

OFFICIAL TRANSCRIPT

PROCEEDINGS BEFORE

**THE SUPREME COURT
OF THE
UNITED STATES**

CAPTION: CHURCH OF THE LUKUMI BABALU AYE, INC.

AND ERNESTO PICHARDO, Petitioners v. CITY OF
HIALEAH

CASE NO: 91-948

PLACE: Washington, D.C.

DATE: November 4, 1992

PAGES: 1 - 54

LIBRARY
SUPREME COURT, U.S.
WASHINGTON, D.C. 20543

(CORRECTED COPY)

ALDERSON REPORTING COMPANY
1111 14TH STREET, N.W.
WASHINGTON, D.C. 20005-5650
202 289-2260

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

'93 JAN -7 A11:24

2025 JAN 10 10:10 AM
U.S. SUPREME COURT

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -X

CHURCH OF THE LUKUMI BABALU :

AYE, INC. AND ERNESTO :

PICHARDO, :

Petitioners :

v. : No. 91-948

CITY OF HIALEAH :

- - - - -X

Washington, D.C.

Wednesday, November 4, 1992

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
10:01 a.m.

APPEARANCES:

DOUGLAS LAYCOCK, ESQ., Austin, Texas; on behalf of the
Petitioner.

RICHARD G. GARRETT, ESQ., Miami, Florida; on behalf of
the Respondent.

C O N T E N T S

	PAGE
ORAL ARGUMENT OF	
DOUGLAS LAYCOCK, ESQ.	
On behalf of the Petitioner	3
ORAL ARGUMENT OF	
RICHARD G. GARRETT, ESQ.	
On behalf of the Respondent	26
REBUTTAL ARGUMENT OF	
DOUGLAS LAYCOCK, ESQ.	
On behalf of the Petitioner	51

1 PROCEEDINGS

2 (10:01 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 first this morning in Number 91-948, Church of the Lukumi
5 Babalu Aye, Inc. v. the City of Hialeah.

6 Mr. Laycock.

7 ORAL ARGUMENT OF DOUGLAS LAYCOCK

8 ON BEHALF OF THE PETITIONER

9 MR. LAYCOCK: Mr. Chief Justice, may it please
10 the Court:

11 This is a case about open discrimination against
12 a minority religion. The four ordinances challenged here
13 were enacted in direct response to the church's
14 announcement that it would build a church and practice in
15 public. They were enacted for the express purpose of
16 preventing the central rituals of this faith. That
17 purpose is recited in the preambles to the ordinances and
18 in the accompanying resolutions. The preambles say that
19 the city's --

20 QUESTION: Is that true of each of the
21 ordinances?

22 MR. LAYCOCK: It is not recited in all four of
23 them, no, Justice White. It is recited in two of the
24 preambles and in one of the resolutions.

25 QUESTION: So it's possible that some of the

1 ordinances could be upheld --

2 MR. LAYCOCK: Well, we do need --

3 QUESTION: Or at least it's possible that some
4 of the ordinances might not be discriminatory on their
5 face is that it?

6 MR. LAYCOCK: It is possible in theory, yes.

7 QUESTION: Okay. All right.

8 MR. LAYCOCK: All four ordinances have merged
9 from the same pattern of legislation. I think they all
10 share the intent, but the intent is recited principally in
11 87-52 and 87-71.

12 The accompanying resolution that goes with the
13 ordinance recites that the target is certain religions and
14 certain acts of any and all religious groups. The
15 ordinances are written in religious terminology. They do
16 not forbid killing, they forbid sacrifice, and indeed,
17 these ordinances do not forbid any physical act as such.
18 All the prohibitions depend in part upon an analysis of
19 the purposes or motives of the actor, and when the
20 analysis is complete, the religious motive is always
21 forbidden.

22 But I think what is most revealing about these
23 ordinances is that they are written on the assumption that
24 animal sacrifice is unnecessary. The city's brief says
25 it's unnecessary, the State Attorney General's opinion

1 says it's unnecessary, all of the city's amici say it is
2 unnecessary, and lack of necessity is an element of the
3 offense in three of the four ordinances.

4 QUESTION: Mr. Laycock, may I ask you a
5 preliminary question? There is a State law that touches
6 on some of this as well, is there not?

7 MR. LAYCOCK: There is a State law that is
8 incorporated into one of the ordinances. The State law is
9 not challenged in this case. I think --

10 QUESTION: Well, has the Attorney General of the
11 State interpreted the State law to encompass the practices
12 at issue here?

13 MR. LAYCOCK: Yes. The State -- the sequence
14 was, was the Hialeah City Council enacted ordinance 87-
15 40, which incorporates the State statute, and then the
16 city requested of the Attorney General an opinion as to
17 whether the State statute that had thus been incorporated
18 applied to animal sacrifice, and he responded that it did
19 apply because sacrifice is unnecessary.

20 QUESTION: So even if you win here, presumably
21 the State law would be in effect.

22 MR. LAYCOCK: Whether the State law remains in
23 effect, the State is not a party. There was no ripe
24 threat of prosecution from the State. There was a ripe
25 threat from the city.

1 QUESTION: And so do we have any of the concerns
2 expressed in Renee v. Geary, our case dealing with
3 redressability?

4 MR. LAYCOCK: I'm not familiar with Renee, but I
5 am familiar with the redressability issue. This lawsuit
6 can resolve all of the ripe threats of prosecution and
7 entirely redress that injury.

8 The State may or may not at some point in the
9 future attempt to enforce the State law. It has not yet
10 done so. There are a variety of other general statutes
11 that the city may at some point construe to apply against
12 us. None of those controversies are ripe either.

13 QUESTION: Well, the State law may not suffer
14 from what you claim to be the principal flaw in these
15 ordinances, namely, an express intent to affect religious
16 rituals, and the State law may be neutral on its face.

17 MR. LAYCOCK: Well, the State law is not neutral
18 on its face as applied to this practice, but you're right,
19 Justice White, that the history of the State law is very
20 different. That would be a different case, but an attempt
21 to enforce the State --

22 QUESTION: Well, if there was an attack on the
23 State law, would you be arguing that it is specifically
24 aimed at religious practices and nothing else?

25 MR. LAYCOCK: No. If we were attacking the

1 State law, I would be arguing that the theory, the legal
2 theory of the Attorney General to make the State law
3 applicable targeted religion. The statute as a whole has
4 many secular applications, but the theory by which it
5 might apply to us is a theory that violates the First
6 Amendment and is specifically targeted at religion.

7 QUESTION: Well, would the attack on the State
8 law be somewhat more difficult for you to sustain than the
9 attack on the local ordinance?

10 MR. LAYCOCK: I think that if the ordinances are
11 struck down, the stare decisis effect will pretty much
12 take care of us on the State statute, but the history, the
13 way in which the ordinances were enacted, is unique to the
14 ordinances and does not apply to the statute. The --

15 QUESTION: Mr. Laycock, what do you rely on for
16 the threat of prosecution from the city? It's just the
17 prologue, or have there been other threats of prosecution?

18 MR. LAYCOCK: Well, the finding of fact is that
19 the city firmly intended to prevent all animal sacrifice
20 in the city, the city adopted resolutions reciting that
21 intention, the entire legislative package was targeted at
22 my clients. The threat of prosecution seemed quite real,
23 and then they have complied for 5 years as a result of
24 that threat of prosecution.

25 QUESTION: Are some of these ordinances zoning

1 ordinances?

2 MR. LAYCOCK: No, none of them are zoning
3 ordinances, and zoning is a red herring in the case.

4 Some of the ordinances say that with proper
5 zoning you can have a commercial food business or a
6 commercial slaughterhouse, but none of the ordinances say
7 or even imply that with proper zoning you could sacrifice.
8 Sacrifice is absolutely forbidden.

9 So there are farms within the city limits with
10 proper zoning. You can slaughter hogs and cattle with
11 proper zoning. Slaughterhouses turn out millions of
12 pounds of meat per day, and in theory, although not in
13 fact, they could be zoned into Hialeah, but sacrifice will
14 remain absolutely forbidden by these ordinances even with
15 those -- even with slaughterhouse zoning.

16 QUESTION: And does your client still intend to
17 perform these sacrifices within the City of Hialeah?

18 MR. LAYCOCK: Yes, he does.

19 QUESTION: Does the ordinance define sacrifice?

20 MR. LAYCOCK: The ordinance defines sacrifice as
21 the unnecessary killing of an animal in a ritual or
22 ceremony not for the primary purpose of food consumption.

23 QUESTION: And when you say sacrifice, you are
24 using it in the term that the ordinance defines it, then.

25 MR. LAYCOCK: That's right. That's right.

1 QUESTION: Mr. Laycock, if you were attacking
2 solely the State statute and you were doing so following
3 an opinion of the Attorney General that a sacrifice was
4 unnecessary, what would your argument be consistent with
5 Smith?

6 MR. LAYCOCK: Well, Smith says that religious
7 acts are subject to neutral and generally applicable
8 regulation, but Smith also reaffirms the long line of
9 cases that says Government cannot resolve religious
10 controversies. Government cannot decide whether sacrifice
11 is necessary or unnecessary.

12 An element of the offense under the State law is
13 that the killing of the animal be unnecessary. That's
14 also an element under three of the four ordinances. The
15 only way to prove that sacrifice is unnecessary is to
16 prove that Santeria is a false religion.

17 To believers in Santeria, sacrifice is directly
18 commanded by the gods in considerable detail on each
19 occasion when it is required. To prove it unnecessary,
20 you must prove the religion false, and when the prosecutor
21 has to prove a religion false, the prosecutor is engaged
22 in a heresy trial.

23 QUESTION: Gee, there -- I'm sure there are a
24 lot of statutes, local, State and Federal, that use the
25 term unnecessary. Do you mean whenever somebody says that

1 God tells him it is necessary, that statute is invalid as
2 applied to that person? That can't be right.

3 MR. LAYCOCK: The prohibition has to depend upon
4 something other than the lack of necessity, Justice
5 Scalia.

6 If Hialeah had a generally applicable
7 prohibition on killing animals, if it said no one may kill
8 an animal in the City of Hialeah, the religious necessity
9 would be irrelevant under this Court's decision in Smith,
10 but Hialeah doesn't have anything like that. Hialeah
11 says, you can kill animals for a whole range of reasons
12 that we the city consider necessary, but not for this
13 religious reason that we the city consider unnecessary.

14 So the necessity element is applied directly to
15 the theological question, and that is forbidden, I think,
16 by the most central principal of the First Amendment and
17 reaffirmed in Employment Division v. Smith.

18 It's also important that none of these
19 ordinances interfere with any of the routine killings of
20 animals that the citizens of Hialeah depend upon every
21 day. The city tells us that all of those killings are not
22 only necessary, they're important. Bow and arrow hunting
23 is very important. Getting rid of surplus pets is
24 important.

25 QUESTION: Is there a lot of bow and arrow

1 hunting in the City of Hialeah?

2 (Laughter.)

3 MR. LAYCOCK: Well, there is bow and arrow
4 hunting by citizens of Hialeah who bring their kill, bring
5 the entire carcass back to the city. There are farms in
6 the City of Hialeah. There are veterinary offices that
7 kill animals in Hialeah.

8 QUESTION: Well, certainly under our cases the
9 city can deal with one perceived evil at a time without
10 having to deal with the whole ball of wax, can't it?

11 MR. LAYCOCK: I disagree, Mr. Chief Justice.
12 When the first step is the First Amendment, they can't
13 deal with that one step at a time. They have to deal with
14 constitutionally protected activities in a generally
15 applicable way.

16 They can distinguish bow hunting from killing
17 surplus pets one step at a time, but they can't say our
18 one and only step is to suppress this religion and
19 distinguish that from all of the secular killings of
20 animals that they permit.

21 QUESTION: Even though that's the only evil that
22 is occurring in the -- and you say that's not so, but
23 supposing that the city council thought that was the only
24 evil that were occurring in the City of Hialeah?

25 MR. LAYCOCK: But the reason they think it's the

1 only evil is that they disapprove the religion.

2 QUESTION: Well, yes, but let's withdraw from
3 that a little bit and just say, supposing the city council
4 sees what they perceive as this evil, or something that
5 they want to regulate. You say it violates the First
6 Amendment, and you say one reason it does is there are
7 lots of other things that they should have embraced, and
8 their response to that is, well, none of those were going
9 on in the City of Hialeah.

10 MR. LAYCOCK: They have not said that none of
11 those things go on --

12 QUESTION: No, but I'm giving --

13 MR. LAYCOCK: And the record does not show that
14 none of those things go on.

15 QUESTION: I'm giving you a hypothetical.

16 MR. LAYCOCK: Okay. Then -- yeah, if no other
17 killings of animals are going on in the City of Hialeah,
18 then their solution under Smith would be to draft an
19 ordinance that simply says, it is illegal to kill an
20 animal in the City of Hialeah. That would be unfortunate
21 for my clients, but under Smith that would be a neutral
22 and generally applicable law. And then --

23 QUESTION: They can't make any exceptions to it.
24 Once they make any exception at all, it's no longer a law
25 of general applicability.

1 MR. LAYCOCK: I'm inclined to think they can't
2 make any exceptions, but this case doesn't get us anywhere
3 close to that question.

4 QUESTION: You mean, you couldn't say you may
5 kill animals for food but not for other purposes -- not
6 for sport, not for sacrifice, not for anything but food.
7 You couldn't even make that exception.

8 MR. LAYCOCK: I can imagine an exception you'd
9 kill an animal in self defense if you're being attacked by
10 a bear.

11 QUESTION: Yes, an animal in self -- or --

12 MR. LAYCOCK: Right, okay. I can imagine very
13 narrow exceptions, but what they cannot do is create broad
14 exceptions that eliminate the political resistance to the
15 law and enable them merely to target the unpopular
16 religion. They have to treat -- as I read your opinion in
17 Smith, they have to treat religion at least as well as
18 they treat favored secular activities.

19 QUESTION: Well, but it may not be targeting the
20 unpopular religion, it may be targeting the unpopular act,
21 which may be an act that happens to be practiced only by
22 the religion.

23 MR. LAYCOCK: The act is not different. The
24 animal is equally dead whether killed in a ritual or
25 ceremony or killed otherwise.

1 QUESTION: Yes, but you've acknowledged that the
2 act becomes different depending upon what its purpose is,
3 that you'll allow it in self defense, you might allow it
4 for food, but you might not want to allow it for other
5 purposes.

6 MR. LAYCOCK: I -- I --

7 QUESTION: It's a different act depending on
8 what the --

9 MR. LAYCOCK: I do not believe they can allow
10 animals to be killed for food without a ritual or ceremony
11 and forbid these sacrifices where the animals are killed
12 in a ritual or ceremony and then eaten. They can't do
13 that.

14 QUESTION: Take, for example, United States v.
15 Reynolds, which was the case in which we upheld the
16 constitutionality of a law prohibiting bigamy in the
17 territory of the United States.

18 Suppose that -- in fact, the only -- there was
19 no problem with bigamy, that the only reason the law was
20 enacted was because there was a single -- a single
21 religious group that practiced it. Would that law
22 therefore, since the only people who do that act happen to
23 do it for religious reasons, is that law invalid?

24 MR. LAYCOCK: That law was not invalid. That
25 law was not analogous to this one. It did not say bigamy

1 is forbidden when done pursuant to the teachings of
2 celestial marriage, bigamy is bad when done for religious
3 reasons. It was an across-the-board prohibition, and --

4 QUESTION: But --

5 MR. LAYCOCK: It implemented a prohibition that
6 had been present in Anglo-American law for centuries, and
7 there had been bigamy by people who were not Mormons and
8 who were not religiously motivated.

9 QUESTION: That hinges on your saying -- or
10 ignoring, I think, the definition of sacrifice though,
11 doesn't it, because the definition of sacrifice includes
12 any ritualistic killing which would include a killing by a
13 fraternity group.

14 Now, you may say well, there aren't any
15 fraternity groups, but that just brings you back to the
16 problem in Reynolds. There may not have been anybody else
17 practicing bigamy, either.

18 MR. LAYCOCK: There may not have been anybody
19 else in Utah at that moment, but bigamy laws have been
20 around for a long time because there had been a problem
21 that the legislatures and the common law had addressed.

22 The legislatures and the common law have never
23 tried to suppress the killing of animals in any systematic
24 way, and if this Court is willing to accept that a
25 definition of sacrifice that contains a hypothetical

1 fraternity ritual is thereby not targeted religion, I
2 think you would equally have to accept that a prohibition
3 on communion is nondiscriminatory and neutral because it
4 might include a fraternity initiation.

5 QUESTION: Could the city council require that
6 all slaughter of animals within the city be done in a
7 humane manner and define humane in a way that the result
8 of which was to either prohibit or require the alteration
9 of these sacrifices?

10 MR. LAYCOCK: Again, I think they could do that
11 if they did it in a neutral and across-the-board way, but
12 many of the killings that they permit are slower and less
13 reliable, crueller than the method of sacrifice by slicing
14 the carotid arteries, which is the method specified in the
15 State and Federal humane slaughter acts.

16 QUESTION: Well, Mr. Laycock, in your view as
17 you read Smith, what is the purpose of the neutrality
18 requirement? Is it an end in itself?

19 MR. LAYCOCK: I don't think it's an end in
20 itself. I hope that the purpose is to build into the
21 political process some of the protection for religious
22 minorities that the other half of Smith says that the
23 courts are not going to be providing on their own.

24 QUESTION: Well, we have a neutrality standard
25 that we administer. What is the purpose of that standard?

1 MR. LAYCOCK: Well, I think the purpose is that
2 this Court stands ready, it says in Smith, to say that if
3 you -- if a Government singles out religion for special
4 burdens or special prohibition, that is forbidden. You
5 have to at least treat religious acts as well as you treat
6 analogous secular acts.

7 QUESTION: And that is the ultimate end.

8 MR. LAYCOCK: Well --

9 QUESTION: We don't have a further reason
10 that --

11 MR. LAYCOCK: Well --

12 QUESTION: We are concerned with --

13 MR. LAYCOCK: No, I -- I --

14 QUESTION: Prohibiting legislatures --

15 MR. LAYCOCK: Well --

16 QUESTION: From acting with hostility to
17 religion.

18 MR. LAYCOCK: I -- I can't read your minds, but
19 I think the purpose for which you enunciated that
20 requirement is that requiring the legislature to treat an
21 unpopular minority faith as well as it treats the bulk of
22 the population will give a sort of self-enforcing
23 political protection to the religious minority.

24 They cannot suppress sacrifice unless they are
25 willing to suppress food killings, poison in people's

1 yards, exterminators --

2 QUESTION: Well, but I take it the underlying
3 purpose for that is to avoid a regime which is hostile to
4 religion.

5 MR. LAYCOCK: Well, I think that's right, but
6 whether or not the whole regime is hostile to religion or
7 whether only a particular body of legislation or a single
8 law is hostile to a particular religion, I think the
9 neutrality requirement is designed to protect religious
10 practices at least to keep -- it's a way of avoiding open
11 persecution if they can single out a religion and treat it
12 differently from how they treat everybody else.

13 QUESTION: Well then the ultimate -- our
14 ultimate inquiry, our ultimate purpose, is to avoid a
15 particular subjective motivation on the part of the State.

16 MR. LAYCOCK: Well, certainly avoiding that
17 subjective motivation I think is part of your purpose, but
18 I don't think it should be all of the purposes. Whatever
19 you find about the subjective motive of the council, if
20 the ordinances on their face forbid sacrifice and do not
21 forbid other killings, I think that's discriminatory.

22 QUESTION: Well, that might be simply an
23 objective mechanism --

24 MR. LAYCOCK: That's right. But I think
25 either --

1 QUESTION: For probing the existence of the
2 forbidden intent.

3 MR. LAYCOCK: Both the objective and the
4 subjective I think are evidentiary on each other, but as I
5 read Smith and as I read analogous cases in the equal
6 protection context -- Washington v. Davis and
7 Massachusetts v. Feeney, I think either objective
8 discrimination in the text of the statute or a subjective
9 discriminatory motive is sufficient to put us into the
10 compelling --

11 QUESTION: Because they both are probative of
12 the forbidden purpose.

13 MR. LAYCOCK: I think that's right.

14 QUESTION: Did the district court make any
15 finding on the question of discrimination?

16 MR. LAYCOCK: Yes, he did. He made two
17 findings:

18 1) The city council's specific intention was to
19 prevent animal sacrifice anywhere in the city. I think
20 that, in terms of discrimination against religion, is a
21 finding of discrimination.

22 And 2) that the city council did not intend to
23 discriminate against Santeria as opposed to Palo Mayombe
24 or any other animal sacrificing religion. It was going to
25 treat all these minority religions equally, but there was

1 intent to suppress this family of religions.

2 QUESTION: The family of religions, or the
3 practice of sacrifice. I mean, was there a finding that
4 there was an antagonism towards Santeria? Was there any
5 attempt to suppress the religion as such?

6 MR. LAYCOCK: When you suppress the central
7 ritual, I think you suppress the religion.

8 QUESTION: Well, that's true, but you know, --

9 MR. LAYCOCK: The finding is --

10 QUESTION: There have been people like the Thugs
11 were a religious group, I believe, and their central
12 ritual was killing other people.

13 MR. LAYCOCK: Right.

14 QUESTION: Surely that can be suppressed.

15 MR. LAYCOCK: That can be suppressed pursuant to
16 neutral and generally applicable laws against murder, and
17 I suppose even pursuant to the compelling interest, but --

18 QUESTION: And Hialeah says they have a
19 universal, generally applicable law against ritualistic
20 killing of animals.

21 MR. LAYCOCK: But that is not a universal or
22 generally applicable law at all.

23 QUESTION: Yes --

24 MR. LAYCOCK: It applies only to religion.

25 QUESTION: No. Anybody who wants to have a

1 ritual and -- you're quite right, it doesn't happen very
2 often in fraternities, though I imagine it happens now and
3 then. But why isn't that a valid argument, that -- they
4 don't care whether you're doing it for religious reasons
5 or not. They really don't care what your reason is.

6 MR. LAYCOCK: If that's a valid argument, you
7 really have repealed the free exercise clause. Any lawyer
8 in the country with that standard of drafting can draft an
9 ordinance to get any church that happens to be at
10 crosswise with the city council. You know, it's --

11 QUESTION: In effect you're saying you've got to
12 define the act without reference to the intention of the
13 people who perform the act.

14 MR. LAYCOCK: You have to define the act without
15 reference to the religious or secular motives, and you
16 have to define the act without reference to things that
17 are themselves inherently religious. In Smith, you --

18 QUESTION: You must ban all killing of animals
19 or else no killing of animals because the purpose can't be
20 taken into account, is that what you're saying?

21 MR. LAYCOCK: You must ban all killing of
22 animals or you must permit religious killing of animals.
23 Of course --

24 QUESTION: I thought you said you could at least
25 allow self defense. That's a purpose.

1 MR. LAYCOCK: I said we would have a much harder
2 and closer case if there were a couple of narrow --

3 QUESTION: I don't think it's close at all. I
4 think it's obvious you can say -- I think it's obvious
5 you're allowed to allow the killing of animals in self
6 defense, and that doesn't mean you have to allow all
7 other --

8 MR. LAYCOCK: That's right, but if the self
9 defense exception would be permitted it would be because
10 of the indication in Smith that the permitted reasons are
11 compellingly different from the religious reasons.

12 QUESTION: The purpose makes a difference, so
13 you can take purpose into account.

14 MR. LAYCOCK: You can -- but you don't take it
15 into account at the neutrality stage, you take it into
16 account at the compelling interest stage.

17 The argument would be that saving human life by
18 killing an animal in self defense is a compelling
19 interest, and that that distinguishes that narrow
20 exception from the religious killings of animals, but what
21 they've done here is say, you can kill animals for almost
22 any reason -- just because you're tired of taking care of
23 them, that's a good enough reason. That's necessary --
24 but not for religious reasons.

25 QUESTION: Did the courts below here apply a

1 compelling interest standard in analyzing the ordinances?

2 MR. LAYCOCK: I think not, Your Honor. They --

3 QUESTION: Well, they --

4 MR. LAYCOCK: Recited the compelling interest.

5 QUESTION: They purported to do so.

6 MR. LAYCOCK: They purported to, but --

7 QUESTION: And --

8 MR. LAYCOCK: They effectively equated it with
9 rational basis.

10 QUESTION: And specifically, where do you find
11 the fault with the analysis of the courts below?

12 MR. LAYCOCK: Well, there's no effort to require
13 the city to show that its compelling interest fit the
14 discrimination in these statutes. Its ritual and ceremony
15 has nothing to do with the pain to the animals or the
16 problem of disposal. There is no effort to insist that
17 the compelling interest be pursued in a neutral or
18 generally applicable way. There is no insistence that the
19 interest be especially important.

20 What all of these interests are are incremental
21 reductions in quite general problems that the city manages
22 for secular purposes. We have carcasses lying on the road
23 when pets are killed by cars. The city doesn't ban cars
24 and it doesn't ban pets. It responds to the problem.

25 An incremental reduction in a general problem

1 cannot be obtained at the expense of the First Amendment.
2 That can -- the incremental reduction can never be a
3 compelling interest, and that's really what the district
4 court found over in --

5 QUESTION: Certainly city can distinguish
6 between accidental killings of pets by cars and treat them
7 one way and intentional killing of animals on the other,
8 can't it?

9 MR. LAYCOCK: Yes, but the accident intention
10 distinction doesn't go to the disposal problem. The
11 disposal problem is this. There are -- some small
12 fraction of all the animals that are sacrificed are
13 apparently improperly disposed of by certain members of
14 these faiths. To eliminate that small fraction, the city
15 says, we have to forbid the entire practice of sacrifice.

16 The analogous pursuit of the interest would be
17 to forbid all ownership of pets because some of them wind
18 up dead and lying on the roads. They've applied a
19 prophylactic total ban to --

20 QUESTION: Yeah, but --

21 MR. LAYCOCK: To sacrifice.

22 QUESTION: One act is intentional and the other
23 is just accidental.

24 MR. LAYCOCK: But most of the people who
25 intentionally sacrifice do not improperly dispose of the

1 animal. The finding is most of the sacrificed animals are
2 eaten.

3 QUESTION: Well, like so many cases it depends
4 on how you describe your class.

5 MR. LAYCOCK: Well, I understand, but they've
6 described the class in a discriminatory way. They've
7 described the class as -- in religious terms and enacted a
8 total prohibition on the religious conduct to get a tiny
9 reduction in problems that they simply manage and deal
10 with in secular context and they do not have any
11 comparable prohibition on the secular activities that
12 produce the very same harms.

13 They don't prohibit hunting and other means of
14 cruel killing, and they don't prohibit other sources of
15 garbage, but they prohibit this religion because they
16 think the religion is unnecessary.

17 QUESTION: Is it their failure to preclude
18 broadly enough, is it the underinclusiveness of it which
19 precludes the finding of a compelling State interest?

20 MR. LAYCOCK: You can describe this as
21 underinclusiveness if you want, but this is
22 underinclusiveness with a vengeance, because nothing is
23 included.

24 QUESTION: You're saying it's underinclusive
25 with a purpose. Ah, yeah.

1 MR. LAYCOCK: No killings of animals are
2 included except the religious killings of animals, so it's
3 underinclusive in a sense, but they really have singled
4 out religion for a prohibition that is applied nowhere
5 else.

6 If there are no further questions, I'll reserve
7 my remaining time.

8 QUESTION: Very well, Mr. Laycock.

9 Mr. Garrett, we'll hear from you.

10 ORAL ARGUMENT OF RICHARD G. GARRETT

11 ON BEHALF OF THE RESPONDENT

12 MR. GARRETT: Mr. Chief Justice and may it
13 please the Court:

14 As the record reflects, in the summer and the
15 fall of 1987, the councilmen observed that the citizens of
16 the City of Hialeah were concerned over the potential for
17 animal sacrifices being conducted in the City of Hialeah.

18 I think it is extremely important that the
19 factual setting be clear in order that the Court can make
20 the evaluation of whether or not in fact this religious
21 practice was targeted or whether a legitimate governmental
22 purpose was the subject of these ordinances. I believe
23 that important factual consideration leads to answer many
24 of the questions that are posed with respect to the
25 alleged subjective targeting and the underinclusiveness

1 that is alleged with regard to the ordinances.

2 Specifically, what Hialeah was facing in the
3 summer and fall of 1987 was a situation where tens of
4 thousands of animals, according to the district court
5 findings, were being sacrificed in the area of South
6 Florida. The specific problems that the city encountered
7 in connection with these sacrifices --

8 QUESTION: But not in Hialeah.

9 MR. GARRETT: Excuse me, Your Honor.

10 QUESTION: But not yet in Hialeah.

11 MR. GARRETT: Your Honor, there are facts in the
12 record that reflect that sacrifices had in fact been
13 occurring in Hialeah, that dead animals were being found
14 in public places --

15 QUESTION: All right.

16 MR. GARRETT: Within Hialeah, that animals were
17 being, in effect, tortured in Hialeah and subjected to
18 cruel treatment in the form of possession prior to
19 sacrifice. The problems were certainly existent in
20 Hialeah.

21 QUESTION: Okay.

22 MR. GARRETT: I think that the record should
23 reflect very clearly that Hialeah was responding to the
24 problem of ritualistic sacrifices taking place in the
25 city.

1 What type of problems are we talking about?
2 We're talking about human health hazards. The human
3 health hazard evidence was evidence concerning the fact
4 that when sacrifices take place, that as many as 52
5 animals in a single day are killed, and they are killed in
6 a private residence in many instances and then they are
7 decapitated, blood is put into pots, the animals are then
8 oftentimes left out in public places if there is a ritual
9 that requires the animal to be left in a public place.

10 There are problems connected with disease. The
11 disease problems were discussed directly at the trial
12 court as being a problem associated with the fact that the
13 killings take place in residences, and as a result of that
14 you have spilled blood, you have animal parts left in and
15 around houses. That is different than the general problem
16 of garbage, and --

17 QUESTION: Well -- well --

18 MR. GARRETT: It is significantly --

19 QUESTION: May I interrupt you for a minute? I
20 suppose it would have been possible for the city to
21 approach this problem by adopting ordinances spelling out
22 the ways in which animals may be killed and the ways or
23 requirements for disposition of any remains, is that not
24 right? I mean, it could have enacted such ordinances.

25 MR. GARRETT: We believe not, in terms of

1 effectiveness, Your Honor. We believe that the nature of
2 the animal sacrifice problem begins all the way from the
3 point in which the animals are possessed for the purposes
4 of animal sacrifice, that the evidence at the district
5 court level was that the inhumane treatment to the
6 animals, which is one of the problems that we cite, begins
7 at that point, and that enforcement is almost impossible
8 because the botanicas and other farms that sell these
9 animals, you have a quickly moving problem. Enforcement
10 is very difficult.

11 More importantly, with respect to the possession
12 of the animals during the sacrifice, there is no evidence
13 that you can solve all of the problems in a house, in a
14 private residence, with respect to a quiltwork of
15 ordinances designed to regulate everything that goes on in
16 that private residence from the standpoint of how many
17 animals you have in that residence, how many -- how they
18 can be killed, what you do with the blood cauldrons, how
19 you have to hold the knife.

20 Then you have problems associated with the
21 disposal of the animals, and that the religions oftentimes
22 mandate they be left in public places.

23 The point is that with respect to effectively
24 solving the problems, it is our position that, 1) you
25 couldn't solve all the problems with a series of

1 ordinances, and 2) that the nature of the kind of
2 entanglement that you would be getting involved in as a
3 result of passing this patchwork of ordinances would
4 itself cause a constitutionality problem of entanglement
5 with the religion.

6 Finally, the kind of ordinances that would be
7 required to deal with this problem even to begin
8 approaching effectiveness -- and we contend the city is
9 not required constitutionally to enact a large number of
10 ordinances which still don't solve the problem.

11 But assuming that you did enact a large number
12 of ordinances, it's our position that they would be back
13 in court saying you've in effect prohibited us from doing
14 what we need to do in our religion, because now you have
15 told us how we have to hold our knives, how we have to
16 kill them, how we have to handle the blood in the
17 particular ceremonies, and how we have to dispose of the
18 animals, and our gods say that's not what we can do, and
19 therefore we would have the same problem.

20 We'd be back here with a different type of
21 argument, but with the same kind of argument that the
22 regulatory framework that we had created effectively
23 precluded them from practicing their religion, and that is
24 the problem that the city was facing.

25 I'd like to go back to these --

1 QUESTION: You might have an ordinance that was
2 easier to defend, though, in that situation, if it had
3 been directed more precisely at the results of these
4 proceedings rather than at the proceedings themselves.

5 MR. GARRETT: Well, our ordinances, Your Honor,
6 are not directed at religion, they are directed at the
7 practice of animal sacrifice. They are specifically
8 directed at the conduct.

9 Now, a lot of argument has been made in the
10 neutrality area here, that really by targeting animal
11 sacrifice we are targeting the religions that do those
12 animal sacrifices. That is not in our opinion a proper
13 analysis of the situation, because our legitimate problem
14 was animal sacrifices.

15 Our legitimate problem the record doesn't
16 reflect was hunting, it isn't euthanasia, it's not pest
17 control, it is the problem with animal sacrifice, all the
18 way from the beginning of the process and the damage to
19 the animals to the end of the process and the disposal of
20 the remains. So we addressed what our problem was, we
21 didn't address what other kinds of problems may exist, and
22 we're not required --

23 QUESTION: But maybe you have to. But maybe you
24 have to. That's what it -- maybe what a generally
25 applicable law means. You don't address the problems of

1 hunters who kill animals cruelly, or dispose of their
2 carcasses in a manner that you don't approve of or that's
3 unsanitary, but you do pick upon this religious practice.

4 MR. GARRETT: Your Honor, there are two
5 responses to that:

6 1) This is not only a religious practice.
7 There is evidence in the record which has not been
8 mentioned that groups engage in this activity --
9 malevolent magic is mentioned by one of their witnesses to
10 describe what existed with respect to a goat that was cut
11 in half and found on Miami Beach.

12 There are also -- there's also evidence in the
13 record with respect to the fact that this particular type
14 of practice is engaged in by Satanists, by witchcraft,
15 voodoo, and this Court has never gone so far as to
16 particularly extend protection to those groups.

17 QUESTION: Well, why shouldn't that go to the
18 compelling interest? You could say that these ordinances
19 do target religion, but they're a compelling interest.

20 MR. GARRETT: We believe that there are two
21 ways, certainly, to reach the result of the district
22 court. The first way is to come to the conclusion that
23 we really do have a neutrality in terms of meeting the
24 neutrality standard of Smith, because we are not
25 underinclusive.

1 We dealt with our particular governmental
2 problem. We didn't have any record of evidence of any
3 problems of hunting, any problems of euthanasia, and
4 therefore we meet the neutrality standard.

5 But I think that there's a second separate
6 ground that doesn't even require a Smith analysis and
7 conclusion of neutrality, which is simply that we had
8 substantial compelling governmental interests that
9 justified the particular ordinances at hand, and we
10 mentioned at the trial court and we argued that the human
11 health hazards are substantial.

12 The human health hazards, which I want to get
13 back to a for a moment -- when you talk about killing of
14 large numbers of animals, and blood and goat heads being
15 present in a community where people live, in residence
16 areas, you are dealing, according to the expert testimony,
17 with a problem of creating vectors for disease.

18 These vectors come about because in an area
19 where you have animal parts or blood in residential areas,
20 you create harborages for rats, who generally like to
21 travel only within 150 feet of their particular food
22 supplies.

23 Then you have the possibility of the fleas, the
24 flies transmitting the diseases. Now, the diseases don't
25 come from the animals in particular. They may come from

1 other animals that feed on them that are diseased.

2 QUESTION: But you let householders who have
3 animals slaughter -- there is an exception made for
4 slaughter of a small number, outside of a slaughterhouse,
5 of a small number of pigs and such. Isn't there an
6 exception for that?

7 MR. GARRETT: There is not an exception in the
8 city ordinances of Hialeah that would permit an individual
9 to slaughter his own animals for any reason in his house.
10 The ordinances cannot be read as permitting any individual
11 killing of animals in the City of Hialeah by a resident,
12 and so --

13 QUESTION: Supposing somebody had a sick cat,
14 that he thought he had to put him out of his misery, is it
15 unlawful in Hialeah to kill your own cat?

16 MR. GARRETT: There is a situation in Hialeah
17 where you may, for the purposes of --

18 QUESTION: Well, for no purpose except to put
19 him out of its misery.

20 MR. GARRETT: Yes, that would be permitted in
21 the City of Hialeah, but we believe that it would be
22 permitted by an establishment that is qualified to do
23 that.

24 QUESTION: You mean, I couldn't just drown my
25 own cat in the bathtub or something like that?

1 (Laughter.)

2 MR. GARRETT: No, that would certainly be cruel.

3 QUESTION: It would.

4 MR. GARRETT: That would be a cruel killing.

5 That would certainly not be permitted under the ordinance.

6 QUESTION: It's forbidden to do that.

7 MR. GARRETT: It's forbidden. It's clearly

8 forbidden under 87-40.

9 QUESTION: But supposing I gave him an injection
10 of something to put him to sleep, then, instead of doing
11 it in the bathtub.

12 MR. GARRETT: In that situation it would be a
13 permitted -- it would be a permitted killing, yes.

14 QUESTION: Let's go back to your reason for not
15 targeting the unsanitary practice rather than targeting
16 the religious practice that you say ultimately leads to
17 it. Why are you likely to be more effective in targeting
18 a religious practice so defined than you are in targeting
19 an unsanitary practice defined as such?

20 MR. GARRETT: Because the sanitary problem that
21 we have identified is one that is unique to animal parts
22 in public places growing out of sacrifice.

23 QUESTION: Yes, but the sacrifice is unique to
24 private practices in private houses, and I don't see how
25 you are likely to be very effective in reaching that.

1 MR. GARRETT: Because if you prohibit the
2 sacrifice, because you are in a position to stop it at a
3 point when the animals are possessed, because you also
4 have a possession statute and you have animals lined up
5 going into a residence, you in effect preclude the problem
6 from developing.

7 QUESTION: Well, I know you do if you can do it,
8 but I guess my question is, why are you likely to be more
9 effective in preventing the practice within the private
10 house than you are to be in preventing the disposal in a
11 public place?

12 MR. GARRETT: Because our view is that there are
13 indications of when an animal sacrifice is about to take
14 place in a house. There are large numbers of people,
15 there are animals outside, and it is the view that we
16 would be able to stop that.

17 On the other hand, with respect to the placement
18 of individual animals throughout the community, that
19 doesn't nearly create the level of conduct or problem that
20 would be perceived by the governmental authorities from an
21 enforcement point of view.

22 QUESTION: Did the district court make findings
23 on these indicia of approaching sacrifice?

24 MR. GARRETT: The district court made some very
25 specific findings about how overwhelming the sacrifice

1 process can become in terms of large numbers of animals
2 being sacrificed in one initiation ceremony in a very
3 small house in Hialeah with a 6 X 10 kitchen, and the
4 district court judge marveled how this could all be done
5 in a sanitary condition under circumstances where the
6 animals were cared for properly under circumstances where
7 the killing was --

8 QUESTION: But you don't allow that. I mean,
9 you don't allow that no matter how sanitary, no matter how
10 easy it is rendered for you to police it. There is not
11 even exception -- you make an exception for
12 slaughterhouses. You can have a licensed slaughterhouse
13 where killing may occur, because I guess it can be
14 inspected and so forth.

15 MR. GARRETT: It can be inspected, it can be
16 regulated --

17 QUESTION: Right.

18 MR. GARRETT: The method of killing can be
19 monitored --

20 QUESTION: But if you're talking about
21 sacrificial killing, you don't even allow it to be done at
22 a place -- a temple, a church, whatever -- where they say,
23 come in and inspect. Do you want to come in and inspect?
24 Do it.

25 MR. GARRETT: Your Honor, I think --

1 QUESTION: You allow it to be done nowhere, no
2 matter how easy it is for you to police, no matter how
3 willing they are to have you inspect it. You just say,
4 no sacrifice.

5 MR. GARRETT: I think there is an open question
6 with respect to the ordinance 87-72, under circumstances
7 where all of the other problems associated with animal
8 sacrifice were alleviated -- and when I'm talking about
9 that, the cruelty to the animals, the situation of the
10 method of slaughter, whether it is humane or not -- which
11 could permit the animal slaughtering where the food is
12 consumed, under 87-72, in an area that was properly zoned
13 for slaughterhouses, and I think that that is something
14 that the petitioners have never pursued.

15 The record reflects that on the eve of trial of
16 this case the petitioners made an application for the
17 purpose of being able to conduct animal sacrifice as a
18 slaughterhouse in the location of the church, and that was
19 never pursued. There is also quoted in the --

20 QUESTION: When you say never pursued, did the
21 city act on it?

22 MR. GARRETT: The -- it was in effect withdrawn.
23 It was not pursued. It was immediately on the verge of
24 trial. It was not pursued. There was no action.

25 QUESTION: So there is no pending application in

1 the City of Hialeah.

2 MR. GARRETT: As we understand at this point
3 there is no pending application at the City of Hialeah.

4 QUESTION: Does the City of Hialeah allow people
5 in their homes to trap mice and rats --

6 MR. GARRETT: Yes.

7 QUESTION: If they're killed in the process --

8 MR. GARRETT: Yes.

9 QUESTION: And to boil live lobsters and eat
10 them?

11 (Laughter.)

12 MR. GARRETT: There is clearly a prohibition in
13 the ordinances about the boiling of lobsters, if you read
14 the ordinances as saying, as I think they do -- or any
15 other animals, so I don't believe that the lobsters --

16 QUESTION: You can't boil the lobster --

17 QUESTION: You can't eat lobster --

18 QUESTION: In Hialeah.

19 (Laughter.)

20 MR. GARRETT: I think that technically -- a
21 technical reading of the ordinance would say that the
22 boiling of lobsters is clausued by, other animals. In your
23 house, I think there is an exception --

24 QUESTION: And what's the exception for the mice
25 and rats? Where do I find that?

1 MR. GARRETT: The exception for the mice and
2 rats would be in the State statute with respect
3 to ordinances.

4 QUESTION: I thought we were looking at the city
5 ordinances.

6 MR. GARRETT: Yes, and there are --

7 QUESTION: I just wondered where I found the
8 exception. Can you show me?

9 MR. GARRETT: I believe I can. I believe that
10 the exception is that it would not fall within a
11 sacrifice --

12 QUESTION: Could you give us the page number of
13 the --

14 MR. GARRETT: Well --

15 QUESTION: Are you referring to the text of some
16 ordinance, and where would I find it?

17 MR. GARRETT: Yes. I think that none of the
18 ordinances would define it as a sacrifice. I believe that
19 it is not being killed for food, and therefore it would
20 not be covered under the particular ordinances.

21 QUESTION: The trapping and so forth are not
22 sacrifices.

23 MR. GARRETT: That's correct.

24 QUESTION: And that's because what the city was
25 trying to prohibit here was just the ritual sacrifice as

1 performed by this church and others like it.

2 MR. GARRETT: No, I think that what the effort
3 was here was -- and we make -- we don't try and argue
4 against this. We were trying to prevent animal
5 sacrifices. The question --

6 QUESTION: By this church and others like it.

7 MR. GARRETT: Not only churches, by any person,
8 by any religion, by any cult, by any secular act --

9 QUESTION: You talked earlier about the
10 slaughterhouse possibility. Suppose there is an area
11 that's zoned for a slaughterhouse and it is a
12 slaughterhouse, can it be used on Saturdays and Sundays
13 for animal sacrifices?

14 MR. GARRETT: I believe that there are no
15 slaughterhouses at this point in the City of Hialeah.

16 QUESTION: Well, I want -- I have a hypothetical
17 city and a hypothetical slaughterhouse.

18 MR. GARRETT: In that situation, I believe that
19 there would under the rulings of this Court probably have
20 to be either a Saturday or Sunday available in order to
21 conduct the rituals in those particular slaughterhouses.

22 QUESTION: That is to say that the sacrificial
23 rites that are conducted in a slaughterhouse are protected
24 by the First Amendment.

25 MR. GARRETT: I think that they would be. Yes,

1 I do.

2 QUESTION: There is a First Amendment right to
3 sacrifice animals.

4 MR. GARRETT: No, I believe that there is a
5 First Amendment right to, in a situation where you have a
6 circumstance where you are allowing some religious
7 practices to occur in a slaughterhouse, that you would
8 have to allow them to occur on a Saturday or a Sunday.

9 (Laughter.)

10 QUESTION: Well, let me ask you this. If a
11 church finds a slaughterhouse that is properly zoned and
12 if it follows standards of applicability that are general
13 for the disposal of animals, does it have a constitutional
14 right to engage in its sacrificial services?

15 MR. GARRETT: No, we do not believe that a
16 church would have a right to engage in animal sacrifice
17 under circumstances that you have now described.

18 QUESTION: Why?

19 MR. GARRETT: Because we believe that the
20 Constitution does not allow all religious practices to be
21 engaged in even if they are central to the religion. The
22 Reynolds case made it very clear that even though polygamy
23 was central to the Mormon Church, that laws basically
24 outlawing the polygamists activities were laws that were
25 constitutional. We would submit that the fact that it is

1 important to a religion, if there is a legitimate
2 governmental purpose to the particular restrictions --

3 QUESTION: Then is the legitimate governmental
4 purpose here the prohibition of sacrifice, per se?

5 MR. GARRETT: We submit that it is. We submit
6 that animal sacrifice is an appropriate category to be
7 specifically focused on by a series of --

8 QUESTION: And is it a fair reading of these
9 ordinances to find that that policy is implicit in these
10 ordinances?

11 MR. GARRETT: I think it is a fair reading of
12 the ordinances that they in effect attempt to preclude
13 animal sacrifice, and they do that in a number of
14 different ways, and I think that is the question that the
15 Court is facing, whether or not the attempt, and in this
16 case a successful attempt to preclude the animal sacrifice
17 as a governmental problem, is one that can be done under
18 the First Amendment, free exercise provision.

19 QUESTION: But would you not agree that in order
20 for the prohibition to be legitimate, the public values
21 that you assert are being furthered by the prohibition
22 must not be allowed to be compromised through other
23 exceptions to the killing that you allow, because
24 otherwise you would have nothing left but an antagonism
25 towards the religion. You do not like sacrifice to be

1 done.

2 If you have other values -- cruelty to animals
3 or public sanitation or whatever else -- at least the
4 other exceptions that you make from your general
5 prohibition cannot permit those things to happen.

6 MR. GARRETT: I believe that the question
7 becomes what particular problems the municipality is
8 facing, and if the municipality has to go and deal with
9 the hypothetical problems in the scope of the ordinance
10 that are not really facing the community, I don't see why
11 that is constitutionally mandated.

12 It would seem that if the problems that we have
13 been able to identify are problems that grow specifically
14 out of animal sacrifice, that it is not required that the
15 city, for example, exempt hunting or any other particular
16 type of problem or deal with them in the ordinances.

17 It's clear that animal sacrifice carries with it
18 very specific problems that are not attendant with the
19 other types of exceptions that the petitioners point to.
20 There is no record evidence that we have any of those
21 particular problems, and I think that it's a question of
22 the classification.

23 QUESTION: Mr. Garrett, can I interrupt you for
24 a moment? The Court found specific harms to the animals.
25 They were cruel in the way they did it and there were some

1 disposal problems and certain other specific problems that
2 they found.

3 He also found, as I remember it, there's a lot
4 of varieties of this religion. Some have more of some
5 customs and some have slightly different customs.

6 Supposing there was one branch of the religion
7 that required as a part of the ceremony that it be
8 conducted in a slaughterhouse as Justice Kennedy suggests,
9 that it dispose of the remains in a lawful manner, and
10 that it had none of the side effects that trouble you, and
11 very properly. But you have a religion that does
12 sacrifice animals.

13 Now, that religion would be prohibited by your
14 ordinance even if none of the side effects occurred, or
15 were permitted to occur by the religion, is that not
16 correct?

17 MR. GARRETT: That's correct. That would be an
18 incidental impact of the ordinance, and we believe that
19 that would be constitutional under Smith.

20 QUESTION: And the other thing that puzzles me,
21 on the one hand you say there are tens of thousands of
22 these sacrifices going on regularly and that's what
23 prompted the ordinance, and then you say, as one very
24 dramatic example of a goat being found on the beach that
25 was apparently very unattractive and unhealthful --

1 (Laughter.)

2 QUESTION: But -- and that dramatic evidence is
3 kind of appealing, you have to say. But if that happens
4 only once when there are thousands and thousands of
5 sacrifices, which way does the example cut?

6 MR. GARRETT: Well, I don't believe by giving
7 you that one example, which was provided to you to show --

8 QUESTION: And there's only one in the record,
9 is that right?

10 MR. GARRETT: No, that is not true at all.
11 There are numbers of animals --

12 QUESTION: Goats.

13 MR. GARRETT: That are testified to as having
14 been placed throughout the community. The testimony is
15 replete with evidence of dead animals being left in Sewell
16 Park, being left throughout the community. There are
17 pictures, photographic pictures of animals --

18 QUESTION: Now, did those -- they violate some
19 other neutral statute before this ordinance was passed? I
20 mean, there must have been some municipal regulation
21 against leaving carcasses around in public parks.
22 Littering, maybe.

23 (Laughter.)

24 MR. GARRETT: Certainly, but they were
25 ineffective. They were obviously not accomplishing the

1 purpose for which they were enacted, because it's very
2 difficult to police a situation where people go out at
3 night time or early in the morning with whole animals and
4 leave them in parks, leave them under palm trees as it's
5 dictated under the religious tenets, leave them at
6 railroad crossings, leave them at the steps of courthouses
7 in some instances -- all of these dispersal of animal
8 problems are problems that are in the record, and they are
9 not simply a single goat. That is not --

10 QUESTION: Okay, but an easier way to police
11 them would be to go back to the example that Justice
12 Kennedy was working you towards to provide some regulated
13 place like a slaughterhouse in which the -- kind of the
14 core practice could occur, and yet you reject that.

15 MR. GARRETT: I do not reject the possibility
16 that under 87-72, under circumstances where there was an
17 area zoned for slaughterhouses or an application was made
18 for a change in the zoning plan and the animals were in
19 fact consumed, that there would be a situation where
20 constitutionally and under the laws of the city, that
21 would be permitted.

22 QUESTION: They don't want to consume them.
23 They just want to sacrifice.

24 MR. GARRETT: Currently --

25 QUESTION: That's right. You still maintain

1 that they may define the practice -- the prohibited
2 practice merely as sacrifice, regardless of where it might
3 take place and under what regulated conditions, isn't that
4 correct?

5 MR. GARRETT: The way the ordinances are drafted
6 now, sacrifice would not be permitted in that
7 circumstance.

8 QUESTION: And it's your position that that is
9 perfectly constitutional.

10 MR. GARRETT: It is our position that that is
11 constitutional.

12 Your Honors, the circumstance that the City of
13 Hialeah was facing was a very specific circumstance --
14 animal sacrifice, inhumane treatment to animals. I would
15 point out that when we talk about putting this activity
16 into a slaughterhouse we are not solving the claim of
17 petitioners that they are entitled to practice their
18 religion as they wish, and the reason why we are not
19 solving that problem is because we never got to the manner
20 in which the sacrifices occur.

21 This is not ritualistic slaughter as it occurs
22 in kosher slaughter, for example. This is an indifferent
23 type of killing. The district court judge was able to
24 conclude that this was an inhumane type of killing because
25 he understood that in -- for example, with respect to a

1 four-legged animal an individual hoists it, puts it on a
2 table or altar, attempts to hold it down with one hand,
3 raises a knife in the right hand and attempts in a jabbing
4 motion to cut the carotid arteries in an unreliable method
5 of killing.

6 QUESTION: Isn't it also the case that that same
7 witness rejected the State law definition of humane
8 killing? In other words, he wishes to impose a different
9 standard from that which State law imposes, isn't that
10 correct?

11 MR. GARRETT: His position was that State law --

12 QUESTION: Well, isn't that correct?

13 MR. GARRETT: His position was that State did
14 not go far enough in being humane.

15 QUESTION: Yeah.

16 MR. GARRETT: That was his position, and he's
17 not a lawyer, and he wasn't rejecting it legally. His
18 view was that that type of killing was not as humane as he
19 would like it to be.

20 But the bottom line is that this type of killing
21 was so unreliable, according to Dr. Fox, that you couldn't
22 be in any way assured that both carotid arteries would be
23 cut, the animal, in effect, would remain conscious for a
24 period of time, and it wouldn't be apparent that you
25 hadn't cut the carotid arteries because of the blood, and

1 so we're talking about altering the manner in which they
2 actually kill the animals.

3 QUESTION: But as I understand it, there's an
4 exemption in the statute so that there's killing for food,
5 and if it's less than, I think, 35 lambs a week or
6 20 cattle, something like that, it's permitted.

7 MR. GARRETT: It is permitted, but the method of
8 humane slaughter is not altered by that exception. Humane
9 slaughter must still be practiced in killing the animals,
10 and so simply moving this religion into a slaughterhouse
11 doesn't solve the problems of meeting the humane slaughter
12 standards.

13 QUESTION: Well, your opponent I thought agreed
14 that the city could prohibit inhumane slaughtering so long
15 as it did it across the board.

16 MR. GARRETT: I believe that the petitioner's
17 claim that they are entitled to slaughter the animals
18 according to their religious dictates, and that that would
19 not be subject to the regulation that we propose and that
20 the State proposes with respect to humane slaughter.

21 QUESTION: Would this method of slaughter
22 violate the State statute?

23 MR. GARRETT: Yes, it is our position that it
24 would.

25 QUESTION: Has any of these people ever been

1 prosecuted under the State statute?

2 MR. GARRETT: To my knowledge there have been no
3 prosecutions either at the State or at the local level.

4 QUESTION: Thank you, Mr. Garrett.

5 Mr. Laycock, you have 4 minutes remaining.

6 REBUTTAL ARGUMENT OF DOUGLAS LAYCOCK

7 ON BEHALF OF THE PETITIONERS

8 MR. LAYCOCK: The question of whether this could
9 be done in a slaughterhouse, the ordinances are clear, the
10 ritual or ceremony would be illegal in Hialeah in any kind
11 of slaughterhouse under any kind of conditions. The
12 testimony --

13 QUESTION: Do you agree, Mr. Laycock, that the
14 limited slaughter that is allowed can only be allowed in a
15 slaughterhouse?

16 MR. LAYCOCK: That is not correct. It can only
17 be allowed where properly zoned. The city attorney,
18 Mr. Gross, testified that on the farms in Hialeah animals
19 are slaughtered under the limited slaughter exceptions in
20 the ordinances. I think it is the case that commercial
21 slaughter is not going on in residential or nonfarm
22 neighborhoods.

23 With respect to the alleged uniqueness of the
24 problem, Mr. Garrett summarized the testimony of the
25 city's expert witness, Mr. Livingstone, about disease

1 factors and the like, but remember, Mr. Livingstone said
2 repeatedly, I'm not talking about animal sacrifice at all,
3 I'm talking about organic garbage. He said it is no
4 different, and the sources of supply of organic garbage
5 are much greater from all of the secular food consumption
6 in the city than they are from these sacrifices.

7 Now, my clients have always been willing to
8 accept regulation of the farms and botanicas which are not
9 protected by the First Amendment. They're willing to
10 accept reasonable zoning on the church itself.

11 They are not willing to give up the rights of
12 their members to sacrifice on special occasions such as
13 births and weddings in the homes, but the church itself
14 can be reasonably zoned, they're willing to comply with
15 disposal regulations, but none of that would satisfy the
16 city. The city sees a special --

17 QUESTION: How about humane slaughter
18 regulations?

19 MR. LAYCOCK: We believe that we are in
20 compliance with humane slaughter. There is a neutral
21 prohibition on torture and torment that is not challenged.
22 The district court did not find that --

23 QUESTION: Why not?

24 MR. LAYCOCK: Hmm?

25 QUESTION: Why not? Why shouldn't you be able

1 to slaughter any way you want -- humane or inhumane?

2 MR. LAYCOCK: Well, it may --

3 QUESTION: If the theory of your case is
4 correct, why -- you know, why not go all the way?

5 MR. LAYCOCK: Well, because -- because we're not
6 tormenting and we're not torturing we don't have to go all
7 the way. I may be back some year with a different client
8 who does.

9 (Laughter.)

10 MR. LAYCOCK: The testimony is the method of
11 sacrifice is very quick, except when it fails. The trial
12 judge said it is somewhat unreliable and therefore it is
13 cruel. There is no finding of how often it is unreliable,
14 how often it misses. Those who are experienced in the
15 method said they believe they don't miss, but the intended
16 method of sacrifice is not cruel.

17 QUESTION: Well, if the intended method is not
18 cruel, could not the city take into account that the
19 intention just wasn't fulfilled sometimes and it turned
20 out to be cruel in fact?

21 MR. LAYCOCK: Well, perhaps they could take that
22 into account in a neutral and generally applicable way,
23 but again, look at all the other methods of killing which
24 they permit with no regulation whatever, with no claim
25 that they might be -- that they have to be always

1 instantaneous and never a mistake. No human activity has
2 never a mistake.

3 I can put poison out in my yard in Hialeah and
4 they don't tell me what kind. They don't say it has to be
5 a quick-acting poison. The animal can wander off and
6 suffer for a week, and that's okay with the city. That's
7 expressly authorized in ordinance 87-40. It's only the
8 religion that has to be perfect if it is to exist at all
9 inside the city.

10 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
11 Laycock. The case is submitted.

12 (Whereupon, at 11:01 a.m., the case in the
13 above-entitled matter was submitted.)
14
15
16
17
18
19
20
21
22
23
24
25