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QUESTION

The recent tragic school shootings at West Carolina Technical University (WCTU), a state university, have produced a number of constitutional disputes.

One rather intense dispute arose at the time of the funerals of the students and faculty members who were killed by the gunman. Members of the congregation of the Threesquare Gospel Church of South Chickengristle, Nebraska, saw televised coverage of the first of the funerals, and were incensed that the WCTU cemetery contained a few headstones that included Wiccan symbols, including pentacles, in the same position that nearby headstones displayed crosses, Stars of David, and other religious symbols. Firmly believing that Wiccan practices involved worship of the Antichrist, the Board of Elders of the church dispatched a dozen parishioners to fly to the WCTU campus to protest at the remaining 30 funerals that were scheduled to take place over the following week. (None of the headstones of the shooting victims were to contain Wiccan symbols, but the church's minister said his congregation was so upset that any public cemetery "in our One Nation Under God" would allow such a display that they felt it to be their Christian duty to protest at all funerals at the cemetery until the offending headstones were removed.)

The members of the Threesquare congregation, armed with bullhorns emblazoned with stickers that said "Make a Joyful Noise Unto the Lord," set up a picket line twenty yards from the gravesite of the next victim's funeral. They carried signs saying, "The Cross is the Only Symbol of the One True God," and chanted loudly on the bullhorns, "There can never be eternal rest alongside witches; All who are buried here are sons of bitches." Their amplified chanting and prayers (asking Divine eternal punishment of all those buried in the WCTU cemetery) made it impossible to hear the clergy-led prayers and statements by the victim's loved ones at the graveside service, which had to be abandoned. When the frustrated mourners dispersed, the demonstrators cheered loudly, and seven of the distraught mourners attempted to attack the demonstrators, but were restrained by other mourners. The next day's edition of the student newspaper denounced the demonstrators and called on the state legislature to act immediately to prevent future demonstrations. The same story quoted the Threesquare members as saying that they would be present at all future funerals at the cemetery until the offending gravestones were removed.

The West Carolina Legislature met in emergency session the next day and passed the Funeral Serenity Act, the text of which is found in the Appendix, and the Governor signed it immediately. The WCTU administration immediately petitioned the state trial court for an injunction under the terms of the statute, requiring all members of the church to abide by the statute's terms, and the court granted it. At the next funeral, Threesquare demonstrators were arrested for violating the injunction, convicted, and sentenced to jail terms of 30 days. They have appealed their convictions to the State Supreme Court on State and Federal constitutional grounds.

Prepare a memo for the Chief Justice of the State Supreme Court analyzing the constitutional issues involved and recommending a disposition of the appeal.

Meanwhile, there was mounting concern about the news coverage of the shooting itself. The shooter (who committed suicide at the conclusion of his murderous rampage) had sent an incendiary videotape to local TV stations and each of the national cable news channels. In the video, he rambled semi-incoherently about the slights and offenses that he felt he had undergone as a WCTU student, and proclaiming that he would kill as many people on the campus as he could. He described his intended victims as “vermin who deserve to die.” His diatribe was liberally laced with profanity.

The Federal Communications Commission (FCC) received numerous complaints from viewers who were offended by the nearly nonstop rebroadcasts of the videotape. Several parents complained that their children were horrified by watching the video and that several had had nightmares about it. One parent complained that following repeated viewing of the video, he had discovered that his fifteen-year-old son had ordered an oversized ammunition clip for his hunting rifle. Another parent complained that his grade-school-age children had suffered nightmares after viewing the video. Local police officials from around the country, joined by a professional association of child psychologists, expressed concern that the repeated airing of the tape would be likely to inspire copycat shootings at other schools, and noted with alarm the dramatic online sales of T-shirts glorifying the shooter.

In response to these complaints, the FCC issued a new regulation imposing limitations on such broadcasts by both television stations and cable networks. (Assume for the purposes of your answer that the FCC has jurisdiction over cable companies.) Broadcasters and cable operators objected to the proposed regulation, but their protests were ignored. [**The text of the regulation appears in the Appendix.**] One cable company, The Faux News Channel (motto: “We pander; you buy our advertisers’ products”), announced that as a protest of the FCC’s infringement of its constitutional rights, it would broadcast a 24-hour marathon of continuous repetitions of the shooter’s video. (Faux had conducted marketing assessment that indicated that its ratings increased by 50% every time the killer’s video was repeated.) Following the marathon broadcast, the FCC imposed a fine of \$500,000 on Faux. Faux has appealed the constitutionality of the fine (and of the regulation) to the U.S. Court of Appeals for the D.C. Circuit.

Prepare a memorandum for the panel of the D.C. Circuit analyzing the constitutional merits of the Faux appeal and recommending a decision to the court.

APPENDIX

WEST CAROLINA FUNERAL SERENITY ACT

Whereas the Legislature finds that funerals are solemn occasions of great emotional and religious significance to many of our Citizens; and

Whereas the disruption of funerals by protesters constitutes a breach of the peace at a most sensitive and sacred hour; and

Whereas irresponsible protesters have disrupted funerals in this State, causing great anguish to family members and other mourners;

Be it therefore enacted that:

Section 1. No protests may occur on the grounds of a public cemetery during a funeral or within 24 hours prior to a funeral or 24 hours following a funeral.

Section 2. Any protest during a funeral or within 24 hours prior to a funeral or 24 hours following a funeral can only take place at a distance of at least 500 yards from the cemetery where a funeral is to take place. No such protest may include the use of any sound amplification equipment.

Section 3. Notwithstanding the provisions of Sections 1 and 2 of this Act, protests may be allowed if the Act's requirements are waived, in writing, by the next of kin of the deceased person or by the member of the clergy responsible for conducting the funeral.

WEST CAROLINA STATE CONSTITUTION (portions)

Article I, Section 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Article I, Section 4. [Religious liberty.]

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment.

FEDERAL COMMUNICATIONS COMMISSION
REGULATION ON INDECENT REPETITION OF CRIMINALS' VIDEOS

Whereas the Commission finds that children are likely to be harmed by viewing self-congratulatory celebrations of obscene violence; and

Whereas the Commission finds that the public safety is imperiled by copycat violence which may be committed by disturbed individuals seeking to emulate killers they have seen on television, and that there is a clear and present danger of copycat killings, and further that the likelihood of copycat violence was increased by the prospect that other killers would aspire to publicity and fame from the viewing of their videos; and

Whereas the Commission seeks to ameliorate the emotional suffering of the families of the victims of mass killings caused by repeated viewings of glorifying self-justification by the killers of their loved ones:

The Commission enacts the following regulation:

- (1) No station or cable outlet shall broadcast video justifications of mass killings by individuals who have murdered more than 10 individuals on a single day (hereinafter "murder videos") except during the hours between 11:00 PM and 6:00 AM.
- (2) Stations or cable outlets choosing to broadcast murder videos must precede the airing of the video with a warning that shall state, "Parents are advised that the following tape is made by a mass murderer, and this station warns parents to protect their children from watching the tape. This station further announces that it deplores the glorification of mass murderers."
- (3) No station or cable outlet may broadcast a murder video more than once in any period of six hours. In the interest of fairness and balance, each broadcast of a murder video must be followed by a statement or news story of comparable length describing the lives of the killer's victims and the suffering of their loved ones.
- (4) Any station or cable outlet which violates these regulations may be fined by an amount not to exceed \$500,000, and, if licensed by the FCC, may be subject to the suspension or loss of its license.