

It's Not About Federalism #1: A Stunning Victory
May 27, 2003

We at the Brennan Center are going to start circulating news under the heading "It's Not About Federalism." Herewith installment number one:

The Court issued the most important states' rights decision of the Term today in the *Hibbs* case. It held that Congress had permissibly overridden the states' 11th Amendment immunity from money-damage suits in the Family and Medical Leave Act. It has generally been hoped that Justice O'Connor might break from the usual 5-justice majority because of the sex discrimination underpinnings of the case; but it was none other than the Chief Justice who wrote today's majority opinion (O'Connor also came along).

The Court applied the "congruence and proportionality" test we know and love from *Boerne* and *Garrett*, but with a different outcome. Congress could conclude that granting family leave to both sexes was necessary to break the stereotype that women are more frequently out of action because of family responsibilities. And because sex-based classifications get heightened scrutiny, there's more leeway in the "congruence and proportionality" test for Congress to prohibit facially constitutional state action (like firing someone when they take time off to care for children) than in the ADA, which addresses an area where state action is subject only to rational-basis review.

Today's slip opinion is at: <http://www.supremecourtus.gov/opinions/02pdf/01-1368.pdf>.