

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SAMUEL JOSEPH WURZELBACHER,)	
)	
Plaintiff,)	Civil Action No.: 2:09-cv-162
)	
v.)	
)	
HELEN JONES-KELLEY,)	
in her personal capacity,)	Jury Trial Demanded
)	
and)	
)	
FRED WILLIAMS,)	
in his personal capacity,)	
)	
and)	
)	
DOUG THOMPSON,)	
in his personal capacity,)	
)	
Defendants.)	
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COMPLAINT

Plaintiff, Samuel Joseph Wurzelbacher, hereby sues Defendants Helen Jones-Kelley, Fred Williams, and Doug Thompson under 42 U.S.C. § 1983 for violations of the U.S. Constitution. As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as Plaintiff asserts claims arising under the laws of the United States.

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to the claims herein occurred within this judicial district.

PARTIES

3. Plaintiff Samuel Joseph Wurzelbacher is an individual and resident of the State of Ohio. Plaintiff served in and was trained by the U.S. Air Force as a plumber. Until recently, Plaintiff was employed by a small plumbing business near his home in the Toledo area. As a result of the media attention Plaintiff has received, he has come to be widely known as “Joe the Plumber.”

4. At all times relevant to this lawsuit and until at least December 2008, Defendant Jones-Kelley was the Director of the Ohio Department of Job and Family Services (“ODJFS”). Defendant Jones-Kelly is being sued in her personal capacity for actions taken under the color of state law.

5. At all times relevant to this lawsuit, Defendant Fred Williams was Assistant Director of ODJFS. Defendant Williams is being sued in his personal capacity for actions taken under the color of state law.

6. At all times relevant to this lawsuit, Defendant Doug Thompson was Deputy Director of Child Support within ODJFS. Defendant Thompson is being sued in his personal capacity for actions taken under the color of state law.

STATEMENT OF FACTS

7. Plaintiff was in the front yard of his home near Toledo, Ohio on October 12, 2008, throwing a football with his son, when then-presidential candidate Senator Barack Obama

and his campaign entourage appeared on his street. Plaintiff eventually joined the crowd and asked several questions of Senator Obama.

8. Plaintiff's questions to Senator Obama involved the impact his tax plan would have on Plaintiff's desire to purchase his employer's plumbing business and whether Plaintiff would have to pay higher taxes.

9. Senator Obama's responses to Plaintiff's inquiries proved to be highly controversial, especially the following statement by Senator Obama:

It's not that I want to punish your success; I just want to make sure that everybody who is behind you, that they've got a chance at success, too I think when you spread the wealth around, it's good for everybody.

10. Plaintiff's questions to Senator Obama were recorded by the news media and the video was replayed afterward across the nation.

11. Plaintiff then began receiving numerous requests from the media to speak about his views regarding Senator Obama. For example, on October 14, 2008, Plaintiff expressed his views regarding Senator Obama during an interview on the Fox News program "Your World With Neil Cavuto."

12. In these media appearances, Plaintiff criticized Senator Obama's tax proposals for being intended to redistribute wealth and being tantamount to socialism.

13. During the third presidential debate on October 15, 2008, Senator McCain criticized Senator Obama's views on wealth distribution and repeatedly referred to Plaintiff by the shorthand "Joe the Plumber."

14. Immediately following the debate, Plaintiff received and responded to numerous inquiries from the media. For example, Plaintiff expressed his opinions during an interview by Katie Couric of the “CBS Evening News” immediately after the conclusion of the debate on October 15, 2008. Early the next morning, Plaintiff also stated his views during an interview by Diane Sawyer on ABC’s “Good Morning America.”

Defendants’ Search of Confidential State Records

15. At all times relevant to this lawsuit, Defendants were the three highest-ranking officials in the ODJFS.

16. The ODJFS administers a wide range of significant state programs that include child support enforcement, the Temporary Aid to Needy Families cash assistance program, and unemployment compensation.

17. The ODJFS maintains certain confidential databases, unique to the agency, as part of its administration of these programs.

18. These confidential databases include the Support Enforcement Tracking System (“SETS”) for child support enforcement; the Client Registry Information System Enhanced (“CRIS-E”), which maintains records pertaining to the Temporary Aid to Needy Families program; and Ohio Job Insurance (“OJI”), which contains information about unemployment benefits.

19. The confidentiality requirements governing SETS, CRIS-E, and OJI are primarily specified under Ohio Revised Code sections 5101.26 through 5101.30 and Ohio Administrative Code Chapter 5101, section 1-1-3.

20. ODJFS personnel are permitted to access these confidential databases only to the extent necessary to carry out official agency business.

21. Prior to being permitted to access these confidential databases, ODJFS personnel are trained in areas related to confidentiality, safeguarding guidelines, and security procedures.

22. On October 16, 2008, four days after Plaintiff asked questions of Senator Obama and the day immediately following the third presidential debate, Defendants had a meeting at which they discussed "Joe the Plumber."

23. Following this meeting, Defendant Jones-Kelley authorized searches related to Plaintiff on three confidential databases (SETS, CRIS-E, and OJI) for the purpose of retrieving information on Plaintiff.

24. Following Defendants' October 16, 2008 meeting, Defendant Thompson directed an agency employee to conduct an inquiry regarding Plaintiff in the confidential SETS database.

25. Following Defendants' October 16, 2008 meeting, Defendant Williams directed an agency employee to conduct a search relating to Plaintiff in the CRIS-E confidential database. This agency employee then contacted another employee who conducted a search of the confidential OJI database.

26. Upon information and belief, the searches of each of these confidential databases for information relating to Plaintiff were conducted on or about October 16, 2008, four days after Plaintiff asked questions of Senator Obama and made various other subsequent public statements.

27. Defendants' searches of the confidential databases regarding Plaintiff were not related to any official agency business.

28. Defendants authorized and directed that searches of the confidential databases be conducted for the purpose of retrieving information on Plaintiff because of Plaintiff's questions to Senator Obama and Plaintiff's subsequent public statements.

29. Upon information and belief, Defendants were supporters of Senator Obama's presidential campaign. Defendant Jones-Kelley was an active supporter and fundraiser for Senator Obama's presidential campaign. In addition to making at least a \$2,500 contribution on her own behalf to Senator Obama's presidential campaign, Defendant Jones-Kelley provided names of numerous other potential high-dollar donors to the Obama campaign and volunteered to help arrange a campaign event for Senator Obama's wife, Michelle.

Investigation by the Office of the Inspector General

30. A subsequent investigation into Defendants' conduct by the Office of the Ohio Inspector General ("OIG") found "no legitimate agency function or purpose for checking on [Plaintiff's] name through SETS, CRIS-E, and OJI or for authorizing these searches." Report of Investigation, File No. 2008299 (Nov. 20, 2008) ("Report") at 10.

31. The OIG concluded that Defendant "Jones-Kelley's decision to authorize searches of the ODJFS databases was not appropriate." Report at 10.

32. The OIG found "reasonable cause to conclude that Jones-Kelley committed a wrongful act by authorizing the searches on [Plaintiff]." Report at iv.

33. The OIG also determined that Defendant Thompson, subsequent to the search he ordered of Plaintiff's name on the SETS confidential database, instructed an agency employee to send an e-mail to another agency official asserting that the search was for an agency purpose. The OIG concluded that "this email orchestrated by [Defendant] Thompson was an attempt to

deceive as there was no agency function or purpose for accessing [Plaintiff's] records.” Report at 7.

34. The OIG also determined that Defendant Jones-Kelley used state resources to engage in political activity on behalf of Senator Obama’s presidential campaign, specifically the use of a state computer and e-mail account for political fundraising.

35. The OIG concluded that Defendant Jones-Kelley’s political activities were “an inappropriate use of state resources” and constituted a “wrongful act.” Report at 11.

36. Following the issuance of the OIG report, Defendants were suspended from their positions by Ohio Governor Ted Strickland. Defendants Jones-Kelley and Thompson reportedly were placed on unpaid suspension for their role in searches of the confidential databases for information on Plaintiff. Defendant Williams also reportedly was suspended without pay for one week.

37. Defendant Jones-Kelley reportedly resigned her position prior to the end of her suspension. Defendant Williams reportedly resigned effective January 31, 2009. Defendant Thompson reportedly was terminated from his position prior to the end of his suspension.

COUNT I
(First Amendment Retaliation)

38. Plaintiff realleges paragraphs 1 through 37 as if fully stated herein.

39. All acts of the Defendants, their agents, servants, employees, or persons acting at their behest or direction, as alleged herein, were done under the color and pretense of state law.

40. Plaintiff enjoys the right to freedom of expression as guaranteed by the First Amendment to the United States Constitution.

41. Plaintiff was exercising this basic right of freedom of expression when he asked questions of Senator Obama and subsequently expressed his views in public regarding Senator Obama.

42. Defendants, acting under color of state law, violated Plaintiff's First Amendment rights by taking actions adverse to Plaintiff as a direct and proximate result of and in retaliation for Plaintiff's exercise of his First Amendment rights. Defendants retaliated against Plaintiff by improperly authorizing and directing searches of confidential state databases for information relating to Plaintiff.

43. Defendants acted knowingly, willfully and/or maliciously, and with the specific intent to deprive Plaintiff of his constitutional rights and/or with deliberate indifference to Plaintiff's constitutional rights.

44. Defendants' actions, improperly accessing confidential state databases in retaliation for Plaintiff's exercise of his First Amendment rights, are sufficient to chill or silence a person of ordinary firmness from future First Amendment activities.

45. As direct and proximate result of these violations of his constitutional rights, Plaintiff suffered substantial damages, including emotional distress, harassment, personal humiliation, and embarrassment.

WHEREFORE, Plaintiff demands judgment be entered against Defendants, jointly and severally, including an award of damages, including punitive damages, reasonable attorneys' fees, costs, and other such relief as the Court deems just and proper.

COUNT II
(Fourteenth Amendment Right to Privacy)

46. Plaintiff realleges paragraphs 1 through 45 as if fully stated herein.

47. All acts of the Defendants, their agents, servants, employees, or persons acting at their behest or direction, as alleged herein, were done under the color and pretense of state law.

48. Plaintiff has a constitutionally protected right to privacy under the Fourteenth Amendment to the U.S. Constitution.

49. Defendants' searches of the confidential databases regarding Plaintiff were not related to any official agency business.

50. Plaintiff's right to privacy regarding information maintained by the government was violated by Defendants' improper search of the confidential databases.

51. Defendants acted knowingly, willfully and/or maliciously, and with the specific intent to deprive Plaintiff of his constitutional rights and/or with deliberate indifference to Plaintiff's constitutional rights.

52. As direct and proximate result of the violation of his constitutional rights, Plaintiff suffered substantial damages, including emotional distress, harassment, personal humiliation, and

embarrassment.

WHEREFORE, Plaintiff demands judgment be entered against Defendants, jointly and severally, including an award of damages, including punitive damages, reasonable attorneys' fees, costs, and other such relief as the Court deems just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Dated: March 5, 2009

Respectfully submitted,

/s/ David R. Langdon

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE, SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 02/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: