**The Supreme Court’s Decision in Snyder v. Phelps (2011)**

The Supreme Court ruled in favor of Fred Phelps and the Westboro Baptist church. There were three opinions written in Snyder v. Phelps (2011). The majority opinion decided the case and may serve as precedent for future cases. The concurring opinion agreed with the majority opinion and added other legal reasons for the decision. The dissenting opinion disagreed with the majority opinion and does not serve as precedent. However, the Supreme Court might use the dissenting opinion in the future in deciding another similar case.

Excerpts from the majority and dissenting opinions are given below. As you read through them, highlight the important points made in each opinion.

From the majority opinion, written by Chief Justice Roberts:

*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.’”*

*That is because “speech concerning public affairs is more than self-expression; it is the essence of self-government.”*

*The “content” of Westboro’s signs plainly relates to broad issues of interest to society at large, rather than matters of “purely private concern.”*

*While these 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.*

*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.*

*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. The record makes clear that the applicable legal term—“emotional distress”—fails to capture fully the anguish Westboro’s choice added to Mr. Snyder’s already incalculable grief. But Westboro conducted its picketing peacefully on matters of public concern at a public place adjacent to a public street.*

*Simply put, the church members had the right to be where they were. Westboro alerted local authorities to its funeral protest and fully complied with police guidance on where the picketing could be staged. The picketing was conducted under police supervision some 1,000 feet from the church, out of the sight of those at the church. The protest was not unruly; there was no shouting, profanity, or violence.*

*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.*

*“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.”*

*Westboro believes that America is morally flawed; many Americans might feel the same about Westboro. Westboro’s funeral picketing is certainly hurtful and its contribution to public discourse may be negligible. But Westboro addressed matters of public import on public property, in a peaceful manner, in full compliance with the guidance of local officials.*

*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.*

The following quotes are from the dissenting opinion, written by Justice Alito

*Our profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case.*

*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.*

*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.”*

*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. (There are more than 4,000,000 miles of public roads in the United States. 2) They could have staged their protest in a public park. (There are more than 20,000 public parks in this country. 3) They could have chosen any Catholic church where no funeral was taking place. (There are nearly 19,000 Catholic churches in the United States. 4) But of course, a small group picketing at any of these locations would have probably gone unnoticed.*

*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. The more outrageous the funeral protest, the more publicity the Westboro Baptist Church is able to obtain.*

*Since respondents chose to stage their protest at Matthew Snyder’s funeral and not at any of the other countless available venues, a reasonable person would have assumed that there was a connection between the messages on the placards and the deceased.*

*Other signs would most naturally have been understood as suggesting—falsely—that Matthew was gay. Homosexuality was the theme of many of the signs.*

*In light of this evidence, it is abundantly clear that 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.*

*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.*

*Allowing family members to have a few hours of peace without harassment does not undermine public debate. I would therefore hold that, in this setting, the First Amendment permits a private figure to recover for the intentional infliction of emotional distress caused by speech on a matter of private concern.*

*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 like petitioner. I therefore respectfully dissent.*

1. Make a list of all of the reasons that the majority ruled in favor of Phelps.
2. What is the majority’s most persuasive argument? Why?
3. What is the majority’s least persuasive argument? Why?
4. Make a list of all of the reasons that Justice Alito would have ruled for Snyder.
5. What is the dissent’s most persuasive argument? Why?
6. What is the dissent’s least persuasive argument? Why?
7. Conservative justices wrote both the majority and dissenting opinions. Explain why justices that share similar political beliefs reached different opinions in this case.
8. What will be the impact of this case on future protest movements? Explain one way in which states could legally limit such protests in the future.
9. Explain two ways Congress could limit the impact of the Snyder v. Phelps decision.