

SOUTER, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 01–1368

NEVADA DEPARTMENT OF HUMAN RESOURCES,
ET AL., PETITIONERS *v.* WILLIAM HIBBS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[May 27, 2003]

JUSTICE SOUTER, with whom JUSTICE GINSBURG and JUSTICE BREYER join, concurring.

Even on this Court’s view of the scope of congressional power under §5 of the Fourteenth Amendment, see *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U. S. 356 (2001); *Kimel v. Florida Bd. of Regents*, 528 U. S. 62 (2000); *Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank*, 527 U. S. 627 (1999), the Family and Medical Leave Act is undoubtedly valid legislation, and application of the Act to the States is constitutional; the same conclusions follow *a fortiori* from my own understanding of §5, see *Garrett, supra*, at 376 (BREYER, J., dissenting); *Kimel, supra*, at 92 (STEVENS, J., dissenting); *Florida Prepaid, supra*, at 648 (STEVENS, J., dissenting); see also *Katzenbach v. Morgan*, 384 U. S. 641, 650–651 (1966). I join the Court’s opinion here without conceding the dissenting positions just cited or the dissenting views expressed in *Seminole Tribe of Fla. v. Florida*, 517 U. S. 44, 100 (1996) (SOUTER, J., dissenting).