

Ruling may weaken escort roles at abortion clinics

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A federal appeals court cast a cloud Thursday over measures in Oakland and other cities intended to protect women entering abortion clinics by requiring antiabortion "counselors" to keep their distance while volunteer escorts shield the women and walk them into the building.

In a suit by an antiabortion pastor who was arrested outside an Oakland clinic, the Ninth U.S. Circuit Court of Appeals in San Francisco said a city can require a protester to obtain the patient's permission to approach her or talk to her - but must also apply that requirement to the escort.

By allowing escorts to approach the women, advise them to ignore the protesters and accompany them into the clinic without first asking consent, Oakland "has enforced the ordinance against anti-abortion speakers but not pro-abortion speakers," the court said in a 3-0 ruling.

Such a policy "unconstitutionally suppresses speech based on the content of its message," said Judge Marsha Berzon, writing for a left-leaning panel that also included Judge Stephen Reinhardt, a well-known liberal. She also said antiabortion protesters might be able to show that the city was violating their rights by allowing escorts to shield the patients and prevent the protesters from getting their consent to talk.

That issue may be addressed after Oakland adopts an even-handed enforcement policy, Berzon said. The court returned the case to a federal judge to oversee changes in the city's policy.

The U.S. Supreme Court upheld a similar law in Colorado in 2000, and appellate courts have upheld a 1994 federal law that prohibits obstruction of reproductive health clinics.

But none of those rulings addressed the conduct of escorts or a protester's claim of discriminatory enforcement. Thursday's decision is the first of its kind in the nation, said Michael Millen, lawyer for the Rev. Walter Hoye of Union City.

To comply, the city "would need to enforce the ordinance as vigorously against the escorts as they did against Mr. Hoye," Millen said. He said escorts should not be allowed to "form a wall around the person" to keep Hoye away.

Oakland City Attorney Barbara Parker said, however, that the ruling requires only "tweaks to the enforcement procedures" and would not weaken the protections for patients.

The 2008 Oakland ordinance created an 8-foot "bubble" around patients entering reproductive health clinics



and barred anyone from knowingly entering that zone without the patient's consent, either to harass her or to talk to her or give her written materials.

Hoye, who describes himself as a "sidewalk counselor" against abortion, was the first person arrested under the ordinance, in May 2008.

A jury convicted him of two misdemeanor charges of harassing patients and he served a 30-day jail sentence in 2009 after refusing a probation condition that would have required him to stay 150 yards away from the Family Planning Specialists Medical Group at Second and Webster streets.

But a Superior Court panel overturned the convictions last year, saying the trial judge's jury instructions had failed to distinguish between illegally approaching patients and speaking or handing them leaflets as they walked by. The district attorney then dropped the charges.

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