

Rental Bar to Unmarrieds Argued

By Hallye Jordan
Daily Journal Staff Writer

SACRAMENTO — In a case Los Angeles attorney Thomas Coleman said “will impact millions of people in California who can’t buy their privacy,” a three-member panel of the 3rd District Court of Appeal heard oral argument Tuesday on whether landlords may refuse on religious grounds to rent to unmarried couples.

Arising out of Evelyn Smith’s refusal in 1987 to rent an unmarried couple an apartment in a four-unit duplex the Presbyterian woman owned in Chico, *Smith v. Fair Employment and Housing Commission*, 3-SIV-C007654, pits a person’s religious beliefs against prohibitions on dis-

crimination based on marital status found in the Fair Employment and Housing Act and the Unruh Civil Rights’ Act.

Coleman, who represents one of the would-be tenants, said the matter has been briefed for 18 months, but was put on hold pending a decision by the California Supreme Court in a similar case, *Donahue v. Fair Employment and Housing Commission*, S024583. When the high court reversed itself last fall, announcing it would not hear *Donahue*, despite granting review in February 1992, it put Smith’s case “in the driver’s seat,” said Coleman, who also represented the would-be tenant in *Donahue*.

But court watchers interested in seeing *Smith* reach the state Supreme Court will have to wait a little longer. Presiding Justice Robert K. Puglia, joined by Associate Justices Arthur G. Scotland and Vance W. Raye, gave attorneys 30 days for additional briefing on whether the case is impacted by the federal Religious Freedom Restoration Act enacted in November.

Jordan Lorence, representing petitioner Smith, said the new federal law is

retroactive, affecting all state and federal cases adopted before or after the law was enacted.

Lorence told the justices the \$954 fine levied in 1989 by the Fair Employment and Housing Commission, which also ordered Smith to post signs declaring she would no longer discriminate against unmarried couples, were an infringement of her freedom of speech and religion. The state, he argued, has not shown a compelling interest to violate those constitutional rights.

He argued the state has made exceptions in the past. Courts have treated married couples “legally better than unmarried couple,” in filing wrongful death suits on behalf of their partners, or when having conjugal visits with prison inmates. The law exempts public and private universities from the discrimination ban by prohibiting unmarried couples from living in dorms designated for those who are married, he said.

But Deputy Attorney General Kathleen Mikkelsen, representing the FEHC, urged the panel, “Let’s not forget the constitutional rights of tenants to freedom of association and privacy.”

David Link, representing one of the tenants, said if the court upholds the petitioner’s arguments, “then you are saying there is no such thing as a secular world, that renting apartments is a religious exercise.”

He said business owners “have to know then they enter the marketplace, there are codes and regulations.”

When asked by justices whether the Legislature intended to make discrimination based on marital status as high a priority as racial discrimination, Link said, “I’m not aware of any case where the Legislature makes a list and the courts determine which is of higher importance. It’s not a matter of whether there are different levels on the list. The issue is housing, housing in general, and the Legislature said housing is a fundamental interest and affects the peace and sanctity of the state.”

“Does the interest become compelling simply because the Legislature says you cannot discriminate?” Raye asked.

“The compelling interest is providing nondiscriminatory housing,” Coleman told Raye.

Puglia asked Coleman whether he would make the same argument if Smith had refused to rent a room in her home.

“No,” Coleman said, “because she has a right of freedom of association, too. She has a right to choose her living companions, too.”

Wednesday, January 26, 1994

Los Angeles Daily Journal

Courts Tackle Housing Bias Against Unmarried Couples

Landlords: Renting Violates Religious Beliefs

By Jerry DeMuth
Special to The Washington Post

Landlords cannot use their religious beliefs as legal justification for refusing to rent to unmarried couples, the Alaska Supreme Court has declared in a ruling that goes against court trends in other states.

Courts in California, Massachusetts, Wisconsin, Minnesota and Illinois have upheld landlords who cited their religious beliefs in defense of their refusals to rent housing to unmarried couples and other unrelated people.

The Massachusetts Supreme Court is expected to rule by June 20 on an appeal of one of those decisions.

In California the state supreme court dismissed an appeal of a decision in favor of a landlord, paving the way for a state superior court to issue its final judgment in what is known as the Donahue case, after the landlord defendant.

A second California case in which a landlord's discrimination against an unmarried couple was upheld is before the Court of Appeals in Sacramento. Arguments were made in late January and a decision is expected by the end of June.

"The Alaska decision, being the first [state supreme court decision against a landlord], is going to have some impact on the other cases that

are waiting in the wings," said Thomas F. Coleman, a Los Angeles attorney who is representing the prospective tenants in the Donahue case and has followed similar cases across the country.

"All these cases are coming to a head at one time. I suspect one or more of these cases will wind up before the U. S. Supreme Court next term," saying that he will petition the high court for a review should he lose his case.

In its 4-to-1 decision Feb. 11 affirming a lower court decision, the Alaska Supreme Court held that the landlord, Tom Swanner, "discriminated against potential tenants based on their marital status," and that "enforcing the fair housing laws does not deprive him of his right to free exercise of his religion."

The court ordered that Swanner pay \$1,000 in attorney's fees plus all legal costs incurred by the Anchorage Equal Rights Commission, which brought the case on behalf of three unmarried couples.

The landlord, in defending his action, said it was against his religion to rent to unmarried couples on the assumption that they were fornicating in violation of God's law, according to Steven S. Holt, the commission's executive director.

Coleman said that allowing landlords to use their religious beliefs to justify discrimination against apartment seekers could lead to refusing to rent to interracial married couples or to married couples who drink or dance or to evicting a single woman who becomes pregnant, or engages in any other behavior that violates the landlord's religious beliefs.

It also creates a conflict between the religious beliefs of landlords and the religious beliefs of apartment seekers, he said.

He filed a petition Tuesday with the California Supreme Court that seeks a review of his case and requests a stay on the grounds of violation of the would-be tenants' religious rights.

"She formulated her own religious beliefs, which are contrary to the religious beliefs of the Donahues which she, as an ex-Catholic, had rejected," Coleman said of his client, Verna Panzo.

"What's happening here is the state is giving a preference to one set of religious beliefs over contrary beliefs," he said, pointing out that the state constitution's freedom of religion clause says the state cannot give preference to any religion.

"This is the only case in which the [prospective] tenant is raising her or his own religious beliefs," he said.

The issue of the religious beliefs of the landlords has prompted the backing of their cases by numerous conservative Christian groups, including Concerned Women for America, Christian Legal Society, Catholic League and religious broadcaster Pat Robertson's American Center for Law and Justice.

The center is defending the landlords in the Massachusetts case and the other groups have each filed

friend of the court briefs in support of the landlords, brothers Paul and Ronald Desilets of Turners Falls, a town of 4,800 in western Massachusetts.

The Desilets denied an apartment to Mark Lattanzi and Cynthia Tarail when Tarail, in response to a question, said they were not planning to get married.

"I don't go for that living in sin stuff," Paul Desilets responded, according to court records.

A Franklin County, Pa., Superior Court judge ruled in favor of the Desilets in 1992, citing their religious rights.

The state's attorney general's office is prosecuting the brothers under the state's fair housing law, which prohibits discrimination based on marital status.

Assistant Attorney General Judith Beals told the Supreme Court during arguments in February that the Desilets were engaged in a commercial activity, not a form of worship that is protected under the law, and that complying with the state's fair housing law would not restrain their religious worship activities.

"The courts are getting into a freedom of religion nightmare," Coleman concluded.

One landlord said it was against his religion to rent to unmarried couples on the assumption that they were fornicating in violation of God's law.

Court Backs Landlords on Refusal

Justices Rule Owners Don't Have to Rent to Unrelated Applicants

By Jerry DeMuth
Special to The Washington Post

CHICAGO—The Wisconsin Supreme Court has ruled that landlords have the right to refuse to rent to unrelated people because the state has an overriding interest in promoting marriage.

The court, ruling 4 to 3, said that a provision of the fair housing law of Dane County, home of the University of Wisconsin and the state capital of Madison, requiring that landlords make available their rental units to cohabitants is invalid because it is "inconsistent with the public policy of this state which seeks to promote the stability of marriage and family."

The court said municipalities may not pass ordinances that are "repugnant to the general policy of the state," and the state's policy is one of "encouraging and protecting marriage."

"This is the first [decision] of its kind," said Thomas F. Coleman, a Los Angeles attorney who has followed similar cases. "I've looked at marital-status decisions from courts of appeal and supreme courts in

Massachusetts, Washington state, Illinois, Minnesota, Alaska and California, and none of them have ever gone off on this tangent."

"I'm sure this will be cited against us in oral arguments," Coleman said.

Margaret O'Donnell, Dane County assistant corporation counsel, has filed a motion that asks the court to reconsider the April 13 decision. The motion cited the impact that the decision could have on students, persons with disabilities who need another person to care for them, single parents who can't maintain a household on one income, and gay and lesbian couples.

Although she is hopeful that the court will reconsider the decision, which has been widely criticized in the Wisconsin press, some attorneys who practice before the court say her chances of getting a rehearing are slim.

The state supreme court's decision reverses a ruling by the Dane County circuit court that found landlords Dwight and Patricia Norman guilty of violating the county's fair housing law for refusing to rent three-bedroom apartments to, first,

three single women, and then to a divorced woman with a child and another woman.

Dwight Norman contended that it was his policy not to rent any of his units to two or more unrelated persons because it would violate his Roman Catholic faith and would be risky from a business standpoint, according to his attorney, David E. Rohrer of Madison. However, Wisconsin's top court did not address either issue in its ruling.

In addition to citing the state's intent to "promote the stability and best interests of marriage and the family," the court declared that the Normans' denial of apartments to the two groups was "triggered by their 'conduct,' not their 'marital status,'" adding, "their living together is 'conduct,' not 'status.'"

The Normans, who own and rent 13 duplexes in Sun Prairie, a suburb of Madison, also are defendants in a case in which they refused to rent to a couple six weeks before they were to be married.

That case, which they lost in Dane County circuit court, is now before

See DECISION, F15, Col. 3

THE WASHINGTON POST

Wisconsin's Supreme Court Backs Landlords on Refusal

DECISION, From F1

the state's court of appeals, although Rohrer has filed a motion to bypass that court and go directly to the state supreme court.

In a stinging dissent, Wisconsin Chief Justice Nathan Heffernan, joined by the remaining two justices, said there was no evidence that the women "were involved in anything other than a cost-sharing relationship. I cannot conceive how allowing these individuals to live together cooperatively would in any way affect

the health and well-being of Wisconsin families and marriages."

Heffernan said "chaos" could result in the Madison area, where "rent-sharing is often the only means of obtaining affordable housing" for students and government employees if property owners "decided to rent only to single individuals or related cohabitants."

But Rohrer said he did not think the ruling will have much impact "because there are market forces at work. Not many landlords are going to adopt this policy."

1993

Landlords' right to reject unmarried couples upheld

Associated Press

SACRAMENTO — A property owner can refuse to rent to an unmarried couple for religious reasons, despite a state law forbidding housing discrimination based on marital status, says a state appeals court.

Finding that the state has no "overriding interest" in protecting the unmarried from discrimination, the 3rd District Court of Appeals ruled that enforcement of the civil-rights law violated the religious freedom of a Chico landlady who considers nonmarital sex sinful.

Evelyn Smith "cannot remain faithful to her religious convictions and beliefs and yet rent to unmarried couples," the court said in a 3-0 ruling, made public Friday.

The court did not discuss sexual orientation, but its reasoning would appear to apply equally to an owner who refused to rent to a homosexual couple for religious reasons.

The ruling overturned a \$954 fine assessed against Smith in 1989 by the state Fair Employment and Housing Commission for denying an apartment to Kenneth Phillips and Gail Randall because they were unmarried.

This is the second such ruling by a state appeals court. An appellate panel in Los Angeles reached an identical conclusion in another case in 1991, but the state Supreme Court agreed to review the decision, then dropped the case without explanation last fall, leaving the law unsettled.

The commission, which contends commercial property owners must follow anti-discrimination laws regardless of their personal beliefs, is certain to appeal Friday's ruling to the state's high court. The case has been followed closely by civil-rights groups and conservative religious organizations, one of which represented Smith in court.

The opinion by Presiding Justice Robert Puglia said the state's action against Smith violated not only her religious rights but also her freedom of speech, because she was ordered to post a notice saying discrimination based on marital status is illegal.

"It is . . . tyrannical to require (Smith) to post on her property notices which proclaim notions and ideas which are offensive to her moral and religious beliefs," Puglia said.

He acknowledged that the state can interfere with religious practices and free speech when necessary to serve a "compelling interest." But Puglia said protecting the housing rights of unmarried couples is not such an interest.

While state housing law forbids many types of discrimination, categories such as race are recognized constitutionally and have a higher priority than marital status, Puglia said.

He also said the courts "have consistently refused to treat unmarried couples as the legal equivalent of married couples." The fact that the Legislature has not passed laws changing those rulings reflects "the state's strong interest in the marriage relationship," Puglia said.

In addition, he noted, the state has allowed public colleges to reserve housing for married couples.

DAILY NEWS

5-29-94

Refusal to Rent To Unmarried Couple Is OK'd

By Hallye Jordan

Daily Journal Staff Writer

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."

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.

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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

SAN FRANCISCO

Daily Journal

Friday September 9, 1994

Official Newspaper of the
San Francisco Municipal, Superior and
United States Northern District Courts

1390 Market Street, Suite 1210, San Francisco, California 94102 415 / 252-0500

\$1.00

High Court Accepts Rent Refusal Case

■ The issue, avoided last year, involves the exercise of religion and housing rights.

By Philip Carrizosa
Daily Journal Staff Writer

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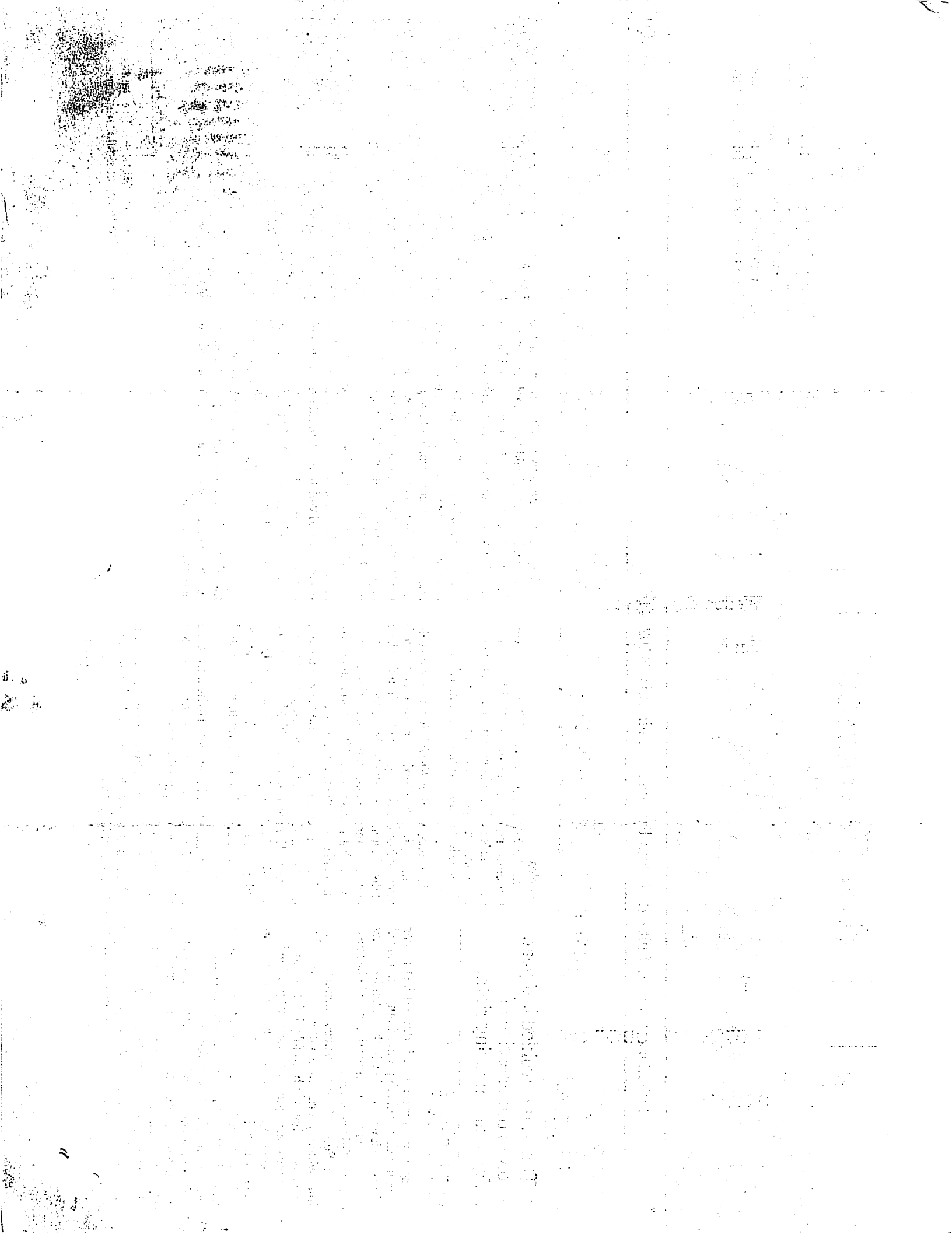
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Daily Journal
MARVIN R. BAXTER — The justice has voted twice to reject similar rent cases.



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LOS ANGELES
Daily Journal

Friday, September 9, 1994

Court to decide rental discrimination case

SAN FRANCISCO (AP) — 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.

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.

The state 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 this 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.

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.

Under the appeals court's ra-

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."

"If a single woman lives alone in an apartment and gets pregnant, eviction could be right around the corner," Coleman said.

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

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."

"If a single woman lives alone in

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

Los Angeles Times

SATURDAY, SEPTEMBER 10, 1994

BY BRANT WARD/THE CHRONICLE

Harvest Time in Wine Country

Workers at Bacigalupi Vineyards near Healdsburg finished picking about 60 tons of pinot noir grapes yesterday for this year's crush. 'The acid and sugar balance was great,' said vineyard owner Charles Bacigalupi, who

estimated that sometime next month the last vines of cabernet sauvignon will be picked. The 1994 crush in Sonoma County, wine analysts say, should produce one of the finest vintages, thanks to ideal weather conditions.

State High Court to Review Rental Case

Landlady refused to rent duplex to unmarried couple

By Harriet Chiang
Chronicle Legal Affairs Writer

The California Supreme Court will decide whether a Chico landlady can refuse to rent to an unmarried couple for religious reasons, tackling an issue that could have enormous ramifications for almost a million single adults in the state.

The justices announced yesterday that they will consider whether a landlady's religious rights would be violated if she were forced to follow a statute outlawing discrimination based on marital status.

The order was signed by all the justices except Justice Marvin Baxter.

Legal observers say the case could be a critical test of whether someone may be free to discriminate by citing religious beliefs.

According to the U.S. Census, 990,446 people in California live with an unmarried partner.

The high court will review a state appeals court ruling in May finding that Evelyn Smith, a member of Bidwell Presbyterian Church in Chico, could for religious reasons refuse to rent to Gail Randall and Kenneth Phillips.

The case goes back to 1987, when the couple put down a deposit on one of the two duplexes owned by Smith in a quiet residential area of Chico. When she told them that she did not rent to unmarried

The case could test if someone is free to discriminate by citing religious beliefs

couples, they told her they were married. Before they moved in, however, they admitted to her that they were not married. Smith promptly canceled the rental agreement and returned the deposit.

The couple filed a claim with the Fair Employment and Housing Commission, the state's civil rights agency. The agency ruled in favor of Randall and Phillips, ordering Smith to follow the law and rent to

The supervisors voted 7 to 3 to double the tax to \$10 per \$1,000 of property value on transactions over \$250,000. The board members supporting the tax — Supervisors Terence Hallinan, Carole Migden, Kevin Shelley, Sue Bierman, Tom Hsieh, Susan Leal and Angela Alioto — are one vote shy of overriding the mayoral veto.

Jordan is stymied as well. The mayor has his own deficit-reduction plan but needs six votes to pass it. The mayor would have to

the city finished the last fiscal year with a surplus at least \$1 million more than already reported, but the controller said he is not sure that figure is accurate.

If Harrington certifies the surplus, Serata said the sum would be applied to the Department of Public Health budget, leaving the agency with an \$800,000 deficit.

Because of the city's precarious finances, Harrington said that no purchases have been deferred until February and that hiring requisitions have been stopped by Jordan's office. He said the low emergency reserve level might have a negative effect on the city's bonding.

Jordan's opponents on the board said a switch to Harrington might be a welcome change.

"I have more confidence in Harrington making the decision in a fair way than the mayor," said Supervisor Kevin Shelley. "Basic health services and public safety should be the priority."

3.1 Quake Rattles San Fernando Valley

San Fernando

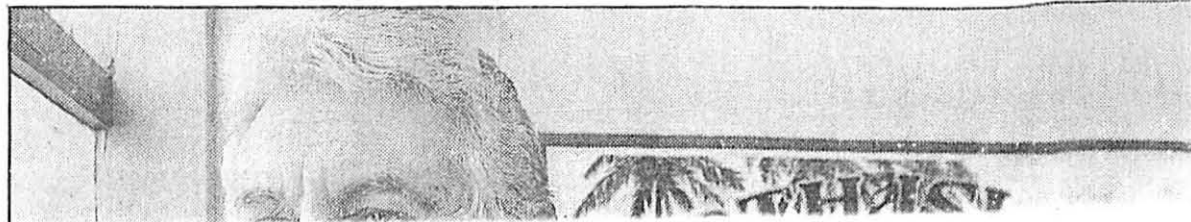
A mild aftershock to January's deadly Northridge earthquake rattled the San Fernando Valley yesterday, a seismologist said. There were no reports of damage or injury.

Associated Press

S.F. Group Seeking Environmental Justice

By Pamela Burdman
Chronicle Staff Writer

dioxin, the main ingredient in Agent Orange, Bay Meadows, it



State Supreme Court to rule on case of Chico's religious landlady

From AP, E-R staff reports

SAN FRANCISCO — The state Supreme Court agreed Thursday to hear the case of Chico landlady who refused to rent to an unmarried couple on religious grounds.

The justices will review a May decision by the state 3rd District Court of Appeal upholding Evelyn Smith's refusal in 1987 to rent to Ken Phillips and Gail Randall because of her conviction that fornicating is a sin.

The appeals court overturned a 1989 decision by the state Fair Housing and Employment Commission favoring the couple and fining Smith \$954 under state law that bars housing discrimination.

Both sides have vowed to carry the issue all the way to the U.S. Supreme Court.

Six of the seven state justices, all except Marvin Baxter, granted review Thursday of an appeal by the couple and the state commission.

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 Phillips and Randall say the exemption recognized by the lower court would also allow exclusions of same-sex couples and could apply to any business.

Phillips, who operates a Paradise landscaping business, and Randall, now in Sacramento, are still friends but do not live

See LANDLADY/10A





Satellite photo taken



Evansville	88	58		Spokane	74	58
Fairbanks	52	43	.16	Syracuse	88	74
Fargo	86	57		Tampa	85	55
Flagstaff	80	45		Topeka	105	76
Grand Rapids	75	56	.19	Tucson	86	65
Great Falls	92	45		Tulsa	82	58
Grovesboro, N.C.	79	55		Wash D.C.	87	63
Hartford Spgld	81	53		Wichita	76	48
Helena	83	44		Wilkes-Barre	80	53
Honolulu	88	76		Wilmington, Del.		
Houston	91	75		National Temperature Extremes:		
Indianapolis	82	54		High: 114 at Lake Havasu City, Ariz.		
Jackson, Miss.	85	67		Low: 25 at Stanley, Idaho		
Jacksonville	86	70		in Wisdom, Mont.		

Landlady

From 1A

together.

The case is one of several on the state high court's current docket that involve 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 its 3-0 ruling, the state appeals court ruled that Smith "cannot remain faithful to her religious convictions and beliefs and yet rent to unmarried couples," wrote Presiding Justice Robert Puglia.

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.

Under the appeals court's rationale, said Thomas F. Coleman, a lawyer for would-be tenant Phillips, restaurant owners with religious objections to homosex-

uality could refuse to serve "two people holding hands or coming in from a gay-rights rally with a slogan on their T-shirt."

"If a single woman lives alone in an apartment and gets pregnant, eviction could be right around the corner," Coleman said.

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 the Rev. Pat Robertson's American Center for Law and Justice.

One of her lawyers, Jordan Lorence, said the state commission was making a "gross distortion of the anti-discrimination laws to punish these landlords."

"It's disappointing that the state argues these landlords lose their religious beliefs when they enter the marketplace," Lorence said.

"There's lots of liberals who have religious beliefs that they want to exercise in the marketplace. They don't want to rent to gun shops or butcher shops or fur stores."

He noted that an Alaska landlord who lost a similar case in his state has appealed to the U.S. Supreme Court.

If the high court agrees to review that case, it will probably determine the outcome of the California case, Lorence said.

Attorney General Dan Lungren's office had represented the state commission against Smith in the appeals court.

But in June, after the appellate ruling in the landlady's favor, Lungren withdrew from the case, explaining in a statement from his press office that he thought the ruling was correct. The commission then pursued the appeal on its own.

The case is Smith vs. Fair Employment and Housing Commission, S040653.

Tree

From 1A

the property.

City Attorney Bob Boehm said Tuesday night that a trial on the matter wouldn't cost the city much because most of the necessary staff work was already completed.

"This is a shame because the essence of the move is to save a tree," said Councilman David Guzzetti at Tuesday night's meeting, before voting in favor of the eminent domain move.

Essentially, La Force agrees with the assertion that the controversy is lamentable, if not silly.

"This is kind of a dumb thing."

Rape

From 1A

Sen. Marian Bergeson, R-Newport Beach, would have handed down

WORLD WAR II

FIFTY YEARS AGO TODAY

SEPT. 9

1 • 9 • 4 • 4

After three days of attacking the Palaus, the 16 aircraft carriers of the U.S. Navy's Task Force 38 launch raids on Japanese airfields on Mindanao in the Philippines. U.S. troops cross into southern Netherlands near Maastricht; Canadian soldiers capture Bruges in Belgium. On the eastern Italian front, British and Canadian units intensify attacks on the Coriano and Gemmano hills.

Source: "2194 Days of War," W. H. Smith Publishers Inc.; "World Almanac Book of World War II," Bison Books Corp., 1981

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,