NO. 18-_____

In the Supreme Court of the United States

MARIANNE D. GUZALL A/K/A MARIANNA GUZALL,

Petitioner,

v.

CITY OF ROMULUS, MICHIGAN, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

LAWRENCE J. COOGAN
COUNSEL OF RECORD
4146 OAKWOOD BLVD.
MELVINDALE, MI 48122
(313) 381-0044
LAWRENCEJCOOGANLAW@YAHOO.COM

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QUESTIONS PRESENTED

This case involves the Petitioner's disclosure of corruption within the Defendant City of Romulus' Mayor's office and her unlawful termination shortly thereafter. In a split decision the Sixth Circuit determined the Defendants' statements were hearsay and failed to apply the Defendants' statements.

The questions presented are:

1. Does the Sixth Circuit Court's split decision determining a statement by a party opponent to be hearsay directly contradict other Circuit Court decisions?

2. Is the Sixth Circuit Court of Appeals required to analyze statements they determine to be hearsay where motive and intent are at issue in accord with and pursuant to Fed. R. Evid. 803(3)?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner and Plaintiff-Appellant Below

- Marianne D. Guzall a/k/a Marianna Guzall

Respondents and Defendants-Appellees Below

- City of Romulus, Michigan
- Alan Lambert, Mayor of Romulus, Michigan
- Betsey Krampitz, Chief of Staff to Mayor Lambert

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Marianne Guzall respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App.1a-29a) is unpublished. The district court's opinion (App.30a-68a) is unpublished.

JURISDICTION

The court of appeals issued its judgment on July 8, 2018. (App.1a). An order of the Sixth Circuit Denying Petition for Rehearing En Banc was issued on September 6, 2018. (App.69a) This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

After the Michigan State Police began investigating the Romulus' Mayor's office, Your Petitioner advised the Romulus' Mayor Pro Tem (Leroy Burcroff) of the Defendant Mayor Lambert's illegal acts that she

witnessed. The Defendant Mayor and his Chief of Staff Defendant Krampitz then told present Romulus Councilwoman Virginia Williams that the Petitioner " . . . was going to be let go because she talks too much . . . ". Petitioner's employment was then terminated within 3 months of her speech in violation of the First Amendment. The Sixth Circuit Court of Appeals Judge Helene White properly determined Defendant "Lambert's statements to Williams qualify as party admissions under Fed. R. Evid. 801(d)(2)(A), since they are statements offered against an opposing party and were made by the party. As the Mayor, these statements were within his authority." (App.28a). Judges Merritt and Donald determined the Defendants' statements such as the Petitioner " . . . was going to be let go because she talks too much . . . " to be hearsay and failed to analyze Defendants' statements pursuant to and in accord with Fed. R. Evid. 803(3). The Majority decision of the Sixth Circuit in this case conflicts with other Circuit Court decisions. Petitions of certification are granted where there exists conflict between decisions; "[w]e granted certiorari for the limited purpose of resolving the conflict between this decision and a previous ruling of the Court of Appeals for the Fourth Circuit." *Erlenbaugh v. United States*, 409 U.S. 239, 240, 93 S. Ct. 477, 478, 34 L. Ed. 2d 446 (1972).

The Majority decision in this case will deter public employees from speaking out about corruption within our government and allow the Sixth Circuit to prevent access to the court system despite overwhelming evidence of retaliation. Such a precedent is not acceptable, therefore action by this Court is necessary.

REASONS FOR GRANTING THE PETITION

I. THE CONFLICT MUST BE RESOLVED TO PREVENT INCONSISTENT APPLICATION OF THE FEDERAL RULES OF EVIDENCE THEREBY CURING THE INJUSTICE IN THIS CASE AND PREVENTING FUTURE INJUSTICE

A. Defendant Mayor Lambert and His Chief of Staff Defendant Krampitz Stated That Marianne Guzall Talked Too Much and Therefore Had to Be Let Go

Current Romulus councilwoman Virginia Williams illustrated the admission statements in this case:

> "Alan Lambert told me that Marianna Guzall was complaining about things that were going on in the Mayor's office and was making those complaints to Leroy Burcroff, and Lambert said those things that Marianne was saying were not true." (MSJ Response, RE 175-4 Page ID # 4485, William's Affidavit at paragraph 2, emphasis added).
>
> "I told him Marianna is loyal and his best employee and that she should not be fired. He told me she had to go." *Id.*, emphasis added.
>
> "Alan Lambert told me prior to the millage increase vote in Romulus that Marianna Guzall was going to be let go because she talks too much, so I know when Mayor Lambert and the City of Romulus later claimed that they had to lay off Marianna Guzall because

> of the millage not passing, that was a false statement and not the real reason they terminated her employment." (*Id.*, emphasis added).

Judge Helene White properly determined Defendant "Lambert's statements to Williams qualify as party admissions under Fed. R. Evid. 801(d)(2)(A), since they are statements offered against an opposing party and were made by the party. As the Mayor, these statements were within his authority." (App.28a). Other Circuits agree with Judge White: "In the employment discrimination context, the circuit courts of appeals have held that Rule 801(d)(2)(D) requires only that the declarant have some authority to speak on matters of hiring or promotion or that the declarant be involved in the decision-making process in general." *Talavera v. Shah*, 638 F.3d 303, 310 (D.C. Cir. 2011). "Where a supervisor is authorized to speak with subordinates about the employer's employment practices, a subordinate's account of an explanation of the supervisor's understanding regarding the criteria utilized by management in making decisions on hiring, firing, compensation, and the like is admissible against the employer." *Abrams v. Lightolier Inc.*, 50 F.3d 1204, 1216 (3d Cir. 1995).

The Defendant Betsey Krampitz told Virginia Williams:

> "Shortly before Marianne Guzall's employment was terminated in Romulus, Betsey Krampitz told me that Mayor Lambert told her that Marianne Guzall talks too much and that she had to be let go, and that Leroy Burcroff was complaining to Mayor

> Lambert about Marianne Guzall complaining to Burcroff about things going on in the Mayor's office." (MSJ Response, RE 175-4 Page ID # 4485, Williams affidavit, paragraph 2, emphasis).

Williams not only established the admissions were direct evidence of retaliation against Marianne, she established the time line as "shortly before Marianne Guzall's employment was terminated" when Krampitz told her "Marianne Guzall talks too much and that she had to be let go". *Id.* William's also related Marianne's speech as the complaints she made "to Burcroff about things going on in the Mayor's office". *Id.* Judge White determined the " . . . Defendants did not identify the individual decision-makers behind the 2011 layoffs and the evidence they rely on leaves open the possibility that Lambert made or influenced the determination of who in his department would be laid off." (App.27a). The Majority here however failed to at a minimum apply the logic of Judge White in favor of Your Petitioner. (App.11a at footnote 2). Judge White's determination was an attempt to comply with the law as " . . . there is no requirement that a declarant be directly involved in the adverse employment action." *Back v. Nestle USA, Inc.*, 694 F.3d 571, 577 (6th Cir. 2012), cite omitted, emphasis added. The Sixth Circuit's decision in this case created a requirement which cannot be a requirement and thus directly conflicts with previous rulings directly on point setting an unlawful precedent; "[a] statement is not hearsay under Rule 801(d)(2)(D) when it concerns a matter within the scope of the declarant's employment—there is no requirement that a declarant be directly involved

in the adverse employment action." *Back, supra*, at 577 (6th Cir. 2012), cite omitted, emphasis added.

Yet further, Judge Merritt and the Sixth Circuit previously held a person acts within the scope of their employment "in stating their views" . . . "[t]hey acted within the scope of their employment in stating their views on the state of their operations and integration of those operations at the request of Premier's CEO." *Med. Ctr. at Elizabeth Place, LLC v. Atrium Health Sys.*, 817 F.3d 934, 944 (6th Cir. 2016). Lambert's statements here that Marianne Guzall was making complaints to Burcroff about things going on in the Mayor's office which were not true and that "she had to go" illustrates Lambert stating his views and his ability to effectuate Petitioner's termination. Therefore Judge Merritt's decision in this case directly contradicts his and the Sixth Circuit Court's reasoning and determination in *Med. Ctr. at Elizabeth Place, supra*,. Despite prior Circuit Court rulings directly to the contrary, the Majority in this case determined Defendant Lambert's statements were hearsay as applicable to him and as applicable to the City of Romulus.

Your Petitioner testified that all of the other Romulus employees who were 'laid off' were brought back to work except the Petitioner who was on a "committee", "[b]ecause I wasn't going to be laid off." (MSJ Response, RE 175-16, Page ID # 4657, p. 62 lines 14-15). Also, "[t]hey wanted-per Mayor Lambert, they wanted the residents to feel a crunch so that they would vote the millage through." *Id.*, at p. 63 lines 10-12. Departments were eliminated "for show" and then brought "right back". *Id.*, p. 63 lines 3-8. Your

Petitioner also testified all employees were brought back except for her:

> . . . they held my job over my head constantly in order to keep me quiet. And I wasn't a lucky one because everyone has gone back except for me. (MSJ, RE 154-4, Page ID # 2775, p. 80 line 10-17, emphasis added).

The Defendants' set forth no evidence contradicting Your Petitioner's testimony. Yet even if Defendants' had done so, such merely creates a question of fact to be determined by a jury. The evidence in this case overwhelmingly illustrates that Your Petitioner was targeted because of the knowledge she possessed and then was retaliated against after she spoke out about the Defendants' illegal conduct. Furthermore, the Michigan State Police Report confirmed the Defendant Mayor possessed the authority to terminate City of Romulus employees.

B. The Michigan State Police Report Confirmed the Defendant Mayor Possessed the Authority to Terminate Romulus Employees

The Defendant Mayor Lambert also threatened other Romulus employees with their jobs, further illustrating his authority to terminate employees. Cynthia Lyon's job among others was threatened by Lambert, and Your Petitioner heard Defendant Lambert threaten her with her job, " . . . if she did not push through the plans for the oil shop, that she would be terminated immediately". (MSJ, RE 154-Page ID # 2855 Ex. 16, lines 21-22). Ms. Lyon's detailed her job being threatened as cited by the Michigan State Police within their investigation report:

> " . . . when Mayor Lambert got there, he put his hands down on the table and addressed the Administrative Review table and said, "If you all like your F-ing jobs you need to approve these plans" and that was how the meeting opened related to that project." . . . "She said everybody sitting at the table clearly new, these plans were going to be approved or you were going to loose your job. She said this was the moment when she decided, she needed a new job."" (MSJ Response, RE 175, Page ID # 4489, Ex. 5, at p. 41 of 52).

The Michigan State Police investigation revealed Lambert wanted to push through plans involving Moe Bazzi's new store in Romulus for his own monetary benefit. (MSJ Response, RE 175-5, Page ID # 4488-4492). Many other acts of Defendants' corruption were documented.

C. Defendants' Had Additional Motive to Silence Your Petitioner

The written confession of former Romulus Police Chief St. Andre further illustrates the greed, habit and practice of Defendant Lambert, whereby Lambert ordered all police vehicles be serviced by "Moe's shop" (Moe Bazzi) and the price of oil changes " . . . became very expensive for the City" and was paid with "forfeiture funds". (MSJ Response, RE 175-10, Page ID # 4527-4528). Lambert also told the then Police Chief to notify him before the local strip club was raided so he could give it's Management notice so they would keep paying Lambert to protect them. (*Id.*, Page ID # 4528-4530 and 4533-4534 showing cash

payments were made to Lambert). Also, the owner of the Beirut restaurant was "busted" in a "prostitution sting" and the " . . . owner of Beirut stated, "[t]his is for you Mayor" and started to hand him the cash" after he was released, paying Lambert cash so he was not charged with the crime. *Id.*, Page ID # 4534. Further, greed was the reason Defendants pushed so hard to pass the millage in Romulus-"[w]hat I was told in the mayor's office was, this was all in order to get the residents to vote for the millage because they needed money because they needed raises." (MSJ Response, RE 175-16, Page ID # 4656, p. 70 line 17-19, emphasis added).

The Defendants' brought back employee Jill Lambert who previously worked in another department to take Marianne Guzall's job; "[b]ut the ones who were appointed came back. Tanya and Jill. Jill came back. Jill Lambert took my job." (MSJ, RE 154-4, Page ID # 2775, page 81 lines 7-9). Petitioner possessed two years more seniority than Jill Lambert and seniority was supposed to dictate who was brought back to work first in time, another fact the Sixth Circuit Majority failed to apply here in the Petitioner's favor. (*Id.*, p. 81 lines 17-21). The millage did not pass and Romulus spent more money after the millage vote- "three times more" than they did prior to the millage vote. (*Id.*, Page ID # 2860, p. 63 lines 13-17). Therefore Defendants' claim of financial distress being the reason for Petitioner's termination was not true, and yet those are facts the Majority failed to cite or apply.

Further though, your Petitioner was told that no one in the Mayors office was going to be laid off. (MSJ Response, RE 175-16, Page ID # 4653, p. 61 line

24-25). Petitioner also had more seniority than Julie Wojtylko in the Mayor's Office and the 'lay offs' were to take place in accord with the higher seniority employees not being laid off, and therefore Wojtylko would had to have been laid off prior to Petitioner. (MSJ Response, RE 175-16, Page ID # 4654, p. 65 line 9 thru p. 66 line 15). Wojtylko also made more money in Romulus and performed the same duties as Petitioner except for putting together "council packets", and therefore if saving money was the 'claimed' factor, Wojtylko and not Petitioner would have been "laid off". The above cited facts illustrate additional proof of the retaliation taken against your Petitioner because of her speech, and not because of the Defendants' concocted reason. The Petitioner was also asked at her deposition, "[d]id you know before May of 2010, that the city was in dire financial straights?" and her response was, "[t]hey were never in dire financial straights. You can look at the budget." (MSJ Response, RE 175-16, Page ID # 4653, p. 60 line 6-9). The Majority's Opinion never cited to nor analyzed the Romulus' budget.

Your Petitioner also testified, " . . . they did not get rid of the fireworks, they didn't get rid of the pumpkin festival, the did not get rid of the things they threatened to take away if the millage didn't pass." (MSJ Response, RE 175-16, Page ID # 4653, p. 61 line 11-14). The Defendants' did not challenge those pointed facts and produced no documented proof illustrating where the so called "new" money came from to bring employees back to work-as "no new money existed". Yet most pointedly, the Defendants' stated they were terminating Petitioner's employment because of her speech, prior to the millage vote. (MSJ

Response, RE 175-4 Page ID # 4485, paragraph 2, Williams' Affidavit). "Subjective motivation appropriately enters the picture on a retaliation claim because our concern is with actions by public officials taken with the intent to deter the rights to free expression guaranteed under the First Amendment." *King v. Zamiara*, 680 F.3d 686, 695 (6th Cir. 2012). The Majority failed to apply the subjective motivation of Lambert and Krampitz in direct conflict with *King, supra*,.

The Sixth Circuit's decision in this case is also in conflict with and a departure from the Seventh Circuit's prior determinations as previously adopted by the Sixth Circuit:

> "We also note that our prior decisions are consistent with the reasoning of the Seventh Circuit in *Williams v. Pharmacia, Inc.*, 137 F.3d 944 (7th Cir.1998), where the court rejected the employer's argument that an employee's statement regarding a particular action of the employer qualifies as a vicarious admission under Rule 801 only if the employee-declarant was involved in the decision-making process leading up to the employer's action. . . . The precise reach of Rule 801(d)(2)(D) is sometimes difficult to discern, as there has been considerable debate about the justification for classifying various admissions as non-hearsay. We are reluctant to follow [the employer's] suggestion and read into the rule a generalized personal involvement requirement, especially in light of the Advisory Committee's admonition that the

> freedom which admissions have enjoyed . . . from the restrictive influences of . . . the rule requiring firsthand knowledge . . . calls for generous treatment of this avenue to admissibility. *Id.* at 950 (quotation marks and internal citations omitted)." *Carter v. Univ. of Toledo*, 349 F.3d 269, 275-76 (6th Cir. 2003).

In addition, statements used to show motive and intent are not hearsay. Your Petitioner also argued before the Sixth Circuit that FRE 803(3) allowed for the application of Williams' statements, and the Majority failed to cite to or apply FRE 803(3). The Majority failed to cite to or apply the Defendants' motive. The word "motive" does not appear within the Majority's decision. The Majority failed to cite to or apply the Defendants' intent. The word "intent" does not appear within the Majority's decision. Your Petitioner set forth those arguments of motive and intent at Appellant's Brief on Appeal at pages 17, 25, 29, 43-44, and in her Reply Brief at pages 8, 9 and 12. The Majority also failed to determine that motive and intent may be shown via Petitioner's statements and Virginia William's statements and the statements made by Defendants' Lambert and Krampitz cannot be cast aside as they illustrate their motive and intent. The Sixth Circuit's decision in this case thus sets an additional unlawful precedent allowing the Sixth Circuit to completely ignore the application of the Federal Rules of Evidence when they deem such obviate's the decision the Sixth Circuit would like to render despite application of the Federal Rules and the law. This Supreme Court cannot allow such a precedent to be set, and in particular in conflict with a prior decision of the Sixth Circuit:

> "'Rules of practice and procedure are exactly that. They should create no rights and should be thought of as indicating the way in which justice should be administered. They should give direction to the process of administering justice but their application should not become a fetish to the extent that justice in an individual case is not done. There is a need for guides and standards. They must be followed but they must always be thought of as guides and standards to the means of achieving justice, not the end of justice itself.'" *Granader v. Pub. Bank*, 281 F.Supp. 120, 153 (E.D. Mich. 1967), aff'd, 417 F.2d 75 (6th Cir. 1969), emphasis added.

It is therefore requested the Sixth Circuit Court of Appeals be directed by this Court to analyze statements they determine to be hearsay where motive and intent are at issue in accord with and pursuant to Fed. R. Evid. 803(3). Judge White properly concluded " . . . I would reverse the district court's grant of summary judgment to Lambert on Guzall's First Amendment retaliation claim." (App.29a). Yet the evidence also illustrates the Defendants' Romulus and Krampitz are proper Defendants in this case and therefore Petitioner's claims against those Defendants' could not have been dismissed. Defendants' Lambert and Krampitz possessed the ability to terminate Petitioner's employment. (MSJ Response, RE 175-16 Page ID # 4658, p. 78 line 19 through p. 79 line 10). The Defendants' held Your Petitioner's job over her head so that she would not speak out about their illegal con-

duct, and after she did, the Defendants' effectuated her termination.

D. The Defendants' Goal, Motive and Intent Was to Prevent Your Petitioner's Speech by Holding Her Job Over Her Head to Prevent Her from Divulging the Illegal Acts She Witnessed

Your Petitioner witnessed a $10,000 cash payment from Subi to Defendant Lambert in the Mayor's office, (MSJ, RE 154-4, Page ID # 2834 at p. 316 lines 17-20) and she testified she told Leroy Burcroff about the illegal cash payments and the campaign finance illegalities. (Appellant's Brief, p. 14, citing to MSJ, RE 154-4, Page ID # 2813-2814). Your Petitioner was told by Defendant Krampitz and Romulus employee Julie Wyjtolko that she was going to be given a "pink slip" in May of 2010 within days after she told them she would not lie to the Michigan State Police, and just days after employee Julie Wyjtolko was questioned by the Michigan State Police. (MSJ, RE 154-4, Page ID # 2783, p. 111 line 11-19 and at Page ID # 2790, p. 138 line 10-21 and p. 139 line 16-25). Petitioner testified as to Krampitz and Wojtylko, "[t]hey said they would give me a box to pack my pack my stuff if I didn't lie." (MSJ Response, RE 175-16, Page ID # 4658, p. 81 lines 18-19; *see also* p. 107 line 5-13 at Page ID # 4662, emphasis). Defendant Mayor Lambert came into the office " . . . ten minutes later", he also confirmed the pink slip was "just for show." (MSJ Resp., RE 175-16, Pg ID # 4658, p. 78 line 3 to line 18). After Petitioner was given that pink slip, and within 3 months of Petitioner being terminated, she told Mayor Pro Tem Burcroff about the illegal conduct in Romulus Mayor Lambert's office. (MSJ Response,

RE 175-16, Page ID # 4663, p. 112 line 12-p. 113 line 3). Burcroff then relayed to Defendant Lambert that Petitioner spoke with him about the illegal conduct of Lambert. (MSJ, RE 154-4, Page ID # 2777, p. 89 line 19 to p. 90 line 6). Defendant Krampitz then immediately put Your Petitioner on notice that Burcroff relayed the information to her as well, and Krampitz was upset:

> " . . . Betsey came out in front of my desk the first day I was back, because I had taken a vacation day, when Mr. Burcroff and I met and she looked right at me and said, "Just remember, Mr. Burcroff's a politician and he talks." And she looked at me, and it was-I just knew that she knew. And she walked out of my office and she slammed the door." (MSJ, RE 154-4, Page ID # 2874, p. 118 line 11-18, emphasis added).

Virginia Williams clarified Petitioner's speech as her complaints to Burcroff, and Lambert denounced those statements as being untrue, also illustrating at a minimum-a slight to Mayor Lambert's dignity, " . . . "government officials in general, . . . may not exercise their authority for personal motives, particularly in response to real or perceived slights to their dignity."" *Bloch v. Ribar*, 156 F.3d 673, 682 (6th Cir. 1998). On that basis alone, regardless of speech content, Petitioner's case moves to trial, yet the Majority failed to address or apply *Bloch*, *supra,* or *King, supra*,. Your Petitioner also detailed those complaints telling Burcroff of the illegal activity within Defendant Mayor Lambert's office:

> "I told him everything that was going on, from the campaign finance report, from the Mayor taking money . . . I informed him that they were holding this pink slip over my head . . . and I told them that I wouldn't lie to the Michigan State Police, and I asked him to help – . . . and I said, you know, "As Mayor"-"As Mayor Pro Tem, your job is to ask me to step down if he's doing something illegal or allegedly-to help or to intervene on behalf of myself, the other employees and the residents, because they deserve better than what they were getting."" (MSJ Resp., RE 154, Petitioner's dep., p. 112 line 12 to p. 113 line 3).
>
> Q. What other illegal activity did you report to Burcroff?
>
> A. I told him about the campaign finance report. I told him about the kickback money from Moe Subi. I told him about the ticket. I told him everything in my complaint, basically. (MSJ, RE 154-4, Page ID # 2813-2814).
>
> Burcroff then told Lambert:
>
> A. . . . he went to the mayor and told him about our meeting and all of the things I brought to him as mayor pro tem that he should have put a stop to. (MSJ, RE 154-4, Page ID # 2778, p. 90 lines 3-6.)

The Majority stated "Guzall stated that she believed Burcroff told Mayor Lambert about that conversation because Krampitz had warned her that "Burcroff's a politician and he talks." (App.5a). The

Majority's decision here however failed to apply the rest of the relevant facts favorable to Your Petitioner.

Burcroff was on the committee to determine the claimed lay-offs and thus had input as to Petitioner being "laid off" and discussed laying off Plaintiff only after she told him of the illegal activity of Lambert. (MSJ, RE 154-4, Page ID # 2786-2787, p. 124 line 13 through p. 125 line 1 and p. 126 line 1 through p. 127 line 23). Those facts and the below facts are relevant in supporting Petitioner's claims, and yet the Majority failed to apply those facts and the below facts in her favor:

> Q. All right. And do you know whether there were other persons discussed at that meeting?
>
> A. Julie told me I was the only person discussed at that meeting, that that was the first time that Mr. Burcroff brought my name up. (MSJ, RE 154-4, Page ID # 2787, p. 127 lines 19-23, emphasis).

"Statements exposing possible corruption in a police department are exactly the type of statements that demand strong First Amendment protection . . . ("[p]ublic interest is near its zenith when ensuring that public organizations are being operated in accordance with the law") . . . ". *See v. City of Elyria*, 502 F.3d 484, 493 (6th Cir. 2007), emphasis added, cites omitted. Ms. Williams properly concluded Petitioner was wrongfully fired, and in doing so did not speculate.

Furthermore, neither the Majority nor Appellees' addressed the law cited by Appellant Guzall at page 4 of her Appeal Brief, "Rule 801(d)(2)(A) provides that a statement is not hearsay if the statement is offered

against a party and is "the party's own statement in either an individual or representative capacity." Fed. R. Evid. 801(d)(2)(A)." *Jewell v. CSX Transp., Inc.*, 135 F.3d 361, 365 (6th Cir. 1998). Defendant's statements are thus admissions and the Majority determined otherwise in violation of that very law. *Id.*

The standard of review at the Sixth Circuit is that "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor", *Russo v. City of Cincinnati*, 953 F.2d 1036, 1042 (6th Cir.1992). Determining credibility is a function reserved for the jury, therefore the Majority's Opinion also conflicts with the law cited in *Russo, supra*, 1041-1042, as the Majority here chose to believe the Defendant's claim of financial distress in opposition to the overwhelming evidence against that claim. The Majority also refused to apply the overwhelming evidence of corruption perpetrated by Defendant Mayor Lambert illustrating further support for Appellant's claim.

E. The Defendants' Did Not Challenge Their Cited Illegal Conduct

Appellee Lambert did not challenge his illegal acts outlined by former Romulus Police Chief St. Andre illustrating motive, custom, habit and routine practice. (Appellant's Brief p. 19-20). Appellee Krampitz claimed " . . . Plaintiff presented no evidence to support claims of large illegal cash payments to Lambert or misuse of campaign funds", and yet at those pages 19-20 of Appellants' Brief are specific witness statements, documented cash payments and misuse of campaign funds. (Krampitz' Brief p. 10). (*See also* Appellant's Brief pages 41-42 citing record cites including RE

175 Page ID # 4487-4500; 4506-4508; 4513-4605, Plaintiff's Exhibits 5, 7, 9, 10, 11, 12, illustrating illegal and large cash payments up to $75,000 cash to Lambert). The $75,000 cash payment is located at RE 175-11 Page ID # 4559-4560. Bazzi also testified "I know that the City was so corrupt so I decide to grab a tape recorder . . . I was afraid one day . . . [if I did] . . . not obey Lambert's rules . . . ". *Id.*, Page ID # 4554. Bazzi also testified to a $10,000 payment to Lambert. *Id.*, Page ID # 4575. Krampitz' statement was not only an improper attempt to confuse the court but was false. Appellees' did not challenge their illegal acts involving Mr. Bazzi. Lambert did not challenge his illegal acts, motives, custom, habit and practices illustrated by Romulus Police Officer's Landry, Droege and Ladach. (Appellant's Brief p. 8-9, 23-24). Appellee's did not challenge that they had Romulus police officers sweep their offices, Alan Lambert's car and his wife's business for "bugs" once the State Police began investigating Romulus. *Id.*, p. 8.

The Majority here also avoided applying Defendants' motive to keep your Petitioner quiet as to their illegal activity, and avoided application of their full admissions, context and motive behind those statements. Former Romulus Police Officer Landry attested to Lambert's habit and practice of violating the law and threats to terminate Romulus employees:

> "I and other Romulus police officers were forced by Mayor Alan Lambert to give money to his campaign or we were told that Lambert would fire us. I am also aware Alan Lambert knocking doors during a campaign and a Romulus citizen indicated she would not be

> voting for him, and a few days later the Romulus police department raided that woman's home." (Appellant's Brief p. 8; MSJ Response, RE 175-3, Page ID # 4483, paragraph 5).

Moe Bazzi confirmed Officer Landry's detail of that woman's home being illegally raided by Lambert. (MSJ response, RE 175-11 Page ID # 4554-4555). Bazzi also testified, " . . . I was afraid the undercovers and the mayor, he might come in and, let's say, accuse me of something, you know, frame me like he treat people." *Id.*, at Page ID # 4555. Bazzi also tape recorded two illegal $3,500 cash payments he collected for Lambert. *Id.*, at Page ID # 4556-4558. Bazzi testified he was to pay Lambert $125,000 after Lambert pushed through Bazzi's new business plan in Romulus. *Id.*, at Page ID # 4561. Lambert told Bazzi to pay him $2,000 per month, "[y]ou can just open a magazine and put $2,000 in it and give me the magazine." *Id.*, at Page ID # 4567. Bazzi testified he paid Lambert the money. *Id.*, at Page ID # 4568.

The Michigan State Police also investigated Lambert's campaign finance reports finding many discrepancies and lack of record keeping as to cash on hand, as an example, "[t]he total cash on hand without supporting documentation is $15,700.00." (MSJ response, RE 175-12 Page *Id* # 4587). Another report states as to $3,000.00, "[i]t does not give any explanation as to where Alan Lambert originally obtained the money from". *Id.* Another report states, [t]here is no documentation covering the period from 5-10-10 to 6-4-10 giving no further indication as to the source of the funds covering the withdrawal of $13,008.00 on

6-4-10." *Id.*, at Page *Id* # 4589. Lambert had clear reason to keep Your Petitioner quiet.

Former Romulus Police Officer Droege stated:

> "I am personally aware of the fact that the City of Romulus retaliates against those people who would not do what the Official in Romulus wanted to be done, as an example, Officer Dwayne DeCaires. I am personally aware of the fact that the City of Romulus retaliates against those people who report illegal activity occurring in the City of Romulus by City Officials, as an example Officer Kevin Ladach." (Appellant's Brief p. 23; RE 175-1, Page ID # 4459, paragraph 3,).

Officer Ladach testified he endured retaliation after filing his complaint to the " . . . Attorney General's office", and after he filed his lawsuit against Romulus, and that when he speaks out in Romulus he is "retaliated against" and is now a " . . . target for discipline" after his complaints. (Appellant's Brief p. 23-24). Evidence of a person's routine practice to prove action in accord with habit or routine practice is allowed per FRE 406, and other acts evidence is allowed. *Griffin v. Finkbeiner*, 689 F.3d 584, 600 (6th Cir. 2012).

CONCLUSION

Your Petitioner was told she would be terminated if she did not lie for the Mayor once the Michigan State Police began their investigation. Petitioner was then retaliated against because she spoke out about the

illegal acts within the Defendant Mayor's office. If allowed to stand, the impact of the Majority decision in this case will deter public employees from speaking out about corruption within our government. Such a precedent is not acceptable.

This case presents an overwhelming amount of uncontroverted corruption and retaliation against Your Petitioner and other government employees in violation of the First Amendment. Without action by this Court the Majority's decision will improperly prevent access to the courts, create a chilling effect and manifest injustice. At a minimum, the Sixth Circuit's decision in this case must be overturned. Your Petitioner Marianne Guzall respectfully requests her petition for writ of certiorari be granted and that she be awarded all relief this Court deems appropriate in her favor.

Respectfully submitted,

LAWRENCE J. COOGAN
COUNSEL OF RECORD
4146 OAKWOOD BLVD.
MELVINDALE, MICHIGAN 48122
(313) 381-0044
LAWRENCEJCOOGANLAW@YAHOO.COM

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