

## **When the First Amendment Crosses the Line**

**Objective:** Students will analyze contemporary situations involving hate speech and rights to assembly, including the interrelated roles of the executive, legislative, and judicial branches of government in the ongoing development and refinement of First Amendment freedoms in the 21<sup>st</sup> century. Students will consider the multiple facets of speech limitations when speech turns into inappropriate or unacceptable actions in our society.

### **Curriculum Standards:**

#### **Common Core Literacy for Social Studies Standards**

- 1.1. Cite specific textual evidence to support analysis of primary and secondary sources.
- 1.2. Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.
- 1.6. Identify aspects of a text that reveal an author's point of view or purpose.
- 1.7. Integrate visual information (e.g., in charts) with other information in print and digital texts.
- 1.8. Distinguish among fact, opinion, and reasoned judgment in a text.
- 2.1. Write arguments focused on discipline-specific content; Support claim(s) with logical reasoning and relevant, accurate data and evidence that demonstrate an understanding of the topic or text, using credible sources.
- 2.8. Gather relevant information from multiple print and digital sources.
- 2.9. Draw evidence from informational texts to support analysis and reflection.

#### **Oklahoma State C3 Standards for United States Government**

- 5.3. Evaluate historic and contemporary examples of American citizens who have attempted to make the values and principles of the United States Constitution a reality.
  - A. Analyze the rights and liberties guaranteed to all citizens in and protected by the Bill of Rights, how they are applied, protected and sustained through the actions of individual citizens.

**Grade Level:** High School

### **Resources:**

Student Readings- "Crimes of Hate: Stories of Shepard and Byrd"  
"Hate Crime Prevent Act, 2009"  
"Different Perspectives"  
"Rest in Peace" Snyder v. Phelps Westboro Case Study  
"Talking Points Memo"

Student Note-Taking Guides- Cause/Effect graphic organizer  
Different Perspectives organizer

Student Handout- Types of Evidence chart

Colored Highlighters or sets of colored markers (one set per pair of students)

### **Procedure:**

1. Ask students to brainstorm a brief list of situations in which they believe freedom of speech should be limited or restricted. What do such situations in the list have in common? Do any situations involve scenarios in which words turn into actions which are violent or criminal? Is there such a thing as justifiable limitations in such essential liberties as free speech? Inform students that the lesson will focus on two Constitutional principles of the First Amendment: the right to speech/thought and the right to

assemble. Further preview the lesson by requesting that students keep an open mind which will be needed to examine very opposing viewpoints toward contemporary and controversial issues in our American society.

2. Pass out copies of the two stories about Matthew Shepard and James Byrd. The teacher will read aloud both stories, as students follow silently. Between each story, ask students to turn to a partner and briefly jot down the facts of each situations, following five basic questions, “Who was involved?” “What happened?” “Where did the event occur?” “Why did this event happen?” and “How were First Amendment rights involved?” Allow time to review as a class the facts of both situations and to review the statistics of hate crimes from the bar graph included with the reading. After discussing the situations, ask each pair of students to develop a definition of a “hate crime.” Share definitions together to arrive at a class consensus.

3. Give each pair of students a copy of the “Cause-Effect” graphic organizer. While watching the video “Senator Clinton Announces Matthew Shepard Hate Crime Act” ask pairs to look for the cause (“Why was the law passed?” “What motivated Congress?” “What was the purpose?” behind the passage of this legislation and the effect (“What changes will occur to the criminal justice system?” “What impact will it have on individuals?” “What effect will it have on the First Amendment?”)

4. Give students a copy of the handout “Hate Crimes Prevention Act” and ask them to add details from the handout to their cause-effect graphic organizer. Allow class time for students to share their findings.

5. Ask students if they agree or disagree with the passage of the Hate Crimes Prevention Act. Why would they support it? Why would they oppose it? Inform students that such controversy still exists regarding instances where many of the American public believes that free speech rights have crossed the line from acceptable to unacceptable.

6. Give students a copy of the “Different Perspectives” from three editorial responses to the recent hate crime legislation. Using the note-taking chart and two colors of highlighters, allow students to work in pairs to identify and highlight each of the three author’s major claim (central idea reflected in his/her point of view) found in the passages. Using a different colored highlighter, ask student to identify one type of evidence used to support each of the author’s claims. (If necessary, remind students of the different types of evidence used by authors to support their opinions by referring to the “Types of Evidence” chart included.) After gathering the claims and evidence, ask students to note their findings on the “Different Perspectives” note-taking chart. Conduct a brief class discussion, evaluating which author best supports his claim and why.

7. Inform students that they will be comparing the situations of hate crimes on individuals, such as Matthew Shepard and James Byrd to a similar situation involving free speech uttered by groups gathered together, exercising the right to assemble under the First Amendment. Show the video “Biker Gang Protects Military Funeral.” Following the video, ask students to review the basic facts of the situation (Who, What, Where, When, Why) as presented in the video. What more do they need or want to know about the situation? Do they believe that such groups as the Westboro Church presented in the video have crossed the line? Why or why not?

8. Review with students the Constitutional provisions appropriate in response to Supreme Court decisions to which members of the public might disagree. For example, what are legal responses that local or state officials can do in disagreement with a decision? What are legal responses the national government can take? Are such responses appropriate and necessary in our system? Are such

responses an element of our Constitution's system of checks and balances? Do such responses meet with the original intent of the First Amendment? Why or why not?

9. Give students a copy of the handout, "Rest in Peace-Snyder v. Phelps Case Study." The class will conduct a mock press conference with the president, justices of the Supreme Court and the white house press corps. The teacher will assign one student to role-play the U.S. Attorney General who will read aloud the introductory paragraph, "Facts of the Case." The teacher will also select two student volunteers who will play the roles of Chief Justice Roberts and Justice Alito who will each read aloud from the majority and dissenting opinions. An additional student volunteer will serve as the president's press secretary who will read aloud the "Press Release." Finally, a student volunteer role-playing the president will read aloud his announcement of the Honoring Veterans Act. Upon conclusion of the president's announcement, the president, his staff members, and the justices will take questions from the "press corps" which will be comprised of all remaining students in the class. The press corps should stand and address a particular individual formally and respectfully, but are allowed to ask any questions regarding the purpose and impact of the court decision and/or the law. If necessary, allow time for the press corps, executive, and judicial branch officials to consult and prepare for the simulation.

10. Returning to the Cause-Effect graphic organizer, ask students to work in pairs to complete the organizer, noting information about the motivations and impact of the Honoring America's Veterans Act on First Amendment freedoms.

**Assessment:**

1. Ask students to consider the role of news reporters and the media in influencing and formulating public opinion by examining the responses of two popular political commentators, Bill O'Reilly and Glen Beck. Watch the brief video debate between these two individuals. Following the video, ask students to read silently the comments by Bill O'Reilly immediately following the Supreme Court's decision.

2. Students will develop a one-page written editorial response to Bill O'Reilly, taking a stance supporting or opposing O'Reilly's opinion regarding issues of free speech and government limitations on the First Amendment.

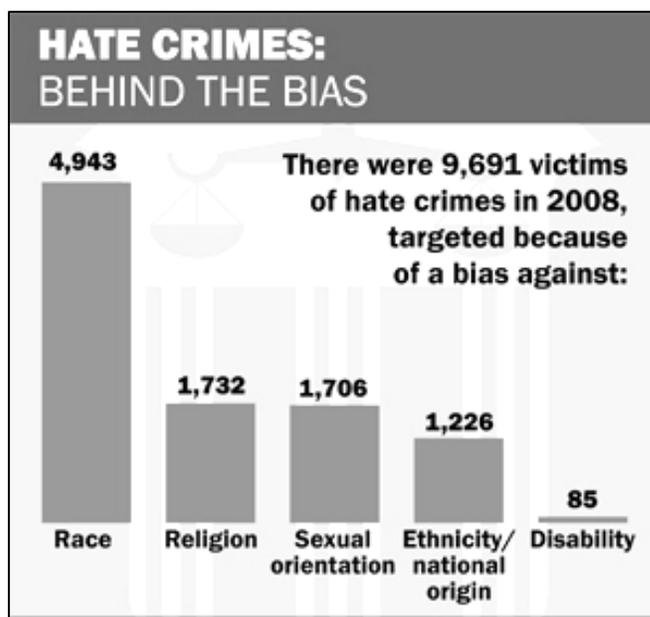
## ***CRIMES of HATE or FREE SPEECH?***

### **The Story of Matthew Shepard**

In the fall of 1998, Matthew Shepard was a student at the University of Wyoming. Shortly after midnight on October 6, 1998, Shepard met two young men whom he didn't know at a local bar and grill in Laramie. Later that evening, the two men offered to give Shepard a ride home. They drove their car to a remote, rural area where they proceeded to rob, pistol-whip, and torture Shepard, tying him to a fence and leaving him to die. According to their court testimony, the two men discovered Sheppard's address and intended to rob his home. Still tied to the fence, alive and in a coma, Shepard was discovered 18 hours later. Shepard had suffered fractures to the back of his head causing severe brain damage. Shepard never regained consciousness. He died at the age of 21 years. The police arrested Aaron McKinney and Russell Henderson shortly after the attack after finding the bloody gun and Shepard's shoes and wallet in their truck. At trial, the two men offered various rationales to justify their actions, arguing that they panicked after being approached by a homosexual. However, during the trial, the girlfriend of McKinney testified that they had "pretended they were gay to get Shepard in the truck and rob him." Henderson eventually pleaded guilty and a jury found McKinney guilty of felony murder. Shepard's parents brokered a deal with the prosecutor, resulting in McKinney receiving two consecutive life terms without the possibility of parole instead of the death penalty.

### **The Story of James Byrd, Jr.**

In the summer of 1998, James Byrd, a 49-year-old African-American living in Jasper, Texas, accepted a ride from three younger men he had known around town. Instead of taking Byrd home, the three men took Byrd to a remote county road, beat him severely, and chained him by his ankles to their pickup truck before dragging him for three miles. Byrd died after his body hit a culvert. The three men dumped their victim's remains in front of an African-American church, and then went to a barbecue. State law enforcement officials determined that since two of the men were well-known white supremacists, they decided to call upon the Federal Bureau of Investigation. The three assailants were tried and convicted for Byrd's murder. Two received the death penalty, while one was sentenced to life in prison. Lawrence Brewer was executed by lethal injection for this crime by the state of Texas in 2011; John King remains on Texas' death row while appeals are pending, while Shawn Berry was sentenced to life imprisonment.



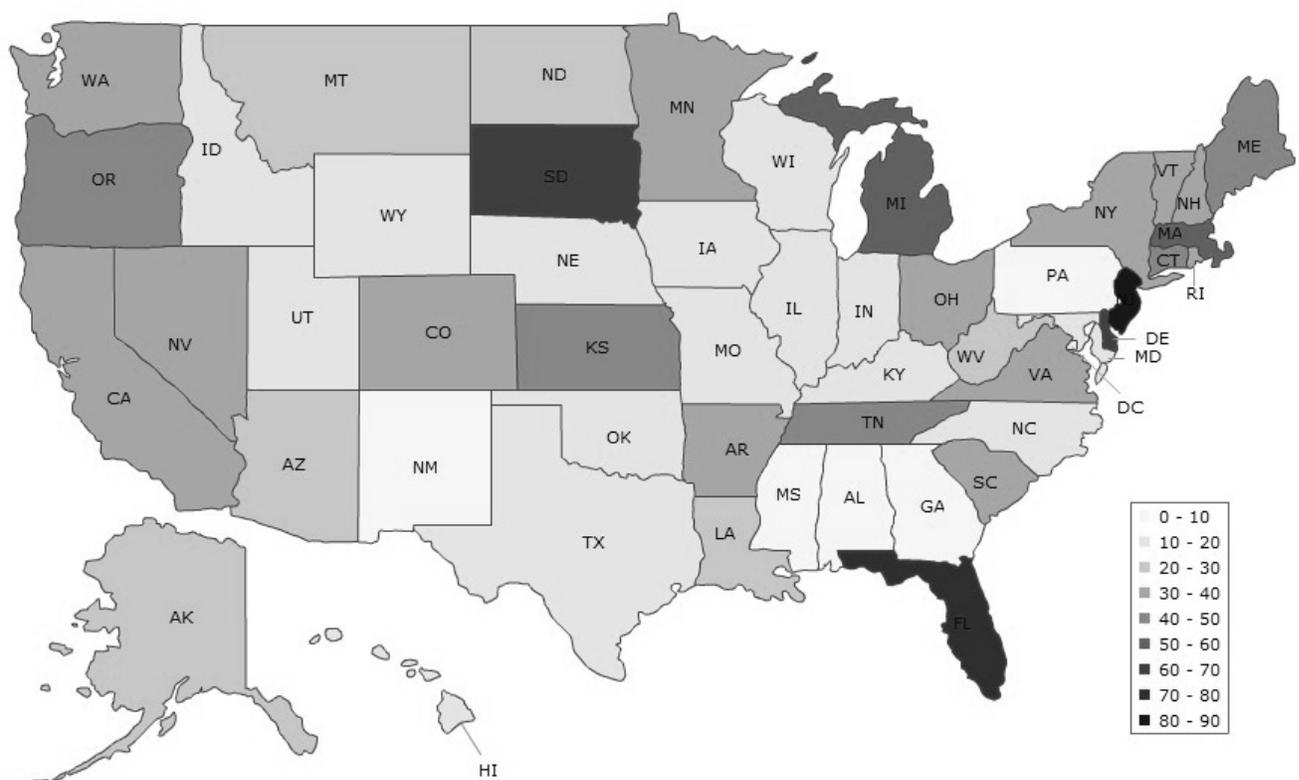
The **Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act**, also known as the **Matthew Shepard Act**, was passed on October 22, 2009, and signed into law by President Obama. Conceived as a response to the murders of Matthew Shepard and James Byrd, Jr., the measure expands the 1969 United States federal hate-crime law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity, or disability. The Act was supported by thirty-one state Attorneys General and over 200 national law enforcement, professional, education, civil rights, religious, and civic organizations.

According to FBI statistics, of the over 113,000 hate crimes since 1991, 55% were motivated by racial bias, 17% by religious bias, 14% sexual orientation bias, 14% ethnicity bias, and 1% disability bias. Though not necessarily on the same scale as Matthew Shepard's murder, violent incidences against gays and lesbians occur frequently. A nationwide study of over 10,000 gay high school students, 24% of gay men reported being victimized at least 10 times per year because of their sexual orientation.

The bill passed Congress, but only by a small majority vote in both houses. Many representatives and senators voting against the measure cited it as an endangerment to first amendment freedom of speech and unnecessary. They also questioned the need for federal involvement in the prosecution of violent acts - traditionally a function of state and local governments.

Since its passage, a man in Arkansas pled guilty to running a car containing five Hispanic men off the road. As a result, he became the first person ever convicted under the Act. In 2011, a man in New Mexico was accused of branding a swastika into the arm of disabled Navajo man. He was convicted of assault and violation of the Hate Crimes Act and sentenced to eight years in prison.

## 2008 US HATE CRIME RATE BY STATE (REPORTED CRIMES PER MILLION RESIDENTS)



Source: FBI 2008 Hate Crimes Report

Russell Wallace, reform-dem.blogspot.com

## Different Perspectives:

### Does Hate Crime Legislation Threaten Free Speech?

By Tom Head, *Civil Liberties Beginners Guide*

Some socially conservative groups have argued that hate crime legislation such as the Matthew Shepard Act threatens freedom of speech and freedom of religion. Let's look at some international examples of hate crime legislation, first. In some parts of Europe, there has been hate crime legislation specifically written to criminalize hate speech on the basis of race, gender, religion, immigration status, and sexual orientation. For example, on several occasions in recent years, the French government has fined a famous actress for hate speech directed against Muslims, immigrants, and those of mixed racial ancestry. A writer was briefly imprisoned in Austria for denying the Holocaust.

Hate crime legislation in the United States has not been, and under current Supreme Court precedents could not be, used to prosecute hate speech. While any speech that is specifically directed towards inciting violence or disrupting events can run afoul of public order laws, hate speech in and of itself is protected by the First Amendment and as legal as any other kind of speech.

None of this is relevant to the United States, where laws criminalizing the content of speech are virtually unenforceable. As long as First Amendment jurisprudence remains strong, hate crime laws won't be used to prosecute speech. On the other hand, it is conceivable that a minister who preaches a strong sermon against the homosexual lifestyle and urges his or her congregation to do whatever necessary to oppose the lifestyle could be prosecuted for conspiracy if a member of the congregation commits an offense covered by the Hate Crimes law. This could occur even though the minister never intended or even dreamed that violence would be used as a result of his or her sermon.

#### Hate Crimes Bill Threatens Free Speech

By Jennifer Wishon, *Christian Broadcasting Network*

Hate crimes legislation offers federal protections to homosexuals but others fear it endangers their ability to preach biblically-held beliefs. Supporters of the hate crimes law say it is necessary to prevent violence against homosexuals, but many fear it will have a chilling affect on religious speech. Some lawmakers say those fears are unwarranted, that pastors will still be free to preach their biblically held beliefs, but Texas congressman Gohmert, who is a former judge, warns people charged under the law could claim to have been influenced by a preacher's sermon. Pastors working in other countries like Canada and England with similar laws have been prosecuted. "There's no logical stopping point to the amount of intrusion into the First Amendment rights of free exercise of religion or free speech," said Craig Parshall of the National Religious Broadcasters.

#### Conservatives Blast Hate-Crime Bill, Saying It Will Limit Free Speech

By James Osburn, *Fox News, 2009*

A Senate hate crimes bill extending federal protection to gay victims is rousing the ire of social conservatives who say their right to free speech will be jeopardized. Frederick Lawrence, a law professor at George Washington University, states "The only language that would be criminalized is language that would meet the requirements of conspiracy or solicitation or direct incitement," he said. "Sharing opinions on things, even opinions others consider discriminatory, cannot be criminalized." But that does nothing to calm conservative bloggers, who are outraged by the possibility that a suspect acquitted of a crime in state court can be retried in federal court if the case becomes categorized as a hate crime.



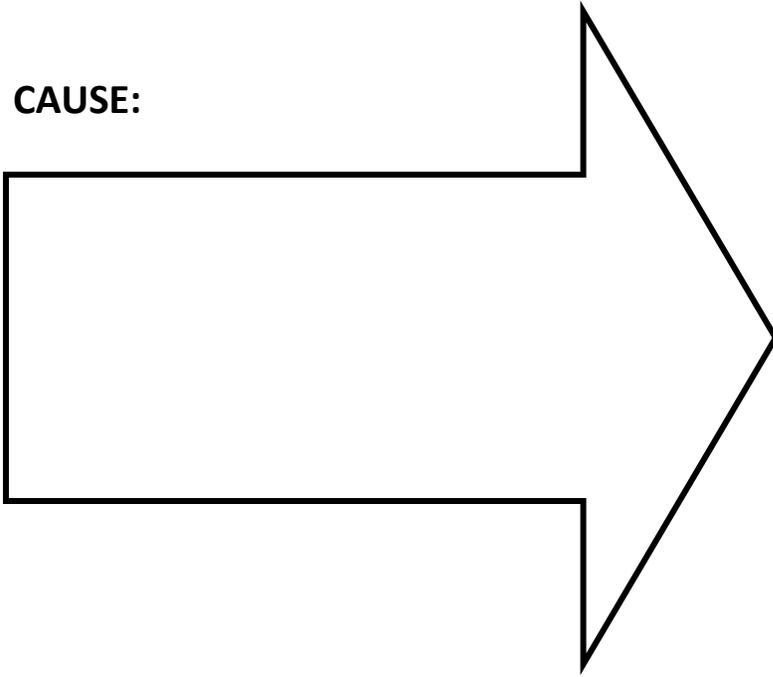
## Different Perspectives: Is Hate Crime Legislation Un-Constitutional?



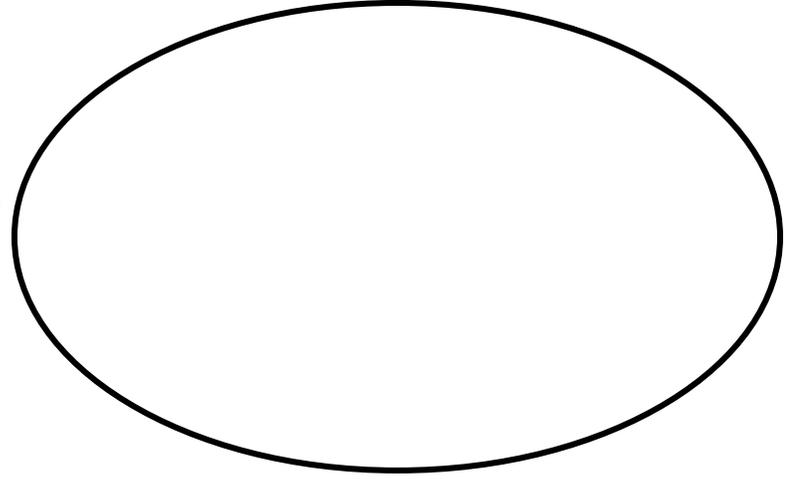
<i><b>“Does Hate Crime Legislation Threaten Free Speech?”</b></i>	<i><b>“Hate Crime Bill Threatens Free Speech”</b></i>	<i><b>“Conservatives Blast Hate-Crime Bill”</b></i>
<b>Author’s Claim:</b>	<b>Author’s Claim:</b>	<b>Author’s Claim:</b>
<b>Evidence to Support the Claim:</b>	<b>Evidence to Support the Claim:</b>	<b>Evidence to Support the Claim:</b>

**Hate Crimes  
Prevention Act**

**CAUSE:**

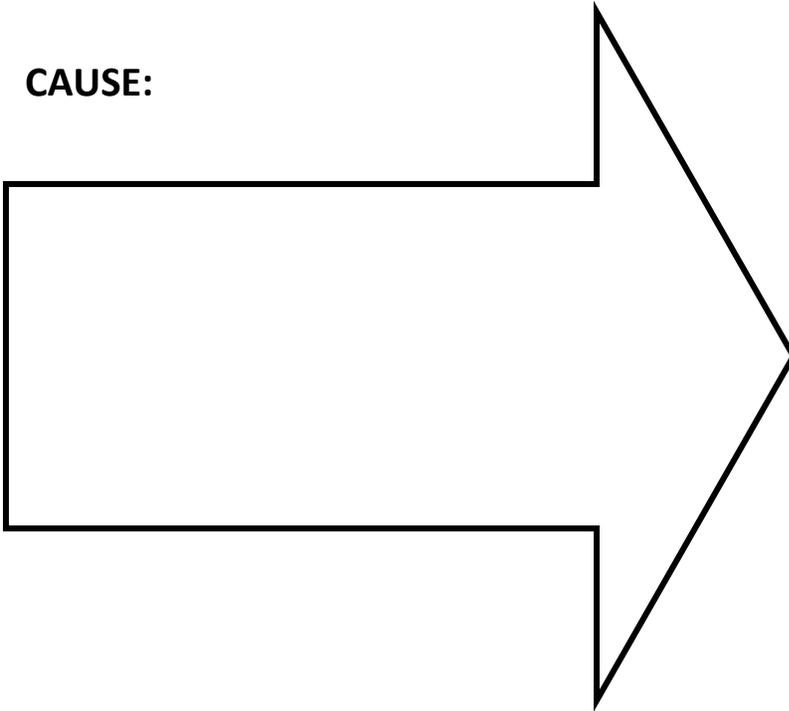


**EFFECT:**

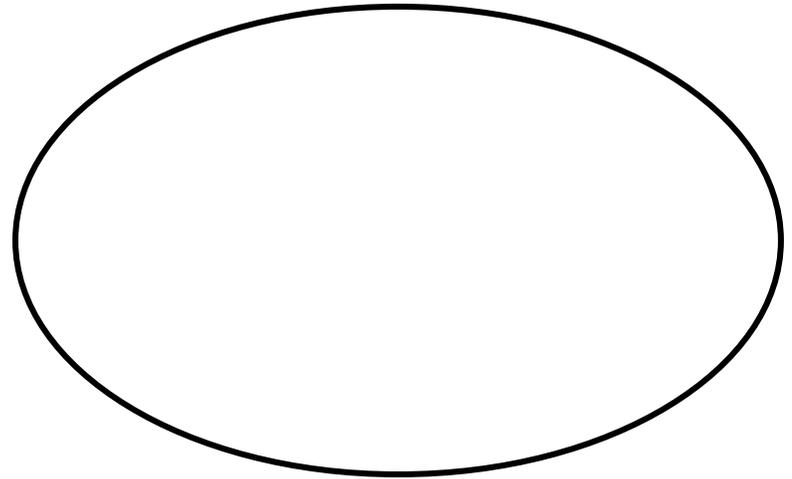


**Honoring America's  
Veterans Act**

**CAUSE:**



**EFFECT:**



## Talking Points Memo

by Bill O'Reilly, March 2, 2011

### Supreme Court rules on Westboro Baptist Church

"Today the Supreme Court ruled 8 - 1 in favor of the vicious Westboro Baptist Church protesters who roam the country screaming hatred at military funerals and other places. These loons believe they're protesting because the United States does not persecute gays, and these vile idiots are happy that our soldiers are coming home dead. Enter Albert Snyder, whose son Matthew was killed in Iraq. Mr. Snyder sued Westboro for intentional infliction of emotional distress, and initially won \$11 million from a jury. But judges overturned the verdict and even made Mr. Snyder pay court costs. Today the Snyder family received the ultimate insult - the vicious Westboro crew won in the Supreme Court. Writing for the majority, Chief Justice John Roberts said America has chosen 'to protect even hurtful speech.' Noble in theory, but what about the rights of Mr. Snyder to bury his son in peace? Talking Points believes the Supreme Court needs to think about what is really happening in the world. Because of the Internet, anonymous sociopaths can now smear and bully anyone they want. The First Amendment is in place to protect the rights of Americans, but free speech can be abused. Slander is real, bullying is real, inflicting pain on others through words is real, but the Supreme Court doesn't seem to get that. It's not just about free speech anymore; it's about personal destruction...Talking Points praises the logic of Justice Samuel Alito, the Court's lone dissenter in the case. He said that the Westboro haters singled out the Snyder family and went there specifically to attack them. This was a personal attack."



## Supporting an Argument: Types of Evidence

Evidence is the information that helps in the formation of a conclusion or judgment. Whether you know it or not, you provide evidence in most of your conversations – they’re all the things you say to try and support your claims. For example, when you leave a movie theater, you might turn to your friend, and say “That movie was awesome! Did you see those fight scenes?” You have just made a claim and backed it up.

Many authors want readers to accept their point of view toward a subject; to change our opinion; some even want us to take action. These authors use **arguments** to convince us. Their mode of writing is called **argumentation**.

As part of an author’s argumentative writing, he/she state a **claim**. A claim is a position or a stance that the author is taking on a subject. It is this position that the author wants the reader to consider and accept.

So, to convince us, the author should offer strong support for his stance. The support an author may offer to prove his/her claim uses different types of **evidence**. Evidence can be anything used to explain the truth of a position (claim). The major types of evidence found in writings we study in social studies are found on the chart below.

Let’s consider the following **claim** an author writing in the 18<sup>th</sup> century made:

**“George Washington should be unanimously elected as the first president of the United States of America.”**

Type of Evidence:	Defined:	Samples Supporting the Author’s Claim:
<b>Factual Information</b>	Truthful statements that cannot be denied; statements that the average person may know or which can be proven.	<p>“Washington served as our military commander of the Continental Army, leading us to victory over the British.”</p> <p>“He served as the presiding officer over the creation of our new Constitution.”</p>
<b>Statistics or Data</b>	Numerical facts; can be presented in raw numbers, percentages, or fractions.	<p>“He is a successful businessman, operating a plantation of over 18,000 acres.”</p> <p>“He has managed an army of over 14,000 troops with a budget at times as little as \$20,000.”</p>
<b>Examples</b>	Real-life situations, events, or individuals that illustrate a position; anecdotal stories that help explain an author’s claim	<p>“Washington and his wife personally attended to the needs of hungry and ill soldiers during the harsh winter months at Valley Forge.”</p> <p>“He appointed Baron von Steuben whose strict military training brought discipline and professionalism to the volunteer army.”</p>
<b>Expert Testimony</b>	The witness, observations, or conclusions of someone who is considered highly knowledgeable because he/she is an expert in a particular field of study or occupation; someone who has firsthand knowledge and experience.	<p>“Washington acted through life as if born, not for himself, but for his country and the whole human race.” Fisher Ames, officer of the Continental Army.</p> <p>“He was incapable of fear, meeting personal dangers with the calmest unconcern. Perhaps the strongest feature in his character was never acting until every consideration was maturely weighed, but, when once decided, going through with his purpose, whatever obstacles opposed.” Thomas Jefferson</p>
<b>Logical Reasoning</b>	An explanation which draws conclusions that the reader can understand; a discussion which helps us understand or make sense out of facts or examples offered.	<p>“Because of Washington’s experience in the military, he will be prepared to command the arm again if we are attacked by other European powers wanting to challenge our new nation.”</p> <p>“His leadership abilities to bring peace among arguing members of the Constitutional Convention will be needed when Congressmen cannot agree upon new laws for our nation.”</p>
<b>Emotional Appeal</b>	Use of sympathy, fear, loyalty, etc. to persuade; manipulates the reader’s emotions. * Claims made without the support of factual information and reasoning are not considered strong arguments.	<p>“Any true and loyal patriot who loves his country will vote for Washington who deserves this honor for all he has sacrificed for his countrymen.”</p> <p>“If we don’t elect Washington as president, Britain will think we are weak and will likely return to enslave us to their taxes and abuses again.”</p>

## Rest in Peace?

### U.S. Supreme Court Case: SNYDER v. PHELPS (2011)

#### Facts of the Case:

The family of deceased Marine Lance Cpl. Matthew Snyder filed a lawsuit against members of the Westboro Baptist Church who picketed at his funeral in 2006. The Topeka church, which has fewer than 100 members, has staged about 600 similar protests at military funerals. The group believes misfortune and tragedies suffered by Americans are God's punishment for a nation that is too tolerant of homosexuality.

The family accused the church and its founders of invasion of privacy and the intentional infliction of emotional distress by displaying signs that said, "Thank God for dead soldiers" at Snyder's funeral. Members of Westboro Baptist Church protested at the 2006 funeral mass of Marine Lance Cpl. Matthew Snyder and carried signs with anti-gay, anti-military and anti-Catholic messages, such as "Thank God for Dead Soldiers."

**Decision:** 8 justices in favor of Phelps (Westboro Baptist Church), 1 vote against.

**Chief Justice Roberts**, in writing the majority opinion, noted:

"Speech is powerful and can inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker...As a nation, we have chosen a different course - to protect even hurtful speech on public issues to ensure that we do not stifle public debate...The protesters followed the directions of law enforcement officials, gathering 1,000 feet from the church and out of the sight of funeral goers. The protest included no shouting, profanity or violence."

**Justice Alito Jr.** states in dissent:

"Our profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case. The Westboro Baptist's attacks make no contribution to public debate and allowing family members to have a few hours of peace without harassment does not undermine public debate. 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 like the petitioner."

#### Press Secretary- White House Press Release:

This afternoon, President Obama signed legislation to help fulfill our nation's obligations to our veterans and their families. The law prohibits protests at military funerals in the two hours immediately prior to and following a military funeral - a measure that will ensure that our servicemembers get laid to rest with the utmost honor and respect. The law could result in fines of up to \$50,000 as well as civil lawsuits.

**THE PRESIDENT:** Well, I want to thank everybody who is here because they all did outstanding work to help us get this legislation completed. As you know, I think all Americans feel we have a moral, sacred duty towards our men and women in uniform. They protect our freedom, and it's our obligation to do right by them. This bill takes another important step in fulfilling that commitment. I want to thank the members of Congress who helped to make this happen. It is going to have immediate impact. The second part of this bill that I want to highlight - prohibits protesting within 300 feet of military funerals during the two hours before and two hours after a service. I supported this step as a senator. I am very pleased to be signing this bill into law. The graves of our veterans are hallowed ground. And obviously we all defend our Constitution and the First Amendment and free speech, but we also believe that when men and women die in the service of their country and are laid to rest, it should be done with the utmost honor and respect.