Civil Service: An Overview



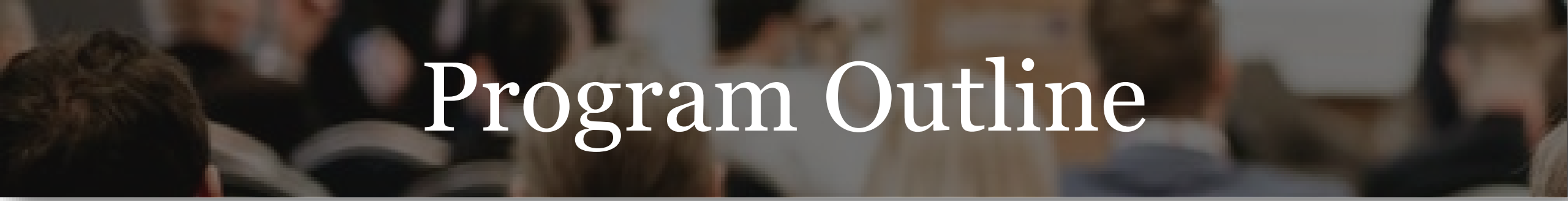
PRESENTED BY

Steve DiJulio
Principal, Foster Garvey

FOR

45th Annual Civil Service Conference

October 20, 2026



Program Outline

- Introduction
- Basics
- Hearings
- OPMA and PRA

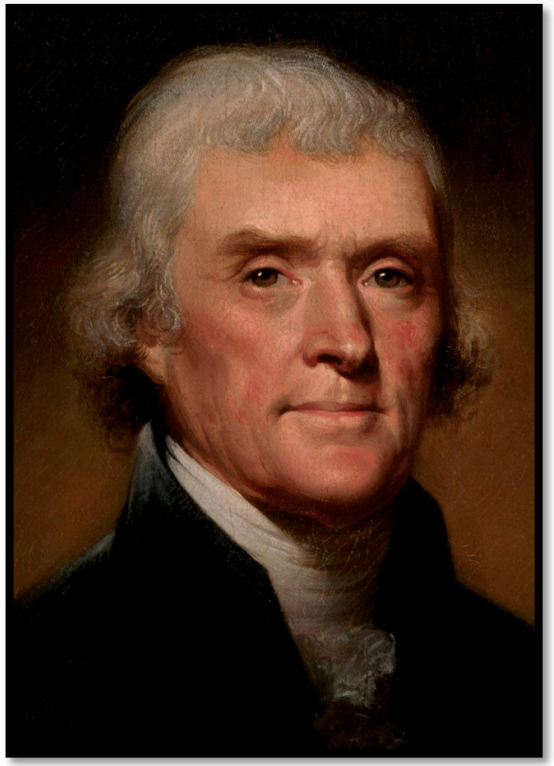


Introduction

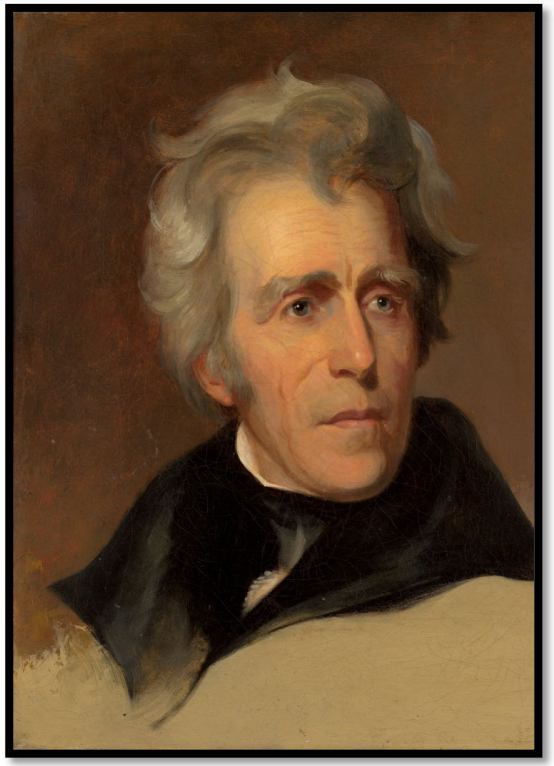
Qin Dynasty, 221–206 BCE



Background – Why Civil Service?

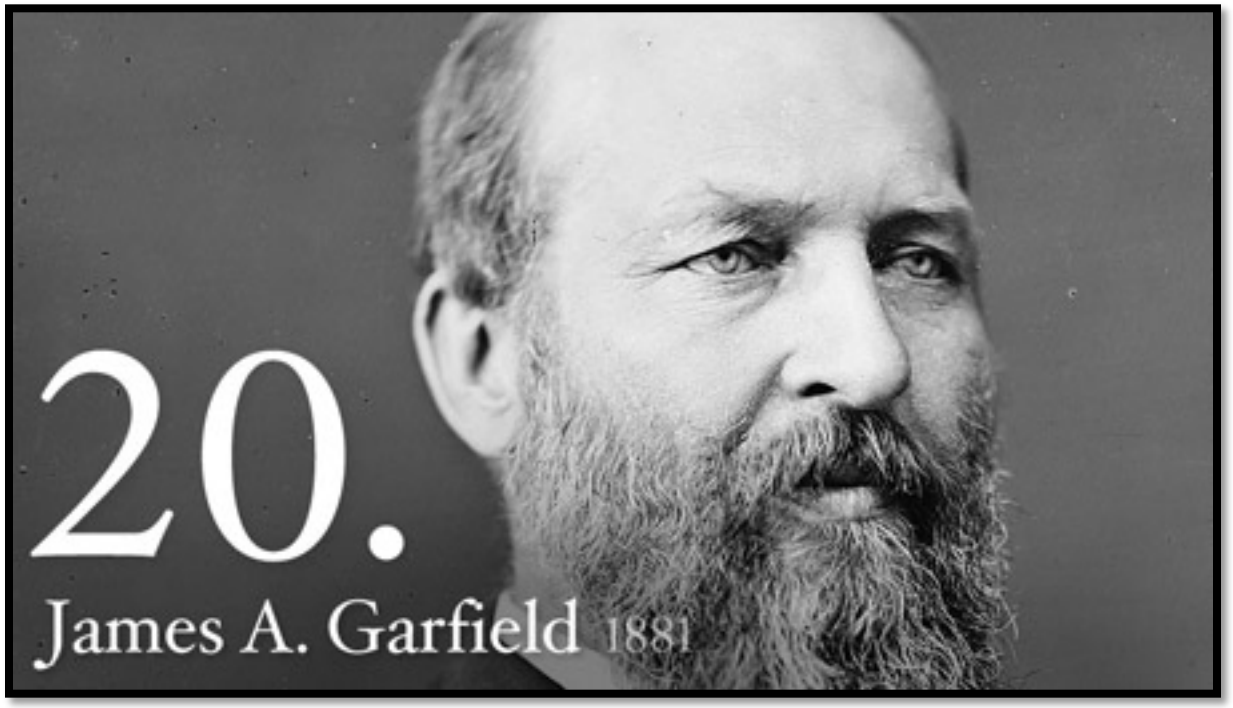


Jefferson
(1801-1809)



Jackson
(1829-1837)

Background



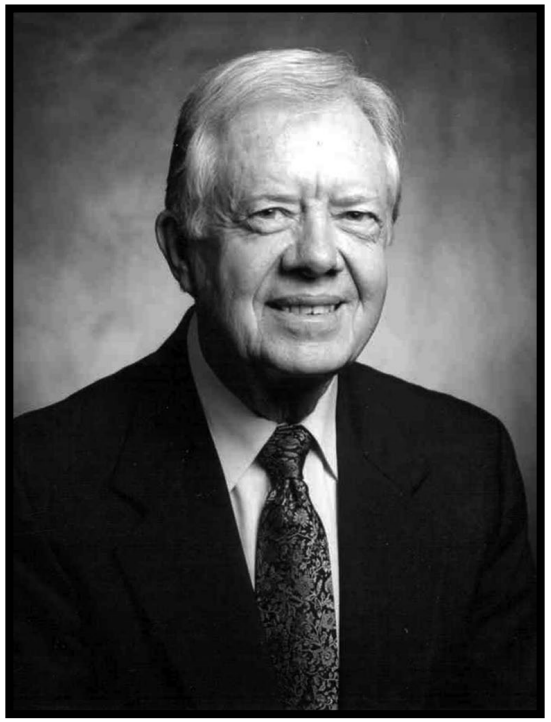
Background

Pendleton Act —

Civil Service Reform Act of 1883



Background



Civil Service Reform Act of 1978

Progressive Era 1890 - 1920



https://2001-2009.state.gov/r/pa/ho/time/ip/108646.htm#:~:text=The%20Progressive%20movement%20was%20a,political%20influence%20of%20large%20corporations.

Systems – Cities General: Seattle 1886 / Yakima 1959



Systems – Fire



Ch. 41.08 RCW
(1935)

Systems – City Police



Ch. 41.12 RCW
(1937)

Systems – County Sheriff



Ch. 41.14 RCW

(I-23, 1958)

Other Municipal Systems





Basics



Basics – Foundation

- Structure
- Purpose
- Coverage
- Jurisdiction
- Collective bargaining

Structure



Reynolds v. Kirkland Police Commission (1963)

Washington State – Purpose of Civil Service

- Merit
- Tenure
- Independent Commission

Vested Rights?



Greig v. Metzler (1982)

Who Runs Department?



Easson v. Seattle (1903)

Who's Covered?



Teamsters v. Moses Lake (1993)

Exempt Positions

- 1988 *Samuels v. City of Lake Stevens:* city's effort to exclude the position of chief of police from civil service violated Chapter 41.12 RCW
- 1987 A city or town may determine by ordinance that the civil service does **not** include
  - any fire chief appointed after July 1, 1987, RCW 41.08.050 ;
  - or a police chief appointed after July 1, 1987 (if the police department includes six or more commissioned officers), RCW 41.12.050.
- 2002 RCW 41.12.050 authorizes "unclassified service" for police
- 1958 RCW 41.14.070 exempt positions outset of county sheriff civil service
- Assignments?

RCW 41.12.050
Persons Included – Restricted Exemptions:

If the police chief is exempt, the classified civil service includes all full paid employees of the department of the city, town, or municipality, except the police chief and an additional number of positions, designated the unclassified service, determined as follows:

Department Position	Unclassified Position Appointments
6 through 10	2
11 through 20	3
21 through 50	4
51 through 100	5
101 through 250	6
251 through 500	8
501 and over	10

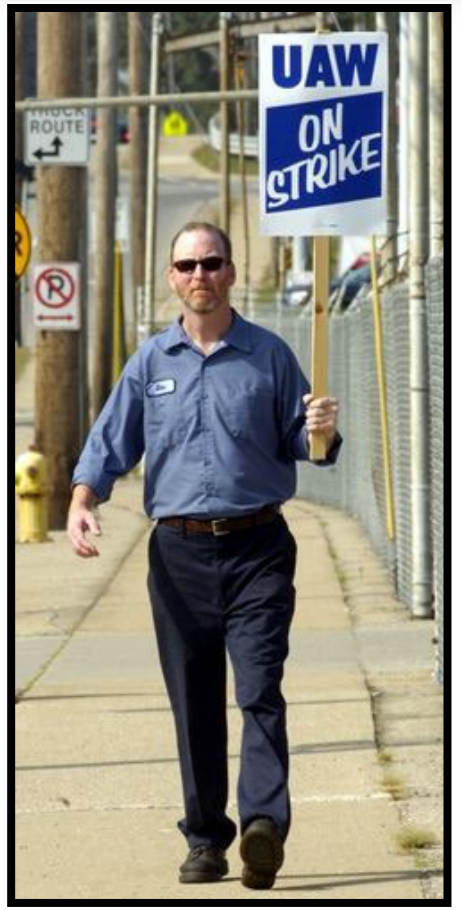
RCW 41.12.050
Persons Included – Restricted Exemptions:

- Assistant chief
- Deputy chief
- Bureau commander, and
- Administrative assistant or administrative secretary.

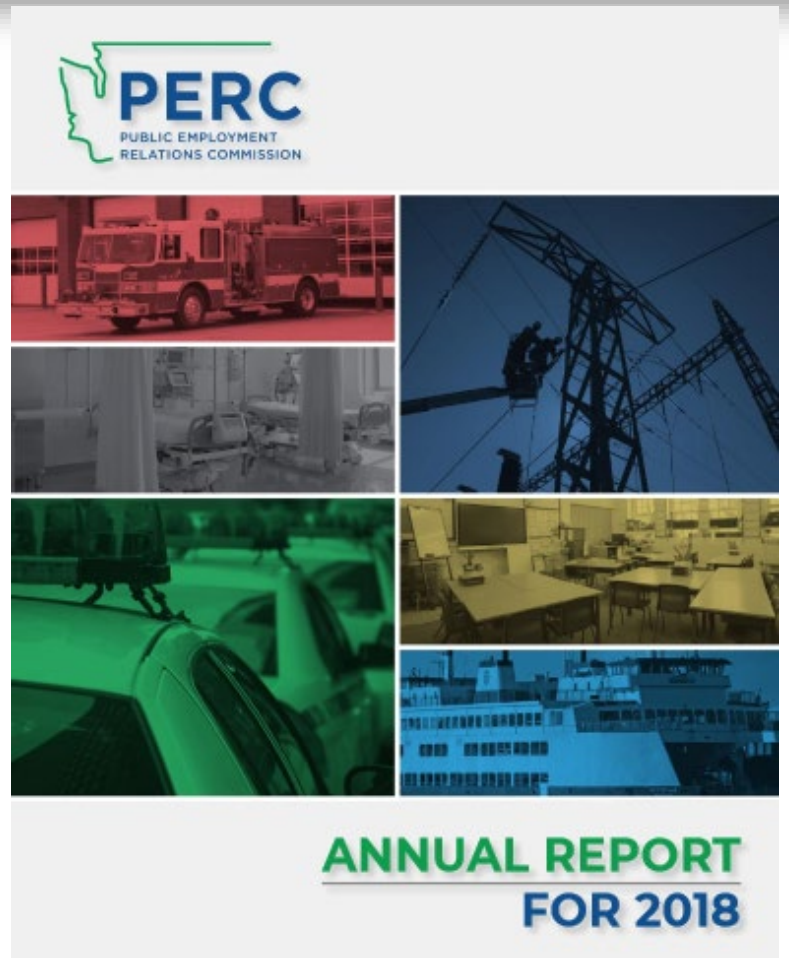
Labor Relations

Chapter 41.56 RCW (1967) and Collective Bargaining

Rose v. Erickson (1986)



Public Employment Relations Commission



Subjects of Bargaining – Sword and Shield

- Mandatory
- Permissive
- Illegal

Civil Service v. Collective Bargaining



Spokane v. Civil Service Commission (1999)

Basics of Civil Service Actions

- Classification of positions
- Examinations
- Registers and eligibility
- Certification and appointment
- Probation
- Discipline and discharge

Classifications



State ex rel. Reilly v. Civil Service (1941)

ELIGIBILITY – RCW 41.08.070; RCW 41.12.070; RCW 41.14.100

An applicant for a position of any kind under civil service under the provisions of this chapter, must be a citizen of the United States of America, a lawful permanent resident, or a deferred action for childhood arrivals recipient. An applicant for a position of any kind under civil service under the provisions of this chapter must be able to speak, read, and write the English language.

(Chapter 330, Laws of 2024)

Examinations: Written or Oral?



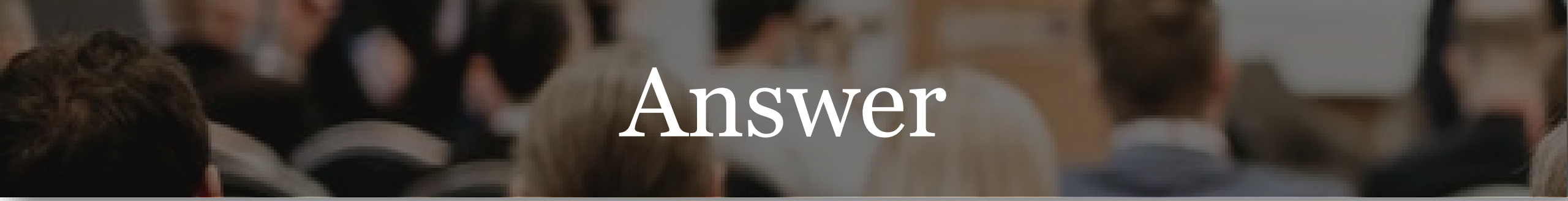
Stoor v. Seattle (1954)

Examinations: Test Materials





Helland v. King County (1975)



Answer

A. It is a “crime” because it violates an existing statute.

B. It is not a “crime” because the statute is obsolete and not usually enforced.

C. It is a “crime” because the exposure may incite others to more serious crime.

D. It is a “crime” because the offensiveness to public opinion justifies the use of the obsolete statute.

E. It is not a “crime” because public opinion would not support the police in taking enforcement action.

See Helland v. King County, 84 Wn.2d 858 (1975)

Examinations: Follow the Rules



See State ex rel. Hearty v. Mullin, 198 Wash. 99 (1939)

Examinations: Open or Promotional?



O'Brien v. Civil Service Commission (1976)

Examinations: Who Tests?



Simonds v. Kennewick (1985)

Examinations: Basics

Employment selection procedure is valid if:

"Predictive of or significantly correlated with important elements of job performance."

29 CFR § 16-7.5(B)

See, TITLE VII of the Civil Rights Act of 1964,
42 USC § 2000-e2(a)

Examinations: Test Sequence?



See Leonel v. American Airlines (2004)

FAIR CHANCE ACT, Chapter 49.64 RCW (2018/2025)

Amended to prohibit asking about criminal history until after a conditional job offer has been made

Adverse actions based on arrest records, juvenile records or adult convictions must be supported by a legitimate business reason, and employers are required to:

- Notify the applicant or employee
- Allow at least two days for response and, if an adverse employment decision is made, and after the response,
- Provide a written decision documenting their assessment of statutory factors

Statutory factors are post-conviction rehabilitation, good conduct, work experience, education and training. Employer documentation requirements are stringent

If the job posting lists a requirement for a background check OR the applicant voluntarily discloses criminal history, employers must notify in writing of specific requirements of the Fair Chance Act and provide the Attorney General's Washington Fair Chance Act guide



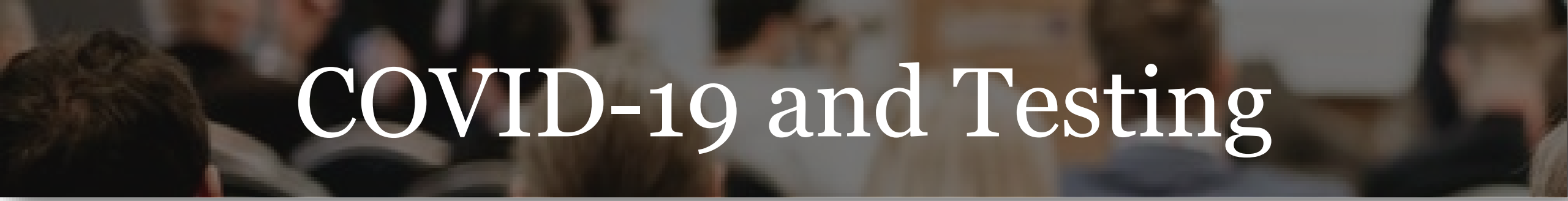
COVID-19 and Testing/Onboarding

What You Should Know About COVID-19

and the ADA, the Rehabilitation Act,

and Other EEO Laws:

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term



COVID-19 and Testing

- An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer
- According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace. . .
- and therefore the employer may withdraw the job offer
- those who are 65 or older, or pregnant women, as being at greater risk does not justify unilaterally postponing the start date or withdrawing a job offer.

Notice Concerning the Undue Hardship Standard in Title VII Religious Accommodation Cases

This document was issued prior to the Supreme Court's decision in *Groff v. DeJoy*, 143 S. Ct. 2279 (2023). The *Groff* opinion clarified that "showing 'more than a *de minimis* cost'…does not suffice to establish undue hardship under Title VII." Instead, the Supreme Court held that "undue hardship is shown when a burden is substantial in the overall context of an employer's business," "tak[ing] into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size and operating cost of an employer." *Groff* supersedes any contrary information on this webpage. For more information about the EEOC's resources on religious discrimination, please see https://www.eeoc.gov/religious-discrimination.

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Test Sequence

- Civil Service
- Departmental?
  - Background
  - Polygraph
  - Medical
  - Other

Commission Review of Registers

- Who tests?
- Who determines candidate eligibility?
- Managing appeals

Competitive Exam Preference Points – RCW 41.04.012

> Maximum of 15 percent for first appointment (not promotional)

- 10% - fluent as a native speaker in two or more languages other than English
- 5% - completely fluent as a native speaker in one language other than English
- 5% - two or more years of professional experience or volunteer experience in the Peace Corps, AmeriCorps, domestic violence counseling, mental or behavioral health care, homelessness programs, or other social services professions
- 5% - an associate of arts or science degree or higher degree

Register/List: Rule of Three (Or More)?



Seattle Police Officers Guild v. City of Seattle (2002 and 2004)



Affirmative Action?

"Selective certification coupled with the engineering department's policy of filling the first of every three vacancies with a qualified minority candidate is not only appropriate, but also essential to eradicate in the instant case the present effects of past discrimination. . . . It is not enough that employment procedures utilized by employers are fair in form. They must be fair in operation."

Lindsay v. Seattle, 86 Wn.2d 698 (1976)



Selective Certification

"The ethics of our society would judge people on their ability and their individualized worth. But past discriminatory practices incongruent with those same ethics and with the abstract, idealistic perfection of a color-blind society, envisioned by the Fourteenth Amendment, have left minorities to varying degrees educationally and economically disadvantaged."

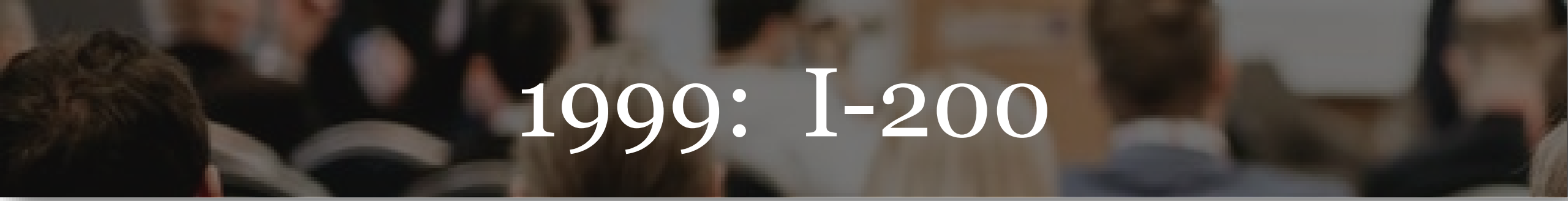
Lindsay v. Seattle, 86 Wn.2d 698 (1976)



Selective Certification

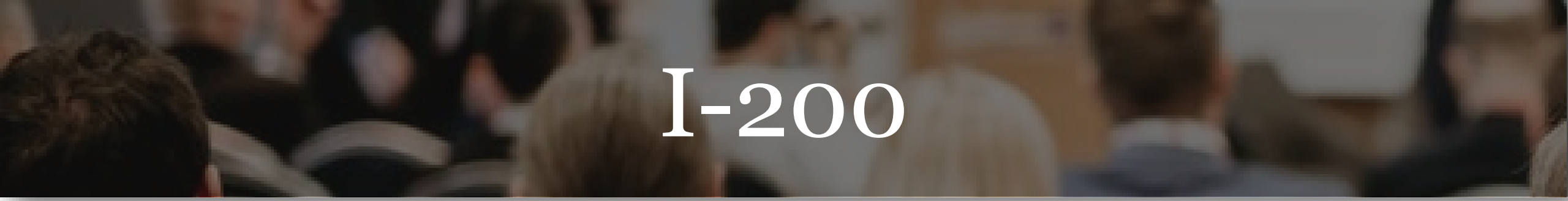
"In light of the underrepresentation of minorities in the Seattle Fire Department as well as in City employment as a whole, and particularly considering the substantial underrepresentation in upper-level positions, we find the City's interest in employing selective certification to eliminate the racial imbalance in its employment to be compelling. The fact that minorities participate on an equal basis in the tax support of the City further supports this conclusion."

Maehren v. Seattle 92 Wn.2d 480 (1979)



1999: I-200

RCW 49.60.400 prohibits the exercise of racial preferences in any aspect of public employment, regardless of the race of the party alleging injury, and provides a separate cause of action for its violation by incorporating the remedies available under other sections of the Washington Law against Discrimination (WLAD).



I-200

RCW 49.60.400 provides, in pertinent part, that

(1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment …

(8) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law.

Parents Involved in Cmty. Schs v. Seattle Sch. Dist. No. 1, 149 Wn.2d 660 (2003)

We hold that the open choice plan's use of a racially cognizant tie breaker does not violate RCW 49.60.400. The School District's open choice plan does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin as meant by law. To the extent the tie breaker is race conscious, it furthers a core mission of public education: to make available an equal, uniform and enriching educational environment to all students within the district.

While we do not reach the constitutional question, we note that article IX imposes on the State the mandatory and paramount duty to provide an education that prepares students for citizenship. This may require positive steps to provide a diverse, culturally rich and racially integrated educational experience.

Dumont v. City of Seattle, 148 Wn. App. 850 (2009)

Our Supreme Court has been very explicit: systems that are racially cognizant but that do not specifically advantage one racial group to the detriment of another do not implicate the terms "discriminate" or "grant preference" as they are used in RCW 49.60.400. . . . Rather, "racially neutral programs designed to foster and promote diversity … would be permitted by the initiative.". . . As our Supreme Court has pointed out, the ballot statement in favor of I-200 itself stated that the initiative "does not end all affirmative action programs. It prohibits only those programs that use race or gender to select a less qualified applicant over a more deserving applicant for a public job, contract or admission to a state college or university."

[Citing *Parents Involved in Cmty. Schs.*, 149 Wn.2d at 687.]

Chapter 14, Laws of 2020

RCW 41.14.060 and 41.14.130 amended:

"The commission shall certify the names of the

((~~three~~)) five persons highest on the eligible list . . ."

Certification and Appointment



See Crippen v. City of Bellevue (1991)

Vahle v. City of Lakewood,

No. 53317-1-II (10/27/2020 – unpublished)

Vahle v. City of Lakewood,

No. 53317-1-II (10/27/2020 – unpublished)

- Promotions within a bargaining unit are mandatory subjects of bargaining
- Collective bargaining agreement confirmed rule of 5
- City authorized Commission to implement standards
- [In 2002, the legislature amended former RCW 41.06.150(2) to omit the benchmark rule of six, providing rulemaking authorities with even greater flexibility to enact rules governing the number of names to certify.]

  [*See* LAWS OF 2002, ch. 354, §§ 203, 411.]

Department Screening?



Probation





Hearings

Discharge/Discipline



Resignation



Micone v. Civil Service Commission (1986)

Reprimands?



City of Yakima (1991)

Commission Jurisdiction?



Yakima v. Yakima Police Civil Service (1981)



Hearing Process

- Quasi-judicial proceedings
- Be careful!
- Avoid **appearance** of unfairness

Increased Penalties



Pool v. City of Omak (1984)

Other Remedies?

- *Bahra v. Cnty. of San Bernardino*, 945 F.3d 1231 (9th Cir. 2019)



Arbitration v. Civil Service



City of Kelso (1999)

CJTC Proceedings?

WAC 139-06-030 **Investigative Authority and Duty to Cooperate**

1. Authority to investigate “regardless of any administrative or criminal investigations”
2. Agencies and employees must cooperate and cannot withhold information; or, agree (with union or otherwise) not to provide full support.
3. Records maintained for 10 years, and must include misconduct and EEO complaints (to include written reprimands and coaching).

Cause?

- "In Good Faith For Cause" v. "Just Cause"



Seattle Police Dept. v. Civil Service (2020)

Seven Elements of Just Cause

- Employee knowledge of rules?
- Rules reasonable to job?
- Investigation?
- Investigation fair & objective?
- Sufficiency of evidence/proof?
- Rules applied evenhandedly?
- Penalty reasonable to offense/service record?

Fair Investigation

- Conduct of internal investigation as basis for claim of disparate impact



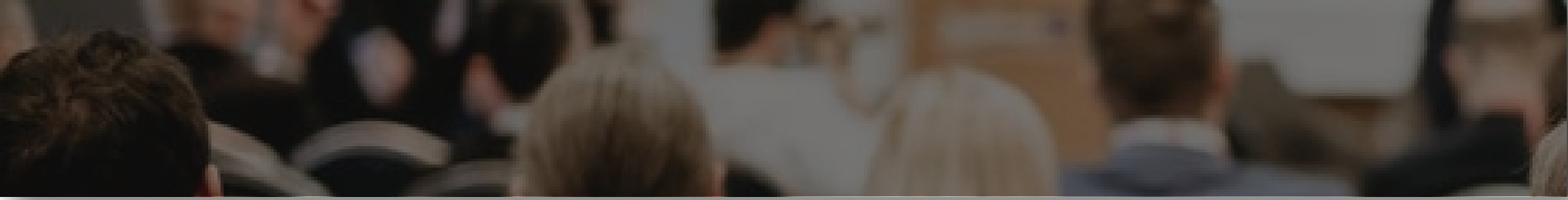
Sidibe v. Pierce County (September 29, 2020)



OPMA AND PRA

Government in a Greenhouse







Questions?

Thank you.



Steve DiJulio

PRINCIPAL

206.447.8971

steve.dijulio@foster.com



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SEATTLE	PORTLAND	WASHINGTON, D.C.	NEW YORK	SPOKANE	TULSA
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T: 206.447.4400 F: 206.447.9700	T: 503.228.3939 F: 503.226.0259	T: 202.965.7880 F: 202.965.1729	T: 212.431.8700 F: 212.334.1278	T: 509.777.1600 F: 509.777.1616	T: 918.732.9355 F: 206.447.9700