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Federal court allows for religious discrimination

The wall dividing church and state as outlined in the Constitution took a beating January 14, when a divided panel of the 9th Circuit Court of Appeals ruled that a landlord may refuse to rent to an unmarried couple if it violates his or her religious sensibilities.

The ruling caused alarm among GLBT legal experts, who warn that, if allowed to stand, it will effectively nullify all existing civil rights ordinances that now provide protection in employment, housing, and public accommodation.

In the case of Kevin Thomas and Joyce Baker v. Anchorage Equal Rights Commission and the Municipality of Anchorage and Paula Haley, Executive Director of the

Alaska State Commission of Human Rights, Kevin Thomas and Joyce Baker argued that they did not want to rent apartments to unmarried couples because it would facilitate fornication, which to them was a sin, and violated their religious beliefs.

Although the case was not given a trial, the trial judge issued an injunction, stating that to abide by Alaska's anti-discrimination law based on marital status would violate the plaintiffs right to religious freedom. The defendants appealed and the case went to the U.S. 9th Circuit Court of Appeals where the trial court decision was affirmed last week.

On the face, the ruling applies to unmarried heterosexual couples. But, the case that originated in Alaska and applies to all states located within the ninth circuit, including Washington, could

be a warning to people of color, the Gay community or people with a contrary disposition to anyone else.

"We disagree with the majority and are concerned about the implications," Clyde Wadsworth, a San Francisco lawyer, who filed a friend of the court brief said. "If this ruling stands, it will gut all civil rights laws."

The appeals court said that forbidding a landlord the freedom to discriminate violates his or her constitutional right to free exercise of religious beliefs. And, it determined that free exercise of religion includes the right to discriminate in the case of a landlord who found the lifestyle of his or her tenants to be potentially immoral.

"If we begin to excuse broad based religious objections from general laws, then we are going to have problems," Wadsworth said. Surprised that the

majority of the three-judge panel reached a conclusion contrary to the decisions in similar cases in the supreme courts of Alaska and California, he points out that there are many conservative judges who will find this decision disturbing.

The Christian Legal Society's Center for Law and Religious Reform applauded the decision and Director Steve McFarland said it was a victory for civil rights. "The real winners are the people of faith who do not want to leave their conscience when they enter the marketplace," McFarland, who entered a friend of the court brief in this case, said. "It is possible to extend this line of reasoning to the homosexual population," he said, "But I do not think single people or Gay people have anything to fear."

"Although there are some good aspects of this decision

recognizing the First Amendment, I am disappointed that it did not take into consideration the privacy of those trying to obtain housing," Mark Wittow, a lawyer at Preston, Gates, and Ellis, who filed a friend of the court brief on the behalf of the American Civil Liberties Union, said. "Religious freedom should never be impacted in the area of commercial housing," he said. "And, there is no way to know the private details of a person's life unless you violate his or her privacy to gain that information."

Cliff Groh, arguing the case for the defense, said that both the Anchorage Equal Rights Commission and the Municipality of Anchorage are pursuing further review of this case and will file a petition next week for review by a larger panel of judges. "If this is granted, it would add another year to the shelf-life of this case," Groh said.

"Some federal judges just do not get it!" Thomas Coleman, a California lawyer and Executive Director of the American Association for Single people, said. "It is one thing to ask for laws you find oppressive because of religious reasons, but when a law causes harm to an identifiable third party, then a line needs to be drawn," he said, representing 80 million unmarried adults in the U.S.

In the decision, Coleman said the judges gave "short shrift" to the part of the constitution referring to separation of church and state. "Now the court is giving us the 'God told me to do it' exemption. Will we now allow business owners to give a religious test?," asked Coleman. "When judges allow this decision to stand, it is the government putting its seal of approval on this. That is establishment of religion, which violates the

Constitution's provision for separation of church and state," he said.

Coleman, a straight man fighting for marital status inclusions to be in anti-discrimination laws, said that the gay community needs to open its eyes.

"The cases hitting the radar screen are straight cases that will effect everyone," he said. "But, Gay people need to see the connection. What happens to one constituent group today will happen to them tomorrow."