

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

ALBERT SNYDER,  
Plaintiff

v.

FRED W. PHELPS, SR.,  
SHIRLEY L. PHELPS ROPER,  
REBEKAH A. PHELPS-DAVIS, and  
WESTBORO BAPTIST CHURCH, INC.  
Defendants

Civil Action No. 1:06-cv-1389-RDB  
Judge Bennett

**RESPONSE OF PLAINTIFF, ALBERT SNYDER, IN OPPOSITION TO  
MOTION TO DISMISS AND FOR SUMMARY JUDGMENT OF  
DEFENDANTS FRED W. PHELPS AND WESTBORO BAPTIST CHURCH, INC.**

**I. PROCEDURAL HISTORY**

Plaintiff initiated the within action against defendants Fred Phelps, Sr. (hereinafter “Phelps”) and Westboro Baptist Church, Inc. (hereinafter “WBC”) on June 5, 2006. Thereafter, plaintiff joined, with leave of Court, defendants Shirley Phelps-Roper (“Roper”) and Rebekah Phelps-Davis (“Davis”) as additional defendants via an Amended Complaint. Thereafter, discovery ensued and ultimately ended on August 6, 2007. The claims against all defendants are: (1) Defamation; (2) Intrusion upon seclusion (Invasion of Privacy); (3) Publicity given to private life (Invasion of Privacy); (4) Intentional Infliction of Emotional Distress; and (5) Civil Conspiracy.

Phelps and WBC filed a Motion for Summary Judgment and accompanying brief on September 4, 2007. Simultaneously, Phelps and WBC filed their so-called Defendants’ Statement of Material Facts as to which there is no Genuine Issue. In response, plaintiff filed a response to Phelps’ and WBC’s purported facts, contradicting the majority of Phelps’ and

WBC's facts. In any event, Phelps and WBC are only seeking summary judgment concerning Count I - Defamation and Count II & III - Invasion of Privacy.<sup>1</sup> Plaintiff files the within memorandum of law in support of his response to Phelps' and WBC's partial motion for summary judgment.

## **II. FACTS**

On March 3, 2006, plaintiff Albert Snyder's son, Lance Corporal Matthew Snyder, was killed in Iraq. Thereafter, two uniformed Marines notified plaintiff of his son's death and that his son would be transported back to the United States for burial. The Snyder family planned a traditional Christian burial at St. John's Catholic Church in Westminster, Maryland. A traditional obituary was submitted to the local newspapers concerning plaintiff's son's death; however, plaintiff requested a private funeral. Snyder Depo. pp.83-84 at Appendix Ex. 2.

In response to Lance Corporal Matthew Snyder's tragic and unfortunate death, defendants issued a news or press release indicating their intention to picket the funeral of Lance Corporal Matthew Snyder.<sup>2</sup> Phelps-Davis Depo. Ex. 1 at Appendix Ex. 17. Importantly, defendants were not invited to Matthew Snyder's funeral, and in fact, defendants knew that their presence would not be well-received by the Snyder family. Phelps-Roper Depo. pp. 101, 146. at Appendix Ex. 13. Furthermore, defendants knew that their presence could elicit violence, and in this regard, defendants requested law enforcement protection. Phelps-Davis Depo. Ex. 4 at

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<sup>1</sup> Phelps and WBC incorporate their motion to dismiss by reference. However, this argument fails for two reasons. First, the standard of review for Fed. R. Civ. P. 12 is different than Fed R. Civ. P. 56. Second, courts have repeatedly disregarded "incorporation by reference" arguments. See, e.g., Cray Communications, Inc. v. Novatel Computer Systems, Inc., 33 F.3d 390, 396 n. 6 (4th Cir. 1994) , and see also, Longworth SK # 4812 v. Ozmint, 302 F. Supp. 2d 535, 542 n. 4 (D. S.C. 2003 )(The Court also rejects any attempt by Petitioner to maintain objections by incorporating arguments presented in earlier briefs by reference.). In the event that the Court allows defendants to incorporate by reference, plaintiff hereby incorporates all of its previously filed documents.

Appendix Ex. 7. In response to defendants' concerns for violence, law enforcement deployed a team of five sheriffs to escort the protestors and provide security for the protestors during their picket. Long Depo. pp. 32-33 at Appendix Ex. 6. Indeed, the sheriffs' presence was for the express and limited purpose of providing security for the protestors. Stated differently, the sheriff personnel were only necessary because of the protestors' presence. Long Depo. p. 70 at Appendix Ex. 6. Law enforcement determined that the protestors' presence created a credible threat of violence. Maas Depo. p. 32 at Appendix Ex. 8. In this regard, local law enforcement deployed a SWAT team and a command post was established. Maas Depo. pp. 8, 19, 29 at Appendix Ex. 8. Additionally, the fire department, ambulances and miscellaneous government equipment were in the area on standby to prepare for the violence associated with defendants' presence. Maas Depo. p. 30 at Appendix Ex. 8. The command center consisted of an incident commander (also a member of the SWAT team), local, county and state police, a traffic engineer, and communication clerks. Maas Depo. pp. 30-31 at Appendix Ex. 8. The enormous amount of government resources associated with defendants' presence required a Winnebago to be utilized as a command center, not to mention police cruisers, fire trucks and ambulances. Maas Depo. pp. 30-31 at Appendix Ex. 8.

Not surprisingly, defendants' presence disrupted plaintiff's son's funeral. Father Leo Affidavit ¶9 at Appendix Ex. 3. Indeed, defendants' presence did not allow for normal access to the church campus and changed the entire atmosphere of the religious services for plaintiff and his family. Id. In short, defendants' presence created a negative and circus-like atmosphere during a solemn occasion. Id. at ¶10. The protestors' activities added insult to injury during a

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<sup>2</sup> Defendants agree that picket is synonymous with protest. Phelps-Davis Depo. p. 103 at Appendix Ex. 5.

time of grief and mourning. Id at ¶11. In addition to injuring the Snyder family, defendants' activities also injured parish families that were present to share in the Snyder family's grief. Id.

Directly across the street from where defendants protested, there is a parish elementary school. Father Leo Affidavit ¶13 at Appendix Ex. 3. Because of the protestors' presence at the funeral, law enforcement and church officials found it necessary to protect school children from the protestors' presence. In this regard, all teachers were required to pull down the blinds so that the children could not see the protestors. Father Leo Affidavit ¶12 at Appendix Ex. 3. In addition, each parent received advance warning of the protestors' presence and officials notified parents that their children should avoid using the main entrance of the school. Id. Tellingly, the school was in a lock-down mode. Id.; Long Depo. p. 26 at Appendix Ex. 6. Further, the children were not allowed to play outside and there would be no dismissal until the protestors left the church. Long Depo. p. 26 at Appendix Ex. 6.

In accordance with their threats, defendants traveled from Kansas and across the country to Westminster, Maryland for the express purpose of protesting Lance Corporal Matthew Snyder's funeral. With law enforcement protection, defendants were escorted by sheriff personnel from the outskirts of town to the protest. Phelps-Roper Depo. p.100 at Appendix Ex. 13. Defendants' sole purpose for traveling to Westminster, Maryland was to picket and protest the funeral. Phelps-Davis Depo. pp. 62, 67 at Appendix Ex. 5. Defendants knew the funeral was at a Catholic church and consequently targeted the Snyder family by bringing and flaunting a sign that stated "Pope in Hell." Phelps-Roper Depo. pp. 112, 116 at Appendix Ex. 13. Additionally, defendants knew that Matthew Snyder was a Marine and brought a sign that said "Semper Fi Fags." Id. p. 124. Because the funeral was in Maryland, defendants brought a sign

that said “Maryland Taliban” to the funeral. *Id* p. 134. Disgustingly, defendants brought a sign which pictured two men performing anal sexual intercourse. Phelps-Davis Depo. p. 120 at Appendix Ex. 5. Defendants even, unbelievably, brought a sign that said “Matt in Hell” to Matthew Snyder’s funeral. Snyder Depo. p. 90 at Appendix Ex. 2.

The Catholic priest, Father Leo, who was present and assisted in the Snyder family’s Christian burial had never observed anyone protest a funeral or church service. Father Leo Affidavit ¶16 at Appendix Ex. 3. In addition, Captain Maas has been in law enforcement for 31 years and had never witnessed anyone protest a funeral. Maas Depo. pp. 28-29 at Appendix Ex. 8. Major Long has been in law enforcement for 37 years and had never observed a funeral being protested. Long Depo. p. 69 at Appendix Ex. 6. Again, defendants’ sole purpose for traveling to Maryland was to protest and picket the funeral. Phelps-Davis Depo. pp. 62, 67 at Appendix Ex. 5. Indeed, defendants could have protested anywhere on March 10, 2006, but specifically chose to target a captive audience. Phelps-Roper Depo. p. 51 at Appendix Ex. 13; Phelps Depo. pp. 79-81 at Appendix Ex. 5; Tim Phelps Depo. p. 114 at Appendix Ex. 15. Importantly, all decisions, to include protests, are unanimously agreed upon by all WBC members. Tim Phelps Depo. pp. 57, 118 at Appendix Ex. 15; Phelps Depo. pp. 39, 55 at Appendix Ex. 5; Phelps-Davis Depo. p. 109 at Appendix Ex. 6; Phelps-Roper Depo. p.105 at Appendix Ex. 13.

Tellingly, defendants had no concern for the Snyder family and only used the funeral as a means of commanding an audience. Phelps Depo. p. 96 at Appendix Ex. 4. Indeed, WBC members use funerals as a platform to command an audience. Tim Phelps Depo. p. 116 at Appendix Ex. 15. Heartlessly, WBC’s corporate designee admitted that defendants capitalize on funerals because it is more “efficient” to get their message to more media. Tim Phelps Depo. pp.

116-117 at Appendix Ex. 15. Finally, defendants did not even care if their presence at the funeral was not welcome. Phelps Depo. p. 89 at Appendix Ex. 4.

Indeed, there was no consideration whatsoever given to the Snyder family's feelings. Id at 90. The adult protestors did not even have any discussions concerning harm to the Snyder family. Id at 91. Even at this juncture, defendants are not sorry for protesting the funeral. Phelps-Davis Depo. pp. 171-172 at Appendix Ex. 5. "Q: Do you regret that -- that you, your children, your sister or your father, traveled to Westminster, Maryland, on March 10, 2006, and protested? A: Absolutely not." Phelps-Roper Depo. 136 at Appendix Ex. 13. According to defendant Phelps, the pastor of the church, no one is sorry for protesting the funeral. Phelps Depo. p. 120 at Appendix Ex. 4.

### **III. ARGUMENT**

#### **A. Summary Judgment Standard.**

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c); see generally Celotex Corp. v. Catreet, 477 U.S. 317, 322 (1986). The Court must resolve all doubts as to the existence of a genuine issue of material fact in favor of the non-moving party. See Brock v. Extra Computer Ctrs., 933 F.2d 1253, 1259 (4<sup>th</sup> Cir. 1991). The moving party bears the initial burden of presenting evidence sufficient to demonstrate the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323. Once the moving party has met its burden, the party opposing summary judgment may not simply rely on the pleadings or mere denials of the allegations; rather, the non-moving party must "go beyond

the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, and designate specific facts showing there is a genuine issue for trial.” Id., 477 U.S. at 324 (internal quotations omitted). Summary judgment should be granted where a party “fails to make a showing sufficient to establish the existence of an element essential to that party’s case and on which that party will bear the burden at trial.” Id. If the evidence adduced by the non-movant is merely colorable or not significantly prohibitive, summary judgment is appropriate. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986).

#### **IV. SUMMARY OF DEFENDANTS’ ARGUMENT**

Defendants argument is straightforward and simple. In Count I, Phelps and WBC claim that plaintiff was not exposed to public scorn, hatred, contempt or ridicule, thereby discouraging other in the community from associating or dealing with plaintiff. In Count II & III, Phelps and WBC believe that the First Amendment shields their actions. Next, Phelps and WBC claim that there is no evidence to establish punitive damages. Finally, it is alleged that plaintiff did not mitigate damages.

##### **A. The Defamation.**

Phelps’ and WBC’s attack on the defamation claim is unavailing. “[P]laintiff must prove: (1) that the defendant made a defamatory communication to a third person; (2) that the statement was false; (3) that the defendant was at fault in communicating the statement; and (4) that the plaintiff suffered harm.” Samuels v. Tschechtelin, 135 Md.App. 483, 544, 763 A.2d 209, 242 (2000)(Internal citations omitted.) “The “fault” element of the calculus may be based either on negligence or actual malice.” Id.

In the instant matter, defendants claimed that plaintiff taught his son adultery and posted that accusation on the internet. According to defendants, plaintiff taught Matthew Snyder to commit adultery.<sup>3</sup> Phelps Depo. Ex. 12 at Appendix 12. Plaintiff did not teach his son adultery or commit adultery.<sup>4</sup> Snyder Depo. pp. 113-114, 173-174 at Appendix Ex. 2. Where, as here, defendants did no investigation to determine the truthfulness of their statements, they are at fault for purposes of defamation. Phelps Depo. p. 98 at Appendix Ex. 4, Phelps-Roper Depo. p. 71-72 at Appendix Ex. 13. Plaintiff was harmed. Snyder Depo. p. 97-98 at Appendix Ex. 2; Report of Chaplain (MAJ) Terry Callis at Appendix Ex. 18; Report of Kenneth J. Doka, PhD at Appendix Ex. 19 ; Report of Scott R. Mann, M.D. at Appendix Ex.20; Report of Jeffrey D. Willard, Ph.D. at Appendix Ex. 21. In short, plaintiff has established a defamation claim.

**B. There is no First Amendment Defense.**

Initially, defendants' cases are readily distinguishable. Street v. New York, 394 U.S. 576, 592 (1969) involved a criminal complaint, and consequently, **action by the government**. Similarly, in Knights of Ku Klux Klan v. Martin Luther King, Jr. Worshipers, 735 F.Supp. 745, 750 (M.D. Tenn. 1990), **government action** was involved concerning a request for a parade permit.

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<sup>3</sup> Defendants may argue that defendant Roper is solely liable for the defamation claim. However, defendants committed a civil conspiracy as well. In this regard, defendants are adamant that they agree on each and every decision, to include their defamatory comments. Phelps Depo. p. 39 at Appendix Ex. 4, Tim Phelps Depo. pp. 16, 57, 100 and 118 at Appendix Ex. 15.

<sup>4</sup> Even assuming *arguendo* that the Court will allow defendants to present their definition of adultery, this issue becomes a question of fact for the jury.



Plaintiff is not a government actor, and consequently, any so-called First Amendment defense is unavailable. In Tilton v. Richardson, 6 F.3d 683, 686-687 (10th Cir. 1993)(internal citations omitted), the court stated,

Mr. Tilton has alleged Appellees aimed at interfering with his right to freedom of religion in violation of the First Amendment, his right to pursue his chosen profession as guaranteed by the Fifth and Fourteenth Amendments, and his right to a fair and impartial jury. These rights are not protected against private infringement. There are few rights protected against private, as well as official, encroachment. The Supreme Court has recognized only “ the Thirteenth Amendment right to be free from involuntary servitude, and, in the same Thirteenth Amendment context, the right of interstate travel.” The right of free speech is not such a right.

The court explained further,

The First Amendment states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The guarantees of the First Amendment run only against the federal government. Of course, by incorporation into the due process clause of the Fourteenth Amendment, these guarantees also run against the State, but this does not make the First Amendment a protection against Appellees' private conspiracy. Mr. Tilton's Fifth and Fourteenth Amendment claims likewise fail as these Amendments do not erect a shield against merely private conduct however discriminating or wrongful.

Id. (Internal citations omitted.)

Other courts have reached the same conclusion. “It is a bedrock principle of constitutional law that most protections of individual rights and liberties contained in the Constitution and its amendments, apply only to the actions of governmental entities. By its own terms, the First Amendment extends only to protect individuals against actions taken by the government. Plaintiff has not alleged that defendant is a governmental entity or that it is associated with the government. Consequently, plaintiff has failed to state a constitutional claim premised on the allegation that defendant violated her First

Amendment right to freedom of religion.” Magallanes v. Cracker Barrel Old Country Store, 2002 WL 92928.

“The Supreme Court has recognized that the First Amendment's protection “... embraces two concepts,-freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.” Thus even if we were to find that the California Church is a religious institution, the free exercise clause of the First Amendment would not immunize it from all common law causes of action alleging tortious activity.” Van Schaick v. Church of Scientology of California, 535 F. Supp. 1125, 1134 (D.C. Mass. 1982).

Even assuming for sake of argument’s sake that a First Amendment analysis is necessary - which would be wrong to begin with - “a state may protect its citizens from unwelcome communications - including offensive communications - where the communications invade substantial privacy interests in an essentially intolerable manner, as where the communications are directed at citizens in their homes or where the communications are directed at a ‘captive’ audience and are so obtrusive that individuals cannot avoid exposure to them.” McQueary v. Stumbo, 453 F. Supp. 2d 975, 990 (E.D. Ky. 2006). To determine whether a significant governmental interest exists, this Court must analyze whether the communication at issue is so intrusive that an unwilling audience cannot avoid it, see Frisby v. Schultz, 487 U.S. 474 (1988), or the Court must determine whether the audience can avoid “bombardment of their sensibilities simply by averting their eyes” Cohen v. California, 403 U.S. 15, 21 (1971).

Obviously, “[f]amily members have personal stake in honoring and mourning their dead and objecting to unwanted public exploitation that, by intruding upon their own grief, tends to

degrade the rites and respect they seek to accord the deceased person who was once their own.”

National Archives and Records Admin. v. Favish, 541 U.S. 157, 168 (2003). It follows that:

A funeral is a deeply personal, emotional and solemn occasion. Its attendees have an interest in avoiding unwanted, obtrusive communications which is at least similar to a person’s interest in avoiding such communications inside his home. Further, like medical patients entering a medical facility, funeral attendees are captive. If they want to take part in an event memorializing the deceased, they must go to the place designated for the memorial event.

McQueary, 453 F. Supp. 2d at 992.

Defendants continue to ignore plaintiff’s rights to bury his son with dignity and respect and without disruption. “It is the right of privacy of the living which it is sought to enforce here. That right may in some cases be itself violated by improperly interfering with the character or memory of the deceased relative, but it is the right of the living, and not that of the dead, which is recognized. A privilege may be given the surviving relatives of a deceased person to protect this memory, but the privilege exists for the benefit of the living, to protect their feelings, and to prevent a violation of their own rights in the character and memory of the deceased.” Schuyler v. Curtis, 147 N.Y. 434, 42 N.E. 22, 25 (1895).

The Supreme Court has recognized that civilized people respect burial rites:

Burial rites or their counterparts have been respected in almost all civilizations from time immemorial. See generally 26 Encyclopaedia Britannica 851 (15th ed.1985) (noting that “[t]he ritual burial of the dead” has been practiced “from the very dawn of human culture and ... in most parts of the world”); 5 Encyclopedia of Religion 450 (1987) (“[F]uneral rites ... are the conscious cultural forms of one of our most ancient, universal, and unconscious impulses”). They are a sign of the respect a society shows for the deceased and for the surviving family members. The power of Sophocles' story in *Antigone* maintains its hold to this day because of the universal acceptance of the heroine's right to insist on respect for the body of her brother. See *Antigone of Sophocles*, 8 Harvard Classics: Nine Greek Dramas 255 (C. Eliot ed.1909). The outrage at seeing the bodies of American soldiers mutilated and dragged through the streets is but a modern instance of the same understanding of the interests decent people have for those

whom they have lost. Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once their own.

Favish, 451 U.S. at 167-168.

In addition, the Supreme Court has realized that all listeners are not equal. “The unwilling listener's interest in avoiding unwanted communication has been repeatedly identified in our cases. It is an aspect of the broader “right to be let alone” that one of our wisest Justices characterized as “the most comprehensive of rights and the right most valued by civilized men.” Hill v. Colorado, 530 U.S. 703, 716-717 (2000) (internal citations and footnotes omitted.) “The right to avoid unwelcome speech has special force in the privacy of the home, and its immediate surroundings, but can also be protected in confrontational settings.” Id. (Internal citations omitted.) “[T]he First Amendment does not demand that patients at a medical facility undertake Herculean efforts to escape the cacophony of political interests.” Hill, 530 U.S. at 716. Likewise, mourners (to include plaintiff) should not be required to undertake Herculean efforts to escape defendants’ disruptive behavior -- especially when plaintiff is burying his own son.

**C. Plaintiff is Entitled to Punitive Damages.**

The plaintiff does not dispute defendants’ recitation of the law. However, defendants have already been admonished that “the words and activity conveying the words is equivalent to an immediate invasion of privacy and an assault.” Westboro Baptist Church, Inc., et al. v. City of Topeka, et al. at 72. Even with that stern language from a court, defendants’ have not been deterred. Indeed, defendants have already been told,

Based on the expert evidence admitted of the societal purpose of funerals and the effect on attendees, particularly the emotional status of mourners who may be, but are not exclusively, family members of the deceased, it is overwhelmingly clear

and beyond doubt that persons at funeral events who are even perceived by the family or friends of a deceased as “outsiders” and interfering with the family’s control of the funeral agenda, much less persons manifesting a presence that is hostile or derisive of the deceased, is per se, conduct that is disorderly and assault provoking. Further, it seems factually beyond dispute that picketing funeral events is, per se, to some degree immediately injurious to family and close friends of the deceased and further, by psychologically interrupting the grieving process of the deceased’s survivors and friends, such a presence may, as medical fact, cause some mourners actual physical distress and physical injury.

Westboro Baptist Church, Inc. et al., v. City of Topeka et al. at 24.

Defendants readily admit that they had no concern for the Snyder family and only used the funeral as a means of commanding an audience. Phelps Depo. p. 96. Matthew Snyder’s funeral was nothing more than a platform to command an audience. Tim Phelps Depo. p. 116. The corporate designee openly admitted that military funerals are nothing more than an “efficient” means to get media attention. Tim Phelps Depo. pp. 116-117.

In sum, as defendants pointed out, there is a jury instruction concerning punitive damages and the jury will undoubtedly follow that instruction.

**D. Plaintiff did not Exacerbate His Own Damages.**

Initially, it is important to note that mitigation of damages is a proper question for the jury and not appropriate for summary judgment. Nonetheless, plaintiff has sought medical treatment for the damages caused by defendants. Report of Scott R. Mann, M.D. at Appendix Ex.20; Report of Jeffrey D. Willard, Ph.D. at Appendix Ex. 21. Notwithstanding that treatment, plaintiff thinks about defendants all of the time. Snyder Depo. p. 62. In fact, plaintiff will live with the memories of defendants protesting his son’s funeral for the rest of his life. Snyder Depo. p. 122.

Notably, the facts defendants rely upon are disputed. For example, plaintiff does not look for statements of defendants on the internet. See Plaintiff's Response to Pro Se Defendants' Facts ¶130. Furthermore, plaintiff did not provide counterpoints to anything defendants have stated. Id at ¶139 and 140. Curiously, defendants suggest that plaintiff exacerbated his damages, that were caused by the defendants, because he filed the within lawsuit. To the contrary, if anything, the lawsuit has helped plaintiff "better deal with the grieving that was interrupted by the Westboro Baptist Church." Mann Depo. p. 116. In sum, mitigation is another question for the jury.

**E. Res Judicata Bars Defendants First Amendment Defense.**

The doctrine of *res judicata* bars the re-litigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation. *Res judicata* protects the courts, as well as the parties, from the attendant burdens of relitigation. Anne Arundel County Bd. of Educ. v. Norville, 390 Md. 93, 107, 887 A.2d 1029, 1037 (2005). The elements of *res judicata* under federal law are analogous to those under Maryland law: (1) identical parties, or parties in privity, in the two actions; (2) the claim in the second matter is based upon the same cause of action involved in the earlier proceeding; and (3) a prior and final judgment on the merits, rendered by a court of competent jurisdiction in accordance with due process requirements. Id.

Here, in Westboro Baptist Church, Inc. et al. v. City of Topeka Kansas, et al., WBC challenged the government's authority to enforce a funeral picketing act in Kansas. According to defendants' motion to dismiss, they were acting on behalf of WBC and, consequently, were a

party or a party in privity with WBC. Notably, defendant Phelps was a party, the within corporate designee (Tim Phelps) was a party and defendants' family law firm litigated the matter on their behalf. Roper and Davis are members of the family law firm. See [www.phelpschartered.com](http://www.phelpschartered.com).

In the aforementioned Kansas case, the within defendants claimed that the First Amendment prevented the government from enforcing the funeral picketing act. Among other things, the court concluded that the government had a compelling government interest in protecting mourners from defendants' activities. "A fair conclusion to be drawn from the expert testimony as a whole is that picketing a funeral is the equivalent of kicking a person while they're down and correspondingly it hurts these defenseless persons, both physically and mentally." Id. at 25. In addition, "it is clear a funeral service or other rite of respect to a deceased is factually and historically a private event and that factually, an uninvited, particularly negative, intrusion ("protest activities") at such an event may properly and legally be seen as disorderly and immediately injurious to some mourners there present, both emotionally and to some likely degree, physically." Id. at 145.

There was a final judgment on the merits. The trial court wrote a 157 page opinion that was subsequently affirmed in its entirety on appeal. It follows that if the government can enforce a funeral picketing act under a compelling government interest standard then a private party can bring a private lawsuit to enforce a private civil action.

## **V. CONCLUSION**

Plaintiff Albert Snyder respectfully requests that defendants motion for summary judgment be denied.

BARLEY SNYDER LLC

/s/ Sean E. Summers

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date true and correct copies of Plaintiff's Response in Opposition to Defendants' Fred Phelps and Westboro Baptist Church, Inc.'s Motion to Dismiss and for Summary Judgment are being served in the following manner:

Via ECF:  
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