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FISCAL IMPACT REPORT

SPONSOR Swisstack **ORIGINAL DATE** 1/28/2007
LAST UPDATED 3/12/2007 **HB** 186/aHJC/aSJC
SHORT TITLE Funeral & Memorial Service Demonstrations **SB** _____
ANALYST McOlash

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$0.0		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 158.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (AG)

New Mexico Public Defender Department (PDD)

SUMMARY

Synopsis SJC Amendments

Senate Judiciary Committee amendments make technical changes that clarify and strengthen the provisions of the bill.

Synopsis of HJC Amendment

The House Judiciary Committee amendment changes the name of the Act from “Demonstrations at Funerals and Memorial Services Act” to the “Alexander Jordan Funeral Protection Act”. All other provisions remain.

Alexander Jordan, a Cibola High School graduate, assigned to the 4th Battalion, 23rd Infantry Regiment, 172nd Stryker Brigade Combat Team, and Fort Richardson, Alaska; died Sept. 10, 2006, of injuries suffered when he encountered enemy forces using small arms fire during combat operations in Baghdad. His funeral in Rio Rancho attracted protestors from the Westboro

Baptist Church in Kansas and the Patriot Guard Riders, a group of veterans which protects funerals.

Synopsis of Original Bill

House Bill 186 enacts the Demonstrations at Funerals and Memorial Services Act to create the crime of demonstrating at a funeral or memorial service, or engaging in disruptive or threatening behavior that interferes with a funeral service or its attendees.

The bill also provides that a court may enjoin demonstrations or disruptive conduct at funerals if there is credible evidence that a person may engage in such conduct and provides for injunctive relief for surviving members of the deceased person's immediate family who are threatened with loss or injury by reason of violation of this Act.

The bill defines "funeral," "funeral site," and "targeted residential picketing." The bill also describes the prohibited acts, such as loud noisemaking, use of abusive epithets, and obstructing other persons' ingress and egress to the funeral site.

House Bill 186 establishes the following penalties for violating sections of this Act:

- A. First offense – petty misdemeanor, with a fine of not more than \$500 and/or imprisonment not to exceed six months;
- B. Second offense – misdemeanor, with a fine not to exceed \$1,000 and/or less than one year imprisonment; and
- C. Third offense – fourth degree felony, with 18 months in prison and a possible \$5,000 fine.
- D.

The bill includes a severability clause and an emergency clause.

SIGNIFICANT ISSUES

In 2006, President Bush signed two bills protecting military funerals from protests. A bill, signed in May 2006 bans demonstrations at national cemeteries. In December 2006, the President signed a bill prohibiting demonstrations at military funerals at non-federal cemeteries.

The federal laws are necessarily limited to military funerals (because of Article I jurisdictional constraints). States, on the other hand, have sought to ban or regulate public "protests" at military funerals and, in a number of cases, at all funerals, making it illegal to protest at the funeral of anyone including Charles Manson or Lee Harvey Oswald. At least thirty-two states are now considering or have passed laws criminalizing funeral protests.

At both the state and federal level, legislation is aimed mainly at the controversial Westboro Baptist Church from Topeka, Kansas that pickets at military funerals because it says homosexuals are taking over the armed forces and the nation. Members of the Church chant outside at services and hold up signs, some of which read, "You Will Eat Your Children" and "Don't Worship the Dead." Members of the Church demonstrated in New Mexico in 2006.

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.

Eugene Volokh, from the UCLA School of Law, has made the following arguments (nationalreview.com, March 23, 2006):

1. The government may not ban picketing based on content – for instance, banning anti-gay or anti-military picketing.
2. The government also may not ban offensive picketing on the grounds that it might start fights. While “fighting words” can be banned, such bans are generally limited to epithets addressed to a particular, insulted person.
3. The government generally may not impose content-neutral bans on all picketing or all picketing at certain places – for example schools or abortion clinics.
4. The government may impose content-neutral limits on noisy picketing; picketing that blocks traffic, etc., but must do this by regulating the number or volume level of picketers and not through bans on picketing. Likewise, violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct may be banned.
5. Picketing can be banned immediately outside the targeted person’s home which might be extended to protect the privacy of grieving.
6. However, the power to ban residential picketing is not limitless. The Court has specifically rejected an injunction that banned residential picketing within 300 feet of the homes of abortion clinic employees.
7. Picketing bans even limited content-neutral ones, must be defined with sufficient precision to avoid constitutional questions.

The New Mexico Public defenders Department has argued that more general laws already exist that address the offensive conduct: “harassment,” see NMSA 1978, § 30-3A-2 (1997), “stalking,” NMSA 1978, § 30-3A-3 (1997), “disturbing lawful assembly,” see NMSA 1978, § 30-13-1 (1963), “disorderly conduct,” see NMSA 1978, § 30-20-1 (1967), and, potentially, “resisting, evading, or obstructing an officer,” see NMSA 1978, § 30-22-1 (1981), should the demonstrator fail to cooperate with officers who are attempting to enforce the law.

OTHER SUBSTANTIVE ISSUES

Starting with Kansas, 28 states have passed similar bills, according to legislative researchers. They typically ban or limit protests around funerals. Some bar noisy, disruptive behavior or signs with "fighting words." Some ban demonstrations at funeral times. Others make demonstrators stay 100 to 1,000 feet back.

In response to the pickets, a motorcyclist group called the Patriot Guard Riders formed in 2005. The group's members use flag-waving crowds and a screen of cyclists and roaring engines to shield mourners from picketers and chants.

Presumably, HB 186 would ban both groups.