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).