

Municipal Issue Report

U.S. SUPREME COURT DECLINES TO HEAR MISSOURI ATTORNEY GENERAL'S APPEAL OF FUNERAL PROTEST PRELIMINARY INJUNCTION – STEMS NEW CHALLENGE TO MAPLEWOOD ORDINANCE, Report No. 2009-02

On the last day of its term, the U.S. Supreme Court denied certiorari to the Missouri Attorney General's appeal of a preliminary injunction temporarily prohibiting enforcement of §578.501 RSMo., which bans "picketing or other protest activities in front of or about any location at which a funeral is held, within one hour prior to the commencement of any funeral, and until one hour following the cessation of any funeral."

The case originated when the funeral protest statute was challenged by a member of the Westboro Baptist Church, a group that protests at funerals of United States soldiers pursuant to its belief that the death of Americans, including soldiers, is divine punishment for the "sin of homosexuality." See *Phelps-Roper v. Nixon*, 509 F.3d 480 (8th Cir. 2007), *modified on rehearing*, 545 F.3d 685 (8th Cir. 2008).

Because the Supreme Court declined to hear the case, the 2007 preliminary injunction imposed by the Eighth Circuit Court of Appeals, which prohibits enforcement of the funeral protest statute, will remain in effect while the case returns to the federal court in the Western District of Missouri for a trial on the merits regarding the statute's validity under the First Amendment. Neither the Eighth Circuit's decision nor the Supreme Court's denial of certiorari is a final determination as to the constitutionality of the funeral protest statute, and a trial on the merits is expected to take place in July 2010.

In the wake of the Supreme Court's refusal to hear the state's appeal, the plaintiff has continued her attack on funeral protest legislation by filing suit in federal court in the Eastern District of Missouri on Tuesday (July 7, 2009) against the City of Maplewood, Missouri, challenging that City's ordinance which also prohibits protests at funerals. The plaintiff's complaint does not allege that the City has enforced its funeral protest ordinance, but rather claims that the ordinance has caused Westboro Baptist Church members to be "chilled in their efforts to engage in protected speech activities inspired by their religious beliefs" and that the ordinance is "unduly vague." *Phelps-Roper v. City of Maplewood*, No. 4:09-cv-1061 (E.D.Mo. July 7, 2009).

While the preliminary injunction issued by the Eighth Circuit only prevents enforcement of the State's funeral protest statute, local government officials should consult legal counsel regarding the implication of these cases on any existing or proposed local ordinances that prohibit or limit the ability of individuals to protest at or near funerals.

This summary is not exhaustive and is intended only as an outline of the significant provisions. Each municipality should contact their legal counsel to ensure the requirements are met for their individual circumstances. To access prior CVR Reports, [CLICK HERE](#).

Further questions may be directed to:

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