

Appeals Court Overturns Pro-Life Pastor's Conviction for Counseling on Abortion

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Oakland, CA (LifeNews.com) – A state appeals court has overturned the criminal conviction against pro-life African-American pastor Walter Hoye. He violated the ordinance Oakland officials passed targeting him because he engages in sidewalk counseling outside abortion centers in the area to help women find alternatives.

In a jury trial in 2009, Hoye was found guilty of two counts of unlawfully approaching women seeking abortions at an Oakland abortion business. The court sentenced him to 30 days in jail and an \$1100 fine.

Officials with the Life Legal Defense Foundation, a pro-life legal group, represented Hoye before the Appellate Division of the Alameda Superior Court.

In a new opinion, the court agreed with Hoye's attorneys that the trial court had erred in two respects.

First, the trial court refused to instruct the jury that it had to unanimously agree on the particular incident for which Hoye was to be found guilty. Because the district attorney's office presented evidence of several separate interactions between Hoye and people entering the abortion clinic, it was unclear whether the jury had all agreed on a single instance where Hoye allegedly violated the ordinance.

Secondly, LLDF officials say the trial court refused defense requests to provide a definition of "knowingly approach," a critical element of the "crime" for which Pastor Hoye was convicted.

By failing to provide a definition, the court stated, the trial court left the jury unaware that the ordinance does not

apply to stationary speakers who address and proffer literature to persons passing by the abortion center.

Hoye is heartened by this turn of events.

"It is my hope that this victory will encourage Pastors to both take a public stand against abortion in the pulpit and to minister the love of Christ to the men, women and children going into an abortion clinic from the public square," he said. "It's time for men of God to come together and end the incontestable evil of abortion, anywhere and everywhere it exists."

However, this may not be the end of the road for the case, LLDF attorney Katie Short told LifeNews.com today.

"The District Attorney's office could decide to retry Pastor Hoye," Short explained. "However, it would be well advised to wait until after the Ninth Circuit rules in our federal constitutional challenge to the ordinance, which is scheduled for a hearing in October."

In August 2009, federal district court judge Charles Breyer [ruled the law constitutional](#) and set the stage for an appeal and a battle at the Ninth Circuit Appeals Court next month.

In a 25-page memorandum opinion, Breyer held that the ordinance, which applies only outside abortion businesses, was not content- or viewpoint-based on its face. Breyer also ruled that the law is narrowly tailored, even though it prohibits someone giving a brochure on abortion alternatives to a woman entering an abortion center.

Mike Millen, an LLDF attorney, said he was very disappointed by the ruling and its free speech implications.

"Mark this day down," Millen told LifeNews.com at the time. "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."

He said Breyer's ruling runs counter to Supreme Court decisions that have upheld First Amendment rights.

"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," he said.

"While disappointing, this ruling is not entirely unexpected. The good news is that while San Francisco federal judges may be loath 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," he said.

Millen also told LifeNews.com that Breyer's decision is contradictory because it allows abortion advocates to violate the eight-foot bubble law. Breyer ruled that abortion business staff are merely "facilitating access" to the abortion center when they come in contact with women outside who are considering an abortion.

Millen also bashed Breyer for dismissing concerns about abortion center staff approaching Hoye outside an abortion center.

"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," Millen told LifeNews.com.

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