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CALIFORNIA COURTS DESTROYING GAY RIGHTS

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By Dell Richards

SACRAMENTO—Two recent court decisions threaten to effectively destroy gay rights in California, and, if higher courts fail to reverse the rulings on appeal, decades of gay activism could be lost overnight.

Both cases are being fought by the American Civil Liberties Union (ACLU), gay groups, cities and counties statewide, and are "incredibly important," said Jon Davidson, an ACLU civil rights attorney. "They will affect whether or not we have effective anti-discrimination laws in California and other states as well."

Although the cases give the appearance of being minor, their implications are far-reaching. The first case, *Delaney*, in which the court decided that cities do not have the right to pass anti-discrimination ordinances, throws into question 13 local civil rights ordinances that protect the majority of Californians from discrimination based on sexual orientation. In light of the governor's recent veto of state anti-discrimination law AB101, these ordinances have become the foundation of gay civil rights law. "The governor vetoed AB101 because he said we already had these protections," said Thomas Coleman, the veteran civil rights attorney involved in both cases.

In *Donahue*, the second case, it was decided that landlords could discriminate against prospective tenants if the tenant's behavior violated the landlord's religious beliefs. Because the case involves a five-unit apartment building without a landlord on the premises, it jeopardizes not only the housing provisions of current state law but also all anti-discrimination provisions of any customer-based business. In addition, hotels and retail stores, restaurants and grocery chains could be affected. Gay customers who could have sued for refusal of services can no longer call upon that right.

Although *Donahue* involves an unmarried heterosexual couple—a condition which the Catholic landlord termed "living in sin"—religious objections are one of the major stumbling blocks to gay progress. "Broadening the religious exemption is disastrous for lesbian and gay couples," said the ACLU's Davidson.

According to Coleman, the religious exemption case is part of a concerted effort by the religious and political right to wipe out civil rights at the state level. Grassroots fundamentalist networks have been developed locally in the past decade, and are now sufficiently organized to target the state law's fair housing provisions.

"Rather than picking on the gay and lesbian community—which will fight back because it's organized—their agenda now is to disable the Fair Employment and Housing Commissions," said Coleman. He cited cases in Illinois and Minnesota, both of which have been lost within the past two years, and cautioned that California and Florida are the next targets. "Florida is also on the hit list," said Coleman. "A trailer park case there involved an elderly out-of-wedlock couple."

And in California, state agencies are fighting the rulings—if only to protect their own power. On Jan. 6, the California Attorney General's office—headed by a Republican but prodded by the Fair Employment and Housing Commission—asked the state Supreme Court to hear the religious exemption case. "If we don't overturn the ruling, it will create a gigantic loophole in the law," said Kathleen Mikkelsen, deputy attorney general.

The San Francisco District Attorney (SFDA) also joined the suit to protect newly won domestic partnership rights in that city. The SFDA is also expected to file a brief on behalf of civil rights ordinances. West Hollywood, Long Beach and San Diego also are expected to submit documents supporting Los Angeles' civil rights law.

"The cities are trying to save their lives," said the ACLU's Davidson.

The outcome, if the cases have to wend their way through the state Supreme Court, may be years away.