

**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN  
DISTRICT OF MISSOURI  
SOUTHWESTERN DIVISION**

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**JEFF SUTHERLAND, AND**

**SSN: xxxx**

**TAMMY SUTHERLAND**

**SSN: xxxx**

**Plaintiffs,**

**vs.**

**MASSA, BRIAN in his official and  
individual capacity, AND**

**McCOOL, LISA in her official  
and individual capacity, AND**

**EVENSON, ROBERT W. in his official  
and individual capacity, AND**

**O'BRIEN, DON in his official capacity,  
AND**

**MILLER, TIM in his official capacity,  
AND**

**HUSTON, RICHARD in his official  
capacity, AND**

**HUSTON, TED in his official capacity,  
AND**

**ANDERSON, BILL in his official  
capacity, AND**

**AMOS, OZZY in his official capacity,  
AND**

**MALCOM, DANNY in his official  
capacity,**

**Defendants.**

**Case No. 08-5129-CV-SW-SWH**

**JURY TRIAL DEMANDED**

**SOUTHWESTERN DIVISION**

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## **FIRST AMENDED COMPLAINT**

COME NOW Plaintiffs, by and thorough their undersigned counsel, and in support of their Complaint against the Defendants, state as follows:

1. Plaintiff Jeff Sutherland, is a citizen of the state of Missouri and a resident of McDonald County, Missouri. At all times pertinent to this litigation he was the husband to Tammy Sutherland.
2. Plaintiff Tammy Sutherland, is a citizen of the state of Missouri and a resident of McDonald County, Missouri. At all times pertinent to this litigation she was the wife of Jeff Sutherland.
3. Defendant Brian Massa is a citizen of the state of Missouri and a resident of McDonald County, Missouri. At all times pertinent to this litigation he was an employee of the McDonald County 911 Center.
4. Defendant Lisa McCool is a citizen of the state of Missouri and a resident of McDonald County, Missouri. At all times pertinent to this litigation she was the Director of the McDonald County 911 Service.
5. Defendant Robert W. Evenson is a citizen of the state of Missouri and a resident of McDonald County, Missouri. At all times pertinent to this litigation he was the attorney for the McDonald County 911 Service as well as a board member.

6. Defendant Don O'Brien is a citizen of the state of Missouri and a resident of McDonald County, Missouri. At all times pertinent to this litigation he was a board member for the McDonald County 911 Service.
7. Defendant Tim Miller is a citizen of the state of Missouri and a resident of McDonald County, Missouri. At all times pertinent to this litigation he was a board member for the McDonald County 911 Service.
8. Defendant Richard Huston is a citizen of the state of Missouri and a resident of McDonald County, Missouri. At all times pertinent to this litigation he was a board member for the McDonald County 911 Service.
9. Defendant Ted Huston is a citizen of the state of Missouri and a resident of McDonald County, Missouri. At all times pertinent to this litigation he was a board member for the McDonald County 911 Service.
10. Defendant Bill Anderson is a citizen of the state of Missouri and a resident of McDonald County, Missouri. At all times pertinent to this litigation he was a board member for the McDonald County 911 Service.
11. Defendant Ozzy Amos is a citizen of the state of Missouri and a resident of McDonald County, Missouri. At all times pertinent to

12. Defendant Danny Malcom is a citizen of the state of Missouri and a resident of McDonald County, Missouri. At all times pertinent to this litigation he was a board member for the McDonald County 911 Service.
13. This Court has personal jurisdiction over all parties in this litigation. This Court's jurisdiction is proper pursuant to the Fifth, Ninth, and Fourteenth Amendments to the United States Constitution.
14. Claims in this litigation are brought pursuant to 42 U.S.C. Section 1983 and Missouri law. Therefore, this Court has subject matter jurisdiction pursuant to 28 U.S.C. Section(s) 1331 and 28 U.S.C. 1367.
15. A substantial part of the events giving rise to this claim occurred in McDonald County, Missouri. Therefore, venue is proper with the Western District of the United States District Court of Missouri pursuant to 42 U.S.C. Section 1391 (b).

**Facts Common to All Counts**

16. At all times pertinent to this litigation, Defendants McCool and Massa acted within the normal, usual and customary scope of their

17. All actions and omissions of Defendant McCool and Defendant Massa, as described below, arose out of and were performed in connection with their official duties as members of the law enforcement community.
18. At all times pertinent to this litigation, Defendant Evenson acted within the normal, usual and customary scope of his duties as attorney and board member for the McDonald County 911 Center.
19. All actions and omissions of Defendant Evenson, as described below, arose out of and were performed in connection with his official duties as attorney and board member for the McDonald County 911 Center.
20. At all times pertinent to this litigation, Defendants Massa, McCool, Evenson and McDonald County 911 Center acted under the color of state law.
21. On or before July 15, 2008 Defendant McCool released a copy of a 911 tape to John Bunch.
22. That the 911 tape was of a call made by Plaintiff Tammy Sutherland.
23. That prior to releasing the tape recording Defendant McCool asked for advice on releasing the tape from Defendant Evenson.

24. That Defendant Evenson's son was opposing Plaintiff Jeff Sutherland in the McDonald County Sheriff's election.
25. That Defendant Evenson told Defendant McCool that the 911 calls were public record and subject to release.
26. That after the release of the tape recording Defendant McCool researched further and found RSMO 610.150 and asked Defendant Evenson to review its contents.
27. That upon review Defendant Evenson changed the policy of the McDonald County 911 Center from releasing 911 phone calls to no longer releasing them.
28. That copies of the released tape were given to local media outlets.
29. On or about August 3, 2008, copies of the released tape were posted on a local website, and were viewed over 100 times.
30. That Plaintiff Tammy Sutherland believed that the contents of her 911 phone call were to be considered confidential and would not be disseminated to the public.
31. That Defendant Massa viewed the confidential driving records of Plaintiff Tammy Sutherland without her knowledge or consent.
32. Color of State Law
  - a. Defendants were all acting under color of State law during all times set out herein, specifically at the times the Plaintiffs' Federal and State Constitutional rights were violated. Since the

33. Deprivations and Violations of Rights

- a. Due to the acts and/or omissions of the Defendants, the Plaintiffs seek damages from committing acts under color of law which deprived Plaintiffs of rights secured under the Constitutions and laws of the United States and of the State of Missouri, to wit:
  - i. For committing such acts in violation of those Constitutions and laws, and
  - ii. For violating the customs and usages of the State of Missouri, and
  - iii. For violating the rights, privileges and immunities secured to them by the Constitution and laws of the United States and the State of Missouri, and
  - iv. For violating the equal protection of the law and equal privileges under the law, guaranteed by the Fourteenth Amendment to the United States Constitution and similar provisions of the Missouri State Constitution, and
  - v. For refusing or neglecting to prevent such deprivations and denials to the Plaintiffs, and

vi. For their wrongful, intentional, reckless and/or negligent conduct.

34. That the defendant board members of the McDonald County 911 Center and Defendant McCool as director of the McDonald County 911 Center, either by affirmative acts or omissions, had in place policies, practices, procedures and/or guidelines that violated or led to the violation of the rights of Plaintiffs Jeff and Tammy Sutherland.
35. That Defendants are further liable for their failures to train, instruct, supervise, control and discipline the individual law enforcement officers on a continuing basis, to wit:
- a. Said failures were the result of official policy and/or the customs, practices, usages of the defendant government entity
  - b. Said failures were the result of the deliberate indifference of the policy makers toward the rights of the citizens and Plaintiffs involved herein.
36. That Defendants McCool and Evenson are further liable for their failures to take the opportunity presented to intercede on the behalf of the Plaintiffs and prevent the dissemination of the confidential tapes.
37. Joint Venture, Joint and Several Liability and Conspiracy



- a. Defendants acted together in a joint venture, were joint tortfeasors, and are jointly and severally liable to the plaintiffs. Plaintiffs allege that the actions of the Defendants described herein were the actions of persons conspiring together, all being conspirators engaged in a scheme and conspiracy to deny and to deprive plaintiffs of rights guaranteed to them under the Constitution and laws of the United States and of Missouri and particularly those enumerated in this Complaint. The conspiracy included, but was not limited to, the dissemination of confidential 911 telephone calls. The defendants combined and acted in concert by way of an agreement to inflict wrongs against/ injuries upon the plaintiffs.
- b. The purpose of conspiring was to deprive, either directly or indirectly, plaintiffs of the equal protection of the laws and equal privileges and immunities under the laws and his Constitutional rights.
- c. Plaintiffs were injured in their persons and deprived of having and exercising their rights and privileges as a citizen of the United States and of Missouri, all as set forth herein.

38. Actual Damages

- a. Plaintiffs specifically suffered deprivation of federal and state Constitutional rights and also- in connection therewith- loss of

- b. That as a direct and proximate cause to the acts and/or omissions of the Defendants, the Plaintiffs have endured loss of enjoyment of life, loss of sleep, symptoms of post-trauma, inconvenience, personal humiliation, nervousness and suffering, anger, pain and suffering, mental anguish, and emotional damages.

39. Exemplary Damages

- a. All the acts of the defendants were willful, wanton, reckless, malicious, and further show a complete and deliberate indifference to, and conscious disregard for the rights of plaintiffs. Therefore, plaintiffs are entitled to an award of exemplary damages, at least against the individual defendants acting in their individual capacities.

**Count I: Invasion of Privacy**

- 39. That Plaintiff Tammy Sutherland had a reasonable expectation of privacy in the 911 call that she made.
- 40. That RSMO 610.150 reinforces this reasonable expectation of privacy in her 911 call.
- 41. That Defendants were aware of the reasonable expectation of privacy in these emergency calls.

42. That Defendants released a copy of Tammy Sutherland's 911 call despite her reasonable expectation of privacy in the contents of that call.
43. That Defendants released the 911 call without the knowledge or consent of Plaintiff Tammy Sutherland.
44. That the contents of the call were then released to the general public through the internet.
45. That the contents of the call were of a private matter.
46. That the public had no legitimate concern in the contents of the phone call.
47. That the publication was made in order to bring humiliation or shame to Plaintiffs.
48. That the release of the information would bring humiliation or shame to a person of reasonable sensibilities.
49. Defendant invaded the privacy of Tammy Sutherland, and as a direct and proximate cause of these acts caused her embarrassment, humiliation, grief and emotional distress.

WHEREFORE, Plaintiff Tammy Sutherland prays this Court enter a joint and several judgment in her favor and against the Defendants named in Count I, holding Defendants liable for the injuries and damages suffered by Plaintiff, specifically granting the following relief:

1. An injunction against any similar actions ever being taken by defendants or any of their employees at any time hereafter, and specifically an injunction requiring the governmental entities involved to take immediate steps so as to provide all necessary training, supervision, and policies required to prevent the release of similar tapes.
2. Plaintiff further prays that this Court order Defendants to pay Plaintiff such actual compensatory sums as to fully and completely compensate her for the injuries and damages she has suffered as previously outlined and for pre-judgment interest.
3. Plaintiff further prays that this Court order Defendants to pay exemplary damages to Plaintiff (acknowledging that the exemplary damages would only be against the individual defendants acting in their individual capacities) as Defendants' conduct is outrageous and exhibits conscious disregard and reckless indifference for the rights and safety of others.
4. Plaintiff further prays for an award of Attorney's fees and expenses as allowed by 42 U.S.C. Section 1983 and 1988.
5. Plaintiff prays for all other relief that this Court deems just and proper.

**Count II – Violation of Plaintiffs' Right to the Equal Protection of Laws**

50. Plaintiffs Jeff and Tammy Sutherland hereby reincorporate and restate paragraphs 1 through 39 into this Count II as though fully set forth herein.
51. Defendants chose to release the 911 call made by Plaintiff Tammy Sutherland.
52. A policy was implemented directly after this release that made it impossible to recover 911 tapes.
53. RSMO 610.150 specifically states that 911 phone calls are not public record.
54. The McDonald County 911 Center is a law enforcement agency within the meaning of RSMO 610.150.
55. Defendants by releasing the tape of Plaintiff Sutherland's 911 call violated her Constitutional Right to equal protection of the laws.
56. Each of the rights described above are clearly established Constitutional rights.
57. As a direct and proximate result of the actions of Defendants in violating the rights of the Plaintiff Jeff Sutherland, he suffered the previously-mentioned injuries and damages.
58. Plaintiff claims that he is entitled to actual damages and exemplary damages (at least as against the individual defendants acting in their

individual capacities as to exemplary damages) based upon all of the facts set out herein.

WHEREFORE, Plaintiffs pray this Court enter a judgment in their favor and against the Defendants named in Count II holding Defendants liable for the injuries and damages suffered by Plaintiffs. Plaintiffs further pray that this Court order Defendants to pay Plaintiffs such sums as to fully and completely compensate them for the injuries and damages they have suffered as previously outlined. Plaintiff further prays this Court order Defendants to pay exemplary damages to Plaintiff as Defendants' conduct was malicious or recklessly indifferent to the rights of others and justifies the award of punitive damages. Plaintiffs further pray for an award of Attorney's fees and reasonable expenses incurred in pursuing this action as allowed by 42 U.S.C. 1983 and 1988. Plaintiffs pray for all other relief that this Court deems just.

### **Count III – Violation of RSMO 610.150**

59. Plaintiffs hereby reincorporate and restate paragraphs 1 through 58 into this Count III as though fully set forth herein.
60. The McDonald County 911 Center is a law enforcement agency within the meaning of the statute.
61. Defendant McCool released the entire tape of Tammy Sutherland's 911 emergency call to John Bunch and not simply, the date, time

specific location, and immediate facts and circumstances surrounding the initial report of the crime as is authorized by the statute.

62. That Defendant McCool released the tape of said 911 emergency call after consultation with Defendant Evenson, attorney for the McDonald County 911 Center and board member.
63. That said release of the tape was in violation of 161.150 RSMo. which states that the information “shall be inaccessible to the public.”

WHEREFORE, Plaintiffs pray this Court enter a judgment in their favor and against the Defendants named in Count III holding Defendants liable for the injuries and damages suffered by Plaintiffs. Plaintiffs further pray that this Court order the Defendants to pay Plaintiffs such sums as to fully and completely compensate them for the injuries and damages they have suffered as previously outlined. Plaintiffs further pray that this Court order Defendants to pay exemplary damages to Plaintiffs as Defendants’ conduct was malicious or recklessly indifferent to the rights of others and justifies the award of punitive damages. Plaintiffs further pray for an award of Attorney’s fees and reasonable expenses incurred in pursuing this action. Plaintiffs pray for all other relief that this Court deems just.

**Count IV: Invasion of Privacy by Intrusion upon Plaintiff’s**

**Private Affairs**

64. Plaintiffs Jeff and Tammy Sutherland hereby reincorporate and restate paragraphs 1 through 63 into this Count II as though fully set forth herein.
65. That Defendant Brian Massa did intentionally view Tammy Sutherland's driver's license data.
66. That Tammy Sutherland's driver's license records were considered her private affairs or concerns.
67. That Defendant Massa viewed these records without a legitimate reason or purpose.
68. That Defendant Massa obtained the information through a means that would be objectionable to the reasonable man.

WHEREFORE, Plaintiffs pray this Court enter a judgment in their favor and against the Defendants named in Count IV holding Defendants liable for the injuries and damages suffered by Plaintiffs. Plaintiffs further pray that this Court order Defendants to pay Plaintiffs such sums as to fully and completely compensate them for the injuries and damages they have suffered as previously outlined. Plaintiffs further pray that this Court order Defendants to pay exemplary damages to Plaintiffs as Defendants' conduct was malicious or recklessly indifferent to the rights of others and justifies the award of punitive damages. Plaintiffs further pray for an award of Attorney's fees and reasonable expenses incurred in pursuing this action. Plaintiffs pray for all other relief that this Court deems just.



**Count V: Public Disclosure of Private Facts**

69. Plaintiffs Jeff and Tammy Sutherland hereby reincorporate and restate paragraphs 1 through 68 into this Count V as though fully set forth herein.
70. Defendants McCool and Evanson made the tape recording of Tammy Sutherland's 911 emergency telephone call available to the general public and specifically disseminated the tape to John Bunch.
71. Defendants McCool and Evanson either had actual knowledge or acted with reckless indifference to the likelihood that the contents of said tape recording would become public knowledge.
72. Tammy Sutherland did not authorize the release of the information contained on said tape recording.
73. The information and contents of said tape recording are to be inaccessible and confidential pursuant to 161.150 RSMo.
74. The contents of the tape recording were used for political gain and brought shame and humiliation to Tammy Sutherland and John Sutherland, and would likewise bring shame or humiliation to a person of ordinary sensibilities.

WHEREFORE, Plaintiffs pray this Court enter a judgment in their favor and against the Defendants named in Count V holding Defendants liable for the injuries and damages suffered by Plaintiffs. Plaintiffs further pray

that this Court order Defendants to pay Plaintiffs such sums as to fully and completely compensate them for the injuries and damages they have suffered as previously outlined. Plaintiffs further pray that this Court order Defendants to pay exemplary damages to Plaintiffs as Defendants' conduct was malicious or recklessly indifferent to the rights of others and justifies the award of punitive damages. Plaintiffs further pray for an award of Attorney's fees and reasonable expenses incurred in pursuing this action. Plaintiffs pray for all other relief that this Court deems just.

Respectfully submitted,

WYSE LAW FIRM , P.C.

-s- Stephen Wyse  
Stephen Wyse, MO Bar# 49717  
U.S. District Court, W.D.  
609 E. Broadway  
Columbia, MO 65205-1793  
(573) 449-7755, Fax (573) 449-7557

Attorney for Jeff and Tammy Sutherland

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served upon counsel for the Defendants by ECF filing with the Clerk of the Court on this 19<sup>th</sup> day of June, 2009.

-s- Stephen Wyse  
Stephen Wyse



11. Admitted Ozzy Amos is a citizen of the state of Missouri and a resident of McDonald County, Missouri but denies the balance of the allegations of paragraph 11.

12. Admitted Danny Malcom is a citizen of the state of Missouri and a resident of McDonald County, Missouri but denies the balance of the allegations of paragraph 12.

13. Denied.

14. Denied.

15. Denied.

**FACTS COMMON TO ALL COUNTS**

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Admitted that the son of Robert Evenson and plaintiff Jeff Sutherland were seeking election to the office of the Sheriff of McDonald County, Missouri.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Color of State Law - Denied.

33. Deprivations and Violations of Rights - Denies all allegations of paragraph 33 and all subparagraphs thereof.

34. Denied.

35. Denied, along with all subparagraphs thereof.

36. Denied.

37. Joint Venture, Joint and Several Liability and Conspiracy – Denied along with all subparagraphs thereof.

38. Actual Damages – Denied along with all subparagraphs thereof.

39. Exemplary Damages – Denied.

**COUNT I: INVASION OF PRIVACY**

- 39. Denied.
- 40. Denied.
- 41. Denied.
- 42. Denied.
- 43. Denied.
- 44. Denied.
- 45. Denied.
- 46. Denied.
- 47. Denied.
- 48. Denied.
- 49. Denied.

WHEREFORE, having fully answered Count I, defendant prays to be dismissed with his costs herein expended and incurred.

**COUNT II – VIOLATION OF PLAINTIFFS’ RIGHT  
TO THE EQUAL PROTECTION OF LAWS**

- 50. Denies all allegations incorporated by reference not heretofore specifically admitted.
- 51. Denied.
- 52. Denied.
- 53. Denied.
- 54. Denied.
- 55. Denied.
- 56. Denied.
- 57. Denied.
- 58. Denied.

WHEREFORE, having fully answered Count II, defendant prays to be dismissed with his costs herein expended and incurred.

**COUNT III – VIOLATION OF RSMO 610.150**

- 59. Denies all allegations incorporated by reference not heretofore specifically admitted.
- 60. Denied.
- 61. Denied.
- 62. Denied.
- 63. Denied.

WHEREFORE, having fully answered Count III, defendant prays to be dismissed with his costs herein expended and incurred.

**COUNT IV – INVASION OF PRIVACY BY  
INTRUSION UPON PLAINTIFFS’ PRIVATE AFFAIRS**

- 64. Denies all allegations incorporated by reference not heretofore specifically admitted.
- 65. Denied.
- 66. Denied.
- 67. Denied.
- 68. Denied.

WHEREFORE, having fully answered Count IV, defendant prays to be dismissed with his costs herein expended and incurred.

**COUNT V – PUBLIC DISCLOSURE OF PRIVATE FACTS**

- 69. Denies all allegations incorporated by reference not heretofore specifically admitted.
- 70. Denied.
- 71. Denied.
- 72. Denied.
- 73. Denied.
- 74. Denied.

WHEREFORE, having fully answered Count V, defendant prays to be dismissed with his costs herein expended and incurred.

**ADDITIONAL DEFENSES**

For additional defenses, defendant states as follows:

- 1. Plaintiffs’ amended complaint fails to state a claim upon which relief can be granted.
- 2. Defendant is immune from civil liability for damages by reason of the doctrine of sovereign immunity.
- 3. Defendant is immune from civil liability for damages by reason of the doctrine of official immunity.
- 4. Defendant is immune from liability by reason of the provisions of Section 537.600 RSMo.
- 5. Damages may not be awarded which include punitive or exemplary damages under Section 537.610 RSMo.
- 7. Section 537.610 RSMo. limits damages which may be awarded in this case.
- 8. Plaintiffs’ claims against defendants are barred by the provisions of Section 190.307 RSMo.
- 9. Plaintiffs’ claims for damages for alleged violation of §610.150 RSMo. are limited by §610.027 RSMo.
- 10. Punitive damages are not recoverable under 42 U.S.C. 1983.

WHEREFORE, having answered all counts, defendant prays to be dismissed with his costs herein expended and incurred.

BLANCHARD, ROBERTSON, MITCHELL  
& CARTER, P.C.

By: /s/ Malcolm L. Robertson  
MALCOLM L. ROBERTSON  
Missouri Bar No. 18442  
320 W. 4th St., P.O. Box 1626  
Joplin, MO 64802  
ATTORNEYS FOR DEFENDANT MCCOOL

Copy hereof mailed on July 16, 2009 to:

Stephen Wyse  
Wyse Law Firm, P.C.  
U.S. District Court, W.D.  
609 E. Broadway  
Columbia, MO 65205-1793

Ronald E. Mitchell  
Blanchard, Robertson, Mitchell & Carter, P.C.  
P.O. Box 1626  
Joplin, MO 64802

/s/ Malcolm L. Robertson