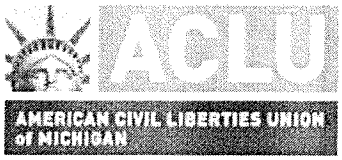

To: The Committee on Veterans Affairs and Homeland Security
From: Shelli Weisberg, Legislative Director of the ACLU of Michigan
Date: March 28, 2006
Subject: Disorderly Conduct at Funerals

Dear Chairman Garfield and members of the Committee:

The ACLU of Michigan shares your extreme distaste for Rev. Phelps and his group. We understand your legitimate concern to protect mourning families and respect the intent of legislation, which seeks to limit increased suffering of grieving individuals. No person should have to endure an additional burden at a time of grief.

However, the ACLU of Michigan, while understanding the basis for the legislation, has some concerns over these bills' relationship with the First Amendment of the U.S. Constitution. These bills could limit speech which has consistently been upheld by Courts throughout the country.

Indeed, living in a free society you are going to be exposed to offensive and unwanted speech. The answer to such repugnant discourse, however, is not to limit the unwanted speech, but to foster more discussion and awareness. This has shown to work even in the case before the committee. Counterdemonstrations have occurred at numerous funeral protests throughout the country, without the advent of legislation. These counter-demonstrators have created a buffer zone between the grieving individuals and those who seek to disrupt. Legislation which limits speech at protests would not only affect the demonstrators themselves, but also these counterdemonstrations that seek to protect those mourning at their loss.

The ACLU of Michigan believes that a line must be drawn between speech which may lawfully be limited and that which, although abhorrent, may not. For instance, funeral protests could be limited at the gates of a cemetery, where, arguably, the public forum ends. Protests, however, should not be limited on the public sidewalks around cemeteries, funeral processions, or funeral homes. The line of what speech may reasonably be restricted must fall in accordance with our country's belief in the freedom of speech.

The Supreme Court has allowed what are called "buffer zones" -- that is, areas in which speech may be limited to a defined location but the Court has never allowed a buffer zone of 500 feet.

For example, in Madsen v. Women's Health Center, Inc., 512 U.S. 753 (1994), the Court upheld a 36-foot buffer zone around a clinic's entrances and driveway, but rejected a 300 foot "no approach" zone around the clinic.

In Schenck v. Pro Choice Network of Western NY, 519 U.S. 357 (1997), the Court held that a *fifteen* foot buffer around women entering a clinic was too restrictive of free speech rights.

In Hill v. Colorado, 530 U.S. 703 (2000), the Court upheld an *eight* foot buffer around those entering a clinic.

There is no authority to support the notion that a 500 foot buffer zone is constitutionally permissible.

- The size of the buffer zones could become a problem if they extend to other public forums, such as parks or public streets.

- The bill can have unintended consequences. It could prohibit, for example, those very counter-demonstrators protecting the funeral goers from carrying pro-military signs.

- State and local laws already prohibit trespassing on private property, blocking access to the public way, drowning out someone else's speech, making threats, making excessive noise, and uttering fighting words.

The bills you are now considering must be deliberated carefully for they raise potential legal questions that could be used by Rev. Phelps to generate even more media attention if he decides to challenge the constitutionality of this legislation. This legislative body should be confident that the bills you vote into law will be upheld.

There are many things which can be done legally, but merely limiting offensive speech is not one of them. The Freedom of Speech is a value which is close to the hearts of many Americans, and one which people have died to protect – including those currently serving in Iraq. The ACLU asks that you consider alternative ways to address this issue which do not include undermining the basis of our country's freedom.