

Constitutional Rights Foundation Chicago

Identifying Persuasive Arguments in *Snyder v. Phelps* (2010)

Constitutional Questions: Does the First Amendment's freedom of speech tenet trump the First Amendment's freedom of religion and peaceful assembly? Does an individual attending a family member's funeral constitute a captive audience who is entitled to state protection from unwanted communication? Does *Hustler Magazine, Inc. v. Falwell* apply to a private person versus another private person concerning a private matter?

A key to deciding the constitutional questions in *Snyder v. Phelps* is understanding the arguments for each side of the case. Below are some of the arguments.

Step 1: Working with a partner, read each argument. Reach consensus on which 3 arguments you feel are the *most persuasive*. Be prepared to explain your choices to the class. You do not need to agree with the argument to consider it persuasive.

Step 2: After you have finished with Step 1, read through each of the arguments and mark whether you think the argument best supports Snyder (S), Phelps (P), both parties (B) or neither (N) party.

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1. ___ The Phelps family and other members of the Westboro Baptist Church argue that protesting outside military funerals, such as that for the Snyder family, is an exercise of political speech protected by the First Amendment.
 2. ___ Albert Snyder stated that the Phelps family intentionally interfered with his grieving process and caused him lasting physical and emotional harm.
 3. ___ Albert Snyder voluntarily gave interviews after his son's 2006 death in Iraq and funeral, and should be viewed as a public, not private, figure.
 4. ___ America owes so much to the military and those who die in the line of duty that we should defend their honor at all costs, even if it means sacrificing our own freedoms in the process.
 5. ___ Supreme Court Justice Oliver Wendell Holmes said, "If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought — not free thought for those who agree with us but freedom for the thought that we hate."
 6. ___ Albert Snyder has suffered from the intentional infliction of emotional distress (IIED) by the Phelps family. In *Hustler Magazine v. Falwell*, the U.S. Supreme Court held that a cartoon lampooning the Rev. Jerry Falwell was protected speech because private citizens must be free to criticize public figures, such as Reverend Falwell, to promote

national dialogue, and public figures cannot claim IIED. Because Snyder has done nothing to attach himself to a public event, *Falwell* should not apply in this case.

7. ___ Private funerals have long been accorded special protection by American law.
8. ___ Snyder cannot claim that he was a captive audience during his son's funeral. Snyder was not disturbed by the Phelps family before or during the funeral. Snyder first saw the protestors and their message while watching the evening news on television. He could have avoided the entire thing by changing the channel.
9. ___ Free speech receives maximum protection when exercised peacefully in a traditional public forum.
10. ___ The Westboro Baptist Church's speech is protected because their words were hyperbolic, figurative, loose, hysterical opinion. By their content, form and context, no reasonable reader could conclude they contain provable facts.
11. ___ Members of the Westboro Baptist Church unreasonably intruded upon Albert Snyder's privacy by picketing 1000 feet outside the funeral of his son, Marine Lance Cpl. Matthew Snyder.
12. ___ The state's interest in protecting an individual's privacy at a peaceful private funeral outweighs the First Amendment interest in protecting the hateful speech and conduct.
13. ___ If juries can award large damage awards based on whether they think speech is "outrageous" it would allow censorship and chill speech. Juries would punish speech that offends them by assigning large damage awards, and then speakers would stop speaking out of fear that they might have to pay huge sums of money if the speaker offended someone.
14. ___ Mr. Snyder was a captive audience during his son's funeral. Snyder was socially obligated to attend the funeral, and funerals are only held once.
15. ___ The Westboro Baptist Church complied with the law because they complied with the time, place, and manner restrictions and stood in a public space while making political speech.