

2012

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Kendra Suesz

*University of Nebraska-Lincoln*

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# America versus Westboro Baptist Church: The Legal Battle to Preserve Peace at the Funerals of Fallen Soldiers

Kendra Suesz

*Abstract: The Westboro Baptist Church (WBC) has gained national attention over the past several years with their fierce protests at the funerals of soldiers killed in action. American citizens outraged by the actions of the WBC pressured the lawmakers in 45 states to enact legislation curtailing the protesters' access to funerals. Claiming that the laws infringe upon their First Amendment rights, the WBC has challenged these legislations in court, and will continue to do so. The goal of this paper is to explain the strategies used by the WBC to spread their message, the response by lawmakers to try and combat the WBC's mission of disrupting funerals, and to analyze the effectiveness of those strategies.*

## *Introduction*

Mortuary rituals surrounding death are a common practice worldwide. In the United States, many funerals and memorial services occur at cemeteries, which are venues generally available to the public. Even though memorial services often occur in a public space, it is a cultural "rule" that the only audience present at the service has some kind of relationship to the deceased. Within the past decade, this peaceful norm has occasionally been transgressed by disruptive protests of a religious organization called the Westboro Baptist Church (WBC). This Kansas-based group is led by Fred Phelps and consists almost entirely of his family members. The small congregation of approximately 75 members has gained national media attention for their protests at the funerals of U.S. soldiers killed in action. While friends and family grieve the death of a loved one, they are subjected to messages from the WBC such as "Thank God for Dead Soldiers" and "Fags Doom Nations." According to the WBC, the United States' acceptance of homosexuality causes God to generate immense

tragedies in the U.S. (Beil 2008:504). For example, the WBC believes that the attacks of 9/11 and casualties of the War in Iraq are due to God's punishment of U.S. citizens for tolerating homosexuals. The WBC is blunt in their beliefs, as demonstrated in the lyrics from a verse they often chant at funerals for U.S. soldiers,

*First to fight for the fags  
Now you're coming home in bags  
And the Army goes marching to hell  
Proud of all of your sin  
No more battles you will win  
And the Army goes marching to hell [Beil 2008:503]*

The messages displayed by the WBC during their protests, have caused a stir among the American people. Generally, the funerals of U.S. soldiers contain symbolism that references America's military culture and patriotism. Protests at these funerals have led to a backlash from the general public. Funeral protests are a new phenomenon in the United States and people are trying to decide upon the best strategies to use for dealing with such events. One strategy is to involve the government. Lawmakers in several states began drafting and enacting funeral protest legislation in 2006, following in the footsteps of two separate federal bills that proposed protecting the funerals of military service men and women.

The overall intention of this paper is to explore the responses of U.S. lawmakers to the funeral protests of the Westboro Baptist Church. This paper presents the creation of the lawmakers' strategies to keep the WBC away from military funeral services. I provide a background of the WBC, including their message and how they use funerals as a forum to deliver their message. This paper intends to highlight the fact that the WBC has been successful in evoking anger from the American people by choosing military funerals as a medium to present their message, while lawmakers are struggling to effectively draft proper restrictions of protesters.

After exploring the WBC's strategy, I layout the strategies used by lawmakers in response to the WBC. From my research, I have counted that the number of states that currently have a funeral protest law is 45 (Refer to Table 1 on page 13 for the states with funeral protest statutes). All of the 45 states that have passed funeral protest legislations have experienced WBC protests at military funerals and have viewed the group as a threat to peaceful funeral ceremonies, and the emotional rights of the grieving family.

Finally, this paper explores the challenges that lawmakers are facing. Funeral protest laws struggle with legal barriers outlined in the U.S. Constitution. Frequently, the legislation infringes upon the Freedom of Speech rights of the WBC. By analyzing the strategies used by lawmakers to limit the WBC and their protests, I hope to encourage future research, specifically anthropological research, on the issue of funeral protests that focuses on how a culture reacts to an event that threatens a social norm. The response of state lawmakers enacting funeral protest laws reveals an interesting quality of American culture in that the symbolism that surrounds military funeral channels a strong emotional and patriotic belief that should be protected.

### *Literature Review*

The issue of funeral protest legislation is a controversial topic that is striking a chord across the country. Most of the literature on the topic focuses on whether the state laws violate First Amendment rights. The majority of the following literature is obtained from law journals, which provided me with an outlook on the issue from a legal viewpoint. Most of the research regarding funeral protests is focused on the issue of protecting Freedom of Speech and First Amendment rights, and whether funeral protest bans violate those rights.

State level governments have drawn attention to the First Amendment rights of the WBC by placing limitations on funeral protests though the implementation of legislations restricting protesters. With numerous states enacting funeral protest laws, it is left up to the U.S. Courts to determine when, or if, the boundaries have been crossed when it comes to Americans' First Amendment rights. For a court to make decisions in such cases, freedom of speech must clearly be defined and standardized, and the purpose of the First Amendment to be understood by government officials and U.S. citizens (Rubenfeld 2001).

Funeral protest legislations underline the fact that common law and constitutional law do not always match up (Epstein 2000). The U.S. Constitution's First Amendment protects the rights of funeral protesters expressing their beliefs. But when we see such demonstrations in action and the messages of the protesters are considered offensive and emotionally taxing, common law is quick to set restrictions.

The concern of the constitutionality of funeral protest laws is apparent. Kara Beil (2008:517) argues that state lawmakers may have acted too quickly. She argues that legislators are less concerned about constitutional issues then they are about public concerns, as they



quickly pass funeral protest laws. She notes that such bills may be able to pass into law quickly, but the bans and restrictions will eventually be challenged by the WBC and the American Civil Liberties Union (ACLU). It is apparent that the American public and their governmental leaders see the WBC and funeral protests as a serious issue and are willing to enact legislative restrictions on such events without giving much thought to the possible constitutional violations that may occur.

What Beil is mainly arguing is that analyzing other First Amendment violation cases is critical for finding the proper balance between the rights of the protesters and those of the mourners (2008:525). Laws restricting protests outside of medical facilities performing abortions have been upheld by the Supreme Court based on the content-neutral language even though they were aimed specifically at the protesters (Ruane 2011:5). Several Supreme Court abortion cases regarding buffer zones and restrictions around clinics provide helpful insight into how a court may analyze the constitutionality of funeral protest laws (Beil 2008:522). She argues the importance of looking at how the courts ruled in abortion cases and other contexts to shed light on how legislation on funeral protests should be drafted in order to survive future court challenges (Beil 2008:525).

Jason Dorsky's response to lawsuits filed against funeral protest legislations is that Phelps and the WBC routinely misinterpret the law (2009:241). He argues that their First Amendment rights are not being violated because the intent of their protests is not religiously driven, but rather on their desire to be noticed (Dorsky 2009:243). WBC members admit that what draws them to a funeral is the opportunity to gain widespread attention, spreading their message of anti-homosexuality. This raises an interesting point in how the media has been used to bring attention to the WBC and their protests. In the advancement of technology in the United States and unnerving dependency many Americans have come to rely on it, mediums such as the Internet can quickly broadcast the messages of the WBC to anyone with a computer.

What Dorsky argues is that it is not the content of the WBC funeral protests that is being targeted, but the venue in which they choose to express it (2009:243). It is hard to argue that the WBC chooses to demonstrate at funerals because they know that it is disrespectful and controversial; therefore, it will bring attention to their message. We can wonder if they would have the same effect if they were to demonstrate somewhere with less emotional association, like a shopping center or park. Anna Zwierz Messar agrees; "There are a number of different places where they can gather to make their point and be heard, giving the protesters no reason to picket a funeral, unless

their desire is to preach hate, to desecrate the funeral, and to intrude on the private grief of family and friends mourning their loss” (2007:106). Cornwell (2007) agrees that the reason that the WBC has been so effective at getting their message across is because of the forum they choose to protest. She believes that they would not have received such notoriety without interacting with the targeted audience in this way (Cornwell 2007:1370). The bottom line is that the WBC knows what they are doing and they are successful at it.

### *Methods*

Data collection was performed by reviewing and analyzing electronic documents such as scholarly journal articles and newspaper articles retrieved from the Internet. This paper relies heavily on articles published in law journals for the background information on the issue of funeral protest legislation and First Amendment rights. Primary data for the Westboro Baptist Church was collected from their website, [www.godhatesfags.com](http://www.godhatesfags.com). The data included press releases, responses from a Q&A section, photos, music or poems, and other sources that revealed the Church’s mission.

Initially, state funeral protest legislation data was collected through the First Amendment Center website ([www.firstamendmentcenter.org](http://www.firstamendmentcenter.org)). The organization provides information and news on the First Amendment and the current issues involving the topic. Their website offers links to states’ official government websites of which their code of law is available.

### *Westboro Baptist Church*

#### Background

Never before has the United States dealt with a protesting group that specifically targets military funerals as a forum to spread their message. Funerals have largely been held as a private, emotional event to respectfully mourn the life of the deceased. Only recently have American citizens witnessed the overwhelming effects that a funeral protesting group can have, and have struggled to find the best strategy to combat the WBC’s efforts.

The small, unaffiliated congregation, consisting of approximately seventy-five members, who are almost entirely related, hails from Topeka, Kansas. Fred Phelps, the founder and leader of the WBC, has been building his congregation since 1955 when he started

the church. Prior to utilizing his church as a tool for public discourse, Phelps, already had a colorful history in protesting.

Phelps and his church achieved public attention in 1991 when Phelps and his congregation demonstrated at a public park that his group viewed as a haven for homosexual activity (McCarthy 2007:1473). This protest spurred counter-protests, resulting in local media attention. A few years later, in 1998, Phelps found himself and the WBC reaching national levels of media attention when he and his followers protested the funeral of Matthew Shepard, a Wyoming college student who was brutally beaten and murdered based on his sexual orientation (McCarthy 2007:1474). The WBC, notorious for the signs they display during protests, shocked mourners with the ones exhibited at Matthew Shepherd's funeral. Samples of these included statements such as "No Tears for Queers" and "Fag Matt in Hell" (Zwierz Messar 2007:105). The impact of the Matthew Shepherd funeral protest put the WBC on the radar of the American public and the media. Since this protest, the WBC has demonstrated at a variety of funerals including those for the victims of the terrorist attacks on September 11, 2001, miners who died in the Sago, West Virginia tragedy, Frank Sinatra, gay men who died after contracting AIDS, Mister Rogers, and Coretta Scott King (McCarthy 2007:1474).

Although those protests outraged the American people, it was not until 2005 and 2006 when the WBC shocked the nation by protesting at the funerals of fallen soldiers. It has been estimated that between 2005 and 2006, WBC members protested at 200 soldiers' funerals, in dozens of states (McCarthy 2007:1474). What has been beneficial to the WBC is that Phelps and several of his children are, or were, attorneys.

In the 1990's, the WBC filed several lawsuits against the City of Topeka, Kansas and Shawnee County, after officials there restricted or completely prevented Church members' picketing (Zwierz Messar 2007:105). The church was later awarded over \$45,000 in legal fees associated with the lawsuits. The money awarded to the WBC from lawsuits they file has allowed the church to continue to protest all over the country. The legal background of several of the members, including Phelps' daughter Maggie, and help from the ACLU has allowed the church to be successful when it comes to challenging state funeral protest laws.

### The Church's Message

The Church refers to their protest demonstrations as "Love Crusades," which they believe are waking up Americans who have



been raised on a “steady diet of fag propaganda in the home, on TV, in church, in school, in mass media...” (Westboro Baptist Church 2011). The WBC believes that protests at the funerals of soldiers are critical because these individuals had upset God by voluntarily fighting for a country believed by the WBC to be run by homosexuals. God has responded to America’s tolerance of homosexuality by choosing to kill U.S. soldiers in Iraq and Afghanistan. Thus, military funerals are the forum of choice for delivering WBC’s message. Through their protests, the WBC claims its purpose is to rid the United States (and the world) of homosexuality (Zwierz Messar 2007:122). Basically, what the members of the WBC believe is that God is punishing Americans for their acceptance of homosexuality by killing soldiers and creating other tragedies. The WBC is trying to persuade American citizens to change their beliefs and the public policies of their country (Cornwell 2007:1364).

The WBC has issues with many minority groups, but homosexuals are the people that concern them most. According to a post on their website, when asked why the church focuses on homosexuals, this was the response,

Homosexuality is due special attention by our ministry for several reasons, First, Paul the Apostle gave the sin of homosexuality special attention. It is clear that on the ladder of human depravity, homosexuality is the bottom rung. God does not hate them because they are homosexuals; they are homosexuals because God hates them...So, we have a Bible basis for recognizing that homosexuality is a particularly heinous sin in the eyes of the God of Eternity [Westboro Baptist Church 2011].

As evident in this response, and throughout other posts on their website, the WBC interprets certain Biblical scriptures as being anti-homosexual, and therefore uses that evidence as a basis for their beliefs.

### Strategies Used

Picketing and protesting is the strategy of choice for the WBC to voice their message. The WBC sing songs, display messages on placards, and hold upside down flags during their protests, all of which are part of what they consider “peaceful sidewalk demonstrations” (Westboro Baptist Church 2011). The media coverage of the WBC protests has helped propel their message into national attention. The



WBC states that “the unique picketing ministry of Westboro Baptist Church has received international attention, and WBC believes this gospel message to be this world’s last hope” (Westboro Baptist Church 2011). The WBC states the method they have found best to spread their message. “Our primary method of spreading our message is through picketing. We travel all over the world, preaching the Gospel” (Westboro Baptist Church 2011).

The WBC boasts that the “humble servants of God” have picketed 46,678 times, in 835 cities, in all 50 states (Westboro Baptist Church 2011). The WBC states that they have held demonstrations since June, 1991 at homosexual parades and other events. Even assuming that military funerals are not the only venues they protest, it is hard to confirm these statistics.

The WBC is very strategic in determining where they will protest. Funerals for fallen soldiers are always being protested by the group, dispersing members to as many funerals as possible across the country. Along with military funerals, the funerals of well-known individuals and victims of nationally covered events are venues used by the WBC for their protests. In each of these situations, the church almost always gains widespread media coverage. In November 2006, WBC members picketed the funerals of one of the school girls killed in a bus accident in Huntsville, Alabama, and in October 2006, they threatened to turn up at the funerals of the Amish school girls killed during a school shooting, but cancelled their plans after being offered fifty-five minutes of free airtime by a radio show (Zwierz Messar 2007:107).

The Westboro Baptist Church certainly has used media technology to their advantage. As Stephen McAllister points out, protesters likely would have given up their activities long ago had they not generated such an incredible response from so many lawmakers (2007:577). He further goes on to say that newspapers and media outlets covering the WBC’s activities only seems to encourage the church members (2007:610). His answer to this problem, although he states he cannot fully understand the emotions of a grieving family while witnessing a funeral protest of a loved one, is that the most effective strategy may be to simply ignore the WBC.

Having to ignore the WBC is a difficult task. They appear in newspapers, on televisions, and have their own website. The WBC recognizes that their greatest weapon is the media and they take full advantage of it to facilitate spreading their message. They understand that the American people have an obsession with the media and many follow it religiously. The WBC believes that Americans’ dependency on the media has been a factor in influencing their tolerance of

homosexuality. While they may loathe the media for what they believe it is doing to the American citizens, they are capitalizing on it. The media is drawn to the WBC's scandalous demonstrations, thereby providing a channel for the WBC to spread their word.

From the message they intend to spread, to how they illustrate it, to the venues they choose to display their message, is all a part of their strategy to change the way people think. "First, our goal is to preach the Word of God to this crooked and perverse generation. By our words, some will repent. By our words, some will be condemned. Whether they hear, or whether they forbear, they will know a prophet has been among them. It is the solemn job of a believing Christian to preach the Gospel to every creature, and warn them to flee from the wrath to come. Second, our goal is to glorify God by declaring His whole counsel to everyone. Third, we hope that by our preaching some will be saved. As Jude said, "on some have compassion, making a difference, but others save with fear" (Westboro Baptist Church 2011). From this response, it can be concluded that the WBC's mission is similar to many other evangelist Christian groups in that they want to spread the Word of God. However, it is their strategy of protesting the funerals of soldiers as a forum for spreading their message that has pushed them into the "extremist" category that is openly denounced as Christians by most Americans. It does not matter how people categorize the WBC; they are on a mission to spread their message and have been successful at grabbing the attention of the U.S.

It is hard to determine if their protests have changed the minds of anyone regarding homosexuality, but it is easy to see that the group has stirred up thoughts and emotions in the American people. Because of their protests, the WBC has become notorious in this country for their unorthodox strategies to gain attention. Images of the group on their "love crusades" are vivid in the minds of many Americans. The WBC has threatened the social norm of appropriate funeral behavior and has challenged the U.S. to respond to their actions. The following section discusses the strategies created by lawmakers and the general public in response to the WBC funeral protests.

### *U.S. Lawmakers*

#### State Legislation

Many Americans' first experience of the WBC's message occurred when the church protested the highly publicized funeral of Matthew Shepherd in 1998. The day before the funeral, the Casper, Wyoming City Council scrambled to draft funeral protest legislation

and adopted a 50 foot buffer zone between protesters and funeral services in the city (Zwierz Messar 2007:106). They patterned their restriction on laws implementing buffer zones between abortion protestors and health clinics that provided abortion services. Although Wyoming was the first state legislation that targeted the protests carried out by the WBC, it took several years for other states to follow Wyoming's lead and begin drafting their own laws restricting the WBC protests.

One of the most prominent WBC protests that took place, influencing states to institute funeral protest laws, was that of Matthew Snyder. In 2006, Marine Corporal Matthew Snyder was killed in combat. His body was returned to his hometown of Westminster, Maryland, where his family held funeral services in his honor. Following the laws established to contain public demonstration, the WBC contacted local law enforcement and was warned to stay about 1000 feet from the church where the services were being held. Matthew Snyder's father testified that as the funeral procession passed by the protesters, he only saw the tops of the signs they were displaying. However, he became upset when the WBC's message was covered and displayed on the local evening news. He decided to sue the WBC for intentional infliction of emotional distress and intrusion upon seclusion (Ruane 2011:2). The federal jury awarded him 2.9 million dollars in compensatory damages and 8 million dollars in punitive damages, which was reduced to 2.1 million dollars by the U.S. District Court for the state of Maryland. The WBC appealed the finding, arguing that the First Amendment protected their speech.

On March 2, 2011, the Supreme Court ruled in favor of the WBC. The decision of the *Snyder v. Phelps* case came as an outrage to many who feel that the offensive messages of Westboro church members who protest military and other highly attended and publicized funerals overstep the boundaries and emotional rights of the family and friends of the deceased.

The Supreme Court ruling in favor of the WBC had a dramatic effect on the country, and influenced several states to draft or reevaluate their funeral protest legislation. By 2011, 45 states (all of whom had been impacted by the WBC) had initiated a funeral protest law. Table 1 below lists the 45 states that currently have funeral protest laws, and the most recent year that the law was enacted or amended. Several states passed funeral protest restrictions in 2005 and 2006, and many of those have amended their laws within the past year, expanding on the buffer zone distance. Nebraska is an example of a state that amended their law in 2011. Their original funeral protest law enacted in 2006 limited protesters to a buffer zone of 300 feet. An amendment to



the law was passed in 2011, extending the distance to 500 feet ([www.nebraskalegislature.gov](http://www.nebraskalegislature.gov), 10/22/2011). Several other states have amended their law to increase their buffer zone including, Alabama, Arkansas, Illinois and Wyoming.

**Table 1. State and Year of Enactment of Funeral Protest Law**

State	Most Recent Year Law Enacted or Amended	State	Most Recent Year Law Enacted or Amended
Alabama	2011	Nebraska	2011
Arizona	2011	New Hampshire	2007
Arkansas	2011	New Jersey	2006
California	2011	New Mexico	2007
Colorado	2006	New York	2011
Connecticut	2007	North Carolina	2006
Delaware	2006	North Dakota	2007
Florida	2006	Ohio	2006
Georgia	2006	Oklahoma	2011
Idaho	2007	Pennsylvania	2006
Illinois	2011	Rhode Island	2007
Indiana	2006	South Carolina	2006
Iowa	2006	South Dakota	2006
Kansas	2007	Tennessee	2006
Kentucky	2006	Texas	2007
Louisiana	2006	Utah	2007
Maine	2007	Vermont	2006
Maryland	2006	Virginia	2006
Massachusetts	Not Determined	Washington	2007
Michigan	2006	West Virginia	2011
Minnesota	2006	Wisconsin	2006
Mississippi	2006	Wyoming	2011
Montana	2007		

*\*Source: U.S. State Legislature websites, 2011*

All of the 45 states that currently have funeral protest laws have experienced WBC demonstrations at funerals of fallen soldiers. The WBC claims that they have conducted protests in all 50 states, but I was unable to confirm this statement. It is possible that they have protested everywhere they claim, but those protests might not have



necessarily been at the funerals of fallen soldiers. A few of the five state who currently do not have a funeral protest law has initiated legislation. Alaska proposed funeral protest legislation in January, 2011, but it has yet to be passed (Alaska Legislature, 22 October 2011). Oregon has also proposed a funeral protest law that is awaiting review. Missouri currently does not have a funeral protest law after their previous law was found unconstitutional by a federal judge in 2010 (Associated Press, 16 August 2010).

At the state level, having lawmakers create bans and restrictions on funeral protests has become the most common strategy implemented in response to the WBC. State legislation restricting funeral protests have grown rapidly in the past five years. At the federal level, elected officials are also trying to thwart protests at funerals, specifically those of soldiers. Senate Bill S-2452, designated Dignity for Military Funerals Act of 2006, was proposed by Sen. Evan Bayh (D-Ind.) and outlined a protest buffer zone of 300 feet at any military funeral. This bill was introduced to Congress on March 16, 2006, but failed to be passed into law. Succeeding this failure was House Bill HR 5037, Respect for America's Fallen Heroes Act (RAFHA). This bill was introduced on March 29, 2006 by Rep. Mike J. Rogers. The bill was passed in the House on May 9, 2006, was passed by the Senate on May 24, 2006, and signed by President George W. Bush on May 29, 2006 becoming Public Law No. 109-228. The bill only applies to funerals taking place on the property under the control of the National Cemetery Administration or the Arlington National Cemetery. The restrictions are as follows,

Prohibits, with respect to such a cemetery, a demonstration during the period beginning 60 minutes before and ending 60 minutes after a funeral, memorial service, or ceremony is held, any part of which demonstration: (1) takes place within 150 feet of a road, pathway, or other route of ingress to or egress from such cemetery property and includes, as part of such demonstration, any individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral, memorial service, or ceremony; or (2) is within 300 feet of such cemetery and impedes the access to or egress from such cemetery.

The federal mandate provided the country and its legislators with a model that places reasonable restrictions on funeral protesting.

Several states have adopted similar laws, while others have increasingly been pushing the limits on constitutional limitations.

By the end of 2006, at least 13 states had passed laws similar to RAFHA, and many more were considering similar laws (Cornwell 2007:1344). Congress is currently considering altering this federal legislation that would extend the quiet time from 60 minutes to 120 minutes, would increase the buffer zone around services from 150 feet to 300 feet, and increase the buffer around access routes to services from 300 feet to 500 feet (Loew 2011). This new act, referred to as the Sanctity of Eternal Rest for Veterans (SERVE), was introduced April 13, 2011 and referred to the Senate Veterans' Affairs Committee. While this federal regulation strictly applies to military funerals, states have developed their own legislations to be applied to general funerals as well. In this section I will outline the state-governed legislations of funeral protests of those states that have enacted them, including the District of Columbia.

The WBC has yet to challenge the federally-mandated RAFHA, but alongside the American Civil Liberties Union, the WBC has contested several state laws that are similar to the RAFHA, often getting the legislation overturned (Michigan, Missouri, Kentucky, Nebraska). The ACLU and WBC members file lawsuits when state legislations on funeral protests inhibit their First Amendment rights as outlined in the Constitution. The ACLU takes issue most with the buffer zone distances, arguing that the law gives individuals unfettered power to grant and enforce applications for exclusion zones around funerals. The ACLU has initiated several lawsuits, including those challenging the Missouri, Ohio, and Kentucky laws (Cornwell 2007:1344).

Occasionally, the ACLU challenges state funeral protest laws even when it does not involve the WBC. In September of 2011, a federal judge struck down Michigan's statute that makes it illegal to "adversely affect" a funeral (ACLU, Press Release, 9 September 2011). This ruling stemmed from a lawsuit filed by the ACLU in 2009 relating to the arrest of a couple who were attending the funeral of a friend and were displaying signs and bumper stickers on their van which were critical of the Bush administration. Neither of those arrested were members of the WBC.

States have the potential to be successful with their funeral protest legislations as long as no one is contesting them. With the help of the ACLU, the WBC is often successful in their lawsuits against state funeral protest laws by getting those laws overturned. The legislative director for the ACLU of Oregon, Andrea Meyer, said the WBC often targets states that have anti-picketing laws, challenges them

in court and wins thousands of dollars in attorney fees that they're able to use to fund their protests. Meyer states, "States end up funding the abhorrent speech they seek to avoid" (Cooper, Associated Press, 28 April 2011). When this occurs, it is a double loss for state lawmakers since their strategy failed and the money that the WBC wins in such cases allows them to fund their mission and travel all over the country protesting funerals.

Buffer Zones

Within this strategy of limiting funeral protests by law, the most popular way in which to restrict the WBC is to implement a distance restriction called a "buffer zone." Most of the 45 states with funeral protest legislation have created a certain buffer zone distance that the protesters must be from the funeral site. State legislatures have to define where the buffer zone begins, and usually they have opted for the boundary of entrances to the property on which a funeral is held (McAllister 2007:580). These distances vary greatly from state to state, ranging from 100 feet to over 1000 feet. These buffer zones are often the reason the legislation gets challenged by the WBC. Nonetheless, states continue to push the boundaries of protesters by creating stricter buffer zones. Based on rulings in abortion clinic protests lawsuits, it is argued that funeral protest buffer zones will likely be upheld if they are a reasonable distance, such as less than one hundred feet, and they are not floating (Beil 2008:536). Several Supreme Court abortion cases regarding buffer zones and restrictions around clinics provide helpful insight into how a court may analyze constitutionality of funeral protest laws.

**Table 2. Common Buffer Zone Distances of State Funeral Protest Legislation**

300 feet	500 feet	1000 feet
Arizona	Georgia	Alabama
Arkansas	Indiana	California
Connecticut	Iowa	Mississippi
Delaware	Maryland	Oklahoma
Idaho	Massachusetts	South Carolina
Illinois	Michigan	South Dakota
Kentucky	Minnesota	Texas
New Hampshire	Nebraska	
New York	New Jersey	
North Carolina	New Mexico	
North Dakota	Pennsylvania	
Ohio	Tennessee	



Vermont
Washington
West Virginia
Wisconsin

*\*Source: U.S. State Legislature websites, 2011*

In *Hill v. Colorado*, a 1993 Colorado law required protesters who were within one hundred feet of an abortion clinic to stay eight feet away from any person who was entering or exiting the clinic (Beil 2008:522). The Court found that the statute was a content-neutral place regulation and upheld the law as constitutional. In a similar case, *Madsen v. Women's Health Center*, the Court found that a thirty-six foot buffer zone in front a clinic was constitutional. These cases provide helpful tools to construct a model statute for funeral protest legislation, by providing language, distance, and time restrictions that have been upheld and the Supreme Court reasoning behind its decisions.

Although the abortion clinic protest buffer zones and their Supreme Court rulings have the potential to be model statutes for funeral protest legislation, few states are following suggested buffer zone of 100 feet or less. The three most common buffer zone distances outlined in funeral protest state legislation is 300 feet, 500 feet, and 1000 feet. Refer to Table 2 regarding the buffer zone distance adopted by each state. A handful of states have required other distances, such as Florida, which does not specify a distance protesters must be from a funeral site, Colorado limits protesters to 100 feet, and Montana has a strict distance of 1500 feet.

### *Strategy Effectiveness*

#### Westboro Baptist Church

The small congregation has undeniably made a dramatic impact on the American people. They have tested the limits of freedom of speech, and have come away quite victorious. The group has stood their ground in court numerous times, arguing that under U.S. law they have a right to spread their message to funeral attendees. The courts have largely agreed with them, awarding them thousands of dollars that the group then uses to further travel the country and voice their thoughts, turning a peaceful funeral into a spectacle. The WBC has gained the level of attention that they craved from the beginning. They have been very effective in their strategy of picketing the funerals of fallen soldiers as a way to bring national media coverage to their issue and use it to channel their message. The media has been attracted to



their controversial approach, and consciously or not, has helped the WBC infiltrate their beliefs and actions into the homes of nearly every American.

Although the WBC has gained national attention and continues to be a hot topic in America, how long can they stay relevant? The group, which is made up almost entirely of family members either by blood or marriage, does not typically recruit outsiders. Also, although not common, there have been members that have chosen to defect from the group, ultimately being rejected by their family. A special shown on ABC's 20/20 television program in 2010 tells the story of a young woman who chose to leave the WBC, therefore leaving her family (ABC, 20/20, 4 June 2010). The young woman, Lauren Drain, began to question the beliefs of the church and was consequently cast out of the family by her parents. When asked if he missed his daughter, Steve Drain answered, "No. Why would I miss her?" It is clear from this statement that the Church's belief in God is far more binding than any emotional attachment that they may have with family members.

Steve Drain and his family are the only members of the WBC who are not related to Phelps by blood or marriage. With the Drain family being the only exception, the WBC does not actively recruit outsiders. With the majority of their recruitment being done by birth or marriage, and occasionally losing current members, it will be interesting to see how long the WBC can survive, and how long they can afford to picket funerals around the country.

No matter what the future may hold for the WBC, it is hard to deny their success as a protesting group. Protected by the First Amendment of the U.S. Constitution, the WBC has made it clear through court room victories that they have a right to express their thoughts to a crowd of funeral attendees. The WBC has used the media to bring national attention to themselves and their mission, resulting in pressure from the American people towards lawmakers to draft legislations that restrict the group's rights. As states scramble with the new phenomena of funeral protests, they are having a difficult time legislating effective restrictions towards the WBC while also maintaining the First Amendment rights of the protestors.

### Lawmakers

Despite their best efforts, the government restrictions on funeral protests have not curtailed the WBC's ability to reach funeral attendees with their message. Church members continue to protest within eyesight of mourners, making their point despite complying with

distance requirements imposed by funeral protest statutes. In many ways, the state funeral protest legislations have backfired in their quest to silence the WBC's unpopular message. Instead, because of the attraction to the issue by the media, funeral protest laws have amplified the protests by the WBC, especially to those not present at the funerals where protests have taken place. As Phelps' daughter Margie Phelps expressed, "the press, the Patriot Guard and the president are delivering our message in spite of themselves" (McCarthy 2007:1491). This statement, along with the amount of media attention funeral protests have received over the past several years is proof that the strategies used by both the lawmakers and the American public has largely failed in their task of silencing the WBC. No matter what kind of strategy states place on funeral protesters, including distance restrictions, the protesters are still able to convey their message to their intended audiences.

Members of the WBC have not been deterred by the outpouring of legislative efforts restricting their speech at funerals. Actually, the WBC seems to be enjoying the attention. In fact, Fred Phelps said he "looked forward to" watching lawmakers wrestle with the First Amendment (McCarthy 2007:1491). Phelps could not have been more right with his statement. Since states began passing funeral protest legislation, there has been a constant struggle to draft laws that are found to be Constitutional when challenged in court.

Some argue that if the government places too many restrictions on the rights of funeral protesters then it is content discrimination (Williams 1991). While funeral protests' content may be offensive – much like the protests that take place at abortion clinics – it is still the right of United States' citizens to engage in free speech. Biases towards one's message can impact the regulations placed on freedom of speech rights. Whether the listener of the message being conveyed agrees or not, basic human rights must be evaluated as long as the regulations set in place by the government are being abided by (Sjoberg et al. 2001).

Ever since states began enacting funeral protest legislation it has been an uphill battle to prove to the courts that the legislation is constitutional when it comes under fire by the WBC and the ACLU. The two organizations have teamed up to challenge funeral protest laws in states including, Missouri, Ohio, Kentucky, and most recently, Nebraska. When brought to court, what has been the deciding factor in whether or not funeral protest laws are constitutional is the buffer zone set in place by the state. According to ACLU attorney Tony Rothert, "Missouri's restrictions created too large a zone in public areas where speech was restricted and made non-disruptive speech illegal"

(Associated Press, 17 August 10). The victory of such cases for the WBC has allowed them to continue to spread their message by traveling around the country protesting the funerals of fallen soldiers. While funeral protest legislation was intended to shield the American public from the manner in which the WBC spreads their message, it has ultimately failed.

U.S. Lawmakers' response to the WBC is just one strategy that is being implemented to combat the ardent group. While lawmakers across the country have been busy drafting protest legislation, the American public has taken matters into their own hands. The Patriot Guard Riders (PGR) has gained as much media attention as the WBC for their counter-protests at the funerals of military service men and women. The PGR was originally founded by a group of military veterans, who are also motorcyclists, hails from Kansas, the home state of the WBC. PGR was formed in early August of 2005 by the American Legion Riders chapter 136 (Patriot Guard Riders, 2011). The group organized and created a mission statement that unites the activists,

To attend the funeral services of fallen American heroes as invited guests of the family. Each mission we undertake has two basic objectives: 1) Show our sincere respect for our fallen heroes, their families, and their communities, and 2) Shield the mourning family and their friends from interruptions created by any protestor or group of protestors (Patriot Guard Riders, 27 September 2011).

Since the first demonstration of the Patriot Guard, the group has accumulated a diverse collection of members from across the country. By 2007, the Patriot Guard had grown to include more than 60,000 members hailing from all walks of life (McCarthy, 2007:1475). According to PGR's website, their current membership is 251,838 (Patriot Guard Riders, 25 October 2011). The Patriot Guard Riders have been a welcomed party to military funerals nationwide and restore the sense of honor and respect for the fallen service men and women.

### *Conclusion*

Funeral protest is a current and sensitive topic. Americans hold great pride and respect for those who have risked and lost their lives fighting in the military. Policy makers are scrambling to do what they can to try and protect the family and friends of the deceased who



are exposed to the WBC's demonstrations, but they must walk a thin line on the level of restrictions they can place on protesters.

With the recent ruling of the Supreme Court in favor of the Westboro Baptist Church, the issue of funeral protests is still abuzz in many American people's minds. With so many Americans finding the group highly offensive, the ruling came as a shock. The Supreme Court argued that although the words of the WBC are not of popular opinion, the decision was correct in protecting the First Amendment rights as outlined in the U.S. Constitution. The government and other organizations, such as the ACLU, have argued that no matter how distasteful the message is, is to be protected under the Constitution. The counterargument that many lawmakers use is that when words are used to inflict injury towards those that are exposed to it than it should no longer deserve the protection of the First Amendment. This puts the government in a difficult situation of where to draw the line on First Amendment protection.

The issue of funeral protest legislation is important and requires further research. Although the WBC holds a belief that is not shared by the majority of the American people and chooses to present it in an unsolicited way, it is their right as noted in the U.S. Constitution to assemble and express their freedom of speech. King et al. (2007) argues that protesters are in competition with lawmakers for attention on certain issues. In the case of funeral protesters and the WBC, they are testing lawmakers' patience and ability on how to handle the situation. As the WBC is pushing the boundaries of their freedom of speech, lawmakers are responding.

I believe continuing research on state funeral protest legislation can be beneficial to understand how lawmakers interpret the law and how they use it to limit protest at funerals. State funeral protest statutes are constantly changing, either being overturned by the court, or amended by state lawmakers. While lawmakers struggle to draft an acceptable law in the eyes of the Courts and First Amendment, changes are constantly being made and further distance restrictions are being proposed. It could be beneficial to interview state lawmakers to understand how they decided upon the restrictions used in their funeral protest legislation.

More anthropological-focused research can follow the Westboro Baptist Church in an attempt to gain a better understanding of the group and their beliefs. It may also be beneficial to evaluate the group dynamic and effectiveness once their leader, Fred Phelps, has deceased. We may find that the WBC is similar to other groups who have been led by a charismatic leader, that when the leader moves on or dies, the organization also ceases to exist. Although Phelps has been



grooming two of his daughters in leadership roles, Margie and Shirley, it will be interesting to know if the WBC can outlive its leader.

What I must conclude on the issue of funeral protests laws is that the citizens of the United States has a strong military culture and an equally strong respect for the dead, and they have decided to fight for peaceful funerals. The country has endured difficult times over the past decade and the WBC has added distress upon many Americans with their funeral protests. Many people might consider the Westboro Baptist Church a terrorist group, and by having the U.S. government step in and limit their demonstrations may help restore Americans confidence in their government.

The attention that the American citizens and government has given to the WBC has helped them succeed in their quest to spread their message and the "Word of God" to people around the country. The media has propelled the group to a level of national attention, bringing the WBC's message into nearly every American home. In response to their shocking behavior at the funerals of fallen soldiers, Americans has urged the government to take action. Unfortunately for the government, their unfamiliarity for handling such cases, has led them to create weak state funeral protest legislations as a knee-jerk reaction to the issue. This works in the WBC's favor when they challenge the laws in court and are awarded money to help fund their cause when the laws are found unconstitutional. As of yet, the WBC remains to be undeterred in their quest of spreading God's message that Americans are doomed to hell for tolerating homosexuality.

### References Cited

American Civil Liberties Union

"Minnesota bill to stop funeral protests may backfire, warns ACLU," March 9, 2006,  
<http://www.aclu.org/free-speech/minnesota-bill-stop-funeral-protests-may-backfire-warns-aclu>, accessed September 23, 2011.

Beil, Kara

2008 Funeral Protest Bans: Do They Kill Speech or Resurrect Respect for the Dead? *Valparaiso University Law Review* 42(2):503-542.

Cooper, Jonathan

"Oregon lawmakers vote to ban funeral protests," *Associated Press*, April 28, 2011,  
<http://www.kval.com/news/local/120896829.html>, accessed September 20, 2011.

Cornwell, Andrea

- 2007 Final Salute to Lost Soldiers: Preserving the Freedom of Speech at Military Funerals. *American University Law Review* 56(5):1329-1374.

Dorsky, Jason M

- 2009 A New Battleground for Free Speech: The Impact of *Snyder v. Phelps*. *Pierce Law Review* 7(2):235-250.

Epstein, Richard A

- 2000 Privacy and the First Amendment: The Dangers of First Amendment Exceptionalism. *Stanford Law Review* 52(5):1003-1047.

First Amendment Center

- 2011 [www.firstamendmentcenter.org](http://www.firstamendmentcenter.org), accessed September 9, 2011.

Kendall, Justin

- "At Westboro Baptist Church, Steve Drain found religion but lost a daughter," *The Pitch*, May 17, 2011, <http://www.pitch.com/gyrobase/at-westboro-baptist-church-steve-drain-found-religion-but-lost-a-daughter/Content?oid=2447983&storyPage=3>, accessed October 7, 2011.

King, Brayden G., Keith G. Bentele, and Bentele, Sarah A. Soule

- 2007 Protest and Policymaking: Explaining Fluctuation in Congressional Attention to Rights Issues, 1960-1986. *Social Forces* 86(1):137-163.

Korobkin, Dan

- "Funeral protests test free speech," American Civil Liberties Union-Michigan, March 3, 2011, <http://www.aclumich.org/blog/2011-03-03/silencing-hate-speech-cost-freedom>, accessed October 5, 2011.

Library of Congress

- HR 5037 "Respect for America's Fallen Heroes Act," <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR05037:@@L&summ2=m&>, accessed September 5, 2011.  
S.2452 "Dignity for Military Funerals Act of 2006," <http://thomas.loc.gov/cgi-bin/query/z?c109:S.2452>, accessed September 5, 2011.

Loew, Tracy

- "States Look to Guarantee Civility at Military Funerals," USA Today, June 4, 2011, <http://abcnews.go.com/Politics/states-guarantee-civility-military-funerals/story?id=13757615>, accessed September 6, 2011.

- McAllister, Stephen R.  
2007 Funeral Picketing Laws and Free Speech. *Kansas Law Review* 55: 575-627.
- McCarthy, Robert F.  
2007 The Incompatibility of Free Speech and Funerals: A Grayned-Based Approach for Funeral Protest Statutes. *Ohio State Law Journal* 68: 1469-1508.
- Patriot Guard Riders  
2011 [www.patriotguard.org](http://www.patriotguard.org), accessed October 15, 2011.
- Ruane, Kathleen Ann  
2011 Funeral Protests: Selected Federal Laws and Constitutional Issues. *Congressional Research Service*. 7-5700, R41717. pp. 1-16. [www.crs.gov](http://www.crs.gov), accessed June 10, 2011.
- Rubinfeld, Jed  
2001 The First Amendment's Purpose. *Stanford Law Review* 53(4): 767-832.
- Sjoberg, Gideon, Elizabeth A. Gill and Norma Williams  
2001 A Sociology of Human Rights. *Social Problems* 48(1): 11-47.
- Westboro Baptist Church  
2011 <http://www.godhatesfags.com>, accessed September 10, 2011
- Williams, Susan H  
1991 Content Discrimination and the First Amendment. *University of Pennsylvania Law Review* 139(3): 615-730.
- Zwierz Messar, Anna  
2007 Balancing Freedom of Speech with the Right to Privacy: How to Legally Cope with the Funeral Protest Problem. *Pace Law Review* 28(1):101-127.