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SATURDAY, JULY 30, 2011

'Unconstitutional': pro-life pastor wins challenge against California 'bubble zone'

by Jeremy Kryn



Rev. Walter Hoye

(Co-authored with Thaddeus Baklinski)

SAN FRANCISCO, California, July 29, 2011 (LifeSiteNews.com) - A constitutional challenge against the City of Oakland's 2008 'bubble' ordinance, which prohibits pro-life sidewalk counselors outside abortion facilities from standing within 8 feet of women seeking abortions, has resulted in a ruling that the city's law is unconstitutional.

Pro-life witness Rev. Walter Hoye brought the constitutional challenge forward.

On July 28, the 9th Circuit Court of Appeals said the city erred when it was disclosed that the enforcement of the bubble ordinance only applied to those who tried to dissuade women from abortion and not to those who encouraged them.

"At oral argument," the court records state, "the City confirmed that it would not enforce the Ordinance against an escort who approached a

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patient, without consent, and said, “May I help you into the clinic?” but that it would enforce it against a sidewalk counselor who said, “May I talk to you about alternatives to the clinic?” The City explained its position as being that speech that “facilitates access” to the clinic does not trigger the Ordinance’s consent requirement, while speech that does not facilitate access does trigger it.”

The unanimous three-judge ruling is not a total victory, however, in that the court simply ordered the city to revise its enforcement of the bubble zone policy to exclude all advocacy within the eight-foot limit.

The court stated, “as to Hoye’s challenge to whether Oakland may apply the Ordinance to situations in which doing so would prevent him from communicating his message, we conclude that the success of the challenge depends on Oakland’s future enforcement policy and the particular circumstances in which that policy may be applied. We therefore do not reach that challenge but also do not preclude Hoye from bringing such a challenge in the future.”

In an interview today, Dana Cody of the Life Legal Defense Foundation (LLDF) explained that under the ruling, “if Pastor Hoye, or anyone else, returns to the clinic and the clinic escorts misbehave by interfering with their free speech rights, the City will need to prosecute the escorts,” Cody observed. “The total impact on Pastor Hoye and others is unpredictable until the matter, which was remanded to the district court, has been dealt with by that court. ”

Rev. Hoye was arrested in May of 2008, charged, found guilty and imprisoned for peacefully counseling and picketing outside Oakland’s Family Planning Specialists Medical Group abortion mill. The Baptist pastor was charged under the bubble zone law, which prohibits pro-life protesters outside abortion facilities, but does not prohibit those who encourage women to enter to procure an abortion.

In August 2009, an appeal by Hoye to federal court failed when U.S. District Judge Charles R. Breyer ruled that Oakland’s bubble zone ordinance was constitutional. He said the law protects access to health care, while also allowing protesters to express their opinion.

At the time, one of Hoye’s lawyers, Michael Millen of the LLDF, announced his intention to appeal the ruling to the Ninth Circuit appellate court and launch the constitutional challenge.

Subsequently, the Appellate Division of the Alameda Superior Court overturned Pastor Hoye’s criminal conviction for violating Oakland’s law restricting sidewalk counseling, and eventually all charges against Hoye were dismissed.

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Cody told LifeSiteNews, "Life Legal Defense Foundation is grateful for the privilege of serving Pastor Hoye as he brings a message of hope and life to women in Oakland. Myself and the attorneys who work with Life Legal rejoice in the court's affirmation of his Constitutional right to speak on this vital topic."

As to whether LLDF has further plans related to the decision, she said, "We may ask for a motion to reconsider, or perhaps the better word is consider, the question of whether or not outstretching your arm to hand someone a leaflet is considered an approach under the Oakland ordinance. The court had no opinion on that issue and it was a subject that was briefed in the district court."

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