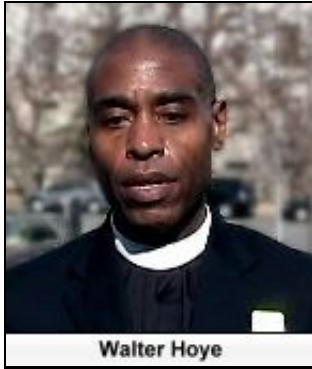


Published: October 11, 2010

Raised eyebrows and sharp rebukes

Ninth Circuit justices skeptical of Oakland's abortion-friendly 'bubble zone' law

Justices of the Ninth U.S. Circuit Court of Appeals grilled an attorney for the city of Oakland during a Friday hearing in San Francisco over the city's so-called "bubble ordinance."



Walter Hoye

The case was brought by Walter Hoye, a Berkeley pastor sent to jail last year for violating Oakland's restrictive ordinance adopted to minimize any pro-life presence outside the city's abortion clinics. The Appellate Division of Alameda Superior Court overturned Hoye's conviction in August, but the district attorney could still re-file charges. Hoye separately challenged the law in federal court, and Friday's hearing was on his appeal from a federal district court ruling finding the Oakland law constitutional.

"Lawyers for the City of Oakland encountered tough questioning from Ninth Circuit justices Marsha Berzon and Stephen Reinhardt during oral argument on Pastor Walter Hoye's challenge to the constitutionality of the City's 'Mother May I' law restricting sidewalk counseling," said Life Legal Defense Foundation, which represents Hoye, in a statement following the hearing. "The City's forthright admission that the City interpreted the law as not applying to clinic escorts 'facilitating access' to abortion clinics met with raised eyebrows. But the City's further suggestion that the law didn't apply to anything but speech intended to discourage women from having abortions brought sharp rebukes from the justices."

Life Legal Defense Foundation legal director Katie Short and volunteer attorney Michael Millen filed suit on Pastor Hoye's behalf immediately after the law's passage in December 2007, said the LLDF statement. The lawsuit challenged several aspects of the ordinance as unconstitutional, including its preference for pro-abortion speech over pro-life speech. The suit also alleges that the active interference and blocking by clinic escorts turned the law's 8-foot "buffer" around patients into an insurmountable barrier to communication, said LLDF.

"In August 2009, federal district judge Charles Breyer granted summary judgment for the City and dismissed the case," said the LLDF statement. "LLDF appealed to the Ninth Circuit Court of Appeals, and in an hour-long hearing on October 8, the court heard arguments from both sides."

"Katie Short did a great job of presenting our case," said Millen, "but it was the City's own admission of its true intentions that should make the justices' jobs very easy. Under the guise of 'facilitating access', the City gave carte blanche to any speech that encourages women to go into clinics, while punishing speech that merely suggested alternatives to abortion."

The City went so far as to say that even leaflets that were distributed outside the clinic would need to be reviewed by police to determine if the law was being violated or not, according to the LLDF statement.

"You just won't find a clearer textbook example of forbidden content-based discrimination than that," said Millen.

The three-judge appeals court panel is expected to issue a written decision on the case within months.

To hear a recording of the hearing, [Click Here](#).

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