

A SHEPHERD'S VOICE

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FRIDAY, JULY 29, 2011

Judge Rules in Hoye Case: "Oakland's enforcement policy is a constitutionally invalid, content-based regulation of speech."



Update: Ninth Circuit opinion [here](#).

A major win for pro-life hero the Reverend Walter Hoye, and for free speech.

From this morning's *San Francisco Chronicle*:

Ruling may weaken escort roles at abortion clinics

"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."

And here is an excerpt from the press release from the [Life Legal Defense Foundation](#):

Pastor Walter Hoye's Constitutional Rights Vindicated at the Ninth Circuit

SAN FRANCISCO, July 29, 2011 /Christian Newswire/ -- Late yesterday the Ninth Circuit Court of Appeals issued its opinion in Hoye v. Oakland, the case in which Pastor Walter Hoye challenged Oakland's "bubble zone" ordinance as an unconstitutional infringement of free speech. In the 3-0 opinion authored by Circuit Judge Marsha S. Berzon, the court stated, "We agree with Hoye that there are grave constitutional problems with the manner in which the City has understood and enforced its Ordinance."

The court reversed the district court's determination that the ordinance is valid as the city applies it, because the City discriminates in enforcing the ordinance against Hoye but not other speakers. The City only prosecutes persons for "approaching" women within the "bubble zone" if they are trying to persuade the woman not to have the abortion. Clinic "escorts" and others "facilitating" the women entering the clinic can approach and give the women whatever message they want -- often urging women to ignore Pastor Hoye. While Pastor Hoye has scrupulously followed the law, he has suffered arrest, prosecution and imprisonment due to the City's determination to shut out his message. On the other hand, clinic escorts routinely break the law as written, yet have never faced prosecution.

Based on these facts, the court concluded, "Oakland's enforcement policy is a constitutionally invalid, content-based regulation of speech...."

Every American should be happy about this, and proud of the good pastor and his legal team!

POSTED BY FR. JOHN MALLOY, SDB AT 7:23 AM

LABELS: ABORTION; PARTY OF DEATH; , CHOOSE LIFE

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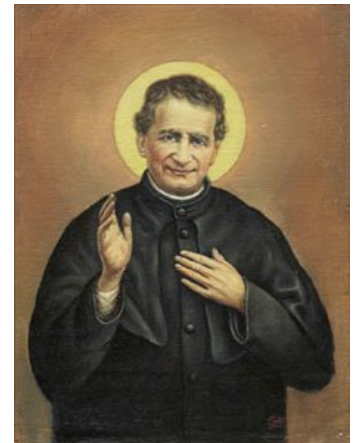
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ABOUT ME

[FR. JOHN MALLOY, SDB](#)

89 years young, Fr. Malloy is a Salesian of Don Bosco. He was the Provincial of the Western and then Eastern Province of the Salesians. He was president of Don Bosco Technical Institute in San Gabriel, CA. Former pastor of Our Lady of Good Counsel Parish in Surrey, B.C. and then