

On May 17, 2004 the Supreme Court held that individuals could sue state and local governments for money damages under Title II of the ADA.

Title II of the ADA prohibits discrimination against people with disabilities in public programs or services.

Applying the now-familiar test, the court determined that Congress has passed unequivocally expressed its intent to abrogate state sovereign immunity.

The majority easily concluded that Congress clearly expressed its intent to abrogate sovereign immunity.

The majority then turned to an analysis of the right of access to the courts. The majority was not troubled by the fact that the ADA does not explicitly mention the right of access to the courts.

Evaluating the appropriateness of Title II as a remedy, the majority found no evidence of the need for a federal remedy.

Finally, the majority turned to the question of whether Title II abrogates state sovereign immunity. The majority found that Title II does abrogate state sovereign immunity.

Justice Rehnquist, joined by Justices Kennedy and Thomas, dissented. Justice Rehnquist stated that the ADA does not abrogate state sovereign immunity.

[T]here is nothing in the legislative record or statutory findings to indicate that disabled persons were systematically denied access to the courts.

*Id.* at 2000 (emphasis original). The dissent also disagreed with the majority's conclusion that Title II abrogates state sovereign immunity.

In a separate concurrence<sup>14</sup>, Justices Souter and Ginsburg reiterated their longstanding approval of the ADA.

. . . yields to the lessons of experience. The congruence and proportionality standard, like all such flabby

*Id.* at 2008-2009.