In another line of case, a different majority of the Court focused not so much on the authority Congress used to subject states to suit as on the language Congress used to overcome immunity. Henceforth, the Court held in a 1985 decision, and even with respect to statutes that were enacted prior to promulgation of this judicial rule of construction, "Congress may abrogate the States' constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear *in the language of the statute*" itself.[103] This means that no legislative history will suffice at all.[104]

Indeed, at one time a plurality of the Court apparently believed that only if Congress refers specifically to state sovereign immunity and the Eleventh Amendment will its language be unmistakably clear.[105] Thus, the Court held in *Atascadero* that general language subjecting to suit in federal court "any recipient of Federal assistance" under the Rehabilitation Act was deemed insufficient to satisfy this test, not because of any question about whether states are "recipients" within the meaning of the provision but because "given their constitutional role, the states are not like any other class of recipients of federal aid."[106] As a result of these rulings, Congress began to use the "magic words" the Court appeared to insist on.[107] Later, however, the Court has accepted less precise

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[103] Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 242 (1985) (emphasis added).

[104] See, particularly, Dellmuth v. Muth, 491 U.S. 223, 230 (1989) ("legislative history generally will be irrelevant"), and Hoffman v. Connecticut Dep't of Income Maintenance, 492 U.S. 96, 103–04 (1989).

[105] Justice Kennedy for the Court in *Dellmuth*, 491 U.S. at 231, expressly noted that the statute before the Court did not demonstrate abrogation with unmistakably clarity because, inter alia, it "makes no reference whatsoever to either the Eleventh Amendment or the States' sovereign immunity." Justice Scalia, one of four concurring Justices, expressed an "understanding" that the Court's reasoning would allow for clearly expressed abrogation of immunity "without explicit reference to state sovereign immunity or the Eleventh Amendment." Id. at 233.

[106] Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 246 (1985). *See also* Dellmuth v. Muth, 491 U.S. 223 (1989).

[107] In 1986, following *Atascadero*, Congress provided that states were not to be immune under the Eleventh Amendment from suits under several laws barring discrimination by recipients of federal financial assistance. Pub. L. 99–506, § 1003, 100 Stat. 1845 (1986), 42 U.S.C. § 2000d–7. Following *Dellmuth*, Congress amended the statute to insert the explicit language. Pub. L. 101–476, § 103, 104 Stat. 1106 (1990), 20 U.S.C. § 1403. *See also* the Copyright Remedy Clarification Act, Pub. L. 101–553, § 2, 104 Stat. 2749 (1990), 17 U.S.C. § 511 (making states and state officials liable in damages for copyright violations).