

## ***Snyder v. Phelps (2011)***

562 U.S. 443

*Fred Phelps was founder and head of the Westboro Baptist Church, which held that God hates and punishes the United States for its tolerance of homosexuality, particularly in America's military. The church frequently communicated its views by picketing—over the course of 20 years, members of Westboro Baptist have picketed nearly 600 funerals. Marine Lance Corporal Matthew Snyder was killed in Iraq in the line of duty, and a funeral was scheduled at the Catholic church in the Snyders' hometown of Westminster. On the day of the memorial service, Phelps and other members of the Westboro congregation picketed near the Maryland State House, the United States Naval Academy, and Matthew Snyder's funeral. The Westboro picketers carried similar signs at all three locations that stated: "God Hates the USA/Thank God for 9/11," "America is Doomed," "Don't Pray for the USA," "Thank God for IEDs," "Thank God for Dead Soldiers," "Pope in Hell," "Priests Rape Boys," "God Hates F\_gs," "You're Going to Hell," and "God Hates You."*

*The church had notified the authorities in advance of its intent to picket at the time of the funeral, and the picketers complied with police instructions in staging their demonstration. The picketing took place within a 10- by 25-foot plot of public land adjacent to a public street, approximately 1,000 feet from the church where the funeral was held. Several buildings separated the picket site from the church. The Westboro picketers displayed their signs for about 30 minutes before the funeral began and sang hymns and recited Bible verses. None of the picketers entered church property or went to the cemetery. They did not yell or use profanity, and there was no violence associated with the picketing. Although the funeral procession passed within 200 to 300 feet of the picket site, Snyder did not see what was written on the signs until later that night while watching a news broadcast covering the event.*

*Snyder filed suit in the United States District Court, alleging five state tort law claims: defamation, publicity given to private life, intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy. Westboro moved for summary judgment contending, in part, that the church's speech was insulated from liability by the First Amendment. The District Court awarded Westboro summary judgment on Snyder's claims for defamation and publicity given to private life, concluding that Snyder could not prove the necessary elements of those torts. A trial was held on the remaining claims. At trial, Snyder described the severity of his emotional injuries. A jury found for Snyder on the intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy claims, and held Westboro liable for \$2.9 million in compensatory damages and \$8 million in punitive damages. The District Court remitted the punitive damages award to \$2.1 million, but left the jury verdict otherwise intact. The Court of Appeals reversed, holding that Westboro's statements were entitled to First Amendment protection because those statements were on matters of public concern, were not provably false, and were expressed solely through hyperbolic rhetoric. The Supreme Court then granted certiorari.*

Opinion of the Court: Roberts, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Sotomayor, Kagan.

Concurring opinion: Breyer.

Dissenting opinion: Alito.

**CHIEF JUSTICE ROBERTS delivered the opinion of the Court.**

A jury held members of the Westboro Baptist Church liable for millions of dollars in damages for picketing near a soldier's funeral service. The picket signs reflected the church's view that the United States is overly tolerant of sin and that God kills American soldiers as punishment. The question presented is whether the First Amendment shields the church members from tort liability for their speech in this case.

## II

To succeed on a claim for intentional infliction of emotional distress in Maryland, a plaintiff must demonstrate that the defendant intentionally or recklessly engaged in extreme and outrageous conduct that caused the plaintiff to suffer severe emotional distress. The Free Speech Clause of the First Amendment—"Congress shall make no law ... abridging the freedom of speech"—can serve as a defense in state tort suits, including suits for intentional infliction of emotional distress.

Whether the First Amendment prohibits holding Westboro liable for its speech in this case turns largely on whether that speech is of public or private concern, as determined by all the circumstances of the case. "[S]peech on 'matters of public concern' ... is 'at the heart of the First Amendment's protection.'" *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.* (1985). The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan* (1964). That is because "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana* (1964). Accordingly, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Connick v. Myers* (1983). "[N]ot all speech is of equal First Amendment importance," however, and where matters of purely private significance are at issue, First Amendment protections are often less rigorous. *Hustler Magazine, Inc. v. Falwell* (1988). That is because restricting speech on purely private matters does not implicate the same constitutional concerns as limiting speech on matters of public interest: "[T]here is no threat to the free and robust debate of public issues; there is no potential interference with a meaningful dialogue of ideas"; and the "threat of liability" does not pose the risk of "a reaction of self-censorship" on matters of public import. *Dun & Bradstreet* at 760.

We noted a short time ago, in considering whether public employee speech addressed a matter of public concern, that "the boundaries of the public concern test are not well defined." *San Diego v. Roe* (2004). Although that remains true today, we have articulated some guiding principles, principles that accord broad protection to speech to ensure that courts themselves do not become inadvertent censors.

Speech deals with matters of public concern when it can "be fairly considered as relating to any matter of political, social, or other concern to the community," or when it "is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." The arguably "inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern." *Rankin v. McPherson* (1987).

Deciding whether speech is of public or private concern requires us to examine the "content, form, and context" of that speech, "as revealed by the whole record." *Dun & Bradstreet*. In considering content, form, and context, no factor is dispositive, and it is necessary to evaluate all the circumstances of the speech, including what was said, where it was said, and how it was said. The "content" of Westboro's signs plainly relates to broad issues of interest to society at large,

rather than matters of “purely private concern.” *Dun & Bradstreet*. While the messages may fall short of refined social or political commentary, the issues they highlight—the political and moral conduct of the United States and its citizens, the fate of our Nation, homosexuality in the military, and scandals involving the Catholic clergy—are matters of public import. The signs certainly convey Westboro’s position on those issues, in a manner designed to reach as broad a public audience as possible. And even if a few of the signs—such as “You’re Going to Hell” and “God Hates You”—were viewed as containing messages related to Matthew Snyder or the Snyders specifically, that would not change the fact that the overall thrust and dominant theme of Westboro’s demonstration spoke to broader public issues.

Apart from the content of Westboro’s signs, Snyder contends that the “context” of the speech—its connection with his son’s funeral—makes the speech a matter of private rather than public concern. The fact that Westboro spoke in connection with a funeral, however, cannot by itself transform the nature of Westboro’s speech. Snyder argues that the church members in fact mounted a personal attack on Snyder and his family, and then attempted to “immunize their conduct by claiming that they were actually protesting the United States’ tolerance of homosexuality or the supposed evils of the Catholic Church.” We are not concerned in this case that Westboro’s speech on public matters was in any way contrived to insulate speech on a private matter from liability. Westboro had been actively engaged in speaking on the subjects addressed in its picketing long before it became aware of Matthew Snyder, and there can be no serious claim that Westboro’s picketing did not represent its “honestly believed” views on public issues. There was no pre-existing relationship or conflict between Westboro and Snyder that might suggest Westboro’s speech on public matters was intended to mask an attack on Snyder over a private matter.

Snyder goes on to argue that Westboro’s speech should be afforded less than full First Amendment protection “not only because of the words” but also because the church members exploited the funeral “as a platform to bring their message to a broader audience.” There is no doubt that Westboro chose to stage its picketing at the Naval Academy, the Maryland State House, and Matthew Snyder’s funeral to increase publicity for its views and because of the relation between those sites and its views—in the case of the military funeral, because Westboro believes that God is killing American soldiers as punishment for the Nation’s sinful policies.

Westboro’s choice to convey its views in conjunction with Matthew Snyder’s funeral made the expression of those views particularly hurtful to many, especially to Matthew’s father. But Westboro conducted its picketing peacefully on matters of public concern at a public place adjacent to a public street. Such space occupies a “special position in terms of First Amendment protection.” *United States v. Grace* (1983). “[W]e have repeatedly referred to public streets as the archetype of a traditional public forum,” noting that “[t]ime out of mind’ public streets and sidewalks have been used for public assembly and debate.” *Frisby v. Schultz* (1988).

That said, “[e]ven protected speech is not equally permissible in all places and at all times.” Westboro’s choice of where and when to conduct its picketing is not beyond the Government’s regulatory reach—it is “subject to reasonable time, place, or manner restrictions” that are consistent with the standards announced in this Court’s precedents. Maryland now has a law imposing restrictions on funeral picketing, as do 43 other States and the Federal Government. To the extent these laws are content neutral, they raise very different questions from the tort verdict at issue in this case. Maryland’s law, however, was not in effect at the time of the events at issue

here, so we have no occasion to consider how it might apply to facts such as those before us, or whether it or other similar regulations are constitutional. . . .

Simply put, the church members had the right to be where they were. The record confirms that any distress occasioned by Westboro’s picketing turned on the content and viewpoint of the message conveyed, rather than any interference with the funeral itself. A group of parishioners standing at the very spot where Westboro stood, holding signs that said “God Bless America” and “God Loves You,” would not have been subjected to liability. It was what Westboro said that exposed it to tort damages.

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. “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson* (1989). Indeed, “the point of all speech protection ... is to shield just those choices of content that in someone’s eyes are misguided, or even hurtful.” *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.* (1995). . . .

#### IV

Our holding today is narrow. We are required in First Amendment cases to carefully review the record, and the reach of our opinion here is limited by the particular facts before us.

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. That choice requires that we shield Westboro from tort liability for its picketing in this case.

#### **JUSTICE ALITO, dissenting.**

Our profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case. Petitioner Albert Snyder is not a public figure. He is simply a parent whose son, Marine Lance Corporal Matthew Snyder, was killed in Iraq. Mr. Snyder wanted what is surely the right of any parent who experiences such an incalculable loss: to bury his son in peace. But respondents, members of the Westboro Baptist Church, deprived him of that elementary right. They first issued a press release and thus turned Matthew’s funeral into a tumultuous media event. They then appeared at the church, approached as closely as they could without trespassing, and launched a malevolent verbal attack on Matthew and his family at a time of acute emotional vulnerability. As a result, Albert Snyder suffered severe and lasting emotional injury. The Court now holds that the First Amendment protected respondents’ right to brutalize Mr. Snyder. I cannot agree.

#### I

Respondents and other members of their church have strong opinions on certain moral, religious, and political issues, and the First Amendment ensures that they have almost limitless opportunities to express their views. They may write and distribute books, articles, and other texts; they may create and disseminate video and audio recordings; they may circulate petitions; they may speak to individuals and groups in public forums and in any private venue that wishes to accommodate them; they may picket peacefully in countless locations; they may appear on

television and speak on the radio; they may post messages on the Internet and send out e-mails. And they may express their views in terms that are “uninhibited,” “vehement,” and “caustic.”

It does not follow, however, that they may intentionally inflict severe emotional injury on private persons at a time of intense emotional sensitivity by launching vicious verbal attacks that make no contribution to public debate. To protect against such injury, “most if not all jurisdictions” permit recovery in tort for the intentional infliction of emotional distress (or IIED). *Hustler Magazine, Inc. v. Falwell* (1988). This is a very narrow tort with requirements that are rigorous, and difficult to satisfy. To recover, a plaintiff must show that the conduct at issue caused harm that was truly severe. A plaintiff must also establish that the defendant’s conduct was “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”

Although the elements of the IIED tort are difficult to meet, respondents long ago abandoned any effort to show that those tough standards were not satisfied here. They did not dispute that Mr. Snyder suffered “wounds that are truly severe and incapable of healing themselves.” Nor did they dispute that their speech was “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” Instead, they maintained that the First Amendment gave them a license to engage in such conduct. They are wrong.

## II

It is well established that a claim for the intentional infliction of emotional distress can be satisfied by speech. This Court has recognized that words may “by their very utterance inflict injury” and that the First Amendment does not shield utterances that form “no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.” *Chaplinsky v. New Hampshire* (1942). When grave injury is intentionally inflicted by means of an attack like the one at issue here, the First Amendment should not interfere with recovery.

## III

In this case, respondents brutally attacked Matthew Snyder, and this attack, which was almost certain to inflict injury, was central to respondents’ well-practiced strategy for attracting public attention.

On the morning of Matthew Snyder’s funeral, respondents could have chosen to stage their protest at countless locations. They could have picketed the United States Capitol, the White House, the Supreme Court, the Pentagon, or any of the more than 5,600 military recruiting stations in this country. They could have returned to the Maryland State House or the United States Naval Academy, where they had been the day before. They could have selected any public road where pedestrians are allowed. They could have staged their protest in a public park. They could have chosen any Catholic church where no funeral was taking place. But of course, a small group picketing at any of these locations would have probably gone unnoticed. The Westboro Baptist Church, however, has devised a strategy that remedies this problem. As the Court notes, church members have protested at nearly 600 military funerals. And in advance of these protests, they issue press releases to ensure that their protests will attract public attention. This strategy works because it is expected that respondents’ verbal assaults will wound the family and friends

of the deceased and because the media is irresistibly drawn to the sight of persons who are visibly in grief.

Respondents, going far beyond commentary on matters of public concern, specifically attacked Matthew Snyder because (1) he was a Catholic and (2) he was a member of the United States military. Both Matthew and petitioner were private figures, and this attack was not speech on a matter of public concern. While commentary on the Catholic Church or the United States military constitutes speech on matters of public concern, speech regarding Matthew Snyder's purely private conduct does not.

#### IV

The Court concludes that respondents' speech was protected by the First Amendment for essentially three reasons, but none is sound. First—and most important—the Court finds that “the overall thrust and dominant theme of [their] demonstration spoke to” broad public issues. This portrayal is quite inaccurate; respondents' attack on Matthew was of central importance. But in any event, I fail to see why actionable speech should be immunized simply because it is interspersed with speech that is protected. The First Amendment allows recovery for defamatory statements that are interspersed with nondefamatory statements on matters of public concern, and there is no good reason why respondents' attack on Matthew Snyder and his family should be treated differently.

Second, the Court suggests that respondents' personal attack on Matthew Snyder is entitled to First Amendment protection because it was not motivated by a private grudge, but I see no basis for the strange distinction that the Court appears to draw. Respondents' motivation—“to increase publicity for its views,”—did not transform their statements attacking the character of a private figure into statements that made a contribution to debate on matters of public concern. Nor did their publicity-seeking motivation soften the sting of their attack. And as far as culpability is concerned, one might well think that wounding statements uttered in the heat of a private feud are less, not more, blameworthy than similar statements made as part of a cold and calculated strategy to slash a stranger as a means of attracting public attention.

Third, the Court finds it significant that respondents' protest occurred on a public street, but this fact alone should not be enough to preclude IIED liability. To be sure, statements made on a public street may be less likely to satisfy the elements of the IIED tort than statements made on private property, but there is no reason why a public street in close proximity to the scene of a funeral should be regarded as a free-fire zone in which otherwise actionable verbal attacks are shielded from liability. If the First Amendment permits the States to protect their residents from the harm inflicted by such attacks—and the Court does not hold otherwise—then the location of the tort should not be dispositive. A physical assault may occur without trespassing; it is no defense that the perpetrator had “the right to be where [he was].” And the same should be true with respect to unprotected speech. Neither classic “fighting words” nor defamatory statements are immunized when they occur in a public place, and there is no good reason to treat a verbal assault based on the conduct or character of a private figure like Matthew Snyder any differently.

#### VI

Respondents' outrageous conduct caused petitioner great injury, and the Court now compounds that injury by depriving petitioner of a judgment that acknowledges the wrong he

suffered. In order to have a society in which public issues can be openly and vigorously debated, it is not necessary to allow the brutalization of innocent victims.