

# Do Unmarried Couples Have Right to Rent?

## Landlady Refused Them Based on Religious Beliefs

### High Court to Decide

By Phillip Carrizosa  
Daily Journal Staff Writer

SAN FRANCISCO — Tackling an issue that it ducked just a year ago, the California Supreme Court announced Thursday it will decide whether a landlady may refuse to rent to an unmarried couple because of her religious beliefs.

Last Sept. 30, the justices dismissed as improvidently granted another case with the same issue that had been fully briefed and was awaiting oral arguments. The court provided no explanation for the move, which caught attorneys by surprise.

Now the justices will hear a new case from Chico in which the owner of two duplexes was ordered to pay \$954 in damages by the state Fair Employment and Housing Commission because she refuses to rent to unmarried couples. The landlady, Evelyn Smith, who is a Presbyterian, says because she believes sex outside of marriage is a sin, she would be committing a sin if she rented to unmarried couples.

#### Won in Appellate Court

On May 26, the Court of Appeal in Sacramento ruled in favor of Smith, saying California's anti-discrimination statute is unconstitutional as applied to landlords whose religious beliefs prohibit renting to unmarried couples.

The case, *Smith v. FEHC*, S040653, squarely pits the right of landlords to free exercise of religion against the right of tenants to housing free of discrimination on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status or disability, as guaranteed by California's Unruh civil rights act.

When the court dumped the previous case, *Donahue v. FEHC*, S024538, last year, Justices Joyce L. Kennard and Ronald M. George dissented while Chief Justice Malcolm M. Lucas and Justices Stanley Mosk, Armand Arabian, Edward A. Panelli and Marvin R. Baxter voted to dismiss.

This time, every justice voted to hear the case except for Baxter. Justice Kathryn Mickle Werdegar, who replaced Panelli after his retirement, joined the majority.

The court's decision to review the Smith case delighted attorneys for the couple, Kenneth C. Phillips and Gail Randall.

"I guess we go into another round of the never-ending battle," said Los Angeles attorney Thomas F. Coleman, who represents Phillips and also represented the tenant in the Donahue case.

Coleman said he believes he is in a better position to prevail this time because of new arguments he will be raising based on employment discrimination cases. Those cases suggest that employers cannot force supervisors to accommodate an individual employee's religious beliefs, he said.

"It's the same here: Trying to force others to accommodate a landlord's religious beliefs, I believe, would violate the federal establishment clause," Coleman said.

Los Angeles attorney David Link, who represents Randall, said he was "exceptionally glad" that the court took the case. "The Court of Appeal was plainly wrong on a number of legal theories. This will give the court a chance to resolve some issues that have cropped up across the nation."

Link was at a loss to explain why the justices dumped *Donahue* only to take *Smith* as soon as it arrived.

"That's the biggest mystery of this entire thing," Link said. "I was convinced they weren't going to take this one. The legal issues are identical, the facts for all practical purposes are identical."

But Coleman theorized that the justices discovered a number of procedural problems with *Donahue* that made it a bad case on which to decide the constitutional issues. For one, he said, the trial judge never ruled on the constitutional issues in *Donahue*; and while the landlord relied on the federal Constitution, the appeal court avoided that and ruled for the landlord based on the California Constitution.

"It may be that case wasn't as clean as they would have liked," Coleman said. "But this case is about as clean as you can get."

FEHC attorney Steven C. Owyang, who also appealed on behalf of the commission after state Attorney General Dan Lungren refused to represent the agency any further, could not be reached for comment.

Attorneys for Smith could not be reached immediately for comment.

Cases involving religious issues have proved difficult for the state Supreme Court. In 1991, the court was deeply divided in ruling that public schools may not sponsor invocations and benedictions at high school graduation ceremonies without violating the federal Constitu-

tion's ban on establishment of religion. Six of the seven justices wrote opinions, demonstrating the sharp divergence of views in *Sands v. Morongo Unified School Dist.*, 53 Cal.3d 863 (1991).

Friday, September 9, 1994

LOS ANGELES  
**Daily Journal**

# State Court to Review Refusal to Rent to Couple

*From Associated Press*

SAN FRANCISCO—Revisiting a clash of religion and civil rights, the state Supreme Court agreed Thursday to decide whether property owners with religious objections can refuse to rent to unmarried couples.

Six of the seven justices, all except Marvin Baxter, granted review of an appeal by two would-be tenants and a state civil rights agency. They were appealing a lower court ruling that granted a Chico landlady a religious exemption from the state's ban on housing discrimination based on marital status.

No hearing date has been set.

The case, which has attracted nationwide attention from conservative religious organizations, has the potential to create a broad

religious exemption from California's anti-discrimination laws.

Lawyers for the Chico tenants say the exemption recognized by the lower court would also allow exclusions of same-sex couples and could apply to any business.

In the case, Evelyn Smith, owner of two duplexes, refused in 1987 to rent to Kenneth Phillips and Gail Randall because they were unmarried.

The Fair Employment and Housing Commission fined Smith \$954 for violating the state law against housing discrimination based on marital status. But the 3rd District Court of Appeal in Sacramento ruled in May that enforcement of the law against Smith violated her religious freedom.

Smith "cannot remain faithful to her religious convictions and beliefs and yet rent to unmarried

couples," Presiding Justice Robert Puglia said in the 3-0 ruling.

He also said the state violated Smith's freedom of speech by ordering her to post a notice saying discrimination based on marital status was illegal.

Under the appeals court's rationale, said Thomas F. Coleman, a lawyer for would-be tenant Phillips, restaurant owners with religious objections to homosexuality could refuse to serve "two people holding hands or coming in from a gay rights rally with a slogan on their T-shirt."

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an apartment and gets pregnant, eviction could be right around the corner," Coleman said.

**Los Angeles Times**

SATURDAY, SEPTEMBER 10, 1994

# Court to decide rental discrimination case

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It is one of several cases on the current docket that require the court to decide between competing rights. The justices have

previously granted review of challenges to the scope of California's hate-crimes laws and to the Boy Scouts' bans on gays and atheists.

The court agreed in 1992 to review a case of another landlord who refused to rent to an unmarried couple, but dismissed its review without explanation 18 months later, leaving the law unsettled.

In the Chico case, Evelyn Smith, owner of two duplexes, refused in 1987 to rent to Kenneth Phillips and Gail Randall because they were unmarried. She said she considered nonmarital sex sinful.

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He also said the state violated Smith's freedom of speech by ordering her to post a notice saying discrimination based on marital status was illegal.

The state can interfere with religious practices and free speech when necessary to serve a "compelling interest," Puglia said. But he said the state has no such interest in protecting the housing rights of unmarried couples, noting that state courts had refused to treat non-marital relationships as the legal equivalent of marriage.

Categories like race are constitutionally recognized and have a higher level of protection, Puglia said. But his reasoning would appear to allow a landlord, or any other business owner, to refuse to do business with a homosexual couple for religious reasons.

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tionale, said Thomas F. Coleman, a lawyer for would-be tenant Phillips, restaurant owners with religious objections to homosexuality could refuse to serve "two people holding hands or coming in from a gay-rights rally with a slogan on their T-shirt."

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He contended that the state, by allowing Smith to discriminate because of her religious beliefs, would create a preference for a particular religion, in violation of federal fair-housing laws and the U.S. Constitution.

Smith is represented by lawyers from the Home School Legal Defense Fund and the Rev. Pat Robertson's American Center for Law and Justice.

They could not be reached for comment Thursday.

Friday, Sept. 9, 1994

## Glendale News-Press

TUESDAY, NOVEMBER 22, 1994

## Housing, Religious Rights Clash in Rental Dispute

■ **Laws:** State high court to review Chico landlady's refusal to rent to couple because they were unmarried.

By MAURA DOLAN  
TIMES LEGAL AFFAIRS WRITER

Gail Randall and Ken Phillips fell in love with the Chico duplex. It had pale yellow clapboards trimmed in brick, a high, steep roof, hardwood floors and a fireplace. The tree-shaded home reminded Randall of a gingerbread house.

But there was a hitch. The landlady, a conservative, devout Christian, refused to rent to unmarried couples. When she learned Randall and Phillips lived together outside of marriage, she canceled the rental agreement and mailed back their deposit.

"It was real disappointing," said Randall, 31.

The couple filed a complaint against the landlady, sparking a constitutional dilemma over the competing rights of religious freedom and fair housing, property and privacy, and, peripherally, over what constitutes sin.

Backed by onetime presidential candidate and television evangelist Pat Robertson, the landlady maintains that her religious convictions entitle her to discriminate. She and a handful of other landlords around the nation have been prevailing in courts with the help of a legal aid group started by the conservative preacher.

California Atty. Gen. Dan Lungren, the state's top law enforcement officer, recently refused to continue representing a state fair housing agency against the Chico woman. Lungren said he supported a Court of Appeal ruling in her favor, forcing the state agency to obtain a private lawyer.

The California Supreme Court agreed to review the dispute even though it had failed to reach a decision in a similar Southern California case. The justices, who rarely drop a case after voting to accept it, were believed to have been deeply torn. Now the case is considered the most important constitutional test on the issue because most other state high courts have avoided ruling directly on the religious freedom issue.

"If it means the homosexuals and the fornicators can't find a place to live," said Evelyn Smith, 62, the Chico landlady, "well, I am sure there are enough sinners who would rent to them. I am not saying people should be homeless."

The ruling, expected next year, could have widespread ramifications, allowing the deeply religious to discriminate against gays and heterosexual couples in housing, employment and other business transactions.

About 500,000 unmarried couples live together in the state, and the majority of people who married in Los Angeles County in 1993 lived together previously.

Discrimination on the basis of marital status is barred by California's Fair Employment and Housing Act, which also prohibits discrimination by race, color, religion, sex, national origin, ancestry, disability and familial status. Landlords who rent rooms in their homes are exempt.

About 11% of the housing complaints lodged in California in 1992-93 alleged discrimination because of marital status. The bulk of the grievances came from renters who believed they were denied housing because of race or because they had children.

Chico, nestled near the Sierra Nevada foothills north of Sacramento, is an eclectic community best known as the home of Chico State, which Playboy magazine once christened the top party college in the nation.

But the predominantly white, middle-income town also shares the conservatism of the rest of Butte County. Farmers tend almond and walnut orchards, and retirees from elsewhere in the state are attracted by Chico's mild winters, its two well-regarded hospitals and a relatively low cost of living.

Smith, who raised her family in Chico, lives in a different neighborhood from her rental units. The widow said most prospective tenants go away quietly if they do not like her rules on "hanky-panky."

She once explained her feelings to a gay man who wanted to rent from her. "He said, 'I respect you for that,'" and decided not to pursue the vacancy, she said.

But Randall and Phillips were indignant. He was 28 at the time, she 24. They had lived together for about three years after meeting in her hometown of Atascadero in San Luis Obispo County. She went to school and worked with Phillips in his landscaping business.

When Phillips called Smith about the vacancy seven years ago, she told him she preferred to rent to married couples.

"That shouldn't be a problem," Phillips, now 35, remembered replying at the time, and now says, "which it shouldn't be. It was a bit of spin control on my part."

Before meeting Smith later that day, the Chico landscaper called the California Department of Fair Employment and Housing and was told that such discrimination was illegal.

But the couple continued their pretense when they met Smith at the duplex, in a neighborhood where the couple had long wanted to live. She accepted a deposit, and the couple signed a rental agreement.

Neither Randall nor Phillips wanted to continue the charade. Phillips called Smith later that day and told her the truth. She put their deposit in the mail and canceled the agreement.

Randall, an aspiring nurse who goes to school at night and works two jobs, said she was "tired of the issue coming up."

She and her boyfriend had previously rented from a landlord who assumed they were married, and rather than risk losing their home, let him believe as he wished. She did not like the subterfuge.

"We didn't like being put in the position of having to lie," she said, "and we certainly did not want to keep up the lie every month."

Smith remembers the couple as "absolutely thoughtless, careless young people."

## RENTAL: A Clash of Rights

The mother of three grown children, Smith rents out two duplexes to supplement the pension of her late husband, a mail carrier. She wears a crucifix around her neck, has a Christian bumper sticker on her car and marches in an anti-abortion rally once a year.

After the unmarried couple filed a complaint against Smith with the state housing commission, her friends put her on "the prayer chain," so that many people would be asking God to send her an attorney.

Jordan Lorence, who was representing a conservative Christian group at the time, took the case. He now is being paid by Pat Robertson's Virginia-based American Center for Law and Justice, which has represented landlords in similar cases.

At a hearing of the California Fair Employment and Housing Commission, a representative of Smith's church, the Presbyterian Church (U.S.A.), testified that she would not be committing a sin if she rented to an unmarried couple.

Smith is still riled about that. "This man can't tell me how I am going to get to heaven," she said.

A representative of the Orthodox Presbyterian Church testified that the Bible supported her views.

The judge ruled for the tenants and ordered Smith to pay them \$900 and to post a notice on her units that she had unlawfully discriminated. The commission later reduced the fine to \$454.

"There is no way in the world I am ever going to rent to fornicators," Smith said, and appealed the decision.

The California Court of Appeal, ruling in her favor, cited "the state's interest in promoting the marriage relationship."

Courts in Minnesota and Illinois also have sided with landlords, but unlike California, those states have laws that prohibit fornication. They cited those laws in their rulings.

A Wisconsin court held that unmarried couples did not fall under a local ordinance prohibiting discrimination on the basis of marital status.

Massachusetts' highest court told the state it had to show compelling reasons for forcing a landlord to rent to someone in violation of his religious beliefs.

Bucking this trend, the Alaska Supreme Court ruled in favor of the tenants in a dispute with a religious landlord. The U.S. Supreme Court on Oct. 31 declined to review the case, leaving Smith's as the pivotal test of the issue.

Smith's lawyer noted that unmarried couples are treated differently from married couples under the law. State colleges, he said, are exempt from the anti-discrimination regulation and can reserve housing for a single sex or for married couples.

"So the state is prosecuting Mrs. Smith for what the state is doing" in public colleges, Lorence complained.

Beyond college, some men share lodgings with women without being romantically involved. Lorence confessed that he did not know how religious landlords would treat such couples, but he added the situation probably was rare.

Marian Johnston, a private attorney who has been representing the state commission since Lungren withdrew, said people who do business in California must comply with the state's regulations.

"If she doesn't like the way the state tells her to run her business," Johnston said, "she shouldn't be in the business."

A victory for Smith would allow landlords and employers to use religion as an excuse to discriminate in all kinds of ways, she said.

"I am sure there are religious groups that don't believe in interracial couples," she said. "I would hate to think the state is required to accept discrimination against an interracial couple in the name of freedom of religion."

Gays would be particularly affected by the court's ruling, said Los Angeles lawyer Thomas F. Coleman, who is representing Phillips.

"Some employers may not want to employ homosexuals," he said. "It is against the law, but they can use this theory that it is a sin in their mind."

Smith said she told her husband on his deathbed eight years ago that she would try to join him in heaven. She fears she might not get there if she rents to sinners.

"I am not saying everybody who rents to fornicators is not going to go to heaven," she said. "But my God won't let me do it."

Randall and Phillips no longer live together, but remain friends. Like Smith, they plan to attend the California Supreme Court's oral arguments in the case, which have not yet been scheduled.

Phillips said the episode with Smith upset him because he felt she was intruding into the privacy of his sex life. But he did not think of the rejection as discrimination until many months later, when he saw a television program about landlords who refused to rent to African Americans.

"Being a white male, I don't think of these things that often," he said. "Usually I am not the victim of them—usually."

# RENTAL: Clash of Housing Rights, Religious Beliefs



Photos by RHONDA BIRNDORF / For The Times

Gail Randall and Ken Phillips in front of the duplex she refused to rent to them.



Chico landlady Evelyn Smith,