



Douglas Graham/Roll Call via Getty Images

What's your first reaction to this photo? Does it shock and anger you? Why or why not? Should members of groups such as the Westboro Baptist Church have the right to picket near a soldier's funeral? ■

## Should Legal Protections Extend to Offensive Speech?

The Westboro Baptist Church (WBC) of Topeka, Kansas, has made itself infamous over the last decade by picketing the funerals of American servicemen and women, as well as at other high-profile funerals, carrying signs proclaiming “GOD HATES FAGS” and “THANK GOD FOR DEAD SOLDIERS.” The church, which is not connected to any other Baptist denomination, is generally described as being mainly composed of the extended family of its founder and former leader, the late Fred Phelps. The church argues that God is punishing the United States for homosexuality, and its members picket the funerals to draw attention to their group.<sup>1</sup> (Fred Phelps died in March 2014, but the WBC has continued with its pickets reportedly under the leadership of non-relative Steve Drain.<sup>60</sup>)

In 2006, the Phelps family brought their pickets to the funeral of Lance Cpl. Matthew Snyder, who was killed in Iraq. The protesters were reportedly kept approximately 1,000 feet away from the church where the funeral was being held. Then, a week later, a member of the Westboro church posted an “epic” to the church’s Web site that told a disparaging story about Snyder and his family, claiming that Snyder’s parents raised him to “defy his creator” and that they taught him that “God

was a liar.” Albert Snyder, Matthew’s father, sued Phelps for intentional infliction of emotional distress and invasion of privacy. He was initially awarded an \$11 million judgment, but that judgment was later reduced to \$5 million by the judge. The case was then reversed by the federal appeals court, based in part on the Supreme

Court’s ruling in *Falwell v. Flynt* that even speech that was “gross and repugnant in the eye of most” was still protected.<sup>2</sup>

When the case of *Snyder v. Phelps* reached the U.S. Supreme Court, there was an extensive public debate over the rights of the Phelps family to free speech versus the rights of the Snyder family to bury their son in peace.

During arguments before the court, the attorney for the Snyder family testified, “We’re talking about a funeral. If the context is ever going to matter, it has to matter in the context of a funeral. Mr. Snyder simply wanted to bury his son in a private, dignified manner.”<sup>3</sup> In response, Margie J. Phelps, daughter of Fred Phelps, argued that there is no constitutional law to keep her from exploiting a funeral for her cause. She told the court that “when I hear the language of ‘exploiting the bereavement,’ I look for: What is the principle of law that comes from this court? This notion of exploiting, it has no definition in a principle of law that would guide people as to when they could or could not.”<sup>4</sup>

The Court eventually ruled in favor of the Phelps family’s right to protest in an 8–1 decision, holding that the Phelps family had followed local laws and stayed the required 1,000 feet away from the funeral. Chief Justice John Roberts, writing for the majority, said that “speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even

hurtful speech on public issues to ensure that we do not stifle public debate.”<sup>5</sup>

### WHO are they?

Who is Fred Phelps? Who is Albert Snyder?

### WHAT did they say?

Why did Albert Snyder sue Fred Phelps and the Westboro Baptist Church? Why do Phelps and his family picket veterans’ funerals?

### WHAT evidence is there?

What grounds would the Court have had for ruling in favor of Snyder? What grounds did the Court have for ruling in favor of Phelps?

### WHAT do you and your classmates think?

Do you agree with how the Court ruled in the Phelps case? Why or why not? What would the consequences be for free speech if the Court had ruled against Phelps? What can communities do (if anything) about the Westboro Baptist Church protests? Do you think people have a right to protest at or near funerals?

<sup>1</sup>Garrett Epps, “Westboro Baptist Church’s Surreal Day in Court,” *Atlantic*, October 6, 2010, [www.theatlantic.com/national/archive/2010/10/westboro-baptist-churchs-surreal-day-in-court/64167/](http://www.theatlantic.com/national/archive/2010/10/westboro-baptist-churchs-surreal-day-in-court/64167/).

<sup>2</sup>Stuart Taylor Jr., “Court, 8–0, Extends Right to Criticize Those in Public Eye,” *New York Times*, January 25, 1988, [www.nytimes.com/1988/02/25/us/court-8-0-extends-right-to-criticize-those-in-public-eye.html](http://www.nytimes.com/1988/02/25/us/court-8-0-extends-right-to-criticize-those-in-public-eye.html).

<sup>3</sup>Robert Barnes, “Court Considers Westboro Baptist Church’s Anti-Gay Protests at Military Funerals,” *Washington Post*, October 6, 2010, [www.washingtonpost.com/wp-dyn/content/article/2010/10/06/AR2010100603950.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/10/06/AR2010100603950.html).

<sup>4</sup>Ibid.

<sup>5</sup>John G. Roberts, “*Snyder v. Phelps* Excerpt: Robert’s Majority Opinion in Westboro Church Case,” *Washington Post*, March 2, 2011, [www.washingtonpost.com/wp-dyn/content/article/2011/03/02/AR2011030203069.html](http://www.washingtonpost.com/wp-dyn/content/article/2011/03/02/AR2011030203069.html).



Video 13.2: More details on *Snyder v. Phelps*.



Web 13.8: Read more about *Falwell v. Flynt*.