

Casey Martin Revisited

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Casey Martin & the ADA

- Martin was the test case for sport and the ADA.
 - Just when all seemed clear for disabled athletes requesting modifications from sport governing bodies, along comes Ford Olinger, the USGA, and the 7th Circuit.
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Facts of *Martin*

- Martin has Klippel-Trenaunay-Weber Syndrome.
 - K-T is a "rare congenital malformation characterized by the triad of arteriovenous or capillary vascular malformations, atypical varicosities, and bony or soft tissue hypertrophy usually affecting one extremity".
- Martin also is an highly skilled professional golfer






Title III of the ADA

- No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.
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Title III of the ADA

- Discrimination includes failure to make reasonable modifications in policies, practices, or procedures . . . Unless the entity can demonstrate that making such modifications would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation.
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Issues before the 9th Circuit

- Whether the PGA Tour is a place of public accommodation?
 - Whether waiver of the walking rule is a reasonable modification?
 - Whether waiver of the walking rule would fundamentally alter the nature of the PGA competition?
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District Court Findings

- **Nothing in the rules of golf requires or defines walking as part of the game;**
 - **The game of golf generally consists of playing a ball from teeing ground into the hole by a stroke or successive strokes in accordance with the rules;**
 - **Martin explored the possibility of using other various artificial aids to walking such as in-shoe orthosis and ankle foot orthosis.**
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District Court Findings

- **While injecting the element of fatigue may be a cognizable purpose, that fatigue factor cannot be deemed significant under normal circumstances;**
 - **Approximately only 500 calories would be expended by walking a golf course in a five hour time period;**
 - **PGA golfers have numerous intervals of rest and opportunities for refreshment or calorie replacement;**
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District Court Findings

- Fatigue due to low intensity exercise is primarily a psychological phenomenon; and
 - Martin's disabling condition caused him more fatigue, even when provided the use of a cart, than the average PGA Tour golfer endured.
 - Use of a cart was a reasonable modification and would not fundamentally alter the PGA Tour competition
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9th Circuit Decision

- Affirmed the District Court
 - Only the real issue: Whether permitting Martin to use a cart will fundamentally alter the nature of the goods/services?
 - Ample evidence to support the District Court's conclusion and findings.
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Facts of *Olinger*

- Olinger has bilateral avascular necrosis
 - A degenerative condition impairing his ability to walk


He also is a highly skilled golfer, having been a professional since 1988

Olinger asked the USGA to allow him to use a cart in a US Open qualifying round






Issues Before the 7th Circuit

- USGA rejected the request saying the ADA did not apply to athletic contests like the US Open, and even if it did, Olinger's use of a cart would "fundamentally alter" the nature of the tournament
 - Court ruled in favor of USGA
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7th Circuit Decision

- Affirmed the lower court's decision
 - Allowing Olinger to use cart would “fundamentally alter” the competition
 - Court stated “the decision on whether the rules of the game should be adjusted to accommodate him is best left to those who hold the future of golf in trust”
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Olinger & Martin Compared

- Both involved highly skilled golfers requesting to use carts to compete
 - 7th Circuit said NO to Olinger because using cart fundamentally alters the competition
 - 9th Circuit said YES to Martin because using a cart does not fundamentally alter the competition
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7th Circuit Rationale - Olinger

- “The ADA does not require entities to change their basic nature, character, or purpose insofar as that purpose is rational, rather than a pretext for discrimination”






9th Circuit Rationale - Martin

- “The central competition in shot making would be unaffected by Martin’s accommodation. All the cart does is permit Martin access to a type of competition in which he otherwise could not engage because of his disability. That is precisely the purpose of the ADA.”
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Where Were The Differences

- Is walking fundamental to the game of golf?
 - Are sport governing bodies entitled to deference in defining rules of competition?
 - Must the rule be a pre-text for discrimination to violate Title III?
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Split Between The Circuits

- Almost identical facts in two different federal circuits,
 - Opposite conclusions reached,
 - Ripe for Supreme Court review.
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What Is The Next Step

● Supreme Court Appeal

● PGA v. Martin

- PGA granted cert.
- Fully briefed and argued
- Currently pending before the Court

● Olinger v. USGA

- Olinger requested cert.
 - No decision on cert. request
 - Unofficially, S.Ct. will not grant cert. Decision in Martin should resolve. But will it?????
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Questions/Comments

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