

FILED

16 DEC 19 AM 11:25

KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 16-2-30233-5 SEA

1
2
3
4
5
6
7 SUPERIOR COURT OF THE STATE OF WASHINGTON
8 KING COUNTY

9 AMERICAN HOTEL & LODGING
10 ASSOCIATION, SEATTLE HOTEL
11 ASSOCIATION, and WASHINGTON
12 HOSPITALITY ASSOCIATION;

13 Plaintiffs,

14 v.

15 CITY OF SEATTLE,

16 Defendant.

No.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

17 **INTRODUCTION**

18 In November 2016, voters passed Initiative 124 which imposes numerous new
19 requirements on operators of hotels in Seattle. The measure purports to provide various health
20 and safety protections for hotel workers in Seattle, but in reality most of the protections are
21 either duplicative of or in conflict with existing federal and state law. The most striking novel
22 feature of the initiative is the requirement that covered hotels maintain a blacklist of persons
23 accused of assault on or sexual harassment of hotel employees. If a hotel employee merely
24 accuses a guest of assault or harassment, the hotel is required to place the guest's name on the
25 list, whether or not the employee is willing to sign a sworn statement, make a police report, or
26 offer any supporting evidence. The names on the list are not required to be kept secret. Even if
27 the accusing employee is unwilling to sign a statement, the names of accused guests must be

1 shared with the City of Seattle and, if the guest returns, with other hotel employees. If the
2 employee is willing to sign a statement, the guest must be denied future lodging for three years,
3 without being told why or given an opportunity to challenge the accusation.

4 The potential for mistakes and abuse is significant, especially because the hotels are
5 allowed no opportunity to determine whether there was actually any wrongdoing, and guests
6 are allowed no opportunity to refute the allegations. The blacklist provision *requires* hotels to
7 punish people (by placing them on a list and denying some of them accommodations) without
8 any opportunity to investigate the allegations. The blacklist requirement further forces hotels to
9 damage the reputation of accused guests, and expose them to public shame, without making
10 any assessment of the truth of the accusations. Most importantly, the blacklist provision creates
11 a significant risk that people will be mistakenly or wrongfully accused without any opportunity
12 to respond or clear their names and denied public accommodations as a result.

13 Obviously, a claim of harassment or assault is a serious matter, but existing state and
14 federal laws already provide protections, without requiring hotels to violate the state and
15 federal constitutional rights of guests.

16 The American Hotel & Lodging Association, the Seattle Hotel Association, and the
17 Washington Hospitality Association therefore allege as follows:

18 I. PARTIES

19 1.1 The American Hotel & Lodging Association (“AHLA”) is a trade association
20 with over 24,000 members representing every segment of the lodging industry. AHLA has
21 members located in Seattle that will be subject to the ordinance recently enacted by Initiative
22 124 (“I-124”).

23 1.2 The Seattle Hotel Association (“SHA”) is an organization of 63 member hotels
24 located in the city of Seattle. Members of SHA will be subject to the ordinance recently
25 enacted by I-124.

26 1.3 The Washington Hospitality Association (“WHA”) is a trade association
27 representing more than 6,000 members involved in all aspects of the hospitality industry. The

1 WHA has hotel members located in Seattle who will be subject to the ordinance recently
2 enacted by I-124.

3 1.4 I-124 will cause economic injury to the Seattle hotels belonging to these trade
4 associations (“Member Hotels”).

5 1.5 In addition, Member Hotels stand in the shoes of hotel guests who will be
6 injured by the blacklist requirements of I-124 but who will be reluctant to challenge it because
7 of the stigma attached even to mere accusations of sexual assault and harassment.

8 1.6 The City of Seattle is a political subdivision of the State of Washington located
9 in King County and responsible for enforcement of I-124.

10 **II. JURISDICTION AND VENUE**

11 2.1 This court has jurisdiction over this matter under chapter 7.24 RCW.

12 2.2 This court also has jurisdiction under RCW 2.08.010 and RCW 7.40.010.

13 2.3 Venue is proper in King County, Washington, pursuant to RCW 4.92.010.

14 **III. RELEVANT FACTS**

15 3.1 In November 2016, City of Seattle voters passed I-124. The initiative results
16 were certified on November 29, 2016, and the initiative became effective on November 30,
17 2016.

18 3.2 The ballot title of the initiative was “Initiative 124 concerns health, safety, and
19 labor standards for Seattle hotel employees.” It was followed by this “concise statement”: “If
20 passed, the initiative would require certain sized hotel-employers to further protect employees
21 from assault, sexual harassment, and injury by retaining lists of accused guests among other
22 measures; improve access to health care; limit workloads; and provide limited job security for
23 employees upon hotel ownership transfer. Requirements other than assault protections are
24 waivable through collective bargaining. The City may investigate violations. Persons claiming
25 injury are protected from retaliation and may sue hotel-employers. Penalties go to City
26 enforcement, affected employees, and the complainant.”

27 3.3 The initiative has five unrelated parts:

1 3.3.1 The first requires, *inter alia*, that hotels keep a list of guests that
2 employees have reported as engaging in violent conduct including sexual harassment or sexual
3 assault. Employees need not provide any corroborating evidence of such conduct, and names
4 must remain on the list for five years. If an employee reporting such conduct offers a
5 supporting statement signed under penalty of perjury, the hotel is required to deny further
6 lodging to the guest for three years. If the employee does not offer such a statement, the guest
7 may return, but other hotel employees who might enter the guest’s room in the course of their
8 work must be informed of the prior accusation against the guest.

9 3.3.2 The second part requires that hotel employers protect employees from
10 chemical hazards and sets a maximum number of square feet that may be cleaned in an eight-
11 hour period without additional pay.

12 3.3.3 The third part requires that hotel employers offer certain employees
13 health insurance coverage equal to the highest tier policies on the state health care insurance
14 exchange for no more than five percent of the employees’ gross earnings from that employer,
15 or alternatively, pay the employees additional compensation up to \$200 per month.

16 3.3.4. The fourth part provides for preferential hiring of existing hotel
17 employees when a hotel undergoes a change in ownership.

18 3.3.5. The fifth part provides, *inter alia*, that the burden of proof is shifted to a
19 defendant hotel employer for certain retaliation claims.

20 **IV. FIRST CLAIM—I-124 VIOLATES THE SINGLE SUBJECT RULE**

21 4.1 Article IV, Sec. 7 of the Seattle City Charter requires that every legislative act
22 “shall contain but one subject, which shall be clearly expressed in its title.”

23 4.2 I-124 contains multiple subjects: health and safety measures for hotel workers,
24 compensation and fringe benefits for hotel workers, preferential hiring requirements for
25 hotels in the event of change of ownership, changes in legal standards for certain
26 discrimination claims, and a blacklist, the effect of which is to deny certain persons public
27 accommodations in Seattle.

1 4.3 I-124 violates Art. IV, Sec. 7 and is therefore void.

2 **V. SECOND CLAIM—I-124 VIOLATES THE SUBJECT IN TITLE RULE**

3 5.1 Article IV, Sec. 7 of the Seattle City Charter requires that every legislative act
4 “shall contain but one subject, which shall be clearly expressed in its title.”

5 5.2 The ballot title of the initiative was “Initiative 124 concerns health, safety, and
6 labor standards for Seattle hotel employees.” It was followed by this “concise statement”: “If
7 passed, the initiative would require certain sized hotel-employers to further protect employees
8 from assault, sexual harassment, and injury by retaining lists of accused guests among other
9 measures; improve access to health care; limit workloads; and provide limited job security for
10 employees upon hotel ownership transfer. Requirements other than assault protections are
11 waivable through collective bargaining. The City may investigate violations. Persons claiming
12 injury are protected from retaliation and may sue hotel-employers. Penalties go to City
13 enforcement, affected employees, and the complainant.”

14 5.3 Neither the ballot title nor the concise statement express the multiple subjects of
15 I-124, particularly those which deal with compensation and fringe benefits, legal standards for
16 discrimination claims, and the novel and disturbing requirement that hotels deny
17 accommodation to certain guests without notice or a chance to respond to allegations.

18 5.4 I-124 violates Art. IV, Sec. 7 and is therefore void.

19 **VI. THIRD CLAIM—PART I VIOLATES HOTEL GUESTS’ PRIVACY AND**
20 **DUE PROCESS RIGHTS**

21 6.1 The Fourteenth Amendment to the U.S. Constitution requires notice and an
22 opportunity to be heard when a person’s good name or reputation is at stake because of what
23 the government is doing to him. *Wisconsin v. Constantineau*, 400 U.S. 433 (1971).

24 6.2 Article I, sec. 7 of the Washington Constitution confers a broad right to privacy.

25 6.3 Part I of I-124 requires that hotels keep a list of persons that hotel employees
26 accuse of sexual harassment or sexual assault whether or not the allegation is credible or
27 backed up by any evidence. The hotels are then required to publish the names of such accused

1 persons to hotel employees in certain circumstances and to deny lodging to such accused
2 persons in other instances. In all instances, the list would be available to the City and to the
3 public through Washington's Public Records Act.

4 6.4 Placement on this blacklist injures the good name and reputation of the persons
5 on the list and invades their right to privacy.

6 6.5 I-124 affords persons on this blacklist no notice of placement on the list and no
7 opportunity to be heard. It provides no mechanism or opportunity for a hotel or hotel guest to
8 respond to or refute the allegations.

9 6.6 I-124 is thus void as a violation of the Fourteenth Amendment of the U.S.
10 Constitution and the Washington Constitution, Art. I, sec. 7.

11 **VII. FOURTH CLAIM—PART II IS PREEMPTED BY WISHA**

12 7.1 RCW 49.17.270 provides that the Washington Department of Labor &
13 Industries

14 shall be the sole and paramount administrative agency responsible
15 for the administration of the provisions of this chapter, and any
16 other agency of the state or any municipal corporation or political
17 subdivision of the state having administrative authority over the
18 inspection, survey, investigation, or any regulatory or enforcement
19 authority of safety and health standards related to the health and
20 safety of employees in any workplace subject to this chapter, shall
21 be required, notwithstanding any statute to the contrary, to exercise
22 such authority as provided in this chapter and subject to
23 interagency agreement or agreements with the department made
24 under the authority of the interlocal cooperation act
25 (chapter 39.34 RCW) relative to the procedures to be followed in
26 the enforcement of this chapter. . . .

27 This language evidences the legislature's intent to occupy the field of worker health and safety.

7.2 Seattle hotels are subject to health and safety standards established by the
Department of Labor & Industries pursuant to Chapter 49.17 RCW.

7.3 I-124 requires the City of Seattle to establish and enforce standards other than
those found in Chapter 49.17 RCW and the provisions of the Washington Administrative Code
adopted pursuant to the chapter.

1 7.4 RCW 49.17.270 preempts regulation by the City of Seattle and thus I-124 is
2 void.

3 **VIII. FIFTH CLAIM—PART V IS CONTRARY TO EXISTING FEDERAL**
4 **AND STATE LAW**

5 8.1 Both federal and state law already prohibit an employer from discharging or
6 otherwise retaliating against an employee for complaining about illegal conduct, including
7 sexual harassment, whether by other employees or guests. 42 U.S.C.A. § 2000e-2 (West 1994);
8 RCW 49.60.180.

9 8.2 Under existing law, when an employee claims retaliation by an employer in a
10 lawsuit, the employee retains the burden of persuasion on his or her claim. In some
11 circumstances the burden of *production* (of an explanation in response to a *prima facie* case)
12 may shift to the employer, but in all such cases, the plaintiff employee retains the burden of
13 *persuading* the trier of fact that he or she has suffered illegal retaliation. *See McDonnell*
14 *Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) as later
15 clarified in *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 120 S. Ct. 2097, 147 L.
16 Ed. 2d 105 (2000), and adopted in Washington by *Hill v. BCTI Income Fund-I*, 144 Wn.2d 172,
17 185-87, 23 P.3d 440 (2001).

18 8.3 I-124 attempts to alter the burden-shifting scheme mandated by state and federal
19 courts for retaliation claims and is thus void.

20 **IX. SIXTH CLAIM—I-124 VIOLATES THE RIGHTS TO DUE PROCESS**
21 **AND TO A JURY TRIAL**

22 9.1 Wash. Const. Art. I, Sec. 21 guarantees the right to a jury trial.

23 9.2 The Fourteenth Amendment to the U.S. Constitution and Wash. Const. Art. I,
24 Sec. 3 provide that no person shall be deprived of property without due process of law.

25 9.3 Part V of I-124 provides that the burden of proof shall be shifted from the
26 plaintiff employee to the defendant employer for certain retaliation claims. Such burden-
27 shifting violates state and federal constitutional guarantees of due process.

1 9.4 Part V of I-124 also imposes on defendant employers a heightened burden of
2 proof in certain cases, requiring them to prove they did not retaliate by clear and convincing
3 evidence. This heightened burden violates the state constitution’s right to a jury trial.

4 **X. SEVENTH CLAIM—I-124 IS BEYOND THE LEGISLATIVE**
5 **AUTHORITY OF THE CITY TO ENACT.**

6 10.1 Article XI, sec. 11 of the Washington Constitution gives municipalities police
7 power only insofar as its use does not conflict with general law.

8 10.2 As alleged in sections VI through IX of this Complaint, I-124 conflicts with both
9 state and federal general law.

10 10.3 Therefore the City lacked the authority to adopt I-124, and it is void in its
11 entirety.

12 **PRAYER FOR RELIEF**

13 Plaintiffs request the following relief:

14 1. Declaratory judgment that I-124 violates the single subject requirement of the
15 Seattle City Charter Art. IV, sec. 7 and is thus void in its entirety.

16 2. Declaratory judgment that I-124 violates the subject in title requirement of the
17 Seattle City Charter Art. IV, sec. 7 and is thus void in its entirety.

18 3. Declaratory judgment that Part I of I-124 violates the Fourteenth Amendment
19 and the Washington Constitution, Art. I, sec. 7, and that I-124 is thus void.

20 4. Declaratory judgment that Part II of I-124 is preempted by WISHA, chapter
21 49.17 RCW, and that I-124 is thus void.

22 5. Declaratory judgment that Part V of I-124 conflicts with federal and state law
23 and that I-124 is thus void.

24 6. Declaratory judgment that Part V of I-124 violates the due process guarantees of
25 both the federal and state constitutions as well as the state constitutional right to a jury trial and
26 that I-124 is thus void.
27

