

BREYER, J., concurring

**SUPREME COURT OF THE UNITED STATES**

No. 96–1337

COUNTY OF SACRAMENTO, ET AL., PETITIONERS v.  
TERI LEWIS AND THOMAS LEWIS, PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF PHILIP LEWIS, DECEASED

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

[May 26, 1998]

JUSTICE BREYER, concurring.

I join the Court’s judgment and opinion. I write separately only to point out my agreement with JUSTICE STEVENS, *ante*, at 1, that *Siegert v. Gilley*, 500 U. S. 226 (1991), should not be read to deny lower courts the flexibility, in appropriate cases, to decide §1983 claims on the basis of qualified immunity, and thereby avoid wrestling with constitutional issues that are either difficult or poorly presented. See *Siegert, supra*, at 235 (KENNEDY, J., concurring) (Lower court “adopted the altogether normal procedure of deciding the case before it on the ground that appeared to offer the most direct and appropriate resolution, and one argued by the parties”).