

Litigation Surrounding Oakland “Mother May I” Law reaching Critical Points This Fall

A decision from the state court of appeal regarding Rev. Hoye’s criminal appeal is due by September 23, 2010.

Oral argument in the Ninth Circuit Court of Appeal in the federal action has been set for October 8, 2010.

For those readers who may be new to Life Legal Defense Foundation, the Rev. Walter B. Hoye, who is African-American, feels a special calling to work for the end of the genocide-by-abortion taking place in the African-American community. As part of his efforts, he stands in front of an abortion clinic in Oakland with leaflets about abortion alternatives and a sign reading, “Jesus loves you and your baby. Please let us help.”

On December 19, 2007, Hoye through his attorneys Mike Millen and Katie Short, Legal Director for the Life Legal Defense Foundation, filed a lawsuit challenging the constitutionality of Oakland Municipal Code §8.52.030(b). The city ordinance at issue prohibits approaching, without consent, persons entering abortion clinics, for the purpose of “counseling, harassing, or interfering with” such persons. [Oakland Municipal Code §8.52.030\(b\)](#).

Hoye was arrested on May 13, 2008, for alleged violations of the ordinance and ultimately convicted of two counts for standing on the sidewalk, holding the above-referenced sign and offering women entering Family Planning Specialists life-saving literature. Hoye was sentenced to 30 days in jail, ordered to pay an \$1130 fine and the Court issued a probation order that prohibits Hoye from coming within 100 yards of the FPS clinic.

In December 2009 in the Appellate Division of the Superior Court of Alameda County, Rev. Hoye’s attorneys, Mike Millen, Allison Aranda and Katie Short, filed the [opening brief](#) in an appeal in the criminal case. Oral argument was made before the Court June 25, 2010. **A decision from the state court of appeal regarding Rev. Hoye’s criminal appeal is due by September 23, 2010.**

Pursuant to the lawsuit filed in 2007 challenging the constitutionality of the ordinance, on May 1, 2009, through his attorneys, Rev. Hoye brought a Motion for Summary Judgment seeking to enjoin enforcement of the ordinance. An August 4, 2009, decision by federal district judge Charles Breyer denied Rev. Hoye’s Motion for Summary Judgment and granted Oakland’s Cross-Motion. The decision from the federal court did not consider the record of pro-abortion activists’ speech to be “pro-choice advocacy” but merely “facilitating access” to the clinic, obviously a viewpoint-based distinction in the City’s application of the ordinance. The lower court told attorneys for the City of Oakland that they were wrong in some of their more extreme interpretations of the Ordinance, effectively acknowledging that the City’s policy was unconstitutional. However rather than enjoining that policy as Rev. Hoye’s motion requested, the Court shirked its duty and denied his Motion for Summary Judgment, and instead granted the City’s Cross-Motion and declared the Ordinance constitutional. Rev. Hoye’s attorneys promptly appealed [read the [Opening Brief](#)].

In response to the decision Attorney Mike Millen commented “Mark this day down. 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.”

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You can view video tape of Rev. Hoyer's activities at the Oakland clinic on LLDF's [web site](#).