PGA Tour, Inc. v. Martin (2000)

A brief overview of the case: *Should a golfer with a congenital leg disease have the right to use a golf cart in professional golf tournaments? In the case of PGA Tour, Inc. v. Martin (2000), the justices of the US Supreme Court disagreed. Their disagreement turned in part on competing views about whether walking the course is essential to the game of golf. To what extent does the debate about using golf carts call into question the athletic nature of golf and the honor due to those who excel at it?*

PGA Tour, Inc. v. Martin (2000)
No. 00-24.

SUPREME COURT OF THE UNITED STATES
Decided May 29, 2001

Justice Stevens delivered the opinion of the Court.

This case raises two questions concerning the application of the Americans with Disabilities Act of 1990, 104 Stat. 328, 42 U.S.C. 12101 et seq., to a gifted athlete: first, whether the Act protects access to professional golf tournaments by a qualified entrant with a disability; and second, whether a disabled contestant may be denied the use of a golf cart because it would "fundamentally alter the nature" of the tournaments, 12182(b)(2)(A)(ii), to allow him to ride when all other contestants must walk.

At trial, petitioner did not contest the conclusion that Martin has a disability covered by the ADA, or the fact "that his disability prevents him from walking the course during a round of golf." 994 F. Supp. 1242, 1244 (Ore. 1998). Rather, petitioner asserted that the condition of walking is a substantive rule of competition, and that waiving it as to any individual for any reason would fundamentally alter the nature of the competition. Petitioner's evidence included the testimony of a number of experts, among them some of the greatest golfers in history. Arnold Palmer,13 Jack Nicklaus,14 and Ken Venturi15 explained that fatigue can be a critical factor in a tournament, particularly on the last day when psychological pressure is at a maximum. Their testimony makes it clear that, in their view, permission to use a cart might well give some players a competitive advantage over other players who must walk. They did not, however, express any opinion on whether a cart would give Martin such an advantage.

Rejecting petitioner's argument that an individualized inquiry into the necessity of the walking rule in Martin's case would be inappropriate, the District Court stated that it had "the independent duty to inquire into the purpose of the rule at issue, and to ascertain whether there can be a reasonable modification made to accommodate plaintiff without frustrating the purpose of the rule" and thereby fundamentally altering the nature of petitioner's tournaments. Id., at 1246. The judge found that the purpose of the rule was to inject fatigue into the skill of shot-making, but that the fatigue

injected "by walking the course cannot be deemed significant under normal circumstances." Id., at 1250. Furthermore, Martin presented evidence, and the judge found, that even with the use of a cart, Martin must walk over a mile during an 18-hole round,17 and that the fatigue he suffers from coping with his disability is "undeniably greater" than the fatigue his able-bodied competitors endure from walking the course. Id., at 1251. As the judge observed:

"[P]laintiff is in significant pain when he walks, and even when he is getting in and out of the cart. With each step, he is at risk of fracturing his tibia and hemorrhaging. The other golfers have to endure the psychological stress of competition as part of their fatigue; Martin has the same stress plus the added stress of pain and risk of serious injury. As he put it, he would gladly trade the cart for a good leg. To perceive that the cart puts him-with his condition-at a competitive advantage is a gross distortion of reality." Id., at 1251-1252.

As a result, the judge concluded that it would "not fundamentally alter the nature of the PGA Tour's game to accommodate him with a cart." Id., at 1252. The judge accordingly entered a permanent injunction requiring petitioner to permit Martin to use a cart in tour and qualifying events. ...

As we have noted, 42 U.S.C. 12182(a) sets forth Title III's general rule prohibiting public accommodations from discriminating against individuals because of their disabilities. The question whether petitioner has violated that rule depends on a proper construction of the term "discrimination," which is defined by Title III to include:

"a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations." 12182(b)(2)(A)(ii) (emphasis added).

Petitioner does not contest that a golf cart is a reasonable modification that is necessary if Martin is to play in its tournaments. Martin's claim thus differs from one that might be asserted by players with less serious afflictions that make walking the course uncomfortable or difficult, but not beyond their capacity. In such cases, an accommodation might be reasonable but not necessary. In this case, however, the narrow dispute is whether allowing Martin to use a golf cart, despite the walking requirement that applies to the PGA TOUR, the NIKE TOUR, and the third stage of the Q-School, is a modification that would "fundamentally alter the nature" of those events.

In theory, a modification of petitioner's golf tournaments might constitute a fundamental alteration in two different ways. It might alter such an essential aspect of the game of golf that it would be unacceptable even if it affected all competitors equally; changing the diameter of the hole from three to six inches might be such a modification.36 Alternatively, a less significant change that has only a peripheral impact on the game itself might nevertheless give a disabled player, in addition to access to the competition as required by Title III, an advantage over others and, for that reason, fundamentally alter the character of the competition.37 We are not persuaded that a waiver of the walking rule for Martin would work a fundamental alteration in either sense.

As an initial matter, we observe that the use of carts is not itself inconsistent with the fundamental character of the game of golf. From early on, the essence of the game has been shot-making-using clubs to cause a ball to progress from the teeing ground to a hole some distance away with as few strokes as possible.39 That essential aspect of the game is still reflected in the very first of the Rules of Golf, which declares: "The Game of Golf consists in playing a ball from the teeing ground into the hole by a stroke or successive strokes in accordance with the rules." Rule 1-1, Rules of Golf, App. 104 (italics in original). Over the years, there have been many changes in the players' equipment, in golf course design, in the Rules of Golf, and in the method of transporting clubs from hole to hole.40 Originally, so few clubs were used that each player could carry them without a bag. Then came golf bags, caddies, carts that were pulled by hand, and eventually motorized carts that carried players as well as clubs. "Golf carts started appearing with increasing regularity on American golf courses in the 1950's. Today they are everywhere. And they are encouraged. For one thing, they often speed up play, and for another, they are great revenue producers."41 There is nothing in the Rules of Golf that either forbids the use of carts, or penalizes a player for using a cart. That set of rules, as we have observed, is widely accepted in both the amateur and professional golf world as the rules of the game.42 The walking rule that is contained in petitioner's hard cards, based on an optional condition buried in an appendix to the Rules of Golf,43 is not an essential attribute of the game itself.

Indeed, the walking rule is not an indispensable feature of tournament golf either. As already mentioned, petitioner permits golf carts to be used in the SENIOR PGA TOUR, the open qualifying events for petitioner's tournaments, the first two stages of the Q-School, and, until 1997, the third stage of the Q-School as well. See supra, at 2-4. Moreover, petitioner allows the use of carts during certain tournament rounds in both the PGA TOUR and the NIKE TOUR. See supra, at 4, and n. 6. In addition, although the USGA enforces a walking rule in most of the tournaments that it sponsors, it permits carts in the Senior Amateur and the Senior Women's Amateur championships.

Petitioner, however, distinguishes the game of golf as it is generally played from the game that it sponsors in the PGA TOUR, NIKE TOUR, and (at least recently) the last stage of the Q-School-golf at the "highest level." According to petitioner, "[t]he goal of the highest-level competitive athletics is to assess and compare the performance of different competitors, a task that is meaningful only if the competitors are subject to identical substantive rules."45 The waiver of any possibly "outcome-affecting" rule for a contestant would violate this principle and therefore, in petitioner's view, fundamentally alter the nature of the highest level athletic event.46 The walking rule is one such rule, petitioner submits, because its purpose is "to inject the element of fatigue into the skill of shot-making,"47 and thus its effect may be the critical loss of a stroke. As a consequence, the reasonable modification Martin seeks would fundamentally alter the nature of petitioner's highest level tournaments even if he were the only person in the world who has both the talent to compete in those elite events and a disability sufficiently serious that he cannot do so without using a cart.

The force of petitioner's argument is, first of all, mitigated by the fact that golf is a game in which it is impossible to guarantee that all competitors will play under exactly the same conditions or that an individual's ability will be the sole determinant of the outcome. For example, changes in the weather may produce harder greens and more head winds for the tournament leader than for his closest pursuers. A lucky bounce may save a shot or two.48 Whether such happenstance events are

more or less probable than the likelihood that a golfer afflicted with Klippel-Trenaunay-Weber Syndrome would one day qualify for the NIKE TOUR and PGA TOUR, they at least demonstrate that pure chance may have a greater impact on the outcome of elite golf tournaments than the fatigue resulting from the enforcement of the walking rule.

Further, the factual basis of petitioner's argument is undermined by the District Court's finding that the fatigue from walking during one of petitioner's 4-day tournaments cannot be deemed significant. The District Court credited the testimony of a professor in physiology and expert on fatigue, who calculated the calories expended in walking a golf course (about five miles) to be approximately 500 calories-"nutritionally ... less than a Big Mac." 994 F. Supp., at 1250. What is more, that energy is expended over a 5-hour period, during which golfers have numerous intervals for rest and refreshment. In fact, the expert concluded, because golf is a low intensity activity, fatigue from the game is primarily a psychological phenomenon in which stress and motivation are the key ingredients. And even under conditions of severe heat and humidity, the critical factor in fatigue is fluid loss rather than exercise from walking. ...

To be sure, the waiver of an essential rule of competition for anyone would fundamentally alter the nature of petitioner's tournaments. As we have demonstrated, however, the walking rule is at best peripheral to the nature of petitioner's athletic events, and thus it might be waived in individual cases without working a fundamental alteration. Therefore, petitioner's claim that all the substantive rules for its "highest-level" competitions are sacrosanct and cannot be modified under any circumstances is effectively a contention that it is exempt from Title III's reasonable modification requirement. But that provision carves out no exemption for elite athletics, and given Title III's coverage not only of places of "exhibition or entertainment" but also of "golf course[s]," 42 U.S.C. 12181(7)(C), (L), its application to petitioner's tournaments cannot be said to be unintended or unexpected, see 12101(a)(1), (5). Even if it were, "the fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth." Pennsylvania Dept. of Corrections v. Yeskey, 524 U.S., at 212 (internal quotation marks omitted).51

Under the ADA's basic requirement that the need of a disabled person be evaluated on an individual basis, we have no doubt that allowing Martin to use a golf cart would not fundamentally alter the nature of petitioner's tournaments. As we have discussed, the purpose of the walking rule is to subject players to fatigue, which in turn may influence the outcome of tournaments. Even if the rule does serve that purpose, it is an uncontested finding of the District Court that Martin "easily endures greater fatigue even with a cart than his able-bodied competitors do by walking." 994 F. Supp., at 1252. The purpose of the walking rule is therefore not compromised in the slightest by allowing Martin to use a cart. A modification that provides an exception to a peripheral tournament rule without impairing its purpose cannot be said to "fundamentally alter" the tournament. What it can be said to do, on the other hand, is to allow Martin the chance to qualify for and compete in the athletic events petitioner offers to those members of the public who have the skill and desire to enter. That is exactly what the ADA requires.52 As a result, Martin's request for a waiver of the walking rule should have been granted. ...

Scalia, J., filed a dissenting opinion, in which Thomas, J., joined.

In my view today's opinion exercises a benevolent compassion that the law does not place it within our power to impose. The judgment distorts the text of Title III, the structure of the ADA, and common sense. I respectfully dissent. ...

The Court attacks this "fundamental alteration" analysis by asking two questions: first, whether the "essence" or an "essential aspect" of the sport of golf has been altered; and second, whether the change, even if not essential to the game, would give the disabled player an advantage over others and thereby "fundamentally alter the character of the competition." Ante, at 20-21. It answers no to both.

Before considering the Court's answer to the first question, it is worth pointing out that the assumption which underlies that question is false. Nowhere is it writ that PGA TOUR golf must be classic "essential" golf. Why cannot the PGA TOUR, if it wishes, promote a new game, with distinctive rules (much as the American League promotes a game of baseball in which the pitcher's turn at the plate can be taken by a "designated hitter")? If members of the public do not like the new rules-if they feel that these rules do not truly test the individual's skill at "real golf" (or the team's skill at "real baseball") they can withdraw their patronage. But the rules are the rules. They are (as in all games) entirely arbitrary, and there is no basis on which anyone-not even the Supreme Court of the United States-can pronounce one or another of them to be "nonessential" if the rulemaker (here the PGA TOUR) deems it to be essential.

If one assumes, however, that the PGA TOUR has some legal obligation to play classic, Platonic golf-and if one assumes the correctness of all the other wrong turns the Court has made to get to this point-then we Justices must confront what is indeed an awesome responsibility. It has been rendered the solemn duty of the Supreme Court of the United States, laid upon it by Congress in pursuance of the Federal Government's power "[t]o regulate Commerce with foreign Nations, and among the several States," U.S. Const., Art. I, 8, cl. 3, to decide What Is Golf. I am sure that the Framers of the Constitution, aware of the 1457 edict of King James II of Scotland prohibiting golf because it interfered with the practice of archery, fully expected that sooner or later the paths of golf and government, the law and the links, would once again cross, and that the judges of this august Court would some day have to wrestle with that age-old jurisprudential question, for which their years of study in the law have so well prepared them: Is someone riding around a golf course from shot to shot really a golfer? The answer, we learn, is yes. The Court ultimately concludes, and it will henceforth be the Law of the Land, that walking is not a "fundamental" aspect of golf.

Either out of humility or out of self-respect (one or the other) the Court should decline to answer this incredibly difficult and incredibly silly question. To say that something is "essential" is ordinarily to say that it is necessary to the achievement of a certain object. But since it is the very nature of a game to have no object except amusement (that is what distinguishes games from productive activity), it is quite impossible to say that any of a game's arbitrary rules is "essential." Eighteen-hole golf courses, 10-foot-high basketball hoops, 90-foot baselines, 100-yard football fields-all are arbitrary and none is essential. The only support for any of them is tradition and (in more modern times) insistence by what has come to be regarded as the ruling body of the sport-both of which factors support the PGA TOUR's position in the present case. (Many, indeed, consider walking to be

the central feature of the game of golf-hence Mark Twain's classic criticism of the sport: "a good walk spoiled.") I suppose there is some point at which the rules of a well-known game are changed to such a degree that no reasonable person would call it the same game. If the PGA TOUR competitors were required to dribble a large, inflated ball and put it through a round hoop, the game could no longer reasonably be called golf. But this criterion-destroying recognizability as the same generic game-is surely not the test of "essentialness" or "fundamentalness" that the Court applies, since it apparently thinks that merely changing the diameter of the cup might "fundamentally alter" the game of golf, ante, at 20.

Having concluded that dispensing with the walking rule would not violate federal-Platonic "golf" (and, implicitly, that it is federal-Platonic golf, and no other, that the PGA TOUR can insist upon) the Court moves on to the second part of its test: the competitive effects of waiving this nonessential rule. In this part of its analysis, the Court first finds that the effects of the change are "mitigated" by the fact that in the game of golf weather, a "lucky bounce," and "pure chance" provide different conditions for each competitor and individual ability may not "be the sole determinant of the outcome." Ante, at 25. I guess that is why those who follow professional golfing consider Jack Nicklaus the luckiest golfer of all time, only to be challenged of late by the phenomenal luck of Tiger Woods. The Court's empiricism is unpersuasive. "Pure chance" is randomly distributed among the players, but allowing respondent to use a cart gives him a "lucky" break every time he plays. Pure chance also only matters at the margin-a stroke here or there; the cart substantially improves this respondent's competitive prospects beyond a couple of strokes. But even granting that there are significant nonhuman variables affecting competition, that fact does not justify adding another variable that always favors one player.

In an apparent effort to make its opinion as narrow as possible, the Court relies upon the District Court's finding that even with a cart, respondent will be at least as fatigued as everyone else. Ante, at 28. This, the Court says, proves that competition will not be affected. Far from thinking that reliance on this finding cabins the effect of today's opinion, I think it will prove to be its most expansive and destructive feature. Because step one of the Court's two-part inquiry into whether a requested change in a sport will "fundamentally alter [its] nature," 12182(b)(2)(A)(ii), consists of an utterly unprincipled ontology of sports (pursuant to which the Court is not even sure whether golf's "essence" requires a 3-inch hole), there is every reason to think that in future cases involving requests for special treatment by would-be athletes the second step of the analysis will be determinative. In resolving that second step-determining whether waiver of the "nonessential" rule will have an impermissible "competitive effect"-by measuring the athletic capacity of the requesting individual, and asking whether the special dispensation would do no more than place him on a par (so to speak) with other competitors, the Court guarantees that future cases of this sort will have to be decided on the basis of individualized factual findings. Which means that future cases of this sort will be numerous, and a rich source of lucrative litigation. One can envision the parents of a Little League player with attention deficit disorder trying to convince a judge that their son's disability makes it at least 25% more difficult to hit a pitched ball. (If they are successful, the only thing that could prevent a court order giving the kid four strikes would be a judicial determination that, in baseball, three strikes are metaphysically necessary, which is quite absurd.)

The statute, of course, provides no basis for this individualized analysis that is the Court's last step

on a long and misguided journey. The statute seeks to assure that a disabled person's disability will not deny him equal access to (among other things) competitive sporting events-not that his disability will not deny him an equal chance to win competitive sporting events. The latter is quite impossible, since the very nature of competitive sport is the measurement, by uniform rules, of unevenly distributed excellence. This unequal distribution is precisely what determines the winners and losers-and artificially to "even out" that distribution, by giving one or another player exemption from a rule that emphasizes his particular weakness, is to destroy the game. That is why the "handicaps" that are customary in social games of golf-which, by adding strokes to the scores of the good players and subtracting them from scores of the bad ones, "even out" the varying abilities-are not used in professional golf. In the Court's world, there is one set of rules that is "fair with respect to the able-bodied" but "individualized" rules, mandated by the ADA, for "talented but disabled athletes." Ante, at 29. The ADA mandates no such ridiculous thing. Agility, strength, speed, balance, quickness of mind, steadiness of nerves, intensity of concentration-these talents are not evenly distributed. No wild-eyed dreamer has ever suggested that the managing bodies of the competitive sports that test precisely these qualities should try to take account of the uneven distribution of God-given gifts when writing and enforcing the rules of competition. And I have no doubt Congress did not authorize misty-eyed judicial supervision of such a revolution.