

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

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MICHAEL KISSICK,

Plaintiff,

v.

Case No. 13-C-99

MICHAEL HUEBSCH, in his official  
capacity as Secretary of the Wisconsin  
Department of Administration, and  
DAVID ERWIN, in his official capacity  
as the Chief of the Wisconsin Capitol Police,

Defendants.

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AFFIDAVIT OF DAVID M. DAVIS IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

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STATE OF WISCONSIN    )  
  ) ss.  
DANE COUNTY            )

I, David M. Davis, being first sworn on oath, depose and certify:

1. I am currently employed as a Sergeant of the Wisconsin State Capitol Police. As part of my duties I supervise detectives, and act as court liaison officer. I have held this position at all times relevant to this affidavit.

2. Following the end of the continuous occupation of the Wisconsin State Capitol building in March of 2011, a group known as the “Solidarity Sing-Along” or “Solidarity Singers” began to appear in the Capitol Rotunda each weekday around noon.

3. Participants in the Solidarity Sing-Along are readily identifiable as a group because they all sing the same songs at the same time. In fact, they hand out song books for this purpose. On information and belief, they are a “member group” of the Wisconsin Peace &

Justice Network (*see* Exhibit A hereto, a printout of relevant portions of the WPNJ website member group list); the Wisconsin Peace & Justice Network's list of member groups currently identifies Brandon Barwick as a point-of-contact for the Solidarity Sing-Along group.

4. Brandon Barwick is an individual known to me personally because of numerous citations that he has received for conducting the Sing-Along in the Capitol without a permit.

5. Upon information and belief, prior to Brandon Barwick conducting the Solidarity Sing-Along, these events were conducted by a person known to me as Chris Reeder.

6. Other persons known to me to have attended Solidarity Sing-Alongs include, but are not limited to, Greg Gordon, Brian Standing, Craig Spaulding, Miles Kristan, Steve Books and William Brietsprecher.

7. Over the course of approximately the last twenty months, I have personally observed disruptive behavior by protestors inside the Capitol, interviewed persons who complained about such disruptions, or reviewed information regarding the same reported by local news media. In many cases, the persons causing the disruptions did so in the course of attending a Sing-Along, immediately before or after a Sing-Along, or were persons known to have attended Sing-Alongs.

8. Since February 2011, the Wisconsin State Capitol Police have referred hundreds of charges to the Dane County District Attorneys' Office arising out of protest activities occurring inside the Wisconsin State Capitol building. (A true and correct copy of a spreadsheet of these charges is attached hereto as Exhibit B). Upon information and belief, most charges have been dismissed by the Dane County District Attorneys' Office, undercutting the ability of the Wisconsin State Capitol Police to maintain the peace and to insure that the Capitol remains

operational. Incidents referred to in paragraph 7, above, include, but are certainly not limited to, the following:

a. On May 31, 2011, the Red Cross terminated a permitted event, a blood drive, early, due to the noise level created by the Solidarity Sing-Along. (See Exhibit C).

b. On May 19, 2011, an individual known to me as Damon P. Terrell was cited for disorderly conduct arising out of an incident where he interrupted a press conference, interfering with media questioning of the Senate majority leader regarding the passage of the Voter ID bill. (A true and correct copy of citation number 2011FO1489 is attached hereto as Exhibit D). Damon Terrell is known to me from several police contacts, and has been observed attending Solidarity Sing-Alongs.

c. On June 16, 2011, Mr. Damon Terrell was again arrested for disorderly conduct. Mr. Terrell was yelling from the Senate gallery, and disrupted a Senate debate. (A true and correct copy of citation number 2011FO1936 is attached hereto as Exhibit E).

d. On August, 25, 2011, a large group of individuals, numbering in the hundreds, entered the Wisconsin State Capitol at 5:55 p.m., just five minutes before closing time. Many remained after closing time. Although Chief Tubbs spoke with individuals and many left before 7:00 p.m., a group of approximately 12 individuals refused to leave. Individuals refusing to leave included Jeremy J. Ryan, who is known to me through numerous police contacts. Mr. Ryan is also known to me as a person who attends the Solidarity Sing-Along as recently as March, 2013. (A true and correct copy of Police Report 1-11-006728 is attached hereto as Exhibit F). Upon information and belief, ultimately several of these arrests resulted in convictions following a trial by jury.

e. On January 26, 2012, I was personally involved in the arrest of Christopher J. Terrell. Upon information and belief, at approximately 5:30 p.m. on that day the Speaker of the Assembly was forced to close the Assembly Galleries due to continue disruptions of the process on the Assembly floor. (A true and correct copy of the report in Case No. 1-12-883 is attached hereto as Exhibit G). After the gallery was cleared, forty to sixty people gathered in front of the doors of the Assembly and began to chant and to bang on the glass windows outside the Assembly chamber while the Assembly was still in session. An individual known to me, from prior contacts, as Christopher J. Terrell then began to play a drum and to engage the crowd. (A true and correct copy of a video of the Terrell arrest is attached hereto as Exhibit H.) Upon review of the video, I am able to identify several individuals involved in the incidents as persons who have attended Solidarity Sing-Alongs: Whitney CK. Steffen, Jason Huberty, Joe Skullan, Greg Gordon, Ed Kuharski, Irving Smith, Jeremy Ryan, Miles Kristian, and Arthur Kohl-Riggs.

f. On January 26, 2012, Damon Terrell was arrested for Disorderly Conduct, Resisting or Obstructing an Officer and Bail Jumping arising out of an incident occurring outside the chambers of the Wisconsin State Assembly. Specifically, Damon Terrell was playing a drum, and the group was engaged in chanting and singing. The group obstructed the entrance to the chamber. Again, I know from personal experience that there is no sound barrier between the Rotunda and the steps outside the Assembly chambers. (Capitol Police Report, Exhibit I).

g. On May 24, 2012, a verbal altercation occurring between Solidarity Sing-Along participants and a person who works in the Capitol. The employee alleged that Mr. Michael J. Dickman followed an employee of the Capitol, verbally harassing him and swearing

at him. When a Capitol Police officer attempted to take a statement from the employee he was surrounded by a group of persons attending the Sing-Along. (Capitol Police Report, Exhibit J).

h. On June 13, 2012, I was assigned to observe the daily Solidarity Sing-Along as an unpermitted gathering. At approximately 12:25 p.m., a Sing-Along participant known to me as Bill Gruber began to yell. When Mr. Gruber yells he can be heard throughout the entire building. At approximately 12:39 p.m., a male approached me and asked if anyone ever asks the group to be quiet. At approximately 12:41 p.m., a female approached me and asked if this conduct occurs every day. At 12:44 p.m., I observed a group of tourists from Owen, Wisconsin, who wanted to enter the Rotunda but were hesitant because of the presence of the Sing-Along. I observed another group of tourists, consisting of 8-10 children between the ages of 8 and 10 with a group of three to four adults. This group was also focused on the Sing-Along, and did not appear to know what to do. The Sing-Along began their last song on that day at 1:04 p.m. by marching in a large circle around the Rotunda with their fists raised in the air. This forced the 1:00 p.m. tour to be modified. I observed that 20-25 people were waiting to take this tour, which normally begins in the Capitol Rotunda. My conclusion from these observations was that visitors choose not to walk into the Rotunda area and observe the Rotunda, including the top of the Rotunda, due to the presence and volume of the Solidarity Sing-Along. (Capitol Police Report, Exhibit K).

i. On June 14, 2012 I was again assigned to observe the noon Sing-Along. At approximately 12:45 p.m., I observed an elderly woman in a wheelchair enter the Capitol accompanied by two other female adults. The two adult females indicated that they wanted to take the elderly woman into the middle of the ground floor of the Rotunda for viewing. I heard the elderly woman reply that she would look instead from the fringe. I again observed that the

Sing-Along continued past 1:00 p.m. causing the Capitol tour to not begin in the Rotunda. Banners continued to be hung over the railings until approximately 1:15 p.m. (Capitol Police Report, Exhibit L.)

j. On June 19, 2012, another officer was assigned to observe the Solidarity Sing-Along. He also noted several banners hanging over the railings, and estimated their sizes as being between two feet and twenty feet in length. At the end of the Sing-Along his report reflects that participant William Gruber “yell(ed) as loud as he could.” The 1:00 p.m. tour was again observed to be disrupted by the occupation of the Rotunda by the Sing-Along. I reviewed this officer’s report in the ordinary course of my duties. (Capitol Police Report, Exhibit M).

k. On June 21, 2012, a third officer was assigned to observe the noon Sing-Along. This officer also noted signs and banners being hung over the railings, and ranging in size from two feet to a sufficient length that it extended, “over the top of the first floor railing and is touching the floor on the ground floor.” The size of the Sing-Along was estimated at 30-60 persons. The officer observed that, “(the singing) was very loud and could be heard behind closed doors in local offices.” The officer explained that, “I was approached by one female staff person who complained that she could not hear the phone in her office due to the sing along.” The office also noted that while, “Some people visiting the capitol walked into the middle of the sing along and looked up to see the painting... Most people visiting the capitol would walk into the rotunda and stay by the pillars to look up.” The officer further observed that during some songs the Sing-Along participants would wave their banners back and forth, blocking exits from the Rotunda, and would join hands in the center of the Rotunda and dance, blocking passage through the Rotunda. Finally, the officer also observed that the 1:00 p.m. tour was altered due to

the fact that he Sing-Along was occupying the Rotunda. I reviewed this other officer's report in the ordinary course of my duties. (Exhibit N).

l. On July 11, 2012, a protestor known to me from prior contacts as Jeremy Ryan, who is also known to me to attend Solidarity Sing-Alongs, engaged in acts of harassment towards a member of the Capitol Press Corps. Recently, Mr. Ryan plead guilty to criminal charges arising out of this incident. During the course of investigating this matter I interviewed Todd Richmond. Mr. Richmond is employed by the Associated Press, and has a working office in the Capitol Press room. During the interview Mr. Richmond and I discussed working conditions in the Capitol. Mr. Richmond told me that if he had his choice he would go to Starbucks or anywhere outside the press room to not be distracted by Mr. Ryan and his group. Mr. Richmond told me the Sing-Along group that sings in the Capitol Rotunda is very loud but when Ryan is outside his door yelling and chanting it becomes louder and more difficult to concentrate. (Capitol Police Case Number 1-12-7199, attached hereto as Exhibit O). Richmond said I wish this would end, meaning the sing along group at noon and Ryan and his group being outside the press room door. Richmond told me if something is not done about the protestors inside the Capitol someone is going to get hurt.

m. On September 21, 2012, citizen Jeff S. Salseider made a formal complaint regarding the Solidarity Sing-Along. Mr. Salseider stated that he feels that the Capitol Rotunda is a public building and that the Rotunda center area is off limits to the public due to the presence of the Sing-Along group. Salseider stated that he felt "intimidated" by the group and that the "Capitol area is off limits to me because the group is disturbing in a loud manner." Salseider stated that he is a graduate student at the University of Wisconsin, and that he believes in free speech, but was concerned with the manner in which the group conducts themselves, and stated

that he would not bring his children to the Capitol building. I reviewed this citizen's report/complaint in the ordinary course of my duties. (Police report containing Salseider Complaint, attached hereto as Exhibit P.)

n. On September 26, 2012, at approximately 12:50 p.m. a Wisconsin State Capitol Police officer observed a group of fourth grade students from West Bend, Wisconsin. The officer noticed a child who appeared scared. The child asked the officer if she could, "please make it (the noise) stop." The officer reported that several of the children said they, "did not like it and it was too loud." The officer further reported that, "I later learned that this group was scheduled for a tour, but was taken to the observation deck first to try to avoid the approx. 50 protestors and solidarity singers on the ground floor rotunda." Speaking with a parent/chaperone, the parent stated, "it would have been nice for the children to be able to go in the rotunda but she was concerned that the protestors would not move." I learned this information from reviewing reports in the ordinary course of my duties. (Capitol Police Report Exhibit Q).

o. On October 24, 2012, Lisa A. Wells, a person known to me to attend the noon Sing-Alongs on a regular basis, was observed spreading a banner approximately six feet wide and seventeen feet long across a staircase, effectively blocking passage. (Capitol Police Report, Exhibit R).

p. On October 25, 2012, subjects participating in the Sing-Along were observed, "yelling for young children and encouraging them to come to the center of the rotunda. The subjects were also encouraging the children to sing and dance around to their signing." The officer went on to note that, "I observed a teacher for one of the school groups yell for some of her groups of students to exit the center rotunda area, stating, 'You're not to going to be part of



that non-sense.” Later that same day, as two women approached another officer to express concerns about the situation, the officer was intruded upon by a person known to her as Mary Ellen Schutz, who claims to be an ACLU observer and wears a yellow ACLU shirt. The women were informed by the officer that they could lead a group of children into the middle of the Rotunda, but they refused, stating that they “did not want to expose them any further.” I learned of this incident in the ordinary course of my duties. (Capitol Police Report, Exhibit S).

q. On November 8, 2012, tour guide Ken Rosenberg complained regarding yelling by a Sing-Along participant known to me as Irving Smith. Mr. Rosenberg was attempting to lead a tour group consisting of children in the fourth grade. (Capitol Police Report of Rosenberg Complaint, attached hereto as Exhibit T).

r. On January 23, 2013, citizen Steven J. Welcenback submitted a complaint to the Wisconsin State Capitol Police concerning “shouting/singing” during the unpermitted Sing-Along interrupting his ability to enjoy the Rotunda at noon. (Capitol Police Report of Welcenback Complaint, attached hereto as Exhibit U).

s. On March 6, 2013, State Representative Al Ott attempted to speak with and take a photograph with a group of High School students from his district as part of their tour of the Capitol. (Capitol Police Case Number 1-13-2120, attached hereto as Exhibit V.) One protestor refused to move out of the photo. Representative Ott told the students that this was their Capitol and their Rotunda too. The Solidarity Sing-Along paused for three minutes during this incident. A person known to me as a frequent attendee of the Sing-Along, Irving Smith, began singing loudly again at 12:09 p.m. Some of the singers joined Irving Smith in singing then and some did not. Brandon Barwick, who I know as a person who frequently conducts the Solidarity Sing-Along, was observed not singing, and was asking others not to as well. A third

frequent attendee of Solidarity Sing-Alongs known to me Lisa Wells was taking pictures of Representative Ott and the students. A copy of a statement from Representative Ott is attached to the report. I reviewed this report in the normal course of my duties.

9. I either personally observed the events or incidents described above, or I learned of them by reviewing police reports or other official documents in the ordinary course of my duties.

10. Upon information, belief, and based upon personal observation, arrest or removal of even a single protestor from the Capitol can require four or more officers.

11. I make this Affidavit in support of defendants' Opposition to Plaintiff's Motion for a Preliminary Injunction.

s/ David M. Davis  
David M. Davis

Subscribed and sworn to before me  
this 18th day of March, 2013.

s/ Donna K. Sorenson  
Notary Public, State of Wisconsin  
My commission expires 4/7/13