

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

<hr/>		)
CHRISTOPHER MARTEL, DONNA MAJOR	)	)
and LYN BATES,	)	)
	)	)
Plaintiffs,	)	)
	)	)
v.	)	C.A. No.
	)	)
MAURA HEALEY, in her Official Capacity as	)	)
Attorney General of the Commonwealth of	)	)
Massachusetts,	)	)
	)	)
Defendant.	)	)
<hr/>		)

**COMPLAINT**

This is an action for declaratory and injunctive relief brought pursuant to 42 U.S.C. §1983 to vindicate Plaintiffs’ rights under the Second and Fourteenth Amendments to the United States Constitution.

**PARTIES**

1. Plaintiff Christopher Martel (“Martel”) resides in Middlesex County, Massachusetts.
2. Plaintiff Donna Major (“Major”) resides in Suffolk County, Massachusetts.
3. Plaintiff Madeleine (Lyn) Bates (“Bates”) resides in Middlesex County, Massachusetts.
4. Defendant Maura Healey (“Healey”) is sued solely in her official capacity as Attorney General of the Commonwealth of Massachusetts. The Attorney General is the chief legal officer of the Commonwealth and is charged with enforcing the laws of Massachusetts.

**JURISDICTION AND VENUE**

5. This is an action arising under the Second and Fourteenth Amendments to the United States Constitution. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§1331 and 1343.

6. Venue is proper in this Court pursuant to 28 U.S.C. §1391.

**BACKGROUND**

7. Massachusetts General Laws Chapter 140 Section 131J (“Section 131J”) prohibits the sale and possession of electrical weapons. Specifically, it provides in part, “No person shall possess a portable device or weapon from which an electrical current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to incapacitate temporarily, injure or kill.” The only exceptions provided for possession of such devices are for certain law enforcement officers and weapons suppliers. Section 131J also prohibits the sale of such devices to anyone other than law enforcement agencies.

8. The penalty for violation of Section 131J is a fine ranging from \$500 to \$1000, imprisonment from six months to two and one half years, or both.

9. Section 131J is actively enforced, and criminal prosecutions for its violation are pursued.

10. Plaintiff Martel is a Sales Engineer for LG Electronics. His job requires him to travel nationwide, and his work is often done after hours. He transports and installs video displays and other electronics worth tens of thousands of dollars, often in downtown areas and sometimes in dangerous neighborhoods. Martel believes that in this type of situation a stun gun is preferable to lethal force. Although Martel has a Massachusetts Class A License to Carry, it is not legal for him to carry a firearm in many of the states in which he travels, and he cannot bring pepper spray on an airplane. Martel wishes to purchase and possess a Taser, stun gun, or other

similar electrical weapon to use for lawful self-defense purposes in the Commonwealth of Massachusetts.

11. Martel reasonably fears arrest, criminal prosecution, incarceration, and fines if he purchases or possesses an electrical weapon in the Commonwealth of Massachusetts.

12. Plaintiff Major works the evening shift as a MRI Technologist at Brigham and Women's Hospital. Her commute to work requires a half hour drive after 10:00 p.m. through difficult areas. Major has a moral aversion to taking human life and cannot contemplate the circumstances under which she would use a firearm even in self-defense. If Massachusetts law permitted her to carry a stun gun, she would do so for purposes of self-protection while traveling between home and work. Major wishes to purchase and possess a Taser, stun gun, or other similar electrical weapon to use for lawful self-defense purposes in the Commonwealth of Massachusetts.

13. Major reasonably fears arrest, criminal prosecution, incarceration, and fines if she purchases or possesses an electrical weapon in the Commonwealth of Massachusetts.

14. Plaintiff Bates is a retired computer scientist/applied mathematician with a long interest in the use of firearms by women for purposes of self-protection. She is a founding member and Vice President of AWARE (Arming Women Against Rape and Endangerment), which is an organization that educates primarily women about issues of self-protection. She has written numerous articles on the subject. She holds a concealed carry permit, but would like to have the option of using a Taser or stun gun in situations where deadly force might not be justified or necessary, such as a mentally ill or impaired attacker. Bates wishes to purchase and possess a Taser, stun gun, or other similar electrical weapon to use for lawful self-defense purposes in the Commonwealth of Massachusetts.

15. Bates reasonably fears arrest, criminal prosecution, incarceration, and fines if she purchases or possesses an electrical weapon in the Commonwealth of Massachusetts.

**CLAIM FOR RELIEF—ELECTRICAL WEAPONS BAN**  
**(Violation of U.S. Const. Amends. II and XIV, 42 U.S.C. §1983)**

16. The Second Amendment protects the people’s right to keep and bear arms, and is incorporated against the states and their political subdivisions pursuant to the Due Process Clause of the Fourteenth Amendment.

17. Because Tasers, stun guns, and other electrical weapons are “arms,” their possession by law-abiding adult citizens is protected by the Second Amendment right to keep and bear arms.

18. Section 131J prohibits the right to keep and bear electrical weapons, including Tasers and stun guns, it infringes upon the right of individuals, including Plaintiffs, to keep and bear arms as guaranteed by the Second and Fourteenth Amendments to the United States Constitution.

19. By enforcing Section 131J and banning electrical weapons, including Tasers and stun guns, Defendant currently maintains and actively enforces a set of laws, customs, practices, and policies under color of state law which deprive individuals, including Plaintiffs, of their right to keep and bear arms, in violation of the Second and Fourteenth Amendments to the United States Constitution. Plaintiffs are therefore injured, and will continue to be injured in the absence of judicial relief, in violation of 42 U.S.C. §1983. Plaintiffs are entitled to declaratory relief and permanent injunctive relief against continued enforcement of Section 131J and maintenance of Defendant’s unconstitutional customs, policies, and practices.

**DEMAND FOR JUDGMENT**

WHEREFORE Plaintiffs request this Court enter judgment in their favor and against

Defendant as follows:

1. A declaratory judgment, pursuant to 28 U.S.C. §2201, that Section 131J violates the United States Constitution and laws of the United States, specifically, the Second and Fourteenth Amendments and 42 U.S.C. §1983;
2. An order permanently enjoining Defendant, her officers, agents, servants, employees, and all persons in active concert or participation with them, from enforcing Section 131J, and any custom, policy, or practice of prosecuting individuals for sale, possession, or lawful use of an electrical weapon;
3. Attorneys' fees and costs pursuant to 42 U.S.C. §1988, 28 U.S.C. §1920, and any other appropriate authority; and
4. Any other further relief as the Court deems just and appropriate.

Respectfully submitted,

CHRISTOPHER MARTEL, DONNA MAJOR and  
LYN BATES,

By their attorneys,

/s/ Gregory D. Cote

Gregory D. Cote, BBO# 553926

gcote@mccarter.com

McCarter & English, LLP

265 Franklin Street

Boston, MA 02110

617-449-6500 – o

617-326-3098 – f

Of Counsel:

Michael E. Rosman\*

rosman@cir-usa.org

Michelle A. Scott\*

scott@cir-usa.org

CENTER FOR INDIVIDUAL RIGHTS

1100 Connecticut Ave., N.W., Suite 625

Washington, D.C. 20036

202-833-8400 – o

202-833-8410 – f

*\*admission pro hac vice pending*

February 16, 2017

**CIVIL COVER SHEET**

JS 44 (Rev. 08/16)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Christopher Martel, Donna Major and Lyn Bates

(b) County of Residence of First Listed Plaintiff Middlesex  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Gregory D. Cote McCarter & English, LLP; 265 Franklin Street,  
617-449-6500 Boston, MA 02110

**DEFENDANTS**

Maura Healey, in her Official Capacity as Mass. Attorney General

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. 1983

Brief description of cause:  
Constitutional challenge to G.L. c. 140, sec. 131J

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE 2/16/2017

SIGNATURE OF ATTORNEY OF RECORD  
/s/ Gregory D. Cote

**FOR OFFICE USE ONLY**

RECEIPT #      AMOUNT      APPLYING IFF      JUDGE      MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) \_\_\_\_\_  
Christopher Martel, et al v. Maura Healey, in her capacity as Attorney General of the Commonwealth of Massachusetts

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830\*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820\*, 840\*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Gregory D. Cote

ADDRESS McCarter & English, LLP; 265 Franklin Street; Boston, MA 02110

TELEPHONE NO. 617-449-6500