

Court Turns Down Pastor Hoye's Challenge to "Mother May I" Ordinance

On August 4, federal district court judge Charles Breyer ruled Oakland's "Mother May I" ordinance constitutional, setting the stage for a showdown in the 9th Circuit. In a 25-page memorandum opinion, Breyer held that the ordinance, which applies only outside abortion facilities, was not content- or viewpoint-based on its face. The court also ruled that the ordinance was narrowly tailored, even though it prohibits merely extending one's hand with a leaflet to a woman seeking to enter an abortion clinic.

The ordinance, passed in February 2008, prohibits unconsented approaches within 8 feet of persons seeking to enter abortion clinics. Rev. Hoye challenged the ordinance because it prevented him from engaging in the counseling he found most effective, namely, walking up to women and asking them if they would like to talk about alternatives to the clinic. Because the ordinance required him to keep an 8-foot distance, pro-abortion escorts could approach the women first and hustle them into the clinic, while others physically blocked Pastor Hoye.

Confronted with evidence that the City does not enforce the ordinance against pro-abortion escorts who approach and surround women, telling them not to listen to Rev. Hoye, not to take his information, and that he is only there to harass them, the court ruled that this speech was merely "facilitating access" to the clinic and thus did not violate the law. Faced with the City's own statements that it is permissible for escorts to approach women and make statements such as "You have the right to an abortion," the court simply stated that the City was wrong about what its own ordinance meant. The court disposed of the escorts' blocking of Rev. Hoye by simply declaring, "Of course, escorts also may not physically block demonstrators," as if by merely saying so, the court had made the problem disappear.

"Mark this day down," said Mike Millen, who, in conjunction with Katie Short of the Life Legal Defense Foundation, is representing Rev. Hoye. "On this day, a federal court judge ruled that it is constitutional to put someone in jail for a year for holding out a hand with a leaflet. The Supreme Court clearly wanted to leave at least that channel of communication open to speakers, but the federal district court blocked even that peaceful form of expression."

The next step is an immediate appeal to the Ninth Circuit, Millen said. "While disappointing, this ruling is not entirely unexpected. The good news is that while San Francisco federal judges may be loathe to strike down clearly unconstitutional city ordinances, the Ninth Circuit has an admirable record of supporting free speech rights. We are optimistic that this wrong will be righted."

For more details about Rev. Hoye's case go to lldf.org. Life Legal Defense Foundation was established in 1989, and is a non-profit organization composed of attorneys and other concerned citizens, committed to the sanctity of human life.

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