

# Refusal to Rent To Unmarried Couple Is OK'd

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SACRAMENTO — A second appellate court ruling allowing landlords to refuse to rent to unmarried couples on religious grounds is expected to propel the issue — once again — into the lap of the state Supreme Court.

In *Smith v. FEHC*, CO07654, released late Friday, the 3rd District Court of Appeal, citing the constitutional guarantee of free exercise of religion, unanimously upheld the right of a Chico Presbyterian to discriminate against an unmarried couple based on her belief that sex outside of marriage is a sin.

Attorneys on both sides said they expected a petition for rehearing to be rejected and an appeal filed shortly with the state high court.

Los Angeles attorney Thomas F. Coleman, who filed the lawsuit on behalf of one of the prospective tenants, said he was not surprised that the appellate court ruled against an unmarried couple. He noted the court had twice ruled against a gay couple attempting to assert the same rights a married couple would have to purchase a joint insurance policy and obtain state medical benefits.

## Was Going to Hear Earlier Case

If the high court grants review in *Smith*, it will mark the second time the justices will face the issue. In February 1992, the court said it would hear a similar case in which an appellate court upheld a Catholic couple who had refused to rent to an unmarried couple in Southern California based on their religious views, *Donahue v. Fair Employment and Housing Commission*. S024583. But the court in October reversed itself, and announced it would not hear the case. Because the court declined to order the appellate court ruling upholding the landlords republished, it lost its standing as a precedent, and the focus shifted to the *Smith* case, pending at the time in Sacramento.

The issue is not only of concern in California, but in other states as well, where conflicting rulings have emerged. The Minnesota Supreme Court in 1990 found in favor of a landlord who refused to rent to an unmarried couple based on religious beliefs, but the Alaska Supreme Court ruled on behalf of the rejected tenants in another similar case.

## Pending in Massachusetts

A decision by a third state high court is pending. The Massachusetts Supreme Judicial Court is expected to rule by June 20 in a similar case involving two Catholic brothers who refused to rent an apartment to an unmarried couple.

In his petition for a rehearing, filed Tuesday, Coleman said the court's ruling was so broad it would open the doors to allow landlords and other business owners to discriminate as long as they cited religious reasons.

"The opinion is not limited to so-called sexual sins such as fornication, homosexual conduct or adultery," Coleman said in his petition. "Its rationale would apply to any conduct the landlord believes to be sinful, such as eating pork, drinking alcohol, dancing, wearing make-up, getting a divorce or having an abortion."

Coleman said the opinion also is not confined to housing discrimination laws because it would exempt any business owner who cites religious grounds from complying with the Fair Employment and Housing Act and the Unruh Civil Rights Act. The laws ban discrimination based on race, color, religion, sex, marital status, national origin, ancestry, familial status or disabilities.

"Those laws prohibit discrimination against employees and consumers by business establishments of all kinds — not just by landlords," Coleman said in his petition. "In the wake of this opinion, it is not hard to imagine a restaurant ejecting a gay couple who shows affection, an employer refusing to promote a qualified employee because he is cohabiting with an unmarried partner, or a hotel manager refusing to rent a room to persons he suspects might fornicate in the room — each claiming the right to discriminate in the name of religion. The ramifications of the opinion are very broad."

But the attorney representing Evelyn Smith, the Presbyterian landlord who refused to rent the unmarried couple a unit in one of two Chico duplexes she owns, disagreed, saying the ramifications of the ruling were limited.

"Unless [the tenants] are in that narrow band of [protected groups, such as racial minorities], landlords are home free" under the law in making rental decisions, Jordan Lorence, a Virginia attorney, said. "The Fair Employment and Housing Commission does not come in and micromanage every business decision."

He pointed out the before the appellate court ruling, *Smith* already was lawfully discriminating against two other groups of renters: smokers and pet owners.

In its decision Friday, the appellate court said the state's "interest in prohibiting discrimination in housing against, for example, a widower or an unmarried woman with children is more compelling than is its interest in prohibiting discrimination against unmarried couples. To conclude otherwise would defeat the state's strong interest in promoting marriage."

Coleman, in his petition for rehearing, protested: "The only instances in which the opinion seems to uphold the Legislature's authority to prohibit such discrimination are when racial or gender bias are involved. Otherwise, the opinion suggests that claims of religious freedom will almost always override fair housing laws."

He noted the Assembly on Tuesday narrowly approved legislation that would allow unmarried couples, including same-sex couples, to register as domestic partners. The bill, AB2810 by Assemblyman Richard Katz, D-Sepulveda, would entitle couples who register as domestic partners to hospital visitation and other benefits enjoyed by married couples.

While pleased with the Assembly's action, Coleman noted, "The Legislature can grant domestic partners all sorts of rights, but will a religious hospital honor a domestic partner registry, based on religious grounds? As long as we can say, 'In the name of God, you can discriminate, we're in trouble.'"

Countered Lorence: "I don't think a white supremacist is now, under this ruling, allowed to discriminate against a black family based on his Aryan religious beliefs."

Lorence said he supports the court's ruling that elevated protection of certain classes above those of other protected classes.

In the ruling, the court said, "It cannot be said the goal of eliminating discrimination on the basis of unmarried status enjoys equal priority with the state public policy of eliminating racial discrimination."

Later in the opinion, the court said there is a hierarchy among those seeking protection against discrimination based on their marital status. For example, protecting "an unmarried woman with children is more compelling than...prohibiting discrimination against unmarried couples," the court said. "To conclude otherwise would defeat the state's strong interest in promoting marriage."