

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 state sovereign immunity.

The majority then turned to an analysis of the right of access to the courts. The majority was not persuaded that the right of access to the courts is a fundamental right.

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

Finally, the majority turned to the question of whether Title II is a proper response to the problem.

Justice Rehnquist, joined by Justices Kennedy and Thomas, dissented. Justice Rehnquist stated that

[T]here is nothing in the legislative record or statutory findings to indicate that disabled persons were sys-

tematically excluded from public programs or services. . . at 2000 (emphasis original). The dissent also disagreed with the majority's

In a separate concurrence<sup>14</sup>, Justices Souter and Ginsburg, joined by Chief Justice Roberts, dissented, approving of the

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

*Id.* at 2008-2009.