

ORIGINAL

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PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

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WASHINGTON, D.C. 20543

DKT/CASE NO. 84-468

TITLE CITY OF CLEBURNE, TEXAS, ET AL., Petitioners V.  
CLEBURNE LIVING CENTER, ET AL.

PLACE Washington, D. C.

DATE March 18, 1985

PAGES 1 thru 50

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IN THE SUPREME COURT OF THE UNITED STATES

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CITY OF CLEBURNE, TEXAS, :

ET AL., :

Petitioners, :

V. : No. 84-468

CLEBURNE LIVING CENTER, :

ET AL. :

-----x

Washington, D.C.

Monday, March 18, 1985

The above-entitled matter came on for oral argument before the Supreme Court at 10:56 o'clock a.m.

APPEARANCES:

EARL LUNA, ESQ., Dallas, Texas; on behalf of the petitioners.

RENEA HICKS, ESQ., Austin, Texas; on behalf of the respondents.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in City of Cleburne, Texas, against Cleburne Living Center.

Mr. Luna, I think you may proceed.

ORAL ARGUMENT OF EARL LUNA, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. LUNA: Mr. Chief Justice, and may it please the Court, this case involves the constitutionality of a zoning ordinance of the City of Cleburne, Texas, on its face and as applied, and it involves a property owner who wishes to contract with the State of Texas to operate an intermediate care facility for 13 mildly and moderately mentally retarded adults who do not --

QUESTION: Mr. Luna --

MR. LUNA: -- possess the skills of independent --

QUESTION: How large is the city?

MR. LUNA: 20,000. Federal legislation authorizes the funding and therefore the different treatment of this group of mentally retarded men and women from other persons. The state regulations require that the facility must be located in an incorporated city which is subject to special use permits, local

1 zoning, and/or occupancy requirements, and must be  
2 non-contiguous with an already existing facility.

3 The City of Cleburne met these requirements.  
4 To operate such a facility then in Cleburne in  
5 accordance with the state regulations --

6 QUESTION: May I inquire? I don't quite  
7 understand what you just referred to. Is it your  
8 position that the State of Texas requires the city to  
9 use special use permits for homes for retarded people?

10 MR. LUNA: Absolutely. The state regulation  
11 will not permit the location of a facility in a city  
12 unless that city has the special use permit requirements  
13 or local zoning laws.

14 QUESTION: I had understood the position of  
15 the State of Texas in its brief to be that the city was  
16 not authorized as a matter of state law to base its  
17 zoning decisions on the physical adequacy of the site or  
18 of a given structure as a group home.

19 Do you agree with the position taken by the  
20 State of Texas here?

21 MR. LUNA: Absolutely not, and the state  
22 regulation is in evidence, and the state statute in  
23 Texas provides that even if there was a conflict, that  
24 the statute that provides for the zoning regulations  
25 would prevail over the other, but the State of Texas is

1 just flat wrong. The regulations say --

2 QUESTION: And it is your position that their  
3 brief is in error then?

4 MR. LUNA: Absolutely.

5 QUESTION: And where in the Joint Appendix  
6 would we find what you are referring to, if you know  
7 offhand?

8 MR. LUNA: You will find that in the Joint  
9 Appendix --

10 QUESTION: Well, don't take time from your  
11 argument.

12 MR. LUNA: -- at Page 78.

13 QUESTION: Thank you.

14 MR. LUNA: Now, as I mentioned, the city met  
15 these requirements that the state had, and therefore it  
16 was necessary to apply for a special use permit and have  
17 a public hearing. At the public hearing and in court,  
18 it was developed that the home would have 13 mentally  
19 retarded men and women and two staff employees in this  
20 facility.

21 The 2,510-foot square -- square feet of house  
22 -- in another place the record shows 2,700 square feet  
23 -- it had only two baths, and a half bath was to be  
24 added. The 13 unrelated adults would sleep in four  
25 bedrooms, three adults in each of three bedrooms, and

1 four unrelated adults in the fourth bedroom.

2 The building's location on a lot 103 feet wide  
3 and 156 feet deep, directly across the street from a  
4 junior high, with considerable school traffic, and in a  
5 500-year flood plain, was of real concern to the members  
6 of the City Council, because just the year before  
7 Buffalo Creek had reached the steps of 201 Featherston  
8 Street.

9 And Bobbie Northrop, one of the corporate  
10 officers of CLC, likewise recognized this potential  
11 flood problem for the residents of this facility when  
12 she stated before the Planning Commission and it is in  
13 evidence as Exhibit 20, Plaintiff's Exhibit 20, we would  
14 evacuate the residents and not let the situation get out  
15 of hand so that an evacuation would not be possible.

16 QUESTION: Mr. Luna?

17 MR. LUNA: Yes, sir.

18 QUESTION: When you say it was in a 500-year  
19 flood plane, does that mean that you would expect a  
20 flood every 500 years?

21 MR. LUNA: Every 500 years, but we don't know  
22 whether it is next month or when, of course.

23 QUESTION: And did the city have a general  
24 policy against building within that flood plane?

25 MR. LUNA: It did not have a general policy

1 against building, but it has building codes which can,  
2 of course, require building up so it will be out.

3 QUESTION: What about the junior high? Is  
4 that in the flood plane?

5 MR. LUNA: No, sir, it is across the street on  
6 the high side. It is higher.

7 QUESTION: While I have you interrupted, how  
8 do you define mental retardation?

9 MR. LUNA: Well, mental retardation is defined  
10 -- I would accept the American Association of -- the  
11 definition as defined by American Association on Mental  
12 Deficiency, and Dr. Roos, the expert in this case, said  
13 that it is subaverage general intelligence functioning,  
14 existing concurrently with deficits in adaptive  
15 behavior.

16 QUESTION: Your council members didn't know  
17 what it was, did they?

18 MR. LUNA: I think they did not want to try to  
19 define it. This was a public hearing, and if they had  
20 not --

21 QUESTION: They didn't know what it was, did  
22 they?

23 MR. LUNA: I am not sure that is so. He said  
24 that he didn't -- he couldn't give a technical  
25 definition. There had been a public hearing, and I



1 would be surprised if the people who were asking in a  
2 public hearing to zone it so they could have a home for  
3 mentally retarded kept a secret from the council what  
4 the definition of mentally retarded was.

5 I have an idea they told them at that  
6 hearing. Surely they would, when they had two public  
7 hearings on the subject. But they were not articulate  
8 council people, and they said they were not doctors, and  
9 they didn't know how to technically define it.

10 The special use permit requirement of the  
11 ordinance is not invidious. A family's children can  
12 reside in the home with the family. But if a person  
13 goes into the business of keeping other people's  
14 children, running a nursery, then this same ordinance  
15 requires them to get a special use permit.

16 So, the same special use permit that is  
17 required to run a home for the mentally retarded is  
18 likewise required to run a nursery to keep little  
19 children, the same ordinance and in the same  
20 paragraphs.

21 The mentally retarded adults that were here  
22 and proposed to be here in this facility, I think, are  
23 very much like the ones involved in Macon Association  
24 for Retarded Citizens versus Macon-Bibb County Planning  
25 and Zoning Commission.

1           This Court dismissed the appeal of a state  
2 court case involving a zoning ordinance with a  
3 classification that was based on mental retardation  
4 which were reviewed under the rational basis standard.

5           The three members of the City Council that we  
6 are talking about voted to deny the permit. One of them  
7 who so voted was a grandfather who had a deceased  
8 mentally retarded granddaughter. Another was a black  
9 man, now deceased, who had spent several years on the  
10 board of directors of a mentally retarded facility in  
11 Cleburne known as the C.C. Cook Developmental Center.

12           They apparently did not believe that these  
13 four unrelated adults in one bedroom and requiring 13  
14 people to take a bath in two bathrooms constituted  
15 normal living conditions in the City of Cleburne, and  
16 that is what the policy is, to try to establish normal  
17 living conditions.

18           QUESTION: May I ask, could there have been  
19 any other use with the same number of people using this  
20 facility that would have been permitted?

21           MR. LUNA: Yes, sir. If a family moved there,  
22 there is --

23           QUESTION: Other than a family. I mean such  
24 as a halfway house or an old people's home or something  
25 like this.

1 MR. LUNA: That is not covered. Some other  
2 uses, the building code requires fire walls and some  
3 other things. It is doubtful that any use other than a  
4 single family could have been used with this building.  
5 Now, the land could have, but the ordinance goes two  
6 ways. It regulates use of the land and the use of the  
7 building. This building was a wooden building. It had  
8 no fire walls, and could not be used for --

9 QUESTION: But then is it correct that you are  
10 really arguing that they shouldn't allow 13 people in  
11 this particular structure?

12 MR. LUNA: That was one --

13 QUESTION: And it really doesn't have much to  
14 do with whether they are mentally retarded or not. Is  
15 that right?

16 MR. LUNA: That's right, unless it's a  
17 family. Unless it's a family.

18 QUESTION: Mr. Luna, if the property were --  
19 if the use of the property was proposed as a boarding  
20 house for people, I take it no special use permit would  
21 have been required.

22 MR. LUNA: No special -- but to use a property  
23 for --

24 QUESTION: Is that right?

25 MR. LUNA: Yes, that is right, on special use,

1 but there is another side of the ordinance that requires  
2 off-street parking and other things which would make it  
3 questionable that you could locate that many people in  
4 this property.

5 QUESTION: Well, in any event the same  
6 requirement would not have been made had it been a  
7 boarding house or adults who were not mentally  
8 retarded.

9 MR. LUNA: That is true, but if it had been a  
10 nursery for little children, it would have been.

11 QUESTION: Well, would they allow a boarding  
12 house for 14 people in a --

13 MR. LUNA: Sir?

14 QUESTION: -- in this kind of a space?

15 MR. LUNA: I don't believe so, but she asked,  
16 did we have to have the special use permit. We have  
17 certificate of occupancy statutes and other building  
18 code requirements that would make it very questionable,  
19 and the record is not developed as to what the other  
20 ordinances show for a boarding house, for example, but I  
21 don't believe there is a chance in the world that 14  
22 people, 13 people and two staff members could wind up  
23 using this place as a boarding house or anything else.

24 Now, the home at that time, located across the  
25 street from the junior high that we had mentioned, met

1 the minimum state requirements at that time. The state  
2 has now, however, since this case has come to light,  
3 reduced the number of people to be put in one of these  
4 homes in Texas from 13 to six, thereby, we think,  
5 recognizing the good judgment of the Cleburne City  
6 Council in saying that this was too many in this  
7 particular house.

8 The District Court found there was a rational  
9 basis.

10 QUESTION: May I go back for just a moment,  
11 Mr. Luna, please, to the statement about the number of  
12 people and other uses? The District Court found that if  
13 the potential residents of the home were not mentally  
14 retarded, but the home was the same in all other  
15 respects, its use would be permitted under the zoning  
16 ordinance.

17 MR. LUNA: I think unquestionably that is true  
18 for a family. It was not developed as to the off-street  
19 parking and that sort of thing that would be required  
20 for other things.

21 QUESTION: I am just trying to be clear. Do  
22 you agree or disagree with the finding just as it is  
23 written? It seems to me it says that if they were any  
24 other group other than mentally retarded persons, it  
25 would have been okay to use the home.

1 MR. LUNA: I am not sure I would completely  
2 agree with that finding.

3 QUESTION: So you are attacking that finding  
4 of fact?

5 MR. LUNA: Well, I think it is not material  
6 here.

7 QUESTION: Well, it is pretty material to me,  
8 I will tell you that, as to whether that is --

9 MR. LUNA: Well, clearly 13 people in a family  
10 could live there, so certainly to that extent there is  
11 no question that the finding is correct, but the record  
12 simply -- you will note that the record did not develop  
13 and part of the ordinance is in evidence here on fire  
14 walls and that sort of thing, so it was not developed as  
15 to what would be the requirements.

16 QUESTION: Mr. Luna, we have a finding of fact  
17 in the record, and I am trying to decide whether we  
18 accept it as a correct finding or part of your case  
19 involves setting aside that finding. Which is your  
20 position?

21 MR. LUNA: Well, I believe that in this case,  
22 since a mentally retarded home in this case requires  
23 more than room and board, it requires training,  
24 habilitaton training under both the federal statute and  
25 state regulations, that even if that finding is not set

1       aside, it would not be the same thing in case for a  
2       mentally retarded home, because they are different.

3               And as Stigner versus Texas said, we are not  
4       required under the law to treat different things, things  
5       that are different as if they were the same. We believe  
6       that there is a different need for mentally retarded.

7               QUESTION: Well, didn't the Court of Appeals  
8       judge the case on the basis that the reason for the  
9       refusal of the permit was that this was a group of  
10      mentally retarded people? So we have two courts  
11      agreeing that it was the nature of the occupants that  
12      made the difference, both the District Court and the  
13      Court of Appeals.

14              MR. LUNA: The nature of the occupants --

15              QUESTION: We rarely disturb those kinds of  
16      findings, do we?

17              MR. LUNA: I think it is a little different  
18      from that, though. These occupants -- if we are talking  
19      about, for example, a boarding house, all we would need  
20      is room and board. Here, this is more than a boarding  
21      house.

22              QUESTION: That is true, but the reason it is  
23      more than a boarding house is that they are mentally  
24      retarded people. Isn't that right?

25              MR. LUNA: No, sir. It might have been used

1 for a boarding house, but the reason under this case,  
2 the reason it would be -- what it is going to be used  
3 for is to attempt to give habilitation treatment to 13  
4 mentally retarded people, none of whom have the skills  
5 of independent living.

6 QUESTION: Right.

7 MR. LUNA: So there is more going on --

8 QUESTION: I think your answer to my question  
9 would be yes, because this group is different because  
10 they are mentally retarded.

11 MR. LUNA: Exactly. So that is why I say, if  
12 those findings -- they are different because they are  
13 mentally retarded.

14 QUESTION: Well, is one of the factors that in  
15 an emergency such as a fire they might not respond the  
16 same as a family under the supervision of a mother and a  
17 father over children, or they might not be able to cope  
18 the way 13 or 14 boarders could cope?

19 MR. LUNA: Exactly, in a flood. I would hate  
20 to be here defending the City Council if they located  
21 there and a 500-year flood came the next month and we  
22 got some people drowned.

23 QUESTION: Mr. Luna, in your petition for  
24 certiorari, you presented two questions. One is whether  
25 mentally retarded persons are a quasi-suspect class for



1 purposes of equal protection analysis. The second is  
2 whether for equal protection analysis legislation  
3 affecting mentally retarded people must be tested by an  
4 intermediate or heightened level of scrutiny.

5 So, I would presume that you intend to argue  
6 some time not just as to whether you should win this  
7 particular case under the Constitution, but what  
8 standard it should be judged by.

9 MR. LUNA: Right. That's what I'm coming to  
10 right now.

11 The District Court found there was a rational  
12 basis for these decisions, and the District Court based  
13 its holding that the mentally retarded persons are not a  
14 suspect or a quasi-suspect class requiring heightened  
15 judicial scrutiny for the Fourteen Amendment equal  
16 protection analysis on the reasoning of the Third  
17 Circuit case of Doe versus Colautte.

18 Now, the Fifth Circuit, of course, reversed,  
19 holding that mentally retarded people are a  
20 quasi-suspect class. Now, in order to reach its  
21 decision, the Fifth Circuit created yet another  
22 constitutionally protected class consisting of all  
23 mentally retarded persons in the United States, and we  
24 believe contrary to this Court's decision in Youngberg  
25 versus Romeo.

1           This group is not the discrete insular  
2 minority envisioned by this Court in U.S. versus  
3 Carolene Products, but it is rather a large, diverse,  
4 and amorphous class proscribed by this Court in San  
5 Antonio versus Rodriguez.

6           Mental retardation, we have noted the  
7 definition of it earlier. It is a problem of reduced  
8 ability to learn, difficulty with abstract thinking,  
9 judgment, problem-solving, and retention, and includes  
10 problems of social adjustment and economic productivity.

11           Now, the mentally retarded are a diverse  
12 class, a diverse group within themselves, consisting of  
13 several subgroups. The mildly retarded constitutes  
14 approximately 89 percent of all mentally retarded  
15 persons. The moderately retarded, the severely  
16 retarded, and the profoundly retarded are, of course,  
17 the subgroups.

18           Both the manifestations of retardation and the  
19 level of care required by each group vary to extremes  
20 ranging from requiring full-time institutionalization to  
21 those who are not even discernible on casual contact,  
22 which, incidentally, constitutes the overwhelming  
23 majority of mentally retarded persons, yet the Fifth  
24 Circuit has lumped them all together in one class, the  
25 mentally retarded.

1           By definition, the needs and capacities of the  
2 mentally retarded are different from each other and from  
3 the rest of society. Unlike other suspect or  
4 quasi-suspect groups such as racial minorities, women,  
5 aliens, and those of illegitimate birth, whose  
6 stereotyped characteristics are not reflective of their  
7 true ability to perform or contribute to society, the  
8 mentally retarded characteristics do reflect an actual  
9 disability.

10           This relationship between the stereotyped  
11 disability and the actual ability to perform was  
12 formalized by this Court in *Frontiero versus Richardson*,  
13 and has become the threshold entry into a determination  
14 of suspectness.

15           Classifications based on age in *Massachusetts*  
16 *Retirement versus Murgia* and mental illness in *Doe*  
17 *versus Colautte* have been rejected as suspect on this  
18 basis. The true novelty of the Fifth Circuit opinion in  
19 addition to a determination that the mentally retarded  
20 are a quasi-suspect class is in having done so contrary  
21 to and by completely ignoring the threshold inquiry and  
22 then requiring application of the heightened scrutiny  
23 applicable to gender and legitimacy to legislation  
24 involving the mentally retarded.

25           Under the Fifth Circuit requirements, the

1 mentally retarded are in what is actually a no-win  
2 situation. Since their needs are different from the  
3 rest of society, government can only address those needs  
4 by establishing classifications based on mental  
5 retardation and providing differing benefits, and yet  
6 the classification itself will fail if it is only  
7 rational and the government is then precluded from  
8 bestowing a benefit based on the classification, and the  
9 Solicitor General's brief deals with that at length.

10 Heightened scrutiny is not the answer to the  
11 problems of mentally retarded. The legislative  
12 approach, if left unhampered, will provide for the needs  
13 of the mentally retarded. It is doing so now.

14 Heightened scrutiny is particularly inappropriate for a  
15 zoning ordinance.

16 This Court has established a long history,  
17 commencing with Village of Euclid versus Amber Realty  
18 through its recent decisions in cases like Village of  
19 Belle Terre versus Boraas and its recent decision by Mr.  
20 Justice Stevens in Members of the City of Los Angeles  
21 versus Taxpayers for Vincent.

22 In each of these the Court applied the  
23 rational basis test to zoning classifications, and that  
24 has generally been done unless the ordinance was  
25 racially exclusive. Otherwise, if it is fairly

1 debatable or any set of facts reasonably may be  
2 conceived to justify it, it must be allowed to stand.

3 Is the City of Cleburne's ordinance fairly  
4 debatable? Of course it is. We think the ordinance  
5 protected the mentally retarded. What exactly does this  
6 ordinance do in this case? It allows the City of  
7 Cleburne to regulate the appropriateness of the location  
8 and the structure of a business established to provide  
9 ICF-MR care facility for the mentally retarded by means  
10 of a special use permit.

11 QUESTION: Mr. Luna, is there any place in the  
12 City of Cleburne where a group home may be established  
13 without a special use permit for retarded people?

14 MR. LUNA: The ordinance treats it the other  
15 way. It may be established anywhere in the City of  
16 Cleburne --

17 QUESTION: Well, would you answer my  
18 question? Is there any place within the city where a  
19 group home for the retarded can be established without a  
20 special use permit?

21 MR. LUNA: The answer is no.

22 QUESTION: Okay, and are there any standards  
23 at all for the yearly renewal of such permits if they  
24 are obtained?

25 MR. LUNA: The same standards for renewal

1 would -- the ordinance has a standard for a special use  
2 permit, and of course the standards would be the same.

3 QUESTION: And the ordinance for the special  
4 use permit requires getting signatures of neighbors, is  
5 that right, in order to issue a -- in order to issue a  
6 special use permit, there is a requirement that the  
7 applicant obtain signatures of neighboring property  
8 owners? Is that right?

9 MR. LUNA: I don't recall that.

10 QUESTION: I thought I saw that. I wondered  
11 if you could enlighten me as to whether those signatures  
12 involved getting the consent of the neighbors or just a  
13 name on a paper.

14 MR. LUNA: There is another case, but I don't  
15 recall that in our ordinance. My memory may have failed  
16 me, but I don't recall it. Our ordinance goes the other  
17 way. It is broader than most ordinances. You may  
18 establish an ICF-MR facility any place in the City of  
19 Cleburne simply by complying with the ordinance and  
20 making it compatible and putting them in a position that  
21 we think permits humane treatment of mentally retarded  
22 people instead of warehousing four in a bedroom and 13  
23 in this small facility.

24 QUESTION: Mr. Luna, you mentioned the junior  
25 high school several times. What is the significance of

1 its location?

2 MR. LUNA: The junior high school, by the way,  
3 has 30 mentally retarded people in it, in the junior  
4 high school. Now, our evidence shows that mothers and  
5 fathers bring their kids to school, and there is more  
6 traffic on that street because of the school than there  
7 would be on some other street where there was not a  
8 junior high.

9 QUESTION: And this might be a danger to the  
10 occupants of this house?

11 MR. LUNA: A danger to the occupants because  
12 they are people who do not have the skills of  
13 independent living.

14 QUESTION: Was that argument made below?

15 MR. LUNA: Oh, yes. Yes, sir.

16 QUESTION: And what happened to it?

17 MR. LUNA: It was disregarded. The lower  
18 court, of course, found that the traffic problem was one  
19 of the reasons in the findings.

20 CHIEF JUSTICE BURGER: Mr. Hicks.

21 ORAL ARGUMENT OF RENE A HICKS, ESQ.,

22 ON BEHALF OF THE RESONDENTS

23 MR. HICKS: Mr. Chief Justice, and may it  
24 please the Court, this case, in which Cleburne has  
25 classified a group home for mentally retarded people as

1 a hospital for the feebleminded, is a crucial one for  
2 retarded people, involving what the trial court found as  
3 a fact is the current principal means of their gaining  
4 access to living in this nation's communities.

5 This case will establish the constitutional  
6 boundaries of what a city may do through its zoning  
7 ordinance to impede retarded persons' efforts to become  
8 socially useful citizens in this nation's cities.

9 QUESTION: Do you agree that a householder who  
10 had that place could run a boarding house with 13 or 14  
11 people, with those rooms and two bathrooms?

12 MR. HICKS: Well, first, there are three  
13 bathrooms.

14 QUESTION: Three bathrooms.

15 MR. HICKS: Yes. I think it is clear from the  
16 ordinance, it is clear from the trial judge's fact  
17 findings as agreed to by the Fifth Circuit that if  
18 everything else about the house was the same, then any  
19 other group of 13 people could locate there, whether  
20 they be a large traditional family, whether it be a  
21 nursing home that also might be certified under state  
22 licensing laws and the Medicaid program --

23 QUESTION: Do you think the legislative arm  
24 has a right to distinguish between 13 retarded children  
25 and their capacity to cope with emergencies such as fire



1 and so forth, and either an ordinary traditional family  
2 or adult boarders?

3 MR. HICKS: Well, that would be a closer  
4 question than this one is, I believe, but that isn't  
5 what --

6 QUESTION: Well, isn't that the question  
7 here?

8 MR. HICKS: I don't believe it is, Your  
9 Honor.

10 QUESTION: Well, you have just told me that  
11 they could have an adult group there.

12 MR. HICKS: Yes.

13 QUESTION: My question is, is there a  
14 distinction between an adult group and their capacity to  
15 cope with emergencies and the problems of living  
16 together in those quarters or in a bedroom and children  
17 who are retarded?

18 MR. HICKS: Well, the people that would be  
19 living here would be adults that are retarded, but I  
20 don't think there is a basis. In fact, Your Honor, I  
21 believe that it is quite likely that in the event of an  
22 emergency, if this were a group home for mentally  
23 retarded people located here as opposed to a normal  
24 boarding house without being specially set up for  
25 retarded people, that the ability of the people in the

1 group home for mentally retarded people to evacuate in  
2 case of an emergency would be superior to the ability of  
3 boarders.

4 And one reason for that is because there is  
5 special training done in that very area. Besides that,  
6 I think it is important to keep in mind --

7 QUESTION: Let me see if I have got your  
8 response correctly. These retarded people would be  
9 better able to cope than the general run of 13 or 14  
10 boarders that they may have in the house?

11 MR. LUNA: I think it is quite likely that  
12 they would, Your Honor. Once again, the very purpose of  
13 this group home is to teach them independent living  
14 skills, and one aspect of that, as required under the  
15 state program that is administered, is that there be  
16 special training for emergencies.

17 Most people, and I think this has happened  
18 many times in boarding houses, in fires, people panic,  
19 in general. Anybody panics. And I think it is also  
20 important to keep in mind that the distinction drawn in  
21 the zoning ordinance is not just between group homes for  
22 mentally retarded people and the boarding house.

23 It is between group homes for mentally  
24 retarded people and, for instance, a nursing home, or a  
25 halfway house for juvenile delinquents, and at one time

1 one of the city administrators said a halfway house for  
2 paroled felons would be permissible here.

3 So, I think that it is important to keep in  
4 mind the distinction that has been drawn.

5 QUESTION: Wouldn't you think that they are  
6 entitled to make a distinction between the ability of  
7 people to cope on that basis, that is, if you have got  
8 former felons who are not retarded, and whatever the  
9 other group was, not retarded, that they could cope  
10 better than retarded people?

11 MR. HICKS: Your Honor, I just don't accept  
12 the proposition that the mentally --

13 QUESTION: I am not stating that as a fact.

14 MR. HICKS: I understand.

15 QUESTION: I am simply stating, are they  
16 entitled as the legislative arm to decide on that  
17 basis?

18 MR. HICKS: Well, I think at a minimum there  
19 has to be a rational basis for that decision.

20 QUESTION: You say that is not rational?

21 MR. HICKS: And I don't think that this  
22 decision that the City Council engaged in had a rational  
23 basis. There is nothing in the record to support a  
24 conclusion that mentally retarded people would be less  
25 able to take certain actions than other people in this

1 instance. In fact, again, I submit there would be  
2 special programs set up that I suspect would ensure that  
3 they would react in a better way.

4 QUESTION: Well, aren't they in that home and  
5 that environment precisely because someone has  
6 determined medically or psychologically that they are  
7 not capable of coping as normal people are, as capable?

8 MR. HICKS: Well, that, I think, overstates  
9 the determination that is made.

10 QUESTION: Well, then, why are they there?

11 MR. HICKS: They are there in many instances  
12 because they do learn slower, is the shorthand version  
13 of what mental retardation is, and they need an  
14 opportunity in a structured environment to do their  
15 learning, to learn, for instance, household cleaning  
16 chores and the importance of following through on those  
17 things, cooking skills.

18 This is, as the name implies, an intermediate  
19 facility, and most people it is hoped will move on to  
20 even more independent living in these situations. I  
21 believe that it overstates the disability of mental  
22 retardation to say that they are unable to cope with  
23 everything in daily living, and that they are unable to  
24 learn how to better cope in some instances with certain  
25 details of daily living.

1 I think that the city's actions in this  
2 particular case and its justifications for its actions  
3 are a crystallization for the Court of the historical  
4 attitudes and mistreatment and underestimation, of  
5 mentally retarded people and their abilities.

6 The city has offered two general  
7 justifications for the distinction drawn in the zoning  
8 ordinance. One is that it is to protect the neighbors,  
9 in essence to protect society from the mentally retarded  
10 people. The other is that it is to protect retarded  
11 people themselves.

12 This is a classic example of government's  
13 historical justifications for exclusion of mentally  
14 retarded people from many areas of American life. On  
15 the one hand, it is argued we are here to protect  
16 society. We exclude them to protect society.

17 Then, as an afterthought, the argument is  
18 made, well, it is really also intended to protect the  
19 mentally retarded people. It is to do them some good.

20 I don't think the record in this case supports  
21 either one of those justifications. As to protecting --

22 QUESTION: I notice that the first argument  
23 you make in your brief is that there was no rational  
24 basis for the city's action.

25 MR. HICKS: Yes.

1 QUESTION: And that is what you are arguing  
2 now, I take it.

3 MR. HICKS: Yes. Well, I am attempting to go  
4 through what their reasons are.

5 QUESTION: What if we disagree with the Court  
6 of Appeals and with you with respect to the standard  
7 under which this action should be judged? Should it be  
8 a rational basis or some intermediate level of review?  
9 What if we disagree with you? Shouldn't we remand and  
10 have the case judged on a rational basis?

11 MR. HICKS: I don't think so, Your Honor. I  
12 think it is obviously a judgment for the Court to make,  
13 but I think it would be an inefficient use of  
14 resources. The rational basis test was argued before  
15 the Fifth Circuit. They went on to decide the  
16 quasi-suspect question.

17 QUESTION: They didn't touch the rational  
18 basis.

19 MR. HICKS: That's correct, Your Honor, but  
20 the whole record is before this Court. It has been  
21 fully developed, and I think the Court in --

22 QUESTION: Well, Mr. Hicks, was the argument  
23 about the policy and laws of the State of Texas fully  
24 developed in the courts below?

25 MR. HICKS: The one --

1 QUESTION: It seemed to me that was a new  
2 factor.

3 MR. HICKS: The State of Texas did not submit  
4 an amicus brief at the Fifth Circuit level, making the  
5 arguments it made in its amicus brief.

6 QUESTION: It just seemed to me that in the  
7 courts below, the argument was made by the city that we  
8 are just doing this as a means of helping the retarded  
9 to be sure they have proper facilities, and now the  
10 State of Texas is coming in and saying that is not the  
11 city's business, it is our business, and we have  
12 regulated it, and they have no right to.

13 And I just wondered the extent to which that  
14 had been developed below.

15 MR. HICKS: The last part of the argument was  
16 not developed. I might also add that the argument that  
17 this was to protect the mentally retarded people  
18 argument by the city was not developed very much at that  
19 point. It only has arrived at that conclusion as its  
20 primary justification at this stage of the proceedings.

21 QUESTION: So there might be some purpose in a  
22 remand on rational basis inquiry in the event the Court  
23 disagrees with the heightened scrutiny standard.

24 MR. HICKS: Well, Your Honor, again, I don't  
25 think it would be appropriate. Neither party has asked

1 for that at any rate. I realize it is a judgment for  
2 the Court to make, obviously. I don't think that the  
3 argument that the state has made that was not developed  
4 below is crucial to this Court's making a decision on  
5 even the rational basis standard of analysis.

6 QUESTION: Except that the District Court, of  
7 course, found that it met the rational basis inquiry.

8 MR. HICKS: Right, but it didn't address the  
9 particular aspect of the argument that Texas has made.  
10 It didn't use that for finding that there was a rational  
11 basis.

12 QUESTION: Well, and perhaps the District  
13 Court is in a better position to be familiar with Texas  
14 law than this Court.

15 MR. HICKS: Well, Your Honor, perhaps. I just  
16 think that the rational basis aspect of the case, to the  
17 extent the Court takes that approach, still can be  
18 decided by this Court. I think the record is fully  
19 enough developed.

20 QUESTION: Yes, but Mr. Hicks, I gather you  
21 are here defending the judgment of the Fifth Circuit,  
22 aren't you?

23 MR. HICKS: Yes, I am, Your Honor.

24 QUESTION: And the Circuit held that it had to  
25 be heightened scrutiny at the intermediate level, didn't



1 it?

2 MR. HICKS: Yes, Your Honor.

3 QUESTION: And do you urge us to --

4 MR. HICKS: Yes, Your Honor, I think that is  
5 an appropriate standard for this Court to use --

6 QUESTION: You are just suggesting that if we  
7 don't alternatively we can find there was no rational  
8 basis --

9 MR. HICKS: That is all I am suggesting, Your  
10 Honor, and I think it is appropriate as an alternative  
11 only that this Court decide that there is no rational  
12 basis for the decision.

13 QUESTION: But you want us to reach that if we  
14 do only so that you can win without having to --

15 MR. HICKS: Well, Your Honor, again -- you  
16 mean to reach the rational basis matter?

17 QUESTION: Yes.

18 MR. HICKS: Yes, I think -- I would like to  
19 win the case.

20 (General laughter.)

21 MR. HICKS: Turning to the question of whether  
22 heightened scrutiny is appropriate for discrimination  
23 against mentally retarded people, I think that the class  
24 of mentally retarded people perhaps more than any other  
25 group of Americans except racial minorities fit the

1 criteria that this Court has established for what  
2 constitutes a class that calls for heightened scrutiny  
3 when discriminations are made against it.

4 QUESTION: Incidentally, you have not ever  
5 urged strict scrutiny, have you?

6 MR. HICKS: Your Honor, we did urge strict  
7 scrutiny before the Fifth Circuit. They rejected it.  
8 Again, I think that the standards that this Court has  
9 set, if applied here, would mean that strict scrutiny is  
10 appropriate.

11 But once again, trying to narrow the decision  
12 as much as is necessary, I think a heightened scrutiny  
13 at what has been termed the quasi-suspect level of  
14 scrutiny would be appropriate and would result in the  
15 invalidation of the city's actions in this instance.

16 Mentally retarded people are a quintessential,  
17 discrete, and insular minority. I don't think anyone  
18 has argued to the contrary on that particular point.  
19 They have suffered from a history of mistreatment that  
20 is virtually unequalled in this nation's history except  
21 for racial minorities.

22 They have been subjected to eugenic  
23 sterilization laws based on what has turned out to be  
24 misinformed scientific doctrines. They have been  
25 isolated, as the trial court found as a fact in remote,

1 stigmatizing living arrangements.

2 And I think that there has been much  
3 litigation that has come before this Court that  
4 delineates the problems in these large institutions that  
5 the Court was referring to, and I think no one questions  
6 but that they are stigmatizing.

7 I think that the result of that is that  
8 because they have been isolated in these institutions,  
9 no one in society or few people in society understand  
10 what mental retardation is. They can only operate on  
11 stereotypes because they don't see on a daily basis  
12 mentally retarded people interacting at the stores --

13 QUESTION: Mr. Hicks, in your view, are all  
14 laws that distinguish between the mentally retarded and  
15 other groups suspect, or just those that segregate them  
16 from the general population? Are laws that provide  
17 special education opportunities and things like that in  
18 your view subject to heightened scrutiny?

19 MR. HICKS: Well, Your Honor, I don't think  
20 that a law that is intended to address the special needs  
21 of mentally retarded people and past inequities  
22 necessarily needs to be subjected to heightened  
23 scrutiny. This Court has said before in a case such as  
24 Fullilove versus Klutznick that when remedying past  
25 discriminations is what is at stake, then there is a

1 different standard to be applied, or alternatively I  
2 might add that applying the heightened scrutiny to those  
3 laws will not subject those laws to invalidation. I  
4 think it would be very supportable.

5 And I think it is true that there is a  
6 substantial relation between any discriminations, if you  
7 want to call it that, drawn in, say, the Special  
8 Education Act, that there is a substantial relationship  
9 between that and an important governmental interest of  
10 providing an appropriate education program for mentally  
11 retarded people.

12 I think that there are many fewer laws that  
13 discriminate on the basis of mental retardation than  
14 might at first blush appear. Quite often people think  
15 that guardianship laws, sterilization laws, commitment  
16 laws all necessarily discriminate on the basis of mental  
17 retardation.

18 While some do, the more modern statutes  
19 clearly do not. They address neutral criteria and  
20 neutral traits that are not tied to mental retardation  
21 in and of itself. They recognize what the city here did  
22 not recognize, and that is that there are individual  
23 differences within the group of people who are mentally  
24 retarded. Some have more abilities than others.

25 It may very well turn out that some require

1 commitment, but it is not because of their mental  
2 retardation that they require commitment. It is because  
3 of other aspects that happen to fall in with the fact  
4 that they are mentally retarded.

5 So, I think it is overstating matters to think  
6 that a whole host of statutes would be subject to  
7 invalidation under this approach. Furthermore --

8 QUESTION: Perhaps not invalidation, but at  
9 least heightened scrutiny.

10 MR. HICKS: Again, I think there is a much  
11 smaller universe of statutes that fit that, and my next  
12 point was going to be that invalidation does not  
13 necessarily follow from applying heightened scrutiny.  
14 This Court has, in other instances where heightened  
15 scrutiny has been applied, upheld classifications based  
16 on gender, based on illegitimacy.

17 And it has shown itself capable of discerning  
18 when important interests are at stake and when there is  
19 a substantial relationship between the objective and the  
20 classification drawn in the statute.

21 QUESTION: Are there other groups that in your  
22 view likewise merit heightened scrutiny which haven't  
23 been given it in the past, such as the mentally ill or  
24 people who are homosexuals or other particularized  
25 groups?

1           MR. HICKS: Well, I am not an expert at all in  
2 either of those other areas -- or in the other areas. I  
3 haven't canvassed all of them. But I don't think there  
4 is another group of people in this society that so  
5 warrant treatment as a quasi-suspect or suspect  
6 classification, heightened scrutiny, as the group of  
7 mentally retarded people. For instance, I --

8           QUESTION: And why is that? I mean, what are  
9 the --

10          MR. HICKS: Well, for instance, with people  
11 that are mentally ill, for instance, I think there is a  
12 potential difference between the immutability of the  
13 characteristic. People move in and out of mental  
14 illness. Not everyone does, but people do. And those  
15 that are mentally ill at one time quite often are  
16 capable of having political power.

17           They vote. They haven't been excluded from  
18 the vote as universally as mentally retarded people, for  
19 instance. When they aren't classified as mentally ill,  
20 they clearly can vote, and they can have an impact on  
21 their community. The onset of it quite often is later  
22 in life.

23           As to homosexuality, I think once again there  
24 is a substantial question of whether that trait is an  
25 immutable characteristic, and I think it is quite clear

1 that that group of people exerts considerable political  
2 power in some areas of this country.

3 So, I think they are much different and are  
4 much -- again, I haven't thought of what the ultimate  
5 resolution should be, but they are clearly not as close  
6 a fit to the standards this Court has set --

7 QUESTION: Does any jurisdiction today to your  
8 knowledge deprive mentally retarded adults of their  
9 vote?

10 MR. HICKS: Yes, Your Honor. You mean as of  
11 today? I haven't canvassed the statutes in detail. As  
12 of 1979, the majority of states disenfranchised mentally  
13 retarded people. I would note -- this came up during  
14 the appellate argument at the circuit level on this --  
15 that it required a Texas Secretary of State's opinion to  
16 get the person a right to vote that was mentally  
17 retarded.

18 QUESTION: Is there any restriction in Texas  
19 today on the right of the retarded adult to vote?

20 MR. HICKS: Yes, Your Honor, there is. They  
21 classify mentally retarded people, I believe -- the  
22 Constitution says that idiots may be denied the right to  
23 vote. Now, "idiots" is an outmoded term. It is another  
24 example of how mentally retarded people have been  
25 stigmatized.

1                   And it has been applied at local levels by  
2 elections officers to mean somebody with Down's  
3 Syndrome, for instance, who is quite capable of voting,  
4 couldn't vote. And again, that happened in 1982 in the  
5 southern part of Texas. Somebody that had Down's  
6 Syndrome was denied the right to vote merely because of  
7 that. And it took an opinion after the fact, after he  
8 had missed the opportunity to vote, to change that.

9                   So, I do think they still are disenfranchised  
10 in large part, if not de jure in some instances, then de  
11 facto because of what they know would happen to them  
12 when they go to the polling place.

13                  QUESTION: Is it your position that the state  
14 has no power at all to disenfranchise anyone who is  
15 mentally retarded?

16                  MR. HICKS: I don't think the state has the  
17 power to disenfranchise people because they are mentally  
18 retarded. They may have the power to -- I do think the  
19 state has the power to disenfranchise people if they  
20 lack the minimal ability to understand the basics of the  
21 workings of democracy or whatever. I realize that they  
22 can't impose a literacy test. That has been ruled out  
23 by this Court. But --

24                  QUESTION: Well, then, extreme retardation  
25 would be a basis then for disenfranchising, a permissible



1 one.

2 MR. HICKS: Well, I think that neutral  
3 criteria, and I can't kind of give a rendition right now  
4 of what all those neutral criteria would be, but I think  
5 neutral criteria would result in a lot of severely  
6 mentally retarded people not being able to vote  
7 statutorily, but it wouldn't be because they were  
8 mentally retarded, but because they failed to meet the  
9 neutral criteria.

10 QUESTION: What is the difference, really,  
11 when you are focusing on that particular question, and  
12 you say the severely mentally retarded would be -- could  
13 properly be disenfranchised because they didn't  
14 understand the workings of democracy. Isn't that a  
15 consequence of their severe mental retardation?

16 MR. HICKS: It is a consequence of an aspect  
17 of their retardation. That is correct. But the problem  
18 with simply saying, for instance, a statute that says a  
19 severely mentally retarded person cannot vote, is that  
20 it is hard to tell down the road what some elections  
21 officer might say is severe mental retardation. Some  
22 people are of the opinion that all mental retardation is  
23 severe enough to be classified as severely mentally  
24 retarded. I think --

25 QUESTION: Who makes the classification?

1 MR. HICKS: Who makes the --  
2 QUESTION: Of the severely retarded person?  
3 MR. HICKS: Well, all, nearly all of the  
4 statutory definitions that are used nationally now are  
5 drawn from a basic --  
6 QUESTION: Well, who makes it?  
7 MR. HICKS: The American Association of Mental  
8 Deficiency has --  
9 QUESTION: They decide who is retarded?  
10 MR. HICKS: They have a working definition of  
11 what is retardation.  
12 QUESTION: Isn't there a government official  
13 who makes the decision?  
14 MR. HICKS: Ultimately the legislature, the  
15 legislature of the State of Texas, for instance, in its  
16 Mentally Retarded Persons Act --  
17 QUESTION: But the State of Texas doesn't  
18 examine people. Who in Texas, who individually in Texas  
19 says, you are severely retarded?  
20 MR. HICKS: A whole host of different  
21 officials, local school district officials, for  
22 instance.  
23 QUESTION: A local school officical can decide  
24 if somebody is mentally retarded?  
25 MR. HICKS: As part of the --

1 QUESTION: Don't you have any experts in  
2 that?

3 MR. HICKS: Well, local school officials, by  
4 that I mean psychologists --

5 QUESTION: Local experts aren't  
6 psychologists.

7 MR. HICKS: I am sorry, I didn't understand  
8 you.

9 QUESTION: Local school officials are not  
10 psychologists.

11 MR. HICKS: Well, they have psychologists on  
12 your staff.

13 QUESTION: Don't you need to have a  
14 psychologist or somebody that has studied it?

15 MR. HICKS: It requires to carefully assess  
16 mentally retarded people, it requires --

17 QUESTION: A local school official can decide  
18 whether I can vote?

19 MR. HICKS: No, Your Honor. I was trying to  
20 point out --

21 QUESTION: Well, that is what I am asking.  
22 Who decides that Applicant B is so severely retarded  
23 that he does not have the right to vote?

24 MR. HICKS: There is no designated officer at  
25 this point other than a local elections officer, and

1 that is the danger in setting a standard such as Justice  
2 Rehnquist has mentioned.

3 There is a local elections officer who sits at  
4 the polls, and in the instance that I mentioned earlier,  
5 determined that this particular person was, to use the  
6 terminology of the statute, an idiot. And only two  
7 years after or a year after the election was it  
8 determined that this person could vote, and so there is  
9 no expert.

10 QUESTION: You mean, if I take the position  
11 that all Democrats are retarded, I could just lock them  
12 all up?

13 (General laughter.)

14 MR. HICKS: There are parts of Texas where  
15 that is so.

16 (General laughter.)

17 QUESTION: Mr. Hicks, can I ask you a question  
18 that I just want to be sure I don't lose?

19 MR. HICKS: Yes.

20 QUESTION: I am going back to your rational  
21 basis argument for a moment. Often in zoning cases you  
22 are concerned with property values. Was there any  
23 attempt made by you opponent in this case to prove that  
24 the property values of the neighborhood would have been  
25 affected in any way by granting the permit here?

1 MR. HICKS: No, Your Honor. There was not. I  
2 might note that there have been studies. I think one of  
3 the amicus briefs by the National Conference on Catholic  
4 Charities discusses some of the literature in this area  
5 which seems to support the idea that property values are  
6 not lowered.

7 QUESTION: Could I ask, what did the Court of  
8 Appeals declare unconstitutional?

9 MR. HICKS: It declared -- first, it declared  
10 the statute on its face unconstitutional.

11 QUESTION: What, the entire zoning  
12 ordinance?

13 MR. HICKS: I am sorry. Section 8 --

14 QUESTION: I can't know what they said was  
15 unconstitutional.

16 MR. HICKS: Section 8, Subdivision --

17 QUESTION: Six.

18 MR. HICKS: -- 6, the part that terms this  
19 group home a hospital for the feebleminded says they  
20 have to get a special use permit, it declared that  
21 unconstitutional.

22 QUESTION: That is 16.

23 MR. HICKS: Excuse me?

24 QUESTION: That is 16.

25 MR. HICKS: Well, Section 8, Subdivision 6 --

1 QUESTION: Is it your contention that the city  
2 may not require special use permits for the mentally  
3 retarded? Or is it your claim that it should have been  
4 granted, a special use permit should have been granted?

5 MR. HICKS: It is both in this instance, but  
6 in the abstract we are not arguing -- I need to make  
7 that clear to the Court -- we are not arguing that no  
8 city anywhere in the United States may require special a  
9 use permit for group homes for mentally retarded people.

10 QUESTION: Are you arguing that this city  
11 here, Cleburne, could not --

12 MR. HICKS: Yes, Your Honor.

13 QUESTION: -- constitutionally require a  
14 special --

15 MR. HICKS: Yes, Your Honor, given the  
16 distinctions and the uses that are already permitted in  
17 that district. Many other cities might have a different  
18 set of use classifications, but in this one, where you  
19 have so many similarly situated congregate living  
20 situations that are permitted, it makes no sense, and  
21 that is the reason we argue it is irrational, it makes  
22 no sense to say --

23 QUESTION: Your position is, you didn't even  
24 need to apply to the City Council to establish this.

25 MR. HICKS: That's correct, Your Honor, and

1 then beyond that even if we did have to apply, that it  
2 is clear --

3 QUESTION: It could not be denied just because  
4 of mental retardation.

5 MR. HICKS: That's correct, Your Honor,  
6 especially when the factfinders, the decisionmakers for  
7 the City Council admitted and testified that they knew  
8 nothing about mental retardation, nothing, or about the  
9 needs of mentally retarded people.

10 And I think it is fair to say that it is the  
11 very definition of irrationality when somebody makes a  
12 decision based on a factor they admittedly know nothing  
13 about.

14 I think, Your Honors, that if what Cleburne  
15 has done in this case in excluding mentally retarded  
16 people from its community, this group home from its  
17 community, then I think that, and this is after  
18 considered judgment, I think it is fair to say that  
19 there is virtually no limit set by the Constitution on  
20 what cities can do to exclude mentally retarded people  
21 from the community.

22 The actions of the City Council are so  
23 baseless in this particular instance that anything goes,  
24 basically, if what they have done is constitutional.

25 Thank you.

1 CHIEF JUSTICE BURGER: Do you have anything  
2 further, Mr. Luna? You have four minutes remaining.

3 ORAL ARGUMENT OF EARL LUNA, ESQ.,

4 ON BEHALF OF THE PETITIONERS - REBUTTAL

5 MR. LUNA: I wanted to point out that in  
6 regard to what was said about the statutes in favor of  
7 the mentally retarded, it is pointed out by the Fifth  
8 Circuit that it is not always easy to tell whether a  
9 statute is to the advantage of a mentally retarded  
10 person or is not to the advantage of them.

11 Some people might think that it is not good to  
12 have somebody supervising them 24 hours a day. In other  
13 cases, it might be necessary. Therefore, to determine  
14 whether a particular statute is good or --

15 QUESTION: Weren't the people who were to be  
16 in this particular facility going to be there  
17 voluntarily? None of them was going to be committed  
18 against his will. Is that right?

19 MR. LUNA: In this case.

20 QUESTION: Yes.

21 MR. LUNA: In this case, that is true.

22 QUESTION: So they would have been perfectly  
23 free to leave any time they wanted to.

24 MR. LUNA: In this case, they would have  
25 been.



1 QUESTION: Yes, thank you.

2 MR. LUNA: But I think the Fifth Circuit was  
3 talking about in cases generally, and this Court has  
4 generally held that the rights, that the question  
5 involved in a suspect or quasi-suspect class is when the  
6 condition has no relation to the person's productivity  
7 or their contribution to society.

8 Now, in that way, the mental retardation is,  
9 of course, completely different. It is different from  
10 blacks and women and the legitimate question where the  
11 suspect provisions have no relation to their  
12 productivity or their contribution to society.

13 In this case, the mentally retarded persons  
14 must be in many instances treated very differently, and  
15 some, of course, to the extremes, have to be placed in  
16 institutions, and they said in this case while they can  
17 come and go, at the same time the records show in this  
18 case that they sometimes would also have the authority  
19 to restrain them.

20 Now, Texas has a statute which affirmatively  
21 protects the rights of mentally retarded. We have an  
22 entire set of statutes on rights of mentally retarded  
23 and protecting those rights.

24 Now, while on the one hand they have raised  
25 the question today about the Texas statute, on the other

1 hand at the court when we tried this case they dropped  
2 all of their state claims, so they talk about their  
3 state claims now, but they were dropped out of this  
4 lawsuit at the District Court level.

5 And the two attorneys that represented the  
6 plaintiffs in this lawsuit, Mr. Hicks and his associate,  
7 are now both with the Attorney General's office, and the  
8 other one signed -- who was with them, with that office  
9 at the time of trial signed the brief, the Attorney  
10 General's brief.

11 So, clearly the Attorney General's position  
12 was put forward in court by the same attorneys who were  
13 representing the plaintiff but are now signing the brief  
14 for the Attorney General's office.

15 QUESTION: Mr. Luna, may I ask one last  
16 question? When we were asking about the reasons why the  
17 special use permit was denied, you mentioned, of course,  
18 the flood plane and across the street from the school,  
19 and both of those were reasons that were designed to  
20 protect the occupants of the home.

21 Were there any reasons that you would identify  
22 as reasons designed to protect neighbors from an  
23 undesirable change in the neighborhood?

24 MR. LUNA: I don't think so, although we --

25 QUESTION: Basically, they were all for the

1 good of the people who would live there.

2 MR. LUNA: Yes, sir. We did have some  
3 neighbors complain, but --

4 QUESTION: But you are not relying on that, I  
5 take it.

6 MR. LUNA: Sir?

7 QUESTION: Are you relying on the complaints  
8 of the neighbors?

9 MR. LUNA: Their counsel's testimony was that  
10 that was not one of the major factors.

11 CHIEF JUSTICE BURGER: Thank you, gentlemen.  
12 The case is submitted.

13 (Whereupon, at 11:54 o'clock a.m., the case in  
14 the above-entitled matter was submitted.)

CERTIFICATION

erson Reporting Company, Inc., hereby certifies that the  
attached pages represents an accurate transcription of  
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Supreme Court of The United States in the Matter of:

84-468 - CITY OF CLEBURNE, TEXAS, ET AL., Petitioners V. CLEBURNE LIVING CENTER, ET AL.

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and that these attached pages constitutes the original  
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BY Paul A. Richardson

(REPORTER)