CITY OF CLEBURNE, TEXAS, ET AL. *v.* CLEBURNE LIVING CENTER, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 84-468. Argued March 18, 1985—Reargued April 23, 1985—Decided July 1, 1985

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WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and POWELL, REHNQUIST, STEVENS, and O'CONNOR, JJ., joined. STEVENS, J., filed a concurring opinion, in which BURGER, C. J., joined, *post*, p. 451. MARSHALL, J., filed an opinion concurring in the judgment in part and dissenting in part, in which BRENNAN and BLACKMUN, JJ., joined, *post*, p. 455.

Earl Luna reargued the cause for petitioners. With him on the briefs were *Robert T. Miller, Jr.*, and *Mary Milford.*

Renea Hicks reargued the cause for respondents. With him on the brief were *Diane Shisk* and *Caryl Oberman.**

**Solicitor General Lee, Assistant Attorney General Reynolds, Deputy Solicitor General Fried, Deputy Assistant Attorney General Cooper,* and *Walter W. Barnett* filed a brief for the United States as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the State of Connecticut et al. by *Joseph I. Lieberman*, Attorney General of Connecticut, *Elliot F. Gerson*, Deputy Attorney General, and *Henry S. Cohn*, Assistant Attorney General, *John Steven Clark*, Attorney General of Arkansas, *John K. Van de Kamp*, Attorney General of California, *Duane Woodard*, Attorney General of Colorado, *Neil F. Hartigan*, Attorney General of Illinois, *Jill Wine-Banks*, Solicitor General, and *Robert J. Connor*, Special Assistant Attorney General, *William J. Guste, Jr.*, Attorney General of Louisiana, and *Robert A. Barnett*, Assistant Attorney General, *Nicholas J. Spaeth*, Attorney General of North Dakota, *Arlene Violet*, Attorney General of Rhode Island, *W. J. Michael Cody*, Attorney General of Tennessee, and *Charles G. Brown*, Attorney General of West Virginia; for the State of Maryland by *Stephen H. Sachs*, Attorney General, *Dennis M. Sweeney*, Deputy Attorney General, and *Judith K. Sykes*, Assistant Attorney General; for the State of Pennsylvania et al. by *LeRoy S. Zimmerman*, Attorney General of Pennsylvania, *Allen C. Warshaw*, Chief Deputy Attorney General, and *Andrew S. Gordon*, Senior Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Thomas J. Miller* of Iowa, *Frank J. Kelley* of Michigan, *Hubert H. Humphrey III* of Minnesota, *Stephen E. Merrill* of New Hampshire, *Irwin I. Kimmelman* of New Jersey, *Anthony J. Celebrezze, Jr.*, of Ohio, and *Bronson C. La Follette* of Wisconsin; for the State of Texas et al. by *Jim Mattox*, Attorney General of Texas, *David R. Richards*, *J. Patrick Wiseman*, and *James C. Todd* and *Philip Durst*, Assistant Attorneys General; for the American Association on Mental Deficiency et al. by *James W. Ellis*, *Ruth A. Luckasson*, *Stanley S. Herr*, and *Donald N. Bersoff;* for the American Civil Liberties Union Foundation et al. by *Burt Neuborne*, *Charles S. Sims*, *Robert M. Levy*, *Paul Hoffman*, *Stanley Fleishman*, *Joseph Lawrence*, *James Preis*, and *James C. Harrington;* for the Association for Retarded Citizens/USA et al. by *Thomas K. Gilhool*, *Frank J. Laski*, *Michael Churchill*, and *Timothy M. Cook;* for the Disability Rights Education and Defense Fund by *Arlene Brynne Mayerson;* for Disabled Peoples' International and Human Rights Advocates, Inc., by *Karen*

JUSTICE WHITE delivered the opinion of the Court.

A Texas city denied a special use permit for the operation of a group home for the mentally retarded, acting pursuant to a municipal zoning ordinance requiring permits for such homes. The Court of Appeals for the Fifth Circuit held that mental retardation is a "quasi-suspect" classification and that the ordinance violated the Equal Protection Clause because it did not substantially further an important governmental purpose. We hold that a lesser standard of scrutiny is appropriate, but conclude that under that standard the ordinance is invalid as applied in this case.

I

In July 1980, respondent Jan Hannah purchased a building at 201 Featherston Street in the city of Cleburne, Texas, with the intention of leasing it to Cleburne Living Center, Inc. (CLC),[1] for the operation of a group home for the mentally retarded. It was anticipated that the home would house 13 retarded men and women, who would be under the constant supervision of CLC staff members. The house had four bedrooms and two baths, with a half bath to be added. CLC planned to comply with all applicable state and federal regulations.[2]

Parker; and for the National Conference of Catholic Charities et al. by *Lewis Golinker, Herbert Semmel,* and *Kathleen E. Surgalla.*

Elliott W. Atkinson, Jr., filed a brief for the Federation of Greater Baton Rouge Civic Associations, Inc., as *amicus curiae.*

[1] Cleburne Living Center, Inc., is now known as Community Living Concepts, Inc. Hannah is the vice president and part owner of CLC. For convenience, both Hannah and CLC will be referred to as "CLC." A third respondent is Advocacy, Inc., a nonprofit corporation that provides legal services to developmentally disabled persons.

[2] It was anticipated that the home would be operated as a private Level I Intermediate Care Facility for the Mentally Retarded, or ICF–MR, under a program providing for joint federal-state reimbursement for residential services for mentally retarded clients. See 42 U. S. C. § 1396d(a)(15);

The city informed CLC that a special use permit would be required for the operation of a group home at the site, and CLC accordingly submitted a permit application. In response to a subsequent inquiry from CLC, the city explained that under the zoning regulations applicable to the site, a special use permit, renewable annually, was required for the construction of "[h]ospitals for the insane or feeble-minded, or alcoholic *[sic]* or drug addicts, or penal or correctional institutions."[3] The city had determined that the proposed

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Tex. Human Resources Code Ann. § 32.001 *et seq.* (1980 and Supp. 1985). ICF–MR's are covered by extensive regulations and guidelines established by the United States Department of Health and Human Services and the Texas Departments of Human Resources, Mental Health and Mental Retardation, and Health. See App. 92. See also 42 CFR § 442.1 *et seq.* (1984); 40 Tex. Adm. Code § 27.101 *et seq.* (1981).

[3] The site of the home is in an area zoned "R–3," an "Apartment House District." App. 51. Section 8 of the Cleburne zoning ordinance, in pertinent part, allows the following uses in an R–3 district:

"1. Any use permitted in District R–2.
"2. Apartment houses, or multiple dwellings.
"3. Boarding and lodging houses.
"4. Fraternity or sorority houses and dormitories.
"5. Apartment hotels.
"6. Hospitals, sanitariums, nursing homes or homes for convalescents or aged, *other than for the* insane or *feeble-minded* or alcoholics or drug addicts."
"7. Private clubs or fraternal orders, except those whose chief activity is carried on as a business.
"8. Philanthropic or eleemosynary institutions, other than penal institutions.
"9. Accessory uses customarily incident to any of the above uses . . . ." *Id.*, at 60–61 (emphasis added).

Section 16 of the ordinance specifies the uses for which a special use permit is required. These include "[h]ospitals for the insane or feeble-minded, or alcoholic *[sic]* or drug addicts, or penal or correctional institutions." *Id.*, at 63. Section 16 provides that a permit for such a use may be issued by "the Governing Body, after public hearing, and after recommendation of the Planning Commission." All special use permits are limited to one year, and each applicant is required "to obtain the signatures of the property owners within two hundred (200) feet of the property to be used." *Ibid.*

group home should be classified as a "hospital for the feeble-minded." After holding a public hearing on CLC's application, the City Council voted 3 to 1 to deny a special use permit.[4]

CLC then filed suit in Federal District Court against the city and a number of its officials, alleging, *inter alia*, that the zoning ordinance was invalid on its face and as applied because it discriminated against the mentally retarded in violation of the equal protection rights of CLC and its potential residents. The District Court found that "[i]f the potential residents of the Featherston Street home were not mentally retarded, but the home was the same in all other respects, its use would be permitted under the city's zoning ordinance," and that the City Council's decision "was motivated primarily by the fact that the residents of the home would be persons who are mentally retarded." App. 93, 94. Even so, the District Court held the ordinance and its application constitutional. Concluding that no fundamental right was implicated and that mental retardation was neither a suspect nor a quasi-suspect classification, the court employed the minimum level of judicial scrutiny applicable to equal protection claims. The court deemed the ordinance, as written and applied, to be rationally related to the city's legitimate interests in "the legal responsibility of CLC and its residents, . . . the safety and fears of residents in the adjoining neighborhood," and the number of people to be housed in the home.[5] *Id.*, at 103.

The Court of Appeals for the Fifth Circuit reversed, determining that mental retardation was a quasi-suspect classification and that it should assess the validity of the ordinance

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[4] The city's Planning and Zoning Commission had earlier held a hearing and voted to deny the permit. *Id.*, at 91.

[5] The District Court also rejected CLC's other claims, including the argument that the city had violated due process by improperly delegating its zoning powers to the owners of adjoining property. App. 105. Cf. *Washington ex rel. Seattle Title Trust Co.* v. *Roberge*, 278 U. S. 116 (1928). The Court of Appeals did not address this argument, and it has not been raised by the parties in this Court.

under intermediate-level scrutiny. 726 F. 2d 191 (1984). Because mental retardation was in fact relevant to many legislative actions, strict scrutiny was not appropriate. But in light of the history of "unfair and often grotesque mistreatment" of the retarded, discrimination against them was "likely to reflect deep-seated prejudice." *Id.*, at 197. In addition, the mentally retarded lacked political power, and their condition was immutable. The court considered heightened scrutiny to be particularly appropriate in this case, because the city's ordinance withheld a benefit which, although not fundamental, was very important to the mentally retarded. Without group homes, the court stated, the retarded could never hope to integrate themselves into the community.[6] Applying the test that it considered appropriate, the court held that the ordinance was invalid on its face because it did not substantially further any important governmental interests. The Court of Appeals went on to hold that the ordinance was also invalid as applied.[7] Rehearing en banc was

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[6] The District Court had found:

"Group homes currently are the principal community living alternatives for persons who are mentally retarded. The availability of such a home in communities is an essential ingredient of normal living patterns for persons who are mentally retarded, and each factor that makes such group homes harder to establish operates to exclude persons who are mentally retarded from the community." App. 94.

[7] The city relied on a recently passed state regulation limiting group homes to 6 residents in support of its argument that the CLC home would be overcrowded with 13. But, the Court of Appeals observed, the city had failed to justify its apparent view that any other group of 13 people could live under these allegedly "crowded" conditions, nor had it explained why 6 would be acceptable but 13 not.

CLC concedes that it could not qualify for certification under the new Texas regulation. Tr. of Oral Rearg. 31. The Court of Appeals stated that the new regulation applied only to applications made after May 1, 1982, and therefore did not apply to the CLC home. 726 F. 2d, at 202. The regulation itself contains no grandfather clause, see App. 78–81, and the District Court made no specific finding on this point. See *id.*, at 96. However, the State has asserted in an *amici* brief filed in this Court that "'the six bed rule' would not pose an obstacle to the proposed Featherston

denied with six judges dissenting in an opinion urging en banc consideration of the panel's adoption of a heightened standard of review. We granted certiorari, 469 U. S. 1016 (1984).[8]

II

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike. *Plyler* v. *Doe*, 457 U. S. 202, 216 (1982). Section 5 of the Amendment empowers Congress to enforce this mandate, but absent controlling congressional direction, the courts have themselves devised standards for

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Street group home at issue in this case." Brief for State of Texas et al. as *Amici Curiae* 15, n. 7. If the six-bed requirement were to apply to the home, there is a serious possibility that CLC would no longer be interested in injunctive relief. David Southern, an officer of CLC, testified that "to break even on a facility of this type, you have to have at least ten or eleven residents." App. 32. However, because CLC requested damages as well as an injunction, see *id.*, at 15, the case would not be moot.

After oral argument, the city brought to our attention the recent enactment of a Texas statute, effective September 1, 1985, providing that "family homes" are permitted uses in "all residential zones or districts in this state." The statute defines a "family home" as a community-based residence housing no more than six disabled persons, including the mentally retarded, along with two supervisory personnel. The statute does not appear to affect the city's actions with regard to group homes that plan to house more than six residents. The enactment of this legislation therefore does not affect our disposition of this case.

[8] *Macon Assn. for Retarded Citizens* v. *Macon-Bibb County Planning and Zoning Comm'n*, 252 Ga. 484, 314 S. E. 2d 218 (1984), dism'd for want of a substantial federal question, 469 U. S. 802 (1984), has no controlling effect on this case. *Macon Assn. for Retarded Citizens* involved an ordinance that had the effect of excluding a group home for the retarded only because it restricted dwelling units to those occupied by a single family, defined as no more than four unrelated persons. In *Village of Belle Terre* v. *Boraas*, 416 U. S. 1 (1974), we upheld the constitutionality of a similar ordinance, and the Georgia Supreme Court in *Macon Assn.* specifically held that the ordinance did not discriminate against the retarded. 252 Ga., at 487, 314 S. E. 2d, at 221.

determining the validity of state legislation or other official action that is challenged as denying equal protection. The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. *Schweiker* v. *Wilson*, 450 U. S. 221, 230 (1981); *United States Railroad Retirement Board* v. *Fritz*, 449 U. S. 166, 174–175 (1980); *Vance* v. *Bradley*, 440 U. S. 93, 97 (1979); *New Orleans* v. *Dukes*, 427 U. S. 297, 303 (1976). When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude, *United States Railroad Retirement Board* v. *Fritz*, *supra*, at 174; *New Orleans* v. *Dukes*, *supra*, at 303, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes.

The general rule gives way, however, when a statute classifies by race, alienage, or national origin. These factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy—a view that those in the burdened class are not as worthy or deserving as others. For these reasons and because such discrimination is unlikely to be soon rectified by legislative means, these laws are subjected to strict scrutiny and will be sustained only if they are suitably tailored to serve a compelling state interest. *McLaughlin* v. *Florida*, 379 U. S. 184, 192 (1964); *Graham* v. *Richardson*, 403 U. S. 365 (1971). Similar oversight by the courts is due when state laws impinge on personal rights protected by the Constitution. *Kramer* v. *Union Free School District No. 15*, 395 U. S. 621 (1969); *Shapiro* v. *Thompson*, 394 U. S. 618 (1969); *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U. S. 535 (1942).

Legislative classifications based on gender also call for a heightened standard of review. That factor generally provides no sensible ground for differential treatment. "[W]hat differentiates sex from such nonsuspect statuses as intelligence or physical disability . . . is that the sex characteristic

frequently bears no relation to ability to perform or contribute to society." *Frontiero* v. *Richardson*, 411 U. S. 677, 686 (1973) (plurality opinion). Rather than resting on meaningful considerations, statutes distributing benefits and burdens between the sexes in different ways very likely reflect outmoded notions of the relative capabilities of men and women. A gender classification fails unless it is substantially related to a sufficiently important governmental interest. *Mississippi University for Women* v. *Hogan*, 458 U. S. 718 (1982); *Craig* v. *Boren*, 429 U. S. 190 (1976). Because illegitimacy is beyond the individual's control and bears "no relation to the individual's ability to participate in and contribute to society," *Mathews* v. *Lucas*, 427 U. S. 495, 505 (1976), official discriminations resting on that characteristic are also subject to somewhat heightened review. Those restrictions "will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest." *Mills* v. *Habluetzel*, 456 U. S. 91, 99 (1982).

We have declined, however, to extend heightened review to differential treatment based on age:

> "While the treatment of the aged in this Nation has not been wholly free of discrimination, such persons, unlike, say, those who have been discriminated against on the basis of race or national origin, have not experienced a 'history of purposeful unequal treatment' or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities." *Massachusetts Board of Retirement* v. *Murgia*, 427 U. S. 307, 313 (1976).

The lesson of *Murgia* is that where individuals in the group affected by a law have distinguishing characteristics relevant to interests the State has the authority to implement, the courts have been very reluctant, as they should be in our federal system and with our respect for the separation of powers, to closely scrutinize legislative choices as to whether, how, and to what extent those interests should be

pursued. In such cases, the Equal Protection Clause requires only a rational means to serve a legitimate end.

III

Against this background, we conclude for several reasons that the Court of Appeals erred in holding mental retardation a quasi-suspect classification calling for a more exacting standard of judicial review than is normally accorded economic and social legislation. First, it is undeniable, and it is not argued otherwise here, that those who are mentally retarded have a reduced ability to cope with and function in the everyday world. Nor are they all cut from the same pattern: as the testimony in this record indicates, they range from those whose disability is not immediately evident to those who must be constantly cared for.[9] They are thus different, immutably so, in relevant respects, and the States' interest in dealing with and providing for them is plainly a legitimate one.[10] How this large and diversified group is to be treated

[9] Mentally retarded individuals fall into four distinct categories. The vast majority—approximately 89%—are classified as "mildly" retarded, meaning that their IQ is between 50 and 70. Approximately 6% are "moderately" retarded, with IQs between 35 and 50. The remaining two categories are "severe" (IQs of 20 to 35) and "profound" (IQs below 20). These last two categories together account for about 5% of the mentally retarded population. App. 39 (testimony of Dr. Philip Roos).

Mental retardation is not defined by reference to intelligence or IQ alone, however. The American Association on Mental Deficiency (AAMD) has defined mental retardation as " 'significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.' " Brief for AAMD et al. as *Amici Curiae* 3 (quoting AAMD, Classification in Mental Retardation 1 (H. Grossman ed. 1983)). "Deficits in adaptive behavior" are limitations on general ability to meet the standards of maturation, learning, personal independence, and social responsibility expected for an individual's age level and cultural group. Brief for AAMD et al. as *Amici Curiae* 4, n. 1. Mental retardation is caused by a variety of factors, some genetic, some environmental, and some unknown. *Id.*, at 4.

[10] As Dean Ely has observed:

"Surely one has to feel sorry for a person disabled by something he or she can't do anything about, but I'm not aware of any reason to suppose that

under the law is a difficult and often a technical matter, very much a task for legislators guided by qualified professionals and not by the perhaps ill-informed opinions of the judiciary. Heightened scrutiny inevitably involves substantive judgments about legislative decisions, and we doubt that the predicate for such judicial oversight is present where the classification deals with mental retardation.

Second, the distinctive legislative response, both national and state, to the plight of those who are mentally retarded demonstrates not only that they have unique problems, but also that the lawmakers have been addressing their difficulties in a manner that belies a continuing antipathy or prejudice and a corresponding need for more intrusive oversight by the judiciary. Thus, the Federal Government has not only outlawed discrimination against the mentally retarded in federally funded programs, see § 504 of the Rehabilitation Act of 1973, 29 U. S. C. § 794, but it has also provided the retarded with the right to receive "appropriate treatment, services, and habilitation" in a setting that is "least restrictive of [their] personal liberty." Developmental Disabilities Assistance and Bill of Rights Act, 42 U. S. C. §§ 6010(1), (2). In addition, the Government has conditioned federal education funds on a State's assurance that retarded children will enjoy an education that, "to the maximum extent appropriate," is integrated with that of nonmentally retarded children. Education of the Handicapped Act, 20 U. S. C. § 1412(5)(B). The Government has also facilitated the hiring of the mentally retarded into the federal civil service by exempting them from the requirement of competitive examina-

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elected officials are unusually unlikely to share that feeling. Moreover, classifications based on physical disability and intelligence are typically accepted as legitimate, even by judges and commentators who assert that immutability is relevant. The explanation, when one is given, is that *those* characteristics (unlike the one the commentator is trying to render suspect) are often relevant to legitimate purposes. At that point there's not much left of the immutability theory, is there?" J. Ely, Democracy and Distrust 150 (1980) (footnote omitted). See also *id.*, at 154–155.

tion. See 5 CFR § 213.3102(t) (1984). The State of Texas has similarly enacted legislation that acknowledges the special status of the mentally retarded by conferring certain rights upon them, such as "the right to live in the least restrictive setting appropriate to [their] individual needs and abilities," including "the right to live . . . in a group home." Mentally Retarded Persons Act of 1977, Tex. Rev. Civ. Stat. Ann., Art. 5547–300, § 7 (Vernon Supp. 1985).[11]

Such legislation thus singling out the retarded for special treatment reflects the real and undeniable differences between the retarded and others. That a civilized and decent society expects and approves such legislation indicates that governmental consideration of those differences in the vast majority of situations is not only legitimate but also desirable. It may be, as CLC contends, that legislation designed to benefit, rather than disadvantage, the retarded would generally withstand examination under a test of heightened scrutiny. See Brief for Respondents 38–41. The relevant inquiry, however, is whether heightened scrutiny is constitutionally mandated in the first instance. Even assuming that many of these laws could be shown to be substantially related to an important governmental purpose, merely requiring the legislature to justify its efforts in these terms may lead it to refrain from acting at all. Much recent legislation intended to benefit the retarded also assumes the need for measures that might be perceived to disadvantage them. The Education of the Handicapped Act, for example, requires an "appropriate" education, not one that is equal in all respects

[11] CLC originally sought relief under the Act, but voluntarily dismissed this pendent state claim when the District Court indicated that its presence might make abstention appropriate. The Act had never been construed by the Texas courts. App. 12, 14, 84–87.

A number of States have passed legislation prohibiting zoning that excludes the retarded. See, *e. g.*, Cal. Health & Safety Code Ann. § 1566 *et seq.* (West 1979 and Supp. 1985); Conn. Gen. Stat. § 8–3e (Supp. 1985); N. D. Cent. Code § 25–16–14(2) (Supp. 1983); R. I. Gen. Laws. § 45–24–22 (1980). See also Md. Health Code Ann. § 7–102 (Supp. 1984).

to the education of nonretarded children; clearly, admission to a class that exceeded the abilities of a retarded child would not be appropriate.[12] Similarly, the Developmental Disabilities Assistance Act and the Texas Act give the retarded the right to live only in the "least restrictive setting" appropriate to their abilities, implicitly assuming the need for at least some restrictions that would not be imposed on others.[13] Especially given the wide variation in the abilities and needs of the retarded themselves, governmental bodies must have a certain amount of flexibility and freedom from judicial oversight in shaping and limiting their remedial efforts.

Third, the legislative response, which could hardly have occurred and survived without public support, negates any claim that the mentally retarded are politically powerless in the sense that they have no ability to attract the attention of the lawmakers. Any minority can be said to be powerless to assert direct control over the legislature, but if that were a criterion for higher level scrutiny by the courts, much economic and social legislation would now be suspect.

Fourth, if the large and amorphous class of the mentally retarded were deemed quasi-suspect for the reasons given by the Court of Appeals, it would be difficult to find a principled way to distinguish a variety of other groups who have perhaps immutable disabilities setting them off from others, who cannot themselves mandate the desired legislative responses, and who can claim some degree of prejudice from at least part of the public at large. One need mention in this respect only

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[12] The Act, which specifically included the mentally retarded in its definition of handicapped, see 20 U. S. C. § 1401(1), also recognizes the great variations within the classification of retarded children. The Act requires that school authorities devise an "individualized educational program," § 1401(19), that is "tailored to the unique needs of the handicapped child." *Hendrick Hudson District Board of Education* v. *Rowley*, 458 U. S. 176, 181 (1982).

[13] The Developmental Disabilities Assistance Act also withholds public funds from any program that does not prohibit the use of physical restraint "unless absolutely necessary." 42 U. S. C. § 6010(3).

the aging, the disabled, the mentally ill, and the infirm. We are reluctant to set out on that course, and we decline to do so.

Doubtless, there have been and there will continue to be instances of discrimination against the retarded that are in fact invidious, and that are properly subject to judicial correction under constitutional norms. But the appropriate method of reaching such instances is not to create a new quasi-suspect classification and subject all governmental action based on that classification to more searching evaluation. Rather, we should look to the likelihood that governmental action premised on a particular classification is valid as a general matter, not merely to the specifics of the case before us. Because mental retardation is a characteristic that the government may legitimately take into account in a wide range of decisions, and because both State and Federal Governments have recently committed themselves to assisting the retarded, we will not presume that any given legislative action, even one that disadvantages retarded individuals, is rooted in considerations that the Constitution will not tolerate.

Our refusal to recognize the retarded as a quasi-suspect class does not leave them entirely unprotected from invidious discrimination. To withstand equal protection review, legislation that distinguishes between the mentally retarded and others must be rationally related to a legitimate governmental purpose. This standard, we believe, affords government the latitude necessary both to pursue policies designed to assist the retarded in realizing their full potential, and to freely and efficiently engage in activities that burden the retarded in what is essentially an incidental manner. The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational. See *Zobel* v. *Williams*, 457 U. S. 55, 61–63 (1982); *United States Dept. of Agriculture* v. *Moreno*, 413 U. S. 528, 535 (1973). Furthermore, some objectives—

such as "a bare . . . desire to harm a politically unpopular group," *id.*, at 534—are not legitimate state interests. See also *Zobel*, *supra*, at 63. Beyond that, the mentally retarded, like others, have and retain their substantive constitutional rights in addition to the right to be treated equally by the law.

IV

We turn to the issue of the validity of the zoning ordinance insofar as it requires a special use permit for homes for the mentally retarded.[14] We inquire first whether requiring a special use permit for the Featherston home in the circumstances here deprives respondents of the equal protection of the laws. If it does, there will be no occasion to decide whether the special use permit provision is facially invalid where the mentally retarded are involved, or to put it another way, whether the city may never insist on a special use permit for a home for the mentally retarded in an R–3 zone. This is the preferred course of adjudication since it enables courts to avoid making unnecessarily broad constitutional judgments. *Brockett* v. *Spokane Arcades, Inc.*, 472 U. S. 491, 501–502 (1985); *United States* v. *Grace*, 461 U. S. 171 (1983); *NAACP* v. *Button*, 371 U. S. 415 (1963).

The constitutional issue is clearly posed. The city does not require a special use permit in an R–3 zone for apartment houses, multiple dwellings, boarding and lodging houses, fraternity or sorority houses, dormitories, apartment hotels, hospitals, sanitariums, nursing homes for convalescents or the aged (other than for the insane or feebleminded or alcoholics or drug addicts), private clubs or fraternal orders, and other specified uses. It does, however, insist on a special permit for the Featherston home, and it does so, as the District Court found, because it would be a facility for the men-

[14] It goes without saying that there is nothing before us with respect to the validity of requiring a special use permit for the other uses listed in the ordinance. See n. 3, *supra*.

tally retarded. May the city require the permit for this facility when other care and multiple-dwelling facilities are freely permitted?

It is true, as already pointed out, that the mentally retarded as a group are indeed different from others not sharing their misfortune, and in this respect they may be different from those who would occupy other facilities that would be permitted in an R–3 zone without a special permit. But this difference is largely irrelevant unless the Featherston home and those who would occupy it would threaten legitimate interests of the city in a way that other permitted uses such as boarding houses and hospitals would not. Because in our view the record does not reveal any rational basis for believing that the Featherston home would pose any special threat to the city's legitimate interests, we affirm the judgment below insofar as it holds the ordinance invalid as applied in this case.

The District Court found that the City Council's insistence on the permit rested on several factors. First, the Council was concerned with the negative attitude of the majority of property owners located within 200 feet of the Featherston facility, as well as with the fears of elderly residents of the neighborhood. But mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like. It is plain that the electorate as a whole, whether by referendum or otherwise, could not order city action violative of the Equal Protection Clause, *Lucas* v. *Forty-Fourth General Assembly of Colorado*, 377 U. S. 713, 736–737 (1964), and the city may not avoid the strictures of that Clause by deferring to the wishes or objections of some fraction of the body politic. "Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect." *Palmore* v. *Sidoti*, 466 U. S. 429, 433 (1984).

Second, the Council had two objections to the location of the facility. It was concerned that the facility was across the street from a junior high school, and it feared that the students might harass the occupants of the Featherston home. But the school itself is attended by about 30 mentally retarded students, and denying a permit based on such vague, undifferentiated fears is again permitting some portion of the community to validate what would otherwise be an equal protection violation. The other objection to the home's location was that it was located on "a five hundred year flood plain." This concern with the possibility of a flood, however, can hardly be based on a distinction between the Featherston home and, for example, nursing homes, homes for convalescents or the aged, or sanitariums or hospitals, any of which could be located on the Featherston site without obtaining a special use permit. The same may be said of another concern of the Council—doubts about the legal responsibility for actions which the mentally retarded might take. If there is no concern about legal responsibility with respect to other uses that would be permitted in the area, such as boarding and fraternity houses, it is difficult to believe that the groups of mildly or moderately mentally retarded individuals who would live at 201 Featherston would present any different or special hazard.

Fourth, the Council was concerned with the size of the home and the number of people that would occupy it. The District Court found, and the Court of Appeals repeated, that "[i]f the potential residents of the Featherston Street home were not mentally retarded, but the home was the same in all other respects, its use would be permitted under the city's zoning ordinance." App. 93; 726 F. 2d, at 200. Given this finding, there would be no restrictions on the number of people who could occupy this home as a boarding house, nursing home, family dwelling, fraternity house, or dormitory. The question is whether it is rational to treat the mentally retarded differently. It is true that they suffer dis-

ability not shared by others; but why this difference warrants a density regulation that others need not observe is not at all apparent. At least this record does not clarify how, in this connection, the characteristics of the intended occupants of the Featherston home rationally justify denying to those occupants what would be permitted to groups occupying the same site for different purposes. Those who would live in the Featherston home are the type of individuals who, with supporting staff, satisfy federal and state standards for group housing in the community; and there is no dispute that the home would meet the federal square-footage-per-resident requirement for facilities of this type. See 42 CFR § 442.447 (1984). In the words of the Court of Appeals, "[t]he City never justifies its apparent view that other people can live under such 'crowded' conditions when mentally retarded persons cannot." 726 F. 2d, at 202.

In the courts below the city also urged that the ordinance is aimed at avoiding concentration of population and at lessening congestion of the streets. These concerns obviously fail to explain why apartment houses, fraternity and sorority houses, hospitals and the like, may freely locate in the area without a permit. So, too, the expressed worry about fire hazards, the serenity of the neighborhood, and the avoidance of danger to other residents fail rationally to justify singling out a home such as 201 Featherston for the special use permit, yet imposing no such restrictions on the many other uses freely permitted in the neighborhood.

The short of it is that requiring the permit in this case appears to us to rest on an irrational prejudice against the mentally retarded, including those who would occupy the Featherston facility and who would live under the closely supervised and highly regulated conditions expressly provided for by state and federal law.

The judgment of the Court of Appeals is affirmed insofar as it invalidates the zoning ordinance as applied to the Featherston home. The judgment is otherwise vacated, and the case is remanded.

It is so ordered.