

## Applying Precedents Activity

**Comparison case:** *Snyder v. Phelps* (2011)

**Precedent case:** *Schenck v. United States* (1919)

**What you need to know before you begin:** When the Supreme Court decides a case, it clarifies the law and serves as guidance for how future cases should be decided. Before the Supreme Court makes a decision, it always looks to precedents—past Supreme Court decisions about the same topic—to help make the decision. A principle called *stare decisis* (literally “let the decision stand”) requires that the precedent be followed. If the case being decided is legally identical to a past decision, then the precedent is considered binding and the Supreme Court must decide the matter the same way. However, cases that make it to the Supreme Court are typically not completely identical to past cases, and justices must consider the similarities and differences when deciding a case.

The process of comparing past decisions to new cases is called applying precedent. Lawyers often argue for their side by showing how previous decisions would support the Supreme Court deciding in their favor. This might mean showing how a previous decision that supports their side is analogous (similar) to the case at hand. It can also involve showing that a previous decision that does not support their side is distinguishable (different) from the case they are arguing.

**How it’s done:** In this exercise, you will analyze a precedent and compare it to *Snyder v. Phelps*. You have been provided with information about two cases: **1)** the facts, issue, and constitutional provisions/precedents of the comparison case (*Snyder v. Phelps*) and **2)** a brief summary of the precedent case (*Schenck v. United States*), which can be found within the *Snyder v. Phelps* case materials.

After reading about the cases, you will look for evidence that *Snyder v. Phelps* is analogous (similar) to the precedent case and evidence that the cases are distinguished (different) from each other. After considering both possibilities, you must decide whether the precedents are analogous enough to command the same outcome in the comparison case, or whether the comparison case is different enough to distinguish itself from the precedents.

- 
1. Using factual and legal similarities, show how *Snyder v. Phelps* is **analogous** (similar) to the precedent case (*Schenck v. United States*):

2. Show how *Snyder v. Phelps* is **distinguished** (different) from the precedent case (*Schenck v. United States*) by pointing out factual and legal differences:

3. We found that *Snyder v. Phelps* is \_\_\_\_\_ (**analogous to** or **distinguished from**) the precedent case (*Schenck v. United States*) because:

4. Based on the application of the precedent, how should *Snyder v. Phelps* be decided?

\_\_\_\_\_ Decision for Snyder

\_\_\_\_\_ Decision for Phelps

## Comparison Case: *Snyder v. Phelps* (2011)

**Argued:** October 6, 2010

**Decided:** March 2, 2011

### **Background**

The United States has a long-standing commitment to protecting freedom of speech, even for speech that is unpopular or considered offensive. The United States has also traditionally allowed people who are harmed to sue and recover money damages from those who hurt them. For example, if you are in a car accident caused by another driver, you are allowed to sue to make the other driver pay your medical bills and compensate you for your pain and suffering. Sometimes, however, people hurt each other with the words they say. One type of harm caused by speech is **defamation**: when someone damages someone else's reputation by saying or writing untrue things about them. Another type of harm is the **intentional infliction of emotional distress**. Someone can be held responsible for intentional infliction of emotional distress if their conduct is (1) intentional, (2) extreme and outrageous, and (3) causes severe emotional distress.

In *Snyder v. Phelps* these two concepts—free speech and protecting people from harmful speech—collide.

### **Facts**

Members of the Westboro Baptist Church (WBC) believe that God hates and punishes America because of its acceptance of gays and lesbians, especially in the military. The WBC often sends its members to picket near the funerals of U.S. soldiers, including the funeral of Matthew Snyder, a Marine killed in Iraq. Fred Phelps, the founder of the church, and a handful of church members gathered on public property near the church where Snyder's memorial service was held. Church members held signs reading: "Thank God for Dead Soldiers," "God Hates the USA," "America is Doomed," "Priests Rape Boys," "You're Going to Hell," and "God Hates You." Some signs referred to gay soldiers, using offensive language. Church members stood almost 1,000 feet away from the cemetery and their signs were not visible to people attending the funeral. They did not engage in any loud or violent behavior and the funeral was not disrupted. The church informed the local police of its planned picketing before the day of the funeral and followed all local laws and police instructions to keep their distance from the funeral.

Albert Snyder, Matthew Snyder's father, saw the tops of the picketers' signs as he was leaving the funeral, but could not read what the signs said. He only found out about the statements on the signs by watching news coverage of the funeral later that day. Mr. Snyder says that he suffered extreme emotional distress caused by the protest and the signs. He sued the Westboro Baptist Church and Fred Phelps for intentional infliction of emotional distress.

The jury decided that the church's conduct had been intentional and outrageous, and caused severe emotional distress for Mr. Snyder. However, if speech is protected by the First Amendment, a

person cannot be held liable for harm caused by that speech. The jury in this case decided that the church's speech was so offensive that it was not protected under the First Amendment. They ordered the church to pay Mr. Snyder several million dollars. The Westboro Baptist Church appealed to the Fourth Circuit Court of Appeals, which reversed the jury's decision. The Fourth Circuit ruled that the church's speech was fully protected under the First Amendment, and, therefore, the church could not be forced to pay damages to Mr. Snyder. Mr. Snyder appealed, and the U.S. Supreme Court granted *certiorari*.

### **Issue**

Can a private individual or organization be held liable for the intentional infliction of emotional distress when their language is commenting on matters of public concern?

### **Constitutional Provisions and Supreme Court Precedents**

- **First Amendment to the U.S. Constitution**

“Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble....”

- ***Schenck v. United States (1919)***

Two months after the United States formally entered World War I, Congress passed the Espionage Act of 1917. The act made it a crime to “cause insubordination, disloyalty, mutiny, refusal of duty, in the military” or to obstruct military recruiting. Charles T. Schenck was convicted for violating the Espionage Act after printing and mailing 15,000 fliers to draft-age men arguing that the draft was unconstitutional and urging them not to go to war. The U.S. Supreme Court ruled against Schenck finding that criticizing the draft was not protected free speech. Justice Holmes stated in the opinion, “the character of every act depends upon the circumstances in which it is done.” According to Holmes, “when a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.” Just as “free speech would not protect a man in falsely shouting fire in a theatre and causing a panic,” the Constitution does not protect efforts to induce the criminal act of resisting the draft during a time of war.

- ***New York Times v. Sullivan (1964)***

In this case, the U.S. Supreme Court ruled that there is strong First Amendment protection for statements made about public officials. In order for a public official to win damages in a defamation case, the official must prove that a statement of fact is false and that the speaker knew the statement was false—that it was made with “actual malice.” In this context, “malice” does not mean spitefulness or ill-will; it means reckless disregard for the truth. Under this standard, it is difficult for public officials to win a defamation case because public

figures have access to the media to defend themselves and assume some risk in taking a public role. The Court emphasized that there is a “national commitment” to the idea that debate on public issues should be uninhibited and wide-open, and that it may include unpleasant or unpopular attacks on public officials. If critics of official conduct were required to guarantee the truth of all their statements, that would lead to self-censorship.

– ***Hustler Magazine, Inc. v. Falwell (1988)***

Rev. Jerry Falwell, a well-known minister, sued *Hustler Magazine* after the magazine published a cartoon that included highly offensive sexual jokes about him and his mother. Falwell sued the magazine for intentional infliction of emotional distress. The U.S. Supreme Court decided that Falwell couldn’t recover damages for intentional infliction of emotional distress. They ruled that a public figure can only prove intentional infliction of emotional distress if they can show that the publication contained a false statement and that the publisher knew it was false—the same standard as the *New York Times* case. In Falwell’s case there could be no intentional infliction of emotional distress because a reasonable person wouldn’t see the cartoon and think it described actual facts or events. The Court said that political parody and satire are important elements of free speech, and that there is no way to distinguish between parody that is valuable to public discourse and the kind of satire published here.

– ***Milkovich v. Lorain Journal Co. (1990)***

Michael Milkovich was a high school wrestling coach. An op-ed column in a local newspaper implied that Milkovich lied under oath during a court case. Milkovich sued the newspaper for defamation. The U.S. Supreme Court ruled for Milkovich, deciding that, while opinion statements are usually protected by the First Amendment (and, therefore, can’t be the basis for defamation liability), an opinion that implies certain facts is not necessarily protected. The Court said that a statement of opinion on matters of public concern has to be provably false if the speaker is going to be held liable for defamation. Otherwise, a statement that does not contain a provably false suggestion will receive full First Amendment protection. Since the newspaper’s opinion that Milkovich lied in Court can be proven true or false, Milkovich can sue for defamation. An opinion like, “Milkovich is a horrible person” can’t be proven true or false and is protected by the First Amendment.

**Arguments for Snyder (petitioner)**

- The First Amendment does not give people permission to express opinions in a way that is seriously harmful to others.
- The Westboro Baptist Church’s protests are not about any “public issue.” Instead, they use personal and hate-filled rants directed at private individuals that exploit families’ grief merely to get the maximum publicity.
- While some of the church’s signs mentioned public issues, several specifically targeted the Snyder family, including the signs that said “You’re Going to Hell” and “God Hates You.”

The church should be held responsible for the effect of these personal signs, even if they can't be sued for damages over the "public issue" signs.

- At least one of the signs falsely implied that Matthew was gay. *Milkovich v. Lorain Journal Co.* found that statements that can be proven true or false (not opinion) can be used to establish defamation. This standard should be applied to cases of intentional infliction of emotional distress as well.
- Mr. Snyder and his family are not public figures. They are private citizens who have no connection to the issues of public concern that the church was protesting. Therefore, the *New York Times* and *Hustler v. Falwell* cases shouldn't apply here.
- There is no need to worry that many people will be sued for intentional infliction of emotional distress for speech that is merely "offensive." It is difficult to prove intentional infliction of emotional distress, and it requires that the harmed person show that they suffered severe emotional distress. People who are only offended won't suffer severe emotional distress.
- People who are grieving lost loved ones are especially vulnerable. Therefore, people at funerals deserve special protection from harmful speech.

### **Arguments for Phelps (respondent)**

- Westboro Baptist Church's speech was concerned with public issues like admitting gay and lesbian service members to the U.S. military, the country's moral standing, and the Catholic Church's sex abuse scandal. Speech on matters of public concern deserves full First Amendment protection.
- The church was exercising its right to public speech on public property. Its members followed all the relevant laws about where and when the protest could take place. States are still able to enact laws regarding the time, place, and manner of such protests—they just can't regulate the content of what is said.
- The Snyder family wasn't personally targeted here. The church uses the same signs at every protest to draw attention to public issues that they believe are ruining America.
- The decision in *Hustler v. Falwell* says that parody, satire, and other similar types of writing that do not claim to state any facts deserve full First Amendment protection. The words on the church's signs were exaggerated opinion, like the parody in *Hustler*. No reasonable reader would understand these statements to be assertions of fact.
- "Outrageous" is a subjective standard, and juries should not be allowed to award damages any time someone is offended by what they perceive to be "outrageous" speech.
- If the Court rules that the church is liable and has to pay damages, people might be less likely to express unpopular opinions on public issues, fearing that someone would be offended by it and sue them.