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]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The Family and Medical Leave Act of 1993 (FMLA or Act) entitles eligible employees to take up to 12 work weeks of unpaid leave annually for any of several reasons, including the onset of a "serious health condition" in an employee's spouse, child, or parent. 107 Stat. 9, 29 U. S. C. §2612(a)(1)(C). The Act creates a private right of action to seek both equitable relief and money damages "against any employer (including a public agency) in any Federal or State court of competent jurisdiction," §2617(a)(2), should that employer "interfere with, restrain, or deny the exercise of" FMLA rights, §2615(a)(1). We hold that employees of the State of Nevada may recover money damages in the event of the State's failure to comply with the family-care provision of the Act.

Petitioners include the Nevada Department of Human Resources (Department) and two of its officers. Respondent William Hibbs (hereinafter respondent) worked for the Department's Welfare Division. In April and May 1997, he sought leave under the FMLA to care for his ailing wife, who was recovering from a car accident and

neck surgery. The Department granted his request for the full 12 weeks of FMLA leave and authorized him to use the leave intermittently as needed between May and December 1997. Respondent did so until August 5, 1997, after which he did not return to work. In October 1997, the Department informed respondent that he had exhausted his FMLA leave, that no further leave would be granted, and that he must report to work by November 12, 1997. Respondent failed to do so and was terminated.

Respondent sued petitioners in the United States District Court seeking damages and injunctive and declaratory relief for, *inter alia*, violations of 29 U. S. C. §2612(a)(1)(C). The District 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. Respondent appealed, and the United States intervened under 28 U. S. C. §2403 to defend the validity of the FMLA's application to the States. The Ninth Circuit reversed. 273 F. 3d 844 (2001).

We granted certiorari, 536 U. S. 938 (2002), to resolve a split among the Courts of Appeals on the question whether an individual may sue a State for money damages in federal court for violation of §2612(a)(1)(C). Compare *Kazmier* v. *Widmann*, 225 F. 3d 519, 526, 529 (CA5 2000), with 273 F. 3d 844 (case below).

For over a century now, we have made clear that the Constitution does not provide for federal jurisdiction over suits against nonconsenting States. *Board of Trustees of Univ. of Ala.* v. *Garrett,* 531 U. S. 356, 363 (2001); *Kimel* v. *Florida Bd. of Regents,* 528 U. S. 62, 72–73 (2000); *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.,* 527 U. S. 666, 669–670 (1999); *Seminole Tribe of Fla.* v. *Florida,* 517 U. S. 44, 54 (1996); *Hans* v. *Louisiana,* 134 U. S. 1, 15 (1890).

Congress may, however, abrogate such immunity 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 Amendment. See *Garrett, supra,* at 363; *Blatchford* v. *Native Village of Noatak,* 501 U. S. 775, 786 (1991) (citing *Dellmuth* v. *Muth,* 491 U. S. 223, 228 (1989)). The clarity of Congress' intent here is not fairly debatable. The Act enables employees to seek damages "against any employer (including a public agency) in any Federal or State court of competent jurisdiction," 29 U. S. C. §2617(a)(2), and Congress has defined "public agency" to include both "the government of a State or political subdivision thereof" and "any agency of . . . a State, or a political subdivision of a State," §§203(x), 2611(4)(A)(iii). We held in *Kimel* that, by using identical language in the Age Discrimination in Employment Act of 1967 (ADEA), 81 Stat. 602, as amended, 29 U. S. C. §621 *et seq.,* Congress satisfied the clear statement rule of *Dellmuth*. 528 U. S., at 73–78. This case turns, then, on whether Congress acted within its constitutional authority when it sought to abrogate the States' immunity for purposes of the FMLA's family-leave provision.

In enacting the FMLA, Congress relied on two of the powers vested in it by the Constitution: its Article I commerce power and its power under §5 of the Fourteenth Amendment to enforce that Amendment's guarantees.[1]

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[1] Compare 29 U. S. C. §2601(b)(1) ("It is the purpose of this Act . . . to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity") with §2601(b)(5) ("to promote the goal of equal employment opportunity for women and men, pursuant to [the Equal Protection C]lause") and §2601(b)(4) ("to accomplish [the Act's other purposes] in a manner that, consistent with the Equal Protection Clause . . . , minimizes the potential for employment discrimination on the basis of sex"). See also S. Rep. No. 103–3, p. 16 (1993) (the FMLA "is based not only on the Commerce Clause, but also

Congress may not abrogate the States' sovereign immunity pursuant to its Article I power over commerce. *Seminole Tribe, supra.* Congress may, however, abrogate States' sovereign immunity through a valid exercise of its §5 power, for "the Eleventh Amendment, and the principle of state sovereignty which it embodies, are necessarily limited by the enforcement provisions of §5 of the Fourteenth Amendment." *Fitzpatrick* v. *Bitzer,* 427 U. S. 445, 456 (1976) (citation omitted). See also *Garrett, supra,* at 364; *Kimel, supra,* at 80.

Two provisions of the Fourteenth Amendment are relevant here: Section 5 grants Congress the power "to enforce" the substantive guarantees of §1—among them, equal protection of the laws—by enacting "appropriate legislation." Congress may, in the exercise of its §5 power, do more than simply proscribe conduct that we have held unconstitutional. "'Congress' power "to enforce" the Amendment includes the authority both to remedy and to deter violation of rights guaranteed thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text.'" *Garrett, supra,* at 365 (quoting *Kimel, supra,* at 81); *City of Boerne* v. *Flores,* 521 U. S. 507, 536 (1997); *Katzenbach* v. *Morgan,* 384 U. S. 641, 658 (1966). In other words, Congress may enact so-called prophylactic legislation that proscribes facially constitutional conduct, in order to prevent and deter unconstitutional conduct.

City of Boerne also confirmed, however, that it falls to this Court, not Congress, to define the substance of constitutional guarantees. 521 U. S., at 519–524. "The ultimate interpretation and determination of the Fourteenth Amendment's substantive meaning remains the province

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on the guarantees of equal protection and due process embodied in the 14th Amendment"); H. R. Rep. No. 103–8, pt. 1, p. 29 (1993) (same).

of the Judicial Branch." *Kimel*, 528 U. S., at 81. Section 5 legislation reaching beyond the scope of §1's actual guarantees must be an appropriate remedy for identified constitutional violations, not "an attempt to substantively redefine the States' legal obligations." *Id.,* at 88. We distinguish appropriate prophylactic legislation from "substantive redefinition of the Fourteenth Amendment right at issue," *id.*, at 81, by applying the test set forth in *City of Boerne:* Valid §5 legislation must exhibit "congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." 521 U. S., at 520.

The FMLA aims to protect the right to be free from gender-based discrimination in the workplace.[2] We have held that 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 (1976). For a gender-based classification to withstand such scrutiny, it 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 (1996) (citations and internal quotation marks omitted). The State's justification for such a classification "must not rely on overbroad generalizations about the different

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[2]The text of the Act makes this clear. Congress found that, "due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men." 29 U. S. C. §2601(a)(5). In response to this finding, Congress sought "to accomplish the [Act's other] purposes . . . in a manner that . . . minimizes the potential for employment discrimination *on the basis of sex* by ensuring generally that leave is available . . . *on a gender-neutral basis*[,] and to promote the goal of equal employment opportunity *for women and men* . . . ." §§2601(b)(4) and (5) (emphasis added).

talents, capacities, or preferences of males and females." *Ibid.* We now inquire whether Congress had evidence of a pattern of constitutional violations on the part of the States in this area.

The history of the many state laws limiting women's employment opportunities is chronicled in—and, until relatively recently, was sanctioned by—this Court's own opinions. For example, in *Bradwell* v. *State,* 16 Wall. 130 (1873) (Illinois), and *Goesaert* v. *Cleary,* 335 U. S. 464, 466 (1948) (Michigan), the Court upheld state laws prohibiting women from practicing law and tending bar, respectively. State laws frequently subjected women to distinctive restrictions, terms, conditions, and benefits for those jobs they could take. In *Muller* v. *Oregon,* 208 U. S. 412, 419, n. 1 (1908), for example, this Court approved a state law limiting the hours that women could work for wages, and observed that 19 States had such laws at the time. Such laws were based on the related beliefs that (1) woman is, and should remain, "the center of home and family life," *Hoyt* v. *Florida,* 368 U. S. 57, 62 (1961), and (2) "a proper discharge of [a woman's] maternal functions—having in view not merely her own health, but the well-being of the race—justif[ies] legislation to protect her from the greed as well as the passion of man," *Muller, supra,* at 422. Until our decision in *Reed* v. *Reed,* 404 U. S. 71 (1971), "it remained the prevailing doctrine that government, both federal and state, could withhold from women opportunities accorded men so long as any 'basis in reason'"—such as the above beliefs—"could be conceived for the discrimination." *Virginia, supra,* at 531 (quoting *Goesaert, supra,* at 467).

Congress responded to this history of discrimination by abrogating States' sovereign immunity in Title VII of the Civil Rights Act of 1964, 78 Stat. 255, 42 U. S. C. §2000e–2(a), and we sustained this abrogation in *Fitzpatrick, supra.* But state gender discrimination did not cease. "[I]t

can hardly be doubted that . . . women still face pervasive, although at times more subtle, discrimination . . . in the job market." *Frontiero* v. *Richardson,* 411 U. S. 677, 686 (1973). According to evidence that was before Congress when it enacted the FMLA, States continue to rely on invalid gender stereotypes in the employment context, specifically in the administration of leave benefits. Reliance on such stereotypes cannot justify the States' gender discrimination in this area. *Virginia*, *supra*, at 533. The long and extensive history of sex discrimination prompted us to hold that measures that differentiate on the basis of gender warrant heightened scrutiny; here, as in *Fitzpatrick*, the persistence of such unconstitutional discrimination by the States justifies Congress' passage of prophylactic §5 legislation.

As the FMLA's legislative record reflects, a 1990 Bureau of Labor Statistics (BLS) survey stated that 37 percent of surveyed private-sector employees were covered by maternity leave policies, while only 18 percent were covered by paternity leave policies. S. Rep. No. 103–3, pp. 14–15 (1993). The corresponding numbers from a similar BLS survey the previous year were 33 percent and 16 percent, respectively. *Ibid.* While these data show an increase in the percentage of employees eligible for such leave, they also show a widening of the gender gap during the same period. Thus, stereotype-based beliefs about the allocation of family duties remained firmly rooted, and employers' reliance on them in establishing discriminatory leave policies remained widespread.[3]

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[3] While this and other material described leave policies in the private sector, a 50-state survey also before Congress demonstrated that "[t]he proportion and construction of leave policies available to public sector employees differs little from those offered private sector employees." The Parental and Medical Leave Act of 1986: Joint Hearing before the Subcommittee on Labor-Management Relations and the Subcommittee

Congress also heard testimony that "[p]arental leave for fathers . . . is rare. Even . . . [w]here child-care leave policies do exist, men, *both in the public and private sectors*, receive notoriously discriminatory treatment in their requests for such leave." *Id.,* at 147 (Washington Council of Lawyers) (emphasis added). Many States offered women extended "maternity" leave that far exceeded the typical 4- to 8-week period of physical disability due to pregnancy and childbirth,[4] but very few States granted men a parallel benefit: Fifteen States provided women up to one year of extended maternity leave, while only four provided men with the same. M. Lord & M. King, The State Reference Guide to Work-Family Programs for State Employees 30 (1991). This and other differential leave policies were not attributable to any differential physical needs of men and women, but rather to the pervasive sex-role stereotype that caring for family members is women's work.[5]

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on Labor Standards of the House Committee on Education and Labor, 99th Cong., 2d Sess., 33 (1986) (hereinafter Joint Hearing) (statement of Meryl Frank, Director of the Yale Bush Center Infant Care Leave Project). See also *id*., at 29–30.

[4] See, *e.g., id.,* at 16 (six weeks is the medically recommended pregnancy disability leave period); H. R. Rep. No. 101–28, pt. 1, p. 30 (1989) (referring to Pregnancy Discrimination Act legislative history establishing four to eight weeks as the medical recovery period for a normal childbirth).

[5] For example, state employers' collective-bargaining agreements often granted extended "maternity" leave of six months to a year to women only. Gerald McEntee, President of the American Federation of State, County and Municipal Employees, AFL–CIO testified that "the vast majority of our contracts, even though we look upon them with great pride, really cover essentially maternity leave, and not paternity leave." The Parental and Medical Leave Act of 1987: Hearings before the Subcommittee on Children, Family, Drugs and Alcoholism of the Senate Committee on Labor and Human Resources, 100th Cong., 1st Sess., pt. 1, p. 385 (1987) (hereinafter 1987 Senate Labor Hearings). In addition, state leave laws often specified that catchall leave-without-

Finally, Congress had evidence that, even where state laws and policies were not facially discriminatory, they were applied in discriminatory ways. It was aware of the "serious problems with the discretionary nature of family leave," because when "the authority to grant leave and to arrange the length of that leave rests with individual supervisors," it leaves "employees open to discretionary and possibly unequal treatment." H. R. Rep. No. 103–8, pt. 2, pp. 10–11 (1993). Testimony supported that conclusion, explaining that "[t]he lack of uniform parental and medical leave policies in the work place has created an environment where [sex] discrimination is rampant." 1987 Senate Labor Hearings, pt. 2, at 170 (testimony of Peggy Montes, Mayor's Commission on Women's Affairs, City of Chicago).

In spite of all of the above evidence, JUSTICE KENNEDY argues in dissent that Congress' passage of the FMLA was unnecessary because "the States appear to have been

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pay provisions could be used for extended maternity leave, but did not authorize such leave for paternity purposes. See, *e.g.,* Family and Medical Leave Act of 1987: Joint Hearing before the House Committee on Post Office and Civil Service, 100th Cong., 1st Sess., 2–5 (1987) (Rep. Gary Ackerman recounted suffering expressly sex-based denial of unpaid leave of absence where benefit was ostensibly available for "child care leave").

Evidence pertaining to parenting leave is relevant here because state discrimination in the provision of both types of benefits is based on the same gender stereotype: that women's family duties trump those of the workplace. JUSTICE KENNEDY's dissent (hereinafter the dissent) ignores this common foundation that, as Congress found, has historically produced discrimination in the hiring and promotion of women. See *post*, at 6. Consideration of such evidence does not, as the dissent contends, expand our §5 inquiry to include "*general* gender-based stereotypes in employment." *Ibid*. (emphasis added). To the contrary, because parenting and family leave address very similar situations in which work and family responsibilities conflict, they implicate the same stereotypes.

ahead of Congress in providing gender-neutral family leave benefits," *post*, at 7, and points to Nevada's leave policies in particular, *post*, at 13. However, it was only "[s]ince Federal family leave legislation was first introduced" that the States had even "begun to consider similar family leave initiatives." S. Rep. No. 103–3, at 20; see also S. Rep. No. 102–68, p. 77 (1991) (minority views of Sen. Durenberger) ("[S]o few states have elected to enact similar legislation at the state level").

Furthermore, the dissent's statement that some States "had adopted some form of family-care leave" before the FMLA's enactment, *post*, at 7, glosses over important shortcomings of some state policies. First, seven States had childcare leave provisions that applied to women only. Indeed, Massachusetts required that notice of its leave provisions be posted only in "establishment[s] in which females are employed."[6] These laws reinforced the very stereotypes that Congress sought to remedy through the FMLA. Second, 12 States provided their employees no family leave, beyond an initial childbirth or adoption, to

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[6]Mass. Gen. Laws, ch. 149, §105D (West 1997) (providing leave to "female employee[s]" for childbirth or adoption); see also 3 Colo. Code Regs. §708–1, Rule 80.8 (2002) (pregnancy disability leave only); Iowa Code §216.6(2) (2000) (former §601A.6(2)) (same); Kan. Regs. 21–32–6(d) (2003) ("a reasonable period" of maternity leave for female employees only); N. H. Stat. Ann. §354–A:7(VI)(b) (Supp. 2000) (pregnancy disability leave only); La. Stat. Ann. §23:1008(A)(2) (West Supp. 1993) (repealed 1997) (4-month maternity leave for female employees only); Tenn. Code Ann. §4–21–408(a) (1998) (same).

The dissent asserts that four of these schemes—those of Colorado, Iowa, Louisiana, and New Hampshire—concern "pregnancy disability leave only." *Post*, at 9. But Louisiana provided women with four months of such leave, which far exceeds the medically recommended pregnancy disability leave period of six weeks. See n. 4 *supra*. This gender-discriminatory policy is not attributable to any different physical needs of men and women, but rather to the invalid stereotypes that Congress sought to counter through the FMLA. See *supra*, at 8.

care for a seriously ill child or family member.[7] Third, many States provided no statutorily guaranteed right to family leave, offering instead only voluntary or discretionary leave programs. Three States left the amount of leave time primarily in employers' hands.[8] Congress could reasonably conclude that such discretionary family-leave programs would do little to combat the stereotypes about the roles of male and female employees that Congress sought to eliminate. Finally, four States provided leave only through administrative regulations or personnel policies, which Congress could reasonably conclude offered significantly less firm protection than a federal law.[9] Against the above backdrop of limited state leave policies, no matter how generous petitioner's own may have been, see *post*, at 13 (the dissent), Congress was justified in enacting the FMLA as remedial legislation.[10]

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[7] See 3 Colo. Code Regs. §708–1, Rule 80.8 (2002); Del. Code Ann., Tit. 29, §5116 (1997); Iowa Code §216.6(2) (2000); Kan. Regs. 21–32–6 (2003); Ky. Rev. Stat. Ann. §337.015 (Michie 2001); La. Stat. Ann. §23:1008(A)(2) (West Supp. 1993); Mass. Gen. Laws, ch. 149, §105(D) (West 1997); Mo. Rev. Stat. §105.271 (2000); N. H. Stat. Ann. §354–A:7(VI)(b) (Supp. 2000); N. Y. Lab. Law §201–c (West 2002); Tenn. Code Ann. §4–21–408(a) (1998); U. S. Dept. of Labor, Women's Bureau, State Maternity/Family Leave Law, p. 12 (June 1993) (citing a Virginia personnel policy).

[8] See 3 Colo. Code Regs. §708–1, Rule 80.8 (2002); Kan. Regs. 21–32–6 (2003); N. H. Stat. Ann. §354–A:7(VI)(b) (Supp. 2000). Oklahoma offered only a system by which employees could voluntarily donate leave time for colleagues' family emergencies. Okla. Stat., Tit. 74, §840–2.22 (historical note) (West 2002).

[9] See 3 Colo. Code Regs. §708–1, Rule 80.8 (2002); Kan. Regs. 21–32–6 (2003); Wis. Admin. Code ch. DWD 225 (1997) (former ch. ILHR 225); State Maternity/Family Leave Law, *supra*, at 12 (Virginia).

[10] Contrary to the dissent's belief, we do not hold that Congress may "abrogat[e] state immunity from private suits whenever the State's social benefits program is not enshrined in the statutory code and provides employers with discretion," *post*, at 10, or when a State does not confer social benefits "as generous or extensive as Congress would

In sum, the States' record of unconstitutional participation in, and fostering of, gender-based discrimination in the administration of leave benefits is weighty enough to justify the enactment of prophylactic §5 legislation.[11]

We reached the opposite conclusion in *Garrett* and *Kimel*. In those cases, the §5 legislation under review responded to a purported tendency of state officials to make age- or disability-based distinctions. Under our equal protection case law, discrimination on the basis of such characteristics is not judged under a heightened review standard, and passes muster if there is "a rational basis for doing so at a class-based level, even if it 'is probably not true' that those reasons are valid in the majority of cases." *Kimel*, 528 U. S., at 86 (quoting *Gregory* v. *Ashcroft,* 501 U. S. 452, 473 (1991)). See also *Garrett*, 531 U. S., at 367 ("States are not required by the Fourteenth Amendment to make special accommodations for the disabled, so long as their actions toward such individuals are rational"). Thus, in order to impugn the

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later deem appropriate," *ibid.* The dissent misunderstands the purpose of the FMLA's family leave provision. The FMLA is not a "substantive entitlement program," *post*, at 12; Congress did not create a particular leave policy for its own sake. See *infra*, at 14–15. Rather, Congress sought to adjust family leave policies in order to eliminate their reliance on and perpetuation of invalid stereotypes, and thereby dismantle persisting gender-based barriers to the hiring, retention, and promotion of women in the workplace. In pursuing that goal, for the reasons discussed above, *supra*, at 10–11, Congress reasonably concluded that state leave laws and practices should be brought within the Act.

[11] Given the extent and specificity of the above record of unconstitutional state conduct, it is difficult to understand the dissent's accusation that we rely on "a simple recitation of a general history of employment discrimination against women." *Post*, at 3. As we stated above, our holding rests on congressional findings that, at the time the FMLA was enacted, States "rel[ied] on invalid gender stereotypes in the employment context, *specifically in the administration of leave benefits*." *Supra*, at 7 (emphasis added). See *supra*, at 7–9.

constitutionality of state discrimination against the disabled or the elderly, Congress must identify, not just the existence of age- or disability-based state decisions, but a "widespread pattern" of irrational reliance on such criteria. *Kimel, supra,* at 90. We found no such showing with respect to the ADEA and Title I of the Americans with Disabilities Act of 1990 (ADA). *Kimel, supra,* at 89; *Garrett, supra,* at 368.

Here, however, Congress directed its attention to state gender discrimination, which triggers a heightened level of scrutiny. See, *e.g., Craig,* 429 U. S., at 197–199. Because the standard for demonstrating the constitutionality of a gender-based classification is more difficult to meet than our rational-basis test—it must "serv[e] important governmental objectives" and be "substantially related to the achievement of those objectives," *Virginia*, 518 U. S., at 533—it was easier for Congress to show a pattern of state constitutional violations. Congress was similarly successful in *South Carolina* v. *Katzenbach,* 383 U. S. 301, 308–313 (1966), where we upheld the Voting Rights Act of 1965: Because racial classifications are presumptively invalid, most of the States' acts of race discrimination violated the Fourteenth Amendment.

The impact of the discrimination targeted by the FMLA is significant. Congress determined:

> "Historically, denial or curtailment of women's employment opportunities has been traceable directly to the pervasive presumption that women are mothers first, and workers second. This prevailing ideology about women's roles has in turn justified discrimination against women when they are mothers or mothers-to-be." Joint Hearing 100.

Stereotypes about women's domestic roles are reinforced by parallel stereotypes presuming a lack of domestic responsibilities for men. Because employers continued to

regard the family as the woman's domain, they often denied men similar accommodations or discouraged them from taking leave. These mutually reinforcing stereotypes created a self-fulfilling cycle of discrimination that forced women to continue to assume the role of primary family caregiver, and fostered employers' stereotypical views about women's commitment to work and their value as employees. Those perceptions, in turn, Congress reasoned, lead to subtle discrimination that may be difficult to detect on a case-by-case basis.

We believe that Congress' chosen remedy, the family-care leave provision of the FMLA, is "congruent and proportional to the targeted violation," *Garrett, supra,* at 374. Congress had already tried unsuccessfully to address this problem through Title VII and the amendment of Title VII by the Pregnancy Discrimination Act, 42 U. S. C. §2000e(k). Here, as in *Katzenbach, supra,* Congress again confronted a "difficult and intractable proble[m]," *Kimel*, *supra,* at 88, where previous legislative attempts had failed. See *Katzenbach, supra,* at 313 (upholding the Voting Rights Act). 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. By setting a minimum standard of family leave for *all* eligible employees, irrespective of gender, the FMLA attacks the formerly state-sanctioned stereotype that only women are responsible for family caregiving, thereby reducing employers' incentives to engage in discrimination by basing hiring and promotion decisions on stereotypes.

The dissent characterizes the FMLA as a "substantive entitlement program" rather than a remedial statute

because it establishes a floor of 12 weeks' leave. *Post*, at 12. In the dissent's view, in the face of evidence of gender-based discrimination by the States in the provision of leave benefits, Congress could do no more in exercising its §5 power than simply proscribe such discrimination. But this position cannot be squared with our recognition that Congress "is not confined to the enactment of legislation that merely parrots the precise wording of the Fourteenth Amendment," but may prohibit "a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." *Kimel*, *supra*, at 81. For example, this Court has upheld certain prophylactic provisions of the Voting Rights Act as valid exercises of Congress' §5 power, including the literacy test ban and preclearance requirements for changes in States' voting procedures. See, *e.g.*, *Katzenbach* v. *Morgan*, 384 U. S. 641 (1966); *Oregon* v. *Mitchell*, 400 U. S. 112 (1970); *South Carolina* v. *Katzenbach*, *supra.*

Indeed, in light of the evidence before Congress, a statute mirroring Title VII, that simply mandated gender equality in the administration of leave benefits, would not have achieved Congress' remedial object. Such a law would allow States to provide for no family leave at all. Where "[t]wo-thirds of the nonprofessional caregivers for older, chronically ill, or disabled persons are working women," H. R. Rep. No. 103–8, pt. 1, p. 24 (1993); S. Rep. No. 103–3, at 7, and state practices continue to reinforce the stereotype of women as caregivers, such a policy would exclude far more women than men from the workplace.

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. Compare *Ragsdale* v. *Wolverine World Wide,*

Inc., 535 U. S. 81, 91 (2002) (discussing the "important limitations of the [FMLA's] remedial scheme"), with *City of Boerne*, 521 U. S., at 532 (the "[s]weeping coverage" of the Religious Freedom Restoration Act of 1993); *Kimel*, 528 U. S., at 91 ("the indiscriminate scope of the [ADEA's] substantive requirements"); and *Garrett*, 531 U. S., at 361 (the ADA prohibits disability discrimination "in regard to [any] terms, conditions, and privileges of employment" (internal quotation marks omitted)).

We also find significant the many other limitations that Congress placed on the scope of this measure. See *Florida Prepaid*, 527 U. S., at 647 ("[W]here 'a congressional enactment pervasively prohibits constitutional state action in an effort to remedy or to prevent unconstitutional state action, limitations of this kind tend to ensure Congress' means are proportionate to ends legitimate under §5'" (quoting *City of Boerne, supra,* at 532–533)). The FMLA requires only unpaid leave, 29 U. S. C. §2612(a)(1), and 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). Employees in high-ranking or sensitive positions are simply ineligible for FMLA leave; of particular importance to the States, the FMLA expressly excludes from coverage state elected officials, their staffs, and appointed policymakers. §§2611(2)(B)(i) and (3), 203(e)(2)(C). Employees must give advance notice of foreseeable leave, §2612(e), and employers may require certification by a health care provider of the need for leave, §2613. In choosing 12 weeks as the appropriate leave floor, Congress chose "a middle ground, a period long enough to serve 'the needs of families' but not so long that it would upset 'the legitimate interests of employers.'" *Ragsdale, supra,* at 94 (quoting 29 U. S. C.

§2601(b)).[12] Moreover, the cause of action under the FMLA is a restricted one: The damages recoverable are strictly defined and measured by actual monetary losses, §§2617(a)(1)(A)(i)–(iii), and the accrual period for backpay is limited by the Act's 2-year statute of limitations (extended to three years only for willful violations), §§2617(c)(1) and (2).

For the above reasons, we conclude that §2612(a)(1)(C) is congruent and proportional to its remedial object, and can "be understood as responsive to, or designed to prevent, unconstitutional behavior." *City of Boerne*, *supra,* at 532.

The judgment of the Court of Appeals is therefore

Affirmed.

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[12]Congress established 12 weeks as a floor, thus leaving States free to provide their employees with more family leave time if they so choose. See 29 U. S. C. §2651(b) ("Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act or any amendment made by this Act"). The dissent faults Congress for giving States this choice, arguing that the FMLA's terms do not bar States from granting more family leave time to women than to men. *Post*, at 13–14. But JUSTICE KENNEDY effectively counters his own argument in his very next breath, recognizing that such gender-based discrimination would "run afoul of the Equal Protection Clause or Title VII." *Post*, at 14. In crafting new legislation to remedy unconstitutional State conduct, Congress may certainly rely on and take account of existing laws. Indeed, Congress expressly did so here. See 29 U. S. C. §2651(a) ("Nothing in this Act or any amendment made by this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of . . . sex . . .").