

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

APPELLANTS' RESPONSE TO
APPELLEE'S MOTION TO STRIKE RESPONSE BRIEF FILED
JULY 22, 2008, AND FOR LEAVE TO FILE CORRECTED BRIEF TO
INCLUDE RESPONSE TO APPELLANTS AND TO AMICI CURIAE
and MOTION TO EXTEND TIME FOR REPLY BRIEF
AND TO ALLOW ADDITIONAL PAGES

Appellants make the following response to “Appellee’s Motion to Strike Response Brief Filed July 22, 2008, and for Leave to File Corrected Brief to Include Response to Appellants and to Amici Curiae;” and move the Court for time to August 25, 2008, to file a reply brief and for additional pages if needed.

1. Appellants filed their opening brief on June 16, 2008.
2. Two amici filed briefs on June 18 and June 25, 2008, in support of reversal of the verdict herein.

3. Appellee filed his initial responsive brief on July 21, 2008. Now Appellee is moving to strike that brief and submit a final brief by August 11, 2008. Appellants have no objection to plaintiff/appellee being permitted to strike his brief, and submit a new brief by August 11, 2008, *provided a) the changes/additions to the brief are limited to legal arguments in response to the amici briefs (which is the stated reason for the need to file a replacement brief); and b) this extends their time to reply to fourteen (14) days beyond that date* (to August 25, 2008¹).

4. Rule 28(c), Federal Rules of Appellate Procedure, states an appellant may file a reply brief. Rule 31(a)(1), Federal Rules of Appellate Procedure, states an appellant has fourteen (14) days from the responsive brief to file a reply. Thus, it appears the rule would set the date for a reply brief at August 25, 2008.

5. Appellee has also anticipated possibly needing additional pages for this responsive brief, given the amici briefs in this matter. For this same reason and due to the number and complexity of issues in this case, defendants/appellants anticipate the possibility for additional pages in the reply brief. Thus defendants request leave to file a reply brief of twenty (20) pages if necessary (and anticipate that 7000 words would not take up more than twenty [20] pages).

6. This plan will permit both sides to submit one brief where all issues raised by the opposing party or any amici could be addressed, which is beneficial to the process and the Court, and not prejudicial to the parties.

¹ This assumes appellee files his new responsive brief on August 11, 2008; this statement applies throughout this document whenever the date August 25 is used.

WHEREFORE, appellants request that the Court set August 11, 2008, as the date for a new/final responsive brief; and allow them to submit a reply brief by August 25, 2008, with twenty (20) pages if necessary.

Respectfully submitted,

/s/ Margie J. Phelps

Margie J. Phelps
3734 SW 12th St.
Topeka, KS 66604
785.408.4598 - ph
785.233.0766 – fax
margie.phelps@cox.net
Attorney for Defendants/Appellants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendants/Appellants' Response to Appellee's Motion to Strike Response Brief Filed July 22, 2008, and for Leave to File Corrected Brief to Include Response to Appellants *and* to Amici Curiae and Motion to Extend Time for Reply Brief and to Allow Additional Pages was filed electronically and served by e-mail on counsel indicated below on August 2, 2008:

Mr. Sean E. Summers, Esq., summers@barley.com

Mr. Craig Trebilcock, Esq., trebilcock@shumakerwilliams.com

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

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

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

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

/s/ Margie J. Phelps

Margie J. Phelps