

## *Snyder v. Phelps*

Argued: October 6, 2010      Decided: March 2, 2011

**Background:** Read deliberately waiting to *decide* until after reading all the info. Highlight or underline *information below*.

The United States has a long-standing commitment to protecting freedom of speech, even for speech that is unpopular or offensive. In the U.S., we also have a tradition of allowing people that are harmed to sue and recover money damages from the people who hurt them. For example, if you are in a car accident caused by another driver, you are allowed to sue to make the other driver pay your medical bills and compensate you for your pain and suffering. Sometimes, however, people hurt each other with the words they say. One type of harm caused by speech is *defamation* – when someone damages someone else’s reputation by saying or writing untrue things about them. Another type of harm is the *intentional infliction of emotional distress*. Someone can be held responsible for intentional infliction of emotional distress if their conduct is (1) intentional, (2) extreme and outrageous, and (3) causes severe emotional distress.

This case is about when these two concepts – free speech and protecting people from harmful speech – collide.

### Facts

Members of the Westboro Baptist Church believe that God hates and punishes America because of its tolerance of homosexuality, especially in the military. WBC often sends its members to picket near the funerals of U.S. soldiers, including the funeral of Matthew Snyder, a Marine killed in Iraq. Fred Phelps (the founder of the church) and a handful of church members gathered on public property near the church where the memorial service was held. Church members held signs reading: “Thank God for Dead Soldiers,” “God Hates the USA,” “America is Doomed,” “Priests Rape Boys,” “You’re Going to Hell,” and “God Hates You.” Some signs referred to gay soldiers, using offensive language. Church members stood almost 1,000 feet away from the cemetery and their signs were not visible to people attending the funeral. They did not engage in any loud or violent behavior and the funeral was not disrupted. The church informed the local police of its planned picketing before the day of the funeral and followed all local laws and police instructions to keep their distance from the funeral.

Albert Snyder, Matthew Snyder’s father, saw the tops of the picketers’ signs as he was leaving the funeral, but could not read what the signs said. He only found out about the statements on the signs by watching news coverage of the funeral later that day. Mr. Snyder says that he suffered extreme emotional distress, caused by the protest and the signs. He sued the Westboro Baptist Church and Fred Phelps for intentional infliction of emotional distress.

The jury decided that the church’s conduct had been intentional and outrageous, and caused severe emotional distress for Mr. Snyder. If speech is protected by the First Amendment, however, a person can not be held liable for harm caused by that speech. The jury in this case decided that the church’s speech was so offensive that it was **not protected** under the First Amendment. They therefore ordered the church to pay Mr. Snyder several million dollars. The Westboro Baptist Church appealed to the Fourth Circuit Court of Appeals, which reversed the jury’s decision. The Fourth Circuit ruled that the church’s speech was fully protected under the First Amendment, and the church therefore could not be forced to pay damages to Mr. Snyder. Mr. Snyder appealed and the U.S. Supreme Court granted *certiorari*.

**Issue:** Can a private individual or organization be held liable for the intentional infliction of emotional distress when their language is commenting on matters of public concern?

## Constitutional Amendments and Precedents

### *First Amendment*

"Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble...."

### *New York Times v. Sullivan (1964)*

In this case, the Supreme Court ruled that there is strong First Amendment protection for statements made about public officials. In order for a public official to win damages in a defamation case, the official must prove that a statement of fact is false **and** that the speaker knew the statement was false – that it was made with "actual malice." In this context, "malice" does not mean spitefulness or ill-will; it means reckless disregard for the truth. Under this standard, it is difficult for public officials to win a defamation case because public figures have access to the media to defend themselves and assume some risk in taking a public role. The Court emphasized that there is a "national commitment" to the idea that debate on public issues should be uninhibited and wide-open and that it may include unpleasant or unpopular attacks on public officials. If critics of official conduct were required to guarantee the truth of all their statements, that would lead to self-censorship.

### *Hustler Magazine, Inc. v. Falwell (1988)*

Rev. Jerry Falwell, a well-known minister, sued *Hustler Magazine* after the magazine published a cartoon that included highly offensive sexual jokes about him and his mother. Falwell sued the magazine for intentional infliction of emotional distress. The Court decided that Falwell couldn't recover damages for intentional infliction of emotional distress. They ruled that a public figure can only prove IIED if they can show that the publication contained a false statement **and** the publisher knew it was false – the same standard as the *New York Times* case. In Falwell's case, there could be no intentional infliction of emotional distress because a reasonable person wouldn't see the cartoon and think it described actual facts or events. The Court said that political parody and satire are important elements of free speech, and there is no way to distinguish between parody that is valuable to public discourse and the kind of satire published here.

### *Milkovich v. Lorain Journal Co. (1990)*

Michael Milkovich was the wrestling coach at a high school. An op-ed column in a local newspaper implied that Milkovich lied under oath during a court case. Milkovich sued the newspaper for defamation. The Supreme Court ruled for Milkovich, deciding that while opinion statements are usually protected by the First Amendment (and therefore can't be the basis for defamation liability), when the opinion implies certain facts, it is not necessarily protected. The Court said that a statement of opinion on matters of public concern has to be provably false if the speaker is going to be held liable for defamation. Otherwise, a statement that does not contain a provably false suggestion will receive full First Amendment protection. Since the newspaper's opinion that Milkovich lied in Court can be proven true or false, Milkovich can sue for defamation. An opinion like, "Milkovich is a horrible person" can't be proven true or false, and therefore is protected by the First Amendment.



**Decision:** Chief Justice Roberts delivered the opinion of the Court, in which Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Sotomayor, and Kagan joined. Justice Breyer filed a concurring opinion. Justice Alito filed a dissenting opinion.

### Majority

The Supreme Court ruled for Phelps and the Westboro Baptist Church. The Court decided that the speech at issue was entitled to full First Amendment protection. They said that this case centered largely on whether the speech is of public or private concern, and that it must consider all the circumstances of the case to decide whether the signs addressed public or private matters. The Court decided that the content of the signs plainly related to broad issues of concern to society at large. The signs conveyed the church's position on several public issues and were designed to reach as broad an audience as possible. Even if some signs were viewed as being directed at the Snyders, the overall theme of the signs spoke to public issues. Since protecting expression on matters of public concern is a principal purpose of the First Amendment, the speech here is protected.

The Court also noted that Westboro's members picketed peacefully in a public forum. The majority observed, "Given that Westboro's speech was at a public place on a matter of public concern, that speech is entitled to 'special protection' under the First Amendment. Such speech cannot be restricted simply because it is upsetting or arouses contempt."

Since this speech is entitled to "special protection," a jury cannot punish the Westboro Baptist Church by finding that it was outrageous and awarding damages for intentional infliction of emotional distress.

The Court concluded by saying, "Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate."

### Dissent (Justice Alito)

Justice Alito argued that the "national commitment" to free and open debate is not a license to commit vicious verbal assaults. He said that, under the reasoning used by the majority, a person (in order to draw attention to his views on public issues) could launch a verbal assault on another private individual, knowing that this verbal attack would cause the individual serious emotional harm. But because the speaker would be expressing views on public issues, the private individual wouldn't be able to recover damages for being harmed.

Justice Alito said the church attacked private individuals at a time when they were especially vulnerable. The church had ample opportunity to share its views, but specifically targeted Matthew's funeral. Justice Alito also said that a reasonable person would have assumed that the content of the signs was referencing Matthew, since they were displayed in the context of his funeral.

Furthermore, Justice Alito did not support the majority's conclusion that all the speech should be protected just because some of it was about public issues. The church should have been held liable for the signs that could be read as referencing Matthew.

**In plain English, what did the Court decide and why?**

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**Why did the dissenting justices not sign on with majority opinion? Explain**

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**Which opinion did you find most persuasive? Explain.**

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# LAW Around the World

## International Forum on Hate Speech

Individuals from many different countries have gathered to discuss whether all countries should enact criminal laws against hate speech. The following speakers give their views.

**A German:** "Because of the experience of our country under Hitler, we are worried about how speech can be used to condemn and abuse millions of people. If there had been laws forbidding anti-Semitic speech, perhaps the Holocaust could have been prevented. Today, we see strong antiforeigner feeling. We are thankful that we have laws prohibiting 'incitement to hatred' and believe they are needed in all countries."

**An American:** "Our history includes a revolution that was at least partially a reaction to government censorship. We think it is dangerous to allow government to decide what speech will be allowed. It is true that racism is a serious problem in our country and that racist speech can have a very negative impact on the victims. However, it may be overly paternalistic for the government to try to protect people from such speech. Would it not be better to let the marketplace of ideas condemn the racists?"

**An Israeli:** "The continual conflict between Arabs and Jews in our region led the government to pass a criminal law governing incitement to racism. However, this law has done nothing but create the illusion of progress against racism. There have been few prosecutions, and the ones that have occurred have been against Arabs. Although the law has symbolic value, it may be better not to have prosecutions, because these just give racists on both sides a platform from which to speak."

**A South African:** "With its history of ethnic and racial division, my country seems a likely candidate for a law against hate speech. In fact, for many years there has been such a



South Africa's Nelson Mandela

law, which prohibited 'bringing any section of inhabitants of the country into ridicule or contempt.' This law was used principally by the white government to prosecute blacks. But many in my country think that the violence can be stopped only if people aren't allowed to promote racial hatred. My view is that while we work to undo racial injustice, it makes sense to ban racist speech."

### Problem 37.6

- Which of the speakers favor laws against hate speech? Why?
- Which of the speakers oppose such laws? Why?
- How do you think the history of each speaker's country affects the viewpoints expressed?
- What are the pros and cons of encouraging countries to enact their own criminal laws against hate speech? What is your position? Give your reasons.

# Should our democracy limit hateful speech?

## DEBATING DEMOCRATIC PRINCIPLES

In recent years, there has been an effort to punish those who express views motivated by bigotry or racism. Such speech is called *hate speech*. Some states and cities have passed laws prohibiting the display of symbols that are hateful on the basis of race, gender, or religion. Others have enacted laws that increase criminal punishments for bias-motivated violence and intimidation. Sometimes, these laws come into conflict with the First Amendment's protection of free speech. Some laws have been ruled unconstitutional, while others have been upheld.

YES

### TEAM A Hate Speech Should Be Outlawed

Hate speech should be outlawed. Certain symbols and expressions are clearly hateful and have no meaningful social benefit. Our freedom of speech is important, but it is not an absolute guarantee. The government should balance freedom of expression with other democratic values, such as respect, equality, and tolerance.

Hateful speech is particularly dangerous when it is directed against minority groups. Such people already lack power in our society. Prohibiting hateful speech against these groups prevents hateful ideas from turning into discriminatory actions. History shows us that the first act of persecution of minorities is frequently speech that condemns or abuses those minorities.

NO

### TEAM B Hate Speech Should Be Protected

Hate speech is regretful and upsetting, but it should not be illegal. Exposure to offensive speech is one small price to pay to ensure our freedom to speak. It is better to counter hate speech with positive speech, or to ignore it, than to make it illegal. In an open "marketplace of ideas," hateful and offensive ideas will be denounced by other speech.

Additionally, hate speech laws are unworkable. They require the government to determine the intent of the speaker. Once we give the government the power to punish some forms of expression based on the speaker's intent, the government will soon be able to punish other speech as well. The government should only ban actions, not what people say or believe.

### EXPLORING THE ESSENTIAL QUESTION

**Analyzing** Americans disagree about whether our democracy should limit hateful speech. Read the evidence provided, and prepare to debate one side or the other.

1. Identify the best reasons to support your side of the debate question.
2. Draft a compelling opening statement that sets out your position in the debate and summarizes your argument.
3. Anticipate the strongest arguments to support the other position. How could you respond to those points?