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INITIATIVE 381

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 381 to the Legislature is a true and correct copy as it was received by this office.

AN ACT Relating to prohibiting discrimination and preferential treatment; amending RCW 49.60.400; adding new sections; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

POLICIES AND PURPOSES

NEW SECTION. **Sec. 1.** In 1998, the voters of Washington overwhelmingly approved Initiative 200 which prohibited state and local governments from discriminating against or granting preferential treatment to any individual or group based on race, sex, color, ethnicity, or national origin in employment, education, and contracting. Ever since then, state and local governments, unelected bureaucrats, and courts have punched loophole after loophole into this common sense law. They have purposely misinterpreted the policies, purposes, and intent of voter-approved Initiative 200. The people are the final word. This measure simply reestablishes and clarifies the people's intent with regard to this voter-approved initiative's equal treatment policies. This measure would prohibit state and local governments from discriminating against, or granting preferential

treatment to, any individual or group based on race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting. This measure would prohibit government from using the group classifications of race, sex, color, ethnicity, or national origin as factors in public employment, public education, and public contracting. To ensure compliance with this requirement, governments shall delay the collection of the group classifications of race, sex, color, ethnicity, or national origin until after a final decision is made, not before. Collection of group classification before a final decision may be used by the government to discriminate against or grant preferential treatment to any individual or group based on the race, sex, color, ethnicity, or national origin. Such discriminatory policies are in direct violation of the intent, policies, and purposes of this act. Contrary to the laughably absurd predictions by opponents, this requirement does not prohibit school interviews, campus visits, school tours, phone calls, or names on applications. The clear intent of this requirement, spelled out in section 2 of this act, is that such interactions do not constitute the collection of group classifications.

Preferential treatment for one is discrimination against another. The courts have many times misinterpreted the intent of Initiative 200 and this measure seeks to clarify the law so that the intent of the people is clear.

Sec. 2. RCW 49.60.400 and 1999 c 3 s 1 are each reenacted and amended to read as follows:

(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, public education, or public contracting.~~) State and local governments 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, public education, or public contracting. State and local governments shall not use the group classifications of race, sex, color, ethnicity, or national origin as a factor in decisions relating to public employment, public education, or public contracting. To ensure compliance with this requirement, state and local governments shall delay the collection of the group

classifications of race, sex, color, ethnicity, or national origin until after a final decision involving public employment, public education, or public contracting, not before. Collection of group classification before a final decision may be used by the government to discriminate against or grant preferential treatment to any individual or group based on the race, sex, color, ethnicity, or national origin. Such discriminatory policies are in direct violation of the intent, policies, and purposes of this act. For the purpose of providing direction in the interpretation of this requirement, the people do not intend to prohibit the use of names on applications or face-to-face interviews prior to a final decision. For the purpose of this requirement, such interactions do not constitute the collection of group classifications.

(2) This section applies only to action taken after December 3, 1998.

(3) This section does not affect any law or governmental action that does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin.

(4) This section does not affect any otherwise lawful classification that:

(a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or

(b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or

(c) Provides for separate athletic teams for each sex.

(5) This section does not invalidate any court order or consent decree that is in force as of December 3, 1998.

(6) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state. The mere receipt of federal funds is not adequate for this subsection to apply; there must be a federal requirement that if not established or maintained, a loss of federal funds would directly result.

(7) For the purposes of this section, "state and local governments" includes, but is not necessarily limited to, the state itself and any of its agencies and other public institutions, such as any city, county, public college or university, community college,

school district, special district, or other political subdivision or governmental instrumentality of or within the state.

(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.

(9) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

(10) Consistent with the intent, policies, and purposes of this act, any public school, including but not limited to the University of Washington, shall not use the group classifications of race, sex, color, ethnicity, or national origin as a factor in its policies, including, but not limited to, its admission policy. To ensure compliance with this requirement, any public school, including any that use, in whole or in part, a holistic system in its admission policy, shall delay the collection of the group classifications of race, sex, color, ethnicity, or national origin until after the applicant is admitted, not before. Collection of group classification before a final decision may be used by the government to discriminate against or grant preferential treatment to any individual or group based on the race, sex, color, ethnicity, or national origin. Such discriminatory policies are in direct violation of the intent, policies, and purposes of this act.

(11) Consistent with the intent, policies, and purposes of this act, any public school, including but not limited to the Seattle school district, shall not use the group classifications of race, sex, color, ethnicity, or national origin as a factor in its policies, including, but not limited to, determining the assignment of students to schools, sometimes referred to as a racial tiebreaker. To ensure compliance with this requirement, any public school shall delay the collection of the group classifications of race, sex, color, ethnicity, or national origin until after a final decision, not before. Collection of group classification before a final decision may be used by the government to discriminate against or

grant preferential treatment to any individual or group based on the race, sex, color, ethnicity, or national origin. Such discriminatory policies are in direct violation of the intent, policies, and purposes of this act.

(12) Consistent with the intent, policies, and purposes of this act, any government, including but not limited to Sound Transit, shall not use the group classifications of race, sex, color, ethnicity, or national origin as a factor in its contracting policies. To ensure compliance with this requirement, any government shall delay the collection of the group classifications of race, sex, color, ethnicity, or national origin until after the final award of a contract, not before. Collection of group classification before a final decision may be used by the government to discriminate against or grant preferential treatment to any individual or group based on the race, sex, color, ethnicity, or national origin. Such discriminatory policies are in direct violation of the intent, policies, and purposes of this act.

(13) Consistent with the intent, policies, and purposes of this act, any government, including but not limited to Sound Transit, shall not be exempt from the policies, purposes, and intent of this act when it comes to employment and contracting just because they are receiving federal tax revenues. State and local governments, including but not limited to Sound Transit, must abide by this act when it comes to the expenditure of state and local tax revenues even if mixed with federal revenue. Governments, like Sound Transit, may only use employment and contracting goals and timetables and other federally permitted preferential treatment with federal-revenue-only projects or if there is a federal requirement that if not established or maintained, a loss of federal funds would directly result.

(14) Consistent with the intent, policies, and purposes of this act, any government, including but not limited to Seattle government, shall not use the group classifications of race, sex, color, ethnicity, or national origin as a factor in its contracting policies. To ensure compliance with this requirement, any government shall be prohibited from using numerical goals and timetables because they may be used by the government to discriminate against or grant preferential treatment to any individual or group based on the race, sex, color, ethnicity, or national origin. Such discriminatory

policies are in direct violation of the intent, policies, and purposes of this act.

(15) Consistent with the intent, policies, and purposes of this act, any government shall not use the group classifications of race, sex, color, ethnicity, or national origin as a factor in its public employment policies. To ensure compliance with this requirement, any government shall delay the collection of the group classifications of race, sex, color, ethnicity, or national origin until after the final award of a contract, not before. Collection of group classification before a final decision may be used by the government to discriminate against or grant preferential treatment to any individual or group based on the race, sex, color, ethnicity, or national origin. Such discriminatory policies are in direct violation of the intent, policies, and purposes of this act.

NEW SECTION. Sec. 3. The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

NEW SECTION. Sec. 4. Part headings used in this act are not any part of the law.

NEW SECTION. Sec. 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 6. This act shall be called Save Initiative 200 Act.

NEW SECTION. Sec. 7. This act takes effect December 10, 2008.

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