

# APPENDIX

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[Entered: October 25, 2017]

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS FOR THE  
FOURTH CIRCUIT

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**No. 16-2040**

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BETSY ROSS, and as next friend of minor K.R.,

Plaintiff - Appellant,

v.

MARY KLESIUS, In her individual and official capacity at Cecil County Department of Social Services; LATONYA COTTON, In her individual and official capacity at Cecil County Department of Social Services; REBECCA SUTTON, In her individual and official capacity at Cecil County Department of Social Services; KIM COMPTON, In her individual and official capacity at Cecil County Department of Social Services; TINA LINKOUS, In her individual and official capacity at Cecil County Department of Social Services; SUSAN BAILEY, In her individual and official capacity at Cecil County Department of Social Services; HELEN MURRAY-MILLER, In her individual and official capacity Department of Human Resources - Social Services,

Defendants - Appellees,

and

CECIL COUNTY DEPARTMENT OF SOCIAL SERVICE; NICHOLAS RICCUITI, In his official capacity at Cecil County Department of Social Services; BARBARA SICLIANO, In her official capacity at Cecil County Department of Social Services,

Defendants.

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Appeal from the United States District Court for the District of Maryland, at Baltimore. Catherine C. Blake, Chief District Judge. (1:11-cv-00181-CCB)

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Submitted: October 6, 2017

Decided: October 25, 2017

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Before MOTZ, TRAXLER, and KEENAN, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Daniel L. Cox, THE COX LAW CENTER, LLC, Emmitsburg, Maryland, for Appellant. Brian E. Frosh, Attorney General, Ann M. Sheridan, Hilma J. Munson, Assistant Attorneys General, Baltimore, Maryland, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Betsy Ross, for herself and as next friend of her minor daughter, K.R., filed a second amended civil complaint against eight named employees of the Cecil County Department of Social Services (“CCDSS”) and a named employee of the Maryland Department of Human Resources (collectively, “Defendants”), alleging various violations of Maryland law and several federal constitutional violations under 42 U.S.C. § 1983 (2012). The district court ultimately dismissed or granted summary judgment in Defendants’ favor as to each of Ross’ claims. In this appeal, Ross challenges two of the district court’s rulings: (1) its August 2014 order granting summary judgment as to her Fourth Amendment claim and part of Ross’ First Amendment claim; and (2) its August 2016 order granting Defendants’ second interlocutory motion for reconsideration and granting summary judgment in favor of Defendants as to the remainder of Ross’ First Amendment claim. For the reasons that follow, we affirm.

We review de novo the district court’s grant of summary judgment. *Lee v. Town of Seaboard*, 863 F.3d 323, 327 (4th Cir. 2017). Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A factual dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In conducting this analysis, we may not make credibility determinations or weigh the evidence, but

instead must view the evidence and draw all reasonable inferences in the light most favorable to Ross, the nonmoving party. *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 568-70 (4th Cir. 2015).

The district court resolved both of Ross' claims at least partially on the basis of qualified immunity. "The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Graham v. Gagnon*, 831 F.3d 176, 182 (4th Cir. 2016) (internal quotation marks omitted). A right is clearly established if it is "sufficiently clear that every reasonable official would have understood that what [s]he is doing violates that right" and "existing precedent . . . placed the statutory or constitutional question beyond debate." *Reichle v. Howards*, 132 S. Ct. 2088, 2093 (2012) (alteration and internal quotation marks omitted); see *Yates v. Terry*, 817 F.3d 877, 887 (4th Cir. 2017) (describing "clearly established" constitutional right). "In practical effect, qualified immunity gives government officials breathing room to make reasonable but mistaken judgments." *Graham*, 831 F.3d at 182 (internal quotation marks omitted). "Because qualified immunity is an immunity from suit rather than a mere defense to liability," and thus is "effectively lost if a case is erroneously permitted to go to trial," the Supreme Court "repeatedly ha[s] stressed the importance of resolving immunity questions at the earliest possible stage in litigation." *Pearson v. Callahan*, 555 U.S. 223, 231-32 (2009) (internal quotation marks omitted).

Ross' Fourth Amendment claim alleged that Defendants Larson, Cotton, and Compton, at the direction of other Defendants, entered Ross' home without a warrant or any recognized exception to the warrant requirement in order to remove Ross' foster children, purportedly in response to allegations of child neglect. It is well established that Fourth Amendment protections apply to the government's conduct of civil, as well as criminal, investigations. *Marshall v. Barlow's Inc.*, 436 U.S. 307, 312 (1978). In view of extant authority, and considering the facts in the light most favorable to Ross, the district court appropriately determined that Defendants were entitled to qualified immunity as a matter of law. Even assuming, without deciding, that Defendants violated Ross' Fourth Amendment rights, their conduct in entering or directing others' entry into Ross' home to retrieve her foster children, under the circumstances presented, did "not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Graham*, 831 F.3d at 182 (internal quotation marks omitted); see Md. Code Ann., Fam. Law §§ 5-325(a)(3), (b)(1), 5-504 (LexisNexis 2006) (establishing CCDSS's legal custody of Ross' foster children); *Martin v. Saint Mary's Dep't of Soc. Servs.*, 346 F.3d 502, 506 (4th Cir. 2003) (recognizing state's legitimate interest in investigating allegations of child neglect); *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993) (discussing reduced Fourth Amendment scrutiny applicable to home visits by social workers). We therefore affirm the district court's grant of summary judgment as to Ross' Fourth Amendment claim.

Ross' First Amendment claim contended that Defendants retaliated against Ross for her protected speech in three instances: by removing her foster children from her home pending a neglect investigation; by closing her foster home; and by prompting the denial, through Defendant Murray-Miller, of Ross' application for private foster home licensure through The Arc. In its August 2014 order, the district court initially granted summary judgment only as to the portion of Ross' claim addressing the closure of her foster home. As Ross does not fairly challenge this portion of the district court's ruling on appeal, we decline to consider it. *See Suarez-Valenzuela v. Holder*, 714 F.3d 241, 248-49 (4th Cir. 2013) (deeming issues not raised in opening brief waived).

The district court granted summary judgment as to the remainder of Ross' First Amendment claim after granting Defendants' second motion for reconsideration. Ross challenges the district court's decision to reconsider its previous interlocutory rulings denying summary judgment. We review the district court's decision to grant reconsideration for abuse of discretion. *See Carlson v. Boston Sci. Corp.*, 856 F.3d 320, 325 (4th Cir. 2017).

"[A] district court retains the power to reconsider and modify its interlocutory judgments, including partial summary judgments, at any time prior to final judgment when such is warranted." *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514-15 (4th Cir. 2003); *see* Fed. R. Civ. P. 54(b). Interlocutory motions for reconsideration generally are not subject to the same restrictive standards applicable to postjudgment motions for

reconsideration. See *Carlson*, 856 F.3d at 325; *Fayetteville Investors v. Commercial Builders, Inc.*, 936 F.2d 1462, 1472 (4th Cir. 1991). The discretion afforded by Rule 54(b) “is not limitless,” however, and “courts have cabined revision pursuant to Rule 54(b) by treating interlocutory rulings as law of the case.” *Carlson*, 856 F.3d at 325. Under the law of the case doctrine, a court may revise its interlocutory ruling in limited circumstances: “(1) ‘a subsequent trial produc[ing] substantially different evidence’; (2) a change in applicable law; or (3) clear error causing ‘manifest injustice.’” *Id.* (quoting *Am. Canoe*, 326 F.3d at 515). In light of this standard, and mindful that “[i]t is the affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial,” *Bouchat v. Balt. Ravens Football Club, Inc.*, 346 F.3d 514, 526 (4th Cir. 2003) (internal quotation marks omitted), we discern no abuse of discretion in the district court’s grant of reconsideration in this case.

As to the merits of Ross’ remaining First Amendment allegations, Ross’ retaliation claim survives summary judgment only if she presented sufficient evidence that: (1) she engaged in protected speech; (2) the alleged retaliation “adversely affected” her protected speech; and (3) the retaliation was causally connected to her protected speech. *Raub v. Campbell*, 785 F.3d 876, 885 (4th Cir. 2015) (internal quotation marks omitted). To satisfy the “rigorous” causation requirement, Ross must demonstrate that Defendants would not have engaged in the alleged retaliation “but for” her protected speech. *Id.* (internal quotation marks omitted). “In order to establish this causal connection, a plaintiff in a retaliation case must

show, at the very least, that the defendant was aware of her engaging in protected activity.” *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 501 (4th Cir. 2005).

Our review of the record reveals no reversible error in the district court’s grant of summary judgment in favor of Defendants as to Ross’ First Amendment retaliation claims related to the removal of her foster children and the denial of licensure by The Arc. We therefore affirm as to these issues substantially for the reasons stated by the district court. *See Ross v. Klesius*, No. 1:11-cv-00181-CCB (D. Md. Aug. 11, 2016).

Finally, Ross challenges the district court’s grant of summary judgment as to her First Amendment claims against all Defendants in their official capacities. Because Ross’ argument on appeal is fairly predicated only on the survival of her First Amendment claim regarding licensure by The Arc, which we have already rejected, we likewise decline to overturn the district court’s rejection of Ross’ official capacity claims.

Accordingly, we affirm the district court’s judgment. 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.

*AFFIRMED*

FILED: October 25, 2017

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 16-2040  
(1:11-cv-00181-CCB)

---

BETSY ROSS, and as next friend of minor K.R.

Plaintiff - Appellant

v.

MARY KLESIUS, In her individual and official capacity at Cecil County Department of Social Services; LATONYA COTTON, In her individual and official capacity at Cecil County Department of Social Services; REBECCA SUTTON, In her individual and official capacity at Cecil County Department of Social Services; KIM COMPTON, In her individual and official capacity at Cecil County Department of Social Services; TINA LINKOUS, In her individual and official capacity at Cecil County Department of Social Services; SUSAN BAILEY, In her individual and official capacity at Cecil County Department of Social Services; HELEN MURRAY-MILLER, In her individual and official capacity Department of Human Resources - Social Services

Defendants - Appellees

and

CECIL COUNTY DEPARTMENT OF SOCIAL  
SERVICE; NICHOLAS RICCUITI, In his official  
capacity at Cecil County Department of Social  
Services; BARBARA SICLIANO, In her official  
capacity at Cecil County Department of Social  
Services

Defendants

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J U D G M E N T

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In accordance with the decision of this court,  
the judgment of the district court is affirmed.

This judgment shall take effect upon issuance  
of this court's mandate in accordance with Fed. R.  
App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

[Entered: August 11, 2016]

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

|                   |   |                       |
|-------------------|---|-----------------------|
| BETSY ROSS        | : |                       |
|                   | : |                       |
|                   | : |                       |
| v.                | : | Civil No. CCB-11-0181 |
|                   | : |                       |
|                   | : |                       |
| NICHOLAS RICCIUTI | : |                       |

**MEMORANDUM**

On January 21, 2011, Betsy Ross, for herself and as next friend of her minor daughter K.R., filed suit in this court. On January 31, 2012, Ross filed a second amended complaint against Nicholas Ricciuti, Mary Klesius, Latonya Cotton, Rebecca Larson (formerly known as Rebecca Sutton), Kim Compton, Tina Linkous, Sue Bailey, Barbara Siciliano, and Helen Murray-Miller (collectively, “the defendants”). The only claims that remain are Ross’s First Amendment retaliation claims, alleged under 42 U.S.C. § 1983, based on the removal of her foster children and the denial by The Arc, a private agency, of her application to be a foster parent. The claims against Ricciuti and Siciliano, and the official capacity claim against Larson, have been dismissed. Now pending is the defendants’ second motion for reconsideration of the denial of summary judgment on all remaining claims. Oral argument on the motion for reconsideration was heard on August 3, 2016. For the reasons that follow, the defendants’ second motion for reconsideration will be granted.

## BACKGROUND

### I. August 15, 2008 Events

In 2008, Ross was a licensed foster care parent through the Cecil County Department of Social Services (“CCDSS”). (Child Neglect Report 1, ECF No. 94.) Linkous, a pre-adoption case worker with CCDSS, testified that she conducted an interview with T.G., one of Ross’s former foster children, at the Pennsylvania home of T.G.’s grandparents, at 10 a.m. on August 15, 2008. (Admin. Hr’g Tr. 155:17-156:20, ECF No. 98-2.) Linkous’s interview notes and testimony state that, during the home visit, T.G. disclosed a number of incidents of neglect by Ross, including occasions when young children were left in the swimming pool unsupervised. (Linkous Dep. 40:17-18, ECF No. 94-1; Child Neglect Report 3.) Linkous testified that she left the home visit sometime after 11:30 a.m. and called Klesius, a social work supervisor at CCDSS, who transferred the call to Katie Horn, a Child Protective Services (“CPS”) in-take worker, to report the allegations of neglect over the phone. (Admin. Hr’g Tr. 163:10-25, 169:1-5; Linkous Dep. 55:16-21; Klesius Dep. 51:14-52:11, ECF No. 94-2.) Klesius testified that she spoke with her supervisor, Siciliano, and together they decided that Ross’s foster children should be removed pending a CPS investigation. (Klesius Dep. 46:1-4.) At around 12:30 p.m., Larson, a CPS assessor with CCDSS, was assigned to conduct the investigation. (Larson Dep. 27:1-4, ECF No. 94-4.)

Ross testified that, around 1:30 p.m. that day, she arrived at the CCDSS office for a previously

scheduled meeting about the nominations of officers for the Cecil County Foster Parent Association (“CCFPA”). (Ross Dep. 8:9-12, ECF No. 94-5.) After Ross arrived, Klesius and Larson met with her to discuss the neglect allegations. (*Id.* at 22:3-24:4.) Ross testified that, in the meeting, Larson informed her that T.G. had come to CCDSS’s offices to make the neglect allegations. (*Id.*) Larson informed Ross that all the foster children in her home would be removed. (*Id.*) Larson, Compton, and Cotton arrived at Ross’s house around 4 p.m. and removed the children. (*Id.* at 27:2-10; Summ. of Contacts 9, ECF No. 94.)

On December 4, 2009, Karen Edwards, a foster parent familiar with Ross, testified during a Department of Human Resources administrative hearing. (Admin. Hr’g Tr. 256-79.) She testified that T.G. was “a chronic liar.” (*Id.* at 260:24.) She also testified that she received a call from CCDSS on August 15, 2008, before 10 a.m., asking if she could take in three foster children who were being removed from another home. (*Id.* at 262:4-13, 263:5-22.) Edwards said she later found out that those children were Ross’s. (*Id.* at 262:23-263:4, 277:20-279:7.)

## II. Foster Parent Association Funds

Representatives from the Maryland State Foster Parent Association (“MSFPA”) attended meetings in March, April, and May 2008 to assist in restarting the CCFPA. (Ross Dep. 14:3-20.) At the May 2008 meeting, they set September 8, 2008, as the date for CCFPA elections. (*Id.* at 15:3-15.) During some of these meetings, Ross and others

asked Klesius for CCFPA's bank account information. (*Id.* at 16:9-14.) Klesius informed Ross that Doris Asti, CCFPA's treasurer, had the information. (*Id.* at 16:15-17, 18:6-18, 19:7-9.) At the end of June 2008, Ross went to Asti's home to get the account information because Klesius had not given it to her. (*Id.* at 32:5-34:11.) Ross testified that Asti stated that "most of the money in this account belongs to social services. They use this account to hide money from the state." (*Id.* at 32:5-10; *see also* Ross Aff. ¶ 4, ECF No. 98-13.) On July 7, 2008, Ross met with Klesius about a back-to-school picnic for foster care children. (Ross Aff. ¶ 3.) Klesius instructed that the CCFPA would pay for the picnic, and Ross said that she could not make that decision without approval from the CCFPA. (*Id.*)

In July 2008, Ross reported the information she had heard from Asti to Michele Burnette, MSFPA's President. (*Id.* ¶¶ 5-6.) Burnette informed her that the new State Foster Care Ombudsman, John Bertulis, would look into the matter in September. (*Id.* ¶ 6; Burnette Aff. ¶¶ 8-10, ECF No. 98-14.) In his affidavit, Bertulis states that he became the Foster Parent Ombudsman for the Maryland Department of Human Resources on August 27, 2008. (Bertulis Aff. ¶ 2, ECF No. 94-8.) On September 5, 2008, he received a claim from Ross alleging that CCDSS had misappropriated funds that the MSFPA intended for the CCFPA. (*Id.* ¶ 3.) Bertulis concluded his investigation on September 29, 2009, and found that there had been no impropriety or mismanagement of funds. (*Id.* ¶ 5.)

### III. Arc Foster Home Application

In early 2010, Ross applied to be a foster parent through The Arc, a private foster care provider. (Ross Dep. 129:16-132:19.) On March 16, 2010, Dianne Ross at The Arc sent Betsy Ross a letter stating that it had decided not to continue the certification process, citing to Ross's disagreements with CCDSS. (March 16 Arc Letter, ECF No. 94-16.) Dianne Ross contacted Murray-Miller, a license coordinator at the Maryland Department of Human Resources, after Betsy Ross requested an appeal of The Arc's decision. (Murray-Miller Dep. 27:12-29:6, ECF No. 98-11; *id.* Ex. 12, Feb. 9, 2010 Email.) The Arc provided Murray-Miller, whose role as a license coordinator was to make sure that agencies followed state regulations, with documents and communications about Betsy Ross's case, including three letters to the editor critical of CCDSS that Betsy Ross had written in a local publication between December 2009 and March 2010. (Murray-Miller Dep. 13:8-21, 30:7-21.) Murray-Miller did not have contact with CCDSS about Ross. (*Id.* at 121:11-122:10.) Murray-Miller told The Arc that there were no reasons based on state regulations for denying Betsy Ross's application, and she said to place Betsy Ross's home study on hold until the CCDSS issue was resolved. (*Id.* at 63:8-64:2; *id.* Ex. 13, March 16, 2010 Email.) The Arc sent a follow-up letter to Betsy Ross on March 18, 2010, informing her that the home study process was being put on hold. (March 18 Arc Letter, ECF No. 94-17.) Ross has not reapplied to be a foster parent at The Arc, and has not applied to any other private provider. (Ross Dep. 129:21-130:11, 132:13-16.)

#### IV. Procedural History

On January 21, 2011, Ross filed suit in this court. (Compl., ECF No. 1.) On January 31, 2012, she filed a second amended complaint against the defendants. (Second Am. Compl., ECF No. 46.) On July 11, 2012, the court dismissed counts 3, 4, and 5, and granted the defendants' motion for summary judgment on counts 7, 8, and 9, of the amended complaint. (*See* July 11, 2012 Mem., ECF No. 57; July 11, 2012 Order, ECF No. 58.) On August 14, 2014, the court granted the defendants' motion for summary judgment on counts 2 and 6, and part of count 10, of the amended complaint. (*See* Aug. 14, 2014 Mem., ECF No. 112; Aug. 14, 2014 Order, ECF No. 113.) At that point, the only claims that remained were the portions of Ross's First Amendment claim, brought under 42 U.S.C. § 1983, alleging that CCDSS's removal of her foster children, and The Arc's denial of her application to be a foster parent, were in retaliation for her protected speech. On September 2, 2014, the defendants moved for reconsideration of the partial grant of summary judgment. (Mot. Recons., ECF No. 116.) On June 24, 2015, the court granted the defendants' motion for reconsideration as to the official capacity claims against Larson, Siciliano, and Ricciuti, due to the fact that they were no longer employed by CCDSS, and dismissed Siciliano and Ricciuti from the case. (*See* June 24, 2015 Mem., ECF No. 128; June 24, 2015 Order, ECF No. 129.) The remainder of the motion for reconsideration was denied. (*Id.*) On December 31, 2015, this case was reassigned to me upon the retirement of Judge William D. Quarles, Jr. On May 16, 2016, a jury was sworn in this case. (Jury Trial, ECF No. 176.) On May 19, 2016, after

plaintiff's counsel was hospitalized and requested a postponement, the court declared a mistrial. (Mistrial Order, ECF No. 178.) After the mistrial, the court agreed to allow the State to file a second motion for reconsideration. (Order, ECF No. 179.) That motion was filed on July 15, 2016. (Second Mot. Recons., ECF No. 181.) Ross filed a response in opposition on July 29, 2016. (Resp. Opp'n, ECF No. 182.) Oral argument on the motion for reconsideration was heard on August 3, 2016. (Mot. Hearing, ECF No. 183.)

### STANDARD OF REVIEW

Where the entry of partial summary judgment fails to resolve all claims in a suit, Federal Rule of Civil Procedure 54(b) governs a motion to reconsider an interlocutory order. *See Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514-15 (4th Cir. 2003). The district court “retains the power to reconsider and modify its interlocutory judgments, including partial summary judgments, at any time prior to final judgment when such is warranted.” *Id.* Although the Fourth Circuit has not identified the precise standard for resolving such a motion, courts frequently look to the standards applicable to motions under Rules 59(e) or 60(b) for guidance. *See Nana-Akua Takyiwaa Shalom v. Payless Shoesource Worldwide, Inc.*, 921 F. Supp. 2d 470, 480 (D. Md. 2013). Courts generally will reconsider an interlocutory order in the following situations: “(1) there has been an intervening change in controlling law; (2) there is additional evidence that was not previously available; or (3) the prior decision was based on clear error or would work manifest injustice.” *Id.* at 481 (quoting *Akeva, LLC v. Adidas*

*Am., Inc.*, 385 F. Supp. 2d 559, 565-66 (M.D.N.C. 2005)). Because the defendants point to no change in the law or any new evidence, their motion depends on proof of “clear error” or “manifest injustice.”

### ANALYSIS

It is in the interests of justice and judicial economy for the court to grant the defendants’ second motion for reconsideration. When this case was reassigned to me on December 31, 2015, the parties had failed to reach a settlement and the case was, therefore, ready for trial. Accordingly, I declined the defendants’ unofficial request to reconsider the court’s partial denial of their summary judgment motion, (*see* Substantive Legal Issues, ECF No. 139), and set May 16, 2016, for trial, (*see* Scheduling Order, ECF No. 140). It became clear during the pretrial conference and from the pretrial motions in limine, however, that there was insufficient evidence to support Ross’s remaining claims against the defendants. Until that point, neither Judge Quarles when he confronted the defendants’ first motion for reconsideration, nor I when addressing the defendants’ unofficial request for reconsideration, could have realized the extent to which Ross’s First Amendment retaliation claims were unsupported by the record. When a mistrial was declared, therefore, I permitted the defendants to file a second motion for reconsideration. (*See* Order, ECF No. 179.) Ross—despite having opportunities at the pretrial conference, in her motions in limine, during our telephone conferences, and at oral argument on August 3, 2016—has failed to convince me that there is evidence in the record to allow a reasonable jury to return a verdict in her

favor. Accordingly, given the procedural posture of the case and for the reasons that follow, I find it necessary to grant the defendants' second motion for reconsideration.

I. Individual Capacity Claims

Ross brings her First Amendment retaliation claims against the defendants in their individual capacities under 42 U.S.C. § 1983. The defendants argue they are entitled to qualified immunity. Government actors are entitled to qualified immunity “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). “Because qualified immunity is an immunity from suit rather than a mere defense to liability . . . it is effectively lost if a case is erroneously permitted to go to trial.” *Id.* (internal quotation and citation omitted). Accordingly, the Supreme Court “repeatedly ha[s] stressed the importance of resolving immunity questions at the earliest possible stage in litigation.” *Id.* at 232 (quoting *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (per curiam)). The qualified immunity analysis involves two inquiries: (1) “whether the facts that a plaintiff has alleged . . . make out a violation of a constitutional right,” and (2) “whether the right at issue was ‘clearly established’ at the time of a defendant’s alleged misconduct.” *Id.* “To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right,” and “existing precedent must have placed the statutory

or constitutional question beyond debate.” *Reichle v. Howards*, 132 S. Ct. 2088, 2093 (2012) (alteration, citation, and internal quotation omitted). “A court may exercise its discretion to determine which of the two steps of the qualified immunity analysis ‘should be addressed first in light of the circumstances in the particular case at hand.’” *Williams v. Ozmint*, 716 F.3d 801, 805-06 (4th Cir. 2013) (quoting *Pearson*, 555 U.S. at 236).

Ross alleges that the defendants removed her foster children in retaliation for her complaints about the CCFPA’s finances, and that her foster parent application to The Arc was denied based on her letters to the editor that were critical of CCDSS. To state a claim for First Amendment retaliation, Ross must establish that: (1) her speech was protected; (2) the defendants’ retaliation adversely affected her constitutionally protected speech; and (3) there was a causal connection between her speech and the retaliation. *See Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 686 (4th Cir. 2000).

#### **a. Removal of Foster Children**

Ross appears to allege that the defendants removed her foster children in retaliation for three instances of First Amendment-protected speech. First, Ross testified that, at the May 2008 meeting about restarting the CCFPA, she and others asked Klesius for CCFPA’s bank account information. (Ross Dep. 16:9-17.) Second, Ross told Klesius on July 7, 2008, that she needed CCFPA’s approval before committing to pay for the back-to-school picnic, (Ross Aff. ¶ 3), and that Klesius’s “countenance towards [her] changed” after this

meeting, “showing a lack of friendliness,” (*id.* ¶ 8). Third, Ross reported that Asti, CCFPA’s treasurer, told her that CCDSS used CCFPA’s bank account to “hide” unused state funds.<sup>1</sup> (*Id.* ¶ 4; Ross Dep. 32:5-10.)

Citizens “have a right to voice dissent from government policies.” *Tobey v. Jones*, 706 F.3d 379, 391 (4th Cir. 2013). Matters of public concern are “at the heart of the First Amendment’s protection.” *Occupy Columbia v. Haley*, 738 F.3d 107, 122 (4th Cir. 2013) (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 758-59 (1985)). “Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community.” *Id.* (quoting *Snyder v. Phelps*, 562 U.S. 443, 453 (2011)). Ross’s report that CCDSS was using CCFPA’s bank account to hide unused state funds dealt with a matter of public concern and, therefore, was protected speech. Questions about an

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<sup>1</sup> It is worth noting that there is no direct, reliable evidence of Asti’s allegation. Asti, who was 81 years old at the time of her deposition, repeatedly testified that she remembered very little from the time period at issue. (See, e.g., Asti Dep. 14:8-21, ECF No. 98-7 (stating that she did not remember receiving a subpoena in Ross’s administrative case, or meeting with and providing documents to plaintiff’s counsel in January 2010); *id.* at 34:9-21 (stating that she did not remember being interviewed by Bertulis for an audit of the CCFPA); *id.* at 37:18-19 (“I don’t remember having problems with any of the workers [at CCDSS and CCFPA].”); *id.* at 38:5-8 (noting that she does not remember the details of her allegations about CCDSS hiding funds in CCFPA’s accounts); *id.* at 41:7-12 (stating that she “ha[d] no idea” whether she was told that the funds CCDSS was hiding were supposed to be returned to the State).)

organization's bank account, without more, and statements that an association must vote to approve expenses, even if that allegedly upset the listener, are not matters of public concern. Accordingly, the court will consider Ross's First Amendment retaliation claim only as it relates to her report of Asti's allegation.

Of the remaining defendants, only Klesius participated in the allegedly retaliatory act, the decision to remove Ross's children, that could have adversely affected Ross's constitutionally protected speech.<sup>2</sup> As Klesius testified during her deposition, she and Siciliano, her supervisor, together decided that Ross's foster children should be removed pending a CPS investigation.<sup>3</sup> (*See* Klesius Dep. 46:1-4.) In contrast, even viewing the evidence in the light most favorable to her, Ross has not presented any evidence to create a genuine dispute that the other defendants were involved in that decision.

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<sup>2</sup> Ross has made many arguments, in her briefs and at the motion hearing, about whether CCDSS's investigation of her and her foster home was justified. Questions about the substantive removal decision, and the subsequent investigation, are no longer in the case. The only issue in front of this court is whether the removal of Ross's children was in retaliation for protected speech, in violation of the First Amendment. Given, however, that Ross continues to raise the substance of the investigation itself, it is worth noting that CCDSS ultimately found problems with Ross's foster home, (*see* Decision Mem., ECF No. 94-13), which she agreed to relinquish as part of a settlement agreement with CCDSS, (*see* Settlement Agreement, ECF No. 94-14).

<sup>3</sup> Ross argues that Siciliano was "errantly dismissed" from the case. (Resp. Opp'n 2.) Judge Quarles dismissed Siciliano from the case more than a year ago, (*see* June 24 Order), and her response is the first time Ross has raised this argument.

Linkous's involvement was limited to her role as reporter of T.G.'s allegations of neglect, which she was required to do under state law.<sup>4</sup> *See Horridge v. St. Mary's Cty. Dep't of Soc. Servs.*, 854 A.2d 1232, 1239 (Md. 2004); *see also* Md. Code Ann., Fam. Law §§ 5-704(a), 5-706(b). She neither made the decision to remove the foster children based on the report, nor assisted in moving the children. Larson, as CPS assessor, was assigned to conduct the CPS investigation. She met with Ross, who was at CCDSS for the CCFPA meeting, at 1:30 p.m. on August 15 to discuss the investigation, and she went to Ross's home that afternoon to remove Ross's foster children. Ross has provided no evidence to show that Larson was involved in the decision to remove the foster children. (*See* Larson Dep. 19:5-12, 22:6-15, ECF No. 98-6 (stating that Klesius, Siciliano, and Alison Kinney authorized the removal and gave Larson instructions).) Compton also went to Ross's house on the afternoon of August 15, 2008, to help remove the foster children, and participated in a meeting before the removal, the purpose of which appears to have been to discuss the operating procedures for the removal.<sup>5</sup> (*See* Compton Dep.

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<sup>4</sup> In her response in opposition, Ross says that *Linkous* and Siciliano together decided that Ross's foster children should be removed. (*See* Resp. Opp'n 2.) Her citation for that proposition, however, is to Klesius's deposition. At oral argument, plaintiff's counsel maintained—without citation—that there was other evidence in the record to show that Linkous participated in the decision to remove Ross's foster children, and he said he would inform the court by August 4, 2016, of that evidence. Mr. Cox has not provided the court with that information.

<sup>5</sup> Siciliano testified that, when CCDSS receives allegations of abuse or neglect in a foster home, they "immediately call a meeting of any of the workers involved that had foster children

15:8-19, ECF No. 120-5 (“Siciliano was our Administrator and she would have directed [the meeting prior to the removal] based on Standard Operating Procedures.”); *id.* at 43:4-11 (“My involvement at the time was to say that we had been directed [by Siciliano], that there was this concern and we needed to find a safe, appropriate place for the child while the investigation was occurring.”).) Ross also has not provided any evidence that Cotton made the decision to remove Ross’s children.<sup>6</sup> The plaintiff points to Cotton’s statement that “[she] was involved in the removal, yes.” (Cotton Dep. 47:6-7, ECF No. 120-1.)<sup>7</sup> But that testimony just points to the fact that Cotton went to Ross’s home on the

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in the home, the investigator that was going to go to the investigation, the Foster Home Recruiter, any of the supervisors that are available and we would meet and we would develop a plan on how to proceed.” (Siciliano Dep. 16:1-7, ECF No. 94-3.)

<sup>6</sup> In her response in opposition to the motion for reconsideration, Ross says that Cotton “personally issued the [June 2009 CCFPA] election results certifying [a person other than Ross] as President . . . and made telephone calls to foster parents telling them to vote.” (Resp. Opp’n 5.) As an initial matter, these allegations are not in Ross’s second amended complaint. Further, Ross appears to allege that the certification of a different person as CCFPA president was retaliation for the investigation into her and her foster home, rather than for the removal of her foster children, which the court has already explained is no longer an issue in this case. (*See id.* (“Because of the ‘investigation’ into Betsy Ross which began . . . on August 15, 2008 . . . there was a new election for president of CCFPA later in June 2009.”).)

<sup>7</sup> This exhibit is unlabeled. In her response, Ross cites to the exhibit when citing to Cotton’s deposition, (*see* Resp. Opp’n 5, 5 n.2), and it appears to be a continuation of Exhibit A, (ECF No. 120), which is Cotton’s deposition transcript.

afternoon of August 15 to remove Ross's foster children. (*See id.* at 87:9-15.) Finally, the only allegation pertaining to Bailey in Ross's second amended complaint is that, "in her capacity as Assistant Director of Services at CCDSS, [she was] and still [is] responsible for controlling and directing the policies of CCDSS and the actions of its agents, including all other Defendants." (Second Am. Compl. ¶ 33.) Bailey testified, and Ross does not contest, that she was on vacation when the allegations of neglect were made. (Bailey Dep. 50:14-16, ECF No. 94-10.) Accordingly, in terms of the removal of Ross's foster children on August 15, the claim against Bailey is essentially one of vicarious liability. That doctrine is not applicable to Section 1983 actions. *See Vinnedge v. Gibbs*, 550 F.2d 926, 928 (4th Cir. 1977) (holding that liability under Section 1983 "will only lie where it is affirmatively shown that the official charged acted personally in the deprivation of the plaintiffs' rights. The doctrine of *respondeat superior* has no application under this section." (citation omitted)).<sup>8</sup> Accordingly, because she has not shown

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<sup>8</sup> At oral argument, Ross appeared to allege that the U.S. Supreme Court's decision in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), contemplated supervisory liability in Section 1983 actions. In fact, that case states that "vicarious liability is inapplicable to *Bivens* and § 1983 suits," and "a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Id.* at 676. Ross also may have cited to *Iqbal* for the proposition that, for causation, she is only required to show purpose rather than knowledge. The Supreme Court, however, said that "[t]he factors necessary to establish a *Bivens* violation will vary with the constitutional provision at issue," *id.*, and the Fourth Circuit has held that the causation prong of a First Amendment retaliation claim requires showing the defendant's knowledge of the protected activity, *see Constantine v. Rectors*

that any of the defendants other than Klesius retaliated against her, Ross cannot show that they violated her First Amendment rights. Linkous, Larson, Cotton, Compton, and Bailey are entitled to summary judgment.

With Klesius, Ross cannot meet the third element of a First Amendment retaliation claim. In order to establish a causal connection, “a plaintiff in a retaliation case must show, at the very least, that the defendant was aware of her engaging in protected activity.” *Constantine*, 411 F.3d at 501. “Knowledge alone, however, does not establish a causal connection’ between the protected activity and the adverse action.” *Id.* (quoting *Price v. Thompson*, 380 F.3d 209, 213 (4th Cir. 2004)). There must also be “some degree of temporal proximity to suggest a causal connection.” *Id.* It is also “not enough that the protected expression played a role or was a motivating factor in the retaliation; claimant must show that ‘but for’ the protected expression the [government official] would not have taken the alleged retaliatory action.” *Tobey v. Jones*, 706 F.3d 379, 390 (4th Cir. 2013) (alterations in original, citation omitted). Here, Ross has not demonstrated a genuine dispute about whether Klesius knew—before Ross’s children were removed—about Ross’s

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& *Visitors of George Mason Univ.*, 411 F.3d 474, 501 (4th Cir. 2005). Further, purpose is, in fact, a heightened showing compared to knowledge. In precluding the use of vicarious liability in the context of Section 1983 or *Bivens* suits, the Supreme Court noted that purpose, rather than “mere knowledge,” would be required to impose liability on a superintendent for a subordinate’s actions. *Iqbal*, 556 U.S. at 677 (emphasis added).

allegations that CCDSS was using the CCFPA bank account to hide state funds.

To support her claim that the defendants retaliated against her for reporting Asti's allegations, Ross submitted her own and Burnette's affidavits. But even these documents do not demonstrate that any of the defendants, including Klesius, were aware of Ross's allegations before August 15, 2008. According to Ross, Asti told her in June 2008 that CCDSS used the CCFPA account to hide unused state funds. (Ross Aff. ¶ 4.) In July 2008, she reported the information to Doreen Hochlowski and Burnette of the MSFPA. (*Id.* ¶¶ 5, 6.) Burnette told her that Bertulis, as the new State Foster Care Ombudsman, would look into the matter "starting in September." (*Id.* ¶ 6.) Ross then met with Burnette and Bertulis several times in September. (*Id.* ¶¶ 17, 19.) And in her amended complaint, Ross states that Bertulis "began investigating CCDSS" "on or about September 10, 2008." (Second Am. Compl. ¶ 16.) Burnette, in her affidavit, averred that she referred Ross to Bertulis in July 2008. (Burnette Aff. ¶ 8.) She does not, however, state that Bertulis looked into the matter before August 15. Instead, she avers that she, Bertulis, and Ross met "on or about September 5, 2008 so that Betsy Ross could go into further depth with the details of her complaint and the fact that her children had just been removed which she felt was in retaliation to her raising the financial concerns." (*Id.* ¶ 12.) And in a portion of his affidavit that is uncontested by Ross, Bertulis averred that he was on vacation from August 7, 2008, through August 22, 2008. (Bertulis Aff. ¶ 4.)

Further, Edwards's testimony does not create a genuine dispute of material fact regarding whether Klesius had knowledge of Ross's protected speech. Edwards testified that CCDSS called her before 10 a.m. on August 15, 2008, to ask if she could take three foster children who were being removed from a foster home.<sup>9</sup> (Admin. Hr'g Tr. 262:6-13.) According to Edwards, she later found out from Sara Ellis and Jen Crooks, who appear to be CCDSS social workers, that the children the CCDSS caller was referring to were Ross's. (*Id.* at 267:12-15, 278:1-3.) Ross offers this testimony to argue that, if Edwards received a call about taking in Ross's foster children before 10 a.m. on August 15, then the defendants' claim that Linkous first received the allegations of neglect about Ross during an interview with T.G. at 10 a.m. cannot be true, thus creating a genuine dispute about whether the neglect allegations were retaliation for Ross's protected speech. Ross's theory, it seems, depends on Linkous having made up the neglect allegations, and Klesius knowing that Linkous made up the allegations before she authorized the removal of Ross's foster children. There is no basis, however, to suggest that Linkous never interviewed T.G.: in her affidavit, Ross herself avers that T.G.'s grandfather told her on September 4, 2008, that someone came by their house at approximately 10 a.m. on August 15 to question T.G. (Ross Aff. ¶ 21.) Any issues with the timeline, therefore, are not sufficiently material to overcome a motion for summary judgment. Further, Edwards's

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<sup>9</sup> This part of Edwards's testimony was a question or inquiry not intended as an assertion and, therefore, is not hearsay. See *United States v. Sinclair*, 301 F. App'x 251, 253 (4th Cir. Nov. 24, 2008).

testimony is not sufficiently concrete to create a genuine dispute of material fact. In particular, Edwards testified that she does not remember who from CCDSS called her before 10 a.m., but said “it wasn’t Tina and it wasn’t Mary,” presumably referring to Linkous and Klesius. (*Id.* at 265:23.) In addition, Edwards’s testimony that Ellis and Crooks told her that the phone call was about Ross’s children is hearsay. Ross argues that the statements should come in as a party-opponent statement, under Federal Rule of Evidence 801(d)(2). That rule provides that a statement is not hearsay if it is “offered against an opposing party” and “was made by the party’s agent or employee on a matter within the scope of that relationship and while it existed.” Fed. R. Evid. 801(d)(2)(D). The burden is on Ross, as the proponent of the evidence, to show that the statement is admissible. *See* Fed. R. Civ. P. 56 advisory committee’s note to 2010 amendment. Ross, however, has offered no evidence that Ellis and Crooks provided the information to Edwards on a matter within the scope of their agency or employment.

Because Ross has not provided any evidence to show that Klesius had knowledge of Ross’s allegations that CCDSS was hiding state funds before she made the decision to remove Ross’s foster children, Klesius too is entitled to summary judgment.

**b. The Arc’s Denial of Ross’s Application**

Ross argues that Murray-Miller, who was a licensing coordinator at the Office of Licensing and

Monitoring in the Maryland Department of Human Resources, violated Ross's First Amendment rights by instructing The Arc to "indefinitely" put on hold her application because of Ross's letters to the editor that were critical of CCDSS. (*See* Resp. Opp'n 12, 17.) Murray-Miller reviewed those letters, along with the rest of Ross's application, when providing licensing advice to The Arc. (*See* Murray-Miller Dep. 29:7-31:10.)

As an initial matter, Ross makes allegations about Murray-Miller in several counts of her second amended complaint, but does not mention Murray-Miller in Count 10, the First Amendment claim. (*See* Second Am. Compl. ¶¶ 122-132.) Even if she did, Ross's First Amendment retaliation claim against Murray-Miller fails for two reasons. First, although Ross's letters to the editor constituted protected speech, there is no genuine dispute that Murray-Miller did not retaliate such that Ross's protected speech would be adversely affected. The record is clear that The Arc denied Ross's application before Murray-Miller ever got involved. (*See* Feb. 9, 2010 Email; March 16 Arc Letter.) Murray-Miller only become involved when The Arc reached out to her for advice after Ross appealed the denial. (Feb. 9, 2010 Email.) After The Arc sent her documents related to Ross's application, Murray-Miller responded by saying that Ross's "situation did not have any COMAR reasons for denial. Place the home study on hold until the Cecil County issue is resolved." (March 16, 2010 Email.) As a result, The Arc sent Ross a letter, which stated that, "[f]ollowing consultation with our licensing monitor from [the] Department of Human Resources," "[t]he unresolved and high profile nature of your current situation with several

entities determines that it is not a good time to proceed with a home study,” but “[o]nce your issues with [CCDSS] are resolved to our mutual satisfaction you are welcome to . . . attend the next available training class for prospective foster parents.” (March 18 Arc Letter.) Ross has pointed to no evidence in the record suggesting that Murray-Miller ordered the hold be put in place “indefinitely.” Instead, the fairer interpretation of the evidence, even in the light most favorable to Ross, shows that Murray-Miller convinced The Arc to take a more lenient, rather than a retaliatory, approach with Ross. Any reasonable official in Murray-Miller’s position would not have understood her actions to have violated a clearly established constitutional right. At a minimum, therefore, Murray-Miller is entitled to qualified immunity.

## II. Official Capacity Claims

The defendants argue that they are immune from suit in their official capacities under the Eleventh Amendment. The Eleventh Amendment bars federal suits by private citizens against an unconsenting state. *See Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). A suit against state personnel acting in their official capacities is a suit against the State. *See Weller v. Dep’t of Soc. Servs. for Baltimore*, 901 F.2d 387, 398 (4th Cir. 1990) (citing *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 68 (1989)). In Maryland, county department of social services employees are state personnel. *See* Md. Code Ann., State Gov’t § 12-101(a)(7); *Keller v. Prince George’s Cty.*, 923 F.2d 30, 32 (4th Cir. 1991). The Eleventh Amendment, however, does not bar private individuals from

bringing suit against state officials for prospective or declaratory relief for ongoing violations of federal law. *See Verizon Md. Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002) (citing *Ex parte Young*, 209 U.S. 123 (1908)).

Previously, Ross has argued that the defendants are committing ongoing constitutional violations by preventing her from operating a foster home and by placing her application to The Arc indefinitely on hold.<sup>10</sup> (*See* Resp. Opp'n Mot. Summ. J. Mem. Law 25, ECF No. 97-1; Aug. 14, 2014 Mem. 18.) As an initial matter, the portion of Ross's First Amendment claim concerning the closure of her foster home has been dismissed, so that cannot be the ongoing constitutional violation that supports her requested relief. That allegation was the only basis on which Ross could argue that Klesius, Larson, Cotton, Compton, Linkous, and Bailey could be sued in their official capacities. Further, as described above, Ross has not sufficiently alleged that Murray-Miller retaliated against her for protected speech; Murray-Miller, therefore, cannot be continuing to violate Ross's First Amendment rights. Accordingly, the defendants are immune from suit in their official capacities under the Eleventh Amendment.

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<sup>10</sup> In her response in opposition to the motion for reconsideration, Ross apparently confines her argument to the reasons why the official capacity claims against Siciliano, Larson, and Riciutti should not have been dismissed, instead of focusing on why the official capacity claims that are still in the case are valid. (*See* Resp. Opp'n 17.)

**CONCLUSION**

For the reasons stated above, the defendants' motion for reconsideration will be granted. A separate order follows.

8/11/2016  
Date

/S/  
Catherine C. Blake  
United States District Judge

[Entered: August 11, 2016]

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

|                   |   |                       |
|-------------------|---|-----------------------|
| BETSY ROSS        | : |                       |
|                   | : |                       |
|                   | : |                       |
| v.                | : | Civil No. CCB-11-0181 |
|                   | : |                       |
|                   | : |                       |
| NICHOLAS RICCIUTI | : |                       |

**ORDER**

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

1. The defendants' second motion for reconsideration (ECF No. 181) is **GRANTED**;
2. The defendants' motions in limine (ECF Nos. 142, 143, 144, 154, 167) are **DENIED as moot**;
3. The defendants' uncontested motions to seal (ECF Nos. 156, 165), which were filed pursuant to the stipulated order regarding confidentiality of discovery material (ECF No. 76), are **GRANTED**;
4. Judgment is entered in favor of all defendants and against the plaintiff;
5. The Clerk shall **CLOSE** this case; and

6. The Clerk shall send copies of this Order and the accompanying Memorandum to counsel of record.

8/11/2016

Date

/S/

Catherine C. Blake

United States District Judge

[Entered: August 14, 2014]

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MARYLAND,  
NORTHERN DIVISION

|                                    |           |             |
|------------------------------------|-----------|-------------|
| BETSY ROSS, <i>et al.</i> ,        | *         |             |
|                                    | *         |             |
| Plaintiffs,                        | *         |             |
|                                    |           |             |
| v.                                 | *         | CIVIL NO.:  |
|                                    |           | WDQ-11-0181 |
| NICHOLAS RICCIUTI, <i>et al.</i> , | *         |             |
|                                    |           |             |
| Defendants.                        | *         |             |
|                                    |           |             |
| *   *   *   *   *                  | *   *   * |             |

MEMORANDUM OPINION

Betsy Ross, for herself and as next friend of her minor daughter K.R., sued Nicholas Ricciuti and others<sup>1</sup> (collectively “the Defendants”), for constitutional violations and other claims. Pending are the Defendants’ motion for summary judgment on all the remaining claims, and the Plaintiffs’ cross-motion for summary judgment on Count Ten. No hearing is necessary. *See* Local Rule 105.6 (D. Md. 2011). For the following reasons, the Defendants’ motion for summary judgment will be granted in part and denied in part. Ross’s cross-motion for partial summary judgment will be denied.

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<sup>1</sup> The Plaintiffs are suing Ricciuti and Barbara Siciliano in their official capacities. *See* ECF No. 46 ¶¶ 3, 10. Mary Klesius, Latonya Cotton, Rebecca Sutton, Kim Compton, Tina Linkous, Susan Bailey, and Helen Murray-Miller are being sued in their individual and official capacities. *Id.* ¶¶ 4-9, 11.

## I. Background<sup>2</sup>

### A. General Background

In 2008, Ross was a licensed Foster Care Parent through the Cecil County Department of Social Services (“CCDSS”). *See* ECF No. 94, Ex. A at 1. Ross resided with her one biological child, one adopted child, and five foster children. *See* ECF No. 94, Ex. A at 8. Ross was scheduled to adopt K.R., one of the foster children. *See* ECF No. 94, Ex. A at 9.

Ricciuti is the Director of CCDSS. *See* ECF No. 94, Ex N; ECF No. 46 ¶ 3. Mary Klesius is a social work supervisor at CCDSS. *See* ECF No. 94, Ex. C at 6:16-20. At the relevant time, LaTonya Cotton was a Foster Care Coordinator for CCDSS. *See* ECF No. 94, Ex. Hat 6:20-8:19. Rebecca Larson<sup>3</sup> was a Child Protective Services (“CPS”) assessor with CCDSS. *See* ECF No. 94, Ex. E at 27:3-8. Kim Compton was a Foster Care Worker with CCDSS. *See* ECF No. 94, Ex. A at 9. Tina Linkous is a pre-adoption coordinator with CCDSS. *See* ECF No. 94, Ex. B at 6:14-7:2. Susan Bailey was the Assistant Director of CCDSS. *See* ECF No. 94, Ex. N. Barbara Siciliano was the In-home Services Administrator at CCDSS at the time, which involved supervision of CPS investigations. *See* ECF No. 94, Ex. D at 7:15-10:14. Helen Murray-Miller worked as a licensing

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<sup>2</sup> On cross-motions for summary judgment, “each motion [is] considered individually, and the facts relevant to each [are] viewed in the light most favorable to the non-movant.” *Mellen v. Bunting*, 327 F.3d 355, 363 (4th Cir. 2003).

<sup>3</sup> At the time, Rebecca Larson went by the name Rebecca Sutton. *See* ECF No. 94, Ex. E at 6:14-15.

coordinator at the Office of Licensing and Monitoring in the Maryland Department of Human Resources. *See* ECF No. 94, Ex. P at 10:9-12:4.

B. Events on August 15, 2008

Tina Linkous, a pre-adoption case worker with CCDSS, testified that she conducted an interview with T.G., one of Ross's former foster children, at the Pennsylvania home of T.G.'s grandparents at 10:00 a.m. on August 15, 2008. *See* ECF No. 98, Ex. A.3; ECF No. 98, Ex. B at 155:17-156:20. T.G. lived at Ross's home from 2006 to October 2007. ECF No. 94, Ex. A at 4. Linkous's interview notes and testimony state that, during the home visit, T.G. disclosed a number of incidents of neglect by Ross, including occasions when young children were left in the swimming pool unsupervised. *See* ECF No. 94, Ex. A at 4-6; ECF No. 98, Ex. A3; ECF No. 94, Ex. B at 39:16-41:12. Linkous testified that she left the home visit sometime after 11:30 a.m. and spoke with Katie Horn, a CPS in-take worker, to report the allegations of neglect over the phone.<sup>4</sup>

Klesius testified that she then spoke with her supervisor, Barbara Siciliano, and together they decided that Ross's foster children should be removed pending the CPS investigation. *See* ECF No. 94, Ex. C at 46:1-4. At around 12:30 p.m., Rebecca Larson, a CPS assessor, was assigned to conduct a CPS investigation. *See* ECF No. 94, Ex. A at 8; ECF No. 94, Ex. E at 27:1-8. Ross testified that

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<sup>4</sup> *See* ECF No. 98, Ex. B at 163:20-22, 169:1-5; ECF No. 94, Ex. B at 55:16-21; ECF No. 94. Mary Klesius testified that Linkous called her directly, and she transferred the call to Horn. *See* Ex. C at 51:11-52:11.

around 1:30 p.m. she arrived at the CCDSS office for a previously-scheduled meeting about the nominations of officers for the Cecil County Foster Parent Association (the "Foster Parent Association"). *See* ECF No. 94, Ex. F at 8:9-12, 21:1-10. After Ross arrived, Klesius and Larson met with her to discuss the CPS investigation of the neglect allegations. *See* ECF No. 94, Ex. F at 21:12-23:17; ECF No. 94, Ex. A at 8.

Ross testified, that in the meeting, Larson informed her that T.G. had come to the CCDSS offices to make the allegations. *See* ECF No. 94, Ex. F at 23:7-24:12. Ross testified:

She said, when we set down in the room she said that [T.G.] had come to Social Services that morning and made allegations against -- well, I am sorry, she did not say [T.G.]. She said that allegations had come in that morning in reference to, you know, a former child that I had in foster care.

ECF No. 94, Ex. F at 23:9-15. Ross continued:

I said, so are telling me [T.G.] came here today and she said, yes, [T.G.] was here. And she went onto say that there are serious safety concerns in your home. We are going to have to remove your children. I mean, I was just in disbelief. And I kept questioning her, 'you are telling me that [T.G.] was here today?' 'Yes, [T.G.] was here today. I did not see her but, yes, she was here.'

ECF No. 94, Ex. F at 23:20-24:9. Larson informed Ross that all the foster children in her home would be moved to another foster care home. *See* ECF No. 94, Ex. A at 8; ECF No. 94, Ex. E at 47:12-18; ECF No. 94, Ex. F at 24:2-4. Larson asked Ross when she could have the children ready to be picked up by CCDSS. *See* ECF No. 94, Ex. F at 24:15-17; ECF No. 94, Ex. E at 47:15-18; ECF No. 94, Ex. A at 8. Ross testified that she told Larson the children would be ready to be picked up “in a couple hours.” ECF No. 94, Ex. F at 25:3-7. The CPS investigations records state “Ms. Ross agreed to allow Ms. [Larson] to come to her home in one hour and pick up the children.” ECF No. 94, Ex. A at 8.

At around 4:00 p.m., Larson, Kim Compton, and Latonya Cotton arrived at Ross’s house. ECF No. 94, Ex. F at 27:2-10. One of the women opened the storm door and knocked on Ross’s front door. *See* ECF No. 94, Ex. F at 28:6-15. Ross testified that “I am not sure who opened the door for them,” and that “[m]y daughter was there and she had two friends there.” ECF No. 94, Ex. F at 29:3-16. Ross testified: “They came in and said, you know, ‘do you have the kids ready?’ You know, they are as ready as they are going to be at this point.” ECF No. 94, Ex. F at 29:19-30:1. The children either packed their own things or Ross’s teenage daughter packed the children’s things. ECF No. 94, Ex. F at 30:6-9. Ross declined to carry K.R. to the car. ECF No. 94, Ex. F at 30:6-16. The foster children were removed from Ross’s home and placed in other licensed foster homes. *See* ECF No. 94, Ex. A at 9.

C. Testimony of Karen Edwards

On December 4, 2009, Karen Edwards, a foster parent familiar with Ross testified during a Department of Human Resources administrative hearing. ECF No. 98, Ex. B at 257-79. Edwards testified that T.G. “had a humongous problem with adults, I guess, in general, and she was a chronic liar.” ECF No. 98, Ex. B at 260:23-24. Edwards testified that she received a call from CCDSS on August 15, 2008 before 10:00 a.m. asking if she could take in three foster children who were being removed from another foster home. ECF No. 98, Ex. B at 262:4-13, 263:6-22. Edwards said she was unable to take in the children. ECF No. 98, Ex. B at 262:14-22. During the call, CCDSS did not tell Edwards from which foster parent the children were being removed. ECF No. 98, Ex. B at 263:8-11. Edwards further testified: “Q. And did you have occasion to learn whose three children these were? A. I found out that very afternoon. Q. And whose were they? A. Betsy [Ross)’s.” ECF No. 98, Ex. B at 262:23-263:2. Edwards testified about how she learned they were Betsy’s children:

Q. Whether or not you knew that these were Betsy Ross’ children and you said at first you thought it was an older couple.

A. Yes.

Q. But then you came to believe that -- you stated earlier that these were actually Betsy Ross’ children.

A. Yeah.

Q. And there were certain DSS or CPS agents that informed you of that, correct?

A. That was later. I found out from DSS agents later that it was Betsy's children. I found out that afternoon from Dr. Clifford and Betsy herself that they were her children.

ECF No. 98, Ex. B at 277:13-25. Edwards was asked to clarify her discussion with the CCDSS agents:

Q. I thought your testimony was Sara Ellis and Jen Crooks told you about the pool incident.

A. They did later, not that day.

Q. So, did they tell you that they or someone they knew called you at 10:00 in the morning to take Betsy Ross' children?

A. No, they --

ECF No. 98, Ex. B at 278:9-15. Edwards was permitted to finish her statement:

They talked to me a couple days later and told me that Betsy's children were taken and it's because of an incident with the pool and the unsafe conditions at her home, and then they started talking about my pool and that I needed to make sure I was within guidelines and that was going to be checked and

they went over all the guidelines with me and everything was fine. But they made a point in telling me why her children were taken and that her children were taken.

ECF No. 98, Ex. B at 278:24-279:7.

D. Foster Parent Association Funds

In December 2007, at a Christmas party Ross had a conversation with Klesius and others about her reactivating the Foster Parent Association. *See* ECF No. 94, Ex. F at 11:11-13-14. Representatives from the Maryland State Foster Parent Association came to meetings in March, April, and May 2008 to assist in restarting the Cecil County Foster Parent Association. *See* ECF No. 94, Ex. F at 14:3-15:2. In the May 2008 meeting, they set September 8, 2008 as the date for the Foster Parent Association elections. *See* ECF No. 94, Ex. F at 15:3-13. During some of these meetings, Ross and others asked Klesius and Rose Caprotti, another CCDSS employee, for the Foster Parent Association's bank account information. *See* ECF No. 94, Ex. F at 16:9-17. Klesius informed Ross that Doris Asti, the Foster Parent Association's former Treasurer, had the information, and that either Klesius or Caprotti would get it from Asti "because Doris traveled a lot." ECF No. 94, Ex. F at 16:9-18:18.

Ross called a representative from the State Association who suggested that Ross contact Asti directly about the bank account information. *See* ECF No. 94, Ex. F at 33:10-34:8. At the end of June 2008, Ross went to Asti's home to get the account

information. *See* ECF No. 94, Ex. F at 32:13-15. Ross testified that Asti stated at the time that “most of the money in this account belongs to social services. They use this account to hide money from the state.” ECF No. 94, Ex. F at 32:5-15. Soon after receiving a check and account information from Asti, Ross went to the bank to inquire about the account balance, but the bank would not give her that information. *See* ECF No. 94, Ex. F at 37:3-8. Asti was the only person named on the account. *See* ECF No. 94, Ex. F at 37:3-6. After the Foster Parent Association elections in September 2008, Ross and the other officers opened a new Association bank account. *See* ECF No. 94, Ex. F at 37:16-21; 34:18-36-2.

In July 2008, Ross reported the information she had heard from Asti to Michelle Burnette, President of the Maryland State Foster Parent Association. *See* ECF No. 98, Ex. M ¶¶ 5-6; ECF No. 98, Ex. N ¶¶ 8-12. Ross “raised questions and concerns about who was in control of the money in the bank account at [the Association], and that the Treasurer had told her that CCDSS funds were being placed in the account.” ECF No. 94, Ex. N ¶ 9. Burnette informed her that the newly hired State Foster Care Ombudsman, John Bertulis, would look into the matter in September. *See* ECF No. 98, Ex. M ¶ 6; ECF No. 98, Ex. N. ¶¶ 6-12. Burnette referred the matter to Bertulis. *See* ECF No. 98, Ex. N ¶¶ 10-11. In his affidavit, Bertulis states that on August 27, 2008 he became the Foster Parent Ombudsman for the Maryland Department of Human Resources. *See* ECF No. 94, Ex. I ¶ 2. On September 5, 2008, he “received a complaint from Betsy Ross alleging that [CCDSS] had misappropriated funds that the Maryland State Foster Parent Association intended

for the Cecil County Foster Parent Association.” ECF No. 94, Ex. I ¶ 3. On September 29, 2009, Bertulis concluded his investigation and determined that there had been no impropriety or mismanagement of funds. *See* ECF No. 94, Ex. I ¶ 5.

#### E. Foster Home Closure

The interviews of Ross’s foster children during the CPS investigation confirmed incidents of lack of supervision; however, because “the nature and extent of being left unsupervised varied among their disclosures” child neglect could neither be indicated nor ruled out. *See* ECF No. 94, Ex. A at 1. On September 17, 2008, CPS issued a Child Neglect Report following the CPS investigation of Ross, finding that the neglect was Unsubstantiated. *See* ECF No. 94, Ex. A at 1. Ross appealed CPS’s unsubstantiated finding. *See* ECF No. 94, Ex. M at 4. On September 26, 2008, K.R. was returned to Ross and her adoption was finalized on October 15, 2008. ECF No. 94, Ex. M at 4. In October 2008, Linkous recommended that Ross’s foster home be closed. *See* ECF No. 94, Ex. B at 70:7-71:15. Larson also recommended that the foster home be closed. *See* ECF No. 94, Ex. E at 116:3-18. On November 13, 2008, Klesius made the recommendation that Ross’s foster home be closed based on numerous violations of the Resource Parent Agreement discovered during the CPS investigation, including inappropriate boundaries with birth families, threats of corporal punishment, and lack of supervision. *See* ECF No. 94, Ex. L at 1.

Between March 5, 2009 and June 2, 2009, Cotton conducted an annual reconsideration of

Ross's foster care approval. *See* ECF No. 94, Ex. M. Cotton's re-evaluation report recommended that Ross's foster home should not be re-licensed, and the foster home should be closed. *See* ECF No. 94, Ex. M at 6. The reevaluation provided a number of bases for this recommendation, including that Ross "blatantly and purposely broke foster care rules and regulations;" "displayed inappropriate boundaries with birth families and an inability to set boundaries with her own children;" and "was dishonest with the local Department in regards to individuals who had a regular presence in her home." ECF No. 94, Ex. M at 6. The re-evaluation also noted the potential dangers of Ross's lack of supervision, Ross's "lackadaisical" parenting style, and concluded that Ross "has shown poor judgment and lacks the expected knowledge and skill level of an experienced licensed foster parent." ECF No. 94, Ex. M at 6-7.

On July 2, 2009, Ricciuti approved the denial of relicensing and the official closing of Ross's foster home. *See* ECF No. 94, Ex. N. Ross also appealed this decision and on January 21, 2010, Ross and CCDSS reached an agreement settling both pending appeals. *See* ECF No. 94, Exs. J, O. Ross agreed to voluntarily surrender her CCDSS foster care license, and withdrew her requests for appeal. *See* ECF No. 94, Exs. J, O. CCDSS agreed to change the unsubstantiated neglect finding to a "ruled out" finding, and to make no negative statements about Ross. *See* ECF No. 94, Exs. J, O.

#### F. Arc Foster Home Application

In early 2010, Ross applied to be a foster parent through The Arc, a private foster care

provider. *See* ECF No. 94, Ex. F at 129:16-132:19. On March 16, 2010, The Arc sent Ross a letter stating that “we have decided not to continue the certification process.” ECF No. 94, Ex. R at 1. The letter explained The Arc’s decision by emphasizing that its main consideration is serving the children in its care, which requires a partnership with CCDSS:

With that focus in mind we are concerned about your ongoing willingness and interest in making this a public discussion. We need to maintain a positive relationship with DSS and protect the privacy of foster children in our custody. We cannot risk knowingly placing them in the midst of such a contentious and unresolved situation that has become a public forum. We respect your desire to resolve the discrimination that you felt and the concerns you have with *DSS*. However, to place a child in the middle of this public fray would not be in the best interest of that child and would not make us as an agency responsible caretakers.

ECF No. 94, Ex. R at 1. An official from The Arc, Diane Ross, contacted Helen Murray-Miller, a license coordinator at the Department of Human Resources after Ross requested an appeal of The Arc’s decision. *See* ECF No. 94, Ex. P at 27:6-29:6. Murray-Miller’s role as a license coordinator was to make sure that agencies were following regulations. *See* ECF No. 94, Ex. P at 13:8-21. Murray-Miller testified that Diane Ross informed her about the

circumstances of Betsy Ross's foster home application, and Murray-Miller requested all The Arc's documentation associated with the case "because what they were doing didn't seem like it was coinciding with COMAR [regulations] as far as the Appeal." See ECF No. 98, Ex. K at 29:12-30-21. The Arc provided Murray-Miller with documents and communications about Betsy Ross's case, including three letters to the editor -- in a local publication -- written by Betsy Ross that were critical of CCDSS. See ECF No. 94, Ex. P at 30:13-32-16; ECF No. 94, Ex. Q. The letters were published between December 2009 and March 2010. See ECF No. 98, Ex. L ¶ 24.

Murray-Miller testified that she informed Diane Ross that The Arc could not prohibit Betsy Ross from proceeding with the home study process:

I told her that she could not do that. There was no reason why this person should not have been able to continue on with the home study. And although there was, you know, other issues she was dealing with, she still should have been able to have that opportunity. So I told her that she needed to write a letter basically saying that she should be allowed to do a home study with The Arc.

ECF No. 94, Ex. P at 63:8-64:2. In an email to Diane Ross at The Arc about Betsy Ross's application, Murray-Miller stated: "When den[y]ing an applicant make sure your denial is based in COMAR [regulations]. Ms. Ross situation did not have any

COMAR [regulation] reasons for denial. Place the home study on hold until the Cecil County issue is resolved.” ECF No. 98, at K13. On March 18, 2010, The Arc sent Betsy Ross another letter, approved by Murray-Miller:

Following consultation with our licensing monitor from Department of Human Resources I am further clarifying our position with regard to your ongoing relationship with The Arc Northern Chesapeake Region and its Treatment Foster Care program. The unresolved and high profile nature of your current situation with several entities determines that it is not a good time to proceed with a home study. Once your issues with Cecil County Department of Social Services are resolved to our mutual satisfaction you are welcome to contact our trainer/recruiter Kathy Pitrat and attend the next available training class for prospective foster parents. At this point you may proceed with the home study process.

ECF No. 94, Ex. S; ECF No. 94, Ex. P at 103:11-104:15. Murray- Miller did not have contact with CCDSS about Betsy Ross. *See* ECF No. 94, Ex. P at 121:11-18. Murray-Miller testified that “[a]ll the information I got was from the Arc.” ECF No. 94, Ex. P at 121:17-18. Ross has not reapplied to be a foster parent at The Arc, and has not applied to any other private provider to be a foster parent. *See* ECF No. 94, Ex. F at 129:21-130:11, 1.32:13-16.

### G. Procedural History

On January 21, 2011., Ross sued CCDSS, Ricciuti in his official capacity, and Klesius in her individual and official capacities for violations of her Fourth Amendment rights and other claims. ECF No. 1. On August 25, 2011, Ross filed an amended complaint against Klesius, Ricciuti, Cotton, Sutton, Compton, Linkous, Susan Bailey, Siciliano, and Murray-Miller (collectively “the Defendants”). ECF No. 19. On January 31, 2012, the Court granted Ross’s motion to file a second amended complaint. ECF No. 44. On January 31, 2012, Ross filed a second amended complaint.<sup>5</sup> On February 21, 2012,

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<sup>5</sup> Ross’s second amended complaint seeks injunctive and declaratory relief from the Defendants in their official capacities, and money damages from the Defendants in their official capacities. The second amended complaint asserts the following claims:

- Relief Under Act of Congress 42 U.S.C. § 1983 (Count One)
- Violation of the Fourth Amendment (Count Two)
- Violation of the Fourteenth Amendment and Article 24 of the Maryland Constitution, Procedural Due Process (Count Three); Substantive Due Process (Count Four);
- Breach of Confidence (Count Five);
- Negligence (Count Six);
- False Light (Count Seven);
- Defamation (Count Eight);
- Breach of Contract (Count Nine);
- Violation of the First Amendment (Count Ten).

ECF No. 46. Count One states the cause of action through which Ross brings Counts Two through Four, and Count Ten. It is not an independent claim.

the Defendants moved to dismiss the second amended complaint, or in the alternative, for summary judgment. ECF No. 49. On March 19, 2012, Ross opposed the Defendants' motion and moved for partial summary judgment. ECF No. 54. On July 12, 2012, the Court granted the Defendants' motion to dismiss Counts Three, Four, and Five; denied the Defendants' motion to dismiss Counts Two, Six, and Ten; granted the Defendants' motion for summary judgment for Counts Seven, Eight, and Nine; and denied Ross's cross-motion for summary judgment. ECF Nos. 57, 58.

On October 22, 2013, the Defendants moved for summary judgment on the remaining claims: Counts Two, Six, and Ten. ECF No. 92. On November 22, 2013, Ross filed an opposition to the Defendants' motion and a cross-motion for partial summary judgment on Count Ten. ECF No. 97. On December 16, 2013, the Defendants replied. ECF No. 106.

## II. Analysis

### A. Legal Standard

The Court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).<sup>6</sup> In considering the motion, the judge's function is

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<sup>6</sup> Rule 56(a), which "carries forward the summary-judgment standard expressed in former subdivision (c)," changed "genuine 'issue' [to] genuine 'dispute,'" and restored the word "shall" . . . to express the direction to grant summary judgment." Fed. R. Civ. P. 56 advisory committee's note.

“not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). A dispute about a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* at 248.

The Court must “view the evidence in the light most favorable to . . . the nonmovant and draw all reasonable inferences in [its] favor,” *Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 645 (4th Cir. 2002), but the Court must abide by the “affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial,” *Bouchat v. Balt. Ravens Football Club, Inc.*, 346 F.3d 514, 526 (4th Cir. 2003) (citation and internal quotation marks omitted).

When cross-motions for summary judgment are filed, “each motion must be considered individually, and the facts relevant to each must be reviewed in the light most favorable to the nonmovant.” *Mellen*, 327 F.3d at 363 (*citing Rossignol v. Voohaar*, 316 F.3d 516, 523 (4th Cir. 2003)).

B. The Defendants’ Motion for Summary Judgment

1. Eleventh Amendment Immunity

The Defendants argue that they are immune from suit in their official capacities under the Eleventh Amendment. *See* ECF No. 92-1 at 22. The Eleventh Amendment bars federal suits by private citizens against an unconsenting State. *See*

*Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). A suit against state personnel acting in their official capacities is a suit against the State. *See Weller v. Dep't of Social Servs. for City of Baltimore*, 901 F.2d 387, 398 (4th Cir. 1990). In Maryland, county department of social services employees are state personnel. *See* Md. Code Ann., State Gov't § 12-101(a)(7); *Keller v. Prince George's Cnty.*, 923 F.2d 30, 32 (4th Cir. 1991). Although Maryland has waived immunity for certain actions brought in state court under the Maryland Torts Claims Act, it has not waived its immunity under the Eleventh Amendment for suits in federal court. *See Weller*, 901 F.2d at 397-98.

There are several exceptions to the Eleventh Amendment bar. *Equity In Athletics, Inc. v. Dep't of Educ.*, 639 F.3d 91, 107 n.13 (4th Cir. 2011). Relevant here, the U.S. Supreme Court has held that the Amendment does not prevent private individuals from bringing suit against State officials for prospective or declaratory relief for ongoing violations of federal law.<sup>7</sup>

Here, Ross has alleged that the Defendants are committing ongoing constitutional violations by preventing her from operating a foster home and placing her Arc application on hold indefinitely. *See*

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<sup>7</sup> *See Ex parte Young*, 209 U.S. 123 (1908); *Litman v. George Mason Univ.*, 186 F.3d 544, 549-50 (4th Cir. 1999); *see also Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002) (a court examining the *Ex parte Young* doctrine must conduct “a straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective” (alteration in original) (internal quotation marks omitted)).

ECF No. 97-1 at 25. “[T]o fall within the *Ex parte Young* exception, it is sufficient for Plaintiffs’ suit to *allege* an ongoing violation of federal law; actually *proving* such an ongoing violation is unnecessary.” *D.T.M. ex rel. McCartney v. Cansler*, 382 F. App’x 334, 337-38 (4th Cir. 2010) (emphasis in original) (unpublished). She also seeks prospective relief by requesting that the Defendants be enjoined “from continuing their unconstitutional actions and enforcing their unconstitutional policies.” See ECF No. 46 at 18. Because Ross has alleged an ongoing violation of federal law and requests prospective relief, the claims against the Defendants in their official capacities are not barred by the Eleventh Amendment.

## 2. Section 1983 Claims

Section 1983 provides a remedy against any person who, acting under color of law, deprives another of constitutional rights. 42 U.S.C. § 1983. The Defendants argue that they are entitled to qualified immunity on Ross’s § 1983 claims. See ECF No. 92-1 at 15, 21.

Government officials performing discretionary functions are shielded from liability for civil monetary damages under § 1983 when their conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal quotation marks and citation omitted). Determining whether an official is entitled to qualified immunity is a two-part inquiry, the Court must decide: (1) whether the facts that the plaintiff has alleged or shown make out a violation of

a constitutional right; and (2) whether the right at issue was “clearly established” at the time of the alleged misconduct. *Pearson*, 555 U.S. at 232. When the defendant asserts qualified immunity, the plaintiff bears the burden of showing that a constitutional violation occurred. *Henry v. Purnell*, 501 F.3d 374, 377 (4th Cir. 2007). The defendant bears the burden of proof on whether a constitutional right was clearly established at the time of the alleged violation. *Purnell*, 501 F.3d at 378.

There are three ways in which law becomes clearly established in Maryland: (1) an authoritative decision by the United States Supreme Court; (2) an authoritative decision by the Fourth Circuit Court of Appeals; or (3) an authoritative decision by the Court of Appeals of Maryland. *Wilson v. Layne*, 141 F.3d 111, 114 (4th Cir. 1998). A constitutional right is clearly established “when its contours are sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Ridpath v. Bd. of Governors Marshall Univ.*, 447 F.3d 292, 313 (4th Cir. 2006) (internal citation and quotation marks omitted).

The Fourth Circuit has emphasized “the importance of resolving the question of qualified immunity at the summary judgment stage rather than at trial.” *Wilson v. Kittoe*, 337 F.3d 392, 397 (4th Cir. 2003). *Wilson* recognizes, however, that “the qualified immunity question can . . . at times require factual determinations respecting disputed aspects of a defendant’s conduct.” *Id.* (quoting *Pritchett v. Alford*, 973 F.2d 307, 312 (4th Cir. 1992) (internal quotations and punctuation omitted)). “The

importance of summary judgment in qualified immunity cases does not mean . . . that summary judgment doctrine is to be skewed from its ordinary operation to give substantive favor to the defense, important as may be its early establishment.” *Id.*

i. First Amendment Claim  
(Count Ten)

To prevail on her claim for First Amendment retaliation, Ross must show that: (1) she engaged in constitutionally protected speech; (2) the Defendants engaged in a retaliatory action which adversely affected her protected speech right; and (3) there is a causal relationship between her protected speech and the Defendants’ actions. *See Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 686 (4th Cir. 2000).

a. Initial Removal of  
the Foster Children

Ross alleges that the Defendants removed her foster children and closed her foster home in retaliation for her complaints about the Foster Parent Association’s finances. *See* ECF No. 46 ¶¶ 124-26; No. 97-1 at 24. Ross’s complaints about CCDSS’s mismanagement of funds and her general criticisms of CCDSS are protected speech. *See Trulock v. Freeh*, 275 F.3d 391, 404 (4th Cir. 2001) (holding that plaintiff’s article criticizing the government and government officials was protected speech). Because the removal of Ross’s foster children and the closure of her foster home would tend to chill a reasonable person’s exercise of First Amendment rights, such conduct is an adverse action. *See Constantine v. Rectors & Visitors of*

*George Mason Univ.*, 411 F.3d 474, 500-01 (holding that the university's conduct in giving a student minimal notice to re-take an exam and pre-determining that she would receive a failing grade was adverse action).

To satisfy the third element of a First Amendment retaliation claim, the plaintiff must show a causal relationship between the protected speech and the adverse action. *See Huang v. Bd. of Governors of Univ. of N.C.*, 902 F.2d 1134, 1140 (4th Cir. 1990). To survive summary judgment, a plaintiff “must have evidence from which a reasonable factfinder could conclude that a causal connection exists between the protected activity and the adverse action.” *See Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 657 (4th Cir. 1998). “In order to establish this causal connection, a plaintiff in a retaliation case must show, at the very least, that the defendant was aware of her engaging in protected activity.” *Constantine*, 411 F.3d at 501. Knowledge of the protected activity is “absolutely necessary” to establish a causal relationship. *See Dowe*, 145 F.3d at 657. However, “[k]nowledge alone, however, does not establish a causal connection between the protected activity and the adverse action.” *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 501 (4th Cir. 2005). “There also must be some degree of temporal proximity to suggest a causal connection.” *Id.*

Here, there is a material dispute of fact whether the Defendants had knowledge of her complaints before the removal of her foster children. In June 2008, Ross informed Burnette, a state foster parent association officer, of her concerns about

CCDSS's use of the Association's funds, and Burnette referred the issue to Bertulis. *See* ECF No. 98, Ex. M ¶¶ 5-6; ECF No. 98, Ex. N ¶¶ 8-12. Bertulis became Foster Parent Ombudsman and met with Ross about her complaints after her children were removed on August 15, 2008. *See* ECF No. 94, Ex. I ¶¶ 2-3. Before the removal of Ross's foster children, Ross and others asked Klesius for the Association's account information during meetings in March, April, and May 2008 in order to restart the Association. *See* ECF No. 94, Ex. F at 16:9-18. Klesius informed Ross that Asti, the former Association treasurer, had the information. *See* ECF No. 94, Ex. F at 16:9-18. Based on these inquiries, a reasonable jury could infer that the Defendants were aware of Ross's complaints about the mismanagement of funds or criticism of CCDSS before August 15, 2008 when the foster children were initially removed.

Additional evidence also lends support to Ross's argument that the neglect allegations were pretextual. Larson, the CPS investigator, told Ross that T.G. reported the neglect at the CCDSS office, although she did not see her, rather than that T.G. reported neglect during a home visit.<sup>8</sup> Also, Edwards, another foster parent testified that she received a morning call from CCDSS requesting that she take in three foster children, and there is a dispute as to whether she was later told by CCDSS agents that the call related to Ross's foster children. *See* ECF No. 98, Ex. B at 277:13-25; 278:9-15; 278:24-279:7. This evidence creates a reasonable inference that the allegations were manufactured by CCDSS as retaliation.

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<sup>8</sup> *See* ECF No. 94, Ex. F at 23:9-24:9.

There also exists a temporal proximity between the protected activity and the alleged adverse actions. Ross made inquiries into the Association's account information in the spring of 2008, and she informed Burnette of her concerns in June 2008. *See* ECF No. 94, Ex. F at 16:9-18; ECF No. 98, Ex. M ¶¶ 5-6; ECF No. 98, Ex. N ¶¶ 8-12. Ross's foster children were removed from her home on August 15, 2008, less than two months later. *See* ECF No. 94, Ex. A at 8; ECF No. 94, Ex. E at 47:12-18; ECF No. 94, Ex. F at 24:2-4. Accordingly, Ross has presented evidence from which a reasonable factfinder could infer a causal connection between her protected activity and the initial removal of her foster children. Taken together, these facts raise a reasonable inference that the initial removal of the foster children was in retaliation for Ross's criticism of CCDSS.

In determining whether government officials are entitled to qualified immunity, the constitutional right that was allegedly violated must also be clearly established. *See Pearson*, 555 U.S. at 232. Generally, the First Amendment's bar on retaliation for protected speech "has long been clearly established." *Crawford-El v. Britton*, 523 U.S. 574, 592 (1998). However, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). "[T]he unlawfulness must be apparent in light of pre-existing law." *Trulock*, 275 F.3d at 400.

Here, the law is well established that a public official cannot take adverse action against an individual for voicing criticism. *See Trulock*, 275

F.3d at 405-06. A reasonable official would have known that retaliation for Ross's statements was impermissible. The Defendants have not asserted that Ross's First Amendment protection against retaliation was not clearly established. Accordingly, the Defendants are not entitled to qualified immunity for this retaliation claim.<sup>9</sup> Because Ross has demonstrated a material dispute of fact, summary judgment on Ross's First Amendment retaliation claim based on the initial removal of her foster children will be denied.

b. Closure of the Foster Home

However, Ross has failed to show causation with respect to CCDSS's decision to close Ross's foster care home. "The causation requirement is rigorous; it is not enough that the protected expression played a role or was a motivating factor in the retaliation; claimant must show that 'but for' the protected expression [the defendant] would not have taken the alleged retaliatory action." *Huang*, 902 F.2d at 1140; *Tobey v. Jones*, 706 F.3d 379, 390 (quoting *Huang* and noting that 'but for' causation is required when considering a motion for summary judgment). The record shows that the decision to close Ross's foster home was made for a variety of reasons unrelated to Ross's complaints about CCDSS's finances. Klesius recommended closure based on the violations uncovered by the CPS investigation, including inappropriate boundaries

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<sup>9</sup> When the plaintiff demonstrates that a constitutional right has been violated, the defendant must demonstrate his entitlement to qualified immunity. *Purnell*, 501 F.3d at 378.

with birth families, threats of corporal punishment, and lack of supervision. *See* ECF No. 94, Ex. L at 1. These findings are supported by the CPS investigation records. *See* ECF No. 94, Ex. A. CCDSS's re-evaluation report recommended that Ross's home be officially closed based on Ross's violation of rules, lack of supervision, and poor judgment, among other reasons. *See* ECF No. 94, Ex. M at 6-7. Based on these findings, a jury could not reasonably find that Ross's criticisms of CCDSS's finances were the "but for" cause of CCDSS's decision to close her foster home. Accordingly, the Defendants' motion for summary judgment on Ross's retaliation claim related to the closure of her foster home will be granted.

c. The Arc's Denial of  
Ross's Application

Ross argues that Murray-Miller also violated her First Amendment rights by "instructing The Arc to indefinitely deny" her application to be an Arc foster parent based on her letters to the editor expressing dissatisfaction with CCDSS. *See* ECF No. 97-1 at 22. Ross wrote letters to the editor for a local publication criticizing the CCDSS, and Murray-Miller reviewed the letters when providing licensing advice to The Arc. *See* ECF No. 94, Ex. P at 30:13-32-16; ECF No. 94, Ex. Q. "[P]ublic criticism of governmental policy, government operations, and government officials is at the very core of the constitutionally protected free speech area." *Bradley v. Computer Sciences Corp.*, 643 F.2d 1029, 1033 (4th Cir. 1981) (internal quotation marks and citations omitted).

The Defendants argue that Ross's retaliation claim fails because she did not demonstrate that she had been adversely affected. *See* ECF No. 92-1 at 20. The court's determination of "whether a plaintiff's First Amendment rights were adversely affected by the retaliatory conduct is a fact intensive inquiry." *Suarez*, 202 F.3d at 686. "[T]he nature of the retaliatory acts impacts whether those acts are actionable when a private citizen is the speaker and a public official is the retaliator." *Id.*

Here, Murray-Miller advised, that given the ongoing issues with CCDSS, The Arc could place the home stay process on hold. *See* ECF No. 98, at K13; ECF No. 94, Ex. P at 63:8-64:2; ECF No. 94, Ex. S. There is a dispute of fact whether Murray-Miller's actions caused The Arc to indefinitely place the process on hold. *See* ECF No. 94, Ex. S. Ross has also demonstrated causation. There is evidence from which a jury could reasonably conclude that Murray-Miller's advice was the direct and "but for" cause of The Arc's decision to place Ross's home stay process on hold indefinitely. As discussed above, Ross's First Amendment right against retaliation for her criticism of CCDSS was clearly established. Accordingly, Murray-Miller is not entitled to qualified immunity. The Defendants' motion for summary judgment on Count Ten as to her application with The Arc will be denied.

ii. Fourth Amendment  
Claim (Count Two)

Ross argues that her Fourth Amendment rights were violated when the Defendants entered her home "without valid consent, a warrant, exigent

circumstances, or probable cause that the children were in immediate danger of serious injury, and removed the children.” ECF No. 46 ¶ 47. The Defendants contend that they did not violate the Fourth Amendment because Ross consented to the entry of her home, and alternatively, the Defendants acted reasonably in entering Ross’s home to remove the foster children. ECF No. 92-1 at 11-13.

The Fourth Amendment prohibits unreasonable searches and seizures. *See* U.S. Const. Amend. IV. Fourth Amendment protections apply when the government is conducting civil, as well as criminal, investigations. *See Marshall v. Barlow’s, Inc.*, 436 U.S. 307, 312 (1978). However, the Fourth Circuit has held that “investigative home visits by social workers are not subject to the same scrutiny as searches in the criminal context.” *Wildauer v. Frederick Cnty.*, 993 F.2d 369, 372 (4th Cir. 1993). In *Wildauer*, the Fourth Circuit also held that, although officers executing a criminal search might be required to disclose that the search could be refused, “the non-criminal nature of this visit makes such disclosure unnecessary.” *Wildauer*, 993 F.2d at 372. Voluntary consent is an exception to the Fourth Amendment’s general prohibition on warrantless searches of a home. *See U.S. v. Hylton*, 349 F.3d 781, 785 (4th Cir. 2003). “Consent may be inferred from actions as well as words.” *Hylton*, 349 F.3d at 786. In determining whether consent was freely and voluntarily given, the Court must consider the totality of the circumstances. *See U.S. v. Lattimore*, 87 F.3d 647, 650 (4th Cir. 1996).

Here, CCDSS had legal custody of the foster children in Ross’s care. *See Ross v. CCDSS*, 878 F.

Supp. 2d 606, 619; Md. Code Ann., Fam. Law §§ 5-504, 5-325(a)(3), (b)(1). Earlier on August 15, 2008, Ross had discussed the removal of her foster children with Larson, a CCDSS employee. *See* ECF No. 94, Ex. A at 8; ECF No. 94, Ex. E at 47:12-18; ECF No. 94, Ex. F at 24:2-4. Ross agreed to have the children ready to be picked up by CCDSS later that day at her home. *See* ECF No. 94, Ex. F at 24:15-17, 25:3-7, ECF No. 94, Ex. E at 47:15-18; ECF No. 94, Ex. A at 8. When Larson and two other CCDSS employees arrived at Ross's home that afternoon, they knocked and entered the home. *See* ECF No. 94, Ex. F at 28:6-15, 29:19-30:1. It is not clear from the record who in the home, if anyone, opened the door. ECF No. 94, Ex. F at 29:3-16. Ross was present when the CCDSS employees entered her home, and stated that the children were "as ready as they are going to be at this point." ECF No. 94, Ex. F at 29:19-30:1. The children either packed their own things or Ross's teenage daughter packed the children's things. ECF No. 94, Ex. F at 30:6-9. The CCDSS employees then removed the foster children from Ross's home, and Ross chose not to carry K.R. to the car. *See* ECF No. 94, Ex. A at 9; ECF No. 94, Ex. F at 30:6-16.

A reasonable jury could conclude that Ross did not consent to the CCDSS employees' entry into her home. CCDSS employees told Ross that they would remove the foster children from her home that day. When the CCDSS employees arrived to retrieve the children as agreed, the children were inside the home. There is a material dispute of fact about how the CCDSS employees gained entry to Ross's home. The circumstances arguably support an inference

that Ross did not consent to the CCDSS employees' entry into her home.

However, even without valid consent, the Defendants are entitled to qualified immunity because they did not violate a clearly established constitutional right of which a reasonable person would have known." *Wildauer*, 993 F.2d at 372 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The Defendants correctly understood that the CCDSS had legal custody of the children. See *Ross v. CCDSS*, 878 F. Supp. 2d 606, 619; Md. Code Ann., Fam. Law §§ 5-504, 5-325(a)(3), (b)(1). The CCDSS employees who entered Ross's home removed the foster children from Ross's care pending a CPS investigation into allegations of neglect, including lack of supervision that endangered the children. See ECF No. 94, Ex. C at 46:1-4; ECF No. 94, Ex. A at 4-6; ECF No. 98, Ex. A3; ECF No. 94, Ex. B at 39:16-41:12. Although the Fourth Circuit has not articulated a clear constitutional standard to judge social workers' investigations,<sup>10</sup> it has made clear that the "state has a legitimate interest *in* protecting children from neglect . . . and in investigating situations that may give rise to such neglect and abuse." *Martin v. Saint Mary's Dep't of Social Servs.*, 346 F.3d 502, 506 (4th Cir. 2003). Additionally, Ross's previous discussion with CCDSS employees about retrieving the children from her home justified the Defendants' reasonable belief that they had to enter the house to remove the children pending an

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<sup>10</sup> See *Word of Faith Fellowship v. Rutherford Cnty. Dep't of Social Servs.*, 329 F. Supp. 2d 675, 688 (W.D.N.C. 2004).

investigation into allegations of abuse.<sup>11</sup> There was no clearly established right to prevent CCDSS from entering Ross's home to recover the foster children pending an investigation of neglect allegations. Accordingly, the Defendants are entitled to qualified immunity from Ross's Fourth Amendment claim.

### 3. Negligence Claim (Count Six)

To establish negligence under Maryland law,<sup>12</sup> a plaintiff must prove that: 1) the defendant was under a duty to protect the plaintiff from injury; 2) the defendant breached that duty; (3) the plaintiff suffered actual injury or loss; and (4) the loss or injury proximately resulted from the defendant's breach of the duty. *Valentine v. On Target, Inc.*, 353 Md. 544, 549 (Md. 1999).

In her complaint, Ross argues that the Defendants had a duty not to violate her Fourth Amendment rights.<sup>13</sup> However, claims for violations

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<sup>11</sup> *Cf. Wildauer*, 993 F.2d at 372-73 (defendants were entitled to qualified immunity for their entry into the plaintiff's home to retrieve children to return them to their legal parents even if the plaintiff had not given consent).

<sup>12</sup> Maryland applies the rule of *lex loci delicti* to determine the law to apply in tort cases. *See, e.g., Philip Morris Inc. v. Angeletti*, 358 Md. 689, 750 n. 28 (Md. 2000). Under that rule, the court applies the law of the state "Where the injury-the last event required to constitute the tort-occurred." *Lab. Corp. of America v. Hood*, 395 Md. 608, 615 (Md. 2006). All the events at issue in this suit occurred in Maryland. *See, e.g., ECF No. 46 ¶¶ 4-35*. Accordingly, Maryland law governs Ross's negligence claim.

<sup>13</sup> *See ECF No. 46 ¶ 82*. Ross also argues that the Defendants had a duty not to violate her Fourteenth Amendment rights; however, the Court held previously that Ross and K.R. had no liberty or property interest in their relationship at the time,

of constitutional rights sound under § 1983 and not negligence. *See Baker v. McCollan*, 443 U.S. 137, 144 (1979). Ross also argues that the Defendants were negligent for removing K.R. from Ross and for failing to thoroughly investigate the neglect report before removing her. *See* ECF No. 97-1 at 19-20. However, Maryland law does not recognize such a duty to persons investigated by social services for child abuse.<sup>14</sup> Accordingly, because the Defendants did not violate a duty to Ross or K.R., they are entitled to summary judgment on Ross's negligence claim.

### C. Ross's Cross-Motion for Summary Judgment on Count Ten

Ross argues that she is entitled to summary judgment on her First Amendment Retaliation claim. *See* ECF No. 97-1 at 24. To succeed in her claim for First Amendment retaliation, Ross must show that: (1) she engaged in constitutionally protected speech; (2) the Defendants engaged in a retaliatory action which adversely affected her protected speech right; and (3) there is a causal relationship between her protected speech and the Defendants' actions. *See Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 686 (4th Cir. 2000).

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and Ross had no protected interest in continuing as a foster parent. *See Ross v. Cecil Cnty. Dep't of Social Servs.*, 878 F. Supp. 2d 606, 624 n.32 (D. Md. 2012). Accordingly, the Court held that the Defendant did not breach a duty not to violate their due process rights by removing K.R. *See id.*

<sup>14</sup> *See Hayes v. State*, 183 Md. App. 742, 756 (Md. Ct. Spec. App. 2009) (holding that social services did not have a duty to a parent accused of abuse, and that, although failing to respond to an report of suspected abuse was not within the agency's discretion, the breadth of the investigation is discretionary, and therefore, not actionable).

With respect to the initial removal of her foster children, there is a material dispute of fact whether CCDSS had knowledge of her criticisms before they initially removed her foster children. In the summer of 2008, Ross contacted a state foster parent association officer about her concerns that CCDSS was misusing funds, and she inquired into the Association's account information. *See* ECF No. 98, Ex. M 5-6; ECF No. 98, Ex. N 8-12; ECF No. 94, Ex. F at 16:9-18. Based on these facts, a reasonable jury could conclude that the Defendants were unaware of Ross's complaints about the mismanagement of funds or criticism of CCDSS before August 15, 2008; this would support a determination that the removal of her foster children had not been retaliatory. Accordingly, summary judgment will not be granted on this claim.

However, with respect to the foster home closure, Ross has not shown a causal relationship between that action and her criticisms of the CCDSS. A plaintiff must show that the retaliation was more than a motivating factor in the retaliation. *Huang*, 902 F.2d at 1140. The uncontradicted evidence is that the decision to close Ross's home was made for a variety of reasons unrelated to Ross's statements, including inappropriate boundaries with birth families and lack of supervision. *See* ECF No. 94, Ex. L at 1; ECF No. 94, Ex. M at 6-7. Ross has not established that "but for" her complaints about CCDSS's finances, the Defendants would not have closed her foster home.<sup>15</sup>

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<sup>15</sup> *Cf. Huang*, 902 F.2d at 1140; *Tobey v. Jones*, 706 F.3d 379, 390 (quoting *Huang* and noting that 'but for' causation is required when considering a motion for summary judgment).

Ross's final First Amendment retaliation claim relates to The Arc's decision to place her foster home application on hold after receiving advice from Murray-Miller. Ross wrote several letters to the editor of a local publication that were critical of CCDSS. *See* ECF No. 94, Ex. Q. Murray-Miller reviewed these letters, and other materials provided by The Arc, when providing The Arc with licensing advice. *See* ECF No. 94, Ex. P at 30:13-32-16. She advised The Arc that it should place the home stay evaluation process on hold. *See* ECF No. 98, at K13; ECF No. 94, Ex. P at 63:8-64:2; ECF No. 94, Ex. S. There is a dispute of fact whether Murray-Miller's advice caused The Arc to place the home stay process on hold. *See* ECF No. 94, Ex. S.<sup>16</sup> Accordingly, Ross is not entitled to summary judgment on this claim.

### III. Conclusion

For the reasons stated above, the Defendants' motion for summary judgment will be granted in part and denied in part. Ross's cross-motion for partial summary judgment will be denied.

8/14/14  
Date

/s/ William D. Quarles, Jr.  
William D. Quarles, Jr.  
United States District Judge

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<sup>16</sup> *Cf. Amer. Civil Liberties Union of Md., Inc. v. Wicomico Cnty. Md.*, 999 F.2d 780, 786 (4th Cir. 1993) (the detention center's actions in withdrawing the accommodations initially made for an ACLU paralegal's visits was not sufficiently adverse to support a constitutional claim).

[Entered: August 14, 2014]

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MARYLAND,  
NORTHERN DIVISION

|                                    |   |             |
|------------------------------------|---|-------------|
| BETSY ROSS, et <i>al.</i> ,        | * |             |
|                                    |   |             |
| Plaintiffs,                        | * |             |
|                                    |   |             |
| v.                                 | * | CIVIL NO.:  |
|                                    |   | WDQ-11-0181 |
| NICHOLAS RICCIUTI, et <i>al.</i> , | * |             |
|                                    |   |             |
| Defendants.                        | * |             |

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ORDER

For the reasons discussed in the accompanying Memorandum Opinion, it is, this 14th day of August, 2014, ORDERED that:

1. The Defendants' motion for summary judgment, (ECF No. 92) BE, and HEREBY IS, GRANTED IN PART and DENIED IN PART;
  - a. The motion is GRANTED as to Counts Two and Six;
  - b. The motion is DENIED as to Count Ten with respect to Ross's claims based on the initial removal of her foster children and her application to The Arc;

- c. The motion is GRANTED as to Count Ten with respect to Ross's claim based on the closure of her foster home;
2. Ross's cross-motion for partial summary judgment (ECF No. 97) BE, and HEREBY IS, DENIED; and
3. The Clerk of the Court shall send copies of this Memorandum Opinion and Order to counsel for the parties.

/s/ William D. Quarles, Jr.  
William D. Quarles, Jr.  
United States District Judge

## U.S. CONST. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## U.S. CONST. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.