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Unwed, unwanted couple, religious landlady litigate

RENTAL REFUSAL:

*State Supreme Court
hears controversial
discrimination case.*

LOS ANGELES (AP) — A religious landlady who refused to rent to an unmarried couple is one of "a tiny minority of people who are trying not to be oppressed by the law," her lawyer told the state Supreme Court Wednesday.

But lawyers for the couple and a state civil rights agency argued that people who do business in a field regulated by state law — in this case, a ban on housing discrimination based on marital status — have no right to a religious exemption that would affect the rights of others.

"She is not being a landlady out of any religious conviction. She's doing it for money," said Marian Johnston, lawyer for the state Fair Employment and Housing Commission. Enforcement of the state law would not violate the land-

lady's free exercise of religion even if it drove her out of business, Johnson added.

The case has attracted national attention from religious organizations on both sides of the issue as well as gay-rights advocates, concerned that the court might let landlords exclude homosexuals.

The justices, who expressed divergent views during the one-hour hearing, are due to rule within 90 days.

The case comes from the Butte County community of Chico, where Evelyn Smith, owner of two duplexes, refused in 1987 to rent to Kenneth Phillips and Gail Randall because they were not married. Smith describes herself as a devout Presbyterian who considers unmarried sex sinful and will not rent to cohabiting couples.

"I don't think I should be taken out of the rental business just because I have Christian convictions," Smith said after Wednesday's hearing.

The Fair Employment and Housing Commission ordered her to pay the couple \$454 for the

higher rental costs they incurred elsewhere and \$500 for emotional distress. But a state appeals court in Sacramento overturned the order in 1994, ruling that enforcement of the law against Smith violated her religious freedom.

Attorney General Dan Lungren, whose office had represented the commission, dropped out of the case at that point, saying he agreed with the appellate ruling. But the commission, an independent agency whose members were appointed by Gov. Pete Wilson, hired a private lawyer and was granted review by the state's high court along with Phillips and Randall, who also appealed.

Phillips' lawyer, Thomas C. Coleman, argued Wednesday that the appeals court's broad ruling in Smith's favor "legalizes discrimination in the commercial marketplace by a for-profit property owner."

Justice Stanley Mosk commented that a restaurant owner could rely on Smith's argument and refuse to serve unmarried couples.