

SOUTER, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 01–682

KAY BARNES, ETC., ET AL., PETITIONERS *v.*
JEFFREY GORMAN

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

[June 17, 2002]

JUSTICE SOUTER, with whom JUSTICE O’CONNOR joins,
concurring.

I join the Court’s opinion because I agree that analogy to the common law of contract is appropriate in this instance, with the conclusion that punitive damages are not available under the statute. Punitive damages, as the Court points out, may range in orders of “indeterminate magnitude,” *ante*, at 6, untethered to compensable harm, and would thus pose a concern that recipients of federal funding could not reasonably have anticipated. I realize, however, and read the Court’s opinion as acknowledging, that the contract-law analogy may fail to give such helpfully clear answers to other questions that may be raised by actions for private recovery under Spending Clause legislation, such as the proper measure of compensatory damages.