

## 09-751 SNYDER V. PHELPS

DECISION BELOW: 580 F.3d 206

LOWER COURT CASE NUMBER: 08-1026

### QUESTION PRESENTED:

The Fourth Circuit reversed a jury determination in favor of Albert Snyder ("Snyder") for the intentional harm perpetrated against him by Fred W. Phelps, Sr., Westboro Baptist Church, Incorporated, Rebekah A. Phelps-Davis and Shirley L. Phelps-Roper (collectively, "Phelps"). Snyder's claim arose out of Phelps' intentional acts at Snyder's son's funeral. Specifically the claims were: (1) intentional infliction of emotional distress, (2) invasion of privacy and (3) civil conspiracy. These claims were dismissed by the Fourth Circuit notwithstanding that (a) *Hustler Magazine, Inc. v. Falwell* does not apply to private versus private individuals; (b) Snyder was a "captive" audience; (c) Phelps specifically targeted Snyder and his family; (d) Snyder proved that he was intentionally harmed by clear and convincing evidence;<sup>1</sup> and (e) Phelps disrupted Snyder's mourning process. The Fourth Circuit's decision gives no credence to Snyder's personal stake in honoring and mourning his son and ignores Snyder's right to bury his son with dignity and respect.

Three questions are presented:

1. Does *Hustler Magazine, Inc. v. Falwell* apply to a private person versus another private person concerning a private matter?
2. Does the First Amendment's freedom of speech tenet trump the First Amendment's freedom of religion and peaceful assembly?
3. Does an individual attending a family member's funeral constitute a captive audience who is entitled to state protection from unwanted communication?

<sup>1</sup> Because Snyder sought punitive damages, he was required to prove his case by clear and convincing evidence. Furthermore, Snyder was required to prove actual malice. Snyder carried his burden on both issues.

CERT. GRANTED 3/8/2010

