



Constitutional Rights Foundation Chicago

Snyder v. Phelps

No. 09-751

Argued: October 6, 2010

Decided: TBA

Facts

Fred W. Phelps, Sr., founded Westboro Baptist Church, Inc. in Topeka, Kansas, in 1955 and has served as its only pastor ever since. The church has sixty or seventy members, fifty of whom are related to him. The church admits to practicing a "fire and brimstone" Christian fundamentalism. Among their religious beliefs is that God hates homosexuality; that God hates the United States for its tolerance of homosexuality in American society and in the U.S. Armed Forces; and that God punishes the United States by killing U.S. soldiers in Iraq and Afghanistan. Members of the church have increasingly picketed the funerals of U.S. service members to share their beliefs. They admit that the funerals offer a more "efficient" way to promote their religious viewpoint, and they also have established a website. Their efforts have gained notoriety for their church and drawn increased attention to its message.

On March 3, 2006, Marine Lance Corporal Matthew A. Snyder was killed in Iraq in the line of duty. After learning of his son's death, Albert Snyder began planning for his son's funeral and scheduled the service for March 10, 2006 in Westminster, Maryland. Obituary notices were placed in local newspapers providing notice of the time and location of the funeral.

Church members learned of Lance Cpl. Snyder's funeral and issued a news release announcing that members of the Phelps family intended to picket the funeral. On March 10, 2006, Phelps, his daughters and four of his grandchildren arrived in Westminster to picket Matthew Snyder's funeral, and notified police officials in advance. The family carried signs with generic messages such as "God Hates the USA," "America is doomed," "Pope in hell," and "Fag troops," as well as more specific messages, to wit: "You're going to hell," "God hates you," "Semper fi fags," and "Thank God for dead soldiers." Phelps testified that it was his "duty" to deliver the message "whether they want to hear it or not." It is undisputed that the Phelps's complied with local ordinances and police directions with respect to being a certain distance from the church.

None of the defendants ever met any members of the Snyder family. It was established at trial that Albert Snyder did not actually see the signs until he saw a television program later that day with footage of the Phelps family at his son's funeral.

Phelps continued to use Matthew Snyder to publicize their message after the actual funeral. The church published an "epic" on their website. In "The Burden of Marine Lance Cpl. Matthew Snyder," they stated that Albert Snyder and his ex-wife "taught Matthew to defy his creator," "raised him for the devil," and "taught him that God was a liar." In the aftermath of his son's funeral, Snyder learned that there was reference to his son on the Internet after running a search on Google.

In June 2006, Albert Snyder sued Fred W. Phelps, Sr., and Westboro Baptist Church for defamation, intrusion upon seclusion, publicity given to private life, the intentional infliction of emotional distress (IIED), and civil conspiracy. The federal district court granted summary judgment to Phelps and dismissed the claims of defamation and publicity given to private life. In October 2007, the parties proceeded to trial on the remaining three claims of intrusion upon seclusion, IIED, and civil conspiracy.

On October 31, 2007 the jury handed down a \$10.9 million verdict against the defendants for invasion of privacy and for causing emotional distress. Phelps appealed to the U.S. Court of Appeals—Fourth Circuit. The Court of Appeals reversed the award of damages altogether, holding that the Phelps' speech—while repugnant—was constitutionally protected.

In his appeal to the U.S. Supreme Court, Snyder argued that the Court of Appeals failed to recognize his personal stake in honoring and mourning his son and ignored his right to bury his son with dignity and respect. On March 8, 2010, the Court agreed to hear his appeal.

Issue

Does the First Amendment protect protesters at a funeral from liability for intentionally inflicting emotional distress on the family of the deceased?

Constitutional Amendment and Precedent

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988)

The Rev. Jerry Falwell was a nationally known minister, founder of Liberty University, and commentator on politics and public affairs. In 1983, he was the subject of a parody advertisement in *Hustler*, a nationally circulated magazine that primarily features nude photos of women. Based on an actual ad campaign for Campari Liqueur and copying the form and layout of these ads, the *Hustler* parody featured an “interview” with Falwell in which he tells that his “first time” was during a drunken incestuous rendezvous with his mother in an outhouse. Falwell sued *Hustler* and its publisher for libel and intentional infliction of emotional distress. A jury did not accept the libel claim but did agree with the emotional distress claim and awarded Falwell \$200,000. The magazine appealed the decision.

In *Hustler Magazine, Inc. v. Falwell*, the Supreme Court of the United States held that the First Amendment's free-speech guarantee prohibits awarding damages to public figures to compensate for emotional distress intentionally inflicted upon them. The Court held that reasonable people would not have interpreted the *Hustler* parody to contain factual claims.



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Arguments for Albert W. Snyder

- Albert Snyder stated that the Phelps family intentionally interfered with his grieving process and caused him lasting physical and emotional harm.
- 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.
- 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.
- Private funerals have long been accorded special protection by American law.
- 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.
- 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.
- 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.



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Arguments for Fred W. Phelps, Sr., Shirley L. Phelps-Roper, Rebekah A. Phelps-Davis, Westboro Baptist Church, Inc.

- Protesting outside military funerals is an exercise of political speech protected by the First Amendment.
- 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.
- 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.
- 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.
- Free speech receives maximum protection when exercised peacefully in a traditional public forum.
- 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.
- 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.
- 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.



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Decided: March 2, 2011

Decision

Chief Justice Roberts wrote the opinion of the Court, in which Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Sotomayor and Kagan joined. Justice Breyer wrote a concurring opinion while Justice Alito wrote a dissenting opinion.

Majority

In an 8-1 decision the Court held that the First Amendment protects the right of protestors to display signs containing offensive messages about gay people near funerals of fallen military service members.

Chief Justice Roberts wrote the majority opinion. The signs discussed the wars in Iraq and Afghanistan and our military, which are public, rather than private matters. When speech deals with a matter of public concern, it deserves stronger First Amendment protection. Additionally, the protestors stayed approximately 1,000 feet away from the funeral service, and Mr. Snyder, the father of the slain Marine, could only see the tops of the protestors' signs. Therefore, the speech was protected by the First Amendment of the United States Constitution.

Dissent

Justice Alito disagreed with the Court, and wrote a dissenting opinion. Justice Alito wrote that the death of Matthew Snyder was not a public issue, but a private issue. The First Amendment does not protect such outrageous conduct dealing with private matters. The protests caused the Snyder family a lot of pain and suffering. Justice Alito would have permitted the Snyder family to sue the protestors.