

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. 06-CV-1389 RDB

**PLAINTIFF’S MOTION IN LIMINE TO EXCLUDE A
PORTION OF PROFESSOR BALMER’S EXPERT REPORT**

Plaintiff, Albert Snyder, by and through counsel, files the within Motion in Limine to Exclude a Portion of Professor Balmer’s Expert Report.

1. On August 6, 2007, Professor Randall Balmer produced an expert report concerning religion. See attached Exhibit A.
2. In Professor Balmer’s report, he apparently felt it necessary to explain his “Personal Disposition Toward the Defendants.” See Exhibit A, p. 2. Plaintiff is requesting that a minimal portion of Professor Balmer’s personal disposition be stricken.
3. Specifically, plaintiff is requesting that this Honorable Court redact or strike:

However, as one of the expert witnesses in the Alabama Ten Commandments case (where I argued for the removal of the monument because it clearly violated the establishment clause of the First Amendment), I felt it was my duty to defend the other part of the First Amendment, the right to freedom of speech and assembly. Therefore, with those caveats in place, I proceed to the substance of my statement.

4. Professor Balmer refers to the “Alabama Ten Commandments case” and discusses his “duty to defend the other part of the First Amendment.” Presumably, Professor Balmer is referring to Glassroth v. Moore, 229 F.Supp.2d 1290 (M.D. Ala. 2002).

5. Importantly, the instant matter is a civil action by and between non-government parties. Consequently, Professor Balmer’s analogy concerning the “Alabama Ten Commandments case” and the within matter is inappropriate and would allow Professor Balmer to give his personal opinion concerning the law, or in other words, Professor Balmer’s understanding of the First Amendment. Unsurprisingly, Professor Balmer does not mention the Snyder family’s right to speech or assembly -- or the fact that defendants disrupted plaintiff’s peaceful religious assembly.

6. In Glassroth, the Ten Commandments “monument [was] the centerpiece of the rotunda” in the judicial building. Id at 1294. Further, the defendant, in Glassroth, was “a state official” and the monument in dispute was “in a state building.” Id at 1303.

7. Where, as here, there is no government action, Professor Balmer’s analogy concerning the “Alabama Ten Commandments case,” is inapplicable and likely to confuse the jury -- not to mention irrelevant. Any so-called First Amendment defense would only apply if there is government action. See, e.g., Tilton v. Richardson, 6 F.3d 683 (10th Cir. 1993); and see also Magallanes v. Cracker Barrel Old Country Store, 2002 WL 92928.

8. As an additional and obvious matter, a funeral is uniquely different than a public rotunda in a state judicial building. In fact,

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 v. Stumbo, 453 F. Supp. 2d 975, 992 (E.D. Ky. 2006).¹

9. Furthermore, defendants are aware that “[t]here is no religious consequence imposed for failing to picket at a specific location or event.” Westboro Baptist Church, Inc., et al v. City of Topeka, et al. at 76. (Unpublished Opinion previously filed herein as Lengthy Exhibit with plaintiff’s opposition to defendants’ motion to dismiss and for summary judgment, Doc. no. 78)

10. Although perhaps premature at this juncture, plaintiff also requests that Professor Balmer be precluded from testifying concerning any First Amendment issues.

11. Professor Balmer is proffered as an expert in religion but not as an expert on the First Amendment.

¹ Notably, the plaintiff in McQueary “asserts that he has picketed funerals with the Westboro Baptist Church.” Id. at 978.

WHEREFORE, plaintiff Albert Snyder respectfully requests that this Honorable Court strike the aforementioned paragraph on page 2 of Professor Balmer's expert report. Furthermore, plaintiff respectfully requests that Professor Balmer be precluded from testifying concerning the First Amendment.

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/s/ Sean E. Summers

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CERTIFICATE OF SERVICE

I hereby certify that on this date true and correct copies of Plaintiff's Motion in Limine to Exclude a Portion of Professor Balmer's Expert Report are being served in the following manner:

Via ECF:

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Date: October 3, 2007