

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

ALBERT SNYDER,  
Plaintiff

v.

FRED W. PHELPS, SR.,  
JOHN DOES, JANE DOES, and  
WESTBORO BAPTIST CHURCH, INC.  
Defendants

Civil Action No. 06-CV-1389 RDB

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO ENLARGE TIME TO JOIN  
PARTIES OR AMEND THE PLEADINGS**

The plaintiff files this Brief in Support of it's Motion to Enlarge Time to Join Parties and Amend the Pleadings and incorporates that Motion herein by reference.

**I. BACKGROUND**

The plaintiff requested that the defendants concur in this request, but the defendants (now demonstrating a pattern)<sup>1</sup> have refused to extend the courtesies typically afforded opposing parties during litigation. Indeed, as discussed below, motions to amend pleadings are liberally granted. It follows that the defendants are aware that a Motion to Amend will eventually be granted. The real question is whether the Court should piecemeal the amendments - and cause more expense for all parties - or allow a reasonable period of time to identify the "John and Jane Does," who were present and protested and disrupted Lance Corporal Matthew Snyder's funeral.

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<sup>1</sup> By means of example, the defendants evaded service for several weeks. Subsequently, the defendants disingenuously represented to the Court that their Kansas attorneys did not represent the defendants *in this matter* - despite their own words to the contrary. Next, the defendants filed a Motion to Dismiss which was summarily denied and contained arguments which could hardly be considered meritorious. Most recently, the defendants have appealed an award of \$3,150 for costs. Although the plaintiff will respond to that Motion and the accompanying Motion to Stay at the appropriate time, the Motions lack merit and are designed to delay and increase to cost of litigation.

Apparently, the defendants would rather piecemeal the amendments and cause all parties more expense.

Plaintiff initiated this action on June 5, 2006. Although the defendants successfully evaded service for a period of time, with Court intervention, they were ultimately served with process and required to respond. This response was in the form of a Motion to Dismiss, which was denied on October 30, 2006. The Court then held a scheduling conference and subsequently issued a Scheduling Order. Counsel, thereafter, communicated concerning deposition dates and the need for written discovery. The defendants were notified that the plaintiff intended to amend the Complaint to join the adult members from defendants Westboro Baptist Church, Inc. that participated in the protest of Matt Snyder's funeral. Indeed, the defendants were told via the plaintiff's response to the Motion to Dismiss that the unnamed defendants would be the adult members of the Westboro Baptist Church, Inc. that participated in the disruption and protest of Matt Snyder's funeral. In other words, defendants have been repeatedly told that additional defendants would be added via amendment to the Complaint. Because defendant Fred W. Phelps, Sr. participated in the disruption of the funeral, he already knows the identity of these members.

## **II. ARGUMENT**

The plaintiff will ultimately move to amend his Complaint to name the adult individuals that participated in the protest and disruption of Lance Corporal Matthew Snyder's funeral. Therefore, it is in all parties' (and the Court's) best interests to file and respond to a single Motion to Amend rather than piecemeal the proceedings and unnecessarily repeat the process.<sup>2</sup>

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<sup>2</sup> Regardless of whether this Motion is granted, the plaintiff reserves the right to move to amend the pleadings on subsequent occasions. However, the plaintiff, at this time, only intends to amend the pleadings to identify the "John and Jane Does."

The law in the Fourth Circuit concerning leave to amend is overwhelmingly clear. “Under Federal Rule of Civil Procedure 15(a), leave to amend a pleading "shall be freely given when justice so requires." Fed. R. Civ.P. 15(a). The Supreme Court has declared that "this mandate is to be heeded." Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). The law is well settled "that leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." Johnson v. Oroweat Foods Co., 785 F.2d 503, 509 (4th Cir. 1986). Delay alone is an insufficient reason to deny leave to amend. See id. Rather, the delay must be accompanied by prejudice, bad faith, or futility. See id.” Edwards v. City of Goldsboro, 178 F.3d 231, 242 (4th Cir. 1999).

### **III. CONCLUSION**

The Plaintiff respectfully requests that this Honorable Court grant the Motion to Enlarge Time to Join Parties and Amend the Pleadings by thirty (30) days and until February 5, 2007.

BARLEY SNYDER LLC

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**CERTIFICATE OF NON-CONCURRENCE**

I hereby certify that I contacted counsel for defendants, Jon Katz, with regard to the Motion for Enlargement of Time to Join Additional Parties and Amend the Pleadings, and he has **not concurred** in the Motion.

BARLEY SNYDER LLC

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