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“Indisputably viewpoint-based”

June 26 hearing scheduled in federal challenge to Oakland’s ‘bubble ordinance’

Attorneys for Rev. Walter Hoye, the Baptist minister sentenced in March to 30 days in jail for violating Oakland’s so-called “bubble ordinance,” have filed a motion in federal court asking a judge to declare the law under which Hoye was convicted unconstitutional.



U.S. District Court Judge Charles Breyer will decide whether Oakland bubble ordinance is unconstitutional.

Lawyers with Life Legal Defense Foundation, which represents Hoye, filed a motion for summary judgment in U.S. District Court for the Northern District of California in San Francisco last month asking a judge to invalidate the Oakland ordinance because it amounts to unconstitutional restriction of a particular viewpoint, in this case a pro-life message.

“Oakland allows pro-abortion clinic escorts to approach women and speak to them without limitation, while prohibiting pro-lifers from doing the same,” said the Foundation in a news release. “LLDF is asking the court to declare the ordinance unconstitutional and enjoin its enforcement.”

The motion for summary judgment is scheduled to be heard by U.S. District Court Judge Charles Breyer on June 26 in Courtroom 8 on the 19th floor of the federal courthouse in San Francisco. Judge Breyer was appointed to the federal bench in 1997 by President Bill Clinton and is the brother of U.S. Supreme Court Justice Stephen Breyer.

On Dec. 18, 2007, the Oakland city council enacted the “bubble ordinance,” prompting Life Legal Defense Foundation to file a lawsuit the following day challenging its constitutionality. Breyer said at the time that the ordinance as adopted appeared to be unconstitutional and could not be enforced because it prohibited pro-life speech but allowed “pro-choice” speech outside abortion clinics. At the judge’s suggestion, Oakland decided to amend the ordinance on Feb. 5, 2008, but Life Legal Defense Foundation maintains the amended ordinance is still constitutionally infirm for the same reasons as the original law.

“The Ordinance is indisputably content and viewpoint-based as applied,” said Life Legal Defense Foundation in documents filed with the court. “The Ordinance restricts picketing, leafleting, and speaking solely on public sidewalks in front of abortion clinics and solely directed at persons entering such clinics.”

In response to Life Legal Defense’s motion for summary judgment, the City of Oakland argues that the amended ordinance is “completely neutral.” According to legal papers filed by the city, “Oakland’s bubble ordinance was passed not to stifle speech but to secure access to reproductive health care in the face of a long history of sometimes violent protests... The undisputed material facts show that the City was amply justified in taking a prophylactic approach to safeguarding patient access to reproductive health clinics.”

Life Legal Defense Foundation ridicules the city’s response as “irrelevant and prejudicial,” saying in court filings the city uses “alleged unlawful incidents at venues other than Oakland abortion clinics” in its attempt to justify the ordinance. “This runs the gamut from the criminal history of someone named James Kopp, to abortion providers wearing bullet proof vests and having their cars vandalized, to meetings with the FBI, to alleged threats and batteries at the Oakland courthouse. The City cannot seriously contend that the Ordinance was intended to address such activity, much less that the 8-foot no approach zone is narrowly tailored to address such issues.”

Rev. Hoye was arrested outside Family Planning Specialists Medical Group in Oakland on May 13, 2008 after a clinic staff member called police. He was carrying a 40-inch sign that read, "Jesus Loves You & Your Baby. Let Us Help You," and attempting to hand out pro-life literature. On March 20, Alameda Superior Court Judge Stuart Hing sentenced Hoye to 30 days in jail and fined him \$1,130 for violating the 'bubble law.' Hoye served 18 days of the sentence before being released for "good behavior" and given credit for time served while in police custody.

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