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Hate Funeral Protests? Then Ignore Them

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Hate funeral protests? Then ignore them

Let's not mince words. Fred Phelps' protests are vile. Phelps, the pastor of a tiny Topeka, Kan., church, thinks that God is punishing America because of its acceptance of gays. He is especially troubled by the military's tolerance of gays (never mind that "don't ask, don't tell" is hardly tolerance).

Phelps and his congregants, almost all of whom are Phelps family members, spread their message by protesting at the funerals of fallen soldiers. One such funeral was that of Marine Lance Cpl. Matthew Snyder, who died in Iraq and whose memorial service was at a church in Westminster, Md.

Phelps, two daughters and four grandchildren showed up at Matthew's funeral with signs that said "Thank God for dead soldiers," "Fag troopers," and "You're going to hell." It didn't matter that Matthew wasn't gay. It was enough for Phelps that Matthew was part of the military-industrial-homosexual complex.

After the funeral, Phelps' daughter posted an "epic" on the church's website called "The Burden of Marine Lance Cpl. Matthew Snyder." In addition to the usual screed against America's tolerance of gays, the epic described how Matthew's parents had "taught Matthew to defy his creator" and "raised him for the devil."

Matthew's father, Albert, sued Phelps for causing him severe emotional distress. He won a multimillion-dollar judgment at trial, but a federal appellate court overturned the verdict. The court said Phelps' protest was protected by the First Amendment. It said no one would think the statements about Matthew's family were true and that the statements were instead protected political hyperbole.

The Supreme Court is now scheduled to hear Albert Snyder's appeal on Wednesday.

This may sound like a no-brainer. Why not stick it to Phelps and reinstate the judgment? Who, after all, is going to shed a tear for Fred Phelps?

But the case is trickier than it seems. For instance, it's important to note that Phelps and his family fully complied with police instructions to stay a reasonable distance from the church where Matthew was buried. Consequently, the protests were not audible at the funeral and the protest signs were not visible.

True, Snyder was aware of the protest and upset by it. But the protest did not interfere with the ceremony.

Yet, even if Phelps did not disrupt the service, why should his speech be protected? Why should the First Amendment protect horribly offensive messages that were certain to upset Matthew's father?

These are hard questions with no easy answers. On the one hand, it is important to recognize that any anti-war protest can be deeply upsetting for families whose relatives died in the war. Who, after all, wants to be told that a loved one died in vain for an unjust cause?

But as upsetting as these protests might be, our Constitution protects them. People have to be free to challenge government policies. Yet people will be cowed into silence if anyone offended by their speech can sue them for millions of dollars in damages.

Seen in this light, Fred Phelps is not much different from other speakers with distasteful messages, whether they are flag burners, cartoonists drawing Mohammed, or pro-lifers waving aborted fetus photos.

All of these messages offend but we still protect them. Those who are offended are told to avert their eyes or respond with speech of their own. The alternative-letting government decide which speech is too offensive to permit-is seen as more dangerous than the speech itself.

If Albert Snyder is going to win on appeal, he will have to convince the Supreme Court that Phelps' speech is somehow different from the many types of offensive speech we already tolerate.

Arguments. But if it does, it will have to explain why every other person offended by harsh political speech can't also sue for damages.

We'll have to see what the Supreme Court says. But in the meantime, our society is already free to deal Phelps' speech the most fatal blow of all. Ignore it.

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