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Civil Rights Versus States' Rights

The heated debate in the Supreme Court on the scope of federal authority over the states reached a pivotal moment this week. The justices heard arguments in an Alabama case that bears not only on the civil rights of disabled Americans but, more broadly, on Congress's power to enforce constitutional guarantees of equal protection.

At issue is whether Congress acted constitutionally when it made states liable for damages for violating the Americans With Disabilities Act. The act, intended to remedy and prevent discrimination against the disabled, was approved overwhelmingly by Congress and signed into law by President Bush.

A narrow but determined conservative court majority has been chipping away at federal power. These same justices will now have to decide whether they are prepared to undercut Congress's authority to protect the rights of vulnerable minorities. Recent court decisions have already expanded the immunity of states from the reach of federal law, narrowing Congress's ability to legislate national remedies to national problems, including civil rights. Last term the court struck down portions of one law barring age discrimination in employment

and another allowing rape victims to sue their attackers.

But these decisions ought not to determine the outcome on the disabilities act. As is often the case, the key vote will be cast by Justice Sandra Day O'Connor. She has been part of the states' rights majority, but her opinion last year in the age discrimination case made a point of not ruling out "powerful remedies" by Congress in other cases. Much depends on her being convinced that the disabilities law represents a "congruent and proportional" response to the long and well-documented history of pervasive and unconstitutional discrimination against disabled people committed by the states — the standard she set out in that decision. Her questioning during the argument took note of Congressional findings that states were major perpetrators of bias against the disabled. That was an encouraging sign.

Justice O'Connor and her colleagues need to think about the harm they would bring to the disabled by holding states immune from liability under the act, and the more serious damage they would inflict on the nation's constitutional framework.