

Appeals Court Hears Pastor's Case Against Oakland Abortion Buffer Zone Law

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Oakland, CA (LifeNews.com) -- A federal appeals court held a hearing Friday in the case pro-life African-American pastor Walter Hoye filed against an Oakland law. City officials passed the buffer law because he engages in sidewalk counseling outside abortion centers in the area to help women find alternatives.

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.

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.

On Friday, lawyers for 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 measure.

The city's admission that it interpreted the law as not applying to abortion center escorts "facilitating access" to abortion clinics met with raised eyebrows. But its suggestion that the law didn't apply to anything but speech intended to discourage women from having abortions brought sharp rebukes from the justices.

Katie Short, a pro-life attorney with the Life Legal Defense Foundation, and volunteer attorney Michael Millen filed suit on Pastor Hoye's behalf immediately after the law's passage in December 2007.

"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."

Oakland officials went so far as to say that even leaflets that were distributed outside the abortion facility would need to be reviewed by police to determine if they violate the law.

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

The lawsuit challenged several aspects of the ordinance as unconstitutional, including its preference for pro-abortion speech over pro-life speech. The suit also alleged that the active interference and blocking by abortion clinic escorts turned the law's 8-foot "buffer" around patients into an insurmountable barrier to communication.

A written decision from the Court of Appeals is expected in a matter of months.

Related web sites:

Audio recording of the arguments - http://www.ca9.uscourts.gov/media/view_subpage.php?pk_id=0000006330

Life Legal Defense Foundation - <http://www.lldf.org>