

# Housing Discrimination Case Sent to Trial in Massachusetts

Paul and Ronald Desilets, Catholic landlords who were sued by the state of Massachusetts in 1990 when they refused to rent an apartment to an unmarried couple, are faced with continuing court proceedings.

A lower court had ruled in the Desilets' favor against a claim by the state attorney general's office that their action in refusing to rent to an unmarried couple violated a state anti-discrimination law. But on July 14, a closely divided Massachusetts Supreme Judicial Court vacated the lower court's grant of summary judgment for the Desilets and sent the case back to the lower court for trial.

In December 1992, Superior Court Judge George C. Keady Jr. dismissed the case against the Desilets on constitutional grounds, finding that the Desilets' right to act on their religious beliefs outweighed the state's interest in ending discrimination. The state Supreme Court, however, while agreeing that the anti-discrimination law "substantially burdens the free exercise of religion by a landlord who does not believe in leasing premises to unmarried couples," ruled that the Desilets must stand trial. At trial the state will have the burden of proving it has a compelling interest in "eliminating housing discrimination against cohabiting couples that is strong enough to justify the burden placed on the defendants' exercise of their religion," the Court said.

This issue, which pits the constitutional rights of property owners against the power of the state to mandate compliance with state law at the expense of individual conscience, is one which has divided courts across the country. In California,

there has been a second decision at the appellate level allowing landlords to refuse to rent to unmarried couples on religious grounds. In *Smith v. FEHC*, the 3rd District Court of Appeal cited the constitutional guarantee of free exercise of religion in upholding the right of a landlord to refuse to rent an apartment to an unmarried couple. In 1992 the California high court said it would review a similar decision, *Donahue v. Fair Employment and Housing Commission*, after an appellate court upheld landlords' refusal to rent to an unmarried couple because of the landlords' religious conviction that cohabitation is sinful. The state Supreme Court eventually reversed itself and declined to review the *Donahue* decision, so attention now has turned to *Smith* which is likely to be appealed.

Two other state supreme courts have reached opposite results when they addressed this question. The Minnesota Supreme Court ruled in favor of a landlord who refused to rent to an unmarried couple while the Alaska Supreme Court ruled for the prospective tenants in a similar case. The Catholic League joined a coalition of religious organizations in filing a friend of the court brief in support of the Desilets, urging the Massachusetts Supreme Court to uphold the decision of the lower court dismissing the case.

When the decision overturning the lower court ruling was announced, the Catholic League issued a press release denouncing the Court's opinion as "a groundless action by an unabashedly liberal court...that places long-standing constitutional rights at the mercy of aggressive special interests, arbitrary bureaucracies and an activist judiciary."