



Pundits Agree Supreme Court Should Protect Westboro Church

By *MAX FISHER* | October 08, 2010 11:37am



The Westboro Baptist Church, led by Fred Phelps, has attracted outrage for years for its outlandish protests at military funerals and other sensitive events. Their sign-waving protests inevitably generate blowback, typically in the form of physical threats or harassment, which the Westboro Church uses as an excuse to churn out lawsuits, the returns from which fund more protests and keep the Phelps family well-fed.

But on Wednesday, the Westboro Baptist Church found itself before the Supreme Court. The father of a slain soldier, whose funeral the church protested, is suing for \$2.9 million for invasion of privacy and intent to inflict emotional distress. Should the church's controversial protests be considered free speech and free assembly, or is the soldier's father legally correct that Phelps went too far? Pundits seem to unanimously agree that the church—though every writer makes clear they hate it—is protected in its speech, and the Court should side with them.

- **There Is No Right Against Being Offended** Cato's [Ilya Somin writes](#), "A private cemetery can and should remove unwanted visitors for trespassing — but the Phelps didn't enter the cemetery. A town can pass ordinances restricting the time, place, and manner of protests — but the Phelps stayed within all applicable regulations and followed police instructions. Violent or aggressive protestors can be both prosecuted and sued for assault, harassment, and the like — but the Phelps' protests are neither loud nor involve 'getting up in the grill' of people, as their lawyer (and church member) put it during oral argument. In short, there's very little to this case and the Phelps' actions, ugly and objectionable as they are, are as constitutionally protected as a neo-Nazi parade. If people don't like that, they can change state laws to put certain further restrictions on protests near funerals or other sensitive areas — or federal laws in the case of military cemeteries—but they shouldn't be able to sue simply for being offended."
- **Limit Speech Through Legislatures, Not Courts** The Washington Post's [Ruth Marcus advises](#), "there is another way to protect the sanctity of funerals and to shield grieving families than to sock protesters with million-dollar damage awards. Indeed, as the states themselves point out, the federal government and 46 states have enacted laws that regulate protests around funerals. The court has long permitted such "time, place and manner" restrictions as consistent with the First Amendment. The justices could easily throw out the damage award without threatening the viability of these statutes."
- **It's Hate Speech, but Also Free Political Speech** The Guardian's [Michael Tomasky sighs](#), "Protected speech? Alas, probably. ... There's an obvious, common-sense difference between political speech, expressing a viewpoint, and hate speech, aimed at a person. But this speech was sort of both."

- **How the Media Can Fix This** The Atlantic's [Megan McArdle](#) urges, "What I'd like to know is, why can't this vast media conspiracy I keep hearing about get it together on Phelps and his rotten little band of merry madmen? Their shameful protests at funerals are condemned by, to a first approximation, every single other person in the United States of America. So why do they keep doing it? Presumably because it gets them on the teevee. So why won't the Liberal Media™ take away their fun? Refuse to broadcast any footage that contains their message; refuse to write about them."
- **Supreme Court 'Struggles'** Slate's [Dahlia Lithwick](#) writes, "The headline writers are going to say that the justices 'struggled' with this case. That may be so, but what they struggled with has very little to do with the law, which rather clearly protects even the most offensive speech about public matters such as war and morality. They are struggling here with the facts, which they hate. Which we all hate. But looking at the parties through hate-colored glasses has never been the best way to think about the First Amendment. In fact, as I understand it, that's why we needed a First Amendment in the first place."

Sources

- [Stop Covering This](#) *Megan McArdle*, The Atlantic
- [SCOTUS Struggles](#) *Dahlia Lithwick*, Slate
- [Free Speech, Hate Speech](#) *Michael Tomasky*, The Guardian
- [Limiting Speech 36](#) *Ruth Marcus*, The Washington Post
- [Being Offended](#) *Ilya Somin*, Cato

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