

BREYER, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 95-2074

CITY OF BOERNE, PETITIONER v. P. F. FLORES,
ARCHBISHOP OF SAN ANTONIO, AND
UNITED STATES

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

[June 25, 1997]

JUSTICE BREYER, dissenting.

I agree with JUSTICE O'CONNOR that the Court should direct the parties to brief the question whether *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U. S. 872 (1990) was correctly decided, and set this case for reargument. I do not, however, find it necessary to consider the question whether, assuming *Smith* is correct, §5 of the Fourteenth Amendment would authorize Congress to enact the legislation before us. Thus, while I agree with some of the views expressed in the first paragraph of Part I of JUSTICE O'CONNOR's dissent, I do not necessarily agree with all of them. I therefore join JUSTICE O'CONNOR's dissent, with the exception of the first paragraph of Part I.