

KENNEDY, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 96-1400

CALIFORNIA AND STATE LANDS COMMISSION, PETITIONERS v. DEEP SEA RESEARCH, INC., ET AL.

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

[April 22, 1998]

JUSTICE KENNEDY, with whom JUSTICE GINSBURG and JUSTICE BREYER join, concurring.

I join the opinion of the Court. In my view, the opinion's discussion of *Florida Dept. of State v. Treasure Salvors, Inc.*, 458 U. S. 670 (1982), does not embed in our law the distinction between a State's possession or nonpossession for purposes of Eleventh Amendment analysis in admiralty cases. In light of the subsisting doubts surrounding that case and JUSTICE STEVENS' concurring opinion today, it ought to be evident that the issue is open to reconsideration.