

## Case #5

Beginning in 2005, protests at funerals for military personnel killed in Iraq have been increasing – and have received much media attention. In particular, members of the Westboro Baptist Church, in Topeka, Kansas, have been especially visible and vocal at many of these military funerals. Reverend Fred Phelps and his protesters claim that U.S. military deaths in Iraq are because America tolerates homosexuals and that they are a sign of divine punishment for America's tolerance of homosexuality. For over a year now, members of this anti-gay church have been crisscrossing the United States, holding more than one hundred protests outside the funerals of U.S. soldiers killed in Iraq.

They wave placards with such expressions as: "You're Going to Hell," "Fag Vets, God Hates You," and "Thank God for IEDs" (the improvised explosive devices responsible for killing many military personnel in Iraq). Phelps contends that all American soldiers are guilty by association – because they are fighting in the service of the U.S. government.

By Spring, 2006, twenty-eight states and Congress were rushing to pass laws to restrict protests outside military funerals. On May 17, 2006, Illinois Governor Rod Blagojevich signed a state law – "Let Them Rest in Peace Act" – that prohibits disruptive and inflammatory protesting 30 minutes before a funeral, during the service, and 30 minutes after a funeral while remaining 200 feet from the funeral site. This new Illinois law drew immediate scorn from Shirley Phelps-Roper, attorney for the Westboro Baptist Church: "The law is impotent. You've done nothing to change that God is killing your children and sending them home in body bags. Keep your big, fat snout out of our religion."

In the U.S. Congress, Representative Mike Rogers (R-Mich.) sponsored a House bill to address this matter. He said that he took up the issue after attending a military funeral in his home state, where mourners were greeted by "chants and taunting and some of the most vile things I have ever heard. Families deserve the time to bury their American heroes with dignity and in peace." On May 24, 2006, Congress passed legislation that would bar demonstrators from disrupting military funerals at national cemeteries.

The "Respect for America's Fallen Heroes Act" prohibits protests within 300 feet of the entrance of a national cemetery and within 150 feet of a road into the cemetery from 60 minutes before to 60 minutes after a funeral. Those violating the act would face up to a \$100,000 fine and up to a year in prison. Senate Majority Leader Bill Frist (R-Tenn.) said that this act "will protect the sanctity of all 122 of our national cemeteries as shrines to their gallant dead. It's a sad but necessary measure to protect what should be recognized by all reasonable people as a solemn, private and deeply sacred occasion."

In response to this federal legislation, Phelps has said that Congress was "blatantly violating the First Amendment rights to free speech" in passing the bill. He said that he will continue to demonstrate but would abide by the restrictions. Constitutional experts are warning that protest restrictions – such as those passed in Illinois and in Congress – appear overly broad and are likely to be overturned if challenged in court. Eugene Volokh, a law professor at the University of California-Los Angeles and an authority on the First Amendment, said: "You can't

treat speech as a breach of peace simply because it offends people. These protests are tremendously offensive and hard to ignore. But ignoring them or counter-protesting is unfortunately the only remedy the 1<sup>st</sup> Amendment allows.” And, the American Civil Liberties Union has filed a lawsuit against a new Kentucky law, saying that it goes too far in limiting freedom of speech and expression. Additional lawsuits are expected to be filed.

U.S military veterans find Phelps’ beliefs and actions particularly abhorrent, and in November, 2005, veterans’ motorcycle groups began showing up at military funerals to oppose the protesters and to show support for the families of the deceased soldiers. Calling themselves the Patriot Guard Riders, these motorcycle groups have organized hundreds of counter-protesters to wave American flags and stand silently in front of the Westboro picketers, to pay respects to the fallen soldier, and to protect the soldier’s family from disruptions.