

In the

ORIGINAL

Supreme Court of the United States

WILLIAM P. CLEMENTS, JR.,

GOVERNOR OF THE STATE OF

TEXAS, ET AL.,

Appellants,

v.

JOHN L. FASHING ET AL.

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NO. 80-1290

Washington, D. C.

Tuesday, January 12, 1982

Pages 1 thru 47

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1 IN THE SUPREME COURT OF THE UNITED STATES
2 - - - - -x
3 WILLIAM P. CLEMENTS, JR., :
4 GOVERNOR OF THE STATE OF :
5 TEXAS, ET AL., :
6 Appellants, :
7 v. : No. 80-1290
8 JOHN L. FASHING ET AL. :
9 - - - - -x
10 Washington, D. C.
11 Tuesday, January 12, 1982
12 The above-entitled matter came on for oral argument
13 before the Supreme Court of the United States at 1:02
14 o'clock p.m.
15
16 APPEARANCES:
17 JAMES P. ALLISON, ESQ., Assistant Attorney General
18 of Texas, Austin, Texas; on behalf of the
19 Appellants.
20 RAYMOND C. CABALLERO, ESQ., El Paso, Texas; on
21 behalf of the Appellees.
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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next
in Clements against Fashing.

Mr. Allison, you may proceed whenever you are ready.

ORAL ARGUMENT OF JAMES P. ALLISON, ESQ.,

ON BEHALF OF THE APPELLANTS

MR. ALLISON: Mr. Chief Justice, and may it please
the Court, this case involves Article XVI, Section 65 of the
Texas Constitution, the resign to run provision, and Article
III, Section 19, concerning eligibility to the state
legislature. The action was brought for declaratory
judgment and injunctive relief alleging violation of the
First, Fifth, and Fourteenth Amendments to the U. S.
Constitution.

The officeholder plaintiffs were a judge of the
county court at law, two justices of the peace, and a
constable. Other plaintiffs included citizens and
registered voters. The defendants were the local and state
officers who were charged with the enforcement of the
challenged provisions.

The district court held that both Article XVI,
Section 65, and Article III, Section 19, contravened the
equal protection clause of the U. S. Constitution, and
therefore the district court granted the plaintiffs' motion
for summary judgment and injunctive relief. The U. S. Court

1 of Appeals for the Fifth Circuit affirmed the district court
2 opinion adopted in the memorandum pending in the district
3 court.

4 A short, very brief historical background on these
5 provisions and the Texas political system would be helpful
6 in analyzing these provisions.

7 The current Texas constitution was adopted in
8 1876. The constitution provides for a very decentralized
9 system of government. Under this constitution, almost all
10 local and state offices are elected, and from 1876 until the
11 1950s each of these, almost all of these were elected for a
12 two-year term.

13 In the 1950s, four-year terms were extended to most
14 of these offices. In 1954, four-year terms were extended to
15 the precinct and county offices included in Article XVI,
16 Section 65. In 1958, after the people of the state had
17 extended four-year terms to these offices, the resign to run
18 provision in Article XVI, Section 65, was adopted.

19 Article III, Section 19 has been included in the
20 Texas constitution since the constitution of the Republic of
21 Texas was drafted in 1836.

22 I would first like to point out an error in the
23 conclusions reached by the district court in its memorandum
24 opinion. The district court found and apparently relied
25 heavily upon a distinction between the application of the

1 resign to run rule to the office of justice of the peace and
2 its application to the office of municipal court judge.

3 The district court stated that the justice of the
4 peace is included under Article XVI, Section 65, and the
5 municipal court judge, who has very similar jurisdiction, is
6 not, and found that to be a distinction of some great
7 importance in finding that the resign to run rule
8 contravened the constitution.

9 What the district court overlooked was Article XI,
10 Section 11 of the Texas constitution, adopted in 1958, at
11 the same time as the resign to run rule in Article XVI,
12 Section 65. Article XI, Section 11, states that any
13 municipality which extends the terms of its officers from
14 two years to four years, that once that is done, that those
15 officers will be under the same resign to run provisions as
16 offices that are under Article XVI, Section 65.

17 So there is no distinction between the application
18 of the resign to run rules, between the office of justice of
19 the peace and any municipal office, whether it be municipal
20 judge --

21 QUESTION: Was that called to the attention of the
22 district judge?

23 MR. ALLISON: No, Your Honor. To the best of my
24 knowledge it was not.

25 QUESTION: Even after the judgment?

1 MR. ALLISON: I don't know, Your Honor. I did not
2 have this case until after the Fifth Circuit had ruled on it.

3 QUESTION: But municipal judges who still have
4 two-year terms are still subject to the resign to run rule?

5 MR. ALLISON: No, sir.

6 QUESTION: I mean, they aren't. They are not
7 subject to it.

8 MR. ALLISON: They are not.

9 QUESTION: Yes, that's right.

10 MR. ALLISON: Because no one with a two-year term
11 is subject to the resign to run rule. Only when they adopt
12 a four-year term.

13 QUESTION: Does that necessarily destroy the
14 holding below?

15 MR. ALLISON: I think it destroys the contrast,
16 because any time that a municipal judge is in the same
17 position as a justice of the peace, that is, holding a
18 four-year term, it is under exactly the same rule.

19 QUESTION: Well, it might depend on whether the
20 difference is relevant.

21 MR. ALLISON: It might.

22 QUESTION: Is there any question but what the state
23 trial court of general jurisdiction or the district court is
24 subject to Article III, Section 19?

25 MR. ALLISON: Article III, Section 19, or Article

1 XVI, Section 65?

2 QUESTION: Article III, Section 19.

3 MR. ALLISON: No, it is subject to Article III,
4 Section 19.

5 In analyzing these provisions, I think it important
6 to note the activities or rights which are not restricted
7 under these two provisions. There is no question that the
8 right to vote is not included and is not restricted under
9 either of these provisions. Neither is the right to support
10 other candidates, the right to speak out on issues, or the
11 right to test the water.

12 QUESTION: May I get back to just a moment to what
13 you tell us was the error of the district court? What can
14 we do about that? Can we correct it?

15 MR. ALLISON: I don't think -- I think you can
16 correct it by reversing the judgment. I pointed out simply
17 that the district court was in error in arriving at that
18 conclusion, and using it --

19 QUESTION: Yes, but you said this was relied on
20 very heavily.

21 MR. ALLISON: It appears to be.

22 QUESTION: To support the finding of
23 unconstitutionality.

24 MR. ALLISON: Yes, sir.

25 QUESTION: But it is a matter of Texas law, I

1 guess, isn't it?

2 MR. ALLISON: Well --

3 QUESTION: Ordinarily, we don't second guess
4 holdings of district judges or courts of appeals --

5 MR. ALLISON: In this case --

6 QUESTION: -- as to what state law is.

7 MR. ALLISON: In this case, it appears to be a
8 conclusion of law as to whether or not there is a rule --

9 QUESTION: Well, I know, but we have to read the
10 section that you said he misconstrued, and we would have to
11 do what? Construe it ourselves?

12 MR. ALLISON: I think you would have to reach the
13 conclusion that there is no difference between the
14 application of resign to run rules between these two offices.

15 QUESTION: What is the highest Texas court that
16 would take care of a question like this? The Supreme
17 Court? Is it the Texas Supreme Court?

18 MR. ALLISON: If it were presented to it, yes, sir.

19 QUESTION: Do you say that is an error of law or an
20 error of fact by the district judge, by the trial judge?

21 MR. ALLISON: I think it is both. I think the
22 court was in error as to the fact of whether or not there
23 was a resign to run rule applicable to the municipal court
24 judges, and then did arrive at an erroneous conclusion of
25 law that Article XVI, Section 65, creates a difference in

1 classification between the two offices.

2 QUESTION: But the real error was in not giving the
3 judge a chance to straighten it out. Right?

4 MR. ALLISON: I do not know. I don't know if the
5 judge would straighten it out had he --

6 QUESTION: He wasn't given the opportunity. You
7 didn't call it to his attention.

8 MR. ALLISON: To my knowledge, it was not.

9 QUESTION: You said you didn't, but I mean your
10 office was responsible for it.

11 MR. ALLISON: The record does not reflect that it
12 was called to his attention at that time.

13 QUESTION: And it could have been straightened out
14 then, couldn't it?

15 MR. ALLISON: Right. It was pointed out to the
16 Fifth Circuit.

17 QUESTION: Did I understand you to say the judge
18 overlooked the recent statute?

19 MR. ALLISON: No, sir, he overlooked Article II,
20 Section 11, of the Texas constitution.

21 QUESTION: That was not newly enacted, of course.

22 MR. ALLISON: No, sir, it was adopted at the same
23 time as Article XVI, Section 65, the resign to run
24 provision. It was on the same ballot.

25 QUESTION: His opinion did not mention that at all?

1 MR. ALLISON: No, sir.

2 QUESTION: So what you are saying is, he simply, so
3 far as the face of his opinion goes, did not consider an
4 article and section of the Texas constitution.

5 MR. ALLISON: Yes, Your Honor.

6 QUESTION: So he didn't construe it, he just
7 apparently didn't cite it at all.

8 MR. ALLISON: Right.

9 QUESTION: Or consider it.

10 MR. ALLISON: That's correct.

11 I would further point out that among the activities
12 not restricted to Article XVI, Section 65, is the right to
13 test the water, that persons who contemplate running for
14 office in Texas have the opportunity to go out and solicit
15 possible support without having to resign an office, and
16 that is in direct opposition to the position taken by the
17 plaintiff appellees in this case.

18 I would further point out that the Texas resign to
19 run rule does not involve any suspect classifications.
20 There is no direct burden on any particular portion of the
21 electorate or upon any particular political viewpoint. The
22 only effects upon the voters would be if they wished to
23 support a particular candidate and that candidate was in
24 mid-term of an office he was holding at the time, and he
25 declined to run because of the resign to run rule.

1 In that limited sense you could say that the
2 Article XVI, Section 65, resign to run provision has some
3 slight effect upon the pool of candidates available to the
4 voters. Otherwise, it has none.

5 Article XVI, Section 65, appears to be a unique
6 resign to run provision. Although a majority of the states
7 now have some resign to run rule, Article XVI, Section 65
8 differs as nearly as I can determine from all of these, in
9 that Article XVI, Section 65, applies only to the first
10 three years of a four-year term. In the last year of your
11 term in Texas, you are free to run for any office, either
12 re-election of the office you then hold or for any other
13 office that you might choose to announce for.

14 I believe this is important in weighing the
15 rationale behind the adoption of the resign to run rule. In
16 1954, when the four-year terms were extended, replacing the
17 two-year terms, the people of Texas staggered the terms to
18 be served. That is, they provided that approximately
19 one-half of the officeholders would come up every two years,
20 thereby shortening the ballot.

21 What this also did was create a temptation and an
22 opportunity for an officeholder in mid-term, in the middle
23 of the four-year term that had been extended to him, to run
24 for another office, to take a free ride while continuing to
25 hold the office that he had been elected to for a four-year

1 term.

2 The state interests served by the resign to run
3 rule have been widely discussed in other cases, and were
4 recognized by the district court in its opinion in this
5 case. The resign to run rule prevents abuse of office, and
6 in this case, by applying it to the first three years of the
7 term, it also prevents neglect of the duties of the office,
8 and that a person may not go out and use his time to run for
9 office while occupying the office he has been elected to.

10 It also prevents abuse of office by a losing
11 candidate who if he were allowed to run in mid-term would
12 return to the office that he had presently held and continue
13 to serve for two years after having run and lost for another
14 race, and certainly it also eliminates even the appearance
15 of impropriety of candidates who are holding an office being
16 allowed to run for higher office or other office in the
17 middle of their term.

18 There is no less restrictive means to achieve these
19 ends. The other possibilities, a leave of absence
20 provision, for example, would certainly not prevent the
21 abuse of office by a losing candidate who would return to
22 the office. The criminal statute, which prohibits abuse of
23 office or abuse of official power, does not in any way
24 affect the neglect of duties that could occur while an
25 officeholder left his office and went out and ran for

1 another office in the middle of his term.

2 QUESTION: Do you see any comparison or analogy
3 between the resign to run provision and the provision of
4 Article I, Section 6, of the United States Constitution,
5 that says no Senator or Representative shall during the time
6 for which he was elected be appointed to any civil office
7 under the authority of the United States which shall have
8 been created or the emoluments thereof have been increased
9 during such time?

10 MR. ALLISON: Yes, I certainly see an analogy
11 between that and Article III, Section 18, of the Texas
12 constitution, which has the same provision, and I have cited
13 it further in my argument. And I certainly see an analogy
14 between that and the provisions of both the federal Hatch
15 Act and the state Hatch Act, which also prohibits candidacy.

16 The plaintiffs in this case, the appellees here,
17 argue that apparently the resign to run rule is defective
18 because it is under-inclusive. They argue that it does not
19 apply to everyone, it only applies to them. And it is true
20 that there are a number of offices excepted from the rule.
21 The process at arriving at a decision through the
22 legislature is always one of compromise, and certainly that
23 was involved in the arriving at this resign to run rule, but
24 to hold the resign to run rule unconstitutional simply
25 because it makes too many exceptions would require that a

1 statute or constitutional provision either go all the way in
2 treating a problem or not attack the problem at all.

3 QUESTION: Do you think the exemption of state
4 legislators from the rule was the result of compromise?

5 MR. ALLISON: Possibly, though I would certainly
6 point out that members of the house of representatives only
7 serve a two-year term anyway, so the resign to run rule
8 purpose of preventing them from neglecting their duties in
9 mid-term while running for another office would have no
10 application to them, because they have to run either for
11 re-election or for other office every two years.

12 The state senate, that may have been the case.

13 QUESTION: Well, do we have to find that this is
14 the result of a compromise, or this is the deliberate choice
15 of the state legislature for reasons which they haven't
16 explained, and perhaps don't need to explain?

17 MR. ALLISON: I think that the provisions can be
18 upheld on the basis of any rational basis for their
19 application, but if you go beyond that --

20 QUESTION: Do you have any system of preserving the
21 legislative history, the evolution of a statute in Texas?

22 MR. ALLISON: Unfortunately, at the time these
23 provisions were adopted, 1954 and 1958, there was no
24 legislative history as such in Texas.

25 QUESTION: These were amendments proposed by the

1 legislature, were they?

2 MR. ALLISON: Amendments proposed by the
3 legislature, adopted by the people.

4 QUESTION: Yes.

5 MR. ALLISON: I would point out that the exceptions
6 found in Article XVI, Section 65, are not classes of
7 persons. They do not involve any suspect categories. They
8 are exceptions of specific positions, and the presumption
9 there is that the legislature based these exemptions upon
10 some circumstances within their knowledge, and that the
11 judiciary will not normally invade that province of the
12 legislature.

13 Article III, Section 19, has been similarly
14 attacked on the same basis, that it creates classifications,
15 and the same arguments apply.

16 I would also point out that the standing of these
17 plaintiffs to attack Article III, Section 19, is
18 particularly objected to by the appellants in that there is
19 no plaintiff who indicated a definite intention to run for
20 the legislature. Article III, Section 19, provides that any
21 person holding a lucrative office in the state shall not be
22 eligible for the legislature during the term for which they
23 are elected. None of the plaintiffs in this case indicated
24 that they definitely intended to come within that provision.

25 One of the plaintiffs said that if it weren't for

1 Article XVI, Section 65, that required him to resign the
2 position he then held, he might run for the legislature or
3 he might run for one or two other offices that he named in
4 his affidavit. We do not believe that that meets the
5 standard case or controversy requirement in order to
6 challenge the constitutionality of Article III, Section 19.

7 QUESTION: But I gather each of these plaintiffs
8 falls within one of the categories to whom Section 19
9 applies? I mean, he is either a judge or one of the other
10 offices, is he?

11 MR. ALLISON: Each of them would.

12 QUESTION: Each of them would.

13 MR. ALLISON: Yes, they were all holders of a
14 lucrative office.

15 QUESTION: But none of them has suggested he wanted
16 to run for the legislature except the one who said maybe he
17 might.

18 MR. ALLISON: Except the one who said he might run
19 for the legislature, or he might run for one or two other
20 offices mentioned.

21 The district court also did not mention Article
22 III, Section 18, which provides that no senator or
23 representative shall during the term for which he was
24 elected be eligible to, one, any civil office or profit
25 under this state which shall have been created or the

1 emoluments of which may have been increased during such
2 term, or two, any office or place the appointment to which
3 may be made in whole or in part by either branch of the
4 legislature.

5 This is the equalizer between the application of
6 Article III, Section 19, which says that if you are holding
7 a lucrative office in another branch you cannot run for the
8 legislature during that term, and Article III, Section 18,
9 states that if you are in the legislature you cannot run
10 during your term for an office that you created or increased
11 the emoluments of or that the legislature may act upon the
12 appointment. That provision prevents abuse by legislators.

13 QUESTION: General Allison, you say this is an
14 equalizer, but a moment ago you said that the
15 classifications here are not classifications of persons, but
16 rather classification of offices. Do I understand that
17 argument to mean that you don't understand there to be a
18 constitutional duty to treat all offices alike, and if so,
19 you don't even need the equalizer if that argument is
20 right? Is that correct?

21 MR. ALLISON: That's correct. I am working on two
22 levels. If you adopt the rational basis argument, then any
23 rational basis that can be found to sustain these provisions
24 is sufficient to uphold them, but if you go further, and if
25 you adopt either the means to the end test or some type of

1 balancing test, then these other provisions come into play.

2 QUESTION: If I understood your argument about the
3 difference between offices, not persons, you don't even need
4 a rational basis, because the persons just happen to occupy
5 different offices, and there is no constitutional
6 requirement that different state offices have the same
7 emoluments. There is no constitutional requirement that a
8 county judge be paid the same as a circuit judge, for
9 example. Is that what you are arguing?

10 MR. ALLISON: Not exactly.

11 QUESTION: What is the constitutional requirement
12 that different offices have the same emoluments, burdens or
13 benefits?

14 MR. ALLISON: I don't think there is any.

15 QUESTION: Well, then you don't even need a
16 rational basis.

17 MR. ALLISON: Well, I think you need a rational
18 basis when you differentiate or distinguish between the
19 qualifications to be a candidate for an office.

20 QUESTION: Why? Why couldn't you say, you need a
21 college education to be a circuit judge, and you need a high
22 school education to be a county judge? What is wrong with
23 that?

24 MR. ALLISON: You can.

25 QUESTION: Even if it is not rational. Even if the

1 one has greater responsibility than the other. What is the
2 constitutional objection?

3 MR. ALLISON: Well, that is a rational basis.

4 QUESTION: No, I am saying, even if the more
5 difficult job you merely required a high school education
6 for, I don't know why the Constitution would prevent the
7 Texas legislature from doing that.

8 MR. ALLISON: I don't think it would.

9 QUESTION: Well, I took it that you were attempting
10 to respond to the rationale of the Fifth Circuit on this.
11 Was that the point you were trying to make?

12 MR. ALLISON: Yes, it was.

13 There is no question that these provisions of the
14 Texas constitution create some restrictions on candidate
15 access to the ballot, but this Court in Bullock versus
16 Carter set the standard in stating that in approaching
17 candidate restrictions, it is essential to examine in a
18 realistic light the extent and nature of their impact on the
19 voters.

20 As I have stated, these provisions serve legitimate
21 state interests. That has not been contested either at the
22 district court or the Fifth Circuit level. They serve them
23 in the least restrictive means possible, and the
24 classifications that are created are reasonably related to
25 the interests to be achieved, so regardless of the standard

1 adopted, be it rational basis, means to an end, the
2 ends-means test, or even strict scrutiny, these provisions
3 meet the standards.

4 This Court also in U. S. Civil Service Commission
5 versus National Association of Letter Carriers, quoted
6 Thomas Jefferson, stating as follows: "The right of any
7 officer to give his vote at elections as a qualified citizen
8 is not meant to be restrained, nor, however given, shall it
9 have any effect to his prejudice, but it is expected that he
10 will not attempt to influence the votes of others nor take
11 any part in the business of electioneering, that being
12 deemed inconsistent with the spirit of the Constitution and
13 his duties to it."

14 The people of the state of Texas have elected to
15 require their officers to adhere to this principle. Such is
16 their right under the Constitution.

17 QUESTION: Mr. Allison, if one subject to the
18 resign to run rule -- those are four-year term people?

19 MR. ALLISON: Yes, sir.

20 QUESTION: Now, if you want to run for an office
21 for the term beginning when yours expires, you are going to
22 have to start running while you are in office.

23 MR. ALLISON: In the last year. Yes, sir.

24 QUESTION: And so you have to resign under that?

25 MR. ALLISON: No, sir.

1 QUESTION: You don't?

2 MR. ALLISON: In the last year of your four-year
3 term, you can announce --

4 QUESTION: You can run for a term that starts at
5 the expiration of your own?

6 MR. ALLISON: Yes, sir.

7 QUESTION: Whether or not it is for re-election of
8 your present office or a new one?

9 MR. ALLISON: Yes, sir. Without restriction.

10 QUESTION: Mr. Allison, in your brief you advanced
11 a number of arguments justifying the various classifications
12 in Section 65, but in the answers to your interrogatories at
13 the trial level, or the interrogatories that were
14 propounded, it sounded like at best Section 65 was just the
15 product of maybe some sloppy legislative drafting, and that
16 these arguments are rather an afterthought. Is that the
17 case?

18 MR. ALLISON: It is difficult if not impossible to
19 say. There is no legislative history in Texas to support
20 what the rationale may have been for the provisions. The
21 defendants in this case are the executive officers charged
22 with enforcing them, and they had no role in the adoption of
23 the provisions. To ask them what was the rationale or the
24 basis in the minds of the legislature at the time they
25 adopted the provision, it is almost impossible to answer.

1 I advanced several arguments that could have been,
2 and that certainly can be sustained as a rational basis for
3 these provisions.

4 CHIEF JUSTICE BURGER: Mr. Caballero?

5 ORAL ARGUMENT OF RAYMOND C. CABALLERO, ESQ.,

6 ON BEHALF OF THE APPELLEES

7 MR. CABALLERO: Yes, Your Honor.

8 Mr. Chief Justice, and may it please the Court,
9 Texas in Article XVI, Section 40, has a prohibition against
10 dual officeholding. That means that you cannot hold more
11 than one lucrative office at the same time. Article XVI,
12 Section 65, is not a dual officeholding prohibition.
13 Article III, Section 19, started out as a dual officeholding
14 provision, and in 1836, they added that clause, "during the
15 term for which he is elected or appointed." That is what
16 causes the problem in III, 19, that I will be discussing
17 later on.

18 In terms of the legislative history here, Section
19 65 of Article XVI was passed in 1954, after the resolution
20 of the legislature to place it on the ballot for the
21 revision of the constitution at the general election, and
22 its purpose, and if you look at the headnote, says it is a
23 transitional article to provide for the staggering of
24 elections between the various officeholders who had been
25 granted four-year terms.

1 In 1958, the paragraph in question here in Section
2 65 was also made part of the constitution, and at exactly
3 the same time, verbatim, the same clause came into Article
4 XI, Section 11, that I will be discussing here in just a
5 second.

6 There is no reason that I know, nor did the state
7 advance any in the courts below, other than that it -- well,
8 the state in the court below simply said that it was going
9 to prevent abuse of office, and therefore that is why the
10 article was placed in there.

11 Now, the question was raised here this morning that
12 the district court made an error of fact or of law in
13 neglecting to mention Article XI, Section 11. That was the
14 provision enacted in 1958 which allowed cities in the state
15 of Texas to give four-year terms to mayors and members of
16 the city council. They had to vote it in. They didn't give
17 it automatically. Very few cities took advantage of that
18 provision to give members of its city council four-year
19 terms. Perhaps counsel here in rebuttal can mention one. I
20 don't know of any, but there may be some.

21 Certainly El Paso, Texas, where this case arose,
22 did not take advantage of it, and where Judge Hudspeth sat
23 at the time members of the city council and municipal courts
24 only had terms of two years.

25 QUESTION: Well, isn't the point that if the

1 municipal judges had only two-year terms, and the justices
2 of the peace four years, that it is --

3 MR. CABALLERO: I apologize. The municipal court
4 judges had four-year terms, but under our provision, we do
5 not have the application in El Paso nor in most areas of the
6 state of Texas of the four-year Article XI, Section 11,
7 statute. The members of the city council run for two years,
8 but the municipal court judges have four-year terms, but the
9 statute does not apply to offices in -- I am sorry, they
10 have two-year terms. That statute does not apply in El Paso.

11 My confusion is -- is this. The problem here is
12 that municipal court judges run -- municipal elections in
13 Texas are in odd years. State and county elections are in
14 even years. That means that a municipal court judge, when
15 he comes around, he wants to run in a state election, in an
16 even year, does not have to resign the office, even though
17 he is only holding a two-year term.

18 QUESTION: Yes, but he has less than a year to go.

19 MR. CABALLERO: He has less than a year to go.
20 There is no prohibition at all to a municipal court judge
21 running.

22 Now, the times here as far as the Texas election
23 process is concerned are important. The filing date in
24 Texas since 1959 has been the first Monday in February of an
25 even year. The way you are elected is, your term runs until

1 January 31st of an even year. That means, for example, if
2 my term as a judge or another officeholder, I would be in
3 office now. If I wanted to run for another office, I would
4 have to file by February 1. However, if I went out and
5 solicited any kind of support for that other office prior to
6 January 1 of this year, the statute does not say private
7 announcement or public announcement, it simply says by the
8 mere solicitation of a campaign contribution, or the
9 announcement of any kind, I am going to be a candidate for
10 some other office. That automatically causes you to vacate
11 your office.

12 An officerholder -- and therefore you lose that
13 office immediately, and you lose your livelihood for a
14 period of a year, even if you win the office that you are
15 now seeking, and that is even if you are running in the last
16 year of your term.

17 It is even worse if you are running mid-term, that
18 is, if you have a four-year term and you are running two
19 years into your term, because then you lose three years of
20 your term.

21 QUESTION: Counsel, are you arguing that the burden
22 is so severe that it is unconstitutional even if it applied
23 to everybody?

24 MR. CABALLERO: Yes, that is one thing that I am
25 arguing, that this statute -- and I argued in the court

1 below, this statute has problems. Both statutes have
2 problems. Even if you -- well, Section 65 has problems even
3 if you applied it to everyone.

4 QUESTION: Well, presumably when they ran for the
5 original office, they took it subject to the burdens that
6 the statute imposed.

7 MR. CABALLERO: That's correct.

8 QUESTION: So long as there is no equal protection
9 problem. What else would there be?

10 MR. CABALLERO: Because it imposes a burden on
11 voters and on candidates that is unnecessary. What goal is
12 it, Your Honor, that you are trying to further by placing a
13 burden? When you place a burden on election rights, our
14 contention is there should be some reason for it. The state
15 has been able to advance, according to the district court,
16 no valid reason for placing such burdens on candidates.

17 QUESTION: Well, what happens with states that say
18 you can only serve one term?

19 MR. CABALLERO: There are states that provide that
20 for certain offices you can only hold office for one term.

21 QUESTION: There certainly are. That is right.
22 What is wrong with that?

23 MR. CABALLERO: I don't know of any prohibition
24 against providing for one term.

25 QUESTION: Well, isn't that a little more stringent

1 than this one?

2 MR. CABALLERO: Yes, Your Honor, it is more
3 stringent.

4 QUESTION: Under this one, you can serve 26 terms,
5 provided you abide by the law.

6 MR. CABALLERO: The problem with this provision
7 is --

8 QUESTION: And the other one, you can't serve but
9 one anyway.

10 MR. CABALLERO: That's correct.

11 QUESTION: When you talk about restrictions, I
12 think you had better get another word, don't you?

13 MR. CABALLERO: Well, the problem is, when you are
14 running for that one term, Your Honor, you run for the one
15 term knowing that you are going to keep the one term. The
16 problem --

17 QUESTION: You run knowing that you can't campaign
18 for the other one.

19 MR. CABALLERO: You run knowing probably that you
20 cannot campaign for any other office.

21 QUESTION: That's right. Why is one so bad and the
22 other one is not?

23 MR. CABALLERO: I think that in this case, Your
24 Honor, the policy generally should be that -- I think you
25 mentioned in one of your opinions -- there are two -- there

1 are competing policies here. It used to be that, one, you
2 wanted to shorten the ballot, and the other policy was that
3 you wanted to provide people access to the ballot and ways
4 to express their viewpoints.

5 In this case, the problem is, you would like to
6 keep people in office and have them tend to their office and
7 not be running for other offices. That is one policy. The
8 competing policy is, there are various judges on this very
9 Court who have come from other courts. The policy has been
10 that you want people to move up the political ladder, to
11 move up to higher office. This defeats that policy.

12 QUESTION: Where does that policy derive?

13 MR. CABALLERO: It is not written anywhere, Your
14 Honor. Just the policy generally --

15 QUESTION: Plus, I don't think any of us ran for
16 this office.

17 MR. CABALLERO: No, you --

18 QUESTION: I hope we didn't.

19 MR. CABALLERO: No, Your Honor, that is true, but
20 in Texas, judges are political, not appointed. You have to
21 run for office in Texas. That is a decision made by the
22 legislature, obviously making judges political persons, as
23 opposed to some states --

24 QUESTION: Wouldn't it be unconstitutional for
25 Congress to say that no federal judge may run for the United

1 States Senate without first resigning?

2 MR. CABALLERO: Without first resigning?

3 QUESTION: Without first resigning his judicial
4 office.

5 MR. CABALLERO: My offhand impression would be that
6 it would not, Your Honor. Now, there is --

7 QUESTION: How is this different?

8 MR. CABALLERO: It used to be the law in the state
9 of Texas, and in the Moreo case there was a prohibition of
10 judicial officers running for non-judicial office. That is
11 not the case here. The prohibition in Texas was removed
12 some time ago. I can see a state validly, as in the Moreo
13 case, with which we have no quarrel, saying a judicial
14 officer may not run for non-judicial office without
15 resigning the judicial office first. That was upheld in
16 Moreo.

17 In this case, we would not have a First Amendment
18 claim, we would have strictly an equal protection claim,
19 were that the case.

20 QUESTION: May I ask you a question about your
21 equal protection claim? What is the most glaring example of
22 unfair treatment? There are so many offices involved, it is
23 hard to -- and there are different dates of running and
24 all. Just pick the two that you think are the worst.

25 MR. CABALLERO: All right. I will give you a

1 couple. There is actually a case, and you can take the cite
2 here, it is 377 Southwest 2nd, and it is also reported in
3 380 Southwest 2nd. I think it was cited in the earlier
4 briefs, not before this Court, by the state. That is the
5 case of Willis versus Potts, Willis versus Fort Worth.

6 It involves really both provisions that are akin to
7 the ones that we have in question here in this case.

8 QUESTION: Well, I would be much happier if you
9 told me about one in this particular record, the two offices
10 in this record that you think there is the most arbitrary
11 discrimination between the two.

12 MR. CABALLERO: All right, I think, for example,
13 county judge.

14 QUESTION: County judge?

15 MR. CABALLERO: A county court of law judge who
16 desires to run for the court of civil appeals, which is the
17 next court of appeals up above that court. Contrasted with
18 a district court judge, also a trial judge, sitting alone,
19 who also reports to the same appellate court. The district
20 judge is not governed by Section 65. He may run midway
21 through a four-year term, keep office, even if he lost.

22 QUESTION: He is governed by Section 19, isn't he?

23 MR. CABALLERO: Yes, he may not run for the
24 legislature, Your Honor. That is because it is a lucrative
25 office. That is correct. He is ineligible for that

1 section. The county court of law judge, let's say that both
2 seek the same office.

3 QUESTION: Would it not be rational for a
4 legislature to think that they should protect the public
5 from confusing these various courts and judges, so that the
6 judge on this county court you speak of would be precluded
7 from having his picture and his posters out around the area,
8 saying, keep Judge Moreo on the bench. The public might
9 think they should keep him on when in fact he is running for
10 a different office. Isn't that a factor a legislature is
11 entitled to take into account?

12 MR. CABALLERO: That is sort of the -- that is a
13 factor, but that is the judicial officer running for a
14 non-judicial position, I think is what you are raising,
15 which is not really the question.

16 QUESTION: No, I am talking about the county judge
17 running for the next highest court.

18 MR. CABALLERO: You can say that, but why would you
19 then turn around and say that a district judge can do that
20 which a county court of law judge does not? There has to be
21 some reason for the distinction. The state was unable to
22 come up with any reasons at all, even in their brief. They
23 said, we have already discussed that distinction. They
24 didn't. They never did discuss the distinction.

25 QUESTION: Do the courts have the same kind of

1 jurisdiction?

2 MR. CABALLERO: Akin. The county courts at law,
3 being creatures of the legislature, are given all kinds of
4 different jurisdictions. Some of them have family,
5 divorce --

6 QUESTION: In other words, they have broader
7 jurisdiction than the district judges?

8 MR. CABALLERO: For example, in probate, they have
9 plenary jurisdiction.

10 QUESTION: Yes or no? I don't need the examples.
11 Does one have a different jurisdiction?

12 MR. CABALLERO: Yes. The district court --

13 QUESTION: And they get different salaries?

14 MR. CABALLERO: Yes, they do. The district
15 court --

16 QUESTION: What is their claim -- what
17 constitutional provision do they rely on to say they are
18 entitled to be treated equally? They are not treated
19 equally. They are different offices, they are paid
20 different salaries, with different jurisdictions.

21 MR. CABALLERO: They are not entitled to be treated
22 equally, but to the extent that they are not treated equally
23 there has to be some reason for it. The state --

24 QUESTION: Could not the legislature, which now
25 pays one more than the other, change its mind and decide to

1 pay that one less than the other?

2 MR. CABALLERO: Conceivably they could.

3 QUESTION: Does it have to have a reason other than
4 they just want to save some money?

5 MR. CABALLERO: Under your past cases of the equal
6 protection clause, yes, they do have to have a reason when
7 they treat people --

8 QUESTION: What past cases deal with any
9 requirement to treat different offices equally? The men or
10 women occupy different offices. Why must the offices be
11 alike?

12 MR. CABALLERO: The offices do not have to be
13 alike, but to the extent that they have made a distinction,
14 there has to be some, even at the lowest level of scrutiny.

15 QUESTION: Do we have to review the distinction in
16 salary or distinction in jurisdiction? Why is there a
17 federal reason why those different offices have to have
18 similar treatment? I don't understand the basic premise on
19 which the whole case rests.

20 Why can't Texas create the XYZ court, give it
21 precisely the same jurisdiction as some other court, but just
22 pay the judges a different salary if it wants to?

23 MR. CABALLERO: It could.

24 QUESTION: And then why can't it say, well, those
25 judges have to resign to run, but other judges don't?

1 MR. CABALLERO: Because there, when you --

2 QUESTION: They occupy different offices.

3 MR. CABALLERO: When you are paying one more than
4 the other, perhaps it is subject to attack. Perhaps there
5 is no valid reason why you pay one judge more than the
6 other. I am just assuming that one perhaps has more
7 jurisdiction than the other, but when you are allowing two
8 men with basically the same qualifications to run for the
9 same appellate office, they are both qualified to run for
10 the court of appeals, for example, on the one hand, you say,
11 judge, you are a judge of the county court of law, therefore
12 you lose your office; you are a judge of the district court,
13 you get to keep your office.

14 This Court has said even at the lowest level of
15 scrutiny there has to be some reason for the distinction.
16 The state cannot come up with any.

17 QUESTION: Well, when you talk about distinctions,
18 supposing that a county court judge is paid \$15,000 and a
19 district court judge is paid \$20,000, and then the
20 legislature decides to raise the salary of the district
21 judge to \$25,000 but not raise the salary of the county
22 court judge at all, so that whereas the county court judge
23 used to make 75 percent of what the district judge made, now
24 he makes 60 percent.

25 Do you think that is subject to attack under the

1 federal Constitution?

2 MR. CABALLERO: It may be subject to attack if
3 there was no reason, if the state -- I can see the state
4 easily coming up with a reason for that distinction.

5 QUESTION: Supposing this was something done back
6 in '54 or '56, and the state is in the position that they
7 can't explain at all why the legislature decided to do this?

8 Do you think that then would be subject to attack
9 under the Constitution?

10 MR. CABALLERO: For example, if this Court were to
11 examine it and find no reasonable -- in other words, if you
12 are placing burdens on some and not on others, and you are
13 unable to come up with any reason, and you have burdened
14 some rights, then I think the state statute is subject to
15 attack.

16 QUESTION: Well, is my example a burden?

17 MR. CABALLERO: I suppose it is a burden of sorts.
18 I suppose someone could conceivably come up with an
19 argument. Here you are talking about something that goes
20 way beyond a mere distinction of salaries. You are talking
21 about a person who is subject to losing office, and another
22 person who is not subject to losing office, a tremendous
23 distinction, not one of mere degree, but almost of kind.

24 QUESTION: Would you urge that we apply a rational
25 basis standard then?

1 MR. CABALLERO: Your Honor, I am urging that you
2 apply a balancing test, kind of like you did in Letter
3 Carriers, and what the court of appeals below suggested in
4 Moreo, and that is, the closer -- that is a good example.

5 QUESTION: How would you distinguish the Letter
6 Carriers case, where the Court upheld the Hatch Act?

7 MR. CABALLERO: Well, there, the interests of the
8 government were tremendous. There is a policy of long
9 standing that in civil service in the United States, you
10 want to keep them as free as possible from political
11 pressures.

12 QUESTION: Well, here is a policy of long standing
13 in Section 19 of the state constitution.

14 MR. CABALLERO: Your Honor, that is what I was
15 saying. I don't know of any policy other than it is a
16 legislative enactment. I am talking about a reason for it.
17 For example, in Letter Carriers, there is a reason. We
18 don't want civil servants to become involved in the
19 political process to the extent where they themselves become
20 partisans. The reason behind Section 19, the state of Texas
21 has been able to come up with one. They said that it
22 prevents conflicts of interest. And then you pose the
23 hypothetical, what happens if I resign my office? Therefore
24 there would be no possible conflict of interest. I am still
25 rendered ineligible.

1 In that situation, they have come up with no
2 distinction whatsoever, no reason for it. The policy
3 decision that I was speaking of earlier is not one that is
4 contained so much in the legislation or is embodied in the
5 legislation, but simply something the government has come up
6 with, and that is the reason that you have civil service on
7 the federal side.

8 QUESTION: Counsel, supposing the Postmaster
9 General put into effect a policy against political activity
10 such as in Letter Carriers, and the Secretary of HEW did
11 not. Could the postal workers claim a denial of equal
12 protection?

13 MR. CABALLERO: Yes, they could, I would think, if
14 they --

15 QUESTION: So if any one department of government
16 imposes some such restriction like this, it is invalid
17 unless it is put into effect throughout the government?

18 MR. CABALLERO: This Court has said in the past
19 that -- the argument was raised by defendants in those
20 cases, you know, you can't expect a legislature to enact
21 everything all at once so everything is uniform, and this
22 Court has held that if someone brings a complaint that they
23 are being treated unequally, that you cannot guess and say,
24 well, maybe they -- this statute that we have here in this
25 case has been around for 23 years. I don't know how long we

1 have to wait for the legislature to come up with the
2 provisions to make it equal treatment. 1836, I would think,
3 is long enough on Section 19.

4 QUESTION: Well, you are starting with an
5 assumption that there is a constitutional requirement that
6 there be equal treatment.

7 MR. CABALLERO: There is, Your Honor. There is,
8 equal treatment to the extent that there is not, that there
9 should be some reason for it. That is the test of this
10 Court.

11 QUESTION: Well, I think you are a little too broad
12 on different agencies. I know some agencies in this
13 government you can write and print whatever you want, and I
14 know others you can't.

15 MR. CABALLERO: That is true, and in application --

16 QUESTION: And I think this Court has passed on
17 that point.

18 MR. CABALLERO: In the Willis case that I was going
19 to mention earlier, it is two cases, and I think they really
20 illustrate the problems with both cases. Willis was a
21 congressman from Fort Worth. Willis decided that he was
22 going to run for the state senate. Willis announced for
23 election. Filed his application, or tried to file his
24 application with the Democratic chairman there in Tarrant
25 County, and the chairman said no, Section 19 makes you

1 ineligible to run for the Texas senate because your term,
2 even if you resign today, would be extending into the
3 legislative term sought.

4 QUESTION: Is that a constitutional decision?

5 MR. CABALLERO: It was mentioned, but it was not
6 based on the constitution. They simply went and upheld --

7 QUESTION: It was meant to but it wasn't based on?

8 MR. CABALLERO: The court did not say -- the court
9 found nothing wrong with the provisions under the Texas or
10 the U. S. Constitution, Your Honor.

11 QUESTION: Well, would you mind if I am not bound
12 by that decision?

13 MR. CABALLERO: I don't think you are bound by the
14 Willis decision.

15 QUESTION: Thank you.

16 MR. CABALLERO: But I am mentioning it simply
17 because of the facts that it raises. Now, in Willis, after
18 this person was held to be ineligible to run for the Texas
19 senate, as soon as he announced for the Texas senate, though
20 he by law could not become a candidate, it was held by the
21 Fort Worth City Council that he had resigned his office
22 because they had a -- it was not 65, but it was something
23 akin to 65 that says as soon as you announce for another
24 office, you lose your spot on the city council.

25 So Willis then filed a second lawsuit, and said,

1 since I can't be a candidate for the Texas senate, I was
2 never a candidate, I should not be losing my office. And
3 they held there, they applied what in effect was Section 65
4 in the Fort Worth City Charter, and held that he had lost
5 his office also.

6 And that's the kind of situation you get here. You
7 are not eligible to be a candidate. For example, Judge Baca
8 in this case, who wants to run for the legislature, cannot
9 file for the legislature. First of all, he is ineligible.
10 Secondly, as soon as he files or announces for office, he
11 loses the one year remaining in his term.

12 QUESTION: You are suggesting that the legislature
13 and the people of Texas haven't a right to say that if we
14 have a person in this particualr office, we want him to
15 spend all his time, devote all his energies to that office,
16 and not dissipate his time and energies by running for
17 another office while he is holding the first one to which he
18 was elected.

19 MR. CABALLERO: The people of the state of Texas,
20 Your Honor, I suppose could say that, but what has happened
21 is that they have said some officeholders we are going to
22 apply the rule to, and some we are not. For example, if a
23 district attorney decides to run for governor, loses his
24 office; the attorney general decides to run for governor, he
25 does not lose his office. In the state's brief in this

1 case, they say that it shouldn't be applied to state
2 officeholders because they are unlikely to run for higher
3 office, when in fact this present attorney general has
4 already filed -- he has announced for office. The previous
5 attorney general, John Hill, filed and ran for office and
6 lost. Neither one of them lost their terms. Texas has 256
7 counties. To allow you only 37 days to test the waters, to
8 see whether or not you want to run for office, is so
9 restrictive a burden as to be unrealistic.

10 What has happened also is that these provisions
11 were enacted in 1958. At that time, the filing deadline in
12 Texas was in June, which gave you about five months to test
13 the waters. Immediately after these provisions were
14 enacted, and I don't know how much thought was given to it.
15 There is no legislative history. In 1959, the legislature
16 moved up the filing deadline to the first Monday in February
17 of each year, so you lost about four months of this testing
18 of the waters period.

19 Before, it may have been reasonable, with a June
20 deadline. Now, with 37 days, saying you cannot run for
21 statewide office or for any other office; if you merely seek
22 office you have lost your present office, that has such a
23 chilling effect that it has prevented a lot of people,
24 including my clients in this case, they claim in affidavits
25 and in pleadings that they will not run for those offices so

1 long as we are looking at these legislative provisions.

2 If there are no further questions.

3 QUESTION: Of course, there is another option that
4 is always open, I guess. They could resign their offices to
5 practice law privately or whatever their skills might be, go
6 into the private sector and then run. They are not totally
7 disabled.

8 MR. CABALLERO: They are not totally disabled, but
9 if you take judges, that is an unrealistic alternative.

10 QUESTION: I know a lot of judges who have resigned.

11 MR. CABALLERO: There are some who have resigned,
12 but what I am saying is that there are many others -- trying
13 to crank up a law practice when you think you might win and
14 have to go back into judicial office --

15 QUESTION: That is really ironic, because my
16 experience has been that most judges think lawyers are
17 better paid than they are. They don't think it is a great
18 sacrifice to go out and have a chance to practice privately.

19 QUESTION: Well, Mr. Caballero, as I understand it,
20 under Section 19, the judge could not resign and run for the
21 legislature.

22 MR. CABALLERO: Under Section 19, it makes no
23 difference if you resign. You are ineligible regardless.

24 QUESTION: Right.

25 MR. CABALLERO: So long as your term extends into

1 the next legislative season.

2 QUESTION: Well, on that score, the people of
3 Texas, having adopted that, have expressed the view that if
4 we elect you to an office, we expect you to stay there until
5 the end of your term, and this is one inducement, if not a
6 pressure, to keep you there, that you can't run for any
7 other office.

8 MR. CABALLERO: I can see them saying that, and I
9 think it is a fine policy.

10 QUESTION: They have said that in the constitution,
11 haven't they?

12 MR. CABALLERO: If it is such a compelling policy,
13 why haven't they said that for the other officeholders? It
14 leads you to believe maybe it is not such a valid reason.

15 QUESTION: Well, I suppose a lot of people in Texas
16 would say that is none of anybody's business except the
17 people in Texas.

18 MR. CABALLERO: That is true. That has been
19 advanced. But under the decisions of this Court, when you
20 do make a distinction between officeholders, they have to
21 give you at least, even under the minimum level of scrutiny,
22 some reason for it, some valid reason for it, and the state
23 of Texas cannot.

24 In the Fourteenth Amendment area, if you look at
25 the interrogatories or if you look at the brief, they have

1 not mentioned any reason for the legislative distinction in
2 Section 65 other than the one you mentioned, Your Honor, and
3 that was legislative oversight. That I contend is not a
4 valid reason. They simply said it was not before the people
5 in 1958. They are agreeing that they never even considered
6 it, Your Honor, not that they had some reasons.

7 Thank you.

8 CHIEF JUSTICE BURGER: Do you have anything
9 further, Mr. Allison?

10 ORAL ARGUMENT OF JAMES P. ALLISON, ESQ.,

11 ON BEHALF OF THE APPELLANTS - REBUTTAL

12 MR. ALLISON: Yes, Your Honor.

13 In the first place, appellees continue to state
14 that the Article XVI, Section 65, provision prohibits
15 testing of the water. And I continue to state that it does
16 not. They have cited a provision of the election code that
17 defines candidacy, but if you read that entire section, it
18 concerns the financial requirements of candidates and states
19 at the beginning of the section that the definitions therein
20 apply only to that chapter.

21 If you look at the state cases construing Article
22 XVI, Section 65, you will not find a single case in which a
23 person has been required to resign from an office in which
24 they have made anything other than a clear and definite
25 pronouncement of candidacy for another office. There is no

1 situation in which a person has been required to resign for
2 merely testing the waters. That is not the situation in
3 Texas. In fact, the election code was recently amended to
4 provide that if you try to file for another office before
5 January 1, and might thereby inadvertently violate Article
6 XVI, Section 65, that your filing will be declined, and it
7 will be refused, and that you can only file after January 1,
8 between January 1 and the first Saturday in February,
9 thereby preventing any inadvertent violation of Article XVI,
10 Section 65.

11 Finally, also on the question of the burden, this
12 case was decided on summary judgment, and the burden, if you
13 use the rational basis test, was upon the plaintiffs to show
14 that there was no rational basis for these provisions, and
15 we have set forth in our brief several. Number One, Article
16 XVI, Section 65, applies to your basic entry level stepping
17 stone political positions, the precinct and county level
18 positions, thereby providing a possible basis would be that
19 the people of the state of Texas thought that it is more
20 likely that someone entering at that level would try to run
21 in mid-term, trying to step up while trying to hold onto the
22 office that he had. They are entitled to make that
23 distinction.

24 Second, on statewide officials, such as the
25 attorney general running for governor, they do not serve

1 staggered terms. They are all up at the same time. Their
2 terms expire at the same time, so they would only be running
3 for another state office in the last year of their term, as
4 provided in Article XVI, Section 65, anyway.

5 We believe that the plaintiffs have not met their
6 burden in this situation and that these provisions do not
7 contravene the Constitution of the United States.

8 QUESTION: Article III, Section 19, would not
9 prevent you from running in the last year of your office for
10 the legislature if your legislative term would begin at the
11 expiration of your own term?

12 MR. ALLISON: It would.

13 QUESTION: It would what?

14 MR. ALLISON: It would not prevent you from running
15 in the last year. No, sir.

16 QUESTION: Yes. Yes.

17 MR. ALLISON: You could run in the last year for
18 the legislature.

19 QUESTION: Well, you could begin running whenever
20 you wanted to, as far as Article III, Section 19, is
21 concerned.

22 MR. ALLISON: That is true.

23 QUESTION: As long as the term for which you are
24 running begins at the expiration of your own.

25 MR. ALLISON: That's true. And the terms all

1 expire at the last --

2 QUESTION: But that is not so under 65.

3 MR. ALLISON: No, sir.

4 CHIEF JUSTICE BURGER: Thank you, gentlemen. The
5 case is submitted.

6 (Whereupon, at 1:55 o'clock p.m., the case in the
7 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of: William P. Clements, Jr., Governor of the State of Texas, Et Al., Appellants, v. John L. Fashing Et Al. No. 80-1290

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY Suzanne Young

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