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Landlords Can Deny Rental to Unmarried Duos

Religious Beliefs Outweigh State Law, 2nd District Says

Appeal of 2-1 Ruling Likely

By Dick Goldberg
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Although state law generally prohibits landlords from refusing to rent to unmarried couples, there are exceptions when the landlord holds a "sincerely held religious belief" that such cohabitation is a sin against God, a state appeal court has ruled.

In a case closely tracked by civil libertarians, the 2nd District Court of Appeal ruled Wednesday that John V. Donahue was exercising religious freedom when he refused to rent his Downey apartment to Verna Terry and Robert Wilder in 1987. *Donahue v. Fair Employment and Housing Commission*, 91 Daily Journal D.A.R. 14633.

"According to the religious convictions of the Donahues, sexual intercourse outside of marriage is a mortal sin, and assisting or facilitating in such behavior is also a sin," wrote Associate Justice Roger W. Boren for the majority in the three-judge panel.

Law Is a 'Burden'

Boren said the Government Code section that prohibits housing discrimination is "a burden" on the sincerely held religious beliefs of Donahue and his wife, Agnes.

The FEHC had imposed sanctions against the Donahues, "thereby putting substantial pressure on adherents to modify their behavior and to violate their beliefs," he stated. Presiding Justice Paul Turner concurred.

Associate Justice Margaret M. Grignon dissented, citing the state's "compelling interest" in providing access to housing and employment free of unwarranted discrimination.

"The Donahues . . . are engaged in secular commercial conduct performed for profit. There are no religious motivations for their conduct," wrote Grignon.

She said the state may require compliance with "a valid and neutral law of general applicability," even if it has an incidental effect on free speech or freedom of religion.

All Unmarried People Affected

"This ruling affects not just unmarried couples but every unmarried person who wants to live with someone," said Thomas F. Coleman, an attorney who is executive director of the Family Diversity Project. "The court is saying there is no compelling interest to protect these people, and that is a very frightening decision."

The court centered its analysis on the longstanding three-part "balancing test" in which the importance of the state interest is weighed against the burden imposed on freedom of religion.

The California Attorney General cited last year's U.S. Supreme Court decision in *Employment Division v. Smith*, 494 U.S. 872, which held that ingesting an illegal drug, peyote, for sacramental purposes could not excuse violations of state or federal laws.

In a 5-4 decision, the high court ruled that "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the grounds that the law proscribes conduct that his religion prescribes."

The California Supreme Court has yet to address the application of *Smith*, wrote Boren. Until they do, Boren said he would continue to apply the balancing test of religious freedom versus compelling state interest.

"Although the law recognizes cohabitation as a modern reality, it has not affirmatively promoted it as a matter of government policy," wrote Boren, noting that the California Supreme Court has "eschewed making a value judgment regarding the cohabitation of unmarried couples." *Elden v. Sheldon*, 46 Cal.3d. 279 (1988).

"It is thus difficult to discern any compelling state interest regarding the cohabitation of unmarried couples," Boren concluded.

Deputy Attorney General Kathleen W. Mikkelson said she will meet with the FEHC on Dec. 19 to discuss an appeal.