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APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 23-1485

ROBERT GRAVATT, III,
Plaintiff - Appellant,

v.

MONTGOMERY COUNTY, MARYLAND; CAROLINE E. HEADEN; EDWARD B. LATTNER; RASHEIM R. SMITH,
Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Theodore D. Chuang, District Judge. (8:22-cv-01296-TDC)

Submitted: June 24, 2024 Decided: July 17, 2024

Before RICHARDSON and RUSHING, Circuit Judges, and KEENAN, Senior Circuit Judge.

Dismissed in part and affirmed in part by unpublished per curiam opinion.

Robert Gravatt, III, Appellant Pro Se. Diane Feuerherd, Donna McBride, MILLER, MILLER &

CANBY, Rockville, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Gravatt, III, appeals the district court's orders granting Defendants' motion to dismiss his 42 U.S.C. § 1983 and state law amended complaint and denying his motion for reconsideration. For the following reasons, we dismiss in part and affirm in part.

"[W]e have an independent obligation to verify the existence of appellate jurisdiction." *Porter v. Zook*, 803 F.3d 694, 696 (4th Cir. 2015) (internal quotation marks omitted). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). In civil cases, a notice of appeal must be filed no more than 30 days after the entry of the district court's final judgment or order, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6).

When a party files a timely Fed. R. Civ. P. 59(e) motion before filing a notice of appeal, the time to file an appeal runs from the entry of the order resolving the Rule 59 motion. Fed. R. App. P. 4(a)(4)(A)(iv). A Rule 59(e) motion must be filed within 28 days after entry of the district court's judgment, however, *see* Fed. R. Civ. P. 59(e), and a district court cannot extend

the time to file such a motion, *see* Fed. R. Civ. P. 6(b)(2). Similarly, a Fed. R. Civ. P. 60(b) motion may toll the time to file an appeal; however, such a motion must be filed no later than 28 days after the judgment is entered. *See* Fed. R. Civ. P. 4(a)(4)(A)(vi).

The district court here entered its dismissal order on March 3, 2023. Therefore, the appeal period for the district court's March 3 order could only be tolled if Gravatt filed such a motion by March 31, 2023. However, pursuant to the district court's order that purported to expand the time in which Gravatt could have timely filed his postjudgment motion, Gravatt filed his motion on April 3, 2023, more than 28 days after the district court's dismissal order. Because of this belated filing, the appeal period applicable to the court's dismissal order was not tolled by the filing of Gravatt's motion for reconsideration. *See* Fed. R. App. P. 4(a)(4)(A). Furthermore, because "the district court's order extending the time to file the motion to alter or amend the judgment was not authorized under the Federal Rules of Civil Procedure," the "time period for filing the notice of appeal could not be deferred on the basis of the district court's order." *Alston v. MCI Commc'ns Corp.*, 84 F.3d 705, 706 (4th Cir. 1996), *overruled in part on other grounds by Bowles*, 551 U.S. 205; *see also Panhorst v. United States*, 241 F.3d 367, 372 (4th Cir. 2001) ("An untimely Rule 59 motion is never proper because the Rules expressly forbid an extension of time for such a motion." (internal quotation marks omitted)). We therefore lack jurisdiction to review the district court's order granting Defendants' motion to dismiss. *See Bowles*, 551 U.S. at 214.

We do, however, have jurisdiction to review the district court's order denying Gravatt's motion for reconsideration, as Gravatt filed his notice of appeal within 30 days after the entry of that order. *See* Fed. R. App. P. 4(a)(1)(A); Fed. R. Civ. P. 6(a). We have reviewed the record and conclude that the district court did not abuse its discretion in denying Gravatt's motion for reconsideration.* *See Aikens v. Ingram*, 652 F.3d 496, 501 (4th Cir. 2011) (en banc) (stating standard of review for Rule 60(b) motion). We therefore affirm the district court's order denying reconsideration. *Gravatt v. Montgomery Cnty.*, No. 8:22-cv-01296-TDC (D. Md. Apr. 27, 2023).

Accordingly, we grant Gravatt's motion to amend his informal brief, dismiss the appeal as to the district court's order granting Defendants' motion to dismiss, and affirm as to the district court's order denying reconsideration. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED IN PART,
AFFIRMED IN PART

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* Because Gravatt's motion was filed more than 28 days after the entry of the district court's dismissal order and the time to file a Rule 59(e) motion cannot be extended, the district court should have construed Gravatt's motion for reconsideration as a Rule 60(b) motion and considered it only under the standards set forth in that rule. *See MLC Auto., LLC v. Town of S. Pines*, 532 F.3d 269, 278 (4th Cir. 2008) (explaining that postjudgment motions should be construed based on time period within which they are filed).

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

ROBERT H. GRAVATT, III,
Plaintiff,

v. Civil Action No. TDC-22-1296

MONTGOMERY COUNTY, MARYLAND,
CAROLINE E. HEADEN, .
EDWARD B. LATTNER and
RASHEIM R. SMITH,
Defendants.

ORDER

Pending before the Court is a Motion for Reconsideration filed by Plaintiff Robert H. Gravatt, III in which he seeks reconsideration of this Court's March 3, 2023 Memorandum Opinion and Order granting Defendants' Motion to Dismiss. The Motion seeks relief under Federal Rules of Civil Procedure 59(e) and 60(b). Under Rule 59(e), a party may seek to alter or amend a judgment (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Bogart v. Chapell*, 396 F.3d 548, 555 (4th Cir. 2005). Under Rule 60(b), a motion seeking relief from a final judgment may be granted for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, is no longer equitable, or is based on an earlier judgment that has been reversed; or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b).

Upon review of the Motion under these standards, the Court finds no basis to alter its ruling. Gravatt primarily seeks relief based on alleged fraud arising from defense counsel's submission of an incorrect version of the Montgomery County Recreation Swimming Pool Rules and Regulations. Joint Record ("J.R.") Ex. 3, ECF No. 32; Fed. R. Civ. P. 60(b)(3). Upon review of the explanation by defense counsel, which is corroborated by the disclosure in the Joint Record of Gravatt's objection to that exhibit, the Court finds no fraud by defense counsel. Moreover, the Court finds that reconsideration of the matter based on J.R. Exhibit 10, the version submitted by Gravatt, does not alter the result. The two versions are not different on matters material to this case. Although the Court referenced restrictions on pool usage during the COVID-19 pandemic in its original ruling, it finds that it reaches the same result even if Gravatt did not violate any COVID-19 restrictions at the time of the relevant incident.

Gravatt's introduction of a new legal theory, an equal protection claim based on a "class of one," Mot. Reconsideration at 9-10, ECF No. 41, also does not alter the result. This theory is not based on an intervening change in controlling case law and

therefore does not provide a basis for reconsideration. Even if it did, where the Court finds that there was a rational basis for Defendants' actions, Gravatt's new theory does not alter the result. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Wilson v. Town of Marshall*, 426 F.3d 251, 263 (4th Cir. 2005).

Upon a careful review of the filings, the Court finds that Gravatt's remaining arguments do not meet any of the recognized bases for reconsideration under Rules 59 or 60, including that he has identified no newly discovered evidence, intervening change in controlling case law, "clear error of law," "manifest injustice," or "other reason" to justify reconsideration of the prior ruling. Fed. R. Civ. P. 59(e), 60; *Bogart*, 396 F.3d at 555. Finally, in his reply brief, Gravatt withdrew his request for leave to amend to add a new party, so the Court need not address that issue.

Accordingly, it is hereby ORDERED that:

1. Gravatt's Motion for Reconsideration, ECF No. 41, is DENIED.

2. The Clerk shall close this case.

Date: April 27, 2023

/s/
THEODORE D. CHUANG
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

ROBERT H. GRAVATT, III,
Plaintiff,

v. Civil Action No. TDC-22-1296

MONTGOMERY COUNTY, MARYLAND,
CAROLINE E. HEADEN,
EDWARD B. LATTNER and
RASHEIM R. SMITH,
Defendants.

ORDER

Upon consideration of Plaintiff Robert H. Gravatt's Request for Conference filed March 17, 2023, it is hereby ORDERED that:

1. Gravatt may file a Motion for Reconsideration under Rule 59(e) or 60(b). No conference is necessary.

2. Any Motion for Reconsideration shall be considered timely if it is filed by **Monday, April 3, 2023.**

Date: March 20, 2023

/s/
THEODORE D. CHUANG
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

ROBERT H. GRAVATT, III,
Plaintiff,

v. Civil Action No. TDC-22-1296

MONTGOMERY COUNTY, MARYLAND,
CAROLINE E. HEADEN,
EDWARD B. LATTNER and
RASHEIM R. SMITH,
Defendants.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is hereby ORDERED that:

1. Defendants' Motion to Dismiss. ECF No. 20, is GRANTED.

2. Counts 1, 3, 6, 7, 8, 10. and 11 of the Amended Complaint are DISMISSED.

3. Counts 2, 4, 5, and 9 of the Amended Complaint are DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction.

4. The Clerk shall close this case.

Date: March 3, 2023

/s/
THEODORE D. CHUANG
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

ROBERT H. GRAVATT, III,
Plaintiff,

v. Civil Action No. TDC-22-1296

MONTGOMERY COUNTY, MARYLAND,
CAROLINE E. HEADEN,
EDWARD B. LATTNER and
RASHEIM R. SMITH,
Defendants.

MEMORANDUM OPINION

Plaintiff Robert H. Gravatt, III has filed a civil action against Defendants Montgomery County, Maryland and three Montgomery County employees alleging deprivations of his constitutional rights and violations of state law based on the issuance of a Disruptive Behavior Order against him following a May 2021 incident at the Bethesda Outdoor Pool, a public pool in Bethesda, Maryland. Defendants Montgomery County ("the County"), Caroline E. Headen, Edward B. Lattner, and Rasheim R. Smith have filed a Motion to Dismiss, which Gravatt now opposes. Having reviewed the submitted materials, the Court finds that no hearing is necessary. See D. Md. Local R. 105.6. For the reasons set forth below, Defendants' Motion to Dismiss will be GRANTED.

BACKGROUND

Gravatt asserts the following facts in the Amended Complaint, which the Court accepts as true for purposes of deciding this Motion. On May 29, 2021 at approximately 2:40 p.m., Gravatt entered the Bethesda Outdoor Pool, a public pool operated by the Montgomery County Department of Recreation. Gravatt used a season pass he had purchased that allowed him to use the Bethesda Outdoor Pool as well as other pools operated by the County. Because of ongoing limitations related to the COVID-19 pandemic, patrons were required to reserve a dedicated swimming time. Gravatt's appointment was at 4:00 p.m.

Gravatt walked over to the pool's edge and placed a plastic thermometer into the water. Defendant Rasheim R. Smith, who identified himself as an employee at the pool, instructed Gravatt to remove the thermometer from the pool. Gravatt refused and insisted that Smith did not in fact work at the pool because Gravatt had never seen him before. Smith made three requests to Gravatt to remove the thermometer, each of which he refused. Smith then walked away. Upon taking the temperature of the water in the pool, Gravatt left the facility.

Two days later, on May 31, 2021, Gravatt appeared again at the Bethesda Outdoor Pool. He was denied entry by Smith and a Montgomery County police officer, who served him with a Disruptive Behavior Order ("the Order"). The Order notified Gravatt that he was to be denied access to

Montgomery County facilities for a period of 90 days due to "stalking behavior towards a lifeguard and putting a device into the pool and refusing to take the device out." Am. Compl. ¶ 13, ECF No. 19. The Order included a section entitled "Review Rights" which notified Gravatt that, as a recipient of the Order, he was entitled under the Montgomery County Code § 32-19C (Disruptive Behavior—Public Facilities) to a Review Meeting the next business day, and that he could request an alternative date for the Review Meeting. Order at 1, Mot. Dismiss Ex. 2, ECF No. 32. Gravatt signed the Order to acknowledge that he had received it.

The Review Meeting was held on June 4, 2021. Edward Lattner, the Chief of Government Operations for the Montgomery County Attorney, presided over the meeting. Smith and his supervisor, Caroline Headen, also attended the meeting. At the meeting, Lattner entered into the record various emails, compiled by Smith and Headen, which contained the accounts of several lifeguards detailing the factual basis for the allegation that Gravatt had displayed stalking behavior. According to Gravatt, when he asserted that the stalking allegations related to a claim of a criminal violation and were not a proper subject of the Review Meeting, Lattner dismissed that claim. Gravatt argued that he had not violated the rule against disruptive behavior by placing a thermometer in the pool. At the conclusion of the Review Meeting, Lattner amended the Order to bar Gravatt from the Bethesda Outdoor Pool only, rather than all Montgomery County recreation facilities.

Gravatt filed suit in this Court on May 31, 2022. On July 22, 2022, Gravatt filed an Amended Complaint, which alleges a total of 11 counts. Count 1 asserts a claim against Smith and the County under 42 U.S.C. § 1983 for a violation of Gravatt's right to equal protection of the law under the Fourteenth Amendment to the United States Constitution and for retaliation in violation of the First Amendment. Count 2 alleges a state law claim of libel against Smith-and the County. Count 3 asserts a claim against Lattner under § 1983 for violations of Gravatt's Fourteenth Amendment rights to equal protection of the law and due process of law. Count 4 alleges a state law claim of gross negligence against Lattner. Count 5 alleges a state law claim of libel against Lattner. Count 6 asserts a claim against Headen and Smith for a conspiracy to deprive Gravatt of his constitutional rights, in violation of 42 U.S.C. § 1985. Count 7 alleges a § 1983 claim against Headen for a violation of Gravatt's Fourteenth Amendment right to equal protection of the law and for retaliation in violation of the First Amendment. Count 8 alleges a § 1983 claim against the County for a violation of Gravatt's right to equal protection of the law based on its denial of a discrimination complaint he filed about the May 29, 2021 incident with the Maryland Commission on Civil Rights on July 23, 2021. Count 9 alleges a state law claim against the County for breach of contract. Count 10 alleges a § 1983 claim against the County for failure to train its employees. Count 11 seeks a declaratory judgment by this Court that Montgomery County Code § 32-19C is facially unconstitutional.

DISCUSSION

In their Motion to Dismiss, Defendants seek dismissal under Federal Rule of Civil Procedure 12(b)(6) based on their assertion that the Amended Complaint fails to state a plausible claim for relief on any of the 11 counts. Defendants Smith, Headen, and Lattner (collectively, the "Individual Defendants") also assert that they are entitled to qualified immunity from the § 1983 claims against them. Lattner also asserts statutory immunity from suit due to his status as a County official who was acting within the scope of his employment.

I. Legal Standard

To defeat a motion to dismiss under Rule l2(b)(6), the complaint must allege enough facts to state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim is plausible when the facts pleaded allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Legal conclusions or conclusory statements do not suffice. *Id.* A court must examine the complaint as a whole, consider the factual allegations in the complaint as true, and construe the factual allegations in the light most favorable to the plaintiff. *Albright v. Oliver*, 510 U.S. 266, 268 (1994); *Lambeth v. Bd. of Comm'rs of Davidson Cnty.*, 407 F.3d 266, 268 (4th Cir. 2005). A self-represented party's complaint must be construed liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). However, "liberal construction does not mean overlooking the pleading requirements under the Federal Rules of Civil Procedure." *Bing v. Brivo Sys., LLC*, 959 F.3d 605, 618 (4th Cir. 2020).

With the Motion, Defendants have submitted multiple exhibits. Ordinarily, in assessing a Rule 12(b)(6) motion, a court must limit its review to the complaint and any attachments to that pleading. Fed. R. Civ. P. 12(d); *Sec'y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007). However, courts are permitted to consider documents attached to a motion to dismiss "when the document is integral to and explicitly relied on in the complaint, and when the plaintiffs do not challenge the document's authenticity." *Zak v. Chelsea Therapeutics Int'l, Ltd.*, 780 F.3d 597, 606-07 (4th Cir. 2015) (quoting *Am. Chiropractic Ass 'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004)). Here, the Court will consider the Disruptive Behavior Order and the Montgomery County Recreation Swimming Pool Rules and Regulations ("the Pool Rules") as integral to the complaint because they are explicitly referenced in the Amended Complaint and Gravatt does not challenge their authenticity. The Court will not, however, consider Defendants' remaining exhibits, which do not meet this standard.

II. The County

The Court first addresses the federal claims asserted under § 1983 against the County, as alleged in Count 1 (equal protection and retaliation), Count 8 (equal protection), and Count 10 (failure to train).

The United States Supreme Court has held that a municipal government may not be held vicariously liable for the actions of its employees or agents and may be held liable under § 1983 only if the alleged

deprivation of federal rights was the result of a custom or policy of the municipal government. *Monell v. Dept. of Soc. Servs. of the City of New York,* 436 U.S. 658, 690-91 (1978). Here, Gravatt has alleged constitutional violations arising out of a single incident—the May 29, 2021 incident—and its aftermath. Gravatt has not plausibly alleged that the claimed Fourteenth Amendment and First Amendment violations arising out of that incident, the Review Meeting, and the County's consideration of his discrimination complaint were the result of any articulable custom or policy of the County. The Court will therefore dismiss the claims against the County in Count 1 and the entirety of Count 8, which is asserted only against the County.

As for Count 10, the Supreme Court has held that "there are limited circumstances in which an allegation of a 'failure to train' can be the basis for liability under § 1983" against a municipal government. *City of Canton Ohio v. Harris,* 489 U.S. 378, 387 (1989). Such a claim is viable only if "the failure to train amounts to deliberate indifference to the rights of persons with whom" the municipal officers come into contact. *Id.* at 388. "Only where a municipality's failure to train its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a city 'policy or custom' that is actionable under § 1983." *Id.* at 389. Thus, such a claim requires more than a showing that a particular employee was unsatisfactorily trained, or that there was an inadequate training program. *Id.* at 390; *Connick v. Thompson,* 563 U.S. 51, 63, 68 (I-Z011) (stating that "showing merely that additional training

would have been helpful in making difficult decisions does not establish municipal liability"). Rather, it requires a showing that there was a "deliberate" or "conscious" choice by the municipal government not to provide the training, and that the need for more or different training was so obvious, and the inadequacy so likely to result in a violation of constitutional rights, that the decisionmakers can be deemed to be deliberately indifferent to the need. *Canton*, 489 U.S. at 389-90. "Deliberate indifference is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Connick*, 563 U.S. at 61. The deficient training must be the actual cause of the alleged injury. *Canton*, 489 U.S. at 391.

Here, Gravatt has failed to allege a plausible § 1983 claim based on a failure to train. The Amended Complaint offers no details about the training which was or was not allegedly provided to the Individual Defendants and provides no facts that could support the conclusion that any of them were not properly trained, that the County acted with deliberate indifference in failing to train, or that there is any causal link between any failure to train and the alleged deprivation of rights. Rather, Gravatt argues only that because his rights were infringed, there must have been some failure to train which caused the alleged infringement. Under Canton, however, the link between cause and effect must be closer than the conclusory reasoning which Gravatt employs. *Id.* at 391 ("For liability to attach in this circumstance the identified deficiency in a city's training program must be closely related to the ultimate injury."). The Court

will therefore dismiss Count 10 for failure to state a claim.

III. Equal Protection

In Counts 1, 3, and 7, Gravatt alleges that the Individual Defendants each violated his Fourteenth Amendment right to equal protection of the law. In Count 1, Gravatt claims that Smith violated this right when he expelled him from the pool based on a discriminatory motivation. In Count 3, he argues that Lattner's actions in presiding over the Review Meeting and upholding the Order deprived him of equal protection. In Count 7, he asserts that I-leaden's enforcement of the Order was discriminatory and thus in contravention of the Equal Protection Clause.

A plaintiff asserting an equal protection claim must allege "that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001); *see Washington v. Davis*, 426 U.S. 229 (1976) ("The invidious quality of a law claimed to be . . . discriminatory must ultimately be traced to a . . . discriminatory purpose."). "The 'similarly situated' standard requires a plaintiff to identify persons materially identical to him . . . who ha[ve] received different treatment." *Applegate, LP v. City of Frederick*, 179 F. Supp. 3d 522, 531 (D. Md. 2016) (citation omitted). Where a plaintiff alleges differential treatment or classification on the basis of some protected characteristic, such as race or national origin, the classification will be examined using a form

of heightened scrutiny. *Morrison*, 239 F.3d at 654. In the absence of a claim of discrimination based on such a protected class or an allegation of a violation of a fundamental right, the differential treatment is presumed to be valid and will be sustained if "there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Heller v. Doe ex rel. Doe*, 509 U.S. 312, 319-20 (1993); *Morrison*, 293 F.3d at 654. Under this rational basis standard, the classification "must be upheld against [an] equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Heller*, 509 U.S. at 320 (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993)).

Here, Gravatt generally alleges that the Individual Defendants "arbitrarily and capriciously" and "intentionally" discriminated against him by excluding him from the Bethesda Outdoor Pool. Am. Compl. ¶¶ 29, 52, 82. He provides no allegations supporting a claim that he was treated differently than other similarly situated individuals, nor does he clearly identify the basis upon which he was treated differently. The specific counts alleging § 1983 equal protection violations (Counts 1, 3, and 7) do not identify a basis for the alleged intentional discrimination. In Count 6, which alleges a "[c]onspiracy to deprive plaintiff of rights or privileges" in violation of 42 U.S.C. § 1985, Gravatt asserts that he is a "member of a class of swimmers who are sensitive to cold water temperatures" and that "[m]embers of Plaintiff's class includes senior citizens (as is Plaintiff), people with health issues, people with

physical injuries, people with certain disabilities and even some swimmers who do not own full-body rubber wetsuits (similar to Plaintiffs) which are often needed in cold conditions." Am. Compl. ¶ 71. Gravatt also references age and disability in Count 8, the § 1983 claim against the County. Viewing the allegations in the light most favorable to the plaintiff, the Court construes Gravatt's equal protection claims as alleging that he has been subjected to intentional discrimination based on his status as a senior citizen and as someone with a disability or sensitivity that causes difficulty swimming in cold water, whether based on a shoulder injury or otherwise.

For purposes of an equal protection claim, neither age nor disability is a suspect class subject to strict or intermediate scrutiny. *See Mass. Bd. of Retirement v, Murgia,* 427 U.S. 307, 313-14 (1975) (holding that classifications based on age are not subject to strict scrutiny and are instead subject to rational basis review); *Brown v. N. Carolina Div. of Motor Vehicles,* 166 F.3d 698, 706 (4th Cir. 1999) (holding that classifications based on disability are subject to rational basis review). Thus, the analysis proceeds under rational basis review.

Here, Gravatt's equal protection claims fail for two reasons. First, he has alleged no facts supporting a plausible claim that the decision to issue the Order was made with the intent to discriminate against him based on his age or any disability. At no point did any of the Individual Defendants reference Gravatt's age or possible disability, and Gravatt has provided no allegations showing that younger individuals or

persons without a disability or aversion to cold water were intentionally provided with more favorable treatment. Second, the allegations in the Amended Complaint are sufficient to conclude that the County had a rational basis for issuing the Order. The events at issue occurred in the late spring of 2021, during the COVID-19 pandemic, at a time when social distancing and other precautionary measures were still in full effect at the Bethesda Outdoor Pool. In that context, an order temporarily barring an individual who arrived at the pool outside his scheduled time slot, dipped an item into the pool, and refused to comply with repeated orders to remove it was rationally related to the legitimate governmental purposes of preventing contamination of the pool as well as enforcing pandemic-related rules about timely entry of scheduled pool patrons and promoting safety by requiring compliance with staff directions in the area of the pool. Because Gravatt has failed to allege a plausible equal protection claim against the Individual Defendants, the equal protection components of Counts 1, 3, and.7 will be dismissed.

IV. Due Process

In Count 3 of the Amended Complaint, Gravatt alleges that Lattner violated his Fourteenth Amendment. right to due process of law when he conducted the Review Meeting and upheld the Order. A procedural due process claim may exist where there had been a deprivation of a protected liberty or property interest by state action. *Iota Xi Chapter of Sigma Chi Fraternity v. Patterson*, 566 F.3d 138, 146 (4th Cir. 2009). Thus, in asserting a procedural due

process claim, a plaintiff must identify a liberty or property interest subject to protection under the Due Process Clause. In the Amended Complaint, Gravatt references three possible protected interests: his "liberty of freedom from government interference in his swimming and his life," which he also described as his right to "free exercise," the property taxes he has paid, and the money he paid for his pool pass Am. Compl. ¶¶ 49, 71.

The Due Process Clause plainly does not contemplate a liberty interest in being free from "government interference in . . . swimming," *id.* ¶ 49, especially where the facilities in question are owned, administered, and managed by the government. Even assuming that the loss of the use of his pool pass for 90 days constitutes a deprivation of a property interest protected by the Due Process Clause, Gravatt has failed to state a plausible claim for relief.

The core protections of due process are notice and an opportunity to be heard. *See Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). However, the Due Process Clause "is flexible and calls for such procedural protections as the particular situation demands," because "not all situations calling for procedural safeguards call for the same kind of procedure." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). In determining what procedural protects are due, courts must consider: (1) the private interest affected by the deprivation; (2) the risk of an erroneous deprivation through the procedures which were used and the probable value, if any of additional or substitute safeguards; and (3) the government's interest,

including in avoiding the burdens associated with substitute or additional procedures. *Mathews v. Eldridge,* 424 U.S. 319, 334-35 (1976).

Even viewing the allegations in the light most favorable to Gravatt, the procedures used were constitutionally adequate. When the Order was issued to Gravatt on May 31, 2021 barring him from Montgomery County recreational facilities for 90 days, he was provided with a written notice of the action and the bases for it: "Stalking behavior towards a lifeguard and putting a device in to the pool and refusing to take the device out." Am. Compl. ¶ 13; Order at 1. The Order also provided Gravatt with notice of his right to contest the determination at a Review Meeting. Although the Review Meeting was presumptively scheduled for the next business day, the notice permitted him to request an alternative date, and the meeting was actually held on June 4, 2021. As reflected in the allegations in the Amended Complaint, when Gravatt appeared at the hearing, he was permitted to speak on his own' behalf and referenced the pool rules and regulations in arguing that the Order should be rescinded. Am. Compl. ¶ 15. In fact, Gravatt succeeded in convincing Lattner to modify the Order to bar Gravatt from the Bethesda Outdoor Pool only. Thus, Gravatt was provided with notice and an opportunity to be heard before the Order was finalized.

In claiming a violation of due process, Gravatt argues that (1) towards the end of the Review Meeting, Lattner "blocked" him from responding to a statement by Smith invoking a pool rule that the instructions of pool staff must be followed at all times; and (2) Lattner

received emails relating to the stalking allegation in advance of the hearing that Gravatt had not seen, such that he was not an "unbiased tribunal." *Id.* ¶¶ 45, 48. Gravatt thus effectively argues that the hearing was deficient in that the reviewing authority did not permit him to rebut every statement made by County personnel, and that he was entitled to review in advance of the hearing any documentary evidence that would be considered.

Under the *Mathews* analysis, neither of these actions rendered the hearing constitutionally inadequate. First, the Court finds that the private interest at stake was relatively minor. This is not a case in which a plaintiff was detained or incarcerated, deprived of real property or substantial government benefits, or lost the custody of children. The harm to Gravatt of losing access to a single municipal pool for 90 days, while inconvenient and resulting in the loss of some of the value of his previously purchased pool pass, was relatively minor by due process standards. Thus, the risk of an erroneous deprivation was also relatively minor: even if Gravatt was completely innocent of the charged conduct, he remained free by the terms of the Order to use any other Montgomery County pool at which his pool pass would be accepted. The harm was thus limited to the time and inconvenience of traveling to a more distant Montgomery County pool, or perhaps the limited expense of paying for access to a more conveniently located non-County pool. As for the government interest, given the nature of the rights at stake, the burden on the government of requiring the additional procedural protections of unlimited rebuttal,

pre-hearing discovery, and a hearing officer completely unaffiliated with the County is significant.

Considered together, the Court finds that for a Disruptive Behavior Order of the type issued to Gravatt, procedural due process did not require the reviewing authority to allow Gravatt to respond to every statement made by Smith, nor did it require pre-hearing discovery of all documents to be considered. Notably, Gravatt has not shown how either of these alleged procedural deficiencies actually impacted the hearing. He does not allege, and there is no basis to conclude, that Lattner based his decision on the point to which he was not permitted to respond: the "absurd" claim that Gravatt had to do whatever he was told. Am. Compl. ¶ 17. Further, where Gravatt asserts that the stalking allegations were dismissed at the hearing, the lack of pre-hearing discovery of the emails relating to that incident could not have affected the result. For these reasons, the Motion will be granted as to Court 3.

V. Retaliation

In Counts 1 and 7 of the Amended Complaint, Gravatt alleges that Smith and Headen retaliated against him for exercising his First Amendment right to free speech. Specifically, Gravatt alleges that his protected free speech consisted of statements about cars that he made to a teen-aged female lifeguard that upset her, and possibly statements made to an older female manager several years before. Although not entirely clear, Gravatt appears to assert that the imposition of the Order was in retaliation for such

statements.

A plaintiff claiming First Amendment retaliation must demonstrate that: (1) the plaintiff engaged in protected First Amendment activity; (2) the defendants took some action that adversely affected the First Amendment right; and (3) there was a causal relationship between the protected activity and the defendants' conduct. Davison v. Rose, 19 F.4th 626, 636-37 (4th Cir. 2021) (citing *Constantine v. Rectors Visitors of George Mason Univ.*, 411 F.3d 474, 499 (4th Cir. 2005)). The retaliation claim fails at the first step, because Gravatt has not plausibly alleged that he engaged in protected First Amendment activity. The First Amendment does not guarantee access to property to engage in speech simply because it is owned by the government. *U.S. Postal Serv. v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 129 (1981). Reasonable time, place, and manner regulations are permissible. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n.*, 460 U.S. 37, 46 (1983). On government-owned property which is not a traditional forum for public expressive activity, the government "may reserve the forum for its intended purposes . . . so long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." *Id.* Where, as here, the County controls access to the pool through the issuance of paid seasonal pool passes, and where there exists no longstanding tradition of outdoor pools as fora for expressive activities, the government may impose reasonable, viewpoint-neutral restrictions on speech. *See Presnick v. Delaney*, 36 F. App'x 5, 6 (2d Cir. 2002). In this instance, the pool rules include a

provision stating that "Socializing with or distracting the pool staff is prohibited." Pool Rules at 3, Mot. Dismiss Ex. 3, ECF No. 32. Such a rule is reasonable in light of the need for safety at a public pool.

Here, the alleged free speech consists of statements by Gravatt to female pool employees which, regardless of the content, violated this pool rule, particularly where Gravatt does not dispute the County's claim that the pool employees had "become upset" over his statements. Am. Compl. ¶ 82. Where Gravatt has not plausibly alleged that his statements to the female pool employees constituted protected First Amendment activity, he has not stated a valid claim of retaliation for engaging in First Amendment Activity. *Davison*, 19 F.4th at 637. Accordingly, the First Amendment components of Counts 1 and 7 will be dismissed.

VI. Conspiracy for Deprivation of Rights

Count 6 alleges a conspiracy between Headen and Smith under 42 U.S.C. § 1985(3) to deprive Gravatt of "equal protection of the laws and thereby to deprive him of free exercise or privilege to use the Bethesda Outdoor Pool." Am. Compl. ¶ 70. In opposing the Motion, Gravatt clarifies that he actually intended for this count to assert a claim of a conspiracy to deprive him of constitutional rights under § 1983. Because the Court has already concluded that the equal protection claims against the Individual Defendants will be dismissed because there are no allegations supporting an equal protection violation, it follows that Count 6 will also be dismissed. *See supra*

part III.

VII. Qualified Immunity

In the alternative, the Individual Defendants seek dismissal of the § 1983 claims against them on the grounds that they are entitled to qualified immunity. The doctrine of qualified immunity applies to municipal officers sued in their personal capacity for damages just as it applies to state officers so sued. *Santos v. Frederick Cnty. Bd. of Comm'rs*, 725 F.3d 451, 468 (4th Cir. 2013). The test to determine whether a government official is entitled to qualified immunity consists of two parts which may be considered in any order. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). The first part is to determine whether the allegations underlying the claim, if true, would establish a violation of a federal right. Davison, 19 F.4th at 640. The second part is to consider whether the constitutional right was a "clearly established" right of which."a reasonable person would have known" at the time. *Id.* As discussed above, the allegations do not support a plausible claim of a violation of the Fourteenth Amendment or the First Amendment. *See supra* parts III-V.

Even if Gravatt's allegations could establish a constitutional violation, it was not clearly established at the time of the events in question that any such violation was one of which a reasonable person would have known. For a right to be clearly established, "existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). A case of controlling

authority or a "consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful" can show that a right is clearly established. *Wilson v. Layne, 526 U.S. 603, 617 (1999); see Plumhoff v. Rickard*, 572 U.S. 765, 780 (2014); *al-Kidd*, 563 U.S. at 742. Gravatt has identified no such controlling authority or consensus of persuasive authority demonstrating that there was a clearly established right, under the Equal Protection Clause, the Due Process Clause, or the First Amendment, to be free from the kind of Disruptive Behavior Order imposed and upheld in this case, under the same or similar circumstances at issue here. The Court is aware of two cases, neither of which is controlling authority, involving a similar fact pattern in which a private person challenged the constitutionality of his ban from a public swimming pool. In the first, *Presnick v. Delaney*, 36 F. App'x 5 (2d Cir. 2002), the United States Court of Appeals for the Second Circuit held in an unpublished opinion that a ban on an individual who was seeking to collect signatures in support of his election campaign from patrons at a public pool did not violate the individual's rights to free speech, due process, or equal protection. *Id.* at 6. In the second, *Kennedy v. City of Cincinnati*, 595 F.3d 327 (6th Cir. 2010), the United States Court of Appeals for the Sixth Circuit held that an individual alleged to have leered at children and who was banned from all city recreation department facilities without a hearing had a protected liberty interest in remaining in "a public place of his choice" and that he was thus entitled to due process before he could be deprived of that right. *Id.* at 336, 338. Unlike in Kennedy, however, Gravatt received a hearing, and there is

nothing in Kennedy that establishes that the process followed in Gravatt's hearing was constitutionally inadequate. See id. The Court therefore finds that there was no clearly established law at the time of this incident which would cause a reasonable officer to understand that either the issuance of the Order or the conduct of the Review Meeting violated equal protection, due process, or the First Amendment. Therefore, the Court finds that the Individual Defendants are entitled to qualified immunity on the § 1983 claims against them in Counts 1, 3, and 7 and will dismiss those claims on this alternative basis as well.

VIII. Montgomery County Code § 32-19C

In Count 11, Gravatt asserts a facial challenge to Montgomery County Code § 32-19C, which bars "disruptive behavior" at Montgomery public facilities and sets forth the procedure for issuing a Disruptive Behavior Order and for the provision of a hearing on such an order. *Id.* In support of this claim, Gravatt alleges that the procedures provided by the statute fail "to meet the minimum standards of procedural due process of law" under the Fourteenth Amendment, and that the imposition of such order violates equal protection of the law. Am Compl. ¶¶ 111, 118. To succeed on a facial constitutional challenge to a law, a plaintiff "must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno,* 481 U.S. 739, 745 (1987). As discussed above, Gravatt has failed to allege facts sufficient to support the conclusion that application of section 32-19C violated due process or equal protection

rights in his own case. *See supra* parts III-IV. He therefore has not stated a plausible facial constitutional challenge to section 32-19C. Count 11 will be dismissed.

IX. State Law Claims

When a federal district court "has dismissed all claims over which it has original jurisdiction," it may decline to exercise supplemental jurisdiction over remaining state law claims. 28 U.S.C. § 1367(c)(3) (2018). Here, the Court has dismissed all federal claims in the Amended Complaint. Where this case remains at the early stages of litigation, the Court declines to exercise supplemental jurisdiction over the remaining state law claims and will dismiss the remainder of this case for lack of subject matter jurisdiction.

CONCLUSION

For the foregoing reasons, the Motion to Dismiss will be GRANTED. Counts 1, 3, 6, 7, 8, 10, and 11 of the Amended Complaint will be DISMISSED, and Counts 2, 4, 5, and 9 will be be DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction. A separate Order shall issue.

Date: March 3, 2023

/s/
THEODORE D. CHUANG
United States District Judge

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED: October 11, 2024

No. 23-1485
(8:22-cv-01296-TDC)

ROBERT GRAVATT, III
Plaintiff - Appellant

v.

MONTGOMERY COUNTY, MARYLAND; CAROLINE E. HEADEN; EDWARD B. LATTNER; RASHEIM R. SMITH
Defendants - Appellees

O R D E R

The court denies the corrected petition for rehearing.

Entered at the direction of the panel: Judge Richardson, Judge Rushing, and Senior Judge Keenan.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

[DATE STAMP]
USDC - GREENBELT
'23 May 1 PM 2:56
HD
Rcv'd by: /s/_____

ROBERT H. GRAVATT III,
Plaintiff,

v. Civil No. TDC-22-1296

MONTGOMERY COUNTY, MARYLAND,
CAROLINE E. HEADEN
EDWARD B. LATTNER
RASHEIM R. SMITH
Defendants.

NOTICE OF APPEAL

Notice is hereby given that ROBERT H. GRAVATT III, Plaintiff in the above captioned case, hereby appeals to the United States Court of Appeals for the Fourth Circuit the Order of March 3, 2023 dismissing the case and the Order of April 27, 2023 denying reconsideration.

/s/
Robert H. Gravatt III

6319 Kenhowe Drive
Bethesda, Maryland 20817
gravatt@verizon.net
301-229-4896
pro se plaintiff

DATED: May 1, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 1th day of May 2023, a copy of the foregoing was mailed by first-class mail, postage prepaid to Defendants' counsel:

Donna McBride, Esq.
Miller, Miller & Canby
200-B Monroe Street
Rockville, MD 20850

/s/
Robert H. Gravatt III
6319 Kenhowe Drive
Bethesda, MD 20817
301-2 29-4896
gravatt@verizon.net

APPENDIX H

28 U.S.C. § 2107

§ 2107. Time for appeal to court of appeals

Effective: December 1, 2011

(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

(b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is--

(1) the United States;

(2) a United States agency;

(3) a United States officer or employee sued in an official capacity; or

(4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or

employee.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds--

(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

(2) that no party would be prejudiced, the district court may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

APPENDIX I

Fed. R. App. P. 4(a)

Appeal as of Right--When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;

(ii) a United States agency;

(iii) a United States officer or employee sued in an official capacity; or

(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf--including all

instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order--but before the entry of the judgment or order--is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual

findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment--but before it disposes of any motion listed in Rule 4(a)(4)(A)--the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal--in compliance with Rule 3(c)--within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to

reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of

these events occurs:

• the judgment or order is set forth on a separate document, or

• 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from that judgment or order.

APPENDIX J

Fed. R. Civ. P. 6(b)

Extending Time

(1) *In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions.* A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

APPENDIX K

Fed. R. Civ. P. 59

New Trial; Altering or Amending a Judgment

(a) *In General.*

(1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues-and to any party-as follows:

> (A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or
>
> (B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial.* After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) *Time to File a Motion for a New Trial.* A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) *Time to Serve Affidavits.* When a motion for a new trial is based on affidavits, they must be filed with the

motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) *New Trial on the Court's Initiative or for Reasons Not in the Motion.* No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) *Motion to Alter or Amend a Judgment.* A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

APPENDIX L

Fed. R. Civ. P. 60

Relief from a Judgment or Order

(a) *Corrections Based on Clerical Mistakes; Oversights and Omissions.* The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) *Grounds for Relief from a Final Judgment, Order, or Proceeding.* On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) *Timing and Effect of the Motion.*

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time-and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality.* The motion does not affect the judgment's finality or suspend its operation.

(d) *Other Powers to Grant Relief.* This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) *Bills and Writs Abolished.* The following are abolished: bills of review, bills in the nature of bills of

review, and writs of coram nobis, coram vobis, and audita querela.