

# Is Phelps a role model on free speech issues?

by [Adelle M. Banks](#) in the [April 5, 2011](#) issue

After the U.S. Supreme Court ruled 8-to-1 that the "Thank God for Dead Soldiers" protesters from Westboro Baptist Church in Kansas have First Amendment rights to protest military funerals, the question being asked is: What's ahead?

More protests from religious groups? Or more efforts to limit them?

The court majority determined March 2 that minister Fred Phelps and members of his small, independent Baptist church in Topeka had free-speech rights to picket within 300 feet of the funeral of Lance Cpl. Matthew Snyder, who was killed in Iraq in 2006.

The court's lone dissenter, Justice Samuel Alito, argued that it was wrong for protesters to continue "inflicting severe and lasting emotional injury on an ever-growing list of innocent victims."

Legal experts differ on whether Westboro will now be a role model for other religious groups with strong views deemed offensive. John Whitehead, president of the Rutherford Institute, which filed an amicus brief in support of Westboro's right to protest, said the decision could provide more room to air unpopular religious views.

Whitehead is already defending a street preacher who was ordered by police to stop using a handheld microphone on a public sidewalk outside last year's Apple Blossom Festival in Winchester, Virginia. "I think it's going to protect those kinds of people," said Whitehead, who is based in Charlottesville,

Virginia.

But Ira Lupu, a church-state expert at George Washington University Law School, said there are probably few groups comparable to Westboro that would seize on this case because the group's "God Hates Fags" signs are just too extreme.

"People just don't do that," Lupu said. "Everybody hates you if you do that. That's the inhibitor, not the law."

Westboro, however, stands ready to "quadruple" its protests at military funerals, Margie J. Phelps, the lead attorney for the church, told reporters, according to ABC News.

The high court's ruling protected Westboro from a claim by Snyder's father that he deserved financial compensation for emotional distress, defamation and "intentional infliction of emotional distress" caused by the church members' appearance at his time of grief.

Chief Justice John Roberts, writing for the majority, said even "hurtful speech" on public matters cannot be stifled. "Speech is powerful," he wrote. "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."

Roberts pointed out that Westboro members never entered the church property where the funeral occurred, weren't violent and didn't yell. Lupu and Whitehead agreed that if Phelps's protesters had been more physically disruptive, the decision could have been different. "Simply put, the church members had the right to be where they were," Roberts said.

Alito, however, forcefully disagreed. "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," he wrote. —RNS