

## ZONING CASE MAY HAVE WIDE REACHING EFFECT

A city zoning decision which denied a "special use" permit for the establishment of a group home in Cleburne, Texas, for mentally retarded persons will be considered by the U.S. Supreme Court this term when it reviews a decision made by the Fifth Circuit Federal Court of Appeals.

According to Mike Morris of the United Cerebral Palsy Association in Washington, the questions considered by the Court may be much broader than zoning laws.

Here's why.

The city of Cleburne denied a permit for the group home for mentally retarded persons in a zone in which other types of multiple-person housing are allowed. Hence, the key reason for the denial was the fact that its residents are retarded, making the ordinance discriminatory "on the face of it" against this class of citizens, Morris stated.

When the case appeared before the circuit court, attorneys for the proposed group home argued that denial of the permit was a violation of the prospective residents' fourteenth amendment rights. Those rights, often known as "equal protection" rights, guarantee that no citizen can be deprived of essential rights without due process of the law, that no person can be denied the "equal protection" of the nation's laws. The circuit court judges found that the violation had occurred.

Historically, groups of persons in the U.S. who have long been discriminated against have been granted something known as "suspect status." This means that legislation involving them must be carefully reviewed to be sure it's not discriminatory. Attorneys for the group home argued before the circuit court that the prospective residents should be grant-

ed this "suspect status" because of a history of discrimination against persons who are mentally retarded. The status was granted.

Should the Supreme Court agree with the lower court on the question of "suspect status," the local zoning ordinance would then be subjected to what's known in legal circles as "heightened scrutiny."

Morris explained that without the "heightened scrutiny" provision, the case would be judged simply on whether or not the town of Cleburne had a "rational basis" for denying the permit. On that basis, he said, it could be fairly easy to allow the denial to remain in effect.

If, however, the case is subjected to "heightened scrutiny," then the interests of both parties involved (the city and the prospective group home residents) must be measured and balanced, he said. "Equal protection" questions would enter the picture as would the issue of whether or not essential rights of mentally retarded persons (and perhaps of all disabled people) have been denied.

Whether or not the Supreme Court agrees with the Circuit Court that mentally retarded persons be granted suspect status is critical, according to Morris, in setting a precedent for how other cases involving handicapped persons are judged.