

Supreme Court torn on free speech rights, private funeral rites

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WASHINGTON (RNS)—The last rites of a slain Marine clashed with a small church’s right to preach its anti-gay gospel in oral arguments heard before the U.S. Supreme Court.

Despite religion’s prominent role in the dispute, however, the justices seemed most interested in, and perplexed by, the limits of another First Amendment right—free speech.

Albert Snyder, center, is surrounded by veterans as he exits the Supreme Court after justices considered the limits of free speech surrounding an anti-gay church that picketed outside Snyder’s son’s military funeral. (RNS PHOTO/Paul Kuehnel/York Daily Record/Sunday News)

[Westboro Baptist Church](#), an independent Baptist congregation with about 50 members based in Topeka, Kan., has picketed nearly 200 military funerals in recent years with signs like “Thank God for Dead Soldiers” and “You’re Going to Hell.”

Founded in 1955 by Fred Phelps and composed mostly of his relatives, Westboro believes God is punishing America for its tolerance of homosexuality by killing U.S. soldiers in Iraq and Afghanistan.

In 2006, Albert Snyder filed a federal lawsuit against Westboro after church members picketed near his Marine son's funeral in a Catholic church in Westminster, Md. Snyder argues the church infringed on his rights of privacy and religious expression, and it intentionally inflicted emotional distress with nasty signs targeted at his son, Lance Cpl. Matthew Snyder.

In addition to the funeral protest, Westboro posted a poem on its website accusing Snyder and his ex-wife of raising their son "to defy his Creator, to divorce and to commit adultery."

A federal court partially sided with Snyder and awarded him \$5 million in damages; an appeals court overturned that verdict, ruling for the church.

Supreme Court justices seemed torn between sympathizing with Snyder's anguish and defending Westboro's right to picket and preach, no matter how offensive its message.

Any ruling they deliver, the justices know, will have far-reaching implications for the First Amendment. The justices repeatedly raised hypothetical situations and pondered where to draw the lines between free speech and harassment, between offering opinions on public issues and targeting private citizens with invective.

Sean Summers, Snyder's attorney, said, "I would hope the First Amendment wasn't enacted to allow people to disrupt and harass people at someone else's private funeral."

Summers painted Westboro as publicity hounds who sought to "hijack someone else's private event" to promote their church and inflict harm on the Snyders.

But the justices questioned whether Westboro's apocalyptic picket signs were targeted at the Snyder family or the country at large. "It sounds like

'You,'” in signs like “You Are Going to Hell,” is directed at “the whole rotten society in their view,” said Justice Ruth Bader Ginsburg.

Westboro used many of the same signs to protest at the Maryland state capital the same day as the Snyder funeral, Ginsburg noted, meaning the church was likely targeting societal issues, not private families. Several justices alluded to the high court’s long history of protecting speech on matters of public concern.

But Ginsburg and other justices also appeared to empathize with the Snyder’s plight.

“This is a case about exploiting a private family’s grief,” she said. Ginsburg then asked Phelps’ daughter and church attorney, Margie Phelps, “Why should the First Amendment tolerate exploiting this Marine’s family when you have so many other forums for getting across your message?”

Margie Phelps said Americans are questioning why U.S. soldiers are dying, and Westboro Baptist Church has answers people need to hear. “We have an answer to your question ... Our answer is that you have to stop sinning if you want this trauma to stop happening.”

“Nation, hear this little church,” Phelps said. “If you want to stop dying, stop sinning. That’s the only purpose of this little church.”

Justice Sonia Sotomayor acknowledged some of Westboro’s pickets, such as those condemning America or its wars, involve public speech and are thus likely protected by the First Amendment. “I fully accept you’re entitled in some circumstances to speak about any political issue you want,” Sotomayor said. “But what’s the line between doing that and then personalizing it and creating hardship for the individual?”

