Case No. 01-35032

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MUHAMMAD SHABAZZ FARRAKHAN, et al.,

Plaintiffs/Appellants,

v.

GARY LOCKE, et al.,

Defendants/Appellees

AMICUS CURIAE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON IN SUPPORT OF APPELLANTS' POSITION SEEKING REVERSAL

On Appeal from the United States District Court
for the Eastern District of Washington
District Court No. CS-96-76-RHW
Honorable ROBERT H. WHALEY

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WITH FRAP 32

This brief is prepared in a double-spaced 14-point proportionally-spaced font (Times New Roman) and contains fewer than 7,000 words.

Nancy L Tabor

IDENTITY AND INTEREST OF AMICUS

The American Civil Liberties Union of Washington (ACLU-WA) is a nonprofit civil liberties organization dedicated to the preservation and defense of constitutional rights and civil liberties. It has often participated as amicus curiae or as direct counsel in federal cases involving voting rights: Boerner v. State, C91-1658, Western District of Washington (direct representation of plaintiffs; equal protection challenge to state law requiring dual majority to pass referendum); Colony v. Munro, 75 F.3d 454 (9th Cir. 1996) (amicus in case challenging term limits law); US Term Limits v. Hill, 514 U.S. 779 (1995) (amicus in challenge to term limits law); Cunningham v. METRO, C89-1587, Western District of Washington (direct representation of plaintiffs alleging violation of one-person one-vote rule in process for electing local government board). Additionally, the ACLU has been a nationwide leader in seeking remedies for racial bias in the criminal justice system. Its legal and legislative work to combat racial profiling is a recent example of this expertise. A motion requesting leave to file this brief, pursuant to FRAP 29, is being filed simultaneously with the brief.

disqualification was not a per se violation of the constitution: "Congress ... has the power to protect against discriminatory uses of felon disenfranchisement

county government web sites provide voluminous information about government services, but no information about how to restore the fundamental right to vote.[4]

A much higher percentage of white felons than African-Americans were assigned "discharge" status by DOC when they were released from prison. CR 135, p. 30. "Discharged" felons have fewer conditions that must be satisfied in order to obtain full completion of their sentences.[5] Id. Full completion of all conditions of the sentence is the key to eligibility for restoration of voting rights. Thus, the lower percentage of "discharged" Black felons made it less likely they would attain eligibility for voting rights restoration. Id. Plaintiffs alleged that this racially disparate aspect of the restoration process constituted a VRA violation, in addition to the felon disqualification itself. Id. They also alleged that the restoration process violated their procedural due process rights. Id.

The trial court ruled that the above-described evidence did not suffice to survive the defendants' motion for summary judgment, both as to the felon

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[4] Counsel for amicus has checked the web sites for the Washington Secretary of State's office and the King County Records and Elections Department, and neither explained the process for obtaining a certificate of discharge that would restore voting rights.

[5] The DOC witness cited in plaintiffs' summary judgment memorandum (CR 135) defined "discharge" status as "when someone has served prison time, and they are then not going to be under face-to-face supervision after they leave ... although the bulk of them will have monetary obligations."

disqualification itself and as to the restoration process. CR 153. The court reached the following conclusion:

> Washington's felon disenfranchisement provision disenfranchises a disproportionate number of minorities; as a result, minorities are under-represented in Washington's political process. ... [T]he cause of this reduction is not the voting qualification; instead, the cause is bias external to the voting qualification. Although racial minorities are clearly being disenfranchised in numbers disproportionate to that of their white fellow citizens, the Court is compelled by controlling Ninth Circuit authority to conclude that this disproportionate impact is not sufficient to provide a legal remedy under the Voting Rights Act ... because Plaintiffs have failed to establish a causal connection between the disenfranchisement provision and the prohibited result.

CR 153. Later in the ruling, the court acknowledged that "Plaintiffs' evidence of discrimination in the criminal justice system, and the resulting disproportionate impact on minority voting power, is compelling. ..." Id. However, the court rejected the argument that the felon disqualification was analogous to prohibited poll taxes and literacy tests; it asserted that unlike those voter qualifications, felon disenfranchisement was not "inherently or inevitably discriminatory." Id.

Turning to plaintiffs' argument regarding the restoration process, the court ruled plaintiffs failed to establish standing because they had not presented evidence or alleged they were eligible for restoration and had attempted to have their civil rights restored. CR 153. The court also stated that the injury alleged by plaintiff Farrakhan regarding restoration was "too speculative." Id. Finally, the court

concluded the argument regarding restoration suffered from the same lack of proof as the rest of the race-based vote denial claim. Id.

This amicus brief challenges the district court's granting of defendant's motion for summary judgment, and seeks reversal and remand for trial.

STANDARD OF REVIEW

This Court reviews a grant of summary judgment de novo. Kaelin v. Globe Communications Corp., 162 F.3d 1036, 1039 (9th Cir. 1998). The Court "view[s] the evidence in the light most favorable to the nonmoving party" and decides "whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law." Id. "All justifiable inferences" must be drawn in favor of the plaintiffs, " 'including questions of credibility and of the weight to be accorded particular evidence.'" Id. (internal citation omitted). The Supreme Court has been particularly careful to strike down summary judgments in favor of the government when claims of racially biased voting are involved. Hunt v. Cromartie, 526 U.S. 541 (1999) (summary judgment inappropriate in equal protection challenge alleging racial bias in state legislature's drawing of boundaries of Congressional district). In these cases, the intent and purpose of the voting law, as well as interpretation of population and

other statistics, are in issue. These are ordinarily considered factual issues requiring a trial. Hunt, supra, 526 U.S. at 546, 548-49, 552.

The Court also reviews constitutional issues de novo. Martinez v. City of Los Angeles, 141 F.3d 1373, 1382 (9th Cir. 1998). This standard of review applies to the equal protection argument raised below.

ARGUMENT

I. THE VRA TEST FOR A PROHIBITED RACIALLY BIASED VOTING DEVICE IS MET BY WASHINGTON'S FELON DISQUALIFICATION LAW

The Voting Rights Act ("VRA," 42 U.S.C. § 1973(a)) states that "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color ...."

> A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. ....

42 U.S.C. § 1973(b) (emphasis added). Both the plain language of this statute, and cases interpreting the VRA and race discrimination in voting in other contexts, demonstrate that Washington's disqualification of felons from voting violates the VRA.

It is undisputed that the VRA was enacted to remedy the long history of racial discrimination in voting in the United States. CR 135; South Carolina v. Katzenbach, 383 U.S. 301 (1966). The VRA contains detailed mechanisms for federal oversight of state voting processes precisely because the states have so persistently attempted to circumvent voting rights protections. South Carolina v. Katzenbach, supra; Shaw v. Reno, 509 U.S. 630 (1993). Similarly, the VRA has been amended numerous times to strengthen its remedies against racially discriminatory voting devices. Most significantly, in 1982 the VRA was amended to make clear that it was not necessary to prove intentional discrimination to establish a VRA violation. 42 U.S.C. § 1973(b); Ruiz v. City of Santa Maria, 160 F.3d 543, 557 (9th Cir. 1998).

The VRA expressly outlaws two of the most notorious racially-biased voting "devices": poll taxes and literacy tests. 42 U.S.C. § 1973b(a) and (c). Case law discussing these devices illuminates the reason they were found racially discriminatory despite the states' claim at the time that they were valid voting

qualifications. In Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966), the Supreme Court struck down a state law denying the right to vote to persons delinquent in paying their poll taxes. The Court recognized that there were only a very few facts that were legitimately relevant to whether a person was "qualified" to vote: "Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax." Harper, 383 U.S. at 666.

Nothing in the poll tax law at issue in Harper stated that it was "inherently discriminatory," a standard the trial court applied in this case. CR 153. The Harper Court could have considered payment of poll taxes to be a valid voter qualification because non-delinquency is a requirement of good citizenship necessary to protect the integrity of the ballot box. It could have found that the $1 or $2 tax imposed by states had some rational basis since many other forms of governmental fees are permitted. Instead, the Harper Court saw through the superficial neutrality of the poll tax law and the weak rationales supporting it, and properly recognized that protecting the fundamental right to vote was more important.

> 'Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

Harper, 383 U.S. at 667, citing Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886) and Reynolds v. Sims, 377 U.S. 533, 561-52 (1964).

Harper expressly noted that neither wealth nor race was a valid qualification on voting rights:

> Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race are traditionally disfavored. To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant. ... [T]he Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process to a fixed catalogue of what was at a given time deemed to be the limits of fundamental rights. Notions of what constitutes equal treatment for purposes of the Equal Protection Clause do change.

383 U.S. at 668 (citations omitted). Harper applied this evolving understanding of impermissible racially discriminatory voting devices to conclude that the poll tax should be struck down despite its facial neutrality and rational basis.

That same year, the Supreme Court used the VRA instead of the equal protection clause of the Constitution to strike down another discriminatory voting device, the literacy test. Katzenbach v. Morgan, 384 U.S. 641 (1966). The Court had previously held that literacy tests were not per se unconstitutional. But it recognized that Congress had legitimately exercised its power in enacting the VRA to outlaw voting devices that might otherwise be permitted by the Constitution.

Katzenbach, supra. Other than the difference in the legal basis for the ruling, however, Katzenbach applied reasoning strikingly similar to Harper's in striking down literacy tests. Such tests deprived large segments of New York's Puerto Rican community of the right to vote since they had been educated in American, but Spanish-speaking, schools and were unable to pass a test of literacy in English. As with poll taxes, the state offered a superficially neutral, rational basis for the voting qualification: the state claimed the literacy requirement would provide an incentive for non-English speaking immigrants to learn English, and would "assure the intelligent exercise of the franchise." 384 U.S. at 654. Yet again, the Supreme Court found the protection of the fundamental right to vote outweighed such proferred justifications: "Congress might have also questioned whether denial of a right deemed so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English, or of furthering the goal of an intelligent exercise of the franchise." Id. at 654.

The district court here correctly concluded that Washington's felon disqualification law is a "voting device" covered by the VRA. CR 81. However, the district court erroneously assumed that literacy tests and poll taxes were "inherently or inevitably discriminatory" and thus not analogous to Washington's felon disqualification law. CR 153. The Supreme Court's analysis of prohibited

voting devices in Harper and Katzenbach reveals the trial court's error. All of the criticisms of poll taxes and literacy tests described above apply equally well to Washington's felon disqualification law. Felon disqualification laws may be superficially neutral, but they have a history of being used to perpetuate racial discrimination. Hunter v. Underwood, 471 U.S. 222 (1985).[6] The state's justification for the law is weak; there is no more need to protect the purity of the ballot box by excluding felons than there is a legitimate reason to exclude voters who are not current in paying their taxes or those who speak another language. See also, 42 U.S.C. § 1973aa(b)(3) (VRA prohibits rules which require voters to "possess good moral character"); Shaw v. Reno, supra, 509 U.S. at 639 (noting that "good character" provisos were devised to deprive black voters of the franchise.") As this Court noted in Dillenburg v. Kramer, 469 F.2d 1222, 1224-25 (9th Cir.

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[6] Prior to Hunter, the Supreme Court ruled that felon disqualification laws are not a per se violation of the Fourteenth Amendment, since section 2 of the Fourteenth Amendment permits denying the right to vote to those convicted of a felony. Richardson v. Ramirez, 418 U.S. 24 (1974). Richardson did not address whether a state's felon disqualification law might violate the VRA; it only addressed the constitutional equal protection argument. Richardson did not analyze felon disqualification laws under Harper or Katzenbach, supra. The Richardson Court instead relied heavily on the fact that it was an accepted practice to disqualify felons from voting at the time the Fourteenth Amendment was passed, in the mid-19th century. Moreover, the Court in Richardson expressly remanded to the state court the issue of lack of uniformity in enforcement of California's felon

1972), the "purity of the ballot box" argument is overly academic and empirically unfounded. Additionally, the Dillenburg Court, 469 F.2d at 1224, properly recognized that "When the facade of the [felon disenfranchisement] classification has been pierced, the disenfranchising laws have fared ill." There is no need to remove voting rights to give felons an incentive toward rehabilitation, just as there was no need to deprive non-English speakers of the vote in Katzenbach. In both cases, maintaining the right to vote would promote the affected population's participation in society, by increasing the exercise of the right to vote.

As the Supreme Court recognized in Harper and Katzenbach, and this Court recognized in Dillenburg, what constitutes an unfair discriminatory voting device is subject to evolving standards. The VRA's protections are triggered by both minor and major changes in voting rules precisely because discrimination in voting will never be eradicated unless such changes are carefully scrutinized for their racially biased effects. Young v. Fordice, 520 U.S. 273, 284 (1997) (noting that the VRA's "preclearance" requirements apply to such voting rule changes as switching from paper ballots to voting machines, and changes in filing deadlines or polling place locations.) The 2000 Presidential election brought to light voting

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disqualification law. 418 U.S. at 56. For these reasons, Richardson does not preclude the arguments raised in this brief.

practices and disparities among those practices which have long been tolerated "traditions," yet are now viewed as unlawful barriers to the fundamental right to vote. See, Bush v. Gore, infra.

Likewise, just because felon disqualification may have been permitted at the time of the enactment of the Fourteenth Amendment does not mean that it should be tolerated under the VRA today. The VRA is a broad remedial statute and "statutory prohibitions often go beyond the principal evil" which prompted their enactment "to cover reasonably comparable evils ...." Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 79 (1998). It is even more true now than it was in Dillenburg that Washington's felon disqualification law is not necessary to promote a compelling state interest. 469 F.2d at 1224 (emphasis in original). Given the fact that Washington's felon disqualification law results in over 20% of African-American men in the state being disenfranchised, this Court should refuse to be "shackled by the political theory of a particular era" and should rule that lack of felony convictions is as "capricious" and "irrelevant" a voting qualification as the poll tax in Harper. The poll tax and literacy test were stricken because, in reality, they caused disenfranchisement based on the forbidden characteristics of wealth, race, and national origin. Here, there was evidence presented from which a trial court could conclude that Washington's felon disqualification likewise has

such little other justification that it is in fact based on the forbidden characteristic of race. It is equally a violation of the VRA.

The VRA's "totality of the circumstances" test further supports the conclusion that Washington's felon disqualification law should be struck down. Although VRA "vote dilution" claims are in many ways different from claims involving illegal voting "denials" or "devices," this Court has ruled the VRA's "totality of circumstances" and "results" tests apply to both types of claims. 42 U.S.C. § 1973(b); Old Person v. Cooney, 230 F.3d 1113 (9th Cir. 2000); Smith v. Salt River Project Agricultural Improvement and Power District, 109 F.3d 586 (9th Cir. 1997), citing Thornburg v. Gingles, 478 U.S. 30 (1986). These tests are intended to "to address 'the reality of changed practices as they affect Negro voters.'" Presley v. Etowah County Commission, 502 U.S. 491 (1992) (emphasis added) (discussing a different section of the VRA which also remedies discriminatory voting devices); see also, Thornburg, 478 U.S. at 79 (totality of circumstances test requires a "searching practical evaluation of the past and present reality" regarding whether the state's political processes are equally open to minorities) (emphasis added).

The Thornburg factors most relevant to the "practical realities" of Washington's felon disqualification law are: 1) the extent to which the state has

used this voting procedure to enhance the opportunity for discrimination; 2) the extent to which members of minority groups bear the effects of discrimination in an area "such as education, employment and health" (here the criminal justice system), which hinders their ability to participate effectively in the political process; and 3) a "tenuous" policy underlying the voting disqualification. Thornburg, 478 U.S. at 37. The test is not a numerical one; "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." Thornburg, 478 U.S. at 45. Nor is the presence or absence of discriminatory motive dispositive; "requiring proof of intentional discrimination or racist motives ... diverts the judicial inquiry from the crucial question of whether minorities have equal access to the electoral process ...." Ruiz v. City of Santa Maria, supra, 160 F.3d at 557.

The large number of African-American men disqualified from voting in Washington due to the felon disqualification, the fact that felon disqualification has been a racially biased voting device in the past, the weak justification for the disqualification and the pervasiveness of racial bias in Washington's criminal justice system combine to make the felon disqualification law a "voting practice resulting in discrimination," and not just a "bare statistical showing of

disproportionate impact." Smith v. Salt River, supra, 109 F.3d at 594. A voting scheme "depends on race or ethnic origin" in violation of the VRA

> only when there is a conjunction ... of two things: (1) a voting scheme or process that allows racial bias to be expressed and (2) racial bias in the voting community. If only the suspect scheme is present, without bias in the community, the scheme cannot, by definition, result in classifications, decisions, or practices based on race or color. Similarly, if only the bias is present, but the scheme does not allow that bias to be expressed or to work to dilute the minority voting strength, then there is simply no reason for the voting community to make classifications, decisions, or practices based on race or color. ... As one student commentator, interpreting the phrase "discriminatory results," has argued, "Congress...revised section 2 to prohibit election practices that accommodate or amplify the effect that private discrimination has on the voting process."

Id., 109 F.3d at 594, n.7 (original ellipses), quoting Solomon v. Liberty County, Florida, 899 F.2d 1012 (11th Cir. 1990) (en banc) (Tjoflat, J., concurring). Stated another way, the VRA's causation requirement is fulfilled when a voting law has a racially disparate effect, and that law interacts with external social conditions to limit the political opportunities of minorities. Thornburg, 478 U.S. at 47. This test was met here.

The parties in Salt River stipulated to the absence of community bias and the absence of a voting scheme that could express or amplify bias. 109 F.3d at 595-96. The record here is dramatically different. The district court found that while Washington's felon disqualification rule might not have been intentionally designed to further racial animus, it is a voting scheme that allows discriminatory

activity in the criminal justice system to be expressed in its impact on voter registration. CR 153, p. 6. Unlike Salt River, where there was a stipulated absence of all relevant criteria and the plaintiffs sought relief on a bare statistical challenge, plaintiffs here introduced considerable evidence of the sort the Salt River court said would suffice to prove causation. Id. at 595.

The district court therefore erred as a matter of law when it ruled section 2 does not purport to redress "bias external to the voting qualification," [CR 153, p. 3], and that it reaches only the voting device whose "operation by itself has a discriminatory effect," [CR 153, p. 6] (original emphasis). Salt River makes exceptionally clear that facially neutral voting schemes like Washington's can, in the correct factual context, violate the VRA. This is the inescapable result that flows from the poll tax and literacy test cases. The rule of Salt River therefore demands, at a minimum, a trial to rigorously examine how the two conjoined factors of bias and a voting system that amplifies that bias interact in a way that abridges the right to vote on the basis of race.

II. DEFICIENCIES IN THE RESTORATION PROCESS FURTHER PROVE THE VRA VIOLATION AND CONSTITUTE AN INDEPENDENT EQUAL PROTECTION VIOLATION

As discussed above, plaintiffs presented sufficient evidence that Washington's felon disqualification law has a racially biased result. They also

showed that the racially biased effects of the felon disqualification were exacerbated by problems in Washington's process for restoring felons' right to vote. For purposes of the VRA, the problems with the restoration process were simply additional evidence supporting the main vote denial claim. It was therefore error for the trial court to conclude that plaintiffs lacked standing to challenge the restoration scheme because none of them were eligible for restoration or had attempted to have their civil rights restored. CR 153, p. 12. The trial court's ruling on standing cannot withstand de novo review and should be reversed.

Washington's process for restoring felons' voting rights (Rev. Code Wash. § 9.94A.220) may appear to ameliorate the severity of the felon disqualification, but when its actual operation is examined, it can be seen that it offers a false promise to many, if not most, felony offenders.[7] Washington's Secretary of State's office has chosen to take no role in establishing a uniform procedure for restoration of felons' rights, nor does it even offer informational guidance on this issue. CR 135, p. 34-42, and exhibits attached thereto. Instead, the Secretary of State leaves it to

[7] Washington's multi-step process for restoration of voting rights contrasts with other states. Montana's Constitution, for example, states that "full rights are

Washington's 39 different county courts and county auditors to establish a procedure for restoration of voting rights if they wish. Id. The courts have a uniform, quick, and automatic system for notifying county auditors that a person is disqualified from voting by reason of a felony conviction, but no formal written procedure at all for restoration of rights. Id. As noted above in the Facts Section of this brief, the entire burden of figuring out the restoration process is placed on each convicted individual, without even assistance in the form of information being provided by the Secretary of State, DOC or the county auditors' offices. The individual is expected to know how obtain a certificate of discharge through DOC, the prosecutor and the court, even though no one explains what such a certificate is nor how to obtain one. The individual is also expected to know that they can register to vote after obtaining the certificate, and that they can sign the oath affirming they are "not presently denied civil rights due to a felony conviction," without risking a perjury charge, even though no written materials explaining this in plain language are readily available from the Department of Corrections. Id. Despite the ease of providing large numbers of people with this information via the

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restored by termination of state supervision for any offense against the state." Montana Constitution Art. II, sec. 28.

Internet, the state and local government officials responsible for voter registration do not include this information on their web sites.

Informational barriers are not mere inconveniences that could be overcome by more diligence on the part of the ex-felon. The chaotic county-by-county restoration procedure is in essence a test of legal literacy. It is equivalent to a county election official demanding that a voter at the polling place explain the meaning of constitutional provisions, a practice quite properly banned by the VRA. 42 U.S.C. § 1973b(a) and (c). As such, the informational and logistical barriers in Washington's restoration process constitute practices and procedures that result in abridgement of the right to vote, 42 U.S.C. § 1973(a), because it means that members of the disqualified class "have less opportunity than other members of the electorate to participate in the political process," 42 U.S.C. § 1973(b).

In many instances, an ex-felon's ability to negotiate the restoration maze is thwarted purely by the financial consideration of unpaid fines or penalties. CR 135. Washington law does not provide a process for indigent ex-offenders to regain their voting rights, even if they are diligently paying their financial obligations as best they can. The lack of such a process results in denial of the franchise solely on the basis of wealth. Thus, like a poll tax, it is constitutionally and statutorily vulnerable.

By making it difficult for felons to regain their voting rights, as described above, the racially biased results of the felon disqualification are aggravated. With a more difficult restoration process and the refusal of state and local government officials to make an affirmative effort to educate felons about restoration of rights, it is surely likely that people entitled to register to vote are unduly discouraged from doing so. Since, as the district court found, "Washington's felon disenfranchisement provision disenfranchises a disproportionate number of minorities," the disproportionality is necessarily perpetuated by these deficiencies in the restoration process. Applying the same Thornburg "totality of circumstances" test discussed above, the deficiencies in the restoration process constitute an additional form of VRA violation.

At the time of the district court's ruling on December 1, 2000, the parties and the court did not have the benefit of the Supreme Court's December 12, 2000 ruling in Bush v. Gore, ___ U.S. ___, 121 S.Ct. 525 (2000). Plaintiffs raised an equal protection claim not involving the restoration process, and they raised a due process claim involving the restoration issue. CR 81; CR 135, p. 42-44. Bush v. Gore announced equal protection rules that apply directly to Washington's inadequate voting restoration procedures. Bush cited with approval the Harper decision discussed above, and recognized that the right to vote is fundamental and

that a state may not "value one person's vote over that of another." Bush, 121 S.Ct. at 530. Based on this important principle, the Supreme Court majority concluded that the absence of specific standards to ensure equal counting of Presidential votes in Florida constituted an equal protection violation. Id. The Supreme Court was particularly concerned that the standards for accepting or rejecting contested ballots might vary from county to county. Bush, 121 S.Ct. at 531.

The evidence in the case at bar demonstrates a similar lack of uniformity in Washington's procedures for restoration of voting rights. There are no uniform state procedures for restoring ex-felons' right to vote; instead the procedures are left to be developed by each county. One county may ask no questions when an ex-felon re-registers to vote; another may demand presentation of a certificate of discharge signed by the court. Further aggravating such disparities, government officials assume no duty of assisting citizens in regaining the right to vote, and do not even attempt to educate voters about the process that is available to them. Without even a set of established guidelines regarding the restoration process, there is unequal administration of election processes, just as there was the potential for unequal consideration of votes in Bush v. Gore, supra. Washington's lack of a uniform restoration process means that persons eligible to vote nevertheless fail to

regain their voting rights due to the lack of standards. Ex-felons' right to vote is essentially accorded less "value" by the state than the voting rights of others. No compelling interest justifies the disparity in counties' restoration procedures. Pursuant to Bush, Washington's voting procedures impermissibly burden the fundamental right to vote and an equal protection violation should be found.

CONCLUSION

For the foregoing reasons, the issues discussed in this amicus brief should be considered by this Court, and the summary judgment in favor of the defendants should be reversed and the case remanded for further proceedings.

Respectfully submitted this 20 th day of April, 2001.

Respectfully submitted,

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APPENDIX

Summary of Conviction by County		
Asotin	1	1%
Benton	1	1%
Clallam	4	2%
Clark	7	4%
Cowlitz	3	2%
Grant	3	2%
King	58	34%
Kitsap	3	2%
Lewis	1	1%
Mason	1	1%
Pacific	2	1%
Pierce	38	22%
Skagit	2	1%
Snohomish	22	13%
Spokane	9	5%
Stevens	1	1%
Thurston	5	3%
Walla Walla	2	1%
Whatcom	5	3%
Yakima	5	3%
Total	173	100%

Summary by Race		
Asian	1	1%
Black	64	37%
Hispanic	7	4%
Native Am.	5	3%
White	96	55%
Total	173	100%

Summary by Sex		
Male	170	98%
Female	3	2%
Total	173	100%

Note: Not all prior offenses are shown.
* Was sentenced twice as a persistent offender.
** Separate convictions in separate states.
*** Conviction overturned by Court of Appeals.

Summary by Current Offense		
Aggravated Murder 1	1	1%
Arson 1	3	2%
Assault 1	7	4%
Assault 1 (Attempt)	1	1%
Assault 2	15	9%
Burglary 1	8	5%
Child Molestation 1	5	3%
Child Molestation 2	1	1%
Child Molest 1 (Attempt)	1	1%
Drug Del Level 8 w/FA	1	1%
Indecent Lib w/Force	1	1%
Kidnapping 1	6	3%
Murder 1	14	8%
Murder 1 (Attempt)	2	1%
Murder 2	5	3%
Murder 2 (Attempt)	1	1%
Rape 1	8	5%
Rape 1 (Attempt)	2	1%
Rape 2	2	1%
Rape 2 (Attempt)	1	1%
Rape 3	1	1%
Rape of a Child 1	6	3%
Rape of a Child 2	1	1%
Rape of a Child 2(Att)	1	1%
Robbery 1	31	18%
Robbery 1 (Attempt)	4	2%
Robbery 2	39	23%
Robbery 2 (Attempt)	3	2%
Vehicular Assault	1	1%
Vehicular Homicide	1	1%
Total	173	100%

Average Age	38

Jury Trial		
Yes	127	73%
No	46	27%
Total	173	100%

Summary by Prior Offenses		
Aggravated Assault	1	0.3%
Aggravated Murder	1	0.3%
Arson 1	1	0.3%
Assault	8	2.3%
Assault 1	9	2.6%
Assault 1(Attempt)	1	0.3%
Assault 2	55	15.9%
Assault 2 (Attempt)	2	0.6%
Assault w/Sex Mot	1	0.3%
Assault 2 w/Sex Mot	2	0.6%
Burglary 1	12	3.5%
Burglary 1 (Attempt)	1	0.3%
Child Molestation 1	3	0.9%
Child Molestation 2	3	0.9%
Child Molestation 2 (Attempt)	1	0.3%
Extortion 1	1	0.3%
Indecent Lib w/Force	5	1.4%
Indecent Lib w/o Force	1	0.3%
Indecent Liberties	1	0.3%
Kidnapping	1	0.3%
Kidnapping 2	2	0.6%
Manslaughter 1	1	0.3%
Manslaughter 1(Attempt)	1	0.3%
Murder (Attempt) w/FA	1	0.3%
Murder 1	3	0.9%
Murder 1 (Attempt)	1	0.3%
Murder 2	3	0.9%
Poss. of Meth w/FA	1	0.3%
Promote Prostitution 1	3	0.9%
Rape (Other)	4	1.2%
Rape 1	4	1.2%
Rape 1 (Attempt)	1	0.3%
Rape 2	5	1.4%
Rape 2 (Attempt)	1	0.3%
Rape 3	6	1.7%
Rape of a Child 1	2	0.6%
Robbery 1 (Attempt)	4	1.2%
Robbery (Other)	31	9.0%
Robbery 1	72	20.8%
Robbery 2	76	22.0%
Robbery 2 (Attempt)	10	2.9%
Sodomy	1	0.3%
Vehicular Assault	1	0.3%
Vehicular Homicide	1	0.3%
Vol. Manslaughter w/DWSE	1	0.3%
Total	346	100.0%

Washington Sentencing Guidelines Commission
Persistent Offender Report, dated January 2001

Table 1. Population by Race and Hispanic or Latino Origin, for the United States, Regions, Divisons, and States, and for Puerto Rico: 2000

Source: U.S. Census Bureau Internet Release date: April 2, 2001

NOTE: Data not adjusted based on the Accuracy and Coverage Evaluation. For information on confidentiality protection, sampling error, nonsampling error, and definitions, see http://factfinder.census.gov/home/en/datanotes/expplu.html.

United States Region Division State Puerto Rico	Total population	Race								
		One race						Two or more races	Hispanic or Latino (of any race)	White alone, not Hispanic or Latino
		White	Black or African American	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islander	Some other race			
United States	**281 421 906**	**211 460 626**	**34 658 190**	**2 475 956**	**10 242 998**	**398 835**	**15 359 073**	**6 826 228**	**35 305 818**	**194 552 774**
NORTHEAST	**53 594 378**	**41 533 502**	**6 099 881**	**162 558**	**2 119 426**	**20 880**	**2 429 670**	**1 228 461**	**5 254 087**	**39 327 262**
New England	**13 922 517**	**12 050 905**	**719 063**	**42 257**	**374 361**	**5 316**	**448 315**	**282 300**	**875 225**	**11 686 617**
Maine	1 274 923	1 236 014	6 760	7 098	9 111	382	2 911	12 647	9 360	1 230 297
New Hampshire	1 235 786	1 186 851	9 035	2 964	15 931	371	7 420	13 214	20 489	1 175 252
Vermont	608 827	589 208	3 063	2 420	5 217	141	1 443	7 335	5 504	585 431
Massachusetts	6 349 097	5 367 286	343 454	15 015	238 124	2 489	236 724	146 005	428 729	5 198 359
Rhode Island	1 048 319	891 191	46 908	5 121	23 665	567	52 616	28 251	90 820	858 433
Connecticut	3 405 565	2 780 355	309 843	9 639	82 313	1 366	147 201	74 848	320 323	2 638 845
Middle Atlantic	**39 671 861**	**29 482 597**	**5 380 818**	**120 301**	**1 745 065**	**15 564**	**1 981 355**	**946 161**	**4 378 862**	**27 640 645**
New York	18 976 457	12 893 689	3 014 385	82 461	1 044 976	8 818	1 341 946	590 182	2 867 583	11 760 981
New Jersey	8 414 350	6 104 705	1 141 821	19 492	480 276	3 329	450 972	213 755	1 117 191	5 557 209
Pennsylvania	12 281 054	10 484 203	1 224 612	18 348	219 813	3 417	188 437	142 224	394 088	10 322 455
MIDWEST	**64 392 776**	**53 833 651**	**6 499 733**	**399 490**	**1 197 554**	**22 492**	**1 417 388**	**1 022 468**	**3 124 532**	**52 386 131**
East North Central	**45 155 037**	**36 826 856**	**5 405 418**	**177 014**	**880 635**	**13 686**	**1 123 544**	**727 884**	**2 478 719**	**35 669 945**
Ohio	11 353 140	9 645 453	1 301 307	24 486	132 633	2 749	88 627	157 885	217 123	9 538 111
Indiana	6 080 485	5 320 022	510 034	15 815	59 126	2 005	97 811	75 672	214 536	5 219 373
Illinois	12 419 293	9 125 471	1 876 875	31 006	423 603	4 610	722 712	235 016	1 530 262	8 424 140
Michigan	9 938 444	7 966 053	1 412 742	58 479	176 510	2 692	129 552	192 416	323 877	7 806 691
Wisconsin	5 363 675	4 769 857	304 460	47 228	88 763	1 630	84 842	66 895	192 921	4 681 630
West North Central	**19 237 739**	**17 006 795**	**1 094 315**	**222 476**	**316 919**	**8 806**	**293 844**	**294 584**	**645 813**	**16 716 186**
Minnesota	4 919 479	4 400 282	171 731	54 967	141 968	1 979	65 810	82 742	143 382	4 337 143
Iowa	2 926 324	2 748 640	61 853	8 989	36 635	1 009	37 420	31 778	82 473	2 710 344
Missouri	5 595 211	4 748 083	629 391	25 076	61 595	3 178	45 827	82 061	118 592	4 686 474
North Dakota	642 200	593 181	3 916	31 329	3 606	230	2 540	7 398	7 786	589 149
South Dakota	754 844	669 404	4 685	62 283	4 378	261	3 677	10 156	10 903	664 585
Nebraska	1 711 263	1 533 261	68 541	14 896	21 931	836	47 845	23 953	94 425	1 494 494
Kansas	2 688 418	2 313 944	154 198	24 936	46 806	1 313	90 725	56 496	188 252	2 233 997
SOUTH	**100 236 820**	**72 819 399**	**18 981 692**	**725 919**	**1 922 407**	**51 217**	**3 889 171**	**1 847 015**	**11 586 696**	**65 927 794**
South Atlantic	**51 769 160**	**37 283 595**	**11 026 722**	**233 192**	**1 101 965**	**25 762**	**1 175 288**	**922 636**	**4 243 946**	**34 575 917**
Delaware	783 600	584 773	150 666	2 731	16 259	283	15 855	13 033	37 277	567 973
Maryland	5 296 486	3 391 308	1 477 411	15 423	210 929	2 303	95 525	103 587	227 916	3 286 547
District of Columbia	572 059	176 101	343 312	1 713	15 189	348	21 950	13 446	44 953	159 178
Virginia	7 078 515	5 120 110	1 390 293	21 172	261 025	3 946	138 900	143 069	329 540	4 965 637
West Virginia	1 808 344	1 718 777	57 232	3 606	9 434	400	3 107	15 788	12 279	1 709 966
North Carolina	8 049 313	5 804 656	1 737 545	99 551	113 689	3 983	186 629	103 260	378 963	5 647 155
South Carolina	4 012 012	2 695 560	1 185 216	13 718	36 014	1 628	39 926	39 950	95 076	2 652 291
Georgia	8 186 453	5 327 281	2 349 542	21 737	173 170	4 246	196 289	114 188	435 227	5 128 661
Florida	15 982 378	12 465 029	2 335 505	53 541	266 256	8 625	477 107	376 315	2 682 715	10 458 509
East South Central	**17 022 810**	**13 113 106**	**3 418 542**	**57 850**	**136 378**	**5 741**	**121 441**	**169 752**	**299 176**	**12 967 670**
Kentucky	4 041 769	3 640 889	295 994	8 616	29 744	1 460	22 623	42 443	59 939	3 608 013
Tennessee	5 689 283	4 563 310	932 809	15 152	56 662	2 205	56 036	63 109	123 838	4 505 930
Alabama	4 447 100	3 162 808	1 155 930	22 430	31 346	1 409	28 998	44 179	75 830	3 125 819
Mississippi	2 844 658	1 746 099	1 033 809	11 652	18 626	667	13 784	20 021	39 569	1 727 908
West South Central	**31 444 850**	**22 422 698**	**4 536 428**	**434 877**	**684 064**	**19 714**	**2 592 442**	**754 627**	**7 043 574**	**18 384 207**
Arkansas	2 673 400	2 138 598	418 950	17 808	20 220	1 668	40 412	35 744	86 866	2 100 135
Louisiana	4 468 976	2 856 161	1 451 944	25 477	54 758	1 240	31 131	48 265	107 738	2 794 391
Oklahoma	3 450 654	2 628 434	260 968	273 230	46 767	2 372	82 898	155 985	179 304	2 556 368
Texas	20 851 820	14 799 505	2 404 566	118 362	562 319	14 434	2 438 001	514 633	6 669 666	10 933 313
WEST	**63 197 932**	**43 274 074**	**3 076 884**	**1 187 989**	**5 003 611**	**304 246**	**7 622 844**	**2 728 284**	**15 340 503**	**36 911 587**
Mountain	**18 172 295**	**14 591 933**	**523 283**	**614 553**	**353 429**	**38 508**	**1 541 704**	**508 885**	**3 543 573**	**12 883 812**
Montana	902 195	817 229	2 692	56 068	4 691	470	5 315	15 730	18 081	807 823
Idaho	1 293 953	1 177 304	5 456	17 645	11 889	1 308	54 742	25 609	101 690	1 139 291
Wyoming	493 782	454 670	3 722	11 133	2 771	302	12 301	8 883	31 669	438 799
Colorado	4 301 261	3 560 005	165 063	44 241	95 213	4 621	309 931	122 187	735 601	3 202 880
New Mexico	1 819 046	1 214 253	34 343	173 483	19 255	1 503	309 882	66 327	765 386	813 495
Arizona	5 130 632	3 873 611	158 873	255 879	92 236	6 733	596 774	146 526	1 295 617	3 274 258
Utah	2 233 169	1 992 975	17 657	29 684	37 108	15 145	93 405	47 195	201 559	1 904 265
Nevada	1 998 257	1 501 886	135 477	26 420	90 266	8 426	159 354	76 428	393 970	1 303 001
Pacific	**45 025 637**	**28 682 141**	**2 553 601**	**573 436**	**4 650 182**	**265 738**	**6 081 140**	**2 219 399**	**11 796 930**	**24 027 775**
Washington	5 894 121	4 821 823	190 267	93 301	322 335	23 953	228 923	213 519	441 509	4 652 490
Oregon	3 421 399	2 961 623	55 662	45 211	101 350	7 976	144 832	104 745	275 314	2 857 616
California	33 871 648	20 170 059	2 263 882	333 346	3 697 513	116 961	5 682 241	1 607 646	10 966 556	15 816 790
Alaska	626 932	434 534	21 787	98 043	25 116	3 309	9 997	34 146	25 852	423 788
Hawaii	1 211 537	294 102	22 003	3 535	503 868	113 539	15 147	259 343	87 699	277 091
Puerto Rico	**3 808 610**	**3 064 862**	**302 933**	**13 336**	**7 960**	**1 093**	**260 011**	**158 415**	**3 762 746**	**33 966**

Source: U.S. Census Bureau, Census 2000 Redistricting Data (P.L. 94-171) Summary File for states and Census 2000 Redistricting Summary File for Puerto Rico, Tables PL1 and PL2.

Local News : Thursday, July 20, 2000

Blacks ticketed more often, Seattle police study confirms

by Andrew Garber
Seattle Times staff reporter

The Seattle Police Department has found that blacks received a disproportionate share of all traffic tickets issued by officers last year.

The department analyzed all 86,000 tickets issued in 1999 and found that 16.8 percent were issued to blacks. Census figures from 1990 show blacks represent about 9 percent of the driving-age population in Seattle.

"We're past the point of saying 'Is there disproportionality?' There clearly is," Capt. John Diaz told Seattle City Council members yesterday.

The tougher question, he said, "is why?"

Diaz spoke before two City Council committees discussing racial profiling: the Public Safety and Technology Committee, and the Housing, Human Services, Education and Civil Rights Committee.

Diaz said the department supports an independent study. He also said that installing video cameras in police cars should be explored. Councilman Jim Compton had suggested that last month.

Diaz said a 20-member panel, called the Building Block group, is doing a more detailed analysis, expected to be released in September. The panel includes judges, law-enforcement officials, King County Council members and representatives from outside groups.

Analysts are considering different ways to look at the information,

including what driving-age population should be used for comparisons, Diaz said. Traffic tickets are issued to people from a variety of cities.

Too many studies, Diaz said, stop at saying that blacks receive a disproportionate number of tickets, and don't take the next step: trying to find out why.

Some people speaking before the committee yesterday called for better collection of data, including the race of all people stopped by police.

The Urban League of Metropolitan Seattle called for a study of police stops in Seattle by location and police precinct. The league wants an analysis of the race of the people being stopped and why they were stopped.

Diaz said the state may want the Department of Licensing to collect information on race.

A Seattle Times analysis of traffic tickets issued by Seattle police over a five-year period also found that a disproportionate share of tickets were issued to blacks. The article was published last month.

The Times analysis found that blacks are twice as likely as whites to receive traffic tickets.

The Times analysis of court records also found blacks got more tickets per stop than whites and were more likely to be cited for certain offenses, such as defective headlights.

Asians received traffic tickets in proportion to their population. The court records did not indicate whether defendants are Hispanic. There was not enough information on Native Americans to analyze.

Researchers who study racial profiling have cautioned that people should not jump to conclusions based on traffic-ticket information. More study is needed, they say.

Justin Mayo, a Seattle Times database specialist, contributed to this report.

Andrew Garber's phone message number is 206-464-2595.

Background, Related Info & Multimedia:

- Archives: Seattle's blacks twice as likely to get traffic tickets

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Local News : Wednesday, June 14, 2000

Seattle's blacks twice as likely to get traffic tickets

by Andrew Garber
Seattle Times staff reporter

Blacks living in Seattle are twice as likely as whites to be given a traffic ticket.

Blacks represent only about 9 percent of the driving-age population in Seattle, according to the 1990 census, but accounted for 18.6 percent of all stops resulting in traffic tickets from the Seattle Police Department since 1995.

A Seattle Times analysis of more than 324,000 citations issued in the past five years also found blacks get more tickets per stop than whites and are more likely to be cited for certain offenses, such as defective headlights. For example, the number of tickets issued to blacks for blocking traffic is four times the proportion of blacks in the driving population.

The proportion of African Americans given tickets dropped from 20.5 percent of all stops in 1995 to 17 percent last year.

Still, the numbers from a Seattle Municipal Court database raise questions: Do police stop people based on the color of their skin? Is there a racial bias?

Police Chief Herbert Johnson, in a written statement, said "racial profiling is not tolerated by the Seattle Police Department."

Johnson, who declined requests for an interview, said the department is doing its own study, expected to be released by the end of the summer, that looks at traffic stops, as well as tickets issued. The study "should

give a more thorough and accurate picture of enforcement," he wrote.

"We remain very sensitive to the issues raised, and will do our very best to ensure that we maintain the highest standards of ethics in providing law-enforcement services to all of our citizens."

City Councilman Richard McIver wants an independent study. "If there is a disproportionality, my concern is, what is the reason for that? It might be racism. It may very well be profiling."

The city needs to find out, he said.

J.D. Miller, a Seattle police officer and vice president of the police union, said officers are not stopping people because of their race.

"The only thing we'd ever profile in this city would be crime, and certainly we do that without any regard for the person's race," he said.

Miller and other law-enforcement officials said there are likely other explanations for the numbers that have nothing to do with race, including economics and where officers are stationed.

Researchers who study racial profiling say it's too early to draw conclusions based on traffic-ticket records.

David Harris, a professor of law at the University of Toledo, reviewed some of The Times' findings. He has done extensive research on the subject nationally.

"You can't conclude it (racial profiling) is occurring," Harris said. "What you are seeing is an indication there may be a problem."

Harris and others said more study is needed, including looking at all stops made by Seattle police, regardless of whether a ticket is issued.

Racial profiling is the use of race as a reason to stop drivers. Concerns have been raised nationally that the country's battle against drug use has led police officers to stop minorities for minor violations as a pretext to search for drugs and other contraband.

Profiling has become a volatile issue.

People from across Washington have testified in front of the state Senate Judiciary Committee, complaining that police stop minorities because of the color of their skin. Gov. Gary Locke signed a law this year requiring the State Patrol to collect information on the backgrounds of people who are stopped and arrested, and whether a search was done.

Emotions about racial profiling surged after an African-American man with a history of mental illness was shot and killed by Seattle police in April.

David Walker was shot after stealing orange juice at a Lower Queen Anne supermarket and firing two gunshots in the store's parking lot. He was holding a knife and had a handgun when he was shot.

Protesters rallied outside Mayor Paul Schell's office last month complaining about a lack of progress on issues such as racial profiling and use of force by police.

Failure to use turn signal

Jabir Muied thinks race played a role when he was stopped and given traffic tickets earlier this year.

Muied was pulled over twice, in February and again in April, in South Seattle. "Both times, I was pulled over for failure to use a turn signal, which seems to be an excuse to pull people over for whatever reason. In my case, I thought it was simple harassment."

Muied, a 20-year-old computer technician who commutes to Seattle from Bothell, said he drives a Corvette and uses his turn signal.

"The primary reason I think he pulled me over is not only because I drove a nice car in a bad neighborhood - he figures most of the people who live in South Seattle are ignorant and you can harass them with impunity," Muied said.

"I know several people who are harassed and pulled over on a regular basis who do nothing about it."

Muied challenged both tickets in court and was found not guilty.

The Rev. Robert Jeffrey, pastor of the New Hope Baptist Church in Central Seattle, said police often stop African-American drivers as an excuse for checking other things.

"They see an African American, and they want to explore the credibility of the person to be on the street," he said. "It's a racist thing."

"African Americans are now to the point where when they get behind the wheel and see a police officer, they automatically suspect if there is any slight thing wrong, that they are going to be pulled over," Jeffrey said.

Disproportionate numbers

Not every black driver stopped by police feels targeted.

Oscar Alexander of Seattle was given a ticket earlier this year for having a defective headlight.

He had received a warning before getting a ticket. It was something "I should have probably gotten fixed," he said.

Still, Alexander believes race shaped the officer's attitude after he was stopped. "I'm feeling he was just harassing me."

Researchers who study racial profiling look for information on whether blacks get a disproportionate number of tickets for minor offenses.

"At a crowded intersection, if a cop sees someone run a red light, the cop goes after them. It doesn't make any difference if they are white, black or whatever," said John Lamberth, a psychology professor at Temple University.

"However, for a low-inflated tire or a brake light that doesn't work, (police) see hundreds of those before they make a stop."

The Seattle Times analysis found that blacks living in Seattle were more likely to receive tickets written for certain offenses. For example, blacks received:

- 27 percent of all tickets issued for equipment violations.
- 33 percent of tickets for not using signals when required.
- 33.7 percent of tickets for defective headlights.
- 47.3 percent of tickets for not having an illuminated license plate.

The percentages drop for other offenses. For example, blacks received:

- 14.5 percent of the speeding tickets.
- 12.5 percent of tickets for illegal U-turns.

Court records also show that blacks are issued more tickets per stop than whites. Blacks, on average, received 1.43 tickets per stop compared with 1.28 for whites.

Lisa Daugaard, an attorney with the Seattle-King County Public

Defenders Office, said the proportion of tickets issued to blacks for certain traffic violations fits what she sees in her practice.

"Based on our anecdotal experience with thousands of cases that originate in traffic stops, it is clear that these data reflect what we see all the time," she said. "Some people have an inordinately high chance of being stopped for what are utterly trivial infractions."

But law-enforcement officials say there are likely other explanations. It is important to look beyond the numbers. For example, blacks may be getting a disproportionate share of tickets because there are more officers patrolling areas with large populations of blacks, said Scott Reinacher, chairman of the National Troopers' Coalition.

And maybe there are economic factors involved, he said, in terms of the ability of some blacks to afford to keep their cars in good repair. According to the 1990 census, 24 percent of African Americans in Seattle lived below the poverty level, compared with 9 percent of whites.

"The issue of race has become the trump card here," Reinacher said.

Harris, with the University of Toledo, said such arguments do not fully explain what is happening.

"You can stop everybody out there for something," he said. "The traffic code, police officers know, is their best friend. That was true 30 years ago, and it's true now."

It's important for communities to find out if racial profiling exists, Harris said.

"It's a problem of the first magnitude because it undermines confidence in the justice system and because it is a problem distributed by race."

Seattle Times database specialist Justin Mayo assisted with this story.

Andrew Garber's phone message number is 206-464-2595.

Background and Related Info.

- How tickets were analyzed
- Top three citations given
- The numbers: by infraction and race
- Correction

Search again

Wednesday, January 17, 2001, 12:00 a.m. Pacific

Minorities get searched more often by Patrol

by Stuart Eskenazi
Seattle Times staff reporter

Blacks, Hispanics and Native Americans pulled over by the State Patrol are 2-1/2 times as likely as whites to be forced to submit to a search, the agency revealed in a report that hints at racial profiling among police.

"One of the reasons we collected the data was to get away from the anecdotal and to have something that is proof, one way or another," Patrol Chief Annette Sandberg said. "This data changes the debate. Now we can look at actual facts and come to terms that we need to examine our behavior as police officers on how we treat people after an initial traffic stop."

Community leaders say state troopers aren't the biggest problem. They hope the report lights a fire under legislative efforts to require the collection of traffic-stop data by local police departments, which receive the majority of racial-profiling complaints.

"Even the most professional police department in this state has a significant discrepancy on searches," said Sen. Adam Kline, a Democrat whose district includes Southeast Seattle. "It lends a great deal of credibility to the complaints I've heard over and over again from people in my district."

The Patrol analyzed all of its 338,885 traffic stops from May to October to determine whether motorists were treated disproportionately on the basis of race. The report, released yesterday, says troopers were as likely to stop white motorists as they were nonwhite ones. But Sandberg said she was startled by the report's findings on what happened after the stops.

Nonwhites accounted for 16 percent of all traffic stops but for 26 percent of all searches. Yet the chance of troopers finding contraband in a search was less for nonwhites than for whites. Troopers found contraband in 22 percent of searches of African Americans, Hispanics and Native Americans and in 33 percent of searches of white motorists.

"The higher percentage of searches with less results clearly raises concerns," Sandberg said. "It conjures up a whole series of questions in my mind. What was the basis to ask for the search to begin with? Are we relying too much on intuition that may subconsciously be a race factor?"

Searches are uncommon for all races but significantly more common for nonwhites. During the period of the study, troopers searched 2 percent of white motorists they pulled over but 4.9 percent of blacks, Hispanics and Native Americans.

The report also indicates that after whites are pulled over, they get off without a ticket 62 percent of the time, compared with 48 percent for African Americans, Hispanics and Native Americans.

"I am alarmed and very much concerned," said Tony Orange, executive director of the state Commission on African-American Affairs. "The reason I have to be restrained in my comments is that we don't know what the numbers will show elsewhere, which is why we want the information gathered."

Racial profiling, the notion that police make decisions - consciously or subconsciously - on the basis of race, has become a huge political issue nationally and is increasingly coming to the fore in Washington. Last summer, Seattle police acknowledged they were issuing a disproportionate number of traffic tickets to minorities and agreed to do a follow-up study. The department, however, is not yet compiling traffic-stop data.

During the 2000 legislative session, state Sen. Rosa Franklin, D-Tacoma, sponsored a bill that would have mandated local law-enforcement agencies to collect traffic-stop data and present annual analyses to the state. The bill that eventually passed only encouraged voluntary participation, such as the analysis done by the State Patrol. Sandberg plans to brief lawmakers on her agency's report at a Monday hearing in Olympia.

The Washington Association of Sheriffs and Police Chiefs is

supporting the idea of amassing traffic-stop data, but only if an individual department chooses to collect it and only if the state foots the bill. Larry Erickson, the association's executive director, declined to comment on the Patrol report until he testifies before the Legislature about it on Monday.

Onofre Contreras, executive director of the state Commission on Hispanic Affairs, said he thinks the report points to a trend of what is happening on roads patrolled by local police departments.

"This may just be the tip of the iceberg," he said. "We finally have real numbers that fall in line with what we have heard anecdotally. People tell us stories of being stopped, having their car searched and then they are let go. But being released doesn't take away from the fact that they feel harassed.

"Discrimination is usually proven because a pattern emerges. But that pattern cannot emerge unless there is documentation. For communities of color, the issue has always been to let us have the documentation and let us see what the reality is."

Sandberg, who is stepping down from her post soon, said the agency plans to analyze the report to determine whether disproportionate treatment is more prevalent in certain areas of the state. The agency plans to hold out the report as a reason to re-educate officers on proper search-and-seizure techniques.

"Sometimes making people aware helps change behavior," she said.

Seattle Times research editor Tom Boyer contributed to this report.

Case No. 01-35032

CERTIFICATE OF SERVICE

I, Bing Aradanas, hereby certify that I have served two copies of the Amicus Curiae Brief of ACLU-WA and one copy of the amicus motion upon:

1) Respondents, by mailing it first class U.S. Mail, postage prepaid, to their attorneys Daniel Judge and Jeffrey Even, Office of the Attorney General, P.O. Box 40116 and P.O. Box 40100, Olympia, WA 98504;

2) Appellants, by mailing it first class U.S. Mail, postage prepaid, to their attorneys D.C. Cronin, Maxey Law Offices, 1835 West Broadway, Spokane, WA 99201, and Lawrence Weiser, Attorney, and Jason Vail, Legal Intern, University Legal Assistance, P.O. Box 3528, Spokane, WA 99220;

3) Other amicus, by mailing it first class U.S. Mail, postage prepaid, to Nancy Northup and Gillian Metzger, Brennan Center for Justice, New York University School of Law, 161 Avenue of the Americas, 12th Floor, New York, NY 10013.

DATED this 20th day of April, 2001.

Bing Aradanas