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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 03-1507

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SUSAN RICH

*Plaintiff-Appellant,*

v.

MONTGOMERY COUNTY, MARYLAND, et al.,

*Defendants-Appellees.*

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**BRIEF OF APPELLEES**

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On Appeal from the United States District Court  
for the District of Maryland  
(Marvin J. Garbis, Judge)

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## **JURISDICTIONAL STATEMENT**

Appellees Montgomery County, Maryland, Captain Wayne Fryer, Officer Wayne Kuster, and Officer Thomas Hane accept Appellant's Jurisdictional Statement as set forth in her brief.

## **STATEMENT OF THE ISSUES**

- I. DID THE DISTRICT COURT APPLY THE CORRECT SUMMARY JUDGMENT STANDARD?
- II. DID THE DISTRICT COURT CORRECTLY GRANT SUMMARY JUDGMENT WHERE THE EVIDENCE DID NOT ESTABLISH A CLAIM UNDER 42 U.S.C. § 1983 FOR VIOLATION OF THE FIRST AMENDMENT?
- III. DID THE EVIDENCE ESTABLISH A CLAIM UNDER 42 U.S.C. § 1983 FOR VIOLATION OF THE FOURTH AMENDMENT?
- IV. DID MS. RICH ESTABLISH SUFFICIENT FACTS TO STATE A CLAIM FOR CONSPIRACY?

## **STATEMENT OF THE CASE**

Appellant Susan Rich initiated this action in the United States District Court for the District of Maryland against Montgomery County, Maryland, Montgomery County Police Captain Wayne Fryer and Animal Control Officers Wayne Kuster and Thomas Hane, alleging various federal constitutional violations arising out of the search of her home and the issuance of civil citations. Following discovery and extensive briefing by the parties on Defendants' motion for summary judgment, the

district court held that Ms. Rich had not established all of the elements necessary for a First Amendment violation, that she had alleged no facts to show evidence of a conspiracy, and that the execution of the search warrant did not violate the Fourth Amendment. The district court entered summary judgment in favor of the County and its employees and this appeal followed.

### **STATEMENT OF FACTS**

Ms. Rich, a long-time animal rights activist, has been critical of Montgomery County and its enforcement of animal control laws, specifically in the areas of cruelty and neglect. (J.A. 176-83) Over the years, Ms. Rich has been in constant contact with the Montgomery County government to express her views and discuss issues concerning the manner in which the County handles its animal control matters, including the selection of persons who are in charge of animal control issues. (J.A. 12-18) Since 1992, Ms. Rich has met with all of the directors charged with animal control<sup>1</sup> to discuss her views on proper shelter requirements, her position that the department has failed to enforce anti-cruelty laws and her belief that there is a lack of interest by animal control staff in the area of animal

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<sup>1</sup>For a number of years a separate County department — the Department of Animal Control — had the responsibility over animal control issues. After a reorganization, the department became a division of the Police Department and is now called the Animal Services Division.

protection. (J.A. 247) Beginning in 1994, Ms. Rich met with various Council members and representatives of the County Executive and Chief Administrative Officer (CAO) to discuss problems in the department and to offer suggestions for choosing a new director.

Between 1996 and 2000, Ms. Rich testified before the Montgomery County Council with regard to sheltering standards, budget issues and funding and staffing concerns. On March 8, 2001, she met with animal control officers concerning the chaining of animals. Finally, on April 21, 2001, she spoke at a County Council meeting regarding the Animal Services Division (ASD) budget. (J.A. 247-48)

***Ms. Rich's specific contact with County employees***

Prior to the matters complained of in her lawsuit, Ms. Rich had contact with the animal control officers and Montgomery County Police Chief Charles Moose. Ms. Rich met Officer Kuster in March 2000 when he responded to her call that someone had improperly chained a dog to a tree. She also spoke to Officer Kuster on a follow-up call in February 2001. (J.A. 248)

Ms. Rich met Officer Hane in late summer/early fall of 1998 when she followed his animal control van and introduced herself to him. She also spoke to Officer Hane in February 2001 by telephone regarding a complaint about birds. (J.A. 249)



Ms. Rich first met Captain Fryer in March 2000. At that time Ms. Rich discussed performance issues, offered community assistance, and showed Captain Fryer a videotape of animals that she thought were not being cared for properly. Although the videotape had been made approximately seven years earlier, Ms. Rich felt that the videotape was proof that the animal control officers had not performed their duties properly. She had a follow-up meeting with Captain Fryer two months later and then had subsequent communications by telephone. (J.A. 78-79, 191-192, 249)

In February or March 2001, Ms. Rich contacted the County's CAO to discuss general concerns. The CAO suggested that Ms. Rich meet with Police Chief Moose and set up a meeting for March 10, 2001. (J.A. 189) Captain Fryer and a small group of citizens also attended the meeting. (J.A. 194-95) Ms. Rich explained to Chief Moose the problems that she felt were existing in the ASD. She showed Chief Moose the same videotape she previously had shown Captain Fryer. Ms. Rich also showed Chief Moose photographs of dogs she believed did not have proper shelter. (J.A. 80, 195-96)

Ms. Rich complained about the ASD and about Captain Fryer's performance. Ms. Rich discussed several addresses where she believed there were animal control violations and wanted follow-up. (J.A. 81, 197-98, 201) One of the addresses that

Ms. Rich complained about was on the same street where she lived, Bluhill Road. (J.A. 85-86, 174, 198-99) Ms. Rich complained that the animal control officers were not properly enforcing the law and were not responding to Ms. Rich's complaints in the proper manner. (J.A. 200) During the meeting, Captain Fryer took notes of Ms. Rich's complaints. (J.A. 197)

Ms. Rich met with Chief Moose and Captain Fryer in May 2001 for follow-up. During this meeting, apparently, there was some conduct on the part of Ms. Rich that caused Chief Moose to ask her to leave before the conclusion of the meeting. Chief Moose and Captain Fryer escorted Ms. Rich from the building. (J.A. 205-06) Although this meeting occurred after the events that are the basis of Ms. Rich's lawsuit, Ms. Rich did not complain to Chief Moose about those events at that meeting. (J.A. 207)

### ***Ms. Rich's community and animal control issues***

Susan Rich lives in a community known as the Connecticut Avenue Estates. In November 2000, Ms. Rich attended a meeting of the Connecticut Avenue Estates Civic Association. ASD officers Diana Clement and Kyle Zollers also attended. (J.A. 202-03) The group discussed a number of community concerns, including animal control issues. The main discussion centered around dogs running loose in the neighborhood. (J.A. 203) The officers discussed various animal control

regulations, the responsibility of pet owners, the chaining of animals, barking dogs and roaming cats. (J.A. 19)

Some of the citizens identified addresses where they believed there were dog-at-large issues. (J.A. 257-59) Subsequent to that meeting, Officer Clement followed up on the addresses, but none of the owners were home. Officer Clement left notices of violation at homes with unlicensed animals. She did not give any citations that day because there were no people to whom she could serve the citations. (J.A. 259-61)

Officer Clement also discussed with Captain Fryer the issues raised at the Civic Association meeting and informed him that there were a high number of dogs loose in the neighborhood and that the neighbors perceived it as a problem. (J.A. 262-63)

***The County's response to the Connecticut Avenue Estate  
problems and the "sweeps"***

In response to Ms. Rich's complaints about her neighborhood and other areas, Captain Fryer decided that the ASD needed to address the problems and rectify any valid concerns. Within a day or so of the March 10, 2001 meeting with Ms. Rich and Chief Moose, Captain Fryer went to the residence on Bluhill Road that Ms. Rich had complained about to investigate the allegations. Captain Fryer found that Ms. Rich's concerns were valid: he noted a fair amount of debris in the

yard, a chain anchored too close to the fence, two unregistered cars with a battery on the hood, and a number of dogs barking. Captain Fryer was quite disturbed about what he saw concerning the condition of the house and the potential animal control violations and decided to have an ASD officer respond to the home for further action. (J.A. 86-87)

While on Bluhill Road, Captain Fryer noticed a number of houses in disrepair, inoperable, unregistered vehicles, and a number of barking dogs. Based on Ms. Rich's complaints and on his own observations in the community, Captain Fryer decided to improve the quality of life in the neighborhood by conducting "neighborhood sweeps to find out how many dogs were in that neighborhood that were unlicensed or not being kept in suitable conditions." (J.A. 88) Because of the conditions of some of the houses in the neighborhood, Captain Fryer also decided that a joint operation with the County Department of Housing would be beneficial. (J.A. 88)

Later that day, Captain Fryer met with his staff and voiced his displeasure at what he had seen in the neighborhood. Captain Fryer was not pleased with his officers and their response to calls, and he felt that they needed to take initiative to verify that dogs in the neighborhood were properly licensed. (J.A. 89) He discussed the problems he had observed and what could be done in that

neighborhood, as well as other neighborhoods with high numbers of complaints. Captain Fryer told his staff that he planned to change the practices and that he expected ASD officers to enforce animal control laws. Fryer further instructed his officers that, while on calls, they should observe other animals and verify that they were properly licensed and vaccinated. (J.A. 89-90)

Captain Fryer directed Officer Clement to return to the Bluhill address to ensure that the problems were fixed. (J.A. 85-87) He also asked the ASD officers to report to him other neighborhoods with similar problems. (J.A. 264)

Lastly, Captain Fryer informed his staff of his plan to put together “sweeps” so that the problems in the neighborhood could be addressed. (J.A. 89, 264) He then directed Officer Wayne Kuster and Officer Thomas Hane to conduct the sweeps for the ASD. (J.A. 105-06) Although Captain Fryer mentioned that Susan Rich had given him some addresses in the Connecticut Avenue Estates area and that he previously went to those addresses himself, he did not direct the officers to go to any particular house — instead Fryer told them to start in the area where he had visited and work their way up Bluhill. Fryer instructed the officers to determine whether any animals they saw or heard were licensed and vaccinated in accordance with the animal control laws. (J.A. 106, 108-09)

Captain Fryer coordinated the “sweeps” with the Montgomery County Department of Housing. Code Inspector Stephen Morris was assigned to assist the ASD officers. (J.A. 290) Inspector Morris was aware of ongoing housing problems in that community, especially on Bluhill Road and the surrounding streets. (J.A. 292-93) He suggested that they start at the bottom of Bluhill because it was at the beginning of the neighborhood. (J.A. 301) On May 8, 2001, Inspector Morris and Officers Kuster and Hane met in the morning to begin the sweep. (J.A. 113-115) Because of their workloads, the officers could not spend a whole day doing the sweeps and decided that it would take them several visits to conduct all the inspections. (J.A. 297-98)

The officers traveled up the street, house by house, on the same side of the street where Ms. Rich lived. They were not looking for Ms. Rich’s address and her address was not highlighted in any manner. (J.A. 114-15) As they walked up the street, the animal services officers observed the houses and looked for evidence of animals. (J.A. 115) Officer Kuster went to every address where he saw or heard an animal and attempted to make contact with a person. Officer Kuster issued citations if the owners were not in compliance and were present. If no one was present at the home, Kuster left a notice of violation requesting compliance. (J.A. 122-23) Officer Kuster later checked the County computer data base for the

addresses where owners were not home to determine if the animals were licensed. (J.A. 118-19) As the ASD officers conducted their inspections, Inspector Morris looked for housing violations, and if he observed a violation, he would leave a notice or speak with the homeowner. (J.A. 155)

***The contact with Ms. Rich on May 8, 2001***

While on Bluhill Road, the officers observed a dog loose and saw a woman catch up to the dog and return to a home with it. (J.A. 124-25) The two ASD officers approached the woman, later identified as Ms. Rich, to inquire about the dog. At that point, Ms. Rich was outside a home and another dog was sitting in a car parked in front of the property. (J.A. 125, 158) Officer Kuster explained to Ms. Rich why they were there. He requested information on the animals that he and Officer Hane had just observed. (J.A. 125-26) Officer Kuster also asked Ms. Rich for identification, which was in his normal course to ensure the identity of the person. Ms. Rich responded that he knew who she was. Officer Kuster still requested identification so that he could verify the address and the name. (J.A. 126-27)

Officer Hane asked Ms. Rich if the dog inside the car was hers because he had some concerns that the dog was in the car with no food and water and the windows rolled up. (J.A. 159) Ms. Rich did not claim ownership of the dog at

first, but when Officer Hane said he would have to remove the dog, Ms. Rich said it was her dog. At some point, she removed the dog and took it inside the house. (J.A. 160)

Officer Kuster asked Ms. Rich several times for information on the dogs, but she refused to provide any documentation, merely stating that one of her dogs had all of its shots. At one point, Ms. Rich went into the house stating that she would get the information, but came back outside without it. (J.A. 128-29, 216, 229-30) Ms. Rich recalls that she may have come back out and said that she had to go through her paperwork and that it would take some time. Officer Kuster told her that they would wait. Ms. Rich took her dog inside the house and never returned with any information, nor did she tell the officers that she could not get the information together. (J.A. 128-29, 231-32)

Because Officer Kuster had observed a dog at large and saw Ms. Rich returning the dog to the house, observed another dog in Ms. Rich's car, heard other animals inside the home barking, and Ms. Rich failed to provide any proof that her animals were licensed and properly vaccinated, Officer Kuster believed that Ms. Rich was in violation of the animal control laws concerning licensing and vaccinations. As a result, Officer Kuster wrote Ms. Rich seven citations: four for unlicensed dogs, two for unvaccinated dogs and one for a dog-at-large. (J.A. 128-



29) When Ms. Rich went back into the house and did not return, Officer Kuster left the citations on the doorstep. (J.A. 36-42, 161)

The officers continued with the inspections and completed that block of Bluhill Road before ending for the day. (J.A. 147-48, 305) Thereafter, ASD Officers Kuster and Clement returned to the neighborhood and conducted more sweeps on several occasions on other streets, issuing notices of violations and citations. (J.A. 147-49, 271-79) Inspector Morris returned to the neighborhood to conduct inspections on a few more occasions over the subsequent months. (J.A. 307-08)

### ***The search warrant***

After the inspection on May 8, 2001, Officer Kuster spoke to Captain Fryer about the sweep and advised him of his contact with Ms. Rich. (J.A. 90, 135) Officer Kuster expressed concern that he heard dogs barking in Ms. Rich's home, but did not know if they were licensed or properly vaccinated. Captain Fryer suggested that Officer Kuster follow up by applying for an administrative search warrant to determine whether Ms. Rich's dogs were licensed and vaccinated. (J.A. 91) Officer Kuster prepared the search warrant application and presented it to a Montgomery County Circuit Court judge, who approved and issued the warrant. (J.A. 51-53)

On May 11, 2001, ASD Officers Thomas Hane and Herbert Emerson, and two Montgomery County police officers executed the search warrant at Ms. Rich's home.<sup>2</sup> The officers observed a dog out on the front stoop without any food, water or shelter. The officers later learned that the dog belonged to a friend of Ms. Rich's. (J.A. 171) Ms. Rich answered the door and the officers entered her home and searched for the number of dogs. The officers requested vaccination and licensing records. (J.A. 172) Initially, Ms. Rich did not say anything but then became cooperative and provided them with vaccination information. Officer Hane did not issue any further citations for unvaccinated dogs, but issued citations for unlicensed dogs because Ms. Rich failed to provide any licensing information. (J.A. 172)

Ms. Rich challenged her citations in court and was found not guilty of all but the dog-at-large citation. She prevailed on the licensing and vaccination citations because the County did not establish proof of age of the dogs at the trial. The licensing and vaccination laws provide that animals over a certain age must be licensed and vaccinated.

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<sup>2</sup>It was standard procedure to have a police officer and a police detective, one in uniform and one in plain clothes, present for this type of search. (J.A. 165)

## **SUMMARY OF THE ARGUMENT**

The district court correctly granted summary judgment in this case based on the undisputed facts and viewing the evidence in the light most favorable to Ms. Rich. The evidence did not support a claim for violation of Ms. Rich's First Amendment rights because she failed to establish a causal connection between the issuance of citations and the search of her home to her criticism of Captain Fryer and the County. The animal control officers conducted a sweep on Ms. Rich's street in response to complaints from her and others that homeowners in that neighborhood were violating the animal control laws. Due to their observations and Ms. Rich's lack of cooperation, the officers had probable cause to believe that she was violating the licensing and vaccination laws. Additionally, the officers had probable cause to believe that Ms. Rich violated the dog-at-large law, for which she was found guilty.

Ms. Rich failed to establish that her Fourth Amendment rights were violated by the search of her home because Officer Kuster had probable cause to apply for an administrative search warrant based on the information known to him. Officer Kuster presented truthful facts in the application and did not omit any information that would have defeated probable cause.

Lastly, the district court properly found that Ms. Rich failed to establish a claim for conspiracy. A conspiracy claim under 42 U.S.C. § 1985 requires at a minimum some proof that there was a meeting of the minds to violate a plaintiff's constitutional rights based on racial or other class-based discriminatory animus, which Ms. Rich failed to show.

## **ARGUMENT**

### **STANDARD OF REVIEW**

This Court reviews the grant of summary judgment *de novo*. *Mellen v. Bunting*, 327 F.3d 355, 363 (4th Cir. 2003). Summary judgment is appropriate if “there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” *Celotex Corporation v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)). In determining whether there is a genuine issue of material fact, the Court reviews the record in the light most favorable to the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

## **I. THE DISTRICT COURT APPLIED THE CORRECT SUMMARY JUDGMENT STANDARD.**

Ms. Rich speculates that the district court must have viewed the motion in the light most favorable to the defendants, since it ruled in their favor. The record establishes, however, that the district court viewed the facts in the light most favorable to Ms. Rich. Contrary to what Ms. Rich would prefer, the court applied the correct standard and properly found that it had to review the evidence realistically:

The Court may look at the evidence presented in regard to the motion for summary judgment through the non-movant's rose colored glasses, but must view it realistically. After so doing, the essential question is whether a reasonable fact finder could return a verdict for the non-movant or whether the movant would, at trial, be entitled to judgment as a matter of law.

(J.A. 329)

Moreover, this Court has spoken clearly on the subject. A plaintiff cannot defeat summary judgment by conclusory allegations, speculation, and conjecture. *See Ross v. Communications Satellite Corporation*, 759 F.2d 355, 364 (4th Cir. 1985) (wholly speculative assertions will not suffice to defeat summary judgment).

Ms. Rich lists twenty-one factors that she feels are sufficient for the case to go forward. The prevailing theme in these factors is Ms. Rich's unsupported contention that the officers' explanations were not worthy of belief. But Ms. Rich

has nothing more than her unsubstantiated allegations to support her claims and absolutely no evidence of a violation of the First or Fourth Amendment or a claim for conspiracy. The district court, therefore, properly granted summary judgment on all claims.

**II. THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT WHERE THE EVIDENCE DID NOT ESTABLISH A CLAIM UNDER 42 U.S.C. § 1983 FOR VIOLATION OF THE FIRST AMENDMENT.**

The gravamen of Ms. Rich's claim for violation of her rights under the First Amendment is that because she was a critic of Montgomery County and its performance in animal control matters, the officers selectively targeted her for violations of the animal control laws and acted to intimidate and harass her in an effort to stop her public criticism.

***There is no evidence of retaliation.***

In order to establish a claim for retaliation under the First Amendment, a plaintiff must prove three elements: (1) that her speech was protected under the First Amendment; (2) that the alleged retaliatory action of the defendants adversely affected the constitutionally protected speech; and (3) that a causal relationship existed between the speech and the retaliatory action. *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 685-86 (4th Cir. 2000). Although Ms. Rich meets the first

element of a retaliation claim — her public criticism is protected under the First Amendment — she fails to meet the second and third elements.

The second element requires that a plaintiff demonstrate that she “suffered some adversity in response to [the] exercise of protected rights.” *ACLU v. Wicomico County, Md.*, 999 F.2d 780, 785 (4th Cir. 1993) (citing *Huang v. Board of Governors of University of North Carolina*, 902 F.2d 1134, 1140 (4th Cir. 1990)). The alleged retaliatory action must **impede** the person’s ability to exercise her constitutionally protected right. *See ACLU v. Wicomico County, Md.*, 999 F.2d at 785 and discussion of cases cited therein. As the district court correctly found, Ms. Rich was and continues to be a vocal critic of the County and the ASD. (J.A. 330) Ms. Rich’s right to speak out against the government and criticize it has not been impeded in any way. She has continued to criticize the County and the performance of the ASD officers. Moreover, even if, as Ms. Rich claims, she suffered adversity because of the issuance of the citations and the search of her home, her First Amendment claim still fails because she cannot establish the most crucial element: a causal connection.

Ms. Rich’s meeting with the Chief of Police and Captain Fryer occurred two months before the sweeps of her neighborhood. According to Ms. Rich, the timing alone is sufficient to create an inference of retaliatory motive and she relies on

*Trulock v. Freeh*, 275 F.3d 391 (4th Cir. 2001), to support her claim. But as the district court correctly noted, Ms. Rich's reliance on *Trulock* is "misguided" because that case involved a motion to dismiss rather than a summary judgment motion where "more than a loose inference of retaliatory motive is necessary to support a claim." (J.A. 339) To defeat a motion for summary judgment, a plaintiff must produce sufficient evidence of a causal connection between her protected speech and the citations and search. Ms. Rich failed to do so.

Ms. Rich felt that Chief Moose had listened to her complaints and expected that someone would look into the problems and rectify them. (J.A. 201-02) After the meeting, Captain Fryer advised Chief Moose that he was aware of some of the addresses and that he would ensure that follow-up would be done on the addresses that warranted it. (J.A. 81) Although Captain Fryer believed Ms. Rich's comments about him were unwarranted, he did not take personal exception because he recognized that as a public official he would be subject to professional criticism, and Ms. Rich had the right to express her opinions. (J.A. 80-81)

The only connection between Ms. Rich's criticism and the events of May 8 and May 11, 2001, is that Ms. Rich requested that the ASD officers do their jobs and follow up on her complaints. They did just that. She complained about a home on her own street, which prompted Captain Fryer to go to her neighborhood,



investigate her complaints, and arrange for follow-up. Because Captain Fryer was disturbed by what he saw in the neighborhood, he took the matter further by requiring the officers he sent to make observations of any violations for the purpose of providing a better quality of life. Much to Ms. Rich's chagrin, however, when the County finally acted on her complaints, the officers found her to be part of the problem in the neighborhood by having a dog-at-large and by having animals that were not properly licensed.

It is undisputed that Ms. Rich has been concerned with animal control issues in Montgomery County for many years and voiced her opinions and dissatisfaction to the County Executive, the County Council and the various directors of the County's animal control agency. The actions of the officers in this case, however, had nothing to do with Ms. Rich's public criticism and all to do with her admitted violations of the animal control laws. Here, the officers acted in a manner consistent with what Ms. Rich wanted them to do. While her specific complaints concerned animal living conditions, her broader concern was that the animal services officers often did not do their jobs. (J.A. 80-82, 200) This general complaint was rampant in all of her more specific complaints. In order to address her broad complaint as well as her more specific concerns relating to the animal conditions at particular addresses, Captain Fryer arranged for the neighborhood

inspections with both ASD and the Department of Housing to try to improve the quality of life in the neighborhood.

Ms. Rich received several citations because she failed to provide the necessary information to establish that she maintained her dogs in compliance with the law, i.e., that the dogs were licensed and vaccinated. In fact, the dogs were not licensed and Ms. Rich has acknowledged her violation of the law. In Ms. Rich's opinion, licensing was not, and is not, a priority. (J.A. 57, 212-15)

Captain Fryer did not specifically instruct or direct the officers to focus their efforts on Ms. Rich, her home or her animals, nor did the officers undertake to focus on Ms. Rich on their own. In fact, there is no evidence that the ASD officers knew Ms. Rich's address at the time they began their sweeps. Further, Officer Kuster did not recognize Ms. Rich when he first observed the dog running loose and saw a female retrieving the dog. Even when he approached her, he was not sure who she was. Officer Kuster eventually recognized Ms. Rich, but that recognition came after Ms. Rich had placed herself in a position where the ASD officers believed that she was in violation of animal control laws.

The only reason the ASD officers confronted Ms. Rich on May 8, 2001 was because her dog had been seen running loose. Although Ms. Rich tries to understate this fact and appears to be challenging the dog-at-large citation, she cannot now

challenge that matter since a state court judge found her guilty of that charge. Ms. Rich opines that the guilty finding was a concession to the County and claims that since she was found not guilty on all the other citations and she received only a \$25.00 fine on the dog-at-large citation, she had “little incentive” to appeal. (Appellant’s brief, p. 25 n.8) The fact remains, however, that Ms. Rich was found guilty and cannot now challenge it.

Further, the twenty-one “factors” that Ms. Rich relies upon are no more than her unsupported speculations. She has produced no evidence to establish that the officers were motivated by anything other than a desire and responsibility to do their jobs.

Although Ms. Rich’s focus has been on cruelty and enforcement of anti-cruelty laws, she is familiar with the County’s animal control law, particularly the rabies vaccination and licensing requirements. In fact, she has been aware of these requirements since at least 1995. (J.A. 12, 183) While Ms. Rich may have a difference of opinion on the priorities that should be given within the law, she recognizes that animal control officers are required to enforce the animal control laws. (J.A. 184)

While Ms. Rich may not believe that the licensing law is of any significance and that she can pick and choose which laws she will comply with, there are

important health reasons for licensing animals. The law protects the public from rabies because a dog may not be licensed unless the owner submits proof that the dog has been vaccinated against rabies. *See* Md. Code Ann., Health-Gen. I § 18-318; Mont. Co. Code §§ 5-401, 5-402. The control of rabies is such an important health issue that the Secretary of the Maryland Department of Health and Mental Hygiene provides a statewide system to control the disease, which includes the offering of antirabies clinics. Md. Code Ann., Health-Gen. I §§ 18-313, 18-315. Simply because not every dog and cat in Montgomery County is licensed and the ASD officers have not cited every animal owner in Montgomery County in violation of the law does not lessen the importance of the licensing and vaccination requirements. Nor do those facts alone establish a violation of Ms. Rich's constitutional rights.

The question here is whether Ms. Rich is entitled to selectively choose which animal control law she wants to comply with and which she thinks should be ignored. The facts as to Ms. Rich's violation of the animal control laws are undisputed: 1) She knew about the licensing and vaccination requirements prior to May 8, 2001; 2) Her dogs were not licensed prior to that date; and 3) Ms. Rich knowingly chose to violate the law because in her mind licensing was not a priority. Officer Kuster issued Ms. Rich citations because she violated the law, not because

she previously expressed her dissatisfaction with the animal control personnel. There simply is no causal connection between Ms. Rich's complaints and the officers' actions. The district court, therefore, properly found that Ms. Rich had not established a claim for violation of her First Amendment rights and properly entered summary judgment on behalf of the defendants on the first count.

**III. THE EVIDENCE DID NOT ESTABLISH A CLAIM UNDER 42 U.S.C. § 1983 FOR VIOLATION OF THE FOURTH AMENDMENT.**

***The search warrant comported with Fourth Amendment standards.***

Under Chapter 5 of the Montgomery County Code, §5-301(d), an animal control officer may enforce animal control laws by searching private property and seizing evidence or animals, pursuant to State law or a warrant issued by a court. With regard to such administrative searches, it is well settled that "administrative searches generally require warrants." *Michigan v. Clifford*, 464 U.S. 287, 291 (1984). It is also well settled that administrative search warrants must comport with Fourth Amendment standards. 464 U.S. at 296-97. This requires that any administrative search warrant be based on probable cause.

Probable cause to search exists when there "is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Further, probable cause concerns probabilities and

not technicalities as the term implies. It is a “fluid concept” that turns upon “the assessment of probabilities in particular factual contexts.” *Id.* at 232.

In this case, the district court properly found that “Officer Kuster had probable cause to believe that [Ms. Rich’s] dogs were unlicensed and unvaccinated.” (J.A. 335) Officer Kuster came upon the circumstances at Ms. Rich’s home during a sweep of the neighborhood. He observed a dog-at-large and approached Ms. Rich, who had other dogs on her property. Officer Kuster questioned Ms. Rich about the dogs and she refused to provide any licensing information, after being requested to do so. In addition, other than telling the officer that the dogs were vaccinated, Ms. Rich failed to provide any proof of vaccinations. Further, a search of the department’s records did not show that the dogs were licensed and vaccinated. (J.A. 149) Lastly, there was absolutely no evidence that the animals on the property did not require licenses. After Officer Kuster observed dogs on the property, received no proof of licensing and vaccination status of the animals, and then reviewed department records which did not show any licenses for the dogs at Ms. Rich’s property, Officer Kuster possessed information that rendered probable the conclusion that unlicensed or unvaccinated dogs were illegally on Ms. Rich’s premises.

***The application for search warrant was  
based on truthful information.***

Officer Hane's execution of the search warrant was proper since he relied on a facially valid warrant when he went to Ms. Rich's home on May 11, 2001, to conduct the search of the premises. Although at that time Ms. Rich provided proof of vaccinations, she did not provide proof of licensing. She continued to be in violation of the County's licensing law.

Ms. Rich asserts that the "warrant application was filled with half-truths" but fails to offer any proof to support such assertions. Instead, she makes unsubstantiated assumptions about Officer Kuster's motives. She asserts that Officer Kuster should have informed the state court that such applications were not being sought for other alleged violators and that the only reason to seek such a warrant for Ms. Rich was to harass her. (Appellant's brief, p. 37) Officer Kuster submitted a truthful application based on the facts that he knew. Further, an officer is not required to include every possible conclusion of the evidence in a warrant application. *United States v. Colkley*, 899 F.2d 297, 301 (4th Cir. 1990). Unlike the situation in *DeLoach v. Bevers*, 922 F.2d 618 (10th Cir. 1990), upon which Ms. Rich relies, none of the alleged omitted facts could have negated probable cause in this case.

The officers conducted a neighborhood inspection in response to general complaints and returned to conduct more inspections. Numerous persons in the

neighborhood, including Ms. Rich, had complained about animal control issues. Additionally, the neighborhood had visible housing problems.

Moreover, Ms. Rich's dog was running loose on May 8 and she did not provide the licensing or vaccination documentation to the officers after being requested to do so. Ms. Rich may have told the officers that the dogs were all vaccinated, but she did not provide proof and the County records did not reveal any licenses, which would have shown all current vaccinations. In fact, the dogs were not licensed. The fact that the officers may have known Ms. Rich before May 8, 2001 does not negate any probable cause. Finally, the officers were not in the neighborhood to harass Ms. Rich. Officer Kuster had probable cause to apply for the search warrant and presented valid information to the court, which approved the application. The district court, therefore, properly found that the information contained in the application for search warrant was not false and there was no Fourth Amendment violation.

#### **IV. MS. RICH DID NOT ESTABLISH SUFFICIENT FACTS TO STATE A CLAIM FOR CONSPIRACY.**

The district court correctly entered summary judgment on behalf of defendants because Ms. Rich failed to either allege or provide proof of the elements necessary for a conspiracy claim under 42 U.S.C. § 1985. In order to establish a sufficient cause of action for conspiracy to deny equal protection of the laws under



§ 1985, “a plaintiff must prove: (1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy.” *Simmons v. Poe*, 47 F.3d 1370, 1376-77 (4th Cir. 1995) (quoting *Buschi v. Kirven*, 775 F.2d 1240, 1257 (4th Cir. 1985)). Additionally, to prove a §1985 conspiracy, a plaintiff must show an agreement or a “meeting of the minds” by defendants to violate the plaintiff’s constitutional rights. *Id.* at 1377 (citations omitted).

Further, a plaintiff must allege some racial or other class-based discriminatory animus behavior behind the alleged conspirators’ actions. *Mears v. Town of Oxford, Md.*, 762 F.2d 368 (4th Cir. 1985). “The conspiracy not only must have as its purpose the deprivation of ‘equal protection of the laws, or of equal privileges and immunities under the laws,’ but also must be motivated by ‘some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators’ action.’” *United Brotherhood of Carpenters & Joiners, Local 610 v. Scott*, 463 U.S. 825, 829 (1983) (quoting *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971)).

In *Simmons*, in affirming the district court’s grant of summary judgment, this Court recognized how difficult it is for a plaintiff to meet the stringent standards for

a § 1985 action and noted that it “has rarely, if ever, found that a plaintiff has set forth sufficient facts to establish a section 1985 conspiracy, such that the claim can withstand a summary judgment motion.” *Id.* at 1377.

In this case, Ms. Rich failed to satisfy the requirements to properly establish a conspiracy claim either through the allegations of the complaint or in response to the motion for summary judgment. Ms. Rich did not contend in her complaint that any alleged actions of the officers were taken against her due to gender, race or other class-based animus. Further, Ms. Rich’s unsubstantiated allegations in her brief do not provide any support for a conspiracy claim under § 1985, which requires proof that there was a “meeting of the minds” to violate her constitutional rights.

First, it is uncontested that neither Captain Fryer, nor any other County official, directed or instructed the ASD officers to seek out Ms. Rich on May 8, 2001. The only reason the ASD officers had contact with Ms. Rich was because her dog was running loose. Second, Officer Kuster did not recognize Ms. Rich until after he confronted her about her dogs.

Further, although Captain Fryer suggested to Officer Kuster that he obtain a search warrant to determine the number of unlicensed dogs in Ms. Rich’s home, there is no evidence that Fryer was motivated by any gender, race or other class-based animus. This case is devoid of any evidence “amounting to intentional and

purposeful discrimination” to Ms. Rich individually or as part of a class. *Norton v. McShane*, 332 F.2d 855, 863 (5th Cir. 1964) (citations omitted).

Ms. Rich asserts that she should have been granted leave to amend her complaint. But this case was decided at the summary judgment stage — not on a motion to dismiss. After defendants made and supported their motion for summary judgment, Ms. Rich was required to “set forth specific facts showing that there [was] a genuine issue for trial.” Fed. R. Civ. P. 56(e). Inasmuch as Ms. Rich did not meet this burden, the district court properly entered summary judgment on this claim.

### **CONCLUSION**

Viewing the evidence in the light most favorable to Ms. Rich, the district court correctly granted summary judgment in this case because Ms. Rich failed to establish that there were material facts in dispute that would support her claims for violation of the First Amendment, Fourth Amendment or for conspiracy under 42 U.S.C. § 1985. This Court should affirm the district court’s decision.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_ day of July, 2003, two copies of the foregoing Brief of Appellee were mailed, postage prepaid, first-class, to:

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