

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: CITY OF EDMONDS, Petitioner v. OXFORD HOUSE,
INC., ET AL.

CASE NO: No. 94-23

PLACE: Washington, D.C.

DATE: Wednesday, March 1, 1995

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 CITY OF EDMONDS, :

4 Petitioner :

5 v. : No. 94-23

6 OXFORD HOUSE, INC., ET AL. :

7 - - - - -X

8 Washington, D.C.

9 Wednesday, March 1, 1995

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 11:10 a.m.

13 APPEARANCES:

14 W. SCOTT SNYDER, ESQ., City Attorney, Seattle, Washington;
15 on behalf of the Petitioner.

16 WILLIAM F. SHEEHAN, Washington, D.C.; on behalf of the
17 Private Respondents.

18 PAUL BENDER, ESQ., Deputy Solicitor General, Department of
19 Justice, Washington, D.C.; on behalf of the Federal
20 Respondent.

C O N T E N T S

	PAGE
ORAL ARGUMENT OF	
W. SCOTT SNYDER, ESQ.	
On behalf of the Petitioner	3
ORAL ARGUMENT OF	
WILLIAM F. SHEEHAN, ESQ.	
On behalf of the Private Respondents	25
PAUL BENDER, ESQ.	
On behalf of the Federal Respondent	39
REBUTTAL ARGUMENT OF	
W. SCOTT SNYDER, ESQ.	
On behalf of the Petitioner	50

1 P R O C E E D I N G S

2 (11:10 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in Number 94-23, The City of Edmonds v. Oxford House,
5 Inc.

6 Refrain from talking till you get outside the
7 courtroom. The Court remains in session.

8 Mr. Snyder.

9 ORAL ARGUMENT OF W. SCOTT SNYDER

10 ON BEHALF OF THE PETITIONER

11 MR. SNYDER: Mr. Chief Justice, may it please
12 the Court:

13 This case presents the Court with one question.
14 Are traditional zoning schemes, which set aside a portion
15 of the community for the exclusive use of the family, as
16 defined in accordance with the decisions of this Court,
17 exempt from the reasonable accommodation requirements of
18 the Fair Housing Act Amendments under section 3607(b)(1),
19 exempting any reasonable local restriction on the maximum
20 number of occupants who may occupy a dwelling?

21 If Congress is to overturn over 70 years of
22 Federal deference to local zoning decisions, and to limit
23 communities' ability to set aside a portion of the
24 community for the exclusive use of the family, we believe
25 it should be required to do so in clear, unequivocal

1 language stated on the face of the statute.

2 As Justice Marshall stated in his dissent in
3 Belle Terre, zoning is the most important function
4 performed by local government.

5 The city believes that the Eleventh Circuit's
6 decision in the City of Athens case, using the exemption
7 to permit a threshold inquiry into the reasonableness of
8 local zoning ordinances, furthers a number of important
9 policy considerations and meets the intent of Congress.

10 First, to do so preserves the traditional
11 deference which this Court and the Federal courts have
12 given to local zoning decisions and legislative decisions
13 allocating portions of the community.

14 Secondly, such an interpretation prevents the
15 FHA from coming into conflict, potentially, with
16 constitutional concerns raised by the amicus Pacific Legal
17 Foundation.

18 Third, to do so permits the Federal courts to
19 continue to prohibit exactly the type of discrimination
20 referenced in the joint committee report, that is,
21 Cleburne-type discrimination, in which groups of disabled
22 persons are judged on a different basis or subjected to
23 differing requirements than groups of other unrelated
24 individuals.

25 Finally, using the reasonableness standard, as

1 opposed to the reasonable accommodation standard, prevents
2 the Federal courts from having to make inquiries,
3 individual fact-based inquiries, into the individual
4 siting decisions of group homes based in large part upon
5 the specific characteristics of a particular program.

6 We believe that the Ninth Circuit was wrong in
7 their decision in our case when it asserted that the vast
8 majority of zoning ordinances would go unreviewed. The
9 reasonableness standard which the Court has applied in a
10 variety of constitutional cases, beginning with Euclid,
11 provide a structural review of zoning ordinances which is
12 consistent with the pattern of decisionmaking of this
13 Court.

14 QUESTION: Well, are you saying that the statute
15 does nothing more than impose the constitutional standard
16 on municipalities?

17 MR. SNYDER: The Fair Housing Act Amendments
18 accomplished many things. For example, it set up a
19 conciliation and review process. What I point to,
20 particularly in the joint committee report, is that the
21 only case cited, and the only evil described with respect
22 to what the Congress was trying to cure with respect to
23 local zoning ordinances, was Cleburne-type discrimination.
24 Cleburne is cited twice, both in the general comments and
25 the specific section-by-section comments.

1 There are other things, obviously, that the act
2 did. For example, having the conciliation process
3 provides an administrative structure, potentially lessens
4 the burdens on the courts, and allows a way for disabled
5 individuals to have their problems addressed with the
6 assistance of HUD investigators.

7 QUESTION: Mr. Snyder, I may not understand your
8 argument, but if all the -- if the act's objective was
9 limited to avoiding Cleburne, or Cleburne kind of
10 discrimination, why would it also have put in the
11 requirement of reasonable adjustment of the zoning
12 ordinances to achieve the objects of the act?

13 MR. SNYDER: The reasonable accommodation
14 standard is most frequently discussed in the comments as
15 they address structural issues: exiting, entrances,
16 stairs, the same sort of barrier-free removal which have
17 occurred in -- through the ADA, for example.

18 QUESTION: So you're saying the reasonable
19 accommodations are just as you put, structural, physical,
20 not doctrinal, certainly.

21 MR. SNYDER: I guess the city's position would
22 rely, perhaps, on a stronger point, we believe, and that's
23 the plain meaning of the statute itself, and particularly
24 the exemption.

25 In our reply brief we cite Rice v. the Board of

1 Trade case, which was a situation in which there was a
2 general prohibition of a certain type of regulation, and
3 then an exemption created for reasonable rules created in
4 a certain area, the breadth of the exemption itself, which
5 refers to any reasonable local limitation.

6 Secondly, this Court and the Federal courts, as
7 they've discussed --

8 QUESTION: But that isn't quite right.

9 MR. SNYDER: -- excuse me.

10 QUESTION: It say, any reasonable. It says,
11 any -- doesn't it limit it to ordinances that control the
12 maximum number of occupants?

13 MR. SNYDER: Correct.

14 QUESTION: So at least we've got to decide
15 whether it's that kind of ordinance.

16 MR. SNYDER: Yes, sir.

17 QUESTION: Yes. You haven't said --

18 QUESTION: Well, it says any reasonable local
19 ordinance imposing a maximum. Is "reasonable" determined
20 in accordance with the purposes of the act, or is it
21 reasonable from the standpoint of general zoning laws, or
22 do we know?

23 MR. SNYDER: Well, I think there are probably
24 two sources of law. When you see the word "reasonable,"
25 it implies a balancing test, obviously. We think that the

1 first level of inquiry in terms of structural review would
2 be to resort to the decisions of this Court, which in four
3 or five decisions have looked at local zoning ordinances
4 and determined certain attributes to be reasonable in a
5 constitutional sense.

6 QUESTION: You mean reasonable under the Due
7 Process Clause? Is that the point?

8 MR. SNYDER: That would be one of the standards.
9 Again, I -- the --

10 QUESTION: Well, I assume that's -- that must be
11 assumed.

12 MR. SNYDER: Yes.

13 QUESTION: I mean, any zoning ordinance has to
14 pass due process muster, or --

15 MR. SNYDER: Yes, sir.

16 QUESTION: So that doesn't help us much.

17 MR. SNYDER: I think, as I said, there are
18 several levels of inquiry. The second level of inquiry,
19 probably an analogy would be best. There's a community
20 immediately south of the City of Edmonds which is
21 comprised solely of single family zoning, but which has an
22 identical definition of family to that of the City of
23 Edmonds.

24 Applied -- the same ordinance, or the same
25 definition of family in that community, would work to

1 exclude the disabled from the community. The key
2 difference in the City of Edmonds' structure is that
3 Edmonds affirmatively amended its ordinance to remove the
4 Cleburne-type discrimination and to open other zoning
5 districts of the city to group home use.

6 QUESTION: Well, my only question is, does
7 "reasonable" in the exceptions clause set forth at page 2
8 of your brief, do we determine "reasonable" with reference
9 to the objectives of this act?

10 MR. SNYDER: I believe it has a broader
11 significance, looking to the structure and history of the
12 purposes of zoning ordinances as developed over the past
13 70 years. The very nature of a zoning ordinance --

14 QUESTION: If it has a broader purpose, does it
15 also include the purposes of this act, or do we only reach
16 the purposes of this act after we have found out that this
17 is somehow a valid, reasonable zoning ordinance with
18 reference to standards that are outside the act?

19 MR. SNYDER: The latter, with a qualification,
20 sir. I think, again, reasonableness implies a balancing
21 test, looking at both the law and the facts. It's not the
22 depth of inquiry, that individualized fact-based inquiry
23 that reasonable accommodation has been given under the ADA
24 and other statutes.

25 The very essence of a zoning ordinance is the

1 ability of a community to distinguish and classify uses.
2 An ordinance which set up unreasonable categories would be
3 exclusionary in that sense. An ordinance which
4 categorizes on a reasonable basis is definitional in
5 nature and also is the very purpose of zoning.

6 QUESTION: It seems to me that's the threshold
7 question -- maybe I'm missing something -- that it's a
8 particular kind of ordinance. It has to be one that
9 relates to the maximum number of people that occupy the
10 property.

11 MR. SNYDER: That's correct.

12 QUESTION: That's the only exemption, isn't it?

13 MR. SNYDER: Yes, sir.

14 QUESTION: So you have to convince us, and maybe
15 you're right, that this is such an ordinance, even before
16 we decide whether it's reasonable.

17 MR. SNYDER: Yes, sir.

18 QUESTION: Yes.

19 MR. SNYDER: The respondents assert that because
20 the Uniform Housing Code, which the City of Edmonds has
21 adopted, is specifically mentioned in the comments, that
22 that is the only, the sole and only type of occupancy
23 limit that can be asserted. As we know --

24 QUESTION: Well, Edmonds, the city does have and
25 has adopted a provision that would limit the maximum

1 number of occupants based on the square footage per person
2 available in the dwelling, right?

3 MR. SNYDER: Yes.

4 QUESTION: And the argument of the other side
5 is, that's the kind of ordinance this Federal law refers
6 to.

7 MR. SNYDER: Yes, Justice O'Connor.

8 QUESTION: And not your definition of family.

9 MR. SNYDER: That's correct, and I think that's
10 the key distinction in the case. Three reasons or
11 examples, I think, would be helpful at this point.

12 The UHC, the Uniform Housing Code, is directly
13 mentioned in the comments, but the plain meaning of the
14 statute goes on to use "any reasonable limitation," to me
15 clearly implying that there are other reasonable occupancy
16 limits that can be employed.

17 If they had meant to say, the UHC and square
18 footage limitations they could -- are the only type that
19 could have been permitted, they should have said so.

20 QUESTION: So you concede, then, that if it
21 didn't have the provision for five unrelated members, if
22 the definition of family in the Edmonds provision just
23 meant individuals married, related by genetics, et cetera,
24 and there was no provision for five or fewer, you wouldn't
25 have a prayer of coming within this exemption. You'd have

1 to work it out under the basic thou shalt not discriminate
2 and thou shall make reasonable accommodations.

3 MR. SNYDER: In addition to having Belle Terre
4 problem, that's correct, Your Honor.

5 QUESTION: Well, I -- I'm sorry, I'm so far
6 behind the curve on this one, I don't even understand what
7 violation you need an exemption from. You come in arguing
8 that you come in within the exemption. What is the
9 violation that you have to be exempted from?

10 MR. SNYDER: It is asserted by the Government,
11 and has been since 1990, that the mere existence of a
12 definition of family in the City of Edmonds which sets a
13 limit on the number of individuals who may occupy a
14 dwelling --

15 QUESTION: Yes.

16 MR. SNYDER: -- is in violation of the FHAA,
17 because a group home --

18 QUESTION: What provision does it violate, is
19 what I'm concerned about. The only provision I can find
20 is the provision that says its unlawful to discriminate
21 against any person in the terms, conditions, or privileges
22 of sale or rental because of a handicap, and then it
23 defines discriminate to include a refusal to make
24 reasonable accommodations in rules, policies, practices,
25 or services.

1 It doesn't mention laws, ordinances -- I note
2 the Government in its brief in this case constantly refers
3 to zoning rules. I never heard the expression, zoning
4 rules. We always say zoning ordinances, zoning laws, but
5 suddenly there's this category of zoning rules. Do you
6 acknowledge that a refusal to make reasonable
7 accommodation in laws comes within that phrase, in rules,
8 policies, practices, or services? It's a very strange way
9 to put it, isn't it?

10 MR. SNYDER: The city gladly embraces your
11 viewpoint.

12 (Laughter.)

13 MR. SNYDER: I think that's a question better
14 for my brothers.

15 QUESTION: Do you think a law is not a rule?

16 (Laughter.)

17 QUESTION: An ordinance is not a rule?

18 MR. SNYDER: In a technical sense there are at
19 State law and in Federal case law very clear distinctions
20 between rulemaking. An ordinance typically implies an
21 enactment --

22 QUESTION: In the general category of rules, do
23 you think ordinances do not fall within that category?
24 You've never advanced that rather radical suggestion, have
25 you?

1 MR. SNYDER: I have not, sir.

2 QUESTION: I thought your point was when you get
3 so specific as to list things, rules, policies, practices,
4 services, if you meant laws and ordinances, you would have
5 said them.

6 MR. SNYDER: I think that's correct. Let me
7 come at it from a slightly different -- let me agree with
8 you in a different way, if you will.

9 QUESTION: Isn't there some experience with this
10 language in Federal legislation and accommodations, let's
11 say in the employment area, where it has not been limited
12 to something lesser than law?

13 MR. SNYDER: I'm not aware of that distinction,
14 Your Honor.

15 QUESTION: Reasonable accommodations, say the
16 notion with respect to religion in title VII, isn't this a
17 familiar qualification, that you sometimes are permitted
18 to make distinctions if it costs too much if the
19 accommodation isn't reasonable? Does that just exclude
20 the realm of a law that would have to have -- a local law
21 that would have an exception?

22 MR. SNYDER: A difficult question for me to
23 answer. Again, the context is so much different from what
24 is presented here.

25 QUESTION: In any event, you might get to that.

1 You say we don't even have to bother with what this
2 provision about reasonable accommodation means, because we
3 are just totally out of it.

4 MR. SNYDER: Yes.

5 QUESTION: We're out of it under the exemption,
6 so Justice Scalia's point might be a live, active point if
7 you're wrong about the exemption, but you said -- say this
8 legislation doesn't touch us for reason A. Maybe it
9 doesn't touch you for reason B, but we're here arguing
10 about what this 3607(b)(1) means.

11 MR. SNYDER: That's correct. Again, 3607(b)(1),
12 and this is the second part to my answer to Justice
13 Scalia, sets up three categories. It discusses Federal,
14 State, and local limitations. The traditional role of
15 zoning authorities has been top-down categorizations,
16 dividing communities into districts, categorizing on the
17 basis of common attributes, in effect setting aside
18 portions of the community, the basic building block of
19 which is the single family zone --

20 QUESTION: And we had gotten to the point where
21 you said, if we had as the definition of the family simply
22 related people, then you would not have a prayer of coming
23 within this exemption, whatever else might take you out of
24 the act.

25 MR. SNYDER: Yes, Your Honor.

1 QUESTION: So you are depending on what is a
2 tag-on to the definition of family, in this case five or
3 fewer people -- in Belle Terre, what was it, two people?

4 MR. SNYDER: Correct.

5 QUESTION: You're saying that that little tail
6 on the basic provision which defines family is what gets
7 you into this exemption.

8 MR. SNYDER: It makes it a -- an occupancy
9 limit, that's correct.

10 QUESTION: Why is it that you concede that a
11 requirement that persons be related is not a maximum?

12 MR. SNYDER: Simply because --

13 QUESTION: It's true that it's not a knowable
14 number.

15 MR. SNYDER: I take your point.

16 It's basically Moore v. East Cleveland and the
17 constitutional limitation on the city's ability --

18 QUESTION: Is it not because the statute says
19 maximum number, and definition of family is limitless as
20 far as number is concerned?

21 MR. SNYDER: It's correct that it's limitless as
22 far as the definition is defined. As the record shows --

23 QUESTION: But it is one way of describing a
24 numerical limit, isn't it?

25 MR. SNYDER: Yes, sir.

1 QUESTION: We ascertain whether the people are
2 related.

3 MR. SNYDER: Yes, sir.

4 QUESTION: And that sets the numerical limit,
5 because anybody that's not related takes it over the
6 numerical limit.

7 MR. SNYDER: I take your point. I would also
8 believe that the record shows an associated basis --

9 QUESTION: Well, so do you think that this is a
10 maximum, then, under the definition of (b) (1)?

11 MR. SNYDER: As written, yes, sir, I do. I
12 think --

13 QUESTION: What would Congress' purpose -- I can
14 understand why Congress wanted -- might have said, look,
15 we're not even going to go into a local zoning rule that
16 says don't crowd people into a single house. Don't take a
17 little house and stuff 10 people into it. You do that,
18 you're okay.

19 But what would have been the point of Congress
20 wanting to exempt from all of this a law, a rule, a local
21 zoning rule that said single family housing? Why would
22 they? I mean, I can understand why they would have wanted
23 the interpretation, don't stuff people into a house.

24 MR. SNYDER: I think --

25 QUESTION: It means that.

1 But if all the city did was just say, we're
2 going to have single families in this place, whether it's
3 one person or 50 people in the family -- it would be a big
4 family -- why would Congress want to exempt all those from
5 the fair housing law? I mean, from the handicapped law?

6 MR. SNYDER: I think it would be a matter of
7 deference to the traditional role that local government
8 has placed in defining the use of lots and homes.

9 QUESTION: I take it nothing in the legislative
10 history that suggests Congress wanted to do that, but
11 there's quite a lot that suggests that what they wanted to
12 do was give way to antistuffing rules, if you like.

13 MR. SNYDER: That is one evil -- or, I'm sorry,
14 that's one form of regulation that they explicitly
15 indicated they wished to preserve.

16 QUESTION: And did they indicate anywhere that
17 they wanted to -- worried about anything else?

18 MR. SNYDER: I think there's a danger in relying
19 particularly on the comments of individual legislators.
20 That may have been their view, but if they didn't have the
21 votes to bring it forward on the basis of things in the
22 statute --

23 QUESTION: There is nothing else, I take it.
24 There is nothing else.

25 MR. SNYDER: Nothing that I can cite at this

1 time, sir.

2 QUESTION: Yes, okay.

3 QUESTION: Well, I guess if you're going to rely
4 on the legislative history -- the House report, was it? --
5 then you'd have to say that the whole thing is only
6 limited to the family discrimination provision anyway, and
7 not to the discrimination against the handicapped, because
8 that whole thing is under that title, as I recall.

9 MR. SNYDER: The city does not rely on the
10 legislative history. We believe that our position is
11 covered by the plain meaning of the statute as written.

12 QUESTION: No, I understand, but the other side
13 does, without bringing in with the legislative history the
14 limitation that it was -- that it speaks as though this
15 provision only goes to the discrimination on the basis of
16 family stats rather than on the basis of handicap.

17 MR. SNYDER: If that was their intent, sir, the
18 statute is extremely poorly written and structured.

19 QUESTION: Why? It seems to me that this
20 releases a town from certain restrictions. You can't
21 discriminate on the basis of family status. That's apart
22 from the handicapped, isn't that true? That's one of the
23 bases, proscribed bases, familial status, right?

24 MR. SNYDER: Yes.

25 QUESTION: And this whole thing seems to be an

1 exemption to permit you to discriminate on family status.
2 The first sentence takes care of stuffing too many
3 children into a small apartment, and the second sentence
4 takes care of keeping the kids out of a retirement
5 community, so the statute is totally logical if it's
6 looked at as having nothing to do with the handicapped,
7 having only to do with not stuffing too many children in a
8 tiny apartment and letting the retirement -- letting older
9 people be free from the noise of children.

10 MR. SNYDER: Yes, Justice Ginsburg.

11 QUESTION: And then it would just not relate to
12 the handicapped at all. You'd have to make your case or
13 not on the basis of the statutory proscription plus the
14 reasonable accommodation.

15 MR. SNYDER: I think your reading would achieve
16 the purpose that the city looks to protect, which is the
17 traditional deference of the courts to local zoning
18 structures. Traditionally --

19 QUESTION: It would -- my reading would say that
20 you don't come under this exemption at all, because the
21 exemption is not dealing with the handicapped. The
22 exemption has to do with overcrowding in small apartments,
23 too many children in one apartment. It's an exemption
24 that deals only with familial status discrimination.

25 MR. SNYDER: If that was the intent of Congress,

1 placing a general exemption without any limitation as to
2 section it seems to me applies the exemption to the Fair
3 Housing Act Amendments as a whole. It's not limited in
4 any way to the specific section. It's not an exemption to
5 the section on familial status. It's an exemption to the
6 Fair Housing Act Amendment, which as you have noted --

7 QUESTION: Well, the second sentence certainly
8 is limited to familial status, is it not? What does the
9 second sentence -- what is the purpose of the provision
10 that says, nothing in the provisions on familial status
11 apply with respect to housing for older people?

12 MR. SNYDER: That's certainly what it says, yes,
13 ma'am.

14 QUESTION: Your response is precisely, thereby
15 emphasizing that the first sentence isn't limited just to
16 families. Doesn't that make it seem even clearer?

17 MR. SNYDER: I appreciate the assistance, sir.

18 (Laughter.)

19 MR. SNYDER: The traditional role of local
20 governments in zoning has been, again, to categorize, and
21 we believe that it's the interplay of the Uniform Housing
22 Code which limits square footage from the bottom up,
23 looking at rooms, bedrooms, and specific square footage
24 requirements, as well as the traditional top-down role of
25 local government to set aside zoning districts and

1 regulate occupancy per lot per building per structure, and
2 the interplay of those two specific types of rules and
3 regulations work to establish the local government's role
4 in occupancy limitation.

5 State and Federal Governments have -- may have
6 different roles depending upon their specific interest in
7 a subject.

8 Again, I think the key from the city's
9 perspective is the 70 years of deference to this type of
10 decisionmaking. It's very difficult, or -- communities
11 assign and create zones and make classifications based
12 upon a specific understanding of their particular
13 demographic nature.

14 As the record indicates, the average unit,
15 family unit size or dwelling unit in the City of Edmonds
16 is 2.41 individuals. The five or fewer unrelated
17 individuals creates -- it's basically double that number.
18 It creates an area in which groups of unrelated
19 individuals with or without disabilities can come together
20 and establish household arrangements.

21 The traditional role, as established by Euclid,
22 for local governments has been to make those distinctions
23 so that it can plan, so that we can make reasonable
24 assumptions about the number of people who reside in a
25 neighborhood, in a lot, and make density decisions,

1 thereby planning, sizing water pipes, sizing sewers,
2 knowing where the locate a precinct house or a fire
3 station.

4 QUESTION: As far as what Edmonds can do now,
5 it's under a further restriction from State law, from
6 Washington State law, and I would be interested in knowing
7 what you understand to be the command in this recent
8 Washington statute.

9 MR. SNYDER: I believe that the purpose of the
10 statute, which was enacted at the same time that the Fair
11 Housing Act was incorporated into State law, was to
12 paraphrase a city's obligations under the Fair Housing Act
13 Amendments.

14 This Court's assistance in interpreting what
15 those obligations are would give the Washington courts
16 great assistance. There is no case pending in the State
17 of Washington. The provision has never been interpreted.

18 As far as mootness goes, as long as there are
19 damage claims against he City of Edmonds pending with
20 respect to actions which may have occurred in 1990, 3
21 years before the statute, we believe that the issue should
22 be resolved by the court.

23 QUESTION: Whether -- one thing is to say your
24 case is not moot, but you are also saying this doesn't
25 give you any clear State command for the future? I

1 thought that the statute meant that from henceforth you
2 were to treat handicapped dwellings the same way you treat
3 family units.

4 MR. SNYDER: Well, the phrase is residential
5 structure, which further confuses the issue.

6 QUESTION: Yes, but how -- what should we do
7 about that? That is, what is the appropriate thing?

8 It looks, if you read this provision, the city
9 may not enact any zoning regulation occupied by persons
10 with handicaps differently from a similar residential
11 structure occupied by a family or other unrelated
12 individuals.

13 On its face, that seems as if it means that you
14 can't treat these people differently, because they have
15 handicaps, than you would treat a family, but it might not
16 mean that. That's what -- so what should we do?

17 MR. SNYDER: I suggest that the meaning of that
18 particular phrase in the State statute be -- that there be
19 deferral to the State courts to determine it.

20 This Court's ruling on what the city's
21 obligations are under the Fair Housing Act Amendments --

22 QUESTION: Would help. How would it help?

23 MR. SNYDER: It would provide direction to the
24 court as to what was the intent -- or the Washington State
25 courts as to what was the general purpose of the Fair

1 Housing Act Amendments, remembering that this provision
2 was enacted at the State legislature in conjunction with
3 an adoption of the Fair Housing Act Amendments.

4 It's been incorporated in the Growth Management
5 Act for the State of Washington, RCW Chapter 3670A, or
6 36A.70, which also requires each local community to
7 annually conduct a special needs population assessment to
8 determine what the needs of the disabled are in each
9 community and to plan for them.

10 Now, we believe that that's the proper role of
11 local government, is to take that big picture approach,
12 determine how many group homes require siting, how much of
13 a community needs to be set aside, and then to properly
14 categorize those, where they belong in the community based
15 on a neutral criteria as to how many residents they would
16 have and what the other physical characteristics of a
17 particular group home are.

18 I'd like, Mr. Chief Justice, to reserve the
19 remainder of my time.

20 QUESTION: Very well, Mr. Snyder.

21 Mr. Sheehan, we'll hear from you.

22 ORAL ARGUMENT OF WILLIAM F. SHEEHAN

23 ON BEHALF OF THE PRIVATE RESPONDENTS

24 MR. SHEEHAN: Mr. Chief Justice --

25 QUESTION: Sometime during your presentation,

1 Mr. Sheehan, will you tell us what you think is the
2 section of the statute that makes it applicable to zoning
3 regulation?

4 MR. SHEEHAN: Yes, I will indeed.

5 Mr. Chief Justice, may it please the Court:

6 I can start with that question initially,
7 Mr. Chief Justice. I think it may be the same question
8 that's on the mind of some of the other justices.

9 We contend -- you'll understand that I'm now
10 jumping ahead to the merits of the argument that we will
11 make if we prevail here on remand in the lower courts.

12 We contend that the statute requires a
13 reasonable accommodation --

14 QUESTION: May I just anticipate --

15 MR. SHEEHAN: Yes.

16 QUESTION: It's related to the chief Justice's
17 question. Am I correct in assuming that the district
18 court and the court of appeals merely held that the
19 exemption didn't apply, and they did not reach the merits
20 of whether there was a violation of the rules, or
21 discrimination, or anything else?

22 MR. SHEEHAN: That is exactly right.

23 QUESTION: So all of that would be open on
24 remand.

25 MR. SHEEHAN: That is exactly right. The Ninth

1 Circuit in its opinion said so expressly.

2 We will contend, if we prevail here, on remand
3 we will contend that the city will discriminate against us
4 if it refuses to make, in the words of the statute, a
5 reasonable accommodation in rules, policies, practices, or
6 services.

7 We believe that local zoning ordinances fall
8 within the language of rules, policies, practices, or
9 services, and so do the half-dozen decisions cited at
10 footnote 7 of our brief, including decisions out of the
11 Tenth and the Third Circuits.

12 QUESTION: None from this Court, I take it.

13 MR. SHEEHAN: None from this Court.

14 QUESTION: More than that, you have to say that
15 the city is discriminating in the terms, conditions, or
16 privileges of sale or rental of a dwelling.

17 MR. SHEEHAN: That's correct.

18 QUESTION: It's law is a privilege of sale or
19 rental.

20 MR. SHEEHAN: We will contend that the effect of
21 the city's law is to work a discrimination that is
22 prohibited by the statute.

23 QUESTION: And your assertion is that rules is
24 meant to preempt State laws and ordinances.

25 MR. SHEEHAN: That's correct, Your Honor. We

1 have --

2 QUESTION: Even though a provision concerning
3 the effect on State law is much more specific later on and
4 refers to State laws, and even though section 36 -- what
5 is it, 3610(g) --

6 MR. SHEEHAN: Refers zoning matters to the
7 attorney general --

8 QUESTION: -- (2)(C) says if the Secretary
9 determines that the matter involves the legality of any
10 State or local zoning or other land use law or ordinance.
11 It refers specifically to law or ordinance.

12 MR. SHEEHAN: Yes, it does, Your Honor, which is
13 one of the reasons why we think zoning ordinances are
14 covered by the act, because cases involving the legality
15 of zoning ordinances are referred to the Attorney General,
16 and the legislative history, I'm reading from page 148 of
17 the Joint Appendix, provides -- states that the committee
18 intends that the prohibition against discrimination
19 against those with handicaps apply to zoning decisions and
20 practices.

21 QUESTION: Did the Congress intend that, or just
22 the committee? Was that a House committee or a Senate
23 committee?

24 MR. SHEEHAN: That was a House committee report,
25 Your Honor. In 1988 --

1 QUESTION: But just to clarify, it is your
2 position that there has not been a first view on any of
3 those issues, so the only thing that's here for us to
4 review is the interpretation of 3607?

5 MR. SHEEHAN: That is correct, Your Honor. That
6 is correct.

7 In 1988, Congress extended the Fair Housing Act
8 to handicapped persons Congress knew must live in group
9 homes in residential areas. If the city's construction of
10 the statute is correct, it means that all local
11 governments across the country can entirely exclude all
12 group homes entirely from their cities. Now, that is true
13 not only for single family zoning, but it's for
14 multifamily zones as well. All group homes for
15 handicapped can be excluded.

16 The city takes the position that its ordinance
17 comes within the exemption because it's constitutional.
18 So was the ordinance in the Village of Belle Terre case,
19 which defined a family to mean two or fewer unrelated
20 people. If the city is correct, every local government
21 can adopt a Village of Belle Terre ordinance and exclude
22 group homes for the handicapped completely.

23 QUESTION: Well, I suppose every local
24 government could adopt a maximum, which could exclude
25 group homes, if it's a maximum. The only question is, is

1 it a maximum? That's what the statute said.

2 MR. SHEEHAN: The statute requires -- the
3 statute exempts a restriction on the maximum occupancy of
4 the number of persons who can occupy a dwelling. The city
5 construes that statute to allow the exclusion of all group
6 homes. It would be remarkable if -- in our view, if in a
7 statute meant to extend the protective embrace of the Fair
8 Housing Act to handicapped persons who Congress knew must
9 live in group homes --

10 QUESTION: Well, the definition of family for
11 the city that we're looking at does in one sense establish
12 a maximum number of unrelated people who can live in a
13 single family home, and the district court judge, Judge
14 Dwyer, found that that established a maximum. The Ninth
15 Circuit disagreed, but why was the district court's
16 interpretation wrong under the statute?

17 MR. SHEEHAN: It was wrong for several reasons,
18 Your Honor. In the first place, it construed the
19 exemption, as the city does, in isolation from the rest of
20 the statute.

21 Just yesterday in the Gustafson decision, this
22 Court said that it's duty is to construe statutes, not
23 isolated provisions. The city can point you to nothing
24 else in the statute, or the legislative history, or its
25 purposes and policies, that gives any indication that

1 Congress meant to exclude group homes.

2 A second reason, Your Honor, is, as you
3 described the ruling of the district court, and as you
4 described the city's position, you said that the city's
5 definition of a family does provide a maximum.

6 QUESTION: Oh, you mean no maximum can exclude a
7 group home? Is that your -- no matter if the ordinance is
8 a maximum or isn't, a group home cannot be excluded?

9 MR. SHEEHAN: Your Honor, if the maximum is
10 written in terms of the kind of health and safety
11 restrictions that housing codes typically impose, a group
12 home can be excluded.

13 QUESTION: That means you could build, you know,
14 80-story group homes in otherwise single family areas.

15 MR. SHEEHAN: No, Your Honor, but I have to jump
16 ahead again to the merits to say why that's not correct.

17 An 80-story group home would not be entitled to
18 a reasonable accommodation, but the ordinance that would
19 be subject to the 80-story group home would not be exempt
20 from a merits review under the statute unless it were
21 written in the terms that we say Congress meant to exempt,
22 namely, proscriptions on -- I mean to say, restrictions on
23 the number of people who can occupy a particular dwelling
24 based on health and safety concerns related to the space
25 of that dwelling.

1 Our construction of the exemption lives happily
2 with the statute. It also lives happily with the Antidrug
3 Abuse Act in which Congress mean to promote, to finance
4 group homes like Oxford House for six or more people.

5 QUESTION: Well, can you tell me why this isn't
6 a maximum? Is it because the family definition is open-
7 ended as to numbers? It is controlled by related? Is
8 that what makes this not a maximum?

9 MR. SHEEHAN: What makes this -- what makes the
10 city's ordinance fall outside the exception is that it
11 doesn't fit into the language of the exception and it
12 doesn't fit into the rest of the structure of the Fair
13 Housing Act or the Antidrug Abuse Act.

14 QUESTION: Does it not fit within the language
15 of the exception because it's not a maximum?

16 MR. SHEEHAN: It does not -- if you stand in
17 front of a house in Edmonds, if you walk inside that
18 house, if you stand next to two identical houses in
19 Edmonds, you can't tell how many people can reside in that
20 house under the city zoning ordinance. You can under its
21 housing code.

22 So the city's zoning ordinance with -- looking
23 strictly at the words of the statute and thinking of
24 nothing else, does not identify the maximum number of
25 people who can occupy --

1 QUESTION: Well, because maximum is in terms of
2 occupants, and of course I guess you can't tell the number
3 of occupants till you go in the house. That's the way
4 it's written.

5 MR. SHEEHAN: Well, I'm talking about an empty
6 house, Your Honor. If you stand in front of an empty
7 house --

8 QUESTION: But you're saying you have to be able
9 to look at that, determine from the outside of the house
10 how many occupants are in it?

11 MR. SHEEHAN: No. I'm just saying that the
12 city's ordinance may impose a maximum number on some
13 groups of people but not on other groups, and it does not,
14 within the words of the statute, identify the maximum
15 number of people who can --

16 QUESTION: Well, it does identify the maximum
17 number of unrelated people --

18 MR. SHEEHAN: It does.

19 QUESTION: -- who can live --

20 MR. SHEEHAN: It does.

21 QUESTION: -- in a house in that part of the
22 city.

23 MR. SHEEHAN: That's correct, it does.

24 QUESTION: And in that sense, it is a maximum.

25 MR. SHEEHAN: In that sense, Your Honor, it is a

1 maximum.

2 QUESTION: And so the question is, why don't we
3 read it as being within the meaning of 3607(b)(1) --

4 MR. SHEEHAN: Because --

5 QUESTION: -- because it does establish a
6 maximum.

7 MR. SHEEHAN: Because it would --

8 QUESTION: I'd assumed that you were arguing
9 because of the legislative history, and because of the
10 general structure of the Federal law in general, but if
11 you just look at this provision, 3607, it does appear to
12 fall within it, doesn't it, which certainly could explain
13 the district court's ruling.

14 MR. SHEEHAN: Well, Your Honor, the district
15 court's ruling can be explained by its refusal to consider
16 the exemption in the context of the overall statute.

17 The ordinance does -- the ordinance does
18 define --

19 QUESTION: Mr. Sheehan, some of us are having
20 trouble hearing you. Maybe if you raised the lectern a
21 little bit with that crank over -- now you're lowering it.

22 Thank you.

23 MR. SHEEHAN: The ordinance does identify a
24 maximum. It identifies a maximum number of some kinds of
25 people who can live in a dwelling. It does not identify

1 the maximum number. The ordinance is not written in the
2 way that one might expect if Congress had meant to exempt
3 a zoning ordinance. It sounds very much like the way one
4 would write an exception -- I meant to say the exception,
5 not the ordinance. The exception is not written in the
6 way you'd expect if Congress was intending to exempt
7 zoning laws.

8 QUESTION: Looking at the ordinance for a
9 second, I guess we have a normal legal animal that's
10 difficult. Part of it seems to have a maximum called five
11 unrelated, part of it doesn't seem to have a maximum,
12 called single family. You could have a little family or a
13 big family. All right.

14 So then I guess I'd like to look to the basic
15 purpose of this particular zoning reg. Was it to prevent
16 overcrowding? Was it to do something else? Why did they
17 pass this reg? What's the point of it, or the zoning
18 rule?

19 MR. SHEEHAN: Your Honor, zoning laws are
20 concerned with the character of neighborhoods. Housing
21 code density restrictions are concerned with the health
22 and safety of individuals inside a dwelling.

23 A zoning code restriction on the number of
24 individuals who may live in a house is not concerned with
25 the health and safety of those individuals inside the

1 house, because the restriction applies whether the house
2 has 2 rooms or 20.

3 Zoning is concerned with neighborhoods. Housing
4 codes are concerned with density of particular dwellings.

5 QUESTION: Well, can you say anything -- what is
6 the concern of this particular zoning rule before us? Why
7 did they pass it?

8 MR. SHEEHAN: Because they wanted to preserve
9 the character of single family zoned areas.

10 QUESTION: Mr. Sheehan you refer to health and
11 safety reasons several times in connection with the
12 ordinance requirements, but the statute doesn't say that.
13 It says, Federal restrictions regarding the maximum number
14 of occupants permitted to occupy a dwelling. It doesn't
15 say for what reason the maximum may be imposed.

16 MR. SHEEHAN: No, it doesn't, and the reason
17 that we believe that Congress intended to exempt only
18 health and safety related rules such as you find in a
19 housing code is in part because of the origin of the
20 exception, and it stems, as was noted earlier, from the
21 concern that large families might insist upon living in
22 small quarters, and the legislative history suggests that,
23 in order to allay that concern, Congress enacted this
24 exemption.

25 QUESTION: Is it your position that this

1 exception doesn't apply at all to a handicapped exclusion?

2 MR. SHEEHAN: It isn't. It is not. We have not
3 contended that. I understand --

4 QUESTION: Well, if you're going to buy the
5 legislative history, it seems you just pick the portion of
6 it you like and omit the portion you don't like?

7 MR. SHEEHAN: Well, Your Honor --

8 QUESTION: I mean, the legislative history makes
9 clear that all they had in mind was family status, so if
10 you're going to use legislative history for the one, I
11 don't know why you don't use it for the other.

12 MR. SHEEHAN: Well, if in fact the legislative
13 history, if we were to rely on that legislative history
14 and this Court were to agree, we would win, so I'm not shy
15 on relying on it for that reason. I just think it doesn't
16 make sense to argue that handicapped -- groups of
17 handicapped people can overcrowd dwellings and cause
18 health and safety problems that housing code restrictions
19 are meant to avoid.

20 QUESTION: Alternatively, if the committee
21 report could be so mistaken about whether this provision
22 applies to the handicapped at all, then it may be equally
23 mistaken about what the provision means as far as maximum
24 is concerned.

25 MR. SHEEHAN: I --

1 QUESTION: I mean, it seems to me you either buy
2 the whole report, in which case you say it doesn't apply
3 to handicapped at all, or if you say, oh yes, it does
4 apply to handicapped, then you're looking at a committee
5 report that is very ignorant, that just makes a botch of
6 the whole thing, to think that it only applies to family
7 status.

8 MR. SHEEHAN: No, Your Honor, I have never said
9 that the committee report states that the restriction does
10 not apply to handicapped people. We don't take that
11 position. We haven't --

12 QUESTION: It says that, though.

13 MR. SHEEHAN: It does not, Your Honor. It
14 suggests that the restriction was designed to alleviate
15 concerns about family discrimination issues, but it does
16 not say that it does not apply to handicapped, to concerns
17 involving overcrowding by handicapped individuals.

18 QUESTION: I will get it, and we will see.

19 MR. SHEEHAN: Let me say one other thing about
20 the way the statute is written. We have cited at page 28
21 of our brief a model housing code which is promulgated by
22 the American Public Health Association and the Center for
23 Disease Control. This is a model housing code, and it
24 says that the permissible occupancy of a dwelling "is the
25 maximum number of individuals permitted to reside in a

1 dwelling unit."

2 That sounds an awful lot like our restriction.

3 QUESTION: Thank you, Mr. Sheehan.

4 Mr. Bender, we'll hear from you.

5 ORAL ARGUMENT OF PAUL BENDER

6 ON BEHALF OF THE FEDERAL RESPONDENT

7 MR. BENDER: Thank you, Mr. Chief Justice, and
8 may it please the Court:

9 The only question before the Court in this case
10 is, as both other counsel have said, the question whether
11 Edmonds' definition of family that limits the number of
12 unrelated persons who may live together in certain areas
13 of the city, is a law regarding the maximum number of
14 occupants permitted to occupy a dwelling.

15 The questions that were raised, have been raised
16 during oral argument by Justice Scalia and others about
17 whether zoning provisions are covered and about whether
18 this kind of restriction can constitute a discrimination,
19 are ones on which the Government has taken a uniform
20 position and ones on which the decisions below are
21 uniform. There have been no decisions in this Court.

22 But those questions are not in this case. This
23 is the threshold issue of, do you even get to those
24 questions, or does the exemption just take it completely
25 out of scrutiny under the Fair Housing --

1 QUESTION: Ordinarily one would think the
2 threshold question would be the other one, rather than
3 this one.

4 MR. BENDER: I agree with you completely, and I
5 was confused by this case for a couple of weeks, because I
6 kept coming at it backwards, but that's because there was
7 a motion for summary judgment based on this exemption,
8 which would, it was alleged, take it out of the housing
9 act completely.

10 Our position is that this Edmonds ordinance is
11 not a provision regarding the maximum number of occupants
12 permitted to occupy a dwelling. To be that, it seems to
13 me, it would have to answer the question, what is the
14 maximum number of occupants permitted to occupy a
15 dwelling? This Edmonds ordinance does not answer that
16 question. You cannot tell from it what the maximum number
17 of persons permitted to occupy --

18 QUESTION: Well, if it's an unrelated group you
19 can answer the question.

20 MR. BENDER: Oh, you can tell what the maximum
21 number of unrelated persons permitted to occupy a dwelling
22 is, but you can't tell what the maximum number of
23 occupants permitted to occupy a dwelling is, and the
24 statutory language seems to us to be completely clear and
25 plain on that, and that, so far as we're concerned, is the

1 end of this case.

2 Congress could easily have written this to also
3 exempt this kind of unrelated persons provision. They're
4 very common. Many communities around the country, a large
5 percentage, have this kind of provision, and they simply
6 could have said, the maximum number of unrelated persons,
7 or the maximum number of occupants permitted to occupy a
8 dwelling. By using the language --

9 QUESTION: Is it not true, Mr. Bender, that most
10 of those cities that have a provision like this also have
11 a maximum occupancy provision?

12 MR. BENDER: Right, and this clearly -- those
13 maximum occupancy provisions, the language you just used,
14 Justice Stevens, is -- are terms that are commonly used in
15 the industry, and they are thought to refer to the kind of
16 thing that Edmonds has and most communities have.

17 Edmonds, I think, is that for each person in a bedroom you
18 need an additional 50 feet.

19 It's to stop overcrowding. It's for health and
20 safety reasons. They're overcrowding provisions. They're
21 density provisions. They're maximum occupancy provisions.
22 That's clearly what this was intended to refer to.

23 We don't think there's any need to look at the
24 legislative history, but if you do look at the legislative
25 history, it's entirely clear as well, because the only

1 reason -- this exemption came into the statute along with,
2 in 1988, along with the prohibitions on discrimination
3 against the handicapped and discrimination on grounds of
4 family status.

5 It wasn't in there before, and the reason it's
6 in there is because it was feared that without this kind
7 of exemption people with large families who sought to live
8 in small apartments so that they would have five or six
9 people in a bedroom, when told you can't do that because
10 the bedroom isn't large enough for five or six people,
11 would say, but you can't tell us that, because that would
12 be a discrimination against us on grounds of family
13 status, and this was put in there to make sure that people
14 could not use the housing act to insulate themselves, to
15 immunize themselves against their violation of health and
16 safety regulations.

17 QUESTION: But the Government doesn't take that
18 position, does it, that the exemption only applies to what
19 it was, you tell us it was intended to cover, and that is,
20 the family status provision, so you didn't have to bring
21 in someone with eight children if the apartment doesn't
22 have room for eight children.

23 MR. BENDER: No, I -- we do not take that
24 position.

25 QUESTION: Well, but --

1 MR. BENDER: We think it applies to the entire
2 statute.

3 QUESTION: But then you're picking and choosing
4 in the legislation. You're saying it's authoritative for
5 one purpose, it's not authoritative for the other, because
6 that provision, the legislative history of the House
7 report says section 3607(b)(1) amends the act to make
8 additional exemptions relating to the familial status
9 provisions.

10 MR. BENDER: Right.

11 QUESTION: And, in fact, the first sentence
12 relates not just to the familial status provision but,
13 you're telling us, to the handicapped provision.

14 MR. BENDER: We do not rely on the legislative
15 history to tell us what this exemption means.

16 QUESTION: But I mean, my goodness, no one would
17 ever look only to legislative history, would they?

18 MR. BENDER: Right.

19 QUESTION: I mean, they'd look to position,
20 structure, language, and legislative history where it's
21 helpful, I guess.

22 MR. BENDER: Well, and --

23 QUESTION: So in some of these things might be
24 helpful, but on others not.

25 MR. BENDER: Right, and I think -- if you think

1 about it, try to think of, are there other provisions of
2 the housing act that people might use to defend themselves
3 against overcrowding limitations, and it's a stretch to
4 think of them, but it would be possible.

5 Somebody might say, somebody -- a member of a
6 minority group with a large family might say, large
7 families are more prevalent in minority groups than
8 anywhere else, and therefore you can't use your
9 overcrowding limitation against me, because it has a
10 discriminatory impact. The housing act, remember,
11 includes discriminatory impact. It's not --

12 QUESTION: Perhaps they might say that having a
13 large family was a handicap.

14 (Laughter.)

15 MR. BENDER: That, too.

16 QUESTION: I vote for that one.

17 (Laughter.)

18 MR. BENDER: So that I think if somebody tried
19 to use the handicapped provision or the race
20 discrimination provision, or perhaps a religion would say
21 that people should have very large families, and somebody
22 would say well, my religion tells me I have to have all
23 these children, and I can't afford a larger apartment, and
24 therefore I'm entitled to violate the overcrowding
25 provisions.

1 I think Congress meant to say you couldn't use
2 that provision of the statute, either, and that's because
3 they thought that these overcrowding provisions and the
4 debates in Congress are full of this, that these
5 overcrowding provisions are so important, because they
6 relate to disease, they relate to fire, they relate to
7 epidemics, those kinds of things. They're so important
8 that they should not be trumped. They should not
9 be overruled.

10 QUESTION: Well, the reason for the overcrowding
11 provision in a normal municipal ordinance applies equally
12 whether the people are handicapped or not.

13 MR. BENDER: That's right, and the reason is so
14 strong that it overcomes the effects protection on
15 discrimination against any of these, handicapped or
16 others, if it applies.

17 And I think that's also important, that
18 principle is also important whether you look to see
19 whether the city's view in this case is tenable, is being
20 consistent with Congress' purpose and I think, as has been
21 said, it's not, because if this ordinance were permitted
22 to come within the exception, that would mean that cities
23 could fence out handicapped people from living in certain
24 areas of the city in those circumstances where handicapped
25 people needed to live in congregate living arrangements in

1 order to be able to live.

2 No more than one would say that a city could,
3 through a no-animals rule, or a no-pets rule, fence out
4 blind people from living in that part of the city because
5 they need to have a guide dog, would Congress have wanted
6 to say that cities can say, handicapped people who need
7 congregate living arrangements -- and there are lots of
8 groups of handicapped that do. The elderly handicapped,
9 for example, mentally retarded people, AIDS victims, often
10 need to live in these arrangements.

11 They need the support of a minimum number of
12 people in order to be able to live, especially with
13 economic factors that mean that they have to share the
14 costs, and so they need a minimum number of people to get
15 the sufficient --

16 QUESTION: Mr. Bender, is it your position that
17 any numerical limitation that has an exception is not a
18 numerical limitation, because I mean, you know, you could
19 read this ordinance, or you could write it differently.
20 You could say, no house in this area of the city shall
21 have more than five occupants unless it is a family. You
22 know, make that one exception, so it's a five-occupant
23 limit, but an exception for families.

24 MR. BENDER: That's basically the same as this.

25 QUESTION: It's basically the same as this, and

1 you say the exception causes it to not be a numerical
2 limitation.

3 MR. BENDER: Yes. I think --

4 QUESTION: What if you say, no more than a
5 hundred people in the apartment building unless in
6 extraordinary situations that's necessary.

7 MR. BENDER: That's slightly different. If
8 there were something about extraordinary situations, and
9 it indicated what those extraordinary situations were, and
10 they were fairly limited --

11 QUESTION: It has to be extraordinary --

12 MR. BENDER: It would be --

13 QUESTION: -- and the difference here is that
14 families are not extraordinary.

15 MR. BENDER: The basic rule, Justice Scalia, I
16 think is you have to be able to look at the ordinance and
17 see a limit on the maximum number of occupants, and the
18 reason why we think that is because the reason for this
19 exception was to permit local and State and Federal laws
20 that limited occupancy for reasons that have nothing to do
21 with what kind of occupants they are. They have to do
22 with overcrowding, and so as long as the ordinance doesn't
23 deal with overcrowding, it doesn't come within this
24 exception.

25 QUESTION: But doesn't the single family

1 limitation basically deal with that, don't you think?

2 MR. BENDER: No, I don't think so.

3 QUESTION: It doesn't deal with population
4 density?

5 MR. BENDER: Well, look at the definition of
6 what's family in the Edmonds ordinance.

7 QUESTION: Well --

8 MR. BENDER: It's anybody who's genetically
9 related.

10 QUESTION: That's because you don't want to put
11 down, you know, limits on the number of children people
12 can have, but basically, when you have a single family
13 limitation, isn't it -- doesn't it deal with overcrowding
14 in the area?

15 MR. BENDER: It's --

16 QUESTION: You don't want a whole lot of people.

17 MR. BENDER: No, I don't think it deals with
18 overcrowd -- it's overcrowding of the dwelling that this
19 is concerned with, not with overcrowding of the area. I
20 think that's quite clear in the exception itself. It's a
21 maximum number of occupants permitted to occupy a
22 dwelling, not the maximum density of occupants in the
23 neighborhood. That's not within the meaning of this.

24 And also, it's not only families. You could
25 have the -- you could have the Oxford House here --

1 QUESTION: But it doesn't matter how big that
2 dwelling is, isn't it?

3 MR. BENDER: No.

4 QUESTION: You can only have one family.

5 MR. BENDER: If -- I don't understand the
6 question. Under the Edmonds ordinance you can have a
7 family and up to five unrelated people, but a family can
8 be infinitely large.

9 Remember, a family is not defined here as
10 parents and children, or even parents, children, and
11 grandchildren. It's anyone genetically related. We don't
12 know what that means. There's nothing in the record to
13 suggest it.

14 But you could have five -- three sisters and two
15 brothers, each of whom are married, who get together in a
16 congregate living arrangement. Apparently, they could
17 live in a house, and then you could have a house exactly
18 the same size next to it, and the 10 people in the Edmonds
19 Oxford -- in Oxford Edmonds House could not live there.

20 That's exactly the kind of discrimination that
21 Congress intended to prohibit by the Fair Housing Act, and
22 that's exactly the kind of discrimination that would be
23 permitted if this ordinance came within this exception.

24 If there are no other questions --

25 QUESTION: Thank you, Mr. Bender.

1 Mr. Snyder, you have 2 minutes remaining.

2 REBUTTAL ARGUMENT OF W. SCOTT SNYDER

3 ON BEHALF OF THE PETITIONER

4 MR. SNYDER: Mr. Chief Justice, two points.

5 This case has never been about whether disabled persons
6 should be excluded from the City of Edmonds, but simply
7 where within the community they should reside, given the
8 numbers and institutional nature of the use.

9 We believe that the Eleventh Circuit's position,
10 or decision in the Athens case, applying a reasonable
11 standard and looking at the factual basis for the
12 ordinance structure, the overall structure of the scheme,
13 is the proper way to approach it. It protects the rights
14 of the disabled, and assures that they have a place in the
15 community.

16 Secondly, we believe that -- as counsel stated a
17 few minutes ago for Oxford House, he says the city can
18 point to nothing in the statute which supports a portion
19 of its position. We believe this is one of those
20 legislative situations of someone trying to keep an
21 elephant in their living room. It's simply impossible to
22 ignore.

23 We believe that the better interpretation would
24 have been that had Congress intended to overrule
25 traditional single family zoning, that it should have done

1 so, and should have done so on the basis of the statute.

2 We believe that there weren't the votes for
3 that, that had this issue been addressed directly it might
4 not have happened, that the Court should look to the plain
5 meaning of the statute and determine what Congress did,
6 not what policies or programs it might have promoted in a
7 different statute.

8 In 1990, citizens -- pardon me, officials of the
9 City of Edmonds sat with the HUD conciliator. They were
10 told that their definition of family, because it had no
11 limit on the number of related individuals, was a
12 violation of the Fair Housing Act Amendment.

13 Their question is the same question I put to the
14 Court today. As they asked the HUD investigator, where in
15 the statute does it say so?

16 Thank you for this opportunity to participate in
17 a unique national institution. Thank you.

18 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Snyder.

19 The case is submitted.

20 (Whereupon, at 12:07 p.m., the case in the
21 above-entitled matter was submitted.)
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23
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25

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

CITY OF EDMONDS, Petitioner v. OXFORD HOUSE, INC., ET AL.

CASE NO.: No. 94-23

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY *Ann Marie Federico*

(REPORTER)