Nos. 23-1201(L); 23-1277 XAP

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

MARSHALL TODMAN; TIFFANY TODMAN,

Plaintiffs-Appellees/Cross-Appellants,

v.

THE MAYOR AND CITY COUNCIL OF BALTIMORE,

Defendant-Appellant/Cross-Appellee.

**On Appeal from the United States District Court
For the District of Maryland at Baltimore**

BRIEF OF APPELLANT/CROSS-APPELLEE

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
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No. 23-1201 Caption: Marshall Todman v. The Mayor and City Council of Baltimore

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(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

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If yes, identify all parent corporations, including all generations of parent corporations:

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If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

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7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
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Signature: /s/ Michael Redmond Date: 03/01/2023

Counsel for: Appellant

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Black's Law Dictionary (11th ed. 2019)..39

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JURISDICTIONAL STATEMENT

The Mayor and City Council of Baltimore ("City") appeals from the district court's September 29, 2022, grant of partial summary judgement in favor of Marshall Todman and Tiffany Todman[1] and against the City, JA846-892, the district court's simultaneous denial of the City's motion for summary judgment, *id.*, and from the district court's February 21, 2023, order of judgment, JA893. The City timely filed a notice of appeal on February 21, 2023. JA894. This Court has jurisdiction under 28 U.S.C. § 1291, as the district court's February 21, 2023, order was a final judgment that disposed of all parties' claims. The district court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331, because the Todmans alleged 42 U.S.C. § 1983 liability against the City for constitutional violations.

STATEMENT OF THE ISSUES

1. Whether the district court erred in denying the City's motion for summary judgment where the City's ordinance modifying Maryland's common-law standard for personal property abandonment solely in the context of potential post-judgment consequences of an eviction judgment in Baltimore City did not violate the United States Constitution.

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[1] The Todmans married during the course of litigation, so the record contains numerous references to Tiffany Todman by her maiden name, Tiffany Gattis.

2. Whether the district court erred in denying the City's motion for summary judgment where the alleged constitutional violations resulted from allegedly inadequate eviction procedures controlled by Maryland state law and applied by Maryland state agencies and private actors, none of which were controlled by the City.

3. Whether the district court erred in denying the City's motion for summary judgment where the proximate cause of the Todmans' losses was an alleged lack of notice as to the date of eviction, of which Maryland state law prohibited the City from requiring the landlord to provide notice in holding over evictions (such as the Todmans').

4. Whether the district court erred in granting the Todmans partial summary judgment against the City as to 42 U.S.C. § 1983 liability where all the reasons discussed above preclude City liability.

5. Whether the district court erred in granting the Todmans partial summary judgment against the City as to 42 U.S.C. § 1983 liability where the Todmans did not move for summary judgment *as to liability*.

6. Whether the district court erred in granting the Todmans partial summary judgment against the City as to 42 U.S.C. § 1983 liability where the factual dispute as to what pre-eviction notice the Todmans received was material.

STATEMENT OF THE CASE

In the mid 2000's, Appellant Mayor and City Council of Baltimore ("City") faced a very stubborn problem with eviction chattel, the personal property that remains on a premises when a tenant is evicted. More than 7,000 evictions were being executed in Baltimore City every year, *see* JA684, over *nineteen evictions per day*, and Maryland state law mandated that sheriffs performing evictions "remove from the property, by force if necessary, all the furniture, implements, tools, goods, effects or other chattels of every description whatsoever belonging to the tenant," Md. Code, Real Property Article ("RP") § 8-401(f)(1)(i); *see also* RP § 8-402(b)(2)(i) (requiring sheriffs "forthwith to deliver to the landlord possession [of premises] in as full and ample manner as the landlord was possessed of the same at the time when the tenancy was made"). As a result, the sheriff's deputies would end up leaving piles of evictees' personal property (mattresses, clothes, broken furniture, etc.) on the City's sidewalks, streets, and alleyways, most often in the City's most economically disadvantaged neighborhoods which could least afford the additional blight, debris, and demoralization that such public displays of instability created. *See, e.g.,* JA287, JA291-293 (letters from residents and clergy describing negative effects of this dumping).

Bills were introduced in the Maryland General Assembly to try to address the issue, but they did not pass. JA684. The City's earlier attempts to address the

issue itself likewise met with little success. *Id.* Although the City tried offering evictees ten days of storage of personal property at City facilities, less than one percent of evictees requested such storage, and of those, only a few ever reclaimed their possessions from City storage. JA682. So by 2006, the City's Department of Public Works had devoted three crews to the task of clearing eviction chattel from the streets, and each year they collected and disposed of almost 3,000 tons of such material at a cost of over $800,000 to the City. JA684.

In 2007, however, the City worked with tenant, community, and landlord organizations to develop and pass Ordinance 07-496, which created Subtitle 8A, Eviction Chattels, of Article 13, Housing and Urban Renewal, of the Baltimore City Code ("§ 8A"). JA412-415; JA688-695. Because Maryland state law (which City ordinances cannot override) required sheriffs to remove evictees' property and return landlords to full possession of the premises, the City could not make § 8A require landlords to store or dispose of evictees' property. RP § 8-401(f)(1)(i); RP § 8-402(b)(2)(i).

Instead, § 8A modifies Maryland's common law standard of personal property abandonment such that, in the specific situation of a Baltimore City eviction – for which state statutes require notice and a court hearing – there is now a simple, bright line rule that "[a]ll property in or about the leased premises at the time that the warrant of restitution [i.e. eviction order] is executed is abandoned."

§ 8A-4. The new subtitle further places the economic burden of disposing the now-abandoned property on the landlords, rather than on the City or on the evictees (who are already experiencing economic hardship). § 8A-5. And it strictly prohibits the landlords from disposing of that property on public property. § 8A-6 & § 8A-9. Furthermore, § 8A-2 requires landlords to provide notice prior to eviction that gives the date of the eviction and that prominently warns that personal property left on the premises will be abandoned, but the notice requirement does not apply where Maryland state law forbids requiring such further notices. *See, e.g.,* RP § 8-402(b)(2)(i) (court must order and the sheriff must execute a holdover eviction "forthwith," i.e. immediately); *see also* Maryland Code of Public Local Laws, Article 4 ("PLL")[2] § 9-19 (landlords complying with state law notice requirements for holding over evictions entitled to benefit of laws allowing "speedy recovery" of premises "without any additional notice").

The City's 2007 ordinance has largely been a success. In the six months after its enactment, the rate of evictions performed by the sheriff in Baltimore fell by more than a fifth, and the rate of evictees who had not moved out by eviction

[2] The Maryland General Assembly enacts both general laws, which apply to every jurisdiction in Maryland and are written into the Maryland Code, and public local laws, which apply only to certain jurisdictions in Maryland and are written into the Maryland Code of Public Local Laws. Both general laws and public local laws are Maryland state law, and county or municipal ordinances cannot conflict with or override either type of state law.

day fell by over a third. *See Abell Salutes: The Public Justice Center (PJC) and Citizens Planning and Housing Association (CPHA) Eviction Reform Initiative*, Abell Foundation, November 2008, *available at* abell.org/publication/abell-salutes-the-pjc-and-cpha-eviction-reform-initiative (last visited August 7, 2023). In the same time, only one fine was issued to a landlord for illegal dumping of abandoned property, *id.*, and the previously commonplace sight of piles of discarded personal property virtually disappeared from the City's streets. *See id.* Moreover, for more than a decade after the enactment of § 8A, the City received absolutely no complaints, concerns, or grievances concerning the modification to abandonment law. JA235-236. In 2019, however, twelve years after § 8A took effect, Appellees Marshall Todman and Tiffany Todman filed a lawsuit claiming that it was unconstitutional. JA1.

Specifically, the Todmans alleged that their landlord and the Maryland state court that adjudicated their eviction misled them as to when their eviction would take place, and even though their personal property was packed and ready to move the next day, the sheriff evicted them a day too early while they were at work, and the landlord then held all their worldly possessions hostage for debts they were unable to pay. *See* JA18-40 (amended complaint). And although no City agency, agent, or officer played any role in the Todmans' eviction, they claimed that the City unconstitutionally deprived them of their property by enacting § 8A, which

deemed their personal property that was still in the rental unit abandoned when their eviction took place. *Id.*

Although the district court held that § 8A did not violate the takings clause of the Fifth Amendment, JA83, and did not constitute a facial due process violation under the Fourteenth Amendment, JA882 n.13, the district court found an as-applied violation of the Todmans' right to procedural due process under the Fourteenth Amendment, JA882.

The district court erroneously reasoned that, even though the abandonment provision of § 8A only applied to evictions, for which Maryland state law requires prior notice and judicial hearings, these did not count as notice or an opportunity to be heard unless they explicitly and clearly addressed the fate of evictees' personal property if it remained on the premises after eviction. *See* JA865-882. The district court then held *sua sponte* that the City was liable for this as-applied violation, even though the City played no role in the application of the statute. JA883-885; *see also* JA885 n.14 ("The plaintiffs moved for summary judgment only on whether their constitutional rights were violated, but the Court finds they also are entitled to summary judgment on the issue of the City's responsibility for the constitutional violation.").

After a trial limited to the determination of damages, a jury awarded the Todmans a $186,000 judgment against the City, of which $150,000 was for

emotional distress. JA893. Because this judgment was based on multiple legal errors committed by the district court at the summary judgment stage, the City appealed. JA894. Further relevant facts are set forth below.

I. FACTUAL BACKGROUND.

A. The participants in eviction proceedings in Baltimore City.

Although, within certain limits, the City can pass ordinances that can change the rights of tenants and landlords within Baltimore City, when it comes to actually applying those ordinances to proceedings to evict a tenant from a landlord's dwelling, the City and its agents do not play *any* role. Rather, the State of Maryland requires that all evictions be adjudicated through the District Court of Maryland. *See* Maryland Code, Courts & Judicial Procedure Article § 4-401(4) (giving Maryland district courts exclusive original jurisdiction over any "action involving landlord and tenant, distraint, or wrongful detainer"). Thus, it is the Maryland judiciary that is tasked with determining the specifics of what language its orders must contain or what topics are covered at the hearings that it must hold in order to provide due process when adjudicating the substantive rights of tenants and landlords as established by the laws passed by State and local legislatures.

To be clear, the Maryland District Court for Baltimore City is *not* an agency of nor in any way controlled by the City, but rather is the branch of the District Court of Maryland with geographic jurisdiction over Baltimore City. *See id.* at §

1-602(1). Likewise, the Baltimore City Sheriff's Office, which executes the District Court's eviction orders in Baltimore City, is *not* an agency of nor in any way controlled by the City; rather, the sheriff in each Maryland jurisdiction is an independently elected Maryland constitutional official that is the Maryland state agent that serves and executes the orders of the Maryland state courts. *See id.* at § 2-301(1) (requiring sheriffs to serve court orders); Maryland Constitution, Article IV, § 44 (sheriffs established as part of the Maryland judiciary); *Harford Cnty. v. Univ. of Maryland Med. Sys. Corp.*, 318 Md. 525, 528, 569 A.2d 649, 650 (1990) ("[T]he sheriff is a state rather than a county official…").

The private actors in disputes between landlords and tenants are also in no way agents of nor controlled by the City. They may rely upon the rights created or curtailed by City ordinances, but they do not act on the City's behalf.

B. The Maryland state laws that govern evictions in Baltimore City.

Evictions in Baltimore City are largely governed by two sets of Maryland state laws passed by the Maryland General Assembly: the first is the Maryland Code, Real Property Article, Title 8. Landlord and Tenant, Subtitle 4. Landlord's Remedies Other Than Distraint (RP §§ 8-401, *et seq.*), and the second is Maryland Code of Public Local Laws, Article 4. Baltimore City, Subtitle 9. Landlord and Tenant (PLL §§ 9-1, *et seq.*). The City can pass ordinances for the benefit of its residents to fill in the procedural and substantive gaps left by these Maryland state laws, but City ordinances can neither conflict with nor override state law.

Both RP §§ 8-401 *et seq.* and PLL §§ 9-1 *et seq*. set forth different procedures for eviction proceedings depending on the type of eviction that is taking place. *Compare* RP § 8-401. Nonpayment of Rent *and* PLL §§ 9-4 through 9-7. Suits for rent due *with* RP § 8-402. Tenant Hold Overs *and* PLL § 9-12. Tenant carrying over.

1. Non-Payment Evictions

Under RP § 8-401(c)(1), when rent is not paid on time, a landlord can give his tenant as little as ten days of notice before filing an eviction action. Once a non-payment action is filed, the court then orders the sheriff to serve the tenant with a summons to appear "at the trial to be held on the fifth day after the filing of the complaint," i.e., just fifteen days after first notice. RP § 8-401(b)(4). If the landlord prevails at that trial, the court must "order that possession of the premises be given to the landlord … within 4 days of the trial." RP § 8-401(e)(3). In other words, once the court determines that the landlord should have the rental unit back because the tenant failed to pay rent, the court must order the tenant to vacate with only a four day grace period, which would end on the nineteenth day after first notice. *Id.* That grace period can be extended from four to fifteen days if the tenant produces a "certificate signed by a physician certifying that surrender of the premises within this 4-day period would endanger the health or life of the tenant," RP § 8-401(e)(4), but this still makes the order to vacate effective in as little as 30 days after first notice from the landlord.

If the non-paying tenant does not voluntarily obey the court's order and vacate within the four-day (or fifteen-day) grace period, "the court shall, at any time … within 60 days" of judgment, on the landlord's request, issue a warrant of restitution, i.e., eviction order, ordering the sheriff

> to cause the landlord to have again and repossess the property by putting the landlord … in possession thereof, and for that purpose to remove from the property, by force if necessary, all the furniture, implements, tools, goods, effects or other chattels of every description whatsoever belonging to the tenant, or to any person claiming or holding by or under said tenant.

RP § 8-401(f)(1)(i). The state law does not require the landlord to request, nor the court to issue, a non-payment eviction order right away. *Id.* In fact, the state law expressly gives the landlord 60 days from judgment to request and execute an eviction, and tells the court it can issue this order "at any time" after the grace period. *Id.* That is because the very next sub-section, RP § 8-401(g), gives tenants facing non-payment eviction the right to redeem the leased premises, even post-judgment, by paying what they owe to the landlord "at any time before the actual execution of the eviction order." This is colloquially known as pay-to-stay, and this same procedure for non-payment evictions is also set forth, in frequently identical terms, in PLL §§ 9-4 through 9-7.

2. Holding Over Evictions

When a landlord seeks to evict tenants whose lease has expired but who refuses to leave, the procedure that Maryland state law requires to evict such

"holding over" or "carrying over" tenants is significantly different than non-payment evictions. Rather than the ten-day notice period required to initiate a non-payment eviction action, Maryland general laws require a variable notice ranging from as little as seven days for a week-to-week lease to 180 days for non-tobacco farm tenancies, RP § 8-402(c)(2), but the Maryland public local laws establish that, for Baltimore City, the required pre-filing notice period is 60 days, PLL § 9-14.

Once 60 days have passed since the holding over tenants were told in writing by the landlord that they need to leave, if the tenants still refuses to leave, the landlord may file an eviction action. RP § 8-402(b). The court must then issue a summons, which the sheriff must serve on the tenant, requiring the tenant to appear before the court on a specific date. *Id.* If the tenant fails to appear, the trial can be continued, but only up to 10 days. *Id.*

If the court finds for the landlord and against the holding over tenant at trial, there is no four-day (or fifteen-day) grace period like there is in non-payment actions, there is no flexibility about when the court must issue an eviction order, and there is no waiting for the landlord to request the eviction order. Rather, Maryland state law requires that when a landlord prevails in a holding-over trial,

> the court shall thereupon give judgment for the restitution of the possession of said premises and shall forthwith issue its warrant to the sheriff or a constable in the respective counties commanding the tenant or person in possession forthwith to deliver to the landlord possession thereof in as full and ample manner as the landlord was possessed of the same at the time when the tenancy was made, and shall give

> judgment for costs against the tenant or person in possession so holding over.

RP § 8-402(b)(2) (emphasis added). The Maryland statute therefore commands both that the court must "give judgment for the restitution of the possession," i.e., tell the tenants that they must leave, *and* that the court "shall forthwith issue its warrant [of restitution, i.e., the eviction order] to the sheriff" so that the landlord can be "forthwith" given possession of the premises "in as full and ample manner as the landlord was possessed of the same at the time when the tenancy was made," i.e. order that the sheriff evict them. *Id.* This statutorily mandated double order upon judgment (both telling the tenants to vacate and telling the sheriff to evict) makes sense because the tenants have already known *for at least 60 days* that they need to leave, but have refused. Because there is no pay-to-stay provision allowing redemption in holding over evictions, the Maryland state law sees no reason for further delay.

The Maryland General Assembly was apparently so determined to evict post-judgment holding over tenants in a timely fashion that, although a tenant may appeal an adverse decision within ten days, an appeal can take no more than fifteen days, and an appeal <u>does not stay the eviction</u> unless the tenant posts a bond that could cover the landlords' costs and damages. *Id.*

Moreover, the Maryland public local laws expressly state that, in Baltimore City, no other notice beyond the 60 days pre-filing notice is required for a landlord

to be entitled to a holding over eviction. PLL § 9-19 ("Such notice, without any additional notice, shall entitle the landlord to the benefit of the law providing for the speedy recovery of the possession of lands or tenements held over by tenants.")(emphasis added); *see also* PLL § 9-14 (landlord that provides 60-day notice in holding over case "shall be entitled to the remedy contained in Section 9-19"). The only automatic (i.e. without posted bond) delay allowed by the Maryland statutes between a holding over judgment against the tenants and their eviction is, therefore, however much time it takes the sheriff to schedule and execute the eviction.

3. Post-Judgement Notice of Eviction Consequences

Nothing in either the Maryland state laws in RP §§ 8-401 *et seq.* or the Maryland state laws in PLL §§ 9-1 *et seq*. requires the landlord, the sheriff, or even the court to provide prior notice of the date of eviction. Indeed, the only post-judgment notice required by state statute that tenants receive that they are actually going to be evicted is the copy of the eviction order – the warrant of restitution – that is mailed out to the tenants, like any other court order is mailed to parties by the District Court clerk, telling them that an eviction has been ordered.

The District Court of Maryland – the state entity that adjudicates landlord-tenant disputes and applies the law on this subject – utilizes that order to provide additional notice to tenants that they will be evicted, what the consequences of the

eviction might be, and what they should expect,[3] depending on where they live in Maryland, by issuing the order on form DC-CV-081. *See, e.g.,* JA332-333 (photograph of eviction order mailed to Todmans on DC-CV-081, Rev. 12/2016); *see also* District Court of Maryland Website, District Court Forms by Category, Landlord/Tenant, Petition for Warrant of Restitution, *available at* mdcourts.gov/sites/default/files/court-forms/dccv081.pdf (last visited August 8, 2023) (linking to DC-CV-081, Rev. 12/2022, which the Maryland judiciary revised, shortly after Judge Deborah L. Boardman issued her summary judgment ruling below, to address *inter alia* the concern that the form's language on personal property abandonment was confusing – it now states in bold, capitalized letters that the abandonment rule "**APPLIES TO ALL EVICTIONS**" in Baltimore City).[4] There is nothing in Maryland law that guarantees that this order/notifying form will or must reach the tenants being evicted prior to the scheduled eviction. In practice, however, the sheriff (in Baltimore City, anyway) does not schedule evictions so quickly that they occur before a mailed order can reach its destination.

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[3] This order does not contain the date of the eviction as this is the order that prompts the sheriff's office to schedule the eviction and determine that date.

[4] The District Court of Maryland's website also makes available a revised version of the form DC-CV-081 that will be used starting October 1, 2023, *available at* mdcourts.gov/sites/default/files/court-forms/dccv081_10.01.2023wm.pdf (last visited August 8, 2023), and which incorporates notice of new procedural protections for evictees' pets that the Maryland General Assembly passed this year. *See* 2023 Maryland Laws Ch. 488 (H.B. 102) (enacting RP §§ 14-801, *et seq.*).

C. How § 8A alters eviction rights in Baltimore City.

As discussed above, the City's 2007 enactment of § 8A adjusted eviction rights in Baltimore City in two main ways: (1) property left over in rental units after evictions is deemed abandoned in all evictions, and (2) landlords are required to provide notice to tenants of the day of eviction in non-payment actions and include in that notice an explanation about (1). *See* § 8A-4; § 8A-2.

Specifically, § 8A-4(a) amends Baltimore residents' common law property rights that would otherwise require a determination as to whether the circumstances indicated an intent to abandon unattended personal property, *see Steinbraker v. Crouse*, 169 Md. 453, 182 A. 448, 450 (1936) (intent to abandon required); *Nickens v. Mount Vernon Realty Grp., LLC*, 429 Md. 53, 78, 54 A.3d 742, 757 (2012) (actions can manifest such intent) (legislatively overturned on other grounds), such that failing to remove personal property from a rental unit that a court had ordered the tenant to vacate automatically renders that personal property abandoned at the time of eviction, § 8A-4(a) ("All property in or about the leased premises at the time that the warrant of restitution is executed is abandoned."). This approach to dealing with former tenants' remaining property was hardly novel, even in 2007, as at least two other Maryland local jurisdictions

and at least one other state took similar approaches. *See* Baltimore County[5] Code, § 35-3-103 (personal property remaining after execution of "a properly issued warrant of restitution shall be considered abandoned;" last amended in 2004); Prince George's County Code, § 13-164 (same, but allowing evictee up to four hours to salvage and remove property if present at time of eviction; last amended in 2003); Ark. Code § 18-16-108(a) ("Upon the voluntary or involuntary termination of any lease agreement, all property left in and about the premises by the lessee shall be considered abandoned and may be disposed of by the lessor as the lessor shall see fit without recourse by the lessee;" enacted in 1987); *see also In re Broughton*, 619 B.R. 596, 617 (Bankr. E.D.N.C. 2020) (bankruptcy court ordered, after giving 60 days to vacate, that "any personal property remaining on the property after the turnover date shall be deemed abandoned and therefore may be disposed of"). The City's adoption of § 8A-4(a) did not terminate anyone's property rights, but rather altered one of the legal consequences of an eviction judgment by changing the danger posed to an evictee's personal property from the danger of being tossed onto the curb (where it could be reclaimed, stolen, ruined by weather, or collected as garbage) to the danger of being automatically deemed abandoned.

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[5] Baltimore County is a separate local jurisdiction in Maryland that geographically surrounds Baltimore City on three sides, but does not share a governing body with the City.

On the flip side, § 8A-2 requires landlords in non-payment eviction actions who are in the 60-day post-judgment period where they can seek warrants of restitution to provide notice of the date of eviction by mail at least 14 days prior *and* by posting at least 7 days prior. § 8A-2(c). In addition to the eviction date and other information, these notices must "prominently warn the tenant that any property left in the leased dwelling will be considered abandoned." § 8A-2(d). With these additional 14 days of notice, the amount of time a tenant in a non-payment eviction action must have by law in Baltimore between initial notice and actual eviction is 33 days (or 44 with a doctor's note).

As noted above, however, this additional notice provision does not apply to the types of eviction actions where State law requires that evictions proceed without delay or where State law prohibits requiring additional notice. *See* § 8A-2(a)(2) (exempting from the additional notice requirements eviction actions based on nuisance, breach of lease, wrongful detainer (i.e., squatters), and tenants holding over). As for tenant holding over actions, where PLL § 9-19 expressly requires that landlords be given the benefit of a speedy eviction "without any additional notice," it is noteworthy that the minimum statutory pre-filing notice of 60 days without any additions is more than one-third longer than the 44-day minimum amount of total notice in a non-payment action *even with the additional notice provided by the City ordinance* and a doctor's note, *compare* RP § 8-401 *with* PLL § 9-19.

D. How the Todmans were evicted.

In 2018, the Todmans were living in a rental property owned by their landlord, Brock Collins, on a month-to-month lease. *See* JA652. On September 12, 2018, their landlord served them with a notice to vacate, thereby starting the 60-day pre-filing notice period required to begin a tenant holding over action under Maryland state law. *Id.* The Todmans continued to refuse to vacate the property, so on May 13, 2019, their landlord filed a tenant holding over complaint in the District Court of Maryland. JA643-644, JA649.

On July 2, 2019, the Todmans and their landlord appeared before the District Court of Maryland for a tenant holding over hearing. *See* JA41-59. There Judge Catherine Chen explained the statutory elements required for the entering of a judgment of restitution of possession in a holding over action, noting correctly that "other issues that you would try to raise[a]re not relevant" as to whether a judgment could be granted. JA44. However, Judge Chen also actively encouraged the parties to have a conversation that might reach a settlement, and offered herself as a resource to assist, without limiting the conversation in any way. JA45 ("I'm a neutral arbiter. … If you want to have a hearing, I here to do that. I have all the time in the world."). Ultimately, the parties agreed to a compromise. The Todmans consented to entry of judgment against them for possession of the premises, and their landlord consented to a two week stay of the judgment until July 16, 2019. JA56.

This agreement was expressly premised on the understanding that, due to whatever court procedures or sheriff scheduling issues, it would take at least two weeks from the time the landlord filed a petition for a warrant of restitution to when the eviction would actually occur. JA51 (court and landlord agreeing that "the eviction would be at least two weeks" after the petition was filed). This understanding was important to the Todmans as they explained that they had a new place lined up for the start of the next month, but needed "30 days" to get to August 2, 2019. JA47-48. The court told the Todmans that a stay of the judgment until July 16, 2019, "would still give [them] the four weeks," JA51, and that they "would still have [the] full month," JA55.

After the parties agreed, the landlord asked on what day he would be able to file his petition, but when the court instructed him to ask the clerk, he declared that he would file it on July 17, 2019. JA58. But the landlord did not wait until July 17, 2019, to petition for a warrant of restitution. Instead, he filed his petition on July 15, 2019, one day before the stay on the judgment entered by Judge Chen expired. *Compare* JA647 (petition filed July 15, 2019) *with* JA645 (consent judgment for possession of the premises, stayed until July 16, 2019). A different judge of the court signed the petition the next day, when the stay had expired, on July 16, 2019, granting the warrant of restitution, i.e., eviction order, against the Todmans. JA645.

A copy of this order was mailed to the Todmans by the court on July 17, 2019. *See* JA644 (court docketing system showing mailing). The order was on form DC-CV-081, discussed above, which did not provide a date of eviction, but explained in bold type that for evictions in Baltimore City, "[**o**]**n eviction day, any personal property left in or around the rental unit is considered abandoned.**" JA333. Whether the Todmans ever received this order is a disputed question of fact, as the landlord asserted that he found the Todmans' copy opened on top of the refrigerator in the rental unit after the eviction, and the Todmans assert that the landlord must have stolen it from their mail. JA616-617.

After the sheriff's office received the order, an eviction was scheduled for July 31, 2019. JA586-594. The landlord asserts that he verbally told Marshall Todman the date of the eviction in person, in advance, and he provided affidavits from two witnesses supporting that assertion. *Id.*; JA675 (affidavit of Hayes Gaines); JA677 (affidavit of Armand Bailey). The Todmans dispute this, asserting that they believed that the District Court of Maryland and the landlord had promised them until August 2, 2019, and they point to a receipt for a rental truck they reserved for August 1, 2019 on July 30, 2019 to show that they planned to move out the following day, even on the eve of the eviction. *See* JA334-335.

On July 31, 2019, the Todmans allege they "had neatly boxed up their possessions and were ready to move out" the following day, but because they did

not know the eviction was scheduled for that day, they went to work. *See* JA19. When the landlord and sheriff's deputies arrived to execute the eviction, Tiffany Todman's mother (who had been staying with them) alerted them, but by the time they were able to return to the rental unit, the locks had been changed and the eviction was complete. *See* JA18-29. The landlord then asserted that he owned all the personal property that remained in his rental unit, by operation of § 8A-4(a), and demanded thousands of dollars (which the landlord asserted was owed for unpaid rent and costs) in exchange for the abandoned property's return. *See id*. The Todmans allege that the landlord also dragged a motorcycle of theirs off of the street and into the yard of the rental unit so that he could assert ownership of it under § 8A-4(a) as well. JA28. The Todmans could not come up with the money that the landlord demanded, so other than a few papers, medicine, and small items, the landlord refused to return the abandoned property.

The Todmans allege that they tried to report the landlord's actions to the police as theft, but were told that an eviction dispute was a "civil matter." JA30. The Todmans did not, however, file any civil action in Maryland state court, nor seek equitable or injunctive relief from the District Court of Maryland that adjudicated their eviction, nor from Maryland's courts of general jurisdiction. The Todmans did, however, include four pendant Maryland state law claims (including conversion, trespass to chattel, and unjust enrichment) against the landlord in their

federal lawsuit. JA35-39. After the federal lawsuit had been filed, the landlord offered to give back the Todmans' abandoned property, but other than the motorcycle (which was returned, allegedly damaged) the Todmans allege that most of their belongings were broken or missing from what was offered. JA31.

II. PROCEDURAL HISTORY.

The Todmans filed their initial complaint in United States District Court for the District of Maryland on November 15, 2019, and their amended complaint on January 17, 2020. JA1; JA5. Their amended complaint alleged multiple pendant state law claims against their landlord, JA35-39, sought declaratory judgment as to § 8A's constitutional infirmity, JA34, and sought damages against the City under 42 U.S.C. § 1983, alleging that § 8A's enactment violated, either facially or as applied, the takings clause and the due process clause of the Fifth and Fourteenth Amendments, JA32-34.

The Todmans eventually settled with the landlord. JA13 (Todmans' voluntary dismissal of landlord via ECF 130). Of the claims against the City, the district court dismissed the takings clause claim because the Todmans simply did not allege a direct appropriation of property by the City. *See* JA83.[6] After discovery, the Todmans moved for "partial summary judgment as to the invalidity

[6] The Todmans' conditional cross-appeal disputes the dismissal of their takings claim.

of Baltimore City Code Art. 13, § 8A-4 under the Due Process Clause of the Fourteenth Amendment." JA85 (emphasis added). The Todmans did not move for a determination as to the City's liability. *Id*. The City also moved for summary judgment and opposed the Todmans' partial motion. JA406.

The district court held a hearing on the motions on April 11, 2022, JA732-845, and denied the City's motion for summary judgment five months later on September 29, 2022, JA892. The district court did not find a facial due process violation under the Fourteenth Amendment. JA882 n.13. The district court did not reach the question of substantive due process, and appropriately refused to address the Todmans' Fourth Amendment claim which was not alleged in their complaint, but raised for the first time at summary judgment. JA861 n.3. Instead, the district court found an as-applied violation of the Todmans' right to procedural due process under the Fourteenth Amendment. JA882.

The district court did not provide the City with notice under Federal Rule of Civil Procedure 56(f) that it planned to grant summary judgment on an issue that had not been briefed, but it nonetheless granted the Todmans summary judgment against the City *as to liability*, even though they had not moved for such judgment. JA885 n.14.

A three-day trial limited to determining the Todmans' damages was held from January 30, 2023 to February 1, 2023. JA15. On February 21, 2023, the district

court entered final judgment against the City, and the City noticed this appeal the same day. JA16; JA893-895. On March 15, 2023, the Todmans noticed a conditional cross appeal. JA896-897.

SUMMARY OF ARGUMENT

The district court found an as-applied due process violation by viewing the post-judgment legal consequences of an eviction judgment in isolation from the notices and judicial hearing (and consent to judgment) that led to the eviction judgment. Such an illogical removal of context is improper and would turn even the most common post-judgment consequences of judgments into due process violations whenever said consequences were not expressly raised in the adjudications leading to the judgment. When properly viewed in the context in which it operates – as altering one potential consequence of an eviction judgment – absolutely nothing about the City's 2007 legislative enactment of § 8A violates the United States Constitution.

Moreover, the district court erred by finding that *the City* violated the Todmans' due process rights in the way § 8A was applied, even though no City actors were involved in its application. The City's only action in this case was to legislatively enact § 8A. Because 42 U.S.C. § 1983 only assigns liability to persons who *cause* rights violations, the City cannot be liable for the State of Maryland or private actors applying § 8A in an allegedly unconstitutional manner.

In addition, even if the Constitution required that the City legislatively require notice of § 8A's changes to the consequence of personal property remaining in rental units post-eviction, any lack of such notice of consequences did not proximately cause the Todmans' loss. Even if they were ignorant of § 8A's effect, the Todmans admit that they had no intention of leaving their personal property in the rental unit post-eviction. The only reason their personal property remained, and was therefore deemed abandoned under § 8A, was that the Todmans were mistaken as to the date of the eviction, and Maryland state law expressly prohibits the City from requiring notice of the eviction date in holding over actions. The City cannot be liable for damages that the City's alleged violation did not proximately cause.

For all these reasons, the district court erred in denying the City's motion for summary judgment. The district court also erred in granting the Todmans' motion for summary judgment for these same reasons, among others.

Because the Todmans expressly limited their motion for partial summary judgment to the question of whether there was a constitutional violation at all, the district court erred in *sua sponte* ruling that the City was liable for said violation without first providing notice of an intention to do so under Federal Rule of Civil Procedure 56(f). This error prejudiced the City by preventing it from fully briefing and arguing liability issues, including those discussed above about proximate cause and whether any actors applying § 8A were doing so on behalf of the City.

The district court also erred in granting summary judgment to the Todmans when there were disputes of material fact as to what pre-eviction notice the Todmans actually received as to both the eviction's date and its consequences. The district court acknowledged these disputes, but erroneously held them immaterial. If the Todmans actually had been told when the eviction would occur and that their personal property would be abandoned if left in the rental unit thereafter, and if the full array of equitable and legal relief was then available to them from Maryland state courts either before or after the eviction, it is impossible to say they were denied notice and an opportunity to be heard. Moreover, if the notice form was received, but it was drafted such that it misled the Todmans, that failure of notice would be caused by the notice's author – the Maryland state judiciary – not the City.

Each of these errors independently requires that the district court's judgment be vacated. This Court must also either require that summary judgment be granted to the City or, at the very least, remand for a full adjudication of liability issues and the genuine material factual disputes.

ARGUMENT

I. The District Court erred both in denying the City's motion for summary judgment and in granting the Todmans summary judgment as to liability.

The only City action relevant to this matter is the City's enactment of § 8A. The district court held that this 2007 enactment *caused* a violation of the Todmans' right to due process in their 2019 holding over eviction. That is plainly incorrect.

All that § 8A did was change one possible post-judgment legal consequence of an eviction judgment. It did not reduce any of the notices or hearings that Maryland state law required for the Todmans to get to that eviction judgment, nor for the Todmans to get to the eviction itself. It did change the result of ignoring, or being ignorant of, an eviction (personal property deemed abandoned rather than dumped on the streets), but it did not (and could not) change the procedure that Maryland law dictates for holding over tenants like the Todmans to get to the point where that result occurs.

The Todmans were given written notice to vacate well over the 60 days required before their landlord filed his holding over complaint. JA652. They attended a hearing before an impartial judge where *they consented* to a judgment against them that required them to vacate within two weeks, or face eviction. JA41-59. After those two weeks, an order was mailed to them that stated in no uncertain terms that they would be evicted and that any personal property left in the unit would be abandoned. JA333. Their landlord (and his supporting affiants)

even assert that the Todmans were told of the exact date of the eviction. JA586-594; JA675-677. Procedural due process cannot require more than this.

Moreover, if the manner in which their landlord, the sheriff, and the Maryland state judiciary system applied this procedure somehow violated the Todmans' rights, that is no fault of the City because the City does not control their landlord, the sheriff, or the Maryland state judiciary system. The City cannot be held liable under 42 U.S.C. § 1983 for violations of rights that it did not cause. Likewise, if the City were somehow responsible for a lack of notice as to the consequences of § 8A, that would still not be enough to support liability because the alleged lack of knowledge of the consequences of eviction did not proximately cause the Todmans' loss. By their own admission, the Todmans had packed up all their possessions, rented a truck, and were planning to take everything. JA19; JA334-335. Their personal property did not become abandoned because they thought they could leave it in the rental unit post-eviction without consequences; rather, the abandonment occurred because they were wrong about the date of the eviction. The provisions in § 8A may have been a "but for" cause of the Todmans' property being abandoned, but this change to the law twelve years earlier did not *proximately cause* their damages, so the City cannot be held liable.

In addition to requiring summary judgment for the City, these points also preclude summary judgment for the Todmans, but so do at least two other points.

The district court failed to provide notice to parties under Federal Rule of Civil Procedure 56(f) before ruling *sua sponte* that the City was liable for the Todmans' alleged damages. And genuine disputes of fact about what actual notice the Todmans received were material, and should have been resolved by a jury.

For all of these reasons, the district court's judgment must be vacated.

A. Standard of Review.

This Court reviews *de novo* both grants and denials of summary judgment motions. *See, e.g.*, *French v. Assurance Co. of Am.*, 448 F.3d 693, 700 (4th Cir. 2006) ("Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."). In reviewing summary judgment, this Court must view the facts and "all reasonable inferences in the light most favorable to … the nonmoving party." *Roberts v. Glenn Indus. Grp., Inc.*, 998 F.3d 111, 115 (4th Cir. 2021) (*citing Smith v. Collins*, 964 F.3d 266, 274 (4th Cir. 2020)).

B. The City's was entitled to summary judgment because § 8A's alteration of one potential post-judgment consequence of an eviction judgment did not violate the United States Constitution.

The Todmans alleged that the City violated their constitutional rights in several ways, but the district court's only finding of such was an as-applied

procedural due process violation. JA846-892.[7] That finding of an as-applied due process violation, however, was based on a faulty analysis that excluded pretty much the entire judicial procedure that led up to the alleged deprivation. *See, e.g.,* JA864 (excluding the initial notice, complaint, summons, and judicial hearing because they did not expressly tell the Todmans what would happen if they failed to follow the court's order to vacate and then left their personal property in the rental unit after eviction). This illogical separation of the alleged deprivation from the process that must necessarily, as a matter of law, lead up to that deprivation would render nearly any possible negative post-judgment consequence a violation of due process.

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[7] As noted above, the district court correctly dismissed the Todmans' takings clause claim. JA83. The district court also correctly concluded that the Todmans' facial challenge to § 8A must fail because the record could not demonstrate that § 8A "is unconstitutional in all its applications." JA882 n.13 (quoting *Bucklew v. Precythe*, 139 S. Ct. 1112, 1127 (2019) (quoting *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010))). The district court also correctly refused to address the Todmans' Fourth Amendment claim because it was not in their complaint and "a plaintiff may not raise new claims after discovery has begun without amending his complaint." JA861 n.3 (quoting *Wahi v. Charleston Area Med. Cntr., Inc.*, 562 F.3d 599, 616 (4th Cir. 2009)). The district court did not reach the Todmans' substantive due process claim, *id.*, but if it had, it could have quickly dispatched it because § 8A is a legislative enactment and keeping personal property in the rental unit after an eviction is not a fundamental right, so the substantive due process analysis would only subject § 8A to rational-basis judicial review. *Hawkins v. Freeman*, 195 F.3d 732, 739 (4th Cir. 1999). A desire for clean streets, better neighborhoods, and saving over $800,000 a year is clearly rational. *See* JA684.

Indeed, if the City had *not* enacted § 8A (or enacted a completely different policy), the district court's logic would still allow a finding of a due process violation because the judicial process did not expressly warn that unmoved personal property would be dumped on the sidewalk (or placed in remote storage at evictee expense, or removed from the sidewalks and disposed of by the Department of Public Works crews as soon as possible, etc.). The Fourteenth Amendment requires governments to provide notice and an opportunity to be heard before deprivation of rights. *See, e.g., Mora v. City of Gaithersburg*, 519 F.3d 216, 230 (4th Cir. 2008). It does not, however, require the government to explain every single possible negative post-judgment consequence to an adjudicated judgment.

Here, the provision in § 8A-4 that deems personal property left after an eviction abandoned operates only within, and at the tail end of, an extensive eviction process. That eviction process is not limited to determining whether the tenants' physical bodies may remain in the rental unit, but also whether their personal property may remain there. It is hard to imagine that any reasonable individual would be unaware that the ability to keep one's personal property in the rental unit is at issue in an eviction proceeding.

Nobody would assume that they could, without negative legal and practical consequences, just keep their personal property in a dwelling after their physical person had been forcibly removed from the dwelling by order of the court and

action of the sheriff. Indeed, the Todmans were under no such illusion, as they expressly alleged that they were all packed up, ready to remove all personal property, and had even rented a truck to do so. JA19, JA334-335. The whole point of the eviction process is to return the landlord to full possession of the rental unit. That, by logical necessity, includes being able to exclude not just the evicted former tenants, but their personal property. If the Todmans were unaware of the full legal implications of the eviction process, including the possibility of their personal property being deemed abandoned, that is unfortunate (and an all too common example of the need for good civil legal representation) but it is not a due process violation.

The treatment of post-eviction personal property is not the only example of negative post-judgment consequence of a judgment that can occur automatically, by legal operation of a statute, without any additional notice or adjudication beyond that provided for the initial judgment. The most obvious example is post-judgment interest on civil damage awards. Both Maryland and federal law impose such interest by statutory operation. *See* 28 U.S.C. § 1961 (variable); Maryland Code, Courts & Judicial Proceedings Article § 11-107(a) (10% annually). Neither federal nor state statute requires either the plaintiff or the court to inform defendants that they may face such interest should they have a money judgment entered against them (or consent to one) and fail to pay it off immediately. *Id.* Yet

the deprivation of the defendants' right to their monetary property (above and beyond the actual damages awarded) begins to accumulate automatically the very day that the judgment is entered without any further notice or adjudication.

Sometimes a plaintiff will specifically request post-judgment interest in a complaint (the Todmans did not here, JA39), and sometime a court will note post-judgment interest in a judgment (the district court did not here, JA893), but there is nothing that requires either to do so. This is not a violation of the defendants procedural due process precisely because the defendants received due process for the underlying judgment. The possible negative post-judgment consequences of that judgment that occurs automatically by legal operation of statute if the defendant fails to comply with the judgment simply is not an independent deprivation. Although there may be circumstances where a defendant has a valid defense to the legal imposition of post-judgment interest (payment offered but refused, etc.), it would be nonsense to assert that its automatic imposition without independent prior notice or separate adjudication is a due process violation. Likewise, the assertion that the operation of § 8A-4 (which occurs automatically, but only after statutorily required extensive notice, a court hearing, a judgment ordering the tenant out, the tenant failing to leave, an order of eviction, and then actual eviction) violates due process because there is no notice or opportunity to be heard simply ignores reality.

To be absolutely clear, the due process that the Todmans received prior to being allegedly deprived of their interest in the personal property that was deemed abandoned after eviction by operation of § 8A-4 included:

- A notice that the landlord was terminating the hold over tenancy and demanding that they vacate the premises more than 60 days prior to his filing an eviction complaint, JA652;
- The complaint and summons requiring appearance at the hearing, JA649;
- The judicial hearing in the District Court of Maryland, JA41-59;
- Their own affirmative consent at that hearing to the entry of an a judicial order requiring them to vacate the premises after a two week stay of execution, JA56, and the judicial order itself, JA645;
- The second judicial order that the sheriff evict them, which told them:

NOTICE OF EVICTION

The Court has ordered that you be evicted. If the property is in Baltimore City there are special procedures that apply. See the notice on the back of this form for the special procedures in Baltimore City and for general information related to eviction from properties that are not in Baltimore City.

THERE WILL BE NO FUTHER NOTICE

JA854-855; JA332-333, and on the back *inter alia* said:

On eviction day any personal property left in or around the rental unit is considered abandoned. When the sheriff returns possession of the rental property to the landlord, any of the tenant's personal property left in or around the rental unit is considered abandoned. The tenant has no right to the property

Id.

- Verbal notification from the landlord (supported by two affidavits) as to the exact day of the eviction, JA586-594; JA675; JA677.

If the Todmans did not understand during any or all of this process that these eviction proceedings also concerned the potential fate of their personal property (should they leave it in the rental unit beyond the date of eviction), that is unfortunate, but it is not a violation of due process. Although it works with the courts, with tenant organizations, and with advocates to try to make sure its residents know their rights, the City does not have an affirmative constitutional obligation to educate its entire population as to the intricacies of every law it enacts. To hold otherwise, would turn the old saw that "ignorance of the law is no excuse" on its head. *Bryan v. United States*, 524 U.S. 184, 195 (1998). Indeed, it would make a plaintiff's ignorance of the law the first step towards a claim under 42 U.S.C. § 1983.

The record here is clear that the Todmans received due process from the Maryland state courts before[8] they were allegedly deprived of their personal

[8] In addition to process provided prior to the eviction, the full range of temporary restraining orders, injunctions, legal and equitable relief were available to the Todmans in Maryland's state courts, yet they made no attempt to utilize these available remedies. Instead, they included four Maryland state law claims in their federal complaint. JA35-39. This obvious indication that there was an actual state court remedy available, yet unutilized, should preclude the Todmans' 42 U.S.C. § 1983 claim as well. *See, e.g., Rockville Cars, LLC v. City of Rockville*, 891 F.3d 141, 149 (4th Cir. 2018).

property. Accordingly, there was no constitutional violation and the City was entitled to summary judgment as a matter of law.

C. The City was entitled to summary judgment because, even if § 8A was unconstitutional *as applied* to the Todmans, the City played no role in the allegedly unconstitutional *application* of § 8A.

Even if some state actor had violated the Todmans' rights by applying a facially constitutional provision of the City's code in an unconstitutional manner, the City still is entitled to summary judgment unless that state actor was also a City actor. As this Court explained in *Covenant Media Of SC, LLC v. City Of N. Charleston*, 493 F.3d 421 (4th Cir. 2007), municipal liability in a 42 U.S.C. § 1983 requires both a determination that there is constitutional violation *and* a determination that "the city is responsible for that violation." *Id.* at 436 (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 120 (1992)).

Here, there simply was no City actor involved in the Todmans' eviction, and thus no City actor applied § 8A to the Todmans' eviction proceedings in any manner, constitutional or otherwise. Their landlord, the Todmans, the District Court of Maryland, and the sheriff's office were the only participants in the entire procedure and process of their eviction, and as described in the facts section above, Maryland state law mandates as much. If the Maryland judiciary used a form that provides constitutionally insufficient notice or provided a constitutionally insufficient opportunity to be heard (to be clear, it did neither), the City did not

cause that hypothetical violation. As the Todmans' counsel explained the motion for summary judgment hearing, "Baltimore City can't require a Maryland state court judge to give notice of something." JA787. Indeed, the City cannot tell any court what it can or cannot do. Likewise, the sheriff simply is not under the City's command, especially not when – as here – it is executing a state court's orders. The district court's decision below seems to be based on a misapprehension that the City controls the evictions procedures and how they are applied in Baltimore City. It does not. For the most part, the State of Maryland dictates how eviction laws work in Baltimore City, and Maryland state courts are the ones that apply those laws.

While the City can pass ordinances requiring landlords to give more and better notice, and has done so where it can, *see* §§ 8A-2(b),(c),&(d), there are places where the City cannot because Maryland state law expressly does not allow additional safeguards to be put in place due to there already being sufficient procedural protection in place and a need for speedy resolution, *compare* § 8A-2(a)(iii) (City ordinance excluding tenant holding over evictions from the City's extra notice requirements) *with* RP § 8-402(b)(2)(i) (Maryland state law requiring sheriff to execute a holding over eviction "forthwith," i.e. immediately) *and* PLL § 9-19 (Maryland state law saying landlords that comply with state law notice requirements for holding over evictions are entitled to eviction "without any

additional notice").[9] Put another way, the City cannot legislatively delay return of a landlord's property where state law mandates it be returned immediately. If a landlord chooses to effectuate a post-judgment holding over action eviction the day they receive judgment, that is wholly a consequence of state law. The City cannot be responsible for state edicts.

The district court correctly noted that municipalities can only be liable in 42 U.S.C. § 1983 actions when an official "policy or custom" causes the deprivation, JA884 (citing *Lytle v. Doyle*, 326 F.3d 463, 471 (4th Cir. 2003) and *Spell v. McDaniel*, 824 F.2d 1380, 1385 (4th Cir. 1987)), but then mistakenly attributed the eviction notification policy that it found insufficient to the City when, in fact, it is Maryland state policy that the City cannot override, PLL § 9-19. The district court did not find the City's alteration of abandonment law in § 8A-4 (which is a City

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[9] The district court took issue with the City's assertion that "forthwith" in RP § 8-402 meant "immediately" or "without delay." *See* JA879-881; *but see* Black's Law Dictionary (11th ed. 2019) ("**forthwith** adv. (14c) **1**. Immediately; without delay. **2**. Directly; promptly; within a reasonable time under the circumstances; with all convenient dispatch."). Regardless of how one interprets forthwith, the provision of PLL § 9-19 requiring eviction "without additional notice" makes clear the Maryland General Assembly's preclusive intent. Furthermore, the district court's insistence that "the Constitution nonetheless has the final say," JA880, misses the City's point entirely. If the City has passed a facially constitutional ordinance, but the Maryland is the one who applies it and who decides how much and what kind of notice is provided, then any as-applied procedural due process violation is *caused by* Maryland, not the City, and the City cannot be held liable. The state law restrictions on City ordinances do not change what is constitutional, but they do show what entity is responsible for alleged failures of insufficiency of notice.

policy) to be unconstitutional itself, but rather found fault with the notice and opportunity to be heard provided, where the limitations found lacking are entirely controlled by Maryland state law and executed by Maryland state actors.

The district court was quick to find blameless the District Court of Maryland judge who told the Todmans they would have until August 2, 2023, when Maryland state court and sheriff procedures actually allowed an earlier eviction:

> The judge is certainly not to blame for what happened to the plaintiffs' property, and in fact, the judge should be commended for seizing an opportunity to resolve a difficult situation. The blame instead lies with the City for failing to officially notify the plaintiffs of when their eviction could occur and when their personal property could be deemed abandoned.

JA869-870. While the City agrees that Judge Chen did an excellent job helping the Todmans and their landlord negotiate a consent judgment, it is entirely illogical to blame the City "for failing to officially notify" the Todmans where Maryland state law and Maryland state actors – both beyond City control – are what determined what notice a holding over evictee received. If the District Court of Maryland and the sheriff wanted to change their policies and procedures such that every holding over evictee in Baltimore City received notice of the date of their eviction and a detailed description of how the abandonment provision of § 8A-4 works, they could do so tomorrow. But because they are Maryland state actors, the City cannot legally tell them to do so. The Maryland General Assembly could do so, but the City cannot.

Accordingly, the City is not "responsible for" the alleged procedural due process violations caused by Maryland state actors applying Maryland state law, and is therefore entitled to summary judgment. *Covenant*, 493 F.3d at 436.

D. The City was entitled to summary judgment because its failure to statutorily require notice of § 8A's alteration of one potential post-judgment consequence of eviction was not the proximate cause of the Todmans' damages.

The City is also entitled to summary judgment because none of its actions were the proximate cause of the Todmans' damages. The Court has explained that for 42 U.S.C. § 1983 liability to be imposed on a City, "the causal connection must be 'proximate,' not merely 'but-for' causation-in-fact." *Spell v. McDaniel*, 824 F.2d 1380, 1387-88 (4th Cir. 1987). The district court below erroneously imposed liability merely because it held the abandonment provision of § 8A-4 was a "but-for" cause of the Todmans' loss. *See* JA885. Even if the City could be deemed responsible for the policy of not notifying holding over evictees sufficiently about the abandonment provision of § 8A-4 (to be clear, it was not), that would still not be enough to impose liability on the City because not knowing about § 8A-4 did not proximately cause any harm to the Todmans. The Todmans had packed up their personal property, rented a truck, and had every intention to take all this with them to their new apartment. JA19; JA334-335. More or less knowledge as to what happens to personal property left in a rental unit would have been absolutely irrelevant to their behavior at that point because they thought they would be gone

before the eviction. *Id.* Rather, the only reason their personal property remained, and was therefore deemed abandoned under § 8A, was that the Todmans were mistaken as to the date of the eviction. Thus, the only notification deficiency that could even potentially be deemed a proximate cause of the Todmans' loses would be the alleged failure to notify the Todmans of the exact date of their eviction.

As discussed in detail above, the City does not control the date of anyone's eviction, it cannot tell the sheriff or the District Court of Maryland (the Maryland state entities that do control the date of evictions) to provide any particular notice, and the City has been affirmatively prohibited by Maryland state law from requiring the landlord to provide more notice than Maryland state law requires in holding over actions. PLL § 9-19 (landlords entitled to holding over eviction "without any additional notice"). Thus, there is simply no way to logically attribute the allegedly constitutionally insufficient date-of-eviction notice to a City policy rather than a Maryland state policy. This is the only alleged procedural deficiency that could even arguably be deemed a proximate cause of the Todmans' loss, and no City policy had anything to do with it. The City, therefore, cannot be held liable for damages that the City's alleged violation did not proximately cause, and is entitled to summary judgment.

E. The Todmans were not entitled to any sort of partial summary judgment against the City, and certainly not as to liability.

At the risk of stating the obvious, all these reasons discussed above why the City was entitled to summary judgment are also reasons why the district court also erred in granting the Todmans' motion for summary judgment. However, those are not the only reasons the district court's grant of summary judgment must be reversed. The district court also granted the Todmans summary judgment on an issue that the Todmans had *not* requested, without providing parties notice or a chance to brief that issue, in violation of the rules of civil procedure. And, finally, the district court also erroneously held genuine disputes of material fact to be immaterial when they were actually potentially dispositive.

1. *The district court failed to provide notice to parties under Federal Rule of Civil Procedure 56(f) before ruling* sua sponte *that the City was liable for the Todmans' alleged damages.*

The Todmans expressly limited their motion for partial summary judgment to the question of whether there was a constitutional violation at all. JA85 (moving for "partial summary judgment as to the invalidity of Baltimore City Code Art. 13, § 8A-4 under the Due Process Clause of the Fourteenth Amendment") (emphasis added). The district court was fully aware of the fact that the Todmans had limited their motion (and the parties their briefs) in this way, yet it ruled *sua sponte* that the City was liable for the alleged violation. *See* JA885 n.14 (district court noting

in its opinion that the Todmans "moved for summary judgment only on whether their constitutional rights were violated, but the Court finds they also are entitled to summary judgment on the issue of the City's responsibility for the constitutional violation") (emphasis added); *see also* JA775-79 (district court noting at the hearing that liability issue are separate from violation issue, and that liability had not been briefed). Indeed, when the district court mentioned liability issues at the hearing, it admitted that the issues were "a bit beyond the scope of the Summary Judgment motions, but it has practical implications for where, if anywhere, we go from here," to which the City's counsel agreed that the liability question was "a bit far afield" from what was before the court. JA777. Yet the district court still granted the Todmans summary judgment as to liability, an issue for which they had not moved for summary judgment and which the parties had not briefed.

Federal Rule of Civil Procedure 56(f) allows the district court to grant a summary judgment motion "on grounds not raised by a party," but only "[a]fter giving notice and a reasonable time to respond." *Id*. at (2). As this Court recently explained, although Rule 56(f) allows "a court to grant summary judgment *sua sponte*," it first requires the court to provide "a reasonable opportunity to present all material pertinent to the claims under consideration" "in view of the procedural, legal, and factual complexities of the case." *Karp v. First Connecticut Bancorp, Inc*., 69 F.4th 223, 230 (4th Cir. 2023) (quoting *U.S. Dev. Corp. v. Peoples Fed.*

Sav. & Loan Ass'n, 873 F.2d 731, 735 (4th Cir. 1989)). Although the *Karp* Court found error in the district court ruling on a motion for summary judgment before the deadline for a reply, it ultimately found the error harmless. *Karp*, 69 F.4th at 230. Here, however, the district court's failure to provide any warning that it was going to rule on liability profoundly prejudiced the City by preventing it from fully briefing and arguing liability issues at all. Had the City been provided such an opportunity, it would have extensively briefed liability issues, including the issues discussed above, like proximate cause and whether the City can be responsible for the actions or inactions of Maryland state actors entirely beyond its control. Indeed, if the district court had provided the notice and opportunity required by Rule 56(f), perhaps the City could have disabused it of its misunderstanding of Maryland state eviction law and the City's minimal role in same. Moreover, some of the liability issues that needed to be addressed were potentially factual determinations that may have needed to be determined by the jury. *See, e.g., Palmer v. State*, 223 Md. 341, 352, 164 A.2d 467, 473 (1960) ("question of proximate cause is usually a question of fact for the determination of the jury, or other trier of the facts"). Accordingly, the City was prejudiced by the lack of an opportunity to brief, or perhaps argue to the jury, the issues surrounding liability, and the district court's violation of Rule 56(f) requires that its *sua sponte* award of summary judgment liability be vacated.

2. *Genuine disputes of material fact about what actual notice the Todmans received precluded summary judgment against the City.*

For summary judgment to be permissible, there must be "no genuine issue of material fact" for the jury to decide. *E.g., French v. Assurance Co. of Am.*, 448 F.3d 693, 700 (4th Cir. 2006). The district court below recognized that there were genuine disputes of fact about whether the Todmans received actual notice before the eviction as to both the eviction's date and its consequences, but the district court erroneously held these facts to be immaterial. JA868 (describing facts as "disputed but immaterial"). The district court's materiality analysis, however, entirely ignores the implications that actual notice would have for questions of causation (both but-for and proximate) and agency.

If the Todmans' landlord gave the Todmans actual prior notice of the date and time of their scheduled eviction (as he and two witnesses assert, and as the Todmans dispute), JA586-594; JA675; JA677, then any procedural deficiency in any alleged constitutional obligation of the City to provide that information could not possibly have *caused* the Todmans to have incurred a loss. If they literally already have the information the City was supposed to provide, any failure in providing that same information becomes irrelevant as it is not even a but-for,

much less proximate, cause of the ensuing harm.[10] Thus, while the disputed notice from the landlord may not have been material to a determination of whether a constitutional violation occurred, it was entirely material to determining whether any liability would attach to that violation.

Likewise, the district court's finding that the dispute as to whether the Todmans received form DC-CV-081 was immaterial also ignores how this is relevant to the question of City liability. JA865-868 (district court offering three pages of rationalization as to why a form that stated in bold that "[**o**]**n eviction day, any personal property left in or around the rental unit is considered abandoned**," JA333 (emphasis in original), was not "reasonably calculated to convey [that] information," JA867 (quoting *Snider Int'l Corp. v. Town of Forest Heights*, 739 F.3d 140, 146 (4th Cir. 2014))). Essentially, the district court held that the District Court of Maryland's order that informed the Todmans that they were being evicted because they had failed to obey the District Court of Maryland's order to vacate, and that any personal property left in the rental unit

[10] The existence of prior notice that the eviction was happening a day earlier than expected also would establish that the Todmans did, in fact, have a full opportunity to avail themselves of Maryland state courts and the sheriff's offices to try to get the eviction rescheduled, stayed, or otherwise restrained on the basis of the Judge Chen's representation that they would have until August 2, 2019. Their failure to even attempt to utilize such remedies would likewise preclude imposing liability.

after eviction would be abandoned, was so confusing that it was constitutionally insufficient to provide that notice, even if they did receive it.[11] *Id.*

The City disagrees with the district court's analysis, but more to the point, the language is clear enough that, if there is any doubts in its effect on the Todmans awareness of the risk of abandonment, that too should have been left for a jury to decide. Moreover, if the notice form was received, but it was drafted such that it was unconstitutionally confusing, that failure of notice would be caused by the notice's author – the Maryland state judiciary – not the City. Indeed, the Maryland state judiciary can and, as discussed above, does revise its forms to try to improve them, but the City cannot order it to do so. Any harm caused by the allegedly poor drafting or procedures of the Maryland state courts are not harms caused by the City, and it therefore cannot be held liable for those violations it did not cause. Accordingly, the district court erred in ruling that these genuinely disputed facts were immaterial, and its grant of summary judgment must be vacated.

CONCLUSION

For the reasons set forth above, Appellant Mayor and City Council of Baltimore respectfully requests that this Court vacate the district court's judgment

[11] As explained above, the landlord insists that he found the opened notice on top of the rental unit's refrigerator after the Todmans were evicted but the Todmans insist he must have stolen it from their mailbox. JA616-617.

and direct the district court to enter summary judgment for the City. In the alternative, the City respectfully requests that the district court's grant of partial summary judgment as to liability be vacated, that the district court be directed to allow the parties to fully brief, and if necessary try, all liability issues, and that the district court be directed to allow a jury to resolve all material factual disputes.

Respectfully submitted,

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