



Bubble ordinances are intended to keep battles like this away from clinics -- but police cannot enforce restrictions against only one viewpoint.

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Oakland abortion clinic bubble ordinance applied in violation of First Amendment

By [Charlie Rosenberg](#), Science, Religion & Politics Examiner

An Oakland, California ordinance which forbids approaching within eight feet of a person seeking to enter a reproductive health care facility, without that person's consent, is being enforced by police in a manner that [violates the First Amendment](#) to the United States Constitution, according to a panel of judges for the Ninth Circuit federal appeals court.

Walter Hoye, a minister and self-described sidewalk counsellor, brought a civil rights action against the city, arguing on various legal grounds that the city ordinance was unconstitutional. The appeals court ruled that the ordinance is "facially constitutional," which means the language in which it is written does not violate anyone's right to freedom of speech. It applies only to a "bubble zone" within one hundred feet of a facility.

That ruling, Judge Marcia S. Berzon wrote, is largely controlled by the U.S. Supreme Court decision upholding a similar Colorado law, reviewed in *Hill v. Colorado*, 530 U.S. 703 (2000). Both laws create a buffer zone of 100 feet outside healthcare facilities. Within that zone, the Colorado statute prohibits knowingly approaching within eight feet of another person, without that person's consent, for the purpose of "passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling" to that person.

Governments may restrict speech in a public forum, the Supreme Court had long ruled in other cases, as long as the restrictions are justified without reference to the content of the regulated speech, are narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication of the information. This sometimes referred to as "content-neutral" regulation of the "time, place and manner" of speech.

The Ninth Circuit panel did find a constitutional violation in the manner the Oakland ordinance is being enforced. Oakland quite openly has a policy of not considering the efforts of "escorts" who help patients get to, and enter a clinic, to be a violation of the ordinance.

Hoye often holds a sign reading "Jesus loves you and your

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baby. Let us help.” His stated goal is “to have a personal, one-on-one conversation with each woman concerning her individual situation and what is causing her to consider abortion.”

Hoye testified that the escorts tell women not to listen to him, not to take his literature or information because it is inaccurate, make noise (such as “lalalala”) to drown out Hoye, and have stood in front of him with blank pieces of cardboard, thus blocking women from seeing his sign.

In order to be constitutional, the panel ruled, the ordinance must be enforced in a neutral manner with regard to any person expressing any viewpoint. Oakland, the court found, has taken sides in a public debate in a manner that the Constitution does not permit. The case was remanded to federal district court to fashion a remedy, but Oakland must enforce its ordinance neutrally upon those who encourage or discourage access to the clinic.

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