

No. 08-1026

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH
CIRCUIT

ALBERT SNYDER,
Plaintiff/Appellee,

vs.

WESTBORO BAPTIST CHURCH, INC., et al.,
Defendants/Appellants,

Appeal from the District of Maryland
Trial Court Judge: Honorable Robert D. Bennett
District Court Docket Number 06-CV-1389

**PLAINTIFF'S/APPELLEE'S MOTION FOR LEAVE OF COURT
TO FILE SUPPLEMENTAL APPENDIX AND TRIAL EXHIBITS**

Plaintiff/Appellee, Albert Snyder, by and through counsel, pursuant to
FRAP 27 and Local Rule 27(a), respectfully requests your Honorable Court grant
him leave to file a supplemental appendix and to file trial exhibits, and in support
thereof states as follows:

1. Defendants/Appellants filed their opening brief and the appendix on June 16, 2007.

2. Plaintiff/Appellee Snyder filed his response brief on July 21, 2007, and at the time submitted a supplemental appendix and his trial exhibits.

3. The supplemental appendix consists of a 157 page Memorandum Opinion and Entry of Judgment entered in the case of *Westboro Baptist Church, Inc., et al. v. City of Topeka, Kansas, et al.*, Case No. 95-CV-1031, in the District Court of Shawnee County, Kansas (*Westboro v Topeka*). Plaintiff/Appellee has bound this document in one volume, designated as a supplemental appendix.

4. Excerpts only from *Westboro v. Topeka* were made part of the record in the court below by Appellants as exhibits in their motion to dismiss or for summary judgment and in response in opposition to motion to dismiss and were included in the appendix (Vol. II pp. 360-365 and Vol. III pp. 790-793).

5. The Opinion in *Westboro v Topeka* was cited by Plaintiff/Appellee in his response brief in opposition to the motion for summary judgment, and Plaintiff/Appellee submitted the full opinion to the district court, which is a matter of record (Document 78) and was considered by the district court.

6. In addition, Plaintiff/Appellee seeks to include his trial exhibits in the record. The trial exhibits were returned to the parties at the conclusion of the trial and therefore were not transmitted to your Honorable Court with the record.

7. In order to file his trial exhibits with the Court, Plaintiff/Appellee has bound those exhibits in one volume consisting of 92 pages.

8. Plaintiff/Appellee did include one exhibit inadvertently, Exhibit No. 23, Epic, The Voices of Thanksgiving, which was identified at trial but not admitted into evidence, and Plaintiff/Appellee therefore requests that the Court not consider Exhibit 23.

9. The exhibits Plaintiff/Appellee desires to file are matters admitted into the record and were considered by the jury in reaching its verdict.

10. For the foregoing reasons, Plaintiff/Appellee believes and therefore avers that good cause exists why the additional material should be accepted in the form submitted.

11. Alternatively, Plaintiff/Appellee requests that your Honorable Court return the Appendix to Defendants/Appellants to supplement the submitted Appendix to include all Plaintiff/Appellee's trial exhibits and the full Opinion in *Westboro v Topeka*.

12. Counsel for Appellants has been informed of Appellee's intention to file this motion. Counsel for Appellants indicated that she concurs in the requested relief, except for Trial Exhibit 23 (see above ¶ 8) and the full Opinion in *Westboro v Topeka*. Consequently, the only issue of non-concurrence is the full Opinion in

Westboro v Topeka. Again, the opinion was filed in the district court and is a public record.

WHEREFORE, Plaintiff/Appellee, Albert Snyder, respectfully requests that your Honorable Court accept for inclusion in the record the Supplemental Appendix and the Plaintiff/Appellee's Trial Exhibits.

BARLEY SNYDER LLC

s/ Sean E. Summers

By: _____
Sean E. Summers
100 East Market Street
P.O. Box 15012
York, PA 17405-7012
(717) 846-8888

Craig T. Trebilcock
Shumaker Williams PC
1 East Market Street
York, PA 17401
(717) 848-5134

Attorneys for Plaintiff/Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this date Plaintiff/Appellee's Motion for Leave is being served in the following manner:

Via EM/ECF System

Margie Jean Phelps, Esq.: margie.phelps@cox.net

John Joshua Wheeler, Esq.: jjw@tjcenter.org

David T. Schur, Esq.: schurd@dicksteinshapiro.com

Steven R. Shapiro, Esq.: sshapiro@aclu.org

Deborah Jeon, Esq.: jeon@aclu-md.org

BARLEY SNYDER LLC

/s/ Sean E. Summers

By: _____

Sean E. Summers
100 East Market Street
P.O. Box 15012
York, PA 17405-7012
(717) 846-8888

Date: July 21, 2008