

## California Catholic Daily

[Return to Article] This printable article is taken from [www.calcatholic.com](http://www.calcatholic.com)

Published: July 20, 2009

### "Fly-specking"

*Will Massachusetts ruling hurt Walter Hoye case?*

On July 8, the U.S. Court of Appeals for the First Circuit issued a decision holding a Massachusetts state law doesn't unconstitutionally violate the free speech rights of pro-life protestors and sidewalk counselors. The law creates 35-foot speech-free zones around abortion clinics throughout the state. It also specifically exempts clinic workers and agents.

Attorneys with the Alliance Defense Fund filed a lawsuit in federal court in January 2008, but in August 2008, U.S. District Court Judge Joseph Tauro ruled that the law was content- and viewpoint-neutral and did not overly burden the free speech rights of pro-life picketers and sidewalk counselors. The First Circuit affirmed that decision this month.

The law updated a 2000 statute that had established six-foot no-approach zones around patients entering abortion clinics. Police and clinic workers had testified that this law was difficult to enforce, leading the Legislature to amend the law to establish the fixed zones around clinics.



Walter Hoye obeying 'Mother May I' Rule

In a filing in the Northern District of California on Tuesday, attorneys for the City of Oakland asked Judge Charles Breyer to take the Massachusetts case into consideration in ruling on the constitutionality of Oakland's "Mother May I" ordinance. The constitutionality of that law has been challenged by Rev. Walter Hoye, represented by attorneys from the Life Legal Defense Foundation.

Asked to comment on the First Circuit decision, Katie Short, legal director of the Life Legal Defense Foundation, said, "This is one of the most disturbing First Amendment decisions I have ever read. It's not just that the court upheld this completely unprecedented restriction on free speech rights. It was the court's tone as well. Rather than seriously weighing the plaintiffs' [sidewalk counselors'] arguments, the court assumed a bemused, condescending tone, as if slightly puzzled how anyone could think this law was unconstitutional. It referred to the plaintiffs' arguments as 'importunings' that were 'fly-specking' and 'jejune' and 'whistling past the graveyard.'"

"The court appears blissfully unaware that this was the first law of its kind in the country, that is, a law declaring that portions of a public sidewalk, the 'quintessential' public forum, as the U.S. Supreme Court has held, were no longer open to the public. And not just random portions of the sidewalk, but portions specifically designated in order to preclude speech activity on one of the most hotly-debated issues of the day. And to top it off, the court barely considered the constitutional implications of exempting from that law persons who are clearly partisans on one side of the debate."

Lawyers with the Alliance Defense Fund say that they are considering various options in proceeding with the case, including petitioning the U.S. Supreme Court for review.

© California Catholic Daily 2009. All Rights Reserved.

Article URL: <http://www.calcatholic.com/news/newsArticle.aspx?id=b18e4ef2-89cb-482f-a821-9ba60aef6a8d>