

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 Richard D. Bennett  
District Court Docket Number 06-CV-1389

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

Defendants/Appellants, and each of them, by and through counsel, hereby make the following response to plaintiff/appellee's motion for leave to file supplemental appendix and trial exhibits:

1. The document marked Exhibit 23, pp. 18a-27a in the submitted document entitled "Plaintiff/Appellee's Trial Exhibits," was not an admitted exhibit at trial. To the contrary, the trial court declined to admit it in spite of arguments by plaintiff/appellee's counsel for its admission; and the trial court specifically precluded reference to the document during closing argument, Appendix, Vol. XI, pp. 2911-2913; Trial Transcript, October 29, 2007, pp. 994-996. Since there is no

cross-appeal in this case based upon the non-admission of this exhibit; and no issue has been raised in plaintiff/appellee's brief about the non-admission of this exhibit; there appears to be no proper basis for including this document in the appendix in this case. Defendants/appellants request that the exhibit be removed from any supplemental appendix which plaintiff/appellee is allowed to file, rather than the novel approach of including an item not a part of the record and asking the Court not to consider it as suggested in the motion.

2. Several of the items included in the submitted "Plaintiff/Appellee's Trial Exhibits" are already included in the Appendix filed by defendants/appellants.

Specifically, these:

Exhibit 1, p. 1a of proposed supplement, Vol. XV, at 3776 in Appendix.

Exhibit 2, p. 2a of proposed supplement, Vol. XV, at 3781 in Appendix.

Exhibit 3, p. 3a of proposed supplement, Vol. XV, at 3782 in Appendix.

Exhibit 4, p. 4a of proposed supplement, Vol. XV, at 3783 in Appendix.

Exhibit 5, p. 5a of proposed supplement, Vol. XV, at 3784 in Appendix.

Exhibit 6, p. 6a of proposed supplement, Vol. XV, at 3785 in Appendix.

Exhibit 7, p. 7a of proposed supplement, Vol. XV, at 3786 in Appendix.

Exhibit 8, p. 8a of proposed supplement, Vol. XV, at 3787 in Appendix.

Exhibit 20, p. 11a-17a of proposed supplement, Vol. XV, at 3788-3794 in Appendix.

Exhibit 24, p. 28a-29a of proposed supplement, Vol. XV, at 3769-3771 in Appendix.

Exhibit 16, p. 92a of proposed supplement, Vol. XV, at 2757 in Appendix.  
Thus it is not necessary to include these items a second time in any supplemental appendix.

3. Defendants/appellants have no objection to plaintiff/appellee submitting Exhibits 9, 10, 24, 25, 27, 29, 30, 32a-x and 42, beyond the objections to the admission of those exhibits made at trial and preserved here.

4. Only those portions of the trial court's decision in *Westboro Baptist Church v. City of Topeka* which are part of the trial court record below should be submitted to this Court. There is no indication that the trial court considered this unpublished decision in its rulings, as suggested by plaintiff/appellee.

WHEREFORE, defendants/appellants request that Exhibit 23 be excluded from any supplemental appendix filed; that exhibits not be duplicated in any supplemental appendix filed; and that any inclusion of the decision in *Westboro Baptist Church v. City of Topeka* be limited to those portions which are a part of the record below.

Respectfully submitted,

/s/ Margie J. Phelps

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Margie J. Phelps  
3734 SW 12<sup>th</sup> St.  
Topeka, KS 66604  
785.408.4598 - ph  
785.233.0766 – fax  
[margie.phelps@cox.net](mailto:margie.phelps@cox.net)  
Attorney for Defendants/Appellants

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Response by Defendants/Appellants to Plaintiff/Appellee's Motion for Leave of Court to File Supplemental Appendix and Trial Exhibits was filed electronically and served by e-mail on Mr. Sean E. Summers, Esq. and Mr. Craig Trebilcock, Esq., on July 29, 2008.

/s/ Margie J. Phelps

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Margie J. Phelps