12/20/2019 Case # 17-2417

Justice Sotomayor this is my

PETITIONER'S APPLICATION TO EXTEND TIME TO FILE A WRIT OF CERTIORARI FOR 60 DAYS FROM CASE # 17-2417 and CASE #19-1055

THAT I AM FILING UNDER THE PENALTY OF PERJURY

Justice Sotomayor, I John P. Greiner Jr, hereby state that the following matters are personally known to me, and if I was called upon to testify, I would be able to competently testify thereto: COMES NOW, the Affiant, John P. Greiner Jr, after being first duly sworn, deposes and states as follows:

AFFIDAVIT / STATEMENT OF FACTS AND STATEMENT OF THE CASE AND APPENDIX INDEX / PROOF OF SERVICE / and APPENDIX

STATEMENT OF FACTS

My name is John Greiner, I requested an extension of 30 days from you in case #19-5052. That case stemmed from a Michigan Employment Relations Commission hearing. You denied my request. Case #19-5052 is incorporated by reference.

Both defendants were also charged in the United States District Court. Then both Defendants were erroneously dismissed.

I filed an appeal in the 6th Circuit Court of Appeals and I have received erroneous orders from the 6th Circuit Court of Appeals. See appendix page (1a)

 Original

10/1/19 Order denying my motion for reconsideration. See appendix page (2a) is the courts order affirming the District Court decision.

The reason, or reasons, an extension of time is appropriate is contained in case #19-5052 statement of the case and the appendix. The pretext of my termination was based on lies. When repeated under oath they became perjury in administrative hearings. Additionally, attorneys have lied to judges, which is obstruction of justice and aiding and abetting. I have reported those actions with supporting documentation that proves the alleged perjury, obstruction of justice, and aiding and abetting to local law enforcement and I have not had the equal protection of the law that is guaranteed by the 14th amendment of the United States Constitution. Recently I have reported those actions to the Michigan State Police (MSP). Their investigation results and I will go to the Michigan Attorney General Dana Nessel for prosecution and representation. The statement of the case in 19-5052 had some errors and omissions; I corrected them. I have also expanded the statement of the case to include what has, and has not happened; since my filing of case #19-5052. Then I reprinted the revised statement of the case here.

STATEMENT OF THE CASE

This case of retaliation originated because I spoke, then I filed a grievance 4/20/2011 for the misappropriation of the distribution of overtime. The Supervisor first acted alone, retaliating, by using my work related disabilities against me. Disciplinary action forms were created and grievances were filed. There was a meeting on 5/18/2011 where I spoke, I reporting to the Defendants my belief that

the Supervisor had been paying people overtime who were not at work; and I submitted the first 20 page Harassment Complaint (20 HC). After speaking to the Defendants, their corruption and collusion became blatantly apparent. They consciously chose to retaliate against me by not representing me for exercising my first Amendment rights. That exposed their systematic deliberate long term corruption. The Defendants had waited until 7/12/12 to have the first Loudermill Hearing (LH) which violated the provisions of the United States Supreme Court. Those requirements for due process for public employees were outlined on 3/19/1985, which supported the provisions of due process contained within the 14th Amendment seen in the ***Cleveland Board of Education v Loudermill*** 470 U.S. 532, 84 L.Ed.2d 494. (CB of E v. L) Those requirements were unknown to me.

Those two actions represent the First, Fifth, and Fourteenth Amendment Constitutional Violation of Free Speech and Due Process. The other Crimes happened by the Defendants to maintain the Pretext of my termination.

I was terminated by a letter on **11/7/12**. I filed for unemployment. I also filed a whistleblowers law suit in Macomb County against Macomb County. Searching for a lawyer to help me; it was explained to me that I had a better retaliation case and was encouraged to file with the EEOC. After filing with the EEOC I realized it was the union that had failed me, by conspiring with the employer to protect the interests of my former coworkers. Then I filed the charges with the Michigan employment relations commission against the union and the employer. The employer provided information to unemployment stating that I was terminated for

insubordination. The actions of forging timesheets to steal overtime pay is explained on page (75a). The Employers witnesses committed perjury during the first and second unemployment hearings, to maintain the pretext of my termination. That perjury currently has me responsible for the repayment of $18, 264.21 at 1% interest per month. See appendix page (2a3). I felt that because the employers' witnesses committed perjury it was to my advantage, because it made there lies perjury. I first explain the actions of those witnesses to Macomb County prosecutor Eric Smith; 12/11/15. I waited until February and March of 2016 to report their crime of overtime fraud and perjury to other law enforcement. On March 4, 2016 I reported to a first lieutenant detective James Grady at the Michigan State Police Department. He informed me that that "I would not take something like this from you unless Macomb County or the local agency made the request. It either have to be that or the prosecutor's office or the Attorney General's office that would have to make that request for MSP to do the investigation." See page (77a). His direction put me between two immovable forces. He also said "Law enforcement does not have the final say ever. We just put the information together, do our investigation, collect the evidence, submitted to the Prosecutor's Office for review or the Attorney General's office for review, and that, it's out of our hands from there. They make the final decision. He continued And I'm going to tell you the Attorney General is going to say well this is a multijurisdictional case, you're going to tell them no it happened in Macomb County, and they're going to tell you to go to Macomb County and see what they'd be willing to do." (80a) page 13-7(to) -21. I

know what they did not do; but, I don't know what they did do. Grady stated, before, "they would have to make that request through the Prosecutor's Office or through the Attorney General's Office or contact the district commander from the State Police. That's how it works. Okay? (77a) page 3-16(to) -19. In late August 2017 I did file police reports in the various communities that the crime took place. I received a call September 1, 2017 from Sgt. Cappola of the Clinton Township Police Department. I explained "so eventually I went to the Macomb County Sheriff's Department," (84a). "I actually – okay, so I emailed the report that you have as Exhibit 1 to the Macomb County Sheriff on April 25th. I also emailed it to Eric's, Eric Smith," Cappola acknowledged yeah, the prosecutor. (85a). Because of their lack of action: Coppola stated "the Sheriff's office or the Macomb County prosecutor needs to be investigated then, and it's, there's an office that does that, that's the Michigan Atty. Gen.'s office." (86a).

Having had no results from the email to the Macomb County Sheriff's office or the prosecutor; I resubmitted the complaint with additional information that relied on the flash drive. I was encouraged by Deputy Eugene Miller to retain my documents until I was contacted by someone from the detectives assigned to the case.

September 7, 2017 I had a conversation with Detective Lieutenant Abro from the Macomb County Sheriff's Department. He said "I would probably give this to the, Attorney General. The problem is it would be a conflict of interest for us to

investigate our own attorney." "You right in your report charging the attorney with obstruction of justice; he's the one who represents us." (92a).

November 28, 2017 I mailed four police reports with an explanation accompanying each one consisting of a document 106 pages; to the Detroit and Lansing locations of the Michigan Attorney's Office. December 7, 2017 I received a call from Richard Cunningham who acknowledged "I'm the division chief for the criminal division. I explained "now in each of those documents it indicates that there's more documents to be provided and there's also a flash drive to be provided, so at some point in time I will anticipate hearing back from you when you are in a position to receive the balance of that information, because it is not an allegation. It is prove of the allegations in the balance of the pages. I'll need to probably go through it with you to explain some things." Mr. Cunningham stated: "You can produce it or anything you want, we will receive it. You're free to present us with anything you want." "You have a flash drive that you think would be helpful you can mail the flash drive here. I stated "what I think I need to do is bring it to you next Tuesday." (97a). I continued: "receiving the information that I have provided so far will, or does include all the police reports that I made at the different agencies." Mr. Cunningham stated: lets see, what do we got, 106 pages on the, 106 pages complaint is what it says here but it looks like there's more than 106 pages." "Okay. Anything else you want to present, you know, make, make (inaudible) to consider. (98a).

On January 3, 2018 I called Mr. Cunningham and stated: "I'm calling today to see if it's possible for us to set up an appointment for me to come" Mr. Cunningham stated "No." I said: "Pardon me?" He said: "No, Mr. Greiner, it's not. We've gone over everything you have here and there's no basis for us to become involved. Were just flat out not going to become involved in this at all." I stated: "Well I appreciate your telling me that, Mr. Cunningham. Unfortunately, I have conviction that you made your decision without having all the information." Mr. Cunningham replied: "Mr. Greiner I have enough information to see very clearly that were not going to become involved in this." He continued: "You can always submit more; I see no basis here for, for action on our part. We're always open to additional information but from what I see here, Mr. Greiner, I've gone through this, there is just no basis for our involvement." I stated: "Okay. You're basing that on what?" He stated: "On all the materials that I've read, Mr. Greiner, and I'm not going to debate this with you. I'm going to tell you, we are not taking any action." **(101a).**

On **1/10/18**, I received a letter from Richard Cunningham. Dated **1/3/18** He stated "I am simply not persuaded that there is a legitimate basis for the involvement of the Attorney General." I had stated above "now in each of those documents it indicates that there's more documents to be provided and there's also a flash drive to be provided, so at some point in time I will anticipate hearing back from you when you are in a position to receive the balance of that information, because it is not an allegation. It is prove of the allegations in the balance of the

pages. I'll need to probably go through it with you to explain some things." It was not my intention to persuade him; it was my intention to have the ability to prove by the documents that the perjury occurred. See exhibit page (3a). Because understanding the documents proves the perjury. On 1/24/18 I received a letter dated 1/17/18 from Richard Cunningham indicating that I could request a one-man grand jury. See appendix page (4a). Single decision makers have made the decisions that have me here today; and those decisions have been supported by the judges of the review courts. I need to be able to present my case to a jury, or, the United States Supreme Court; not a single decision maker again.

To date, the perjury of the individuals, has cost me, by my lost wages for the past 7 years to be over 350,000, not counting Social Security contributions, or, retirement contributions; and the potential $18, 264.21 at 1% interest per month for the repayment of unemployment.

Additionally important to mention is the fact that I have been eligible to collect my defined benefit pension starting 12/1/12. The amount I can currently collect is 1,103.70 on option A-Joint and 100% Survivor. That means, by my election to resolve this wrongful termination I have 85 months of uncollected benefits totaling 93,814.50. Making my total loss to date at least 443,815.50; in addition to the return of the $18, 264.21 at 1% interest per month for the repayment of unemployment. Also, I have not asked my friend Debbie to marry me yet; because, if I started to collect my pension now, I could never add her, as my survivor later.

Knowing that the police reports that I filed, with the supporting documentation, prove, I was the victim of the defendant's perjury. Knowing that Richard Cunningham had closed my case prematurely. Remembering what Detective Grady stated, before, "they would have to make that request through the Prosecutor's Office or through the Attorney General's Office or contact the district commander from the State Police. That's how it works. Okay? (77a) page 3-16(to) - 19. Knowing that I want and need an attorney, knowing that the (MSP) will investigate Macomb County when there is a conflict of interest, I started writing to the district commander for the (MSP), with the intention that they will investigate this, and presented the findings to the Attorney General; Dana Nessel. I wrote:

Dear Captain Thomas Deasy, of the Michigan State Police, 2nd District Special Investigations. I have been the victim of Macomb County Government Corruption that has spilled into Oakland and Wayne counties. I have reported this corruption and have been redirected and ignored. I provide the following Statement of facts/Narrative/Affidavit/Exhibit Index, and Exhibits, to support the assertion that I have not had equal protection of the law that is guaranteed by the United States Constitution. Individuals have Obstructed Justice; and, Aided and Abetted, so that this corruption has proceeded up to, and is filed in the United States Supreme Court.

Having received the 6th circuit order on **10/1/19** supporting the District Court decision, stating that, "Upon review, we conclude that we did not overlook or miss apprehend any point of law or fact. Fed. R. App. P. 40(a)(2)." See appendix page

(1a). Responding to that order I filed a motion for reconsideration, and petition for an en banc hearing, on 10/15/19, with two exhibits. Exhibit 2 is expressly included to correct the misperception represented by Sergeant Russell seen on pages 49, supported by Exhibit 50 on page 324: and on page 50, supported by Exhibit 52 seen on page 333: and on page 52 supported by Exhibit 53 seen on page 335: and on page 63 supported by Exhibit 63 seen on page 353, and on page 66 supported by Exhibit 57 seen on page 355. See appendix page (5a).

I also asked my friend, Father Dale Redwanski, if he would allow me the time to explain exhibits to him so that he could sign an affidavit. He agreed. See appendix page (6a). In addition I asked Father Dale, to explain how we met, and how we came to discuss the Bible stories. See appendix page (7a) I have also expressed to Father Dale my sentiments that I presented in the introduction of the United States Supreme Court introduction of case #19-5052. There I testified that there are 2 stories describing the virgin birth, and that, both cannot be true. I have also discussed the story in Daniel, of Shadrach, Meschach and Abednego with Father Dale. Father Dale said "I love that story." I said "I hate that story." Then I gave him a copy of Bart Dobben story where he burned his children to death; in a foundry in Muskegon Michigan. See appendix page (8a).

On 10/16/19 I went to the (MSP) Metro North Post to file a police report, with the supporting documentation, being the letter to Captain Deasy, without the motion attached. I spoke with the detective Beardsley who challenges the veracity of the letter I received from Sheriff Wickersham dated 9/11/19, seen as, page 506,

and, document 92-5, Page ID 62. Beardsley stated "That's not the proper method of requesting (MSP) to help with an investigation, and every single Police Department around knows the proper method, and that's not it. They would never send someone properly just to come down here and say here's the letter. That letter could have been typed by you I have no way of knowing." I testified in the letter to Captain Thomas Deasy, and I am testifying here, to you, under the penalty of perjury. I received that letter from the United States Postal service on **9/14/2019**.

On **11/22/19** I return to the (MSP) Metro North Post with the original letter and envelope. I spoke with a Sergeant J Rider. He asked me "What brings you here today?" With the letter in hand, I stated, "This letter brings me here today." We discussed the letter and the role of the (MSP). With Debbie's sworn testimony in affidavit format regarding her ability to see the perjury; I asked Sergeant Rider, if I called Sergeant Russell back from the Southfield Police Department and explained to him that he needs to recognize that this perjury exists, and that, Debbie is aware of it and she sees it; and I go back and meet with him would you send someone from the (MSP)? Rider stated "Were not going to send a trooper over there with you. I see no positive conclusion for you to go over; you don't want a negative charging decision from any local prosecutor." His statement reinforces my attempt to have this presented to the Michigan Attorney General, Dana Nessel.

On **11/26/19** I went to the (MSP) 2nd District special investigations office. I asked to speak to Captain Thomas Deasy to make a police report. A Detective/ Sergeant Henry met me and indicated that he would take the police report. Henry

stated "This is the county's attorney that you believe is lying. He's not under oath he's not on the stand. So he doesn't have to tell the truth." I started to laugh out loud. Henry said "He's an attorney." I said "My God, Sergeant Henry I just want to say to you he is completely obligated to tell the truth in the oath of office that he took and the oath that he took it does not prescribe that he has the ability to lie to the judge that is called fraud on the court." Henry responded "Ok." I continued "That is the charge I'm charging him with; and fraud on the court is obstruction of justice." I did leave the Wickersham letter with him, the supporting documents, and two flash drives; **(5a)**, and I did get a police report # of SIS-799-19. The lawyer's oath in plain English, clearly state "I will pursue my client's claims with true and honor: I will never mislead the judge" **(9a)**. Fraud on the Court is clearly defined in appendix page **(10a)**.

The Sheriff Wickersham letter states that I am asking for a criminal investigation against John Schapka. Which I am because he lied to the judge. The proof that he lied to the judge was, or is, in the April 25, 2017 email that I sent to Sheriff Wickersham and Macomb County prosecutor Eric Smith. See page 45 supported by Exhibit 48, page 319, or page ID, document 92-3, page ID 89. Also there is, or was, enough direction in attachment 8 of the 106 page document I sent to the Attorney General; for Richard Cunningham to do the investigation and see that Attorney John Schapka had lied to the judge. See appendix page **(10a1)**

Giving Henry the benefit of the doubt, I will provide him with the appendix pages **(9a)** and **(10a)**.

Although, Wickersham's letter is deficient, it does not even mention the perjury that is involved by the other Macomb County employees during their depositions. Or the substance of my termination which was the pretext that was created by my coworkers that became perjury when they restated it under oath in Southfield.

Henry and I agreed to meet again, and we did on **12/6/19.** I brought the supporting documentation with the police reports that proves the perjury of the individuals. During the meeting Henry was overwhelmed with the evidence. He resisted wanting to call it perjury. Perjury does have elements; and those elements are all present. A person took an oath to truthfully testify, declare, depose, or certify, verbally or in writing; The person made a statement that was not true; The person knew the statement to be untrue; The person made the false statement willfully; and The subject matter of the statement was material to the preceding in which it was made. See appendix page **(11a)**. Michigan perjury laws states "Perjury is considered a crime against justice because it jeopardizes the integrity of the legal system by corrupting it with lies and deceit. In Michigan a defendant is guilty of perjury when all of the following have been met: The defendant is legally required to take an oath in a legal proceeding; The defendant took the oath; The defendant made a false statement while under oath; and The defendant knew that the statement was false." See appendix page **(12a)**. I will provide this information to Henry as well. Henry requested that I put together a summary of the individual's perjury in a concise format so that he is able to make a more direct presentation to

a prosecutor. I indicated to Henry that I will do that, but I have to make this request for an extension of time; and, I have to write a writ of certiorari in the event that I am not granted an extension. Then I also indicated to Henry that I was not willing to let this go to an individual prosecutor; I want the information presented to the Michigan Attorney General Dana Nessel; and I want to be present during the presentation. No one knows the facts of this case like I do; and I need to be sure that Dana Nessel acknowledges the perjury, and states that she will prosecute them for the crime of perjury; before the presentation ends. Those details have not been arranged yet.

On **12/3/19** former Livingston County District Court judge Teresa Brennan has pleaded guilty to perjury. "This defendant violated the very tenets we as a society hold dear: truth, honor and justice," Attorney General Dana Nessel said in a statement. She made a mockery of her oath of office and undermined the integrity of the bench." Brennan is scheduled to be sentenced on January 17." **(13a)** Brennan did what she did, because she thought she could get away with it. The individuals mentioned in my letter to Captain Deasy, and individuals who have lied under oath and lied to the judge thought they could get away with it too; and they have so far.

In your biography it states "Sotomayor's first leanings towards the justice system began after watching an episode of the television show Perry Mason. When a prosecutor on the program said he did not mind losing when a defendant turned out to be innocent, Sotomayor Later said to the New York Times that she made a quantum leap: if that was the prosecutor's job, then the guy who made the decision

to dismiss the case was the judge. That was what I was going to be." See appendix page (14a). With the attitude, to correct, mistakes that are made by judges; I could not have asked for a better judge. Your experience in the prosecutor's office prosecuting criminals demonstrates you are willing to enforce the law. Your pro bono work illustrates your commitment to the underprivileged. Your decisions on important cases shows your willingness to make long-term, substantial, decisions for the betterment of our society. When you wrote "We must not pretend that the countless people who are routinely targeted by police are "isolated." (14a4). You are aware that the police can decide prematurely how they're going to treat someone. The courts can too.

The issue in this case, and this request address the essence of our judicial system. The equal protection of the law; and the enforcement of the law. My use of the vulgar word, perjury, has caused retaliation for my speech. I could have, said, this case needs to be returned to the district court because of the mendacity of the defendants. I described their actions as they are, perjury. Which they broke the law when they chose to lie under oath. The rule, or laws, are contained within this request. It is the application of those rules that I see from you; so that I can have a good conclusion, for myself, and to set a president for others. My actions have prevented me the equal protection of the law. Their actions have violated the First, Fifth, and Fourteenth Amendment of the Constitution; violation my Free Speech and Due Process. The other Crimes happened to maintain the Pretext of my termination.

When I say the traditional Catholic grace before meals; I say, thank you, for blessing us O Lord, with these thy gifts, which we are about to receive, through thy bounty, through Christ, our brother, the example, amen; and I believe, what is written in the (Bible) in Matthew 20:26, there it is recorded to say what Jesus said "With men this is impossible; but with God all things are possible." I also believe I am about our father's business; being an example, it seems that your life demonstrates that same commitment too. It is for these reasons that I pray that you will honor this request and grant my petition.

Further, Affiant saith not.

John P. Greiner Jr, Affiant

John P. Greiner; Jr.

Subscribed and sworn to before me

This 21 day of December, 2019

Jamie Lynn Penzien

Notary Public

Saint Clair County, Michigan

JAMIE LYNN PENZIEN
Notary Public, State of Michigan
County of Saint Clair
My Commission Expires 02-21-2021
Acting in the County of Macomb

My Commission Expires: 02-21-2021

Appendix index

(1a) 10/1/2019 order from United States Court of Appeals denying rehearing

(2a) 8/16/2019 order from the United States Court of Appeals supporting the District Court decision

(2a1) 2/22/2019 order from United States Court of Appeals denying my appeal

(2a2) 3/21/2019 order from United States Court of Appeals denying as late

(2a3) unemployment restitution notice form

(3a) 1/03/ 2018 letter from Richard Cunningham

(4a) 1/17/2018 letter from Richard Cunningham

(5a) R 92 Plaintiff's Motion for Reconsideration of Rehearing and Petition for an En Banc Hearing to 6th Cir R90-2. Affidavit, Statement of Facts, Exhibits and Exhibit Index

(6a) Affidavit from Father Dale Redwanski, acknowledging Southfield perjury

(7a) Affidavit from Father Dale Redwanski, explaining, and supporting, my free speech

(8a) Bart Dobben Muskegon Michigan deaths and foundry

(9a) The plain English lawyers oath

(10a) Fraud on the court law and legal definition

(10a1) Attachment #8 of the 106 pages sent to the Michigan Attorney General

(11a) Definition of perjury

(12a) Michigan perjury laws

(13a) Former judge Teresa Brennan pleads guilty to perjury

(14a) Justice Sonia Sotomayor's Biography

Proof of Service

We John P. Greiner, Jr. and Debbie L. Stradling being first duly sworn, deposes and states that on, 12/21/2019, we did personally deposit with the United States Post office ~~a copy~~ Three copies of Petitoner's Application to Extend Time to file a Writ of Certiorari for 60 Days from case #17-247 and case # 19-1055 via first class mail, to United States Supreme Court at this address 1 First Street NE Washington DC. 20543 by inclosing a copy, the same as Mr. Greiner's copy, in a sealed ~~envelope~~ Box with first-class postage fully paid and by depositing that sealed ~~envelope~~ Box into the United States Postal Service depository system.

Sincerely

By John P Greiner, j
John P. Greiner; Jr.

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No. 17-2417

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 01, 2019
DEBORAH S. HUNT, Clerk

JOHN P. GREINER,

Plaintiff-Appellant,

v.

MACOMB COUNTY, MI; MICHIGAN AFSCME COUNCIL 25 (AFL-CIO),

Defendants-Appellees.

ORDER

Before: NORRIS, SILER, and SUTTON, Circuit Judges.

The plaintiff seeks rehearing of our decision of August 16, 2019 denying his motions to reconsider and affirming the district court's decision. The late petition for rehearing is accepted and considered as if timely filed. Upon review, we conclude that we did not overlook or misapprehend any point of law or fact. Fed. R. App. P. 40(a)(2).

The petition for rehearing is DENIED.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-2417

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN P. GREINER, Plaintiff-Appellant, v. MACOMB COUNTY, MI; MICHIGAN AFSCME COUNCIL 25 (AFL-CIO), Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

O R D E R

Before: NORRIS, SILER, and SUTTON, Circuit Judges.

John P. Greiner, a pro se Michigan litigant, appeals the district court's orders granting summary judgment in favor of the defendants, the Charter County of Macomb, Michigan ("Macomb County") and the Michigan Council 25 American Federation of State, County, and Municipal Employees, AFL-CIO ("AFSCME") in this action brought pursuant to 42 U.S.C. § 1983. He has also filed: (1) a motion for the appointment of counsel; (2) two motions for reconsideration of this court's prior order that denied his motion to reconsider another prior order that denied his motion to hold this appeal in abeyance; and (3) a motion for reconsideration of this court's prior order that denied his motion to hold the submission of this appeal in abeyance pending the filing of an amended reply brief. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In November 2000, Macomb County hired Greiner to work as a highway maintenance person with the Macomb County Road Commission. He was employed by Macomb County until his termination on November 7, 2012. During his employment, Greiner was a member of AFSCME.

The following facts concerning Greiner's employment and termination are taken from the summary judgment evidence. Approximately two years after Greiner began his employment, his supervisor drafted a report that detailed Greiner's poor work performance and unsafe behavior. For instance, the report indicates that Greiner often mishandled equipment and was uncooperative with his coworkers. In January 2003, Greiner's driving privileges were revoked after he backed his truck into another truck. His driving privileges were fully reinstated in October 2005 after he completed a defensive driving course.

Greiner then received two promotions: one in October 2005 that promoted him to a highway maintenance leader, and another in June 2007 that promoted him to a heavy truck driver.

In December 2007, Greiner received a written reprimand after he caused damage to a county truck. Shortly thereafter, he received a warning after he pulled down a cable wire because the dump box on his truck was too high. Then, in April 2009, he received another warning after he damaged a county building with a truck.

On December 8, 2009, Greiner drove a truck through a red light, striking the driver's side of another car. The driver of that car, which was heavily damaged, suffered a fractured leg. Greiner was placed on administrative leave until February 3, 2010.

On the day that he was taken off of administrative leave, Greiner signed: (1) a memorandum of understanding, in which he agreed to (a) serve twenty days of unpaid leave, (b) return to work as a highway maintenance person in the sign department, and (c) not operate any county vehicles or equipment; (2) a Last Chance Agreement, in which he agreed that "[a]ny further acts of negligence, insubordination, or unsafe activity on [his] part shall be cause for his immediate discharge"; and (3) another memorandum of understanding, in which he agreed that he could challenge the first memorandum of understanding and the Last Chance Agreement only if he was found not guilty of the charges related to the December 8, 2009, accident. Although, after

the accident, Greiner was ticketed for "disobey[ing] a traffic control device," he was ultimately found responsible for "speeding 1-5 over."

Greiner returned to work on or about March 3, 2010, as a highway maintenance person in the sign department. The job duties of a highway maintenance person include performing manual labor; cutting trees; moving, hauling, and handling equipment; and operating power tools, such as jack hammers. An essential function of a highway maintenance person is lifting or moving materials weighing up to fifty to eighty pounds.

Upon returning to work in March 2010, Greiner began to submit doctors' notes indicating that he needed work restrictions due to certain health limitations. In particular, on March 23, 2010, Greiner provided his supervisor with a note from his physician, who restricted Greiner to lifting no more than twenty pounds and advised that he not stoop, crawl, or climb and not stand or walk for more than four hours. He then presented Macomb County with notes from his physician that precluded him from working until June 3, 2010. In one of the notes, Greiner's physician reiterated the foregoing restrictions.

On June 1, 2010, Greiner received an independent medical examination from another physician, who cleared him to return to work without restrictions. Instead of returning to work, Greiner used personal and sick time and did not return to work until July 23, 2010. During this time off, Greiner's physician wrote him another note that reiterated the restrictions listed in the foregoing paragraph. According to Greiner, these restrictions were in effect from his return to work on July 23, 2010, through the remainder of his employment. However, in November 2010, the physician who evaluated Greiner during his June 1, 2010, independent medical examination concluded again that Greiner was able to work without restrictions. Nevertheless, Greiner continued to submit notes from his physician indicating that he needed the restrictions identified above.

Thereafter, Greiner received several warnings, reprimands, and suspensions related to his unsafe work conduct and refusal to perform certain tasks. For instance, he was suspended in May 2011 after he injured himself while operating a chainsaw and failed to report his injury to his supervisors.

In 2012, Greiner attended three *Loudermill*[1] hearings regarding his insubordination. At each hearing, Greiner was accompanied by at least one union representative who spoke on his behalf. The topics and results of the hearings were as follows:

- On July 12, 2012, the first *Loudermill* hearing was held regarding allegations that Greiner had failed to perform certain job duties. After the hearing, Macomb County concluded that Greiner had been insubordinate for failing to perform his job duties and suspended him for three days.

- On August 13, 2012, the second *Loudermill* hearing was held regarding allegations from Greiner's coworkers that he had been inefficient and incompetent when installing signs. After the hearing, Macomb County found the allegations credible and suspended Greiner for ten days.

- On October 19, 2012, the third *Loudermill* hearing was held regarding additional allegations from Greiner's coworkers that he had been insubordinate while flagging traffic and had refused to help lift a guardrail onto a trailer. After the hearing, Macomb County terminated Greiner. The termination letter provides that Greiner was terminated because he was "insubordinate and demonstrate[d] unsatisfactory job performance as evidenced by the recurrent carelessness and negligence in performing [his] daily functions."

Greiner's collective bargaining agreement with AFSCME and Macomb County allowed AFSCME to initiate arbitration proceedings to respond to any grievance. Greiner filed a grievance with respect to his termination, but AFSCME declined to pursue arbitration proceedings, reasoning that (1) there was a lack of evidence to refute Macomb County's allegations against Greiner and (2) the Last Chance Agreement prohibited Greiner from filing a grievance regarding his termination in any event.

Greiner filed this action in 2014. Greiner's complaint, as amended, asserts the following causes of action against the defendants: (1) violation of the Americans with Disabilities Act ("ADA"); (2) violation of the Michigan Persons with Disabilities Civil Rights Act ("PWDCRA"); (3) violation of the Age Discrimination in Employment Act of 1967; (4) (a) violation of his due

[1] *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985). The purpose of a *Loudermill* hearing is to provide an employee an opportunity to present his side of the story before the employer makes a decision regarding any potential discipline.

process rights and (b) retaliation, in violation of the First Amendment; (5) breach of contract; (6) concert of action; (7) civil conspiracy; and (8) intentional infliction of emotional distress.[2]

After discovery, the defendants each filed a motion for summary judgment. The district court issued an order in which it (1) granted AFSCME's motion as to all claims and (2) granted Macomb County's motion as to all claims except Greiner's retaliation claim. Shortly thereafter, the district court granted Macomb County's supplemental motion for summary judgment with respect to the retaliation claim. Greiner now appeals the district court's judgment.

Forfeiture on Appeal

Greiner's appellate briefs do not raise any specific challenge to the district court's order granting summary judgment in favor of the defendants on his claims for violation of the Age Discrimination in Employment Act, breach of contract, concert of action, civil conspiracy, and intentional infliction of emotional distress. The "failure to raise an argument in [an] appellate brief constitutes a waiver of the argument on appeal." *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 311 (6th Cir. 2005). Although pro se filings should be liberally construed, "pro se parties must still brief the issues advanced and reasonably comply" with the briefing standards set forth in Federal Rule of Appellate Procedure 28. *Bouyer v. Simon*, 22 F. App'x 611, 612 (6th Cir. 2001) (citing *McNeil v. United States*, 508 U.S. 106, 113 (1993)); *see also Geboy v. Brigano*, 489 F.3d 752, 766-67 (6th Cir. 2007) (concluding that plaintiff had "waived any possible challenge to the dismissal" of certain claims by failing to "advance[] any sort of argument for the reversal of the district court's rulings on these matters"). In particular, an appellant's brief "must contain the 'appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies.'" *Bouyer*, 22 F. App'x at 612 (quoting Fed. R. App. P. 28(a)).

Greiner's briefs do not meet these requirements. Although Greiner challenges (albeit scantly) the district court's orders granting summary judgment against him on his ADA, PWDCRA, due process, and retaliation claims, he does not raise any argument challenging the

[2] Greiner's second amended complaint also included claims for "employment discrimination," "retaliatory discharge," and violation of Title VII of the Civil Rights Act, but he voluntarily dismissed those claims before summary judgment briefing.

district court's decision with respect to the claims identified in the preceding paragraph. Instead, he merely recites some of the facts that are contained in the record (and some that are not). This is insufficient to satisfy his obligations under Rule 28. Accordingly, we find that Greiner has forfeited his right to appellate review of the district court's order granting summary judgment in favor of the defendants on those claims.

Standard of Review

We review the district court's grant of summary judgment de novo. *Laster v. City of Kalamazoo*, 746 F.3d 714, 726 (6th Cir. 2014). Summary judgment is appropriate when the evidence presented 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).

Section 1983

To prevail on a § 1983 claim, a plaintiff must show that: (1) he was deprived of a right, privilege, or immunity secured by the Federal Constitution or laws of the United States, and (2) the deprivation was caused by a person acting under color of state law. *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155-57 (1978).

Claims for Violations of the Americans with Disabilities Act and the Michigan Persons with Disabilities Civil Rights Act

Although Greiner's complaint alleged that the defendants violated the ADA and PWDCRA when they (1) failed to accommodate his alleged disability and (2) terminated him because of his disability, on appeal, he argues only the first point. To establish a prima facie failure-to-accommodate claim, an employee must show that: "(1) he is disabled under the ADA; (2) he is otherwise qualified for the position, with or without a reasonable accommodation; (3) his employer knew or had reason to know of his disability; (4) he requested a reasonable accommodation; and (5) the employer failed to provide the reasonable accommodation." *Aldini v. Kroger Co. of Mich.*, 628 F. App'x 347, 350 (6th Cir. 2015). "The PWDCRA 'substantially mirrors the ADA. . . .'" *Donald v. Sybra, Inc.*, 667 F.3d 757, 764 (6th Cir. 2012) (quoting *Cotter v. Ajilon Servs., Inc.*, 287 F.3d 593, 597 (6th Cir. 2002)).

Even assuming that Greiner is "disabled," he has failed to raise a genuine issue of fact regarding whether he was "otherwise qualified for the position, with . . . a reasonable accommodation."[3] A reasonable accommodation is defined, in part, as "[m]odification[] or adjustment[] to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable[s] an individual with a disability who is qualified to perform the essential functions of that position." 29 C.F.R. § 1630.2(o)(1)(ii). A plaintiff who sues for a violation of this prohibition bears "the initial burden of proposing an accommodation and showing that that accommodation is objectively reasonable." *Kleiber v. Honda of Am. Mfg., Inc. W*, 485 F.3d 862, 870 (6th Cir. 2007) (quoting *Hedrick v. W. Reserve Care Sys.*, 355 F.3d 444, 457 (6th Cir. 2004)).

The district court properly found that Greiner failed to show that any of his proposed accommodations were reasonable. Greiner's first proposed accommodation—that he be entitled to assistance from coworkers—is not reasonable because "employers are not required to assign existing employees . . . to perform certain functions or duties of a disabled employee's job which the employee cannot perform by virtue of his disability." *Bratten v. SSI Servs., Inc.*, 185 F.3d 625, 632 (6th Cir. 1999).

Greiner's second proposed accommodation was that he be assigned to the sign truck every day. But Greiner conceded that, when working on the sign truck, he was required to lift more than twenty pounds and climb, and the restrictions imposed by his physician indicated that he must not lift more than twenty pounds nor climb. In addition, as thoroughly explained by the district court, Greiner's proposed accommodation would have compelled his higher-classified coworkers to cover his lower-classified work on a permanent basis, which would have violated rights of the higher-classified coworkers under the collective bargaining agreement. For these reasons, Greiner's proposed accommodation of being assigned to the sign truck is unreasonable.

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[3] Greiner does not contend that he was qualified for his position *without* reasonable accommodations.

Finally, Greiner's proposed accommodations that steps be added to the sign truck and that the chain on the post puller be lowered for him are not objectively reasonable when viewing Greiner's essential job functions as a whole. Although these accommodations may have helped him get into the sign truck and pull posts, he has not shown that these accommodations would have allowed him to perform other essential functions of a highway maintenance person—e.g., lifting over twenty pounds. *See EEOC v. Ford Motor Co.*, 782 F.3d 753, 766 (6th Cir. 2015) (holding that the employee's proposed accommodation "was not reasonable because it would have removed at least one essential function from her job"); *Wohler v. Toledo Stamping & Mfg. Co.*, No. 96-4187, 1997 U.S. App. LEXIS 27183, at *21-22 (6th Cir. Sept. 30, 1997) (providing that a plaintiff makes a prima facie showing under the ADA where he shows, among other things, "that he is capable of performing *all* essential functions of the employment position that such individual holds or desires" (emphasis added)).

Because Greiner has not shown that he was qualified for his position, he failed to establish a prima facie claim for violation of the ADA. Summary judgment in favor of the defendants on this claim therefore was proper.

Due Process Claim

Because there is no dispute that AFSCME is not a state actor, the district court properly granted summary judgment in its favor on Greiner's due process claim. *See Moore v. Int'l Bhd. of Elec. Workers Local 8*, 76 F. App'x 82, 83 (6th Cir. 2003) (finding that a union is not a state actor).

Although Macomb County is a state actor, the district court properly granted summary judgment in its favor on Greiner's due process claim as well. Greiner's primary argument on appeal is that he was denied due process because he was not afforded a post-termination *Loudermill* hearing. This argument lacks merit. "[G]rievance procedures provided by a collective bargaining agreement can satisfy a plaintiff's entitlement to post-deprivation process." *Farhat v. Jopke*, 370 F.3d 580, 596 (6th Cir. 2004) (quoting *Hennigh v. City of Shawnee*, 155 F.3d 1249, 1256 (10th Cir. 1998)). Here, Greiner's collective bargaining agreement granted him the ability to file a grievance to challenge his termination, and it permitted AFSCME to pursue arbitration

before a neutral decisionmaker to review that grievance. "The fact that [AFSCME] elected not to pursue arbitration on [Greiner's] behalf does not amount to a deprivation of [his] right to [post-termination] due process by [Macomb County]." *Rhoads v. Bd. of Educ.*, 103 F. App'x 888, 897 (6th Cir. 2004).

Greiner also argues that his pre-termination *Loudermill* hearings were insufficient because he was not provided with any witnesses or evidence against him. This argument again lacks merit. As aptly explained by the district court, Greiner had sufficient notice of the allegations against him, knew that the allegations were made by coworkers who would be the key witnesses against him, and failed to identify any specific, non-disclosed evidence that unfairly prejudiced him. Greiner also appears to argue that the defendants violated his due process rights by not affording him a *Loudermill* hearing before his driving privileges were temporarily revoked in January 2003. But Greiner neither raised this allegation in his complaint nor argued it in his briefs in opposition to the defendants' motions for summary judgment, and we will not consider new allegations raised for the first time on appeal. *See, e.g.*, *ATC Distribution Grp. v. Whatever It Takes Transmissions & Parts, Inc.*, 402 F.3d 700, 713 n.8 (6th Cir. 2005). Because Greiner offers no other meaningful argument that his disciplinary and termination proceedings violated due process as set forth in *Loudermill*, summary judgment therefore was properly entered against Greiner on this claim.

Retaliation Claim

Summary judgment on Greiner's retaliation claim was properly granted in favor of AFSCME, a private entity. *See Moore*, 76 F. App'x at 83.

To prevail on his retaliation claim against Macomb County, Greiner

> must first make a prima facie case of retaliation, which comprises the following elements: (1) he engaged in constitutionally protected speech or conduct; (2) an adverse action was taken against him that would deter a person of ordinary firmness from continuing to engage in that conduct; (3) there is a causal connection between elements one and two—that is, the adverse action was motivated at least in part by his protected conduct. If the employee establishes a prima facie case, the burden then shifts to the employer to demonstrate by a preponderance of the evidence that the employment decision would have been the same absent the protected conduct. Once this shift has occurred, summary judgment is warranted if, in light of the evidence viewed in the light most favorable to the plaintiff, no reasonable juror could fail to return a verdict for the defendant.

Benison v. Ross, 765 F.3d 649, 658 (6th Cir. 2014) (quoting *Dye v. Office of the Racing Comm'n*, 702 F.3d 286, 294-95 (6th Cir. 2012)).

Greiner claims (1) that, one day before the third *Loudermill* hearing, he reported to Macomb County his belief that his coworkers were engaging in overtime fraud and (2) that he was terminated for having reported the alleged overtime fraud scheme. Macomb County counters that Greiner "was terminated for good cause based on his history of poor work performance and insubordination."

Assuming for purposes of this appeal that Greiner established a prima facie case of retaliation, Macomb County was nevertheless entitled to summary judgment because it proved by a preponderance of the evidence that it would have terminated Greiner regardless of his protected speech. As set forth above, throughout his employment, Greiner had numerous disciplinary issues arising from his insubordination, negligent operation of county equipment, unsafe behavior, and inability to cooperate with his coworkers. His termination letter expressly provides that he was terminated because he was "insubordinate and demonstrate[d] unsatisfactory job performance as evidenced by the recurrent carelessness and negligence in performing [his] daily functions." Robert Hoepfner, who is the Director of the Macomb County Department of Roads and who made the decision to terminate Greiner, testified that Greiner was terminated because "[h]e was not performing his functions as an employee" based on "an accumulation of incidents." Hoepfner terminated Greiner based on the recommendation of Karen Bathanti, the Service Director for the Human Resources and Labor Relationship Department, who investigated the allegations against Greiner and participated in all three *Loudermill* hearings. Greiner has not refuted this evidence showing that he was terminated because of his persistent insubordination and not because he reported alleged overtime fraud. On this record, no reasonable jury could fail to return a verdict for Macomb County. *See Benison*, 765 F.3d at 658.

Motion for the Appointment of Counsel

Greiner's motion for the appointment of counsel on appeal must be denied. A plaintiff does not have a constitutional right to counsel in a civil case; rather, the appointment of counsel is

"justified only by exceptional circumstances." *Lavado v. Keohane*, 992 F.2d 601, 605-06 (6th Cir. 1993). Greiner has not demonstrated any exceptional circumstance that warrants the appointment of counsel, and the appointment of counsel at this stage would not alter the evidence showing that the defendants were entitled to judgment as a matter of law.

Motions for Reconsideration

We also deny Greiner's motions for reconsideration. On May 2, 2019, we issued an order that denied Greiner's motion to hold this appeal in abeyance pending the resolution of a motion to reconsider that he filed in another appeal. Greiner filed a motion to reconsider, which we denied on May 29, 2019. In the present motions, Greiner asks us to reconsider the May 29, 2019, order. But his motions lack merit. The other case that was pending in this court is now closed, and, on May 2, 2019, Greiner was admonished that no further filings would be accepted in that case. Thus, there is no basis on which to hold this case in abeyance.

The same can be said of Greiner's motion for reconsideration of this court's July 3, 2019, order that denied his motion to hold the submission of this appeal in abeyance so that he could file an amended reply brief after the United States Supreme Court rules on his petition for a writ of certiorari. This appeal has been pending for nearly two years and has been fully briefed by the parties. This court has also granted numerous briefing extensions to Greiner in the past. Because we find that another extension is unwarranted, and that the case is ripe for a decision, we deny Greiner's motion for reconsideration.

Accordingly, we **DENY** the motions for the appointment of counsel and for reconsideration and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Additional material from this filing is available in the Clerk's Office.