

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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WISCONSIN CARRY, INC.,  
KRYSTA SUTTERFIELD, and  
NAZIR AL-MUJAAHID,

Plaintiffs,

v.

Case No. 12-C-352

CITY OF MILWAUKEE, JOHN CHISHOLM, in  
his official capacity as District Attorney of  
Milwaukee County, Wisconsin, JOHN BARRETT,  
in his official capacity as Clerk of Courts for the  
Circuit Court of Milwaukee County, Wisconsin,  
OFFICER DOE 1 and OFFICER DOE 2,

Defendants.

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DEFENDANT DISTRICT ATTORNEY CHISHOLM'S ANSWER TO  
PLAINTIFFS' AMENDED COMPLAINT

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Defendant John Chisholm, in his official capacity as District Attorney of Milwaukee County, Wisconsin ("Defendant District Attorney Chisholm"), appears in this matter by his attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Christopher J. Blythe, and submits his Answer to Plaintiffs' Amended Complaint as follows:

1. Defendant District Attorney Chisholm admits that plaintiffs are bringing this action under 42 U.S.C. § 1983, but denies that their claims have a basis in law or fact. Plaintiff Krysta Sutterfield's open records claim is not brought against Defendant District Attorney Chisholm, so he takes no position as to such claim.

2. Defendant District Attorney Chisholm denies the allegations of paragraph 2 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

3. Defendant District Attorney Chisholm denies the allegations of paragraph 3 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

4. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 with respect to where the plaintiffs reside, so Defendant District Attorney Chisholm therefore denies the allegations of paragraph 4 regarding venue.

5. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.

6. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

7. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7.

8. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8.

9. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9.

10. Defendant District Attorney Chisholm admits the allegations of paragraph 10.

11. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11.

12. Defendant District Attorney Chisholm admits the allegations of paragraph 12.

13. Defendant District Attorney Chisholm admits the allegations of paragraph 13.

14. Defendant District Attorney Chisholm admits the allegations of paragraph 11.

15. Subject to the objection that, as of this date, only one of the two persons charged in this matter has been convicted with respect to the referenced robbery (and therefore all references should be to the “alleged robber or robbers”), Defendant District Attorney Chisholm admits the allegations of paragraph 15.

16. Defendant District Attorney Chisholm admits the allegations of paragraph 16.

17. Defendant District Attorney Chisholm admits the allegations of paragraph 17.

18. Defendant District Attorney Chisholm admits the allegations of paragraph 18.

19. Defendant District Attorney Chisholm denies the allegations of paragraph 19 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

20. Defendant District Attorney Chisholm admits the allegations of paragraph 20.

21. Defendant District Attorney Chisholm admits the allegations of paragraph 21.

22. Defendant District Attorney Chisholm denies that he “suggested” that plaintiff Nazir Al-Mujaahid (“Mr. Mujaahid”) file a petition for the return of property, and affirmatively alleges that in response to Mr. Mujaahid’s statement that he wanted to file a petition, Defendant District Attorney Chisholm informed Mr. Mujaahid that he had a right to file such a petition, as that would be the proper process.

23. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23.

24. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24.

25. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25.

26. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26.

27. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27.

28. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28.

29. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29.

30. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30.

31. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31.

32. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32.

33. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33.

34. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34.

35. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35.

36. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36.

37. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37.

38. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38.

39. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39.

40. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40.

41. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41.

42. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42.

43. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43.

44. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44.

45. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45.

46. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46.

47. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47.

48. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48.

49. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49.

50. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50.

51. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51.

52. Defendant District Attorney Chisholm is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52.

53. Defendant District Attorney Chisholm denies the allegations of paragraph 53 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

54. Defendant District Attorney Chisholm denies the allegations of paragraph 54 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

55. Defendant District Attorney Chisholm denies the allegations of paragraph 55 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

56. Defendant District Attorney Chisholm denies the allegations of paragraph 56 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

57. Defendant District Attorney Chisholm denies the allegations of paragraph 57 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

58. Defendant District Attorney Chisholm denies the allegations of paragraph 58 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

59. Defendant District Attorney Chisholm denies the allegations of paragraph 59 in that they are legal arguments for which no response is required here and about which relevant law is the best authority.

60. Defendant District Attorney Chisholm denies that the plaintiffs are entitled to the relief requested.

61. Defendant District Attorney Chisholm denies that the plaintiffs are entitled to the relief requested.

62. Defendant District Attorney Chisholm denies that the plaintiffs are entitled to the relief requested.

63. Defendant District Attorney Chisholm denies that the plaintiffs are entitled to the relief requested.

64. Defendant District Attorney Chisholm denies that the plaintiffs are entitled to the relief requested.

65. Defendant District Attorney Chisholm denies that the plaintiffs are entitled to the relief requested.

66. Defendant District Attorney Chisholm takes no position on plaintiffs' request for a jury trial.

67. Defendant District Attorney Chisholm denies that the plaintiffs are entitled to the relief requested.

#### AFFIRMATIVE DEFENSES

1. This action is barred against Defendant District Attorney Chisholm by the doctrine stated in *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989), holding that state employees acting in their official capacity are not "persons" as that term is used in 42 U.S.C. § 1983.

2. To the extent that Defendant District Attorney Chisholm is being sued in his official capacity, this action is further barred by the Eleventh Amendment.

3. Defendant District Attorney Chisholm has prosecutorial immunity for any conduct alleged in this matter.

4. Defendant District Attorney Chisholm lacks the requisite personal involvement to be held liable under plaintiffs' 42 U.S.C. § 1983 cause of action.

5. Although Defendant District Attorney Chisholm has not been named in his personal or individual capacity, to the extent that plaintiffs attempt to assert claims against him in his personal or individual capacity, he is protected by his official qualified immunity, *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), because at all times material hereto his conduct did not violate any clearly established and sufficiently particularized federal statutory or constitutional rights of which he reasonably would have known.

6. Plaintiffs' complaint fails to state a claim upon which relief can be granted.



WHEREFORE, Defendant District Attorney Chisholm respectfully asks the Court to DISMISS this cause of action brought pursuant to 42 U.S.C. § 1983 with respect to him, and to DENY all requests for relief with respect to him.

Dated this 28th day of November 2012.

J.B. VAN HOLLEN  
Attorney General

s/Christopher J. Blythe  
CHRISTOPHER J. BLYTHE  
Assistant Attorney General  
State Bar #1026147

Attorneys for Defendant  
District Attorney John Chisholm

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