

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division**

LEAH ELIZABETH BARAN, et al.*

Plaintiffs * Civil Action No. 1:17-cv 253 JFM

v.

**COUNTY OF BALTIMORE,
MARYLAND, et al.**

Defendants *

**REPLY OF DEFENDANTS, COUNTY OF BALTIMORE
AND JIM JOHNSON, TO PLAINTIFFS' OPPOSITION TO
MOTION TO DISMISS OR FOR SUMMARY JUDGMENT**

Defendants, County of Baltimore, Maryland and Jim Johnson, by undersigned counsel, respectfully submit this Reply to Plaintiffs' Opposition to their Motion to Dismiss or for Summary Judgment.

INTRODUCTION

As is explained below, emergency legislation has been introduced before the Baltimore County Council to repeal §17-2-104 of the Baltimore County Code. It is anticipated that the repeal of that section of the County Code will put an end to this lawsuit as to the Baltimore County Defendants.

Defendants will first address the issue of mootness. In the event the Court declines to dismiss this lawsuit against the Baltimore County Defendants or to grant

them summary judgment on the ground of mootness, this will Reply will address the other four arguments made in the Plaintiffs' Opposition.

ARGUMENT

1. For the reasons previously set forth in Defendants' Motion to Dismiss or for Summary Judgment and for a new reason, this case is moot.

In their Opposition, the Plaintiffs state as follows: "Here Baltimore County intends to retain its unconstitutional law on the books where it could be enforced in the future." This statement is incorrect. Attached hereto as **Exhibit A** is the Second Declaration of Michael E. Field, County Attorney for Baltimore County, confirming that emergency Bill 12-17 was introduced on March 6, 2017 in the Baltimore County Council in order to repeal §17-2-104 of the Baltimore County Code.

Mr. Field anticipates that the County Council will vote favorably on this Bill at its April 3, 2017 session and that the County Executive will sign it into law on or about April 5, 2017.

As soon as this repeal takes effect, undersigned counsel will so advise the Court and opposing counsel.

If the Court declines to dismiss this action outright based on mootness, then it will need to address the following additional issues.

2. Baltimore County, Maryland, is the proper defendant in this case.

Plaintiffs characterize the County's argument with respect to properly naming Baltimore County, Maryland as the Defendant, as being frivolous. This assertion

completely ignores §103 of the Baltimore County Charter, which specifies that the correct corporate name for Baltimore County is “Baltimore County, Maryland” and which requires that it be designated as such in all actions and proceedings touching its rights.

3. The current Chief of the Baltimore County Police Department should be substituted for “Jim Johnson.”

The County agrees as stated in Federal Rule of Civil Procedure 25(d) that this action does not abate because Chief Johnson has resigned from the Baltimore County Police Department,. The Plaintiff should, however, substitute the current Chief of the Baltimore County Police Department, Terrence B. Sheridan, for former Chief Johnson.

4. Taser International, Inc. is a necessary party.

It should be noted that the Plaintiffs have not addressed the County’s argument that it was Taser International, Inc.’s erroneous refusal to sell tasers to Plaintiffs and not any act or omission of Baltimore County which caused the alleged deprivation of the Plaintiffs’ rights under §1983.

Additionally, the County disagrees with the Plaintiffs’ argument that Taser International, Inc. is not a necessary party. Rather, the County believes that Taser International, Inc. should be made a party so that it can explain why it declined to sell the Plaintiffs tasers in the face of the note under §17-2-104 stating that that section of the County Code had been abrogated by *Caetano v. Massachusetts*.

EXHIBIT A

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*

**COUNTY OF BALTIMORE,
MARYLAND, et al.**

*

Defendants *

SECOND DECLARATION OF MICHAEL E. FIELD

I, Michael E. Field, do hereby declare as follows:

1. I am over the age of eighteen (18) and am competent to testify to the following matters which are based upon my personal knowledge.


2. I am presently the County Attorney for Baltimore County. I have been the County Attorney since December 6, 2010.

3. In my capacity as County Attorney, I am the legislative draftsman for the Baltimore County Council.

4. Attached hereto is emergency Bill 12-17, which was introduced on March 6, 2017. This Bill will repeal §17-2-104, Electronic Control Devices, of the Baltimore County Code. Also, attached hereto is the Legislative Branch's description of this "Pending Legislation."

5. I expect that the Baltimore County Council will vote favorably on this Bill at its session on April 3, 2017 and that the County Executive will sign it into law on or about April 5, 2017.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE AFOREGOING STATEMENT IS TRUE AND CORRECT.



Michael E. Field,
County Attorney

Date: April 8, 2017

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2017, Legislative Day No. 5

Bill No. 12-17

Mr. Tom Quirk, Chairman
By Request of County Executive

By the County Council, March 6, 2017

A BILL
ENTITLED

AN ACT concerning

Electronic Control Device Law – Repeal

FOR the purpose of repealing the county's electronic control device law; and making this Act an emergency measure.

By repealing

Section 17-2-104

Title 2. Firearms and Weapons

Article 17. Miscellaneous Provisions and Offenses

Baltimore County Code, 2015

WHEREAS, in March 2016, the United States Supreme Court ruled in the case of *Caetano v. Massachusetts* that the protections of the Second Amendment to the United States Constitution extend to electronic control devices (e.g., tasers, stun guns); now therefore

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

1 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE
2 COUNTY, MARYLAND, that Section 17-2-104 of Title 2. Firearms and Weapons, of Article
3 17. Miscellaneous Provisions and Offenses, of the Baltimore County Code, 2015 is hereby
4 repealed.

5 SECTION 2. AND BE IT FURTHER ENACTED, that, in accordance with § 308(f) of
6 the Baltimore County Charter, this Act is hereby declared an emergency measure affecting the
7 public health, safety or welfare and shall take effect from the date of enactment.

BALTIMORE COUNTY, MARYLAND

LEGISLATIVE BRANCH

Pending Legislation

The following Bill, in PDF format, was introduced by the County Council at its March 6, 2017 meeting. This Bill will be discussed at the Work Session on Tuesday, March 28, 2017 at 2 p.m. Final Reading and Vote will occur at the Legislative Session on Monday, April 3, 2017 at 6 p.m. in the Council Chambers.

Bill 12-17 Electronic Control Device Law - Repeal

The following Bills, in PDF format, were introduced by the County Council at its February 21, 2017 meeting. These Bills will be discussed at the Work Session on Tuesday, March 14, 2017 at 2 p.m. Final Reading and Vote will occur at the Legislative Session on Monday, March 20, 2017 at 6 p.m. in the Council Chambers.

Bill 10-17 CEB – Linkage to Care

Bill 11-17 Zoning Regulations - Bakery

The following Resolutions, in PDF format, were introduced by the County Council at its March 6, 2017 meeting. These Resolutions will be discussed at the Work Session on Tuesday, March 14, 2017 at 2 p.m. Final Reading and Vote will occur at the Legislative Session on Monday, March 20, 2017 at 6 p.m. in the Council Chambers.

Resolution 27-17 Extension of Sanitary Sewer System – Delight Road – Reisterstown

Resolution 28-17 Planning Board – Review of Regulations on Development Plans and Plats

Revised March 7, 2017