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November 6, 2007

**VIA FEDERAL EXPRESS**

The Hon. Richard D. Bennett  
 United States District Court for the  
 District of Maryland, Baltimore Division  
 101 W. Lombard St.  
 Baltimore, MD 21201

FILED  
 IN THE OFFICE OF  
 RICHARD D. BENNETT  
 NOV - 7 2007  
 UNITED STATES DISTRICT COURT

**Re: *Snyder v. Westboro Baptist Church, et. al.***

Dear Judge Bennett:

I represent The Baltimore Sun, and I write concerning what the Sun understands to be the sealing of Court Exhibit #1, consisting of financial statements that were published to the jury for purposes of considering punitive damages in the above-captioned case. One or more Sun reporters previously informally requested these records from the Court, and were informed that they were sealed. The record reflects that this exhibit was sealed by order of the Court on November 1, 2007. Docket Entry #196. I write to provide the Court with legal authority for the Sun's request and to respectfully request that the Court re-consider releasing these records to the Sun.

This exhibit was published to the jury so that the jury could consider the Defendants' financial circumstances for purposes of assisting it in deciding both liability for, and the amount of, punitive damages. Because these records were submitted to the jury, the press and public have a presumptive First Amendment right of access to them. The Fourth Circuit has consistently held that the First Amendment provides a presumptive right of access to judicial records submitted to the relevant decision-maker for purposes of deciding dispositive issues in a civil case. *Virginia State Police v. Washington Post*, 386 F.3d 567 (4<sup>th</sup> Cir. 2004); *Stone v. University of Maryland Medical System Corp.*, 855 F.2d 178 (4<sup>th</sup> Cir. 1988) (*Stone I*); *Rushford v. New Yorker Magazine*, 846 F.2d 249, 253 (4<sup>th</sup> Cir. 1988).

In all these cases, the Circuit consistently held that a First Amendment right of access attaches to exhibits submitted for purposes of deciding a summary judgment motion, because summary judgment "serves as a substitute for trial." *Virginia State Police*, 386 F.3d at 576. As the Court has also held, this applies equally to documents originally subject to a protective order prior to their submission, because "[o]nce the documents are made part of a dispositive motion, such as a summary judgment motion, they 'lose their status of being 'raw fruits of discovery.'" *Id.* at 252, quoting *In re "Agent Orange" Product Liability Litigation*, 98 F.R.D. 539, 544-45 (E.D.N.Y. 1983). Plainly, therefore, documents actually used for purposes of considering

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liability and damages at trial are subject to the First Amendment right of access. *See also In re Washington Post Co.*, 807 F.2d 383, 390 (4<sup>th</sup> Cir. 1986) (First Amendment right of access applies to documents submitted in connection with sentencing hearings).

Where a First Amendment right of access attaches, the burden is on the party seeking to deny public access to show that “closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enterprise I*, 464 U.S. 501, 510 (1984), *quoted by Washington Post Co.*, 807 F.2d at 390. Even where courts apply the common-law presumption of access to other judicial records, which, unlike those at issue here, were not submitted in connection with trial or dispositive motions, “[t]he public’s right of access to judicial records and documents may be abrogated only in unusual circumstances.” *Stone I*, 855 F.2d at 182.

We also note that as a procedural matter, before a court actually seals judicial records, it must follow the procedure first laid out by the Circuit in *In re Knight Publishing Co.*, 743 F.2d 231, 234-35 (4<sup>th</sup> Cir. 1984). *Rushford*, 846 F.2d at 253-54. That procedure requires that (1) adequate notice be provided to the public that the sealing of documents may be ordered; (2) interested persons must have “an opportunity to object to the request before the court ma[kes] its decision,” *Knight*, 743 F.2d at 235; (3) if the Court ultimately decides to seal documents, “it must state its reasons on the record, supported by specific findings.” *Id.* at 234; and (4) the Court must state its reasons for rejecting alternatives to closure. *Id.* at 235.

When those principles are applied to this case, we respectfully submit that the First Amendment requires that these records be unsealed. Issues related to the Defendants’ net worth and ability to pay an award of punitive damages were a central focus of the parties arguments’ concerning punitive damages. Indeed, virtually the entirety of defendants’ counsel’s arguments regarding punitive damages focused on both the content and import of these documents, while counsel for the plaintiff urged the jury to question their reliability, particularly the claims of some defendants that they have no financial means.

It is also likely that the contents of this exhibit will again be a primary focus of any motion for a new trial or a remittitur. It is therefore impossible for the press and public to meaningfully assess both the parties’ arguments and the jury’s decision in this case without access to this exhibit. Yet the very reason First Amendment access rights to trial records and exhibits have been widely recognized is to ensure the public’s ability to meaningfully assess the conduct of the parties, the decisions of the jury, and the overall fairness of the proceedings. *Washington Post Co.*, 807 F.2d at 389. *See also FTC v. Standard Financial Management Corp.*, 830 F.2d 404 (1<sup>st</sup> Cir. 1987) (affirming the unsealing of defendants’ personal financial statements submitted in a civil case, because they were germane to the court’s approval of the reasonableness of a consent decree).

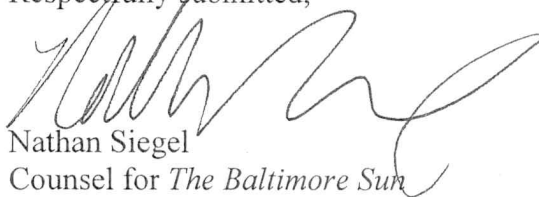
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By contrast, there would appear to be no sufficiently compelling interest in maintaining these materials under seal, particularly given that the defendants' alleged financial circumstances have already been the subject of debate on the public record. Moreover, while we do not know specifically what these documents contain, if they include any specific, sensitive identifying information about non-parties, such as contributors to the defendant Church, the Sun would not object to redacting the identities of any such persons.

Thank you for your consideration of this request.

Respectfully submitted,



Nathan Siegel  
Counsel for *The Baltimore Sun*

cc: Sean E. Summers, counsel for Plaintiff (via facsimile and first-class mail)  
Jonathan L. Katz, counsel for Defendants Westboro Baptist Church, Inc. and Fred W.  
Phelps, Sr. (via facsimile and first-class mail)  
Shirley L. Phelps-Roper, defendant *pro se* (via facsimile and first-class mail)  
Rebekah A. Phelps-Davis, defendant *pro se* (via facsimile and first-class mail)