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ROLL NUMBER

DESCRIPTION

1040

2007 HOUSE JUDICIARY

HB 1040

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1040

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/8/07

Recorder Job Number: 717, 751

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1040.

Rep. Grande: (prime sponsor) Introduced the bill (see attached testimony).

Chairman DeKrey: Thank you. Any questions for Rep. Grande?

Rep. Kretschmar: How did you determine the 300 ft., that's kind of an arbitrary figure.

Rep. Grande: The 300 ft was chosen, I had LC research other states proposals and what has worked and what had problems. Three hundred ft. was what I was told that they use in Fargo on the abortion area of protests and that has held well and I feel that that would work the best.

Rep. Onstad: You have a Class B misdemeanor for disorderly conduct. Does disorderly conduct in any other functions, is that also 300 ft.

Rep. Grande: I do not know if these are further. I do have written testimony from the sheriff of Cass Co. Paul Laney, he was unable to come (see attached testimony). On a personal note, tragedy came into my family on July 23, 2005 when Sgt. Ryan Opskar, a marine from the Minnesota area, whose family lives in Fargo, part of the family lives in Fargo. My son knew him (see attached testimony). This has a great affect locally and personally to many people in this room. As they planned the funeral for this young man, who had given his life as the ultimate sacrifice, a group came forward that wished to protest his funeral. This bear's outfit

was made from Marine Opskar's uniform, as his family could not be here today, they offered this as their token and this information. The protestors didn't make it to the funeral but they came to the grave. It was a very difficult time. A young lady made this bear's outfit. I hope this committee can move forward on this bill.

Chairman DeKrey: Thank you for appearing before the committee this morning.

Rep. Ralph Metcalf: I am also a sponsor of this bill. I would like to thank Rep. Grande for the job she did in presenting this bill. We can depend on the information she gave to be very heartfelt and very factual. I hope we can accept it in that spirit. I guess my only thing that I would like to bring to your attention is my extensive membership in the National Guard and the active Army. This brings me back to the area of the 1960's and 1970's, which I think was probably the hardest time to belong to any military organization. There was a complete disregard for authority. In fact, it got to the point where we couldn't even leave the Post without changing into civilian clothes, because the military was thought of in such high disregard, they didn't want to see military uniforms anywhere in this country; drugs and alcohol were involved and there was a very serious problem and a lot of that was brought on, I believe, by the fact that I really wonder if the people that were protesting at that time knew exactly what they were doing and how this country was being affected. If we allow this to continue, we would be building up to the position again, where the military would be in strong disrespect and I encourage that you take every effort that you can to pass this bill. The only reason for its existence, and it's too bad that this country has to have laws like this, is that you would think that our people that have the benefit of these soldiers dying for them, that they would realize the importance of them being out there. There is one other reason I wanted to make a presentation here is because I have three grandchildren that are in the National Guard. One of them has been in Iraq and has returned. Number 2 is scheduled to go in June, June 14th to be

exact. Number 3 has not been scheduled, but he is in a unit that has been placed on alert. So I will have three grandchildren that will have served. Now I would hope that if anything would ever happen to one of these three grandchildren, that there would be something to protect them when it comes to the last rites that we would want to offer. I think that's very important. Thank you very much for listening to me and I will be happy to answer any questions.

Chairman DeKrey: Thank you.

Sen. Dick Dever: (see attached testimony).

Chairman DeKrey: Thank you for appearing.

Sen. Stan Lyson: Support. I am a sponsor of this bill, and I won't take long. Everything that needed to be said has been said. I am a veteran of the United States Army and I served as commander of the Honor Guard for veterans' funerals. I'm really interested in this bill, so I can control my people in case something like this would happen. I mean that with all my heart. Please give this a Do Pass.

Chairman DeKrey: Thank you for appearing this morning.

Rep. Bill Amerman: As you might know, I do have a bill, HB 1163, but I do stand in support of Rep. Grande's bill today. There were some differences in the bill; like there are in a lot of sessions when you have legislation in a similar bill but a little different. I put mine in the hopper to make sure that the right thing is done. In talking to Rep. Grande and other entities and people, I believe we are on the right track. Mine was a little different, I had 500 ft. and there is a little difference in the penalty area, but after talking with several people I think that is pretty much ironed out. What I ask is that if it does come before this committee, is that you bring it to the floor for purposes of being withdrawn. The reason I ask this is because this is too important legislation to be tied in a couple different bills and it needs to go through the Senate. That's not the purpose. I don't care whose name is on the top. I am a Vietnam Veteran and I

want this done on the fast track. I want the Governor to sign and get this done and out of here, and let's keep these people out of here as best we can.

Chairman DeKrey: Thank you for appearing and clearing this matter up. We are going to act swiftly on this bill but not so swiftly that we can't work with you on your bill and then we'll take care of whatever your wishes are at that time. I appreciate your bringing it forward and we'll see to it that we try to make everybody happy. Thank you. Further testimony in support.

Lt. Col. Dave Thiele, National Guard: I am appearing on behalf of Adj. General Sprynczynatyk, who sincerely regrets that he can't be here personally, he is on his way to Ft. Hood, TX to see off 39 men and women. I think everybody has said everything we need to. In discussing this with Gen. Sprynczynatyk the other day, he was discussing his mission, his goals at Adj. General; in taking care of families of service members. That's what this bill is doing. The First Amendment is very important, but it doesn't say that you can say whatever you want whenever you want, wherever you want. There are reasonable restrictions that can be put in place and that's what this bill does. This was on our number one priority list. Rep. Grande put this in early. We've been working with her on this legislation and certainly would encourage a Do Pass. I would like to make a personal observation, sometimes out of bad comes good. This bill, I would suggest, has done something unintended; to shield families from this type of thing, but it's also to pay respect. If you have been to a serviceman's funeral, I would suggest that it becomes so much bigger than that. To see hundreds of riders of every shape, form, everybody. I've been trying for 3 days to figure out my emotions and I can't. I think that sums it up. Rep. Amerman, coming to you saying, you know what, we're coming together. We're not fighting about this, that's not the code spirit. That's what this is all about.

Rep. Meyer: Would you prefer 500 ft. instead of 300 ft. What is your personal preference.

Lt. Col. Thiele: My preference is whatever will stand constitutional scrutiny. I think what the courts are looking at is what the minimum necessary to accomplish this goal is. I think what we've determined is it is arbitrary, as has been brought up; 300 or 500 ft, which is correct? The court's have generally looked at it, and have said that 300 ft seems reasonable. I think that if we went 500 ft. that they would immediately be looking and asking why didn't you take 300 ft. We have other legislation that says 300 ft is sufficient, it's a football field length. I will tell you, that being involved with funerals and the process of dealing with these protestors, local law enforcement works very well with us. Everybody came together, and it worked out fine. I'll be honest with you, we had a situation where people were literally saying, well they didn't even show up. They did, they were there; between the activities of the local law police department and the Patriot Guard riders, people were unaware that they were there.

Chairman DeKrey: I have a question. Would it be better not to have a distance in the bill completely. The reason I say that, at the funerals I've attended, they've been more than 300 ft. away which is just fine with me. But my question would be, if we put 300 ft into this bill, is that going to give them an absolute right to where we are going to have to determine what 300 ft away from is, and we're going to have to let them be that close.

Lt. Col. Thiele: I hadn't considered that, but I think it's probably better to specify the distance in there. Could it mean that they could be closer than they might have been otherwise. You have to understand that this group is very specific in their activities. They contact local law enforcement, they say this is where we're at. They don't care where they are placed, they have not made that an issue; but of course, this bill means any funeral, any group that they intend to disrupt. Three hundred feet, a football field away from the area, I'm comfortable with it personally.

Rep. Klemin: As you are aware, there's two ways that the courts look at constitutionality of a provision, and one of those is how it's applied and having a specific foot limitation, do you think that might alleviate any possibility that the courts may say that it's unconstitutional, as applied if in a specific circumstance a local law enforcement set it at a distance much further than 300 ft.

Lt. Col. Thiele: I don't know if that would affect the constitutionality, it could, because as you point out, how it's applied. I would think that part of that would be educating law enforcement on how to work through this legislation. I visited with the AG today, and he is probably better qualified than I to comment on that.

Chairman DeKrey: Seeing no further questions, thank you for appearing.

Wayne Stenehjem, Attorney General: I have a personal interest for reasons that I think everybody on this committee knows; the soldiers that Gen. Sprynczynatyk is going down to see off to Afghanistan will be the replacements for my son, who is currently in Afghanistan, somewhere along the Pakistan border. So I hope that you'll understand that this is legislation that I've given probably more thought to, than to any other piece of legislation that we had before. I think on one hand that it is unfortunate that that ND legislature has to be involved in an issue where we have one group of bizarre cultists who are making it necessary for us and other states to change the statute so that families, who simply have a funeral for their relatives who have fallen in combat, that is indeed unfortunate. Nonetheless, we are at the situation where we are, and it seems to me, it is entirely appropriate legislation that you have before you be approved. My office stands ready to fully and vigorously defend this session, if and when this is challenged in court. I think that the bill you pass is one that is carefully tailored to meet the requirements that will withstand a first amendment challenge. The US Supreme Court has held that the government may regulate the time, place or manner of expressive activity, so

long as the restrictions are content neutral, narrowly tailored to serve a significant government interest and leave open ample alternatives for expression of ideas. It seems to me that the bill that you have in front of you does all of those things. The number of feet that you have provided for the prohibited activity, does make a difference. The shorter that it is, obviously makes it much more likely that it will withstand a challenge; I think the 300 ft I would be very comfortable with, but even 500 ft, I think is not something that would make a much more difficult case. But, obviously, the further you get from the actual site, the more difficult it becomes to defend, so please keep that in mind. There are some differences between this bill and HB 1163 that you should know. HB 1163 may not be as sufficient in promoting content neutrality, because this statute you have before you, HB 1040, simply prevents unreasonable noise that disrupts a funeral. HB 1163 is different, it prohibits protesting and picketing. So a challenge on content neutrality might be more successful with HB 1163. The other bill, HB 1163 provides for a private cause of action for family members whose services are interrupted. You may want to look at that, as something you should consider. I am pleased that you have the Emergency Clause on the bill.

Rep. Delmore: One question, Mr. AG, are they going to make that federal law legislation while we are trying to do this statewide as well. If so, is it still to our benefit to have our own law.

AG: I don't know what the federal law would do it, but that would probably apply to federal property in order to require prosecution if there was something to be done in federal courts. That's why I think that it makes sense to have a North Dakota law that will be enforced, prosecuted right here in the state.

Chairman DeKrey: Thank you for appearing.

AG: If there are any other issues or questions, or something that I can work with the committee on this bill, or any other bill, please let me know.

Chairman DeKrey: Further testimony in support of HB 1040.

Maureen Wanner: (see attached testimony).

Chairman DeKrey: Thank you for appearing. Further testimony in support.

Dan Biesheuvel, member of Patriot Guard Riders: I will keep my comments short. I do have some concerns about this bill. My main concern is that there is no definition of uninvited guests (see attached testimony).

Chairman DeKrey: I have talked to the sponsor about your concern, so I was aware of them, and before we pass it out of this committee, we will satisfy that to our satisfaction that we're not doing that. I don't think there is anybody here that's not really grateful for what the Patriot Riders are doing and we want to see to it that we don't create a problem for you by trying to fix another problem. Thank you for appearing this morning.

Rep. Charging: I want to share an experience that we had on the Three Affiliated Tribes, Ft. Berthold Indian Reservation, when we laid to rest, Cpl. Nathan Goodiron who lost his life on Thanksgiving (see attached testimony). I urge a Do Pass on this bill. I also want to thank the Patriot Riders who did come and did stand guard, on the coldest day we've had so far. They also stood guard along the route. All law enforcement agencies worked together. There are a lot of resources expended for the protection everyone.

Rep. Kretschmar: Were there protests at this funeral.

Rep. Charging: We had received word that they had arrived, but apparently we had gotten word out that they would be removed. They sent an official notice that said they would not come upon private lands, which the reservation is private land; and then there would be penalties. Under penalties, each mourner shall be entitled to recover reasonable damages, of

not less than \$1,000 together with reasonable attorney fees and costs from each person who violates.

Chairman DeKrey: Thank you. Further testimony in support of HB 1040.

Paul Sannes, President of ND Funeral Directors Association, manager of Myers Funeral Home in Linton: (see attached testimony).

Chairman DeKrey: Thank you for appearing.

John Jacobson, ND Veteran Coordinating Council, legislative committee: I served 30 years in the ND National Guard, Army reserve, retiring in 1995. I also served on active duty in 1991 during the Persian Gulf War. The ND Veterans Coordinating Council membership is comprised of 15 members: 5 from each of the veteran's organizations in the state; American Legion, Amvets, Disabled American Veterans, Veterans of Foreign Wars and the Vietnam Veterans of America. These organizations represent approx. 60,000 veterans currently living in ND. I have been instructed by the Coordinating Council to ask that this committee put a Do Pass on this bill.

Chairman DeKrey: Thank you for appearing this morning. Further testimony in support.

Randy Lindborg, State Captain for the Patriot Guard Riders: We participated, by invitation of the families, for the final send-offs for seven courageous ND soldiers over the course of the last eight months. We are truly privileged to be allowed the honor of bestowing respect, dignity, and gratitude on these heroes and families. The first funeral we attended was that of Sp. Mike Hermanson of Fargo. Mike was my son's roommate prior to his departure for Iraq. Mike was also the first military funeral in our state that members of the Westboro Baptist church showed up at. They subsequently made appearances at the funerals of Sgt. Travis Van Zoot, Cpl. Paul Byer of Jamestown. The display of disrespect that was then shown by the WBC was beyond description. In each instance, they were well closer than 300 ft. to the

church property. The family and community deserved the basic decency of burying their loved ones in peace, uninterrupted by any disgusting behavior, such as that exhibited by this group. It is our hope that this bill passes into law and to include consideration for the amendments submitted by Dan Bueshevel. The future may hold challenges to this proposed law, regardless of that possibility, what's crucial here is the message being sent. By passing this bill into law, you are making a statement. You are reinforcing the fact that these people in ND have a moral compass that we abide by. We have proven that no matter what may be permissible anywhere else in the world or country, we have standards that we adhere to and certain types of behavior are just plain unacceptable. Thank you for your time.

Chairman DeKrey: Thank you for your testimony. Further testimony in support of HB 1040.

Joyce Mehrer: My son was killed with Travis Van Oorst. I support this bill.

Chairman DeKrey: Thank you for appearing this morning. On behalf of the committee, I certainly want to offer you our respect and condolences as a whole to what you and your family have gone through and very appreciative that you did come this morning, so that the committee could see the results of this group's actions.

Michael Jay, Executive Director of ABATE: On behalf of 2,000+ members, we strongly urge that you Do Pass on this bill.

Chairman DeKrey: Thank you.

Bob Hanson, Commissioner of Veteran Affairs: Support this bill. We hear in our office, why can't we do something to protect our families and you are addressing that, and I want to thank Rep. Grande for what she is doing, and Rep. Amerman, for his bill as well. Passing this legislation will bring a bit of peace to some. I don't know how many of you have attended a funeral or have attending an event where the Patriot Riders were there. The Patriot Riders deserve a large amount of respect for what they do. I was asked how I did I feel about the

signs. I could not express what they said. I've never seen anybody with those types of signs, protesting that. On behalf of the veterans of this state, I urge a Do Pass.

Chairman DeKrey: Thank you for appearing.

Mark Landis, Burleigh County Veteran Service officer: I am a military retiree myself. My wife is a military retiree. My son is in the National Guard. He hasn't been called yet, but we know he can be. They protect our precious freedoms, our constitution, our government. I also believe that this bill, that you've introduced, does not limit anyone's right to free speech. They are welcome to take their speech somewhere else as far as I'm concerned. I wonder if the bill goes far enough; 300 ft is not very far. It may seem like a long way in an urban area, if you're standing in a rural cemetery, or a veteran cemetery, I can see those signs 300 ft away. I can hear them chanting 300 ft away, on a cool, crisp ND morning. I am also concerned that there doesn't appear to be anything in the bill concerning the procession route. So protestors could be lining up along the procession route and chanting, and showing their vile signs and I would like to see that as part of the legislation. Thank you for your time.

Chairman DeKrey: Thank you for appearing. Further testimony in support of HB 1040; testimony in opposition, seeing no testimony in opposition to HB 1040, we will take neutral testimony.

John Val Emter: I am not in opposition, but I'm not for it either. The reason I'm neutral is I'm a veteran also; I have 4 years in the United States Navy. We don't know why we are over in those other countries any longer. These people who are protesting these funerals are looking at our citizens, knowing that they are going to get excited and mad, and start taking away constitutional rights. They are winning, once you pass a constitutional change, they've won. I can't talk about God here either. Once you let people, protestors, get you to sympathize to the point where you break the constitution, that isn't right.

Chairman DeKrey: Thank you for appearing. Further testimony, we will close the meeting.

(Continued later in the same session)

Chairman DeKrey: We will take up the Grande amendment. She gave me a proposed amendment. I talked to Rep. Amerman. Basically what this amendment does, is replace on the 2nd offense would replace an A misdemeanor with a C felony. So I would be interested to know what the committee thinks of that. What do you think of that, Bill. In the penalty section, it would replace on the second subsequent violation in the section, it would replace the A misdemeanor with a C felony. That was the Grande amendment.

Rep. Amerman: No, it probably came out of discussion, my wording in the penalty phase is different, she said she was working on something like this.

Rep. Delmore: Can we get our cheat sheets on the penalties.

Chairman DeKrey: The AG gave us an excellent sheet that was on our desks and I forgot to bring it up. That was the best one I've seen. It's got the intent and it's got the different violations. Does anyone in the committee have strong feelings on the amendment, one way or the other.

Rep. Kretschmar: An A misdemeanor is a year in jail and up to \$2,000 fine. The C felony is 5 years in prison and up to \$5,000 fine, that's the maximum.

Chairman DeKrey: A B misdemeanor is 30 days or \$1,000 fine.

Rep. Kretschmar: I would be a little reluctant to go for a C felony. I think an A misdemeanor is sufficient.

Chairman DeKrey: Okay, we will ignore that. The other suggestion we got was on Rep. Amerman's bill, he's got it at 500 ft. And with our discussion with the AG, his suggestion was that we leave it at 300 ft in town and go to 500 ft when we got outside of city limits where it's

more spread out. He thought that would be defensible. I like that idea, so should we have that amendment drawn up.

Rep. Kingsbury: What about the procession, would that be 500 ft.

Chairman DeKrey: I just wonder if we could have it tied to any activity normally included in a funeral, if they have to stay that amount away.

Rep. Koppelman: I think in Rep. Amerman's bill it means the procession.

Chairman DeKrey: So that is already covered then.

Rep. Koppelman: So what I'm wondering if you went with 500 ft. in the rural areas, that would probably include then, depending how you defined it, if it were outside the city limits, if you had a funeral in town, the procession in town and bury someone in the country, you would be away.

Chairman DeKrey: I would assume that too,

Rep. Klemin: I'm not sure that processions are actually covered that way here; because section 1a on page 1, talks about ceremonies, rituals, processions and memorial services held at a funeral site, and it doesn't say on the way to a funeral site which is what you're talking about I think, about a procession.

Rep. Koppelman: Could you say at or enroute to.

Rep. Klemin: There again, if we are talking about going from the place of the funeral maybe to the cemetery, so there's two, that's a procession.

Rep. Koppelman: So if you have say at or enroute to a funeral site, in connection with a burial, etc.

Rep. Klemin: The difficulty I'm having here is trying to look at it from the standpoint of being sure we have something that's going to survive a constitutional challenge. One of the problems that you see frequently, if something becomes constitutionally vague. If we say

procession, to include the route, now what is the route and does one of these protestors know in advance what route you are going to take; and if you go down the only highway in town and they have to be 300 or 500 ft away from that street or road, are they going to know that you are going to be there. I'm just raising some questions here that I'm hoping won't jeopardize this statute.

Rep. Amerman: I'll just give you a for instance in my home area, you go outside the city limits to a cemetery, about ¼ mile. Either 300 or 500 ft, I don't want to make it any easier for the demonstrators, I'm not sure how much with the highway, and ditches, and then you're on private lands. If you're on private lands, you're probably not 300 ft. so they would have to ask permission from whoever owns that property, if they wanted to demonstrate along that area. In my neck of the woods, you wouldn't get that permission.

Chairman DeKrey: Not anywhere in the state.

Rep. Klemin: There's a very highly publicized situation involving this woman, who's son was killed in Iraq, who's been camped out near President Bush's home in Texas and she got permission from the landowner who lives right there to do that. She's been very vocal and doing various protests. I'm wondering if we might find some of that here, too, I don't know.

Rep. Amerman: I don't know either. I know this committee is going to do the work. I'm just here to answer any questions.

Chairman DeKrey: I want you included in this, because we are trying to do the right thing here and you've got a bill here too. The other issue you bring out in your bill, that I think we should talk about, is the civil penalty. I would be interested to know what the committee thinks about that. I've been told, and I don't know if it's true or not, that you already could take action against a person, anytime you are harmed or you feel you are harmed, you have the right to take action already, so do we need to spell it out in the bill or not.

Rep. Delmore: The other thing that one of the guardsmen mentioned today was, he wasn't sure that they wouldn't have to be preinvited. I just wonder if we don't need a subcommittee to look at this. There were several concerns that I wrote down from people who were giving testimony and this is an important bill, I think we want to do the right thing by it.

Rep. Meyer: They have an amendment defining invited and uninvited guests.

Chairman DeKrey: I will appoint a subcommittee of Rep. Kretschmar, Rep. Klemin, and Rep. Griffin. I ask the committee to include Rep. Amerman in their discussions, although the official committee is out of this committee. Once the subcommittee gets back to us, we'll decide when we take up work on the bill again. I guess the rush is, is that everybody believes this is an important bill and we want to get something in place and we would, God forbid, we get another one come home in a box, we would like to have something in place in case that does happen. I can tell you that I drilled this weekend, and they are sending another big group, an Engineer brigade over to Iraq. A lot of those guys are my personal friends and I've served in the unit with them and I think this is the least we can do for them. We want to get it right and want everybody to be happy when we get it right. We want to get it over to the Senate and get it through. Rep. Kretschmar will chair the subcommittee.

Rep. Amerman: I would like to thank you for inviting me back up and including me in your discussions and by all means, I'm not going to hinder. Whatever comes, will be fine.

Chairman DeKrey: You're doing a noble thing here, and we want that to be recognized because so oftentimes things get mired in politics and we start worrying about who's name is one what, and who's going to get credit and so we conscious of what you are doing for us here.

Rep. Amerman: I appreciate that. I'm sure you are going to come up with the right thing. I will just leave it up to your judgment.

 **Chairman DeKrey:** We will keep in touch with you.

Meeting closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1040

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/10/07

Recorder Job Number: 848

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will take a look at HB 1040.

Rep. Kretschmar: The subcommittee on HB 1040 met yesterday and we were unanimous in our decision to amend this bill. We are proposing one amendment, to page 2, to remove lines 3, 4 and 5 of subsection c. That seemed to give some concern to the groups called Patriot Riders. We did consider other changes in the bill; but left the bill as it was. We left the 300 ft distance because we thought that was reasonable and it has been upheld in the ND under other circumstances. We wanted to try to get the bill that would withstand constitutional challenges. Further we left the penalties alone; first offense, A misdemeanor and second offense, B misdemeanor, rather than make one of those a felony. We thought there was some discussion in the committee at the hearing about funeral processions, and that is part of the definition; we left it alone because we thought it would get too complicated for people involved in the funeral process. We adopted the one amendment and are proposing that to the committee. I move the amendment.

Rep. Klemin: Second.

Rep. Dahl: Under the amendment, you could obstruct the funeral as long as you were 300 ft. away.

Rep. Kretschmar: Anybody could do that.

Rep. Dahl: Including obstruction.

Rep. Klemin: Yes.

Rep. Charging: I talked with Rep. Klemin about Rep. Grande's, in dealing with law enforcement and setting up a designated place to be.

Rep. Klemin: We did talk about that briefly, they can do that anyway. They can designate where you can be if they wanted to. You don't want to say that they have to designate a spot, it wouldn't be appropriate and to say that they may designate a spot is unnecessary.

Chairman DeKrey: I would think that would open up some law enforcement issues, if they didn't designate a spot, then the protestors could say, there isn't a spot designated so we can choose where we want to be.

Rep. Klemin: One other comment, on the procession route. We discussed that and to say that they had to be 300 ft. away from the procession route, could mean that the people handling the funeral would have to give advance notice of where the procession route was going to go. That's not only going to be complex but maybe they don't want them to know.

Chairman DeKrey: You get out into a rural area and already they're limited to less than that, because a driveway is only 60 ft.

Rep. Klemin: The 300 ft. vs. 500 ft or any other restrictions, you stand on the end of the football field and look down to the other end, that's a long ways away; 300 ft has already been upheld by the courts.

Rep. Charging: Rep. Grande had also talked about to this committee about how drastic it was in the amendment to turn it into from an A misdemeanor to a felony. The reason was they wanted a stiffer penalty.

Rep. Dahl: Was there discussion regarding the private cause of action.

Rep. Kretschmar: We did discuss that in the subcommittee, and people already have a cause of action available in the statute, if there was harassment or emotional distress. They can already pursue that.

Rep. Griffin: To answer Rep. Charging's question regarding the A misdemeanor, it wouldn't be just a slap on the wrist, it could be up to a year in prison.

Rep. Wolf: In Rep. Ammerman's bill, he says that within the next hour or has been conducted within the last hour, and in Rep. Ammerman's bill, he also includes the word "during". Is that included in that timeframe.

Rep. Klemin: The Grande bill doesn't have a time limit. During is encompassed within that timeframe.

Rep. Wolf: The other bill also dealt with picketing at the residence.

Chairman DeKrey: The discussion I had with Rep. Grande and her husband, who is an attorney, was that when determining the constitutionality of an act, at some point, if you can keep putting stuff into it, it becomes vague. We will take a voice vote on the amendment. Motion carried. We now have the bill before us as amended.

Rep. Delmore: I move a Do Pass as amended.

Rep. Koppelman: Second.

14 YES 0 NO 0 ABSENT

DO PASS AS AMEND

CARRIER: Rep. Kretschmar

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1040

Page 2, line 6, replace "B" with "A"

Page 2, line 7, replace "A misdemeanor" with "C felony"

Renumber accordingly

PROPOSED AMDENDMENTS TO HOUSE BILL NO. 1040

Page 2, remove lines 3 through 5
Renumber accordingly

70065.0203
Title.0300

Adopted by the Judiciary Committee
January 10, 2007

House Amendments to HB 1040 (70065.0203) - Judiciary Committee 01/10/2007

Page 1, line 21, after the underscored semicolon insert "or"

House Amendments to HB 1040 (70065.0203) - Judiciary Committee 01/10/2007

Page 2, line 2, replace "or" with an underscored period

Page 2, remove lines 3 through 5

Renumber accordingly

Date: 1/10/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1040

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amend

Motion Made By Rep. Delmore Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:



REPORT OF STANDING COMMITTEE (410)
January 11, 2007 8:47 a.m.

Module No: HR-07-0429
Carrier: Kretschmar
Insert LC: 70065.0203 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1040: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1040 was placed on the Sixth order on the calendar.

Page 1, line 21, after the underscored semicolon insert "or"

Page 2, line 2, replace "or" with an underscored period

Page 2, remove lines 3 through 5

Renumber accordingly

2007 SENATE JUDICIARY

HB 1040

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1040

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1551 & 1552

Committee Clerk Signature

Maria L. Solberg

Minutes: Relating to disorderly conduct at a funeral.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Grande – Dist. 41 Introduced Bill (meter 1:50) Gave Testimony Att. #1a provided **Daniel Biesheuvel**, Patriot Guard Riders – Att. #1b **Paul Laney**, Cass County Sheriff. Att. #1c and **Randy Lindborg**, State Captain for the Patriot Guard Riders – Att. 1d

Rep. Dekrey, Dist 14 Testified in support of the bill (meter 6:50) This bill was heard in the house along with another bill being proposed. We combined Rep Amerman's bill and this one. We were careful to address any constitutional issues when we did this.

Sen. Nelson questioned if it is a "group" protesting would the language be strong enough?

Yes. (meter 8:45)

Rep. Charging, Dist. #4 (meter 9:40) Sited how the loss of one of there warriors and a group came to protest on the reservation. As a Sovereign Nation they acted quickly to pass legislation stating "Prohibit ting individuals from protesting during wake and funeral services held on the Ft. Berthold Reservation. The resolution adopts an ordinance making it unlawful to picket or protest during services making any violation of this a Class 1 Misdemeanor." She

continued reading. This was a very difficult time. She stated that it was very expensive to protect the protesters. I have received over 300 positive E-Mails from across the state.

Paul Sannes, ND Funeral Directors Assoc. (meter 12:50) Att. #2 Gave Testimony in Support of the bill.

Major Col. Dave Sprynczynatyk, spoke in support of the bill (meter 14:20) Every day I pray for the safeness of our soldiers who protect our freedoms that we enjoy. ND has lost 12 National Guard members. Spoke of his attending of the funerals and how this bill grants them the respect. This legislation is one of our top priorities this legislation. The bill has been crafted so it will hold up in court. Said his "thanks" to several people. Handed out picture of 12 of the 14 soldiers who have passed away.

Wayne Stenehjem-ND Attorney General (meter 17:33) Thank you for allowing me to testify in support are in support of this bill. We have reviewed the statute for the constitutionality of it and it is sound. Spoke of a Kentucky case and first amendment restrictions. This bill will withstand any challenges.

Sen. Fiebiger question how the distance of 300 feet was derived. (meter 18:63) Discussion of it being an average of existing legislature other states have adopted. **Sen Lyson** satiated that this is one city block and easy to use.

John Jacobsen, Am. Legion and veteran. (meter 20:15) Gave Testimony – Att. # 3

Gene Kuba, Commissioner of Veteran Affairs. spoke for Bob Hanson (22:06) in favor of the bill

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

Recorder Job number: 1552

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following:

Sen. Lyson made the motion to Do Pass and **Sen. Olafson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing.

Date: 1-22-07

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1040

Senate _____ Judiciary _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Lyson Seconded By Sen. Olafson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fieblger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 16 No 0

Absent 0

Floor Assignment Sen. Lyson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1040, as engrossed: Judiciary Committee (Sen. Nethling, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1040 was placed on the ~~Eleventh~~ order on the calendar.

14th

2007 TESTIMONY

HB 1040

Chairman Dekrey and members of the Judiciary Committee,

Thank you for the opportunity to come before this committee today to introduce HB 1040.

I am pleased to be back in this committee room as I did serve on this committee for two sessions.

Mr. Chairman and committee members, HB 1040 is before you today in hopes to provide grieving families the respect, protection and honor that they deserve.

Respect for the 1st Amendment, including even the most despicable forms of speech, is at the foundation of this great country. However, as important as this right is, there are limits. When the speech of one individual harms another it crosses the line. As vigilantly as we protect the right to speak one's mind we must be equally determined to protect the rights of others such as those who are grieving over the loss of a loved one.

I am very aware that we must protect free speech, but there are limits and there is a proper place and time, funerals, especially funerals for fallen servicemen and women, are not the proper place or time for hurtful and disruptive protests.

The key is a proper balance between the right to free speech on one hand and the provision of a suitable, appropriate and respectful time to grieve.

This Bill is simple and straight forward. It is not intended to silence any speech, even speech directly intended to be hurtful and insensitive and exploitive. It is simply intended to ensure that families will have a zone of peace to properly lay a loved one to rest.

Some would like to have greater restrictions on funeral protests, a larger buffer zone for example. However this Bill is not intended to right every wrong but rather provide a constitutionally appropriate solution to grieving families, especially military families.

Supreme Court Justice Anthony Kennedy has stated "Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once there own".

Again, there are strong emotions tied to this issue and many would like to see even greater restrictions on this specific form of exploitive speech. This Bill is not intended to right every wrong or to blaze a new constitutional trail; it has one simple and clear goal, to provide constitutionally sound protection for grieving families. It is important to keep that simple goal in mind and even more important to keep in our hearts and minds the families of fallen military and those brave men and women who have sacrificed so much for us.

Thank you for your consideration and I encourage the committee to move swiftly as there is an emergency clause with this bill. We are hoping to move this through the House and Senate for the Governor to sign in a timely fashion.

Honorable Bette Grande
State Representative
600 E. Boulevard Ave.
Bismarck, ND 58505

Dear Representative Grande,

I am writing this letter to support your endeavors on HB 1040. As a law enforcement professional, I have experienced the pain and anguish caused by groups like the Westboro Baptist Church from Topeka, Kansas. Their message of hate is not appropriate at a funeral where families are saying goodbye to their loved ones.

As a law enforcement leader, I believe in the right of free speech and will always support the constitution. However, there must be limits placed on those who would infringe on the rights of others to further their cause. Funerals are sacred. People are saying goodbye to their loved ones and in cases of the military, where personnel have died in the line of duty, families and entire communities are saying goodbye to their hero. They should be allowed to mourn and say goodbye in peace.

It is my belief a buffer zone for protestors is not an infringement on their rights. They are still able to spread their message, while the families are able to lay their family members to rest in peace. The constitution is upheld, while families can have the sanctity and tranquility expected at a funeral.

I support HB 1040.

Sincerely,

Paul D. Laney
Sheriff
Cass County North Dakota

Protest Set for Marine's funeral

Controversial Kansas group links soldiers' deaths in Iraq, bombing of their church

By Joe W. Berman

joeb@bman.com

Moorehead police are bracing for the arrival of members from a controversial Kansas church who plan to picket the funeral of slain Moorehead Marine Sgt. Bryan Opaker on Tuesday.



Sgt. Bryan Opaker
Moorehead
33-year-old
killed July 23
by a roadside
bomb in Iraq

Westboro Baptist Church of Topesville operates two anti-gay Web sites and links soldiers' deaths in Iraq to a 1995 bomb detonated on the church's compound. The group also claims explosive devices, or IEDs,

America's acceptance of

Opaker, 23, of the 2nd Marine Division out of Camp Lejeune, N.C., was killed July 23 by a roadside incendiary device in Iraq.

His funeral begins at 10:30 a.m. Tuesday at Trinity Lutheran Church in Moorehead.

A news release from Westboro Baptist Church claims "Opaker" was killed by an IED, like the IED America used to bomb our church in a terrorist attempt to stop WBC's anti-gay preaching."

The Topesville Police Department linked the Westboro Baptist bomb to a serial bomber setting off firebombs across the city, according to the Web site answers.com. The church claimed the other bombs set off throughout the city were a cover-up for the one at the church compound, the Web site stated.

A news release from the church earlier this year said: "We may be pardoned for seeing a direct correlation between the improvised Explosive Devices killing American kids in Iraq and the IED that nearly killed a sleeping Westboro baby August 20th 1995."

Ten members of the church plan to picket for 30 minutes before Opaker's funeral, said lifelong member and church attorney Shirley Phelps-Roper, 47, a daughter of church minister Fred Phelps.

A phone message left for Erling Opaker, Bryan's father, was not returned Friday.

Picketing soldiers' funerals is ideal for the group, Phelps-Roper said, "because funerals are when people pay attention and the group can spread its message."

Phelps-Roper said the group doesn't picket private funerals for soldiers. The church, only pickets public funerals, where the military promotes the war and downplays the situation in Iraq, Phelps-Roper said.

FUNERAL: Back Page

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Readers can reach Kansas reporter
Joe W. Berman at (781) 244-5522

FUNERAL: Group picketed Matthew Shepard service

From Page A1

Phelps-Roper also said the media plays a role in "getting their message out" at soldiers' funerals.

"If they're going to use it, we're going to use it" to spread the church's message, she said.

And the group's message is drastic and shocking, said Sgt. Chris Carey of the Moorehead Police Department. The messages they put on signs will be extremely disturbing to a family grieving the loss of a son or loved one, Carey said.

Carey's advice for those attending Tuesday's funeral is to ignore the picketers.

"If somebody was responsible for the Sept. 11 attacks, they would like to do is ignore the message they're sending. They're an extremely small minority from the United States that feels that way."

At an Army soldier's funeral July 28 in Oklahoma, signs carried by Westboro Baptist picketers read: "America is Doomed," "God Hates Fags" and "Thank God for IEDs."

Police will be out in greater

numbers for Opaker's funeral to help prevent a conflict between mourners and picketers, Carey said. Police will also videotape the picketing, he said.

"We've done some checking into the Westboro Baptist Church. It is a small number that turn out to picket at funerals," Carey said.

The group garnered national attention in 1993 after picketing the funeral of Matthew Shepard, a gay man from Wyoming who was beaten to death by two men.

The church also protested in the wake of the Sept. 11 attacks in New York City, mocking victims as they were taken from the rubble, about the "phosphorus" at rescue workers and demanding that those still alive be left to die, according to answers.com.

Westboro Baptist Church picketed outside a North Dakota State University football game in 2003 after the school participated in Safe Zone, a program in which college faculty and staff put a sticker on their door signaling they are willing to talk to students about gay issues.

Readers can reach Kansas reporter
Joe W. Berman at (781) 244-5522

In Loving Memory of
SERGEANT BRYAN J. OPSKAR

February 14, 1973 - July 23, 2005

The Funeral Service

Tuesday, August 2, 2005 - 10:30 AM
Trinity Lutheran Church
Moorhead, Minnesota

Rev. Heidi Schwerdtfeger, officiating

Rev. John Andrews, assisting

Peter Nygaard, organist

Recorded Musical Selections

"You Raise Me Up" - Selah

"Untitled Hymn" - Chris Rice

The Memorial Service

Thursday, August 4, 2005 - 10:30 AM
Immanuel Lutheran Church
Princeton, Minnesota

Rev. Stephen Cook, officiating

Sondra Erickson, organist

Barb Larsen, pianist

Beth & Don Hanson, vocalists



Active Casket Bearers

Allen Dotzenrod	Chris Opskar
Rudy Dotzenrod	John Opskar
Kris Dougherty	Eric Swenson
Jason Ostbye	Sam Thorvilson

Military Honors by

US Marine Corps

Interment

Tuesday, August 2, 2005 - 2:00 PM
Cormorant Lutheran Cemetery
rural Lake Park, Minnesota

Arrangements by
Koromo Funeral Service-Moorhead, Minnesota

HB 1040
Disorderly Conduct at a Funeral
Testimony of Senator Dick Dever

Mr. Chairman, members of the committee, for the record I am Dick Dever, Senator from District 32 in Bismarck.

It is truly an honor to have the opportunity to serve as a co-sponsor of this very important bill. I am sure that if we did not limit the number of sponsors to six, we would need to hold this hearing as a joint session of the Legislature in order to accommodate all the sponsors.

Mr. Chairman, some things change. When I was young, it was said that one person's freedom ended where another person's nose began. "Rights" had more to do with responsibility than with abuse.

This bill is not about the "Right" to free speech. Nobody should have the right to disrupt someone else's funeral service. The bill does not prevent the ability to protest. It simply provides a reasonable distance away so the protest is not disruptive. An amendment that I would like to see might cross that line. The amendment would be to change the word "feet" to miles.

Mr. Chairman, some things don't change. We can thank God that young men, and young women, of every generation of Americans have been willing to step forward and put their lives on the line so that we can all enjoy the freedoms that we share. This bill addresses the abuse of some of those freedoms.

Last April, I had the opportunity to travel to our nation's Capitol for the first time. I visited the Vietnam Veteran's Memorial and did a pencil rubbing of the name of one of my cousins.

Pass this bill for my cousin, Elton, the hundreds of thousands of other Americans throughout our history who have made the same sacrifice; for all those who fought; for all those who fight; and, God willing, for all those future generations who will continue to fight for the freedoms that we all hold dear.

Thank you, Mr. Chairman, and I would be happy to respond to any questions.

Chairman, Committee Members and Guest,

I am Maureen Wanner.

My niece Tiffany Jasmann-Trumble was deployed with the MPAD, NDNG and returned.

My brother Maurice Jasmann was deployed with the 141 Co C, NDNG and returned.

My nephew-in-law Blake Trumble was deployed with the 164, NDNG, wounded but returned to Iraq after his therapy. He is again home, safe.

My nephew David Jasmann is currently deployed to Afghanistan with his active Army unit from Washington state. We pray he to will be returned safe.

My husband is MSG Sherwin Wanner and will be deploying in March with the Engineering Brigade, NDNG. We have 3 sons, 14, 10, and 4.

My family is closely effected by this war. Our children are effected.

God willing, all of our soldiers will come home safe, but if one is killed, I know this community will come together with great support. I have seen it with past funerals for fallen soldiers. What I have also seen is a group of people not loving others as God would want. They displayed signs with words that we do not use in our home. Words I don't want my children to use let alone see. This group acted in a manner I would discipline my children for. I know there have been children at these past funerals and it is sad that they had to be exposed to these displays of rudeness.

I am grateful that our soldiers are fighting to keep my family free and safe. I am grateful that people have the right to speak freely. I am grateful that people have the right to display signs as they wish, with what they wish. I am grateful that I have the right to stand here today and ask that protesters, at a funeral for a fallen soldier, have the right to protest but out of sight of the mourning family. I ask that you place them as far away from the family as possible.

I find it distasteful, unloving and very sad in God's eyes that anyone would want to protest a fallen soldiers funeral. It is a shame that a soldier's family and children would have to see such a display.

Thank you soldiers, past and present, for my freedom.

Thank you committee members for your time.

Maureen Wanner

Chairman DeKrey, Vice Chairman Klemin, members of the committee and attendees,

Good morning. My name is Dan Biesheuvel. I have been a member of the Patriot Guard Riders in the Bismarck/Mandan area since my co-worker, SGT Travis Van Zoest was killed in Afghanistan on 6/6/06. I immediately joined this organization when I learned that a faction of misguided people from Topeka, Kansas were planning on protesting Travis' funeral to further their twisted cause. The preservation of a solemn, respectful and grateful tone at the funeral service of a fallen hero is foremost in our mission as Patriot Guard Riders. We appreciate the interest this committee has concerning this issue. We only wish to assure that these families are not exposed to further burden on a day already full of burden.

I am here today to comment on House Bill No. 1040. On the surface this bill appears to be exactly what these grieving families deserve. But upon closer inspection, I see problems that need to be addressed and corrected. I have attached those amendments.

In the opening paragraph the inclusion of the phrase "of uninvited guests or groups" needs to added. In Section 1 the meaning of "uninvited" and "invited" and in definitions in has to be included also. This will help define to whom these restrictions are actually directed. Without that verbiage, the restriction will be applied to any invited or approved attendees who just happen to exhibit the described activity. Let me explain why.

At times during the requested appearance before the funeral begins the Patriot Guard Riders (PGR) will clap, sing or recite the pledge of allegiance to drown out the obscenities of the protestors. The PGR members and supporters also hold up flags and banners in support of the family and respect of the fallen. As written this bill will require the 300 foot distance restriction for even the invited guests described under "engagement" or "displays". The uninvited guests (UGs) and their legal representatives will not hesitate to argue that those invited attendees will be eligible as first time offenders of a class B misdemeanor, disorderly conduct at a funeral.

The US Congress passed **HR 5037** and the President signed **Public Law 109-228 the "Respect for America's Fallen Heroes Act**. In this law there is language directed to the definition of "certain demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery". I feel the state of North Dakota needs to expound on that definition by identifying the difference between 'invited' and 'uninvited' guest. Even though the United States Supreme Court has not upheld the 300 **yard** restriction, I feel a 300 **foot** standard for funerals is an equitable distance and not denying the UGs right to protest.

From the attached article by First Amendment Center research attorney David L Hudson, Jr. concerning funeral protesting, (online at: http://www.firstamendmentcenter.org/Assembly/topic.aspx?topic=funeral_protests), Mr. Hudson says:

According to the National Conference of State Legislatures, 34 states have introduced bills to limit protests near funerals; 27 of those states have passed such measures. ...

In the context of the personal privacy exemption in the Freedom of Information Act, the U.S. Supreme Court recognized in 2004 in National Archives and Records Administration v. Favish the strong privacy interests of family members.

"Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once their own," Justice Anthony Kennedy wrote in Favish."

Oklahoma Republican state Rep. Paul Wesselhoft, sponsor of the measure ...said in an October 2005 news release: "I am not regulating content of speech. Citizens are afforded various places at numerous times to picket, protest and fully exercise their First Amendment rights...but a funeral is not such a place or time. Grieving families have rights, too."

I agree with Rep Wesselhoft, the grieving families have rights too. That includes the right to privacy in the darkest hours of mourning. No constructive ends are met by protesting a fallen soldier's funeral. It has been said that any right becomes an intrusion when it impedes on the rights of anothers. I question when one demand must completely overshadow the rights of far more. Freedom of speech is a sacred right, but it does not allow you to cry "FIRE" in a crowded theater nor should it permit the ability to yell obscenities and abuse at a grieving family. I encourage you to apply these amendments to this bill and give it a 'do passed'. Thank you. I am open for any questions.

(Attached are my revisions to this bill)

Sixtieth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1040
(**bold and underlined** entries are requested amendments)

Introduced by

Representative Grande

A BILL for an Act to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to disorderly conduct **by an uninvited guest or group** at a funeral; to provide a Penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

Disorderly conduct at a funeral - Penalty.

1. For purposes of this section:

- a. "Uninvited" means any individual or group not expressly invited nor generally approved by the deceased's family or designated representative.**
- b. "Invited" means any individual or group expressly invited or generally approved by the deceased's family or designated representative.**
- a- c. "Funeral" means the ceremonies, rituals, processions, and memorial services held at a funeral site in connection with the burial, cremation, or memorial of a deceased individual.**
- b- d. "Funeral site" means a church, synagogue, mosque, funeral home, mortuary, cemetery, gravesite, mausoleum, or other place at which a funeral is conducted or is scheduled to be conducted within the next hour or has been conducted within the last hour.**

2. An individual or group is guilty of disorderly conduct at a funeral if the individual or group:

- a. Engages, without general approval by the deceased's family or designated representative and with knowledge of the existence of a funeral site, in any loud singing, playing of music, chanting, whistling, Yelling or noise making within three hundred feet (91.44 meters) of any ingress or egress of that funeral site if the volume of the singing, music, chanting, whistling, yelling, or noisemaking is likely to be audible at and disturbing to the funeral site. This restriction does not apply to invited guests unless and until their activity becomes disturbing to the deceased's family or designated representative.
- b. Displays, without general approval of the deceased's family or representative and with knowledge of the existence of a funeral site and within three hundred feet (91.44 meters) of any ingress or egress of that funeral site, any visual images that convey fighting words or actual or veiled threats against any other individual. This restriction does not apply to invited guests unless their activity becomes disturbing to the deceased's family or designated representative: or
- b. Without general approval of the deceased's family or designated representative and with knowledge of the existence of a funeral site, knowingly obstructs, hinders, impedes, or blocks other invited individual or group's entry to or exit from that funeral site or a facility containing that funeral site.

3. Disorderly conduct at a funeral is a class B misdemeanor. A second or subsequent violation of this section is a class A misdemeanor.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Public Law 109-228
109th Congress

An Act

To amend titles 38 and 18, United States Code, to prohibit certain demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery, and for other purposes. <<NOTE: May 29, 2006 - [H.R. 5037]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress <<NOTE: Respect for America's Fallen Heroes Act. 38 USC 101 note.>> assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Respect for America's Fallen Heroes Act''.

SEC. 2. PROHIBITION ON CERTAIN DEMONSTRATIONS AT CEMETERIES UNDER THE CONTROL OF THE NATIONAL CEMETERY ADMINISTRATION AND AT ARLINGTON NATIONAL CEMETERY.

(a) Prohibition.--

(1) In general.--Chapter 24 of title 38, United States Code, is amended by adding at the end the following new section:

``Sec. 2413. Prohibition on certain demonstrations at cemeteries under control of the National Cemetery Administration and at Arlington National Cemetery

``(a) Prohibition.--No person may carry out--

``(1) a demonstration on the property of a cemetery under the control of the National Cemetery Administration or on the property of Arlington National Cemetery unless the demonstration has been approved by the cemetery superintendent or the director of the property on which the cemetery is located; or

``(2) 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--

``(A)(i) takes place within 150 feet of a road, pathway, or other route of ingress to or egress from such cemetery property; and

``(ii) 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

``(B) is within 300 feet of such cemetery and impedes the access to or egress from such cemetery.

``(b) Demonstration.--For purposes of this section, the term 'demonstration' includes the following:

``(1) Any picketing or similar conduct.

``(2) Any oration, speech, use of sound amplification equipment or device, or similar conduct that is not part of a funeral, memorial service, or ceremony.

((3) The display of any placard, banner, flag, or similar device, unless such a display is part of a funeral, memorial service, or ceremony.

((4) The distribution of any handbill, pamphlet, leaflet, or other written or printed matter other than a program distributed as part of a funeral, memorial service, or ceremony.'').

(2) Clerical amendment.--The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

((2413. Prohibition on certain demonstrations at cemeteries under control of the National Cemetery Administration and at Arlington National Cemetery.'').

(b) <<NOTE: 38 USC 2413 note.>> Construction.--Nothing in section 2413 of title 38, United States Code (as amended by subsection (a)), shall be construed as limiting the authority of the Secretary of Veterans Affairs, with respect to property under control of the National Cemetery Administration, or the Secretary of the Army, with respect to Arlington National Cemetery, to issue or enforce regulations that prohibit or restrict conduct that is not specifically covered by section 2413 of such title (as so added).

SEC. 3. PENALTY FOR VIOLATION OF PROHIBITION ON UNAPPROVED DEMONSTRATIONS AT CEMETERIES UNDER THE CONTROL OF THE NATIONAL CEMETERY ADMINISTRATION AND AT ARLINGTON NATIONAL CEMETERY.

(a) Penalty.--Chapter 67 of title 18, United States Code, is amended by adding at the end the following new section:

((Sec. 1387. Demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery

((Whoever violates section 2413 of title 38 shall be fined under this title, imprisoned for not more than one year, or both.'').

(b) Clerical Amendment.--The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

((1387. Demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery.'').

SEC. 4. SENSE OF CONGRESS ON STATE RESTRICTION OF DEMONSTRATIONS NEAR MILITARY FUNERALS.

It is the sense of Congress that each State should enact legislation to restrict demonstrations near any military funeral.

Approved May 29, 2006.

LEGISLATIVE HISTORY--H.R. 5037:

CONGRESSIONAL RECORD, Vol. 152 (2006):

May 9, considered and passed House.

May 24, considered and passed Senate, amended. House concurred in Senate amendment.

<all>

Bush Signs Funeral Protest Ban

(May 29, 2006)--President Bush marked Memorial Day by signing a bill that keeps demonstrators from disrupting military funerals.

Before heading to Arlington National Cemetery for a wreath laying and speech, Mr. Bush signed the "Respect for America's Fallen Heroes Act."

It was passed mainly in response to a Kansas church group that has staged protests at military funerals around the country.

The group says the deaths in Iraq and elsewhere show that God is angry over U.S. tolerance of gays.

The law prevents protests within 300 feet of the entrance of a national cemetery.

Even as Mr. Bush signed the bill, members of the Kansas group stood about 300 feet from the entrance to Arlington.

They held signs that read, "Thank God for dead soldiers," and "'Bush killed them."

A conservative group supporting the troops stood across the highway, holding a large sign calling troops "American heroes."

Gov. Rick Perry signed a bill earlier this month that authorizes an immediate ban on protests at military funerals in Texas.

It was also drafted with members of the Westboro Baptist Church of Topeka, Kan. in mind.

Church members protested earlier this year at the funeral for a soldier in Temple.

"There is a time and place for protests, but it is not at funerals and burials for U.S. soldiers who died to protect the freedoms we hold so dear," Perry said as he signed the measure.

The bill makes it a Class B misdemeanor to protest within 500 feet of the site of a funeral service.

The ban is in effect from one hour before to one hour after a site is used for a service.

Oklahoma and Iowa have enacted laws to make such protests illegal in their states.

The Texas legislature took up the bill after Gov. Rick Perry expanded the call of the special session, which ended earlier this month.

Funeral protest bill fails legal scrutiny

The Wichita Eagle

<http://www.topix.net/redirect/loc=off-hosted-page/http=3A=2F=2Fwww.kansas.com>

BY STEVE PAINTER

April 26, 2006

A constitutional law professor warned a legislative negotiating committee Wednesday that the state likely would be sued and lose under the House version of a bill to restrict protests at funerals.

Conference committees -- three negotiators from each chamber -- rarely take new testimony when working out differences between versions of bills.

But Stephen McAllister, a professor of constitutional law and former dean of the University of Kansas School of Law, told the panel that the 300-yard limit on protesters imposed in the House bill goes too far. In free-speech cases, he said, the U.S. Supreme Court has never upheld limits that strict, he said.

However, he said lawmakers probably could prohibit yelling, chanting, singing or other disruptive protests.

'I think you can silence them,' he said.

The legislation is a reaction to protests at soldiers' funerals by members of the Westboro Baptist Church in Topeka. Pastor Fred Phelps contends the soldiers' deaths are God's punishment for U.S. tolerance of homosexuals.

Negotiators are trying to work out differences in bills the House and Senate passed to limit funeral protests.

The House version bans protesters closer than 300 yards from one hour before a service to two hours after. The Senate banned protests within 100 yards.

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Funeral Protests

By David L. Hudson Jr.

First Amendment Center research attorney

"They turned America over to fags; They're bringing them home in body bags." The Topeka, Kan.-based Westboro Baptist Church displays such inflammatory, anti-gay statements when protesting the funerals of American soldiers killed in Iraq. The church asserts that God is punishing the country for its support of gay rights. The Rev. Fred Phelps, the church's founder, and members of his family have garnered many headlines through the years for their vehement protests against homosexuality, including picketing the funeral of Matthew Shepard, a gay man beaten to death in Wyoming in 1998.

The church's activities led the Kansas Legislature to pass an anti-funeral protest law called the Kansas Funeral Picketing Act in 1992. Phelps challenged the constitutionality of the law and in 1995 a federal judge ruled the Kansas law was unconstitutionally vague with respect to its terms "before" and "after" a funeral. The Legislature then amended the statute to provide: "It is unlawful for any person to engage in picketing before or about any cemetery, church or mortuary within one hour prior to, during and two hours following the commencement of a funeral." For many years, the issue remained confined in Kansas until Westboro's protests drew the ire of lawmakers across the country.

State measures

The church's more recent protests unleashed a torrent of legislative activity rarely rivaled in the annals of First Amendment history. According to the National Conference of State Legislatures, 34 states have introduced bills to limit protests near funerals; 27 of those states have passed such measures (not including Kansas).

The measures generally criminalize protests near funeral processions as a form of disorderly conduct. The measures typically impose both time and distance limitations. Some of the laws only prohibit protesting at military funerals, while many others ban protests at any funeral.

The Oklahoma Funeral Picketing Act blocks protests at military funerals, prohibiting such activity from one hour before to two hours after the funeral. It also prohibits protests within 300 feet of the location of the funeral service or 300 feet of the "military funeral procession or burial."

On the other hand, the Illinois law forbids protests at any funeral "within 200 feet of any ingress or egress of a funeral site." The Illinois measure also prohibits the display "of any visual images that convey fighting words or actual or veiled threats against any other person."

All in all, in addition to Kansas' older law, funeral-protest laws have been passed in the following states: Alabama, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia and Wisconsin.

Kentucky court case

Lawsuits have been filed challenging the constitutionality of such measures in three states — Kentucky, Missouri and Ohio. As of October 2006, only one court had issued a decision. A federal district court issued a preliminary injunction on Sept. 26, 2006, preventing enforcement of Kentucky's law because of First Amendment concerns.

In *McQueary v. Stumbo*, the court determined that parts of the Kentucky law, which banned all types of demonstrations within 300 feet of funerals and funeral processions, "burden substantially more speech than is necessary to prevent interferences with a funeral or to protect funeral attendees from unwanted, obtrusive communications that are otherwise impractical to avoid."

The judge held that the law was content-neutral and recognized the privacy interests of family members at funerals. However, the court said the law was not narrowly tailored enough to satisfy constitutional standards.

"Certainly the Commonwealth has an interest in showing respect and compassion for the deceased and for their families, but we cannot allow lawmakers to trample upon the First Amendment in the process," said ACLU of Kentucky staff attorney Lili Lutgens in a news release. "Today, the federal court recognized that even speech that most people find distasteful is still protected by the Constitution."

Federal legislation

Congress has entered the fray over funeral protests. In March 2006, Sen. Evan Bayh, D-Ind., introduced the Dignity for Military Funerals Act of 2006, which would bar picketing within 300 feet of a military funeral for a period of one hour before to one hour after the ceremony. The measure was referred to the Senate Judiciary Committee.

Several months later, Congress passed the more narrowly confined Respect for America's Fallen Heroes Act and President George W. Bush signed it into law on May 29, 2006. The law broadly prohibits any type of demonstration "under the control of the National Cemetery Administration or on the property of Arlington National Cemetery unless the demonstration has been approved by the cemetery superintendent or the director of the property on which the cemetery is located." It imposes both time (one hour before and after) and distance requirements (150 feet from road and 300 feet from the cemetery).

The last section of the federal law explains why so many states have rushed to enact and pass similar legislation: "It is the sense of Congress that each State should enact legislation to restrict demonstrations near any military funeral."

Constitutional concerns

The measures are designed to protect family privacy and prevent emotional distress. Supporters of the measures argue that protecting privacy amounts to a compelling state interest.

In the context of the personal privacy exemption in the Freedom of Information Act, the U.S. Supreme Court recognized in 2004 in *National Archives and Records Administration v. Favish* the strong privacy interests of family members.

"Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once their own," Justice Anthony Kennedy wrote in *Favish*. Though the Court addressed privacy in the FOIA context, Kennedy's statement indicates the depth of the Court's commitment to family privacy.

The funeral anti-picketing measures reflect state legislators' similar concerns with families' privacy rights. For example, the new Oklahoma law provides that "the interests of families in privately and peacefully mourning the loss of deceased relatives are violated when funerals are targeted for picketing and other public demonstrations."

Oklahoma Republican state Rep. Paul Wesselhoft, sponsor of the measure and a retired U.S. Army chaplain, said in an October 2005 news release: "I am not regulating content of speech. Citizens are afforded various places at numerous times to picket, protest and fully exercise their First Amendment rights — precious rights that I have defended as a combat veteran, but a funeral is not such a place or time. Grieving families have rights, too."

Ann Stock, legislative aide to Missouri state GOP Sen. Charlie Shields, sponsor of the new Missouri law, described the measure's impetus: "Senator Shields filed this legislation after a group protested the funeral of a fallen soldier from the senator's district. Those involved with the funeral, including the family, were very upset that this type of protest happened during their time of grieving."

Stock said the measure "does not specify any certain type of protest or the reason for the protest" and is therefore content-neutral.

Phelps' group contends all such measures infringe on First Amendment free-speech rights. The church argues that the proposed bills discriminate on the basis of content and viewpoint in flagrant violation of fundamental First Amendment principles.

On its Web site, the church says in a statement that it will challenge such legislation. The church warns legislators: "Your standard is 'reasonable, time, place and manner restriction.' If you go one bit over that line we're going to litigate, and request fees."

Leading free-speech experts agree that the funeral-picketing measures present troubling First Amendment issues.

"The rationale behind these laws is to stop an offensive type of expression (most people would agree this is offensive)," says Robert D. Richards, director of the Pennsylvania Center for the First Amendment, "but that's the very type of expression the First Amendment continues to protect."

The experts question whether the laws are content-neutral and, thus, do not discriminate against speech based on content. Supporters counter that the measures only impose reasonable time, place and manner restrictions on expression.

Robert M. O'Neil, founder and director of the Thomas Jefferson Center for the Protection of Free Expression, said: "Despite the apparent content neutrality, these measures target a particular subject matter in ways that — and for reasons that — imply a concern with content."

"I would not view such measures as time, place and manner limited — and would assume (for example) that symbolic displays respectful or laudatory of the deceased would not be banned," he said.

O'Neil also pointed out that "only one occasion or event is targeted for quite unusual restrictions."

Richards, author of *Freedom's Voice: The Perilous Present and Uncertain Future of the First Amendment*, said: "These laws do raise troubling First Amendment issues."

"The sidewalks and streets surrounding funeral homes, churches and the like are typically public fora, and the law governing restrictions on speech in a public forum is fairly well settled. Unless the government can demonstrate a compelling interest — and I frankly don't see enough support for it in the legislative findings in [current legislative proposals] — it can only impose content-neutral time, place and manner restrictions on speech."

"Given that the expression at issue, 'funeral protest,' could easily be interpreted as a content-based restriction, the government will likely have a tough time defending the restriction," Richards said.

"While most people — myself included — would sympathize with grieving family members at a funeral, I don't find it to be a compelling governmental interest to restrict speech in the area of a funeral."

Richards said disorderly conduct statutes are sometimes applied in a manner that restricts free-expression rights.

O'Neil agreed, saying: "What is seemingly a content-neutral time, place and manner regulation in fact has a content bias, not only by being so site-specific and thus targeting a particular message (related to funerals and burials) but clearly by constraining only one side of the issue, since a laudatory demonstration ('military hero') would clearly not be covered."

"The time window does not help since the audience sought to be reached would not likely be present at any other time, save possibly on Memorial or Veterans Day and a few other such holidays," O'Neil said. "Thus, a seemingly time-limited constraint is, de facto, a total ban on conveying an important message to a specific audience."

Richards and O'Neil warn that many of the laws may not only be content-based but also may constitute an egregious form of content discrimination known as viewpoint discrimination. Content discrimination generally refers to general subject-matter discrimination, such as a law that bans political speeches in parks. Viewpoint discrimination goes beyond mere subject matter and restricts speech based on viewpoint. An example would be a law that prohibits Republican Party speakers in a park but allows Democratic Party speakers.

"The other question I would have is what would happen if people who loved the deceased held up signs outside the church or funeral home saying, 'We love you. We'll miss you,'" Richards said. "Would those folks face criminal charges? If not, there's a viewpoint-based discrimination issue."



Three Affiliated Tribes
Home of the Mandan, Hidatsa, Arikara Tribes
404 Frontage Road * New Town, N.D. 58763-9402

Contact information:

Vonnie Alberts Tribal Press Secretary 701-627-4781 Ext 8135 or Dawn
Charging 701-627-4871 Ext 8020 (cell) 701-421-0041
Fax – 701-627-3503

Three Affiliated Tribal Headquarters New Town N.D
Official Statement by Chairman Marcus D. Wells Jr.,
Eah Bah Dah Gish – Bald Eagle

The Three Affiliated Tribes Business Council today held a "Special Meeting" to address a notification they received at the Tribal Administrative Headquarters in New Town that the Westboro Baptist Church of Kansas intends to protest the funeral services for Cpl. Nathan Goodiron. The announcement of this protest is also scheduled on the group's Website for members of the Westboro Baptist Church to occupy the funeral site Mandaree High School, at 9:15 a.m. on Saturday, December 2.

"The Tribal Business Council believes it is in our best interest, as the elected leaders to protect the honor of our tribal soldiers and the honor of all tribal members by prohibiting any protestors, Indian or Non-Indian, access to the Fort Berthold Reservation," said Chairman Marcus Wells Jr.

The Tribal Business Council passed a unanimous resolution today (Friday, Dec. 1, 2006) prohibiting any individual from protesting during wake and funeral services held on the Fort Berthold Reservation. The Resolution adopts an Ordinance making it unlawful to picket or protest during such services and makes any violation of the Ordinance a Class I misdemeanor. The Ordinance also requires that any non-member of the Tribe who violates the ordinance be immediately excluded from the Reservation.

Wells stated: "We recognize and respect the right to free speech and the public's right to assemble, but we want everyone to know that the Three Affiliated Tribes, as a sovereign

Tribal government, has the right to regulate any person or persons who harass and show disrespectful conduct towards our members within our boundaries for the protection of our own members, especially during the time of a funeral for one of our highly respected members who gave his life while serving his Country and the people of his Tribe. Today's resolution is just one example of the Tribe exercising its inherent 'sovereign' right to exclude individuals from the Reservation where specific circumstances warrant exclusion."

Last week, the Tribe proclaimed Dec 1, to be in memory and honor of Cpl. Nathan Joel Goodiron. Article two of the proclamation states, "The Tribal Business Council recognizes and honors the valor and bravery that all members of the United States Armed Forces are charged with and places high esteem on them for their honorable services to our Nation and our Native American Ancestry and history when our warriors fought against the enemy to earn certain rights in our society."

"Our entire Reservation is grieving the loss of our friend, brother, husband and son," Wells continued. "We will not tolerate any harassment that is intended to provoke ill feelings and violence."

"The proposed protest by Westboro Baptist Church offends any sense of common decency, and it goes against our cultural values and traditions. We respect our veterans. They have served unselfishly our Tribe, our State and our Country."

Wells further stated, "Cpl. Nathan Goodiron has given the ultimate sacrifice for all of us, and we will absolutely not tolerate any group disrespecting his ultimate sacrifice."

"It is the wish of the Tribal Business Council to allow the services for Cpl. Goodiron to proceed with dignity, honor and respect."

Appropriate tribal, county, state and Federal law enforcement agencies have received notification of the Tribes official Resolution to exclude public protest and will enforce the appropriate penalties within the jurisdiction and boundaries of the Fort Berthold Reservation.

#



RESOLUTION NO. 06-015-VJB

**RESOLUTION OF THE GOVERNING BODY
OF THE
THREE AFFILIATED TRIBES
OF THE
FORT BERTHOLD INDIAN RESERVATION**

A Resolution Entitled: "An Act of the Tribal Business Council Making it Unlawful for Individuals to Picket or Otherwise Disturb A Funeral on the Fort Berthold Reservation."

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-laws pursuant to said Act; and
- WHEREAS,** Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS,** Article VI, Section 5 (I) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies and Tribal officials on the Reservation; and
- WHEREAS,** Article VI, Section 5 (j) of the Constitution of the Three Affiliated Tribes provides the Tribal Business Council has the power to cultivate and preserve the culture, ceremonies and traditions of the Tribes; and
- WHEREAS,** The Tribal Business Council finds that the Tribe and its members and the people of the Fort Berthold Reservation have a substantial interest in the peaceable organization and attending funerals for deceased relatives; and
- WHEREAS,** The Tribal Business Council also finds that picketing of funerals in any manner causes severe emotional distress to grieving families, relatives and friends of the deceased; and
- WHEREAS,** The Tribal Business Council further finds that the interests of families, relatives and friends in privately and peacefully mourning the loss of the deceased is violated when funerals are targeted for picketing and other public demonstrations; and
- WHEREAS,** The Tribal Business Council desires to protect the privacy of funerals and the traditions and ceremonies of the Tribe and its members by making it unlawful for any individual to picket a funeral or otherwise intentionally disturb the peaceful organization and attendance of funerals and funeral-related functions such as wakes on the Fort Berthold Reservation.
- NOW THEREFORE BE IT RESOLVED,** that the Tribal Business Council of the Three Affiliated Tribes hereby amends Title II, Part VI of the Criminal Code of the Three Affiliated Tribe of the Fort Berthold Reservation by adding the provisions below as "Article 3" to "Part VI" of the "Criminal Code" entitled "Offenses Against Public Decency":

**RESOLUTION NO. 06-015-VJB****Article 3. Funeral Picketing; Penalty; other Relief****Section 630.1 Definitions.**

As used in this Article:

1. "Funeral" means the wake, ceremonies, rituals, processions, and memorial services held in connection with the burial, cremation, memorial, of a deceased person, including the assembly and dispersal of the mourners.
2. "Picketing" means protest activities engaged in by a person or persons on the Fort Berthold Reservation during the day of a funeral that is reasonably calculated to inflict emotional distress on the mourners.
3. "Mourner(s)" means a member(s) of the decedent's immediate family at the funeral.

Section 630.2 Unlawful to Picket.

It is unlawful for any person to engage or attempt to engage in picketing on the Fort Berthold Reservation during the day before or the day of a funeral.

Section 630.1 Penalty.

1. A violation of Section 630.2 is a Class I Misdemeanor pursuant to Section 110.4 for Tribal members or any Indian.
2. Any non-Indians violating Section 630.2 shall be immediately excluded from the Fort Berthold Reservation and shall remain excluded until the day proceeding a funeral. Law Enforcement shall obtain the identity of any person violating Section 630.2 and the person's address for purposes of subsection (3) below.
3. Each mourner shall be entitled to recover reasonable damages, but not less than one thousand dollars, together with reasonable attorney fees and costs from each person who violates subsection 630.2 of this Article.

A. The court shall impose joint and several liability on any person who:

- (1) Violates Section 630.2 of this Article by acting in concert with one or more other persons; and
- (2) Consciously conspires with one or more other persons and deliberately pursues a common plan or design to commit a violation of Section 630.2 of this Article.

BE IT FINALLY RESOLVED, that these Amendments shall take effect immediately and the Criminal Code shall be amended accordingly.



RESOLUTION NO. 06-015-VJB

CERTIFICATION

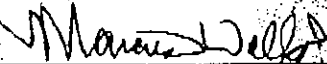
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the December 1st 2006; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman ☒ Voting. [] Not voting.

Dated this 1st day of December 2006.


Executive Secretary, Judy Brugh
Tribal Business Council
Three Affiliated Tribes

ATTEST:


Tribal Chairman, Marcus Wells, Jr.
Tribal Business Council
Three Affiliated Tribes

HB 1040

Westboro Baptist Church

(WBC Chronicals - Since 1956)
3781 SW 12th St. Topeka, Ks. 66604 785-273-0325 www.godhatesfags.com
Religious Opinion & Bible Commentary on Current Events

Thursday, November 30, 2006

NEWS RELEASE

(Supplemental info: background, photos, audio sermons & hymns, and video footage -- available free at: www.godhatesfags.com, godhatesamerica.com, hatemongers.com, and www.thetruthaboutthechurch.org)

Thank God for IEDs

(Improvised Explosive Devices)

God Himself Has Now Become America's Terrorist, Killing and Maiming American Troops in Strange Lands for Fag Sins.

WBC will picket the Funeral of Army National Guard Cpl. Nathan Goodiron - at 9:15 a.m., Sat., Dec. 2 - at Mandaree High School, 215 Main St., Mandaree, North Dakota.

"For there fell down many slain, because the war was of God." 1 Chron. 5:22. God has irreversibly cursed America.



America bombed our church with an IED made by fag students at Washburn Univ. in Topeka. In His retaliatory wrath, God is killing Americans with Muslim IEDs: "Saying, Touch not mine anointed, and do my prophets no harm." 1 Chron. 16:22. "For it is written, Vengeance is mine; I will repay, saith the Lord." Rom. 12:19. God Almighty killed Army Cpl. Goodiron. He died in shame, not honor - for a fag nation cursed by God: "Buried with the burial of an ass." Jer. 22:19. Thence to Hell with his soldier pals.

They turned America
Over to fags;
They're coming home
In body bags.



The Dover Factor. They come night and day, steel-gray cargo planes, bringing IED dead. America became WBC's terrorist. Now God Himself is America's Terrorist.

"And I myself will fight against you with an outstretched hand and with a strong arm, even in anger, and in fury, and in great wrath." Jer. 21:5.

When the barbaric Babylonians were at the gate, King Zedekiah sent messengers to Jeremiah seeking help from God. Too late. Israel had sinned away her day of grace. Jeremiah brought God's answer: "Not only will I no longer help you - I will fight against you. I will help the Babylonians. I am now your Enemy. I will not spare you, neither have pity, nor mercy." Jer. 21:1-7. Even so, America. You bombed our church and instituted a 15-year reign of terror against us - for warning you of fag sins. America is now in God's eternal crosshairs.



"Burial of an ass." Jer. 22:19.

January 8, 2007

HOUSE JUDICIARY COMMITTEE HB 1040

CHAIRMAN DEKREY AND COMMITTEE MEMBERS:

My name is Paul Sannes. I am president of the North Dakota Funeral Directors Association and also manage the Myers Funeral Home in Linton. Our Association strongly supports this legislation and respectfully request that you give it a do pass.

We believe every family must be afforded a respectful time to grieve and to provide their loved ones with a dignified burial service. This bill does guarantees that this will be the norm in North Dakota.

A funeral service should not be disrupted for any purposes. This is a sacred time for the family and friends of the deceased. This is a time-honored tradition in North Dakota and we respectfully request that protect this tradition by passing HB 1040.

Thank you for your time. I'd be glad to answer any questions.

HH #1a

1-22-07

Chairman Nething and members of the Judiciary Committee,

Thank you for the opportunity to come before this committee today to introduce HB 1040.

HB 1040 is before you today in hopes to provide grieving families the respect, protection and honor that they deserve.

Respect for the 1st Amendment, including even the most despicable forms of speech, is at the foundation of this great country. However, as important as this right is, there are limits. When the speech of one individual harms another it crosses the line. As vigilantly as we protect the right to speak one's mind we must be equally determined to protect the rights of others such as those who are grieving over the loss of a loved one.

I am very aware that we must protect free speech, but there are limits and there is a proper place and time, funerals, especially funerals for fallen servicemen and women, are not the proper place or time for hurtful and disruptive protests.

The key is a proper balance between the right to free speech on one hand and the provision of a suitable, appropriate and respectful time to grieve.

This Bill is simple and straight forward. It is not intended to silence any speech, even speech directly intended to be hurtful and insensitive and exploitive. It is simply intended to ensure that families will have a zone of peace to properly lay a loved one to rest.

Some would like to have greater restrictions on funeral protests, a larger buffer zone for example. However this Bill is not intended to right every wrong but rather provide a constitutionally appropriate solution to grieving families, especially military families.

Supreme Court Justice Anthony Kennedy has stated "Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once their own".

Again, there are strong emotions tied to this issue and many would like to see even greater restrictions on this specific form of exploitive speech. This Bill is not intended to right every wrong or to blaze a new constitutional trail; it has one simple and clear goal, to provide constitutionally sound protection for grieving families. It is important to keep that simple goal in mind and even more important to keep in our hearts and minds the families of fallen military and those brave men and women who have sacrificed so much for us.

Thank you for your consideration and I encourage the committee to move swiftly as there is an emergency clause with this bill. We are hoping to have the Governor sign the bill in a timely fashion.

1b

1-22-07

I am Daniel Biesheuvel, a member of the Patriot Guard Riders from Bismarck, and I encourage the Senate committee to vote 'do pass' on this important piece of legislation. The right to free speech is a protected right. Yet that right does not allow you to trample on the right to privacy of a grieving family.

We trust that passage of this bill into law will help allow those families the right to peacefully lay their loved one to rest. We also trust that the spirit of this bill will not restrict attendees who come to pay their respect. It would be a tragedy if invited organizations, like the Patriot Guard Riders who come to honor the dead, are bundled into and restricted away with the angry protesters this bill actually addresses.

Thank you to Rep Grande for introducing this bill and the committee members who have and will see the importance of this legislation.

My best regards and grateful thanks,

**Daniel Biesheuvel
Patriot Guard Rider
Riding with Respect**

lc

1-22-07

Honorable Bette Grande
State Representative
600 E. Boulevard Ave.
Bismarck, ND 58505

Dear Representative Grande,

I am writing this letter to support your endeavors on HB 1040. As a law enforcement professional, I have experienced the pain and anguish caused by groups like the Westboro Baptist Church from Topeka, Kansas. Their message of hate is not appropriate at a funeral where families are saying goodbye to their loved ones.

As a law enforcement leader, I believe in the right of free speech and will always support the constitution. However, there must be limits placed on those who would infringe on the rights of others to further their cause. Funerals are sacred. People are saying goodbye to their loved ones and in cases of the military, where personnel have died in the line of duty, families and entire communities are saying goodbye to their hero. They should be allowed to mourn and say goodbye in peace.

It is my belief a buffer zone for protestors is not an infringement on their rights. They are still able to spread their message, while the families are able to lay their family members to rest in peace. The constitution is upheld, while families can have the sanctity and tranquility expected at a funeral.

I support HB 1040.

Sincerely,

Paul D. Laney
Sheriff
Cass County North Dakota

1d

1-22-07

Monday, January 22, 2007

In my absence, I respectfully submit my written testimony concerning ND HB 1040.

Good Morning. My name is Randy Lindborg. I am the State Captain for The Patriot Guard Riders. We have participated, by invitation of the families, in the final send offs of 7 courageous North Dakota soldiers over the course of the last 8 months. We are truly privileged to be allowed the honor of bestowing respect, dignity, and gratitude upon these heroes and their families.

The first funeral we attended was that of Spc Mike Hermanson, of Fargo. Mike was my son's roommate and fire-team partner in Iraq. Mike's was also the first military funeral in our state that the members of the Westboro Baptist Church showed up at. They subsequently made appearances at the funerals of Sgt. Travis Van Zoest, of Bismarck, and Cpl Paul Beyer, of Jamestown. The vile display of disrespect and obscenities by the WBC, is beyond description in this testimony.

A family and community deserve the basic decency of burying their loved ones in peace, uninterrupted by any type of disgusting or disturbing behavior, such as that exhibited by the WBC.

It is our hope that this bill passes into law. The future may hold challenges to this proposed law. Regardless of that possibility, what is crucial here, is the message being sent. By passing this bill into law, you are making a statement. You will be reinforcing the fact that we, the people of the state of North Dakota, have a moral compass that we abide by. You will prove that no matter what may be permissible anywhere else in our world or our country, we have standards that we hold dearly to, and certain types of behavior are just plain unacceptable.

In saying that, you will be representing the people of this state appropriately and accurately.

Thank You for your good work, and commitment to our state!

HH #2
1-22-07

January 22, 2007

SENATE JUDICIARY COMMITTEE
HB 1040

CHAIRMAN NETHING AND COMMITTEE MEMBERS:

My name is Paul Sannes. I am president of the North Dakota Funeral Directors Association and also manage the Myers Funeral Home in Linton. Our Association strongly supports this legislation and respectfully request that you give it a do pass.

We believe every family must be afforded a respectful time to grieve and to provide their loved ones with a dignified burial service. This bill does guarantees that this will be the norm in North Dakota.

A funeral service should not be disrupted for any purposes. This is a sacred time for the family and friends of the deceased. This is a time-honored tradition in North Dakota and we respectfully request that protect this tradition by passing HB 1040.

Thank you for your time. I'd be glad to answer any questions.



July 22, 2003

Specialist Jon Feltz
Sgt. Matt Rhee Bridge Company



January 24, 2004

Sergeant Keith Simette
Sgt. Matt Rhee Bridge Company



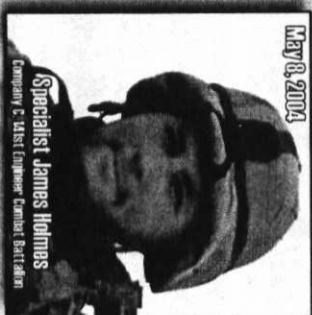
January 24, 2004

Staff Sergeant Kenneth Hendrickson
Sgt. Matt Rhee Bridge Company



May 8, 2004

Specialist Philip Brown
Company B 1st Engineer Combat Battalion



May 8, 2004

Specialist James Holmes
Company C 1st Engineer Combat Battalion



September 22, 2004

Staff Sergeant Lance Koenig
Company B 1st Engineer Combat Battalion



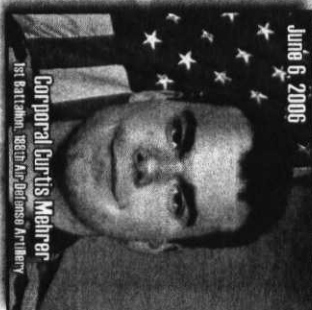
November 4, 2004

Specialist Cody Wentz
Company A 1st Engineer Combat Battalion



May 23, 2006

Specialist Michael Hermanson
Company A 1st Engineer Battalion



June 6, 2006

Corporal Curtis Mehner
1st Battalion, 80th Air Defense Artillery



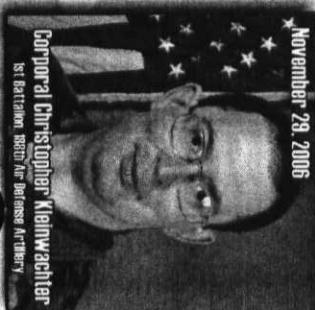
June 6, 2006

Sergeant Travis Van Zoost
1st Battalion, 80th Air Defense Artillery



November 23, 2006

Corporal Nathan Goodiron
1st Battalion, 80th Air Defense Artillery



November 29, 2006

Corporal Christopher Kleinwachter
1st Battalion, 80th Air Defense Artillery

North Dakota National Guard

All gave some,
Some gave all.



Att #3
1-22-07

NORTH DAKOTA VETERANS COORDINATING COUNCIL

My name is John L. Jacobsen. I am the Chairman of the Legislative Committee of the North Dakota Veterans Coordinating Council. I am also a member of the American Legion and the Veterans of Foreign Wars.

I served in the North Dakota National Guard and the US Army Reserve for a total of 30 years. I retired in 1995 as a Colonel. I served on Active Duty in 1991 during Operation Desert Shield/Desert Storm in the Persian Gulf, stationed in the United Arab Emirates.

The Coordinating Council is made up of 15 members, 3 from each of the five Veterans Organizations in North Dakota:

- American Legion
- AMVETS
- Disabled American Veterans
- Veterans of Foreign Wars
- Vietnam Veterans of America

It is the policy of the Coordinating Council to support legislation that will benefit the welfare of the members of the Armed Forces. The committee **MUST** concur totally, that is all 15 members must agree on the legislation to be supported or else it does not get the support.

In this case, I have been instructed to recommend to this legislative committee that a "DO PASS" is supported by the Legislative Committee of the Coordinating Council.

HB 1040

ND VETERANS COORDINATING COUNCIL

The Coordinating Council is composed of veterans appointed from the veterans organizations and represents all of the North Dakota veterans. The purpose of the Coordinating Council is to determine the needs of North Dakota's veterans and to propose the means to alleviate those needs so that the veteran and his family may enjoy a satisfying quality of life. It is of the utmost importance that the members of this council be willing to work hard and spend the time needed to help their fellow veterans.

The Coordinating Council, through their Legislative Committee, is responsible for introducing legislation intended to meet and/or alleviate the needs of veterans and their family. The Legislative Committee may be made up of members of the Coordinating Council or may be other veterans appointed by the members of the Council from each of the veterans organizations represented. Only the Legislative Committee will develop proposed legislative bills. If the bill is approved by the Council the members of the Legislative Committee are responsible to actively promote that legislation by lobbying members of the state legislature.

Only the members of the Coordinating Council Legislative Committee are to testify before legislative committees and meet with and lobby members of the legislature. Other members of the Coordinating Council and other veterans will not testify nor lobby members of the legislature unless specifically asked to do so by the Legislative Committee and will limit their discussions to the particular piece of legislation they have been asked to help with. The reason for this is so the legislators will not be given differing points of view about a piece of legislation but only that agreed upon by the Council and the Legislative Committee.

The Coordinating Council is responsible for providing help and support to the Administrative Committee and their two sub-committees, the Veterans Home and the Department of Veterans Affairs. The Legislative Committee in particular is charged with providing support in the hearings in legislative committees for the budgets of the Administrative Committee and it's sub-committees and any other bills they have before the legislature.

If the Administrative Committee becomes aware of an unmet need of veterans, or feels there is a need for a legislative bill, either through their sub-committees or other means, this information is to be brought to the Coordinating Council as well as any suggestions the Administrative Committee may have for meeting the need or the proposed bill. The Coordinating Council will review the information. If the suggestions of the Administrative Committee will require legislation the Coordinating Council will assign the Legislative Committee the responsibility to develop appropriate legislation. The Legislative Committee will report back to the Council and Administrative Committee with the proposed legislation for their discussion and approval.