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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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**NEVADA DEPARTMENT OF HUMAN RESOURCES ET
AL. v. HIBBS ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

No. 01–1368. Argued January 15, 2003—Decided May 27, 2003

Respondent Hibbs (hereinafter respondent), an employee of the Nevada Department of Human Resources (Department), sought leave to care for his ailing wife under the Family and Medical Leave Act of 1993 (FMLA), which entitles an eligible employee to take up to 12 work weeks of unpaid leave annually for the onset of a “serious health condition” in the employee’s spouse and for other reasons, 29 U. S. C. §2612(a)(1)(C). The Department granted respondent’s request for the full 12 weeks of FMLA leave, but eventually informed him that he had exhausted that leave and that he must report to work by a certain date. Respondent failed to do so and was terminated. Pursuant to FMLA provisions creating a private right of action to seek both equitable relief and money damages “against any employer (including a public agency),” §2617(a)(2), that “interfere[d] with, restrain[ed], or den[ie]d the exercise of” FMLA rights, §2615(a)(1), respondent sued petitioners, the Department and two of its officers, in Federal District Court seeking damages and injunctive and declaratory relief for, *inter alia*, violations of §2612(a)(1)(C). The court awarded petitioners summary judgment on the grounds that the FMLA claim was barred by the Eleventh Amendment and that respondent’s Fourteenth Amendment rights had not been violated. The Ninth Circuit reversed.

Held: State employees may recover money damages in federal court in the event of the State’s failure to comply with the FMLA’s family-care provision. Congress may abrogate the States’ Eleventh Amendment immunity from suit in federal court if it makes its intention to abrogate unmistakably clear in the language of the statute and acts pursuant to a valid exercise of its power under §5 of the Fourteenth

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Amendment. See, *e.g.*, *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U. S. 356, 363. The FMLA satisfies the clear statement rule. See *Kimel v. Florida Bd. of Regents*, 528 U. S. 62, 73–78. Congress also acted within its authority under §5 of the Fourteenth Amendment when it sought to abrogate the States’ immunity for purposes of the FMLA’s family-leave provision. In the exercise of its §5 power, Congress may enact so-called prophylactic legislation that proscribes facially constitutional conduct in order to prevent and deter unconstitutional conduct, *e.g.*, *City of Boerne v. Flores*, 521 U. S. 507, 536, but it may not attempt to substantively redefine the States’ legal obligations, *Kimel, supra*, at 88. The test for distinguishing appropriate prophylactic legislation from substantive redefinition is that valid §5 legislation must exhibit “congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.” *City of Boerne, supra*, at 520. The FMLA aims to protect the right to be free from gender-based discrimination in the workplace. Statutory classifications that distinguish between males and females are subject to heightened scrutiny, see, *e.g.*, *Craig v. Boren*, 429 U. S. 190, 197–199; *i.e.*, they must “serv[e] important governmental objectives,” and “the discriminatory means employed [must be] substantially related to the achievement of those objectives,” *United States v. Virginia*, 518 U. S. 515, 533. When it enacted the FMLA, Congress had before it significant evidence of a long and extensive history of sex discrimination with respect to the administration of leave benefits by the States, which is weighty enough to justify the enactment of prophylactic §5 legislation. Cf. *Fitzpatrick v. Bitzer*, 427 U. S. 445, 456. *Garrett, supra*, and *Kimel, supra*, in which the Court reached the opposite conclusion, are distinguished on the ground that the §5 legislation there at issue responded to a purported tendency of state officials to make age- or disability-based distinctions, characteristics that are not judged under a heightened review standard, but pass equal protection muster if there is a rational basis for enacting them. See, *e.g.*, *Kimel, supra*, at 86. Here, because the standard for demonstrating the constitutionality of a gender-based classification is more difficult to meet than the rational-basis test, it was easier for Congress to show a pattern of state constitutional violations. Cf. *South Carolina v. Katzenbach*, 383 U. S. 301, 308–313. The impact of the discrimination targeted by the FMLA, which is based on mutually reinforcing stereotypes that only women are responsible for family caregiving and that men lack domestic responsibilities, is significant. Moreover, Congress’ chosen remedy, the FMLA’s family-care provision, is “congruent and proportional to the targeted violation,” *Garrett, supra*, at 374. Congress had already tried unsuccessfully to address this problem through Title VII of the Civil Rights Act of 1964

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and the Pregnancy Discrimination Act. Where previous legislative attempts have failed, see *Katzenbach, supra*, at 313, such problems may justify added prophylactic measures in response, *Kimel, supra*, at 88. By creating an across-the-board, routine employment benefit for all eligible employees, Congress sought to ensure that family-care leave would no longer be stigmatized as an inordinate drain on the workplace caused by female employees, and that employers could not evade leave obligations simply by hiring men. Unlike the statutes at issue in *City of Boerne, Kimel*, and *Garrett*, which applied broadly to every aspect of state employers' operations, the FMLA is narrowly targeted at the fault line between work and family—precisely where sex-based overgeneralization has been and remains strongest—and affects only one aspect of the employment relationship. Also significant are the many other limitations that Congress placed on the FMLA's scope. See *Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank*, 527 U. S. 627, 647. For example, the FMLA requires only unpaid leave, §2612(a)(1); applies only to employees who have worked for the employer for at least one year and provided 1,250 hours of service within the last 12 months, §2611(2)(A); and does not apply to employees in high-ranking or sensitive positions, including state elected officials, their staffs, and appointed policy-makers, §§2611(2)(B)(i) and (3), 203(e)(2)(C). Pp. 2–17.

273 F. 3d 844, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. SOUTER, J., filed a concurring opinion, in which GINSBURG and BREYER, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment. SCALIA, J., filed a dissenting opinion. KENNEDY, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.