

BREYER, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 02–891

CENTRAL LABORERS’ PENSION FUND, PETITIONER
v. THOMAS E. HEINZ ET AL.

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

[June 7, 2004]

JUSTICE BREYER, with whom THE CHIEF JUSTICE,
JUSTICE O’CONNOR, and JUSTICE GINSBURG join,
concurring.

I join the opinion of the Court on the assumption that it does not foreclose a reading of the Employee Retirement Income Security Act of 1974 that allows the Secretary of Labor, or the Secretary of the Treasury, to issue *regulations* explicitly allowing plan amendments to enlarge the scope of disqualifying employment with respect to benefits attributable to already-performed services. Cf. *Christensen v. Harris County*, 529 U. S. 576, 589 (2000) (SOUTER, J., concurring).