SUPREME COURT OF THE UNITED STATES

No. 93–1001

ALLIED-BRUCE TERMINIX COMPANIES, INC., AND TERMINIX INTERNATIONAL COMPANY, PETITIONERS *v.* G. MICHAEL DOBSON ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

[January 18, 1995]

JUSTICE SCALIA, dissenting.

I have previously joined two judgments of this Court which rested upon the holding of *Southland Corp.* v. *Keating*, 465 U. S. 1 (1984). See *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468 (1989); *Perry* v. *Thomas*, 482 U. S. 483 (1987). In neither of those cases, however, did any party ask that *Southland* be overruled, and it was therefore not necessary to consider the question. In the present case, by contrast, one of respondents' central arguments is that *Southland* was wrongly decided, and their request for its overruling has been supported by an *amicus* brief signed by the attorneys general of 20 States. For the reasons set forth in JUSTICE THOMAS' opinion, which I join, I agree with the respondents (and belatedly with JUSTICE O'CONNOR) that *Southland* clearly misconstrued the Federal Arbitration Act.

I do not believe that proper application of *stare decisis* prevents correction of the mistake. Adhering to *Southland* entails a permanent, unauthorized eviction of state-court power to adjudicate a potentially large class of disputes. Abandoning it does not impair reliance interests to a degree that justifies this evil. Primary behavior is not affected: no rule of conduct is retroactively changed, but only (perhaps) the forum in which violation is to be determined and remedied. I doubt that many

contracts with arbitration clauses would have been forgone, or entered into only for significantly higher remuneration, absent the *Southland* guarantee. Where, moreover, reliance on *Southland* did make a significant difference, rescission of the contract for mistake of law would often be available. See 3 A. Corbin, Corbin on Contracts §616 (1960 ed. and Supp. 1992); Restatement (Second) of Contracts §152 (1979).

I shall not in the future dissent from judgments that rest on *Southland*. I will, however, stand ready to join four other Justices in overruling it, since *Southland* will not become more correct over time, the course of future lawmaking seems unlikely to be affected by its existence, cf. *Pennsylvania* v. *Union Gas Co.*, 491 U. S. 1, 34–35 (1989) (SCALIA, J., concurring in part and dissenting in part), and the accumulated private reliance will not likely increase beyond the level it has already achieved (few contracts not terminable at will have more than a 5-year term).

For these reasons, I respectfully dissent from the judgment of the Court.