



Pro Bono & Public Interest Litigation

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A Guide for Creating Your Own Public Interest Legal Organization

By Dionne Stanfield, Esq.

Let's face it. There has never been a scarcity of lawyer jokes. Sometimes the jokes are fueled by a sentiment that our chosen profession is rife with greed and dishonesty. Other times the jokes seek merely to highlight that there are just too many of us. Whatever the punch line may be, one thing is clear: Lawyers generally do not have a reputation for giving back. Yet, the spirit of public service is indeed thriving within our great American legal system. Nationally, public interest law firms number in the thousands. The services these firms provide run the gamut, and cumulatively, they offer a broad range of comprehensive legal services to a whole host of indigent and underserved individuals throughout the country. Yet there is unquestionably more room for those who desire to give of themselves for the public good.

For those entrepreneurially minded public servants among us, the following is intended as a very basic guide to start you on the path to creating your own public interest legal organization. Perhaps in your locality you have identified an area of legal practice where the underserved are. Perhaps there is a particular group of disenfranchised individuals with whom you would like to work to ensure access to legal services. Whatever the case may be, this very basic step-by-step guide should start you on the path to creating a public interest legal organization that satisfies that need.

Step 1: Identify Your Mission

While this may seem obvious, it is nonetheless necessary to explicitly identify your mission. In the beginning stages of planning, you likely already know with whom you would like to work and what services you would like to render. However, writing your mission will provide you with the necessary framework to focus your efforts. In doing this, be careful to avoid being too broad in your stated purpose, as this may cause you to be encumbered by ideas that are too general or numerous to allow you to move forward.

In an [article](#) on how to start a non-profit organization, Carter McNamara, an authority in the area of non-profit organization development, recommends writing your mission statement early and keeping it basic. Because it is likely that your public interest legal organization will be incorporated as a non-profit, McNamara's article is a great resource for general tips and guidance.

Step 2: Begin the Leg Work

Once you have your mission in hand, you can begin to implement it. At this stage, it would be

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wise to draft a business plan identifying essential personnel and governance you will need to run the organization before you do anything else. Recruiting a small group of individuals with depth of experience related to your organization's practice area(s) to serve as advisors or board members will prove invaluable. Your local bar association may be a wonderful resource toward this endeavor. Almost every state bar association has a volunteer lawyers program or a pro bono section. Tap into those resources to locate like-minded individuals who can provide essential guidance. For a comprehensive contact list of state bar associations check the [ABA Bar Services website](#).

Step 3: Implementation

Structuring your organization as a legal entity is the next step. Your local non-profit association is a great resource for this. Check the [National Council for Non-Profits' website](#) to locate the association near you. Your local association should be able to assist by providing information and rules for non-profit formation that are specific to your locality. It is recommended that during this phase, you consult an attorney regarding the following: drafting your by-laws and articles of formation, and registering your organization with your state. One often overlooked consideration is obtaining malpractice insurance. The ABA [provides information](#) with regard to each state's professional liability concerns and will serve as an excellent resource.

Step 4: Secure a Location and Funding

Once your public interest organization has its legal existence, the next step is to decide where it will be housed. The physical space your organization will occupy will obviously depend on your funding. There are many options for seeking money to support your endeavor, personal funds and fundraising being the primary ones. If you determine that your funding will come in any part from fundraising, you should register your organization with your state's charity registration office. The National Association of State Charity Officials has a [comprehensive website](#) that provides information for each state's charity registration office. You should also consider whether fiscal sponsorship is appealing to you. Fiscal sponsorship is creating a relationship with an existing entity that allows you, in essence, to share the non-profit status of an entity whose mission is similar to that of your organization. There is a [website](#) that explains the benefits of fiscal sponsorship. You can then [search for local entities](#) that support fiscal sponsorship.

Step 5: Bring Your Mission to Fruition

Once you have taken the steps necessary to create your own public interest legal organization, you can enjoy the fruits of your labor by working toward fulfilling your organization's mission. Whether you start as a solo doing work for one client or you create a full-fledged organization with a board and staff, as your organization grows and takes shape, you must remember to maintain funding sources and nurture relationships with other entities, who will likely serve as sources of guidance and support. Finally, do the utmost for your client base. After all, they are why you embarked on the journey, and they will appreciate your interest in serving their needs.



Probono.net is an additional resource of various pro bono programs, public interest firms, and volunteer lawyer projects. If the task of starting your own public interest legal organization is too daunting, consider going to work for one that already exists or simply doing one thing for one person in need.

Keywords: public interest, legal organization, pro bono legal, underserved, indigent legal services

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Changes to the Truth in Lending Act Provide Pro Bono Counseling Opportunities

By Joan M. McClenney, Esq.

Most pro bono cases represent a wide spectrum of legal issues ranging from criminal law to estate law. Cases that deal with basic civil issues, such as landlord-tenant issues, often have an underlying opportunity to help clients. That underlying opportunity is to provide credit counseling. Recent amendments to the Truth in Lending Act (TILA) provide pro bono attorneys with additional resources with which to address the primary legal issue as well as any underlying issues that may have led to a client's current predicament. 15 U.S.C. §1601 et seq.

Revisions to the Truth in Lending Act

In May 2009, amendments to the Truth in Lending Act that will greatly benefit consumers and greatly restrict creditors were codified into law. All of these amendments provide opportunities for pro bono counseling. The Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act), sponsored by U.S. Rep. Carolyn B. Maloney (NY-14), addresses a wide range of issues relevant to those who find themselves in great financial distress. 15 U.S.C. §1637 et seq. The Credit Card Act contains five titles that address issues concerning consumer protection, enhanced consumer disclosures, protection of young consumers, and gift cards.

Title I of the Credit Card Act contains key provisions that provide immediate relief to consumers. Title I prohibits a creditor from increasing the annual percentage rate (APR) of interest, fees, or finance charges applicable to the existing balance on an open-end consumer credit card account unless specified conditions are met. Open-end consumer credit card accounts, also known as revolving accounts, are offered by companies such as American Express. Now, a creditor can only increase an APR, fee, or finance charge when (1) a previously disclosed

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specified time period expires; (2) a change in the index that serves as the basis for the percentage rate occurs outside of the creditor's control; (3) payment is not received within the 30-day grace period after the payment's due date; or (4) a temporary hardship arrangement is complete or the consumer fails to comply with same. 15 U.S.C. §1738. Other provisions include prohibitions against penalties for on-time payments; over-the-limit fees, unless the consumer expressly opts-in; and imposition of a separate fee related to the method of payment. Title I also revises the civil penalties for creditor noncompliance with TILA. *Id.*

Moreover, Title I revises requirements governing the crediting of payments by requiring card issuers to apply payments in excess of the minimum amount required first to the balance bearing the highest rate of interest and then the remainder to each successive balance bearing the next highest rate of interest. 15 U.S.C. §1738. Additionally, Title I requires a creditor to allocate the excess of the minimum payment to a balance on which interest had been deferred during the previous two billing cycles. *Id.* Title I also specifically addresses the initial issuance of subprime or "fee harvester" cards by prohibiting payment of any fee from the credit made available by the card. *Id.*

Title II of the Credit Card Act concerns disclosures. Title II revises and expands requirements for mandatory minimum payment disclosures. This title directs the Federal Reserve to require creditors to establish and maintain a toll-free telephone number that provides consumers information about accessing credit counseling and debt management services. 15 U.S.C. §1739. Title II also amends the Fair Credit Reporting Act to require advertisements for a free credit report to disclose prominently that free credit reports are available under federal law at approved websites such as www.annualcreditreport.com. *Id.*

Title III of the Credit Card Act provides protections for young consumers and focuses on marketing credit to students at institutions of higher learning. Title III prohibits the extension of credit to consumers under the age of 21 unless the application is signed by a cosigner who is at least 21 years old. 15 U.S.C. §1740. This title also prohibits creditors from offering any tangible item as inducement to participate in an open-end consumer credit plan. However, the caveat to this title is that enforcement depends on whether the offer is made on or near the campus of the institution or at an event sponsored by or related to such an institution.

Title IV addresses gift cards. It is illegal to impose a dormancy, inactivity, or service fee with respect to gift certificates, store gift cards, or general prepaid cards. 15 U.S.C. §1741. Additionally, Title IV prohibits the sale or issuance of a gift certificate, store gift card, or general use prepaid card that is subject to an expiration date.

Title V contains a provision requiring the comptroller general to study and report to Congress the relationship between fluency in the English language and financial literacy. The report must cite whether, and to the extent to which, individuals whose native language is not English are



impeded in the conduct of their financial affairs. 15 U.S.C. §1742. Title V also authorizes a state, as *parens patriae*, to bring a civil action on behalf of its residents if the state attorney general finds that state residents are threatened or adversely affected by the actions of any person subject to an FTC-prescribed rule in a practice that violates such rule. 15 U.S.C. §1742.

Pro Bono Counseling Opportunities

Despite efforts to alleviate the financial crisis this country faces, many are still dealing with the residual effects of our close call with a full-blown depression. While issues such as landlord and tenant disputes would seem more urgent, credit counseling is a necessity that can play a crucial role in addressing the underlying causes of the larger legal issue. Recent changes in federal law have created new ways to comprehensively counsel clients. New “tricks” by credit card companies to subvert those federal laws reinforce the need for competent counselors. Alerting clients to the fact that they are no longer subject to penalties for on-time payments or separate fees because of the method of payment will save them money. Additional counseling about what it means to “opt in” for over-the-limit fees offers a chance to help clients delineate the terms of their credit card agreements. 15 U.S.C. §1738. For example, by defining the APR and explaining the indexes that serve as its base, a pro bono attorney can help clients monitor indexes and understand how creditors use financial markets as the basis for charges. Encouraging clients to establish and maintain payment plans and/or comply with a temporary hardship arrangement will set them on the course for better fiscal responsibility.

The fee harvester provision in Title I also provides an excellent opportunity for pro bono attorneys to educate clients about what to look for on monthly statements. The enhanced disclosure requirements of the Credit Card Act provide tools to make clients keenly aware of the need to pay more than the minimum payments, show them how to find additional help, and obtain a free credit report.

Explaining the limits of credit card offers to young consumers and their parents can help stem the tide of future overburdened credit card debtors and encourage positive debt management at an early age. Note that the law does not prohibit companies from promoting credit products to young people at locations away from the campus of an institution of higher learning, such as at a local shopping mall.

The mandated study of the relationship between English language proficiency and financial literacy will provide even more information to help clients who are new to the United States or for whom English is not their primary language acclimate and understand the differences between how credit is issued and regulated in the United States.

Additional Issues for Clients

Consumers have seen positive changes as a result of the Credit Card Act. However, they are still prey for some predatory lending practices. Some credit card companies have found ways to



circumvent the more strict policies of the Credit Card Act by using cash back, reward points, and other incentives to keep consumers mired in credit card debt. For example, card companies that provide cash back rewards are not required to provide a fixed set of categories for which the reward can be received. By changing the category of goods eligible for the reward, companies can benefit from consumer spending without being required to give the full cash back offer. Additionally, companies can require consumers to spend thousands of dollars before providing the cash back reward. Clients should be made aware of the intricacies of cash back and other reward programs before opening or maintaining an account.

Credit card companies are also circumventing some provisions of the Credit Card Act by reducing or eliminating the grace period, which is the interest-free time period after a purchase is made. The Credit Card Act opens the door for states to monitor the practices of credit card issuers more closely. This may result in increased pro bono opportunities in terms of investigating and potentially litigating issues where residents are targeted and unjustly penalized by credit card companies.

Keywords: Credit Card Act, consumer, counseling, credit, disclosure, financial, lending, payments, reporting, student credit, truth in lending

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Empowering the Next Generation of Community Service Leaders

By Donna Bunch Coaxum, Esq.

I watched with eyes glistening with tears as my 12-year-old daughter presented the first donation from her non-profit organization, Maya On a Mission, to a homeless shelter for women and children in Chicago. It was a moment to celebrate. She personally chose to donate hand towels and washcloths to symbolize her desire to wash away homelessness in children. As I looked at this young lady whose innocence was matched only by her concern for the less fortunate, I was proud of the deliberate steps my husband and I took in our efforts to raise a child who is not only physically healthy and intellectually astute, but who also has a true passion for community service. At that moment, I realized that our concern over our daughter's love for electronic gadgets like the wii, xbox, and iPod was unfounded. Her love for modern gadgetry neither overshadowed nor negated her desire to give her time, talent, and treasure—the “triple Ts” by which our family measures true service.



How do parents who consider themselves community servants cultivate and sustain those triple Ts of service in their children? When should our efforts begin? I would argue that we must begin building a legacy of community service in our children when they are young—in utero is not too soon. We must communicate with our children on their level, and help them understand that community service is as much a part of their regular lives as Disney.

In our efforts to teach our daughter about her responsibility for helping others, we enlisted the help of one of my favorite childhood authors, Dr. Seuss. In a strange way, I owe many of the values that my husband and I have instilled in our daughter to Dr. Seuss. Dr. Seuss teaches fundamental values that are communicated through whimsical rhymes that children devour like bowls of ice cream while completely oblivious to the fact that they are learning. His books are timeless, and his lessons touch almost every topic parents could ever desire to teach their children. Who can forget Dr. Seuss's *Green Eggs and Ham*; *One Fish, Two Fish, Red Fish, Blue Fish*; or the forever lovable *The Cat in the Hat*? It encourages children to “[b]e who you are and say what you feel because those who mind don’t matter and those who matter don’t mind,” Theodor Seuss Geisel (1904–1991), writer, artist, cartoonist, and publisher. Dr. Seuss helped us teach Maya many things, including pride in her uniqueness, and to not be concerned about what others think of her.

Dr. Seuss's advice encourages young and old alike to work hard and think independently, and lets us know that the rewards of doing so can take us to wonderful places. In the words of Dr. Seuss, “You have brains in your head. You have feet in your shoes. You can steer yourself any direction you choose. You’re on your own, and you know what you know. And you are the guy who’ll decide where to go. . . . Oh the places you’ll go.” Dr. Seuss, *Oh! The Places You’ll Go!* Random House (1990). While it is our desire that Maya go to wonderful places, we have taught and continue to teach her that a requirement for going to those places is that she must leave each place a little better than she found it. Maya has a responsibility to serve and care for others, but we, as her parents, have a responsibility to engrain in her an attitude for caring for and serving others so that as an adult, her commitment will evolve into significant and impactful community service. Dr. Seuss understands this concept perfectly, and assists us by teaching children that they play a central role in making things better in the world.

While Dr. Seuss helped us start the conversation with our daughter about the important role she plays in making our world a better place, we ultimately knew that we had to teach her by example. As any great relay team member knows, both the giver and the receiver must be moving when handing off a baton to the next runner. Likewise, my husband and I knew that if we were going to be successful in handing off the baton of community service to Maya, we had to perform community service in her presence. To that end, when we gave our time, talent, and treasure by providing free legal assistance to poor and battered women seeking divorces, providing free tax assistance to the poor and elderly, mentoring pregnant teens, serving on the boards of colleges, speaking at events for underprivileged children entering college, teaching



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classes for junior achievement, serving food to homeless people, and donating money and goods in support of both education and homeless people, Maya was right there by our side, observing, learning, and, eventually, participating. When she was a young child, Maya served food during a Thanksgiving food giveaway at a local McDonald's in a Philadelphia children's hospital. As she grew older, she also helped package food for distribution to food pantries. She learned that not serving is not an option.

Over time, Maya started to formulate her own ideas about giving back. She decided that she wanted to focus on children who were less fortunate than herself. She developed her own non-profit organization, Maya On a Mission, through which she now feels empowered to continue our community service legacy.

The true measure of our success is not simply tied to our degrees, our income, or even our material trappings. We continue to teach our daughter that the true measure of our success is how we utilize the gifts of our time, talent, and treasure, because as Dr. Seuss so eloquently put it, "Unless someone like you cares a whole awful lot, nothing is going to get better. It's not." Dr. Seuss, *The Lorax*, Random House (1971).

Keywords: Dr. Seuss, community service, children community service, pro bono legacy, Maya On a Mission

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The Respect for America's Fallen Heroes Act: A Case Study

By Donald Chisholm II, Esq. and Ashley E. Shapiro, Esq.

On October 6, 2010, *Snyder v. Phelps* was argued before the United States Supreme Court. On March 2, 2011, the Court ruled 8–1 that the First Amendment shielded members of the Westboro Baptist Church from tort liability for picketing near a soldier's funeral service with signs reflecting "the church's view that the United States is overly tolerant of sin, and that God kills American soldiers as punishment." 131 S.Ct. 1207, 562 U.S. ___ (2011).

This case, among others, have added to the debate about protest speech in the context of a military funeral and whether that speech can be so egregious as to be found actionable in tort, or is nevertheless protected by the First Amendment regardless of how egregious the speech is.

Various theories on the First Amendment have been interpreted through case law. However, in our view, the operative bottom line is that the First Amendment bars the government from regulating or punishing protected speech. See Geoffrey Rosenbalt, *Stern Penalties: How the*

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Federal Communications Commission and Congress Look to Crackdown on Indecent Broadcasting, 13 Vill. Sports & Ent. L.J. 167 (2006). Freedom of speech is considered a fundamental right protected by the Due Process Clause of the Fifth and Fourteenth Amendments but has never been deemed an absolute freedom. *Gitlow v. New York*, 268 U.S. 652, 666 (1925). In First Amendment cases, a court “makes an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression.” *Snyder*, 562 U.S. at ___. The Supreme Court has stated that “even protected speech is not equally permissible in all places and at all times.” *Frisby v. Schultz*, 487 U.S. 472, 479 (1988). Some speech-related activities, such as incitement, fighting words, child pornography, and obscene language do not receive any First Amendment protection. *Id.*

In 2006, President George W. Bush signed the Respect for America’s Fallen Heroes Act, in part to help regulate funeral picketing at specified cemeteries. Pub. L 109-228, 120 Stat. 387 (2006). The RAFHA is very specific in its scope. *See* Sec. 2413. This Act was carefully crafted to comport with the First Amendment. Throughout history, “the Supreme Court has held that laws governing the time, place, and manner of speech are permissible, so long as the laws don’t discriminate based on the subject of the speech, serve a significant public interest, and are carefully designed to leave open alternative means for communication of the information.” Walter Dellinger, [Military Funeral Protests Can Be Banned](#), US News & World Report, July 6, 2010. In addition to this federal statute, 43 states now have laws about picketing at funerals. Though Maryland now has a law restricting funeral picketing, at the time Snyder brought suit, it did not. Md. Crim. Law Code Ann. Section 10-205 (Lexis Supp. 2010). It should be noted Justice Alito in dissent observed that “verbal attacks that severely wounded petitioner in this case, complied with the new Maryland law regulating funeral picketing.” *Snyder*, 562 U.S. at ___. (Alito, J., dissenting).

Snyder v. Phelps

In 2006, Albert Snyder buried his only son, Lance Corporal Matthew Snyder, after Matthew died in Iraq when his humvee crashed. Upon Albert’s arrival at the funeral in Maryland, he saw the tops of picket signs being carried by members of the Westboro Baptist Church founded by Fred Phelps Sr. The picketing took place on public land, approximately 1,000 feet from the church where the funeral service was held. As stated in the majority opinion, “the Westboro picketers displayed their signs for about 30 minutes before the funeral began and sang hymns and recited bible verses.” The majority opinion also pointed out that “none of the picketers entered church property or went to the cemetery. They did not yell or use profanity, and there was no violence associated with the picketing.” Riding in his car to the funeral, Mr. Snyder was unable to read what the signs said and only found out when he watched the evening news later that day. The signs read “Thank God for Dead Soldiers,” “Fags Doom Nations,” “Priests Rape Boys,” “Semper Fi Fags,” and “You’re Going to Hell.” Major John Loran Kiel, Jr., *Crossing the Line: Reconciling the Right to Picket Military Funerals with the First Amendment*, 198 Mil. L. Rev. 67 (2008). In addition, as emphasized by Justice Alito in dissent, “[h]omosexuality was the theme of

most of the signs. There were signs reading “God Hates Fags, and “Fag Troops” [These] signs would most naturally have been understood as suggesting—falsely—that Mathew was gay.” *Snyder*, 562 U.S. at ___ (Alito, J., dissenting). The purpose of their picketing was to demonstrate “that U.S. deaths in Afghanistan and Iraq [were] punishment for Americans’ immorality, including tolerance of homosexuality and abortion.” Mark Sherman, [Court weighs free speech vs. privacy in military burial pickets](#), Associated Press (October 6, 2010), (last visited March 27, 2011).

Snyder sued the church for five state tort law claims: “defamation, publicity given to private life, intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy.” A jury found for Snyder on the intentional inflicting of emotional distress, intrusion upon seclusion, and civil conspiracy claims, and held Westboro liable for \$2.9 million in compensatory damages and \$8 million in punitive damages. On appeal, the Court of Appeals agreed with Westboro’s argument that the church was entitled to judgment as a matter of law because its speech was protected by the First Amendment. The U.S. Supreme Court granted certiorari.

Respect for America’s Fallen Heroes Act

The Respect for America’s Fallen Heroes Act (RAFHA) was signed by President Bush on May 29, 2006. It prohibits certain demonstrations at national cemeteries and sets up a time frame for when picketing is permitted as well as the exact distance as to where picketing should take place. 38 U.S.C.A § 2413 (2006). Almost all states have passed laws similar to RAFHA limiting funeral protesting. RAFHA should in practice be exactly what it is named for: a matter of respect for the people who have lost their lives, especially those fighting for our country.

In our view, individuals picketing with negative words and expressing ideas such as those expressed by the six members of the Westboro Baptist Church in this case is repugnant. Americans have the right to freedom of speech, but what happened to good manners and respect at or near a funeral? The Westboro Baptist Church protestors could have “returned to the Maryland State House or the United States Naval Academy, where they had been the day before” or “any of the more than “4,000,000 miles of public roads” in the United States, one of the more than “20,000 public parks in this country,” or any Catholic church where no funeral was taking place. *Snyder*, 562 U.S. at ____, (Alito, J., dissenting). We concur with Justice Alioto’s view that “our profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case.”

Constitutionality of the Law

Freedom of speech is a touchstone of individual liberty in any civilized democratic society. In the words of the great Justice Cardozo, “This is true, for illustration, of freedom of thought, and speech. Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom.” *Palko v. Connecticut*, 302 U.S. 319, 327, (1937) (revs’d on other grounds). On its face, the First Amendment seems to speak in absolute terms: “Congress shall



make *no law* . . . abridging the freedom of speech.” U.S. Const. amend. I. That reads in absolute terms, especially in contrast to the wording of the Fourth Amendment’s guard against “unreasonable searches and seizures.” U.S. Const. amend. IV. Therefore, its thought is that if we allow the government any power to restrict or infringe upon our freedom of speech, we may lose our ability to check the abuse of power by the very same public officials that we elect to protect our rights. Vincent Blasi, *The Checking Value in First Amendment Theory*, 1977 Amer. Bar Found. Res. J. 521 (1977).

Furthermore, that absolutist position would seem to safeguard all speech regardless of our pleasure or displeasure with what is said. “But if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.” *U.S. v. Schwimmer*, 279 U.S. 644, 654–55, (1929) (Holmes, J., dissenting). So why do we have the juggling act called balancing? Because there is a time and place for everything. “The character of every act depends upon the circumstances in which it is done.” *Aikens v. Wisconsin*, 195 U.S. 194, 205–06 (1904). So, “the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.” *Schenck v. U.S.*, 249 U.S. 47, 52 (1919).

There is a time and place for everything. A time to protest laws and a place to protest laws—neither should be at a person’s funeral. A funeral is a time for sad good-byes for families and friends, not protests of any kind. When a family has only one chance to say their farewells, free speech should not be heard over the tearful and sobbing good-byes. Death is difficult enough without having protesters yelling and holding signs with derogatory statements as they arrive at the funeral service, interrupting a last prayer at a funeral or burial. The First Amendment protects the right to freedom of speech. Although it is one of the most important protections given to Americans, there is still an appropriate and acceptable manner in which it can be done—a way that the deceased can rest in peace and the deceased’s family can send their loved ones off to a better place without picketers drowning out the moment of silence and the prayers. The 43 states with laws governing picketing at funerals should vigorously enforce those laws, and those states without such a law should consider enacting one.

For an opinion on why protesters should be permitted to picket at military funerals, please see a related [article](#) written by Timothy Zick (last accessed March 27, 2011).

Keywords: military funerals, protesting funerals, free speech, First Amendment, *Snyder v. Phelps*, Westboro Baptist Church, RAFHA, Respect for America's Fallen Heroes Act, fallen heroes, church protest



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A Lawyer's Duty to Defend the Constitution

By Jesse Montagnino, Esq.

On the clear, sunny Tuesday morning that quickly turned into one of the darkest days in American history, where were you? After the smoke cleared, more than 6,000 people were injured and more than 3,000 people were murdered. We the people, the unified American citizens, told ourselves “We will not forget!”

And we have not forgotten. The American public quickly learned that Al Qaeda, the militant Islamic fundamentalist terror group, carried out the cowardly attacks on September 11, 2001. Since that day, the naïve link between Al Qaeda and innocent American Muslims, however, has made life for Muslims in the United States quite difficult. Unfortunately, innocent Muslims have become victims of religious profiling in the form of harassment, hate crimes, and persecution.

With active military campaigns in Afghanistan and Iraq targeting fundamentalist groups, many Americans, including politicians, mistake innocent American Muslims for Islamic extremists. The extremists are the ones who seek to destroy the American way of life. The innocent American Muslims, on the other hand, are honest Americans who are exercising the freedom to practice their religion of choice. These American Muslims have sought to exercise their religious expression by building a Muslim community center in an old Burlington Coat Factory building a few blocks away from Ground Zero in New York City.

This proposed community center is causing quite the commotion, not only in Manhattan, but across this nation. People are blogging, and local politicians are sounding off. Even President Barack Obama asked a Gainesville, Florida, preacher to “listen to those better angels” and restrain from exercising his freedom of speech by not burning a Quran on September 11, 2010. Copland, Harry & Rick Hampson, *Obama Weighs in as Plans to Burn Quran Spark Debate*, USA Today, September 9, 2010. But aren't the Muslim Americans seeking to construct the community center doing exactly what James Madison, Thomas Jefferson, and our other founding fathers would want them to do—exercise their constitutionally protected freedom to practice the religion of their choice? *Moore v. Gaston County Bd. of Ed.*, 357 F.Supp. 1037 (W.D.N.C., 1973).

The Freedom of Religion Clause is perhaps the most cherished protection in the United States Constitution. “Congress shall make no law respecting an establishment of religion, or prohibiting



the free exercise thereof.” U.S. Const. amend. I. Simply put, the government will not endorse a religion and it will not forbid a religion from being practiced . . . at least it’s not supposed to. *School District of Abington Township, Pa. v. Schempp*, 374 U.S. 203, 215 (1963).

If the Constitution mandates government neutrality regarding the exercise of religion, then how can our politicians get away with some of the statements they make? How can politicians, who purport to be protectors of the First Amendment, undermine the very clause that allows them and every other American citizen to worship whomever and however they want without fear of persecution? For example, Democratic Senator Harry Reid, while being careful not to make a statement forbidding the construction of the Muslim community center, [said](#) “this mosque should be built somewhere else.” Former Republican Governor and reality television star, Sarah Palin, [posted](#) on her Twitter page, “We all know they have the right to do it, but should they?” To build or not to build; is that the question? Perhaps Reid and Palin need to read some American history.

Why should the Muslim community center not be built where these American citizens want to build it? Is it because the September 11 attackers were Muslims, and any Muslims building a house of worship near Ground Zero would be insensitive? I think not. Timothy McVeigh, the Oklahoma City bomber, was a Roman Catholic. Are we to surmise that people would complain about the building of a Roman Catholic Community Center near the Alfred P. Murrah Federal Building in Oklahoma City? Would Americans be up in arms about that? No.

What should lawyers do about this situation? Lawyers should be defending the Constitution. They should be doing exactly what the founding fathers would have done. Think of John Adams, who defended the British in the Boston Massacre. He defended obvious enemies neither for fortune nor fame; he defended them because of a sense of duty to the rule of law. Heck, the British in the Boston Massacre were actual culprits against America and our aspiring way of life. The Muslims that want to build a community center near Ground Zero are innocent American citizens who are not guilty of any crime. They simply share a common religion with the terrorists who attacked our beloved nation.

Most people have taken a passive approach to the proposed Muslim community center, particularly because the media has not covered the story after the anniversary of September 11 last year. But instead of sitting and waiting to see the outcome after the dust settles on the Muslim community center debate, a good pro bono legal project would be to file a declaratory action on behalf of those attempting to build the center. Certainly, this would not be an endeavor for fame or fortune. Rather, it would be an endeavor to promote that sacred sense of duty to protect and defend the rule of law, specifically, the First Amendment. It would be a project that would carry on the spirit of our founding fathers and what it means to be an American—free from tyranny and oppression and tolerant of others.



Keywords: 9/11, September 11, 2001, ground zero, freedom of religion, First Amendment, Muslim mosque, New York City, mosque, Islam, Al Qaeda, fundamentalist, American

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NEWS & DEVELOPMENTS

Stateside Legal Help for Military Families

The American Bar Association's Military Pro Bono Project connects active-duty military personnel and their families to free legal assistance for civil legal issues beyond the scope of services provided by a military legal assistance office. The Project accepts case referrals for limited civil-law matters on behalf of income-eligible service members from military legal assistance offices worldwide, and then places these cases with volunteer pro bono attorneys anywhere in the United States the legal representation is needed. You can find cases currently available for pro bono assistance [here](#), and examples of the good work done by our volunteers [here](#).

—*Dawn M. Du Verney, Esq., Social Security Administration, Philadelphia, PA*

Illinois Governor Signs Bill Abolishing Death Penalty

On March 9, 2011, 11 years after Illinois passed a moratorium on capital punishment, Governor Pat Quinn signed a bill abolishing the death penalty.

Back in January, Illinois lawmakers voted to do away with capital punishment. The governor then spent the following two months speaking with prosecutors, victims' families, death penalty opponents, and religious leaders before making a decision, according to the Associated Press. "I think if you abolish the death penalty in Illinois, we should abolish it for everyone," the governor said.



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Governor Quinn was joined by colleagues and supporters at his Springfield office when he signed the bill to outlaw Illinois' death penalty. The ban takes effect on July 1, and makes Illinois the fourth state in the past two years—following New York, New Jersey, and New Mexico—to abolish capital punishment.

Quinn also commuted the sentences of all 15 inmates remaining on Illinois' death row. Five of the 17 people across the country who were proven innocent by DNA testing after serving time on death row were from Illinois.

» [Read more: NPR.org](http://www.npr.org)

—*Dawn M. Du Verney, Esq., Social Security Administration, Philadelphia, PA*

Minnesota Supreme Court Extends Licensing Fees for Indigent Legal Services

The *Minnesota Lawyer* reports that the state's highest court has extended two fees on attorney licensing renewals as a means of increasing funding for indigent legal services. "The Minnesota Supreme Court has extended a \$75 increase to the lawyer registration fee to help fund the state's public defense system and made a \$25 increase for legal services permanent. The increases were sought by the Minnesota Board of Public Defense and the Legal Services Advisory Committee."

» [Read more: Minnesota Lawyer](http://www.minnesotalawyer.com)

—*Dawn M. Du Verney, Esq., Social Security Administration, Philadelphia, PA*

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