

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

TERRY BEVILL,
Plaintiff,

v.

**CITY OF QUITMAN, TEXAS; CITY OF
QUITMAN POLICE DEPARTMENT;
TOM CASTLOO, Wood County Sheriff;
DAVID DOBBS, City of Quitman Mayor;
JAMES “JIM” WHEELER, Former Wood
County District Attorney;
JEFFREY FLETCHER, and
WOOD COUNTY, TEXAS,**
Defendants.

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CIVIL ACTION NO. 4:19cv406

JURY DEMANDED

**CONDITIONAL ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS
TOM CASTLOO, JAMES “JIM” WHEELER AND WOOD COUNTY, TEXAS**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COME NOW Defendants Tom Castloo, James “Jim” Wheeler and Wood County, Texas and file this their Conditional Answer and Affirmative Defenses, and in support thereof, Defendants would show the Court the following:

**I.
CONDITIONAL ANSWER OF DEFENDANTS**

1. Defendants deny the averments contained in Paragraph 1 of Plaintiff’s Original Complaint.
2. Defendants admit that Plaintiff signed an affidavit in support of a motion to change venue for David McGee, a former employee of the Wood County Sheriff’s Department. Defendants admit that McGee’s arrest was covered by the local media. Defendants deny the remaining averments contained in Paragraph 2 of Plaintiff’s

Original Complaint.

3. Defendants admit Judge Fletcher issued a warrant for Plaintiff's arrest for aggravated perjury. Defendants admit that the grand jury did not indict Plaintiff on the charge of aggravated perjury. Defendants are without sufficient knowledge to admit or deny the facts surrounding Plaintiff's termination from the Quitman Police Department or Plaintiff's employment search. Defendants deny the remaining averments contained in Paragraph 3 of Plaintiff's Original Complaint.
4. Defendants admit that Plaintiff purports to bring this action pursuant to 42 U.S.C. § 1983 as stated in Paragraph 4 of Plaintiff's Original Complaint, but deny that such claims are proper, viable or cognizable and deny that Plaintiff is entitled to any relief whatsoever as a result of his claims.
5. Defendants admit that Plaintiff purports to bring this action pursuant to 42 U.S.C. § 1985(2) as stated in Paragraph 5 of Plaintiff's Original Complaint, but deny that such claims are proper, viable or cognizable and deny that Plaintiff is entitled to any relief whatsoever as a result of his claims.
6. Defendants admit that Plaintiff purports to bring a claim for conspiracy to violate his First Amendment rights as stated in Paragraph 6 of Plaintiff's Original Complaint, but deny that such claims are proper, viable or cognizable and deny that Plaintiff is entitled to any relief whatsoever as a result of his claims.
7. Defendants admit that Plaintiff seeks damages and attorneys' fees as stated in Paragraph 7 of Plaintiff's Original Complaint, but deny that Plaintiff is entitled to any relief whatsoever as a result of his claims.
8. Defendants admit that this action is purportedly based on federal statutes as set

forth in Paragraph 8 of Plaintiff's Original Complaint, but aver that they are unable to confer jurisdiction by admission. Defendants deny that venue is proper in the Sherman Division of the Eastern District of Texas.

9. Defendants admit that supplemental jurisdiction is asserted by Plaintiff as set forth in Paragraph 9 of Plaintiff's Original Complaint, but aver that they are unable to confer jurisdiction by admission.
10. Defendants admit that Plaintiff is a citizen of the United States but are without sufficient information to admit or deny the remaining averments contained in Paragraph 10 of Plaintiff's Original Complaint.
11. Defendants admit that Plaintiff purports to name the City of Quitman as a defendant in this lawsuit. Defendants deny the remaining averments contained in Paragraph 11 of Plaintiff's Original Complaint.
12. Defendants admit that Plaintiff purports to name the City of Quitman Police Department as a defendant in this lawsuit. Defendants deny the remaining averments contained in Paragraph 12 of Plaintiff's Original Complaint.
13. Defendants admit that Plaintiff purports to name Tom Castloo as a defendant in this lawsuit. Defendants deny the remaining averments contained in Paragraph 13 of Plaintiff's Original Complaint.
14. Defendants admit that Plaintiff purports to name David Dobbs as a defendant in this lawsuit. Defendants deny the remaining averments contained in Paragraph 14 of Plaintiff's Original Complaint.
15. Defendants admit that Plaintiff purports to name James Wheeler as a defendant in this lawsuit. Defendants deny the remaining averments contained in Paragraph 15

- of Plaintiff's Original Complaint.
16. Defendants admit that Plaintiff purports to name Jeffrey Fletcher as a defendant in this lawsuit. Defendants deny the remaining averments contained in Paragraph 16 of Plaintiff's Original Complaint.
 17. Defendants admit that Plaintiff purports to name Wood County as a defendant in this lawsuit. Defendants deny the remaining averments contained in Paragraph 17 of Plaintiff's Original Complaint.
 18. Defendants admit that Plaintiff worked for the City of Quitman. Defendants are without sufficient knowledge to admit or deny the remaining averments contained in Paragraph 18 of Plaintiff's Original Complaint.
 19. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 19 of Plaintiff's Original Complaint.
 20. Defendants admit that David McGee was arrested in February 2017 and charged with tampering with government records and facilitating and/or permitting the escape of an inmate which was covered by the media. Defendants deny as worded the remaining averments contained in Paragraph 20 of Plaintiff's Original Complaint.
 21. Defendants admit that Sheriff Castloo previously worked for the Wood County Sheriff's Office prior to becoming sheriff. Defendants deny the remaining averments contained in Paragraph 21 of Plaintiff's Original Complaint.
 22. Defendants admit that Wood County has been a party in previous lawsuits, but Defendants deny as worded the averments contained in Paragraph 22 of Plaintiff's Original Complaint.

23. Defendants deny the averments contained in Paragraph 23 of Plaintiff's Original Complaint.
24. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 24 of Plaintiff's Original Complaint.
25. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 25 of Plaintiff's Original Complaint.
26. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 26 of Plaintiff's Original Complaint.
27. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 27 of Plaintiff's Original Complaint.
28. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 28 of Plaintiff's Original Complaint.
29. Defendants generally admit that the affidavit of Terry Bevill contained the language stated in Paragraph 29 of Plaintiff's Original Complaint.
30. Defendants admit that the Texas Code of Criminal Procedure contains the sections quoted in Paragraph 30 of Plaintiff's Original Complaint, but deny the remaining averments.
31. Defendants generally admit that the affidavit of Mayra McGee contained the language stated in Paragraph 31 of Plaintiff's Original Complaint.
32. Defendants generally admit that the affidavit of David McGee contained the language stated in Paragraph 32 of Plaintiff's Original Complaint. Defendants deny the remaining averments contained in Paragraph 32 of Plaintiff's Original Complaint.
33. Defendants deny the averments contained in Paragraph 33 of Plaintiff's Original

Complaint.

34. Defendants deny the averments contained in Paragraph 34 of Plaintiff's Original Complaint.
35. Defendants deny the averments contained in Paragraph 35 of Plaintiff's Original Complaint.
36. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 36 of Plaintiff's Original Complaint.
37. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 37 of Plaintiff's Original Complaint.
38. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 38 of Plaintiff's Original Complaint.
39. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 39 of Plaintiff's Original Complaint.
40. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 40 of Plaintiff's Original Complaint.
41. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 41 of Plaintiff's Original Complaint.
42. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 42 of Plaintiff's Original Complaint.
43. Defendants admit that Sheriff Castloo and Jim Wheeler attended a Quitman City Council meeting, but Defendants deny as worded the remaining averments contained in Paragraph 43 of Plaintiff's Original Complaint.
44. Defendants admit that Judge Fletcher issued a warrant for Plaintiff on June 28,

2017, but are without sufficient information to admit or deny the remaining averments contained in Paragraph 44 of Plaintiff Original Complaint.

45. Defendants admit that Plaintiff had several bond conditions, but Defendants are without sufficient knowledge to admit or deny the remaining averments contained in Paragraph 45 of Plaintiff's Original Complaint.
46. Defendants admit the averments contained in Paragraph 46 of Plaintiff's Original Complaint.
47. Defendants deny as worded the averments contained in Paragraph 47 of Plaintiff's Original Complaint.
48. Defendants deny the averments contained in Paragraph 48 of Plaintiff's Original Complaint.
49. Defendants deny the averments contained in Paragraph 49 of Plaintiff's Original Complaint.
50. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 50 of Plaintiff's Original Complaint.
51. Defendants admit that Defendant Wheeler has resigned from his position as Wood County District Attorney, but are without sufficient knowledge to admit or deny the remaining averments contained in Paragraph 51 of Plaintiff's Original Complaint.
52. Defendants deny the averments contained in Paragraph 52 of Plaintiff's Original Complaint.
53. Defendants deny the averments contained in Paragraph 52(2) of Plaintiff's Original Complaint.
54. Defendants deny the averments contained in Paragraph 53 of Plaintiff's Original

Complaint.

55. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 54 of Plaintiff's Original Complaint.
56. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 55 of Plaintiff's Original Complaint.
57. Defendants are without sufficient knowledge to admit or deny the averments contained in Paragraph 56 of Plaintiff's Original Complaint.
58. Defendants deny the averments contained in Paragraph 57 of Plaintiff's Original Complaint.
59. Defendants deny the averments contained in Paragraph 58 of Plaintiff's Original Complaint.
60. Defendants deny the averments contained in Paragraph 59 of Plaintiff's Original Complaint.
61. Defendants deny the averments contained in Paragraph 60 of Plaintiff's Original Complaint.
62. Defendants deny the averments contained in Paragraph 61 of Plaintiff's Original Complaint.
63. Defendants deny the averments contained in Paragraph 62 of Plaintiff's Original Complaint.
64. Defendants deny the averments contained in Paragraph 63 of Plaintiff's Original Complaint.
65. Defendants deny the averments contained in Paragraph 64 of Plaintiff's Original Complaint.

66. Defendants deny the averments contained in Paragraph 65 of Plaintiff's Original Complaint.
67. Defendants deny the averments contained in Paragraph 66 of Plaintiff's Original Complaint.
68. Defendants deny the averments contained in Paragraph 67 of Plaintiff's Original Complaint.
69. Defendants deny the averments contained in Paragraph 68 of Plaintiff's Original Complaint.
70. Defendants deny the averments contained in Paragraph 69 of Plaintiff's Original Complaint.
71. Defendants deny the averments contained in Paragraph 70 of Plaintiff's Original Complaint.
72. Defendants deny the averments contained in Paragraph 71 of Plaintiff's Original Complaint.
73. Defendants deny the averments contained in Paragraph 72 of Plaintiff's Original Complaint.
74. Defendants deny the averments contained in Paragraph 73 of Plaintiff's Original Complaint.
75. Defendants deny the averments contained in Paragraph 74 of Plaintiff's Original Complaint.
76. Defendants deny the averments contained in Paragraph 75 of Plaintiff's Original Complaint.
77. Defendants deny the averments contained in Paragraph 76 of Plaintiff's Original Complaint.

Complaint.

78. Defendants deny the averments contained in Paragraph 77 of Plaintiff's Original Complaint.

79. Defendants deny the averments contained in Paragraph 78 of Plaintiff's Original Complaint.

80. Defendants deny the averments contained in Paragraph 79 of Plaintiff's Original Complaint.

81. Defendants deny the averments contained in Paragraph 80 of Plaintiff's Original Complaint.

82. Defendants deny the averments contained in Paragraph 81 of Plaintiff's Original Complaint.

83. Defendants deny the averments contained in Paragraph 82 of Plaintiff's Original Complaint.

84. Defendants deny the averments contained in Paragraph 83 of Plaintiff's Original Complaint.

85. Defendants deny the averments contained in Paragraph 84 of Plaintiff's Original Complaint.

86. Defendants deny the averments contained in Paragraph 85 of Plaintiff's Original Complaint.

87. Defendants deny the averments contained in Paragraph 86 of Plaintiff's Original Complaint.

88. Defendants deny the averments contained in Paragraph 87 of Plaintiff's Original Complaint.

89. Defendants admit that Plaintiff requests a jury.
90. Defendants deny that Plaintiff is entitled to any of the relief requested under the section of Plaintiff's Original Complaint entitled "Prayer."

II.
AFFIRMATIVE DEFENSES

1. Defendant Wood County, Texas asserts that it has sovereign immunity from suit based on the 11th Amendment to the United States Constitution, and further asserts that it can only be held liable in accordance with the requirements of *Monell* and its progeny.
2. Defendant Wood County, Texas asserts that it cannot be liable for punitive damages as a matter of law.
3. Defendant Wood County, Texas also asserts that it is not liable for any state law causes of action since there is no waiver of immunity under the Texas Tort Claims Act or other legislative enactment abrogating immunity.
4. Defendants Tom Castloo and Jim Wheeler assert that they are entitled to the defense of qualified immunity from Plaintiff's federal claims.
5. Defendants Tom Castloo and Jim Wheeler assert they are entitled to official immunity under state law.
6. Defendant Jim Wheeler asserts that he is entitled to absolute prosecutorial immunity from suit.
7. Defendants Tom Castloo and Jim Wheeler assert that the state law claims brought against them are barred by the Texas Tort Claims Act and are subject to the defenses and limitations contained in said Act. Defendants plead and adopt by

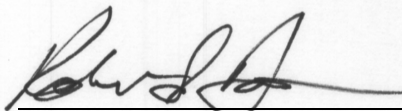
reference all defenses under the Tort Claims Act, including, but not limited to, sections 101.021, 101.023, 101.024, 101.055, 101.056, 101.057, 101.101 and 101.106. To the extent Plaintiff asserts any claims outside the strict waiver of immunity under the Texas Tort Claims Act, Defendants plead that such claims are barred by the doctrines of sovereign and governmental immunity.

8. Defendants assert that Plaintiff fails to state a claim for which relief may be granted.
9. Defendants assert that Plaintiff's damages and injuries, if any, were proximately caused by Plaintiff's own acts and omissions.
10. Defendants assert that Plaintiff has failed to mitigate his damages, if any.
11. Defendants assert that Plaintiff failed to provide notice as required by applicable law.
12. Defendants respectfully request a jury in this case.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the claims against Defendants be dismissed with prejudice to refiling, that Defendants be awarded their attorney fees and costs of court and for any and all other such relief to which Defendants may show themselves justly entitled.

Respectfully submitted,

FLOWERS DAVIS, P.L.L.C.
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701
(903) 534-8063
(903) 534-1650 Facsimile



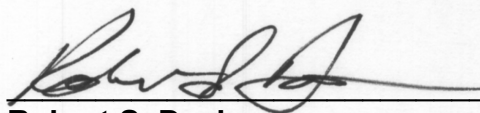
ROBERT S. DAVIS
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rsd@flowersdavis.com
Lead Attorney

**ATTORNEY FOR DEFENDANTS
TOM CASTLOO, JAMES "JIM" WHEELER
AND WOOD COUNTY, TEXAS**

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing instrument was served upon all counsel of record in the above entitled and numbered cause on July 12, 2019, in the following manner:

 X Via ECF



Robert S. Davis