Golfer's fight hits Supreme Court

The question of allowing carts to be used in tournaments could affect other venues

By Joan Biskupic
USA TODAY

WASHINGTON — The Supreme Court this week will examine just how far the Americans With Disabilities Act goes in assuring access to public places when it considers the plight of pro golfer Casey Martin, who wants to use a cart in tournaments because of a painful circulatory disorder.

The case to be heard Wednesday is a major test of the ADA's reach, and the effect of an eventual ruling could go beyond the fairways to all professional sports, concert halls and other places that serve the public.

"Earlier cases involving the ADA have focused on very preliminary questions of the law," says Georgetown University law professor Chai Feldblum. "This case gets to a new level. Does the law cover only spectators at an event, or does it cover participants, too?"

In the dispute tracing **to** 1997, the PGA Tour contends it shouldn't have to let Martin ride a golf cart in the competitions it sponsors because the **federal** law against discrimination in public accommodations **covers "clients and customers," such as spectators, not athletes in competition.**

It also says exempting Martin from the PGA Tour's longstanding no-cart rule would eliminate the "fatigue" factor that is a part of the sport and give him an advantage over other players.

But Martin, who is backed by the Justice Department and an array of disabilities rights groups, says he is asking only "to get to the game, which **is exactly what the ADA requires."**

Martin's condition **has** caused his lower right leg to atrophy to half the girth of his left leg. Walking is virtually impossible. Beyond issues of shotmaking and walking the course, the case is an important test of the scope of one of the USA's most significant civil rights laws.

The 1990 act prohibits bias against disabled people in jobs, housing and places that serve the public.

Martin's case involves that last provision, and Wednesday's oral arguments will consider when businesses must accommodate the disabled. The arguments also will explore when a request requires only a "reasonable modification" or goes so far that it would "fundamentally alter" the goods or services provided.

On the most basic question of who's covered by the public place protections, the Justice Department has told the court that the PGA argument "would seem to exclude people who perform services, rather than receive them."

That, the government says, could make a difference in whether volunteers in a homeless shelter are covered, or visitors to a hospital, or business reps who recruit on college campuses. (Martin is not considered a PGA employee, so job-discrimination provisions are not at issue here.)

While the legal questions are new to the court, two justices, Sandra Day O'Connor and John Paul Stevens, know a little something about golf. O'Connor happened to notch her first hole-in-one last month on a course near Phoenix. A court spokesman said Stevens had a hole-in-one in 1990.

Martin, 28, a former Stanford University teammate of Tiger Woods, has been on the professional circuit since 1995. But because of his degenerative circulatory disorder, known as Klippel-Trenauney-Weber Syndrome, he cannot walk between holes without worsening the condition.

Three years ago, when the PGA denied his request for a cart, Martin sued under the law prohibiting bias in any "place of public accommodation" and specifically including golf courses and "any place of exhibition or entertainment."

A federal trial court in Eugene, Ore., where Martin lives, ordered the PGA to let him use a cart in the tournaments he qualifies for, and said allowing him to ride would not "fundamentally alter" the nature of any competition.

The U.S. Court of Appeals for the 9th Circuit affirmed that decision last year, saying the ADA extends to players and performers, as well as customers at a public place. It agreed with the trial court that walking is not an essential element of the game of golf: "Stress and motivation are the key ingredients here," the 9th Circuit said.

In a separate case last year, a Chicago-based federal appeals court ruled against disabled golfer Ford Olinger and his request to the United States Golf Association for use of a cart. Siding with the PGA in the Martin case, which will be determinative for all such cart disputes, the USGA and other professional golf and tennis groups say trial judges shouldn't meddle with the rules of tournaments.

"Athletic competition is *supposed* to favor the more skilled and physically able," says the ATP Tour, which organizes professional tennis tournaments. "It is a test of who is the 'best' at mastering the game as defined by its rules, and it is this characteristic that makes it compelling to both competitors and spectators."

Among the groups joining Martin and urging wide protection for people with disabilities are the American Association of Adapted Sports Programs, the National Wheelchair Basketball Association and the Bazelon Center for Mental Health Law.

Five members of Congress who shepherded the law to passage, including former senator Bob Dole, R-Kan., and Sen. Edward Kennedy, D-Mass., have told the justices that they intended the statute to be read broadly to reach participants, and not just spectators.

But a business group, the Equal Employment Advisory Council, warns that such an interpretation could have significant ramifications for the kitchens, back rooms and other non-public areas of places providing goods and services.

Martin himself says he is surprised at the nationwide attention on the case and his new place in history: "I never would have imagined that it would have changed my life the way it has."

By Bob Child, AP

From links to courtroom: Golfer Casey Martin drives a golf cart in Cromwell, **Conn., in June during the Greater** Hartford Open. Martin has a circulatory disorder that affects his legs.

Contributing: Harry Blauvelt

The Nation

Supreme Court limits ADA suits

Congress can't make states liable, justices say

By Joan Biskupic
USA TODAY

WASHINGTON — The U.S. Supreme Court ruled Wednesday that states could not be sued under federal law for discriminating against their disabled workers. The decision pierces a landmark civil rights law aimed at protecting people from prejudice because they appear different.

By a 5-4 vote, the justices said Congress lacked the power to make states liable for money damages in lawsuits by workers under the Americans with Disabilities Act.

The law, which was designed to open doors for the mentally and physically disabled, was passed by Congress and signed by President George Bush in 1990 after years of political wrangling.

With the conservative bloc at the lead, the ruling was yet another step in the court's march to reduce federal power over the states. The case involved the ADA's employment section, but the majority's rationale could lead to the erosion of other protections for the disabled in state services and benefits.

Civil rights advocates and some members of Congress denounced the ruling, saying it undermined the expansive intent of the law. But lawyers for the states praised the court and asserted that their own statutes against disability bias meet the needs of the nation's nearly 5 million state workers.

The ADA was designed to provide uniform opportunities across the USA by prohibiting bias in jobs, housing and places that serve the public. At issue in the case was a provision that lifted states' usual immunity from lawsuits and said that they, like private firms, could be sued for acts of bias.

"In order to authorize private individuals to recover money damages against the states," Chief Justice William Rehnquist wrote for the court, "there must be a pattern of discrimination by the states which violates" the Constitution's guarantee of equal protection of the laws. He said Congress failed to identify a pattern of bias by states against the disabled and had no authority to intervene.

Justices Anthony Kennedy and Sandra Day O'Connor joined the majority but acknowledged in a separate opinion the magnitude of discrimination: "There can be little doubt ... that persons with mental or physical impairments are confronted with prejudice which can stem from indifference or insecurity as well as from malicious ill will." But they said there was insufficient evidence to show that the states were actively mistreating the disabled.

Also in the majority were Justices Antonin Scalia and Clarence Thomas.

Dissenting were Justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer.

"Congress compiled a vast legislative record, documenting massive, society-wide discrimination," Breyer wrote for the foursome, adding that "powerful evidence ... implicates state governments."

He said the majority's narrow view of Congress' power to remedy civil rights violations recalled the 1930s when the court, in a now-discredited series of decisions, curbed federal authority to address societal problems.

The ADA case was brought by Patricia Garrett, who was nursing director at an Alabama state medical center, and Milton Ash, who was a security officer at a youth services agency. Garrett had breast cancer and was demoted when she returned to work after undergoing chemotherapy. Ash has asthma and says he received a bad evaluation after complaining that the state had failed to enforce its "no smoking" policy or fix cars that emitted fumes.

A lower federal court rejected Alabama's defense that it couldn't be sued for damages because Congress lacked the authority to override the state's usual immunity under the 11th Amendment from lawsuits by individuals.

In agreeing with Alabama, the Rehnquist court deepened its pattern of curtailing federal power in favor of the states.

"Many of us thought that if there was a stopping point for their analysis (favoring states' rights), it would be here, with disabilities," says Georgetown University law professor Chai Feldblum, who helped draft ADA and supported Garrett and Ash.

But Jeffrey Sutton, who represented Alabama, said, "The states have been anything but hardhearted when it comes to accommodating the disabled."

The court's rationale followed a 2000 ruling that states could not be made liable for discrimination against their older workers and now becomes part of a larger package of decisions since 1992 limiting federal power to address social problems in the states.

"The court today continued its assault on the powers of the people," declared Sen. Patrick Leahy, D-Vt. "The court's 'federalism' crusade now adds those with disabilities to its growing list of victims."

Senators from both parties had urged the justices to allow workers claiming bias to sue state employers. A spokesman for Senate Health and Education Committee Chairman Jim Jeffords, R-Vt., said Jeffords would examine what options Congress had to respond to the ruling in *University of Alabama vs. Garrett*.

Spokesman Joe Karpinski said the ability to sue for back pay and other damages "gets people's attention" and is an incentive for bias victims to go to court to vindicate their rights.

By Emilie Sommer, USA TODAY

Court case: Patricia Garrett, former nursing director at a medical center, and Milton Ash, who was a security officer at a youth agency, sued Alabama under the Americans with Disabilities Act.

Reuters

Rehnquist: No pattern of bias.

Key ADA rulings

Wednesday's 5-4 ruling by the Supreme Court significantly limits the breadth of the 1990 Americans with Disabilities Act, and is the latest example of the justices moving to limit federal authority over the states.

The court's major rulings concerning the ADA:

- **People who have** the AIDS virus are covered by the ADA even when they have no overt symptoms of the disease. (1998)
- **The ADA does not** cover people whose impairments can be readily corrected with eyeglasses, medicine or other treatment. (1999)
- **Part of the ADA** barring discrimination by public entities requires states to put mentally disabled people in community homes rather than hospitals, if health professionals agree. (1999)
- **States cannot be sued** under the ADA for discriminating against disabled workers. Congress lacked the power to make states liable for monetary damages under the ADA. (Wednesday)