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Melissa Ass Ressler

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Note

PGA Tour, Inc. v. Martin: A Hole in One for Casey Martin and the ADA

Melissa Ann Ressler*

I. INTRODUCTION

“[T]he ADA does not distinguish between sports organizations and other entities when it comes to applying the ADA to a specific situation [T]he disabled have just as much interest in being free from discrimination in the athletic world as they do in other aspects of everyday life.”¹

“If Franklin Roosevelt ran the country out of a wheelchair, Casey Martin should be able to play golf out of a golf cart. That golf cart is not going to hit the ball.”²

Congress enacted the Americans with Disabilities Act (“ADA”) in 1990 in order to eliminate discrimination against individuals with disabilities.³ In enacting the ADA, Congress sought to provide more

* J.D. expected May 2003. I would like to thank my family and friends for their continuing love, support, and encouragement. I dedicate this Note to my parents, John and Mary Ressler, and my sister, Marianne Wilhelm, who have inspired me to achieve my dreams.

1. *PGA Tour, Inc. v. Martin*, 994 F. Supp. 1242, 1246 (D. Or. 1998) [hereinafter *Martin II*] (quoting Coffin, J.), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001).

2. *Nightline: Casey Martin's Triumph, Golfer Produces A Bold Stroke For The Disabled* (ABC television broadcast, Feb. 12, 1998), available at 1998 WL 5372982 [hereinafter *Nightline*] (quoting Chi Chi Rodriguez, professional golfer). In discussing the debate surrounding the United States District Court for the District of Oregon's decision allowing Casey Martin to use a golf cart during PGA tournaments, the *Nightline* program provided interviews with Casey Martin and Scott Verplank, a diabetic golfer who has been successful on the PGA Tour without using a golf cart. *Id.*

3. Americans with Disabilities Act of 1990, 42 U.S.C. § 12101(b)(1)–(b)(2) (1994). The ADA was enacted in order:

- (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

than forty-three million physically or mentally disabled Americans with the full and equal opportunity to goods, services, and accommodations enjoyed by all other Americans.⁴ The ADA extends to all facets of society, including employment,⁵ transportation,⁶ and public accommodations.⁷ Most recently, Congress broadened the ADA's reach to professional sports.⁸

In *PGA Tour, Inc. v. Martin*, the United States Supreme Court faced the issue of whether the ADA applied to a professional sports organization.⁹ Prior to *Martin*, a number of high profile athletes successfully battled a disability while competing in professional baseball,¹⁰ football,¹¹ and track and field.¹² However, it was Casey

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C. § 12101(b)(1)-(b)(4).

4. 42 U.S.C. § 12101(a). Congress found that:

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

....

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

....

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally.

Id.

5. 42 U.S.C. §§ 12111-12117.

6. 42 U.S.C. §§ 12131-12165 (1994 & Supp. V 1999).

7. 42 U.S.C. §§ 12181-12189 (1994).

8. See *PGA Tour, Inc. v. Martin*, 121 S. Ct. 1879, 1898 (2001) [hereinafter *Martin IV*].

9. *Id.* at 1884.

10. Jim Abbott was a successful pitcher in the 1990s even though he lacked a hand on his glove arm. Mike Rosen, Editorial, *Martin's Suit Against the PGA Was Flawed*, THE GAZETTE (Colorado Springs), Feb. 20, 1998, available at 1998 WL 7982329. Major league baseball permitted Abbott to spin the baseball in his left hand in order to find the desired grip even though this is a technical violation of the rules of baseball. *Fanfare*, WASH. POST, Mar. 19, 1998, at E2, available at 1998 WL 2474036.

11. See W. Kent Davis, *Why Is the PGA Teed Off at Casey Martin? An Example of How the Americans with Disabilities Act (ADA) Has Changed Sports Law*, 9 MARQ. SPORTS L.J. 1, 2 (1998) (citing Matthew J. Mitten, *Amateur Athletes with Handicaps or Physical Abnormalities: Who Makes the Participation Decision*, 71 NEB. L. REV. 987, 989 (1992)). For example, Kenny Walker played football for the Denver Broncos and was successful despite being deaf. *Id.*

12. *Id.* at 3. Gale Devers, America's gold medal winning track and field star, successfully competed in the Olympics after being diagnosed with Graves' disease. *Id.* Graves' disease is a

Martin, a disabled golfer with a dream of being successful on the world's most elite golf tour, that brought the Professional Golf Association (PGA) to the center of this debate.¹³

Casey Martin suffers from Klippel-Trenaunay-Weber Syndrome, a degenerative circulatory disorder that causes blood to pool in Martin's lower right leg.¹⁴ Because Martin's condition is painful and places him at significant health risks, including possible amputation of his right leg,¹⁵ Martin sought a waiver of the PGA's "no-cart" rule¹⁶ so that he could qualify for the PGA Tour.¹⁷ After the PGA denied Martin's request, he sought an injunction against the PGA's "no-cart" rule.¹⁸ The United States District Court for the District of Oregon and the Ninth Circuit Court of Appeals held that PGA tournaments are places of accommodation, and that allowing Casey Martin to use a golf cart is a reasonable accommodation that does not fundamentally alter the nature of professional golf.¹⁹ Thereafter, the PGA appealed and the United

disease associated with over-activity of the thyroid gland. National Graves' Disease Foundation, *Frequently Asked Questions About Graves' Disease*, at <http://www.ngdf.org/faq.htm> (last modified Feb. 19, 2001).

13. Of the estimated 25 million golfers in the United States, less than 500 are given the opportunity to play in a PGA sponsored event each year. Brief for Petitioner at 3, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1706732.

14. Brief for Respondent at 1, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1846091. Martin's disability is defined as a "massive, permanent malformation of his right leg that dramatically limits his ability to walk." *Id.*; see also *infra* notes 227-32 and accompanying text (detailing Martin's disease).

15. John Garrity, *Golf Plus, Out on a Limb: His Parents Hoped Casey Martin Would Lead a Normal Life, Instead He's Living an Extraordinary One*, SPORTS ILLUSTRATED, Feb. 9, 1998, at G10, available at 1998 WL 8979287 (discussing the health risks that Martin faces every time he steps on the golf course). Martin is also at risk for developing blood clots and fracturing his right tibia. *Id.*

16. UNITED STATES GOLF ASSOCIATION, 2000 OFFICIAL RULES OF GOLF 149 (1999). In prohibiting competitors to use a golf cart during PGA Tour competitions, the PGA utilizes an optional provision in the Official Rules of Golf which requires players to "walk at all times during a stipulated round." *Id.* Prior to *Martin*, the PGA had never waived the "no-cart" rule for an athlete. *Martin II*, 994 F. Supp. 1242, 1244 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001).

17. *Martin IV*, 121 S. Ct. 1879, 1886 (2001). Due to the high degree of pain that Martin must endure and the significant health risks that he faces by the mere act of walking, his treating physician testified that it is medically necessary for Martin to use a golf cart in order to compete during a golf tournament. *Martin II*, 994 F. Supp. at 1244.

18. See *Martin v. PGA Tour, Inc.*, 984 F. Supp. 1320, 1322 (D. Or. 1998) [hereinafter *Martin I*], *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001).

19. *Martin v. PGA Tour, Inc.*, 204 F.3d 994, 1002 (9th Cir. 2000) [hereinafter *Martin III*], *aff'd*, 121 S. Ct. 1879 (2001); *Martin II*, 994 F. Supp. at 1246, 1252; *Martin I*, 984 F. Supp. at 1326.

States Supreme Court granted certiorari in order to resolve a split between the Seventh and Ninth Circuits.²⁰

The United States Supreme Court faced two issues in *Martin*.²¹ First, the Court considered whether the ADA provided a disabled competitor access to a professional golf tournament.²² Second, the Court examined whether the PGA can deny a disabled competitor the use of a golf cart because the cart “fundamentally alters” the nature of PGA tournaments.²³ Professional golfers weighed in on both sides of this controversial issue.²⁴ Legendary golfers such as Arnold Palmer and Jack Nicklaus testified on behalf of the PGA.²⁵ The PGA argued that its golf tournaments are not subject to Title III of the ADA, and that waiving the “no-cart” rule would remove the fatigue element from professional golf.²⁶ Thus, allowing Casey Martin to use a cart would fundamentally alter the nature of professional golf.²⁷ The public²⁸ and a group of fellow golfers, however, sided with Martin.²⁹ Martin argued that the PGA is subject to Title III of the ADA as a place of public

20. *Martin IV*, 121 S. Ct. at 1889; *see also infra* Part II.C.4 (discussing the Seventh Circuit’s opinion in *Olinger v. United States Golf Assoc.*).

21. *Martin IV*, 121 S. Ct. at 1884.

22. *Id.*

23. *Id.* Under Title III of the ADA, an entity is not required to make a reasonable accommodation for a disabled individual if the requested accommodation fundamentally alters the nature of the accommodation being offered. 42 U.S.C. § 12182(b)(2)(A)(ii) (1994); *see also infra* notes 77-92 and accompanying text (detailing a *prima facie* case under Title III).

24. Bruce Meadows, *A Lot Riding on Martin Case PGA Finds Itself in Lose-Lose Situation*, PRESS DEMOCRAT (Santa Rosa), Feb. 8, 1998, at C4, available at 1998 WL 5703668; Cameron Morfit, *Golf Plus, Winning A La Cart While Preparing to Fight the Tour for the Right to Ride, Casey Martin Won the Nike Opener*, SPORTS ILLUSTRATED, Jan. 19, 1998, at G6, available at 1998 WL 8979183; *Nightline*, *supra* note 2.

25. *See Meadows*, *supra* note 24, at C4. Arnold Palmer, Ken Venturi, and Jack Nicklaus all testified on behalf of the PGA, and opined that allowing Martin to use a golf cart would destroy the integrity of the game. *Id.*

26. Brief for Petitioner at 15, 37, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1706732.

27. *Id.* at 30. The PGA argued that certain rules of the sport are “outcome-affecting,” and if these rules are eliminated or altered, the game of golf will be altered. *Id.* at 37. In addition, the PGA argued that the “no-cart” rule is an integral part of professional golf and distinguishes high-level professional competition from less elite competitions. *Id.*

28. Jeff Barnard, *Martin and PGA Tour Calling Final Witnesses*, PITTSBURGH POST-GAZETTE, Feb. 10, 1998, at C8, available at 1998 WL 5231944 (noting the widespread public support for Martin during his first tournament using a golf cart).

29. *See Morfit*, *supra* note 24, at G6. Professional golfers such as Chi Chi Rodriguez, Brian Henniger, and Eric Johnson stood behind Martin. *Nightline*, *supra* note 2.

accommodation,³⁰ and that allowing him to use a cart does not fundamentally alter the nature of the professional sport.³¹

In a 7-2 opinion written by Justice Stevens, the United States Supreme Court affirmed the rulings of the district court and the Ninth Circuit.³² The Court held that PGA tournaments occur at places of public accommodation under Title III, and that allowing Casey Martin to use a golf cart does not fundamentally alter professional golf.³³ Justice Scalia, writing for dissent, disagreed and argued that the PGA's golf tournaments do not take place at places of public accommodation, and allowing Martin to use a golf cart fundamentally alters the type of "no-cart" competition that the PGA offers.³⁴

Because Casey Martin is the first physically disabled athlete to successfully use the ADA in the arena of professional sports, his lawsuit raises profound questions as to the limits of the ADA and the ability of professional sports organizations to promulgate rules of play.³⁵ In professional sports, which are intended to promote competition among elite athletes, should accommodations be made for those who are qualified, but physically disabled?³⁶ Furthermore, if a professional sports organization must make an accommodation for a disabled athlete, at what point does that accommodation fundamentally alter the nature of that sport?³⁷

This Note examines the broadened role of the ADA in the area of professional sports. Part II of this Note begins with a discussion of the ADA and the specific provisions of Title III, the title at issue in *Martin*.³⁸ Part II also examines prior precedent in the arena of

30. Brief for Respondent at 16, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1846091. A public accommodation is defined as anything other than a private entity. See 42 U.S.C. § 12181(6) (1994).

31. Brief for Respondent at 35, *Martin IV* (No. 00-24). Casey Martin argued that the essential aspect of golf is shot-making and not walking. *Id.* at 31. Martin reasoned that the Official Rules of Golf do not prohibit the use of golf carts and that the PGA and other professional golf tours allow the use of carts during certain competitions. *Id.* at 35-36.

32. *Martin IV*, 121 S. Ct. at 1883-84, 1898.

33. *Id.* at 1890, 1894-98.

34. *Id.* at 1898, 1901 (Scalia, J., dissenting).

35. See *Martin II*, 994 F. Supp. 1242, 1251 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001); see also *infra* Part V (discussing the impact that *Martin* could have on professional sports).

36. See *Martin IV*, 121 S. Ct. at 1884 (questioning whether modifications to the rules of golf must be made in order to accommodate the disabled).

37. See *Martin II*, 994 F. Supp. at 1243. The district court questioned what type of rules could be "modified to accommodate a disabled competitor." *Id.*

38. See *infra* Part II.A (outlining the history and specific provisions of the ADA).

professional sports and ADA accommodations for disabled athletes.³⁹ Part II further canvases the history of the PGA and the rules of golf,⁴⁰ as well as Casey Martin's career as a disabled athlete.⁴¹ Next, Part III focuses on the district court,⁴² Ninth Circuit,⁴³ and United States Supreme Court⁴⁴ opinions in *Martin*, where the Supreme Court ultimately held that the PGA must accommodate Casey Martin's disability by allowing him to use a golf cart during PGA competitions.⁴⁵ Part IV then provides an analysis of the Supreme Court's decision, and argues that the Court correctly interpreted Title III of the ADA because: (1) golf courses are specifically listed as places of public accommodation under Title III; (2) a golf cart is a reasonable accommodation of the "no-cart" rule for Casey Martin; and (3) allowing Martin to use a golf cart will not fundamentally alter the competitive nature of professional golf.⁴⁶ Finally, Part V discusses the impact of the Court's decision by hypothesizing that *Martin* will not have a drastic effect on the future of professional sports, although the decision will result in an increased administrative and financial burden for sports organizations and the court system.⁴⁷

II. BACKGROUND

This Section will first outline the events leading up to the ADA and its specific provisions.⁴⁸ Next, this Section will outline the application of the ADA in high school, collegiate, and professional sports.⁴⁹ This Section will then discuss the PGA, including its rules of qualification, rules governing play during PGA tournaments, and the history of racial and disability discrimination in professional golf.⁵⁰ Finally, this Section

39. See *infra* Part II.B (discussing how the lower courts have applied the ADA to disabled athletes in high school sports, intercollegiate athletics, and professional sports).

40. See *infra* Part II.C (examining the PGA's rules for tour qualification, rules of play, and the history of discrimination in professional golf).

41. See *infra* Part II.D (discussing Martin's disability and his history as a golfer).

42. See *infra* Part III.A (examining the district court's two part opinion).

43. See *infra* Part III.B (outlining the Ninth Circuit opinion).

44. See *infra* Part III.C (examining the majority and dissenting opinions of the United States Supreme Court).

45. *Martin IV*, 121 S. Ct. 1879, 1897-98 (2001).

46. See *infra* Part IV (analyzing the majority's correct application of Title III).

47. See *infra* Part V (predicting that the Court's decision will result in an increased administrative burden for professional sports and the court system).

48. See *infra* Part II.A (outlining the history of the ADA and specific provisions of the ADA).

49. See *infra* Part II.B (discussing the successes and failures of attempts by athletes to use the ADA in the sports setting).

50. See *infra* Part II.C (examining the operations of the PGA and the history of discrimination in professional golf).

will review the life of Casey Martin and his battle to use a cart during PGA tournaments.⁵¹

A. *The Americans with Disabilities Act (ADA)*

Although the ADA was not the first statute enacted to prevent discrimination against individuals with disabilities,⁵² it was considered the “first comprehensive declaration of equality” for disabled Americans.⁵³ Utilizing pre-ADA statutes, as well as the ADA itself, disabled amateur and professional athletes have experienced little success in their attempts to seek the protections of the ADA.⁵⁴

1. Moving Toward the ADA

Prior to the enactment of the ADA, the federal government made several attempts to eliminate discrimination against disabled Americans.⁵⁵ The passage of the Rehabilitation Act of 1973 marked the first significant attempt by Congress to prevent discrimination based on disability.⁵⁶ Congress designed the Rehabilitation Act to prevent discrimination against disabled contractors, government employees, and recipients of federal grants, by denying federal aid to any activity that discriminated against the disabled.⁵⁷ It also required programs

51. See *infra* Part II.D (discussing Casey Martin’s life, disability, and the beginnings of his legal battle against the PGA).

52. See *infra* Part II.A.1 (outlining the pre-ADA statutes enacted in order to prevent disability discrimination).

53. See *infra* Part II.A.2 (describing the provisions of the ADA).

54. See *infra* Part II.B (exploring disabled athletes’ attempts to use the Rehabilitation Act and the ADA to prevent discrimination based on their disabilities).

55. See, e.g., Individuals with Disabilities Act, 20 U.S.C. §§ 1401–1491 (1994), amended by Pub. L. No. 106-402, § 401, 114 Stat. 1737 (requiring public schools to provide specialized education programs to the disabled); Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151–4157 (1994) (requiring buildings which are constructed, altered, or financed by the federal government to be accessible to the disabled); Act of June 10, 1948, Pub. L. No. 617, ch. 434, 62 Stat. 351 (prohibiting employment discrimination based on physical handicaps within the Civil Service).

56. W.S. Miller, *Ganden v. NCAA: How the NCAA’s Efforts to Clean Up Its Image Have Created an Ethical and Legal Dilemma*, 7 MARQ. SPORTS L.J. 465, 467 (1997). Miller notes that “the Rehabilitation Act of 1973 was the first piece of legislation which treated disabled Americans as a unified group, and not merely separate groups based upon a person’s particular disability.” *Id.* Prior to the Rehabilitation Act, several pieces of legislation were enacted in order to eliminate discrimination against the disabled. *Id.* at 466 n.9. These separate pieces of legislation were aimed at protecting certain sectors of disabled individuals, but no single piece of legislation benefited all disabled Americans until the enactment of the Rehabilitation Act, which protected all disabled individuals associated with programs receiving federal aid. *Id.* at 467.

57. The Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended at 29 U.S.C. § 794(a) (1994)). The Rehabilitation Act provides that no disabled individual “shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal

receiving federal aid to make reasonable accommodations for the disabled, unless the accommodation would cause an undue burden to the program.⁵⁸ Although the Rehabilitation Act represented a successful step in eliminating discrimination against disabled employees, it failed to include a large number of private sector employees.⁵⁹

During the thirteen year span between the enactment of the Rehabilitation Act and the passage of the ADA, Congress continued to attack the problem of disability discrimination by adopting additional legislation aimed at protecting disabled Americans.⁶⁰ Despite the passage of these acts, discrimination against the disabled continued to be a pervasive social problem permeating all areas of society, including employment, housing, public accommodations, and transportation.⁶¹ In

financial assistance or under any program or activity conducted by any Executive agency” *Id.* A program or activity is defined as a department or agency, a college or university receiving federal financial aid, and a corporation or partnership which is principally engaged in the business of providing “education, health care, housing, social services, or parks and recreation.” 29 U.S.C. § 794(b).

58. 29 C.F.R. § 32.13(a) (2001). The Interagency Disability Coordinating Council, the council responsible for implementing and enforcing policies and regulations under the Rehabilitation Act, promulgated this regulation. 29 U.S.C. § 794(c). In determining whether an accommodation would cause an undue burden, the following factors can be taken into account: the nature of the accommodation and its associated cost; the size of the program, including the number of employees and the number of facilities; and the composition and structure of the operation. *Id.*

59. 29 U.S.C. § 794(b). The Rehabilitation Act only applies to programs that receive financial assistance from the federal government. 29 U.S.C. § 794(a). Thus, many employees who work in the private sector and students who attend private universities are not protected by the Rehabilitation Act. *See id.*

60. *See, e.g.*, Voting Accessibility for the Elderly and Handicapped Act of 1984, 42 U.S.C. § 1974 (1994); Developmental Disabilities Bill of Rights Act of 1975, 42 U.S.C. § 6001 (1994), *repealed by* Pub. L. No. 106-402, Title IV, § 401(a), 114 Stat. 1737 (2000); Air Carrier Access Act of 1986, 49 U.S.C. app. § 1374(c) (1994); *see also* Davis, *supra* note 11, at 5-6 (citing RUTH COLKER, *THE LAW OF DISABILITY DISCRIMINATION* 19 (1995)). The most significant of these acts was the Individuals with Disabilities Education Act, which required public schools at the K-12 levels to provide “children with disabilities” with a formal, written “individualized education program.” 20 U.S.C. §§ 1401-1491 (1999). The individualized education plan must include a set of goals that would allow the student to progress in the general education curriculum and requires a determination of what special assistance will be necessary to meet these goals. 20 U.S.C. § 1414.

61. Lowell P. Weicker, Jr., *Historical Background of the Americans with Disabilities Act*, 64 TEMP. L. REV. 387, 388-89 (1991). Weicker, the Senate co-sponsor of the ADA, stated that “[d]espite the myriad of civil rights legislation on the books, people with disabilities remained unprotected in many contexts in which federal laws prohibited other types of discrimination—private employment, public accommodations, transportation, and state and local activities and services.” *Id.* at 389. Congressional findings determined that the disabled are a “discrete and insular minority” who “occupy an inferior status in our society” are, politically powerless, and have been subjected to unpurposeful treatment. Americans with Disabilities Act

1990, Congress sought to expand the ability of the federal government to protect the disabled by ensuring that the more than forty-three million disabled Americans have full and equal opportunities, economic self-sufficiency, and the chance to live independently.⁶²

2. The Development of the ADA

In order to expand the government's role in protecting the disabled, Congress adopted the Americans with Disabilities Act in 1990.⁶³ The stated purpose of the ADA is to eliminate discrimination against individuals with disabilities while ensuring that the federal government plays a role in enforcing the standards of the ADA.⁶⁴ Specifically, the ADA prohibits discrimination based on disability in employment, programs and services provided by state and local governments, and goods and services provided by private companies and commercial facilities.⁶⁵ The ADA is currently codified into five titles that provide a variety of comprehensive protections for the disabled.⁶⁶

Title I covers employment discrimination and prohibits employers⁶⁷ from discriminating against disabled individuals with respect to hiring, promotion, termination, and any other privileges of employment.⁶⁸ In order to establish a Title I violation, an individual must prove that he is

of 1990, 42 U.S.C. § 12101(a) (1994). As a minority, the disabled have traditionally been subjected to discrimination, intentional exclusion, and failure to make modifications to facilities and practices, and segregation. 42 U.S.C. § 12101(a)(5). In the employment sector, Congress found that approximately 8.2 million people with disabilities desired to work, but remained unemployed because of discrimination. H.R. REP. NO. 101-485(II), at 32 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 314 (citing the ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream). With respect to public accommodations, studies found that the disabled did not frequent places of public accommodations due to past acts of discrimination and architectural, communication, and transportation barriers. *Id.* at 34-37, *reprinted in* 1990 U.S.C.C.A.N. at 316-18.

62. 42 U.S.C. § 12101(a)(8). Congress sought to ensure "equality of opportunity, full participation, independent living, and economic self-sufficiency" for the disabled. *Id.*

63. Robert Burgdorf, Jr., *The Americans with Disabilities Act: Analysis and Implication of a Second-Generation Civil Rights Statute*, 26 HARV. C.R.-C.L. L. REV. 413, 413 (1991). At the ADA signing ceremony, President George Herbert Walker Bush stated that the ADA was "the world's first comprehensive declaration of equality for people with disabilities." *Id.* at 414.

64. 42 U.S.C. § 12101(b)(1)-(b)(2). Congress sought to provide consistent and enforceable standards that would address discrimination against the disabled. *Id.*

65. 42 U.S.C. §§ 12101-12213.

66. 42 U.S.C. §§ 12111-12213 (enumerating Titles I-V of the ADA).

67. 42 U.S.C. §§12111(5), 12112(2). Title I covers those who employ at least fifteen employees, employment agencies, and labor organizations. *Id.*

68. 42 U.S.C. §§12111-12117. Specifically, Title I prohibits discrimination "in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a).

a qualified individual with a disability, and that he was excluded because of a disability or the failure of an employer to make a reasonable accommodation for the plaintiff's disability.⁶⁹ Thereafter, an employer must make the accommodation unless it would pose an undue hardship on the employer.⁷⁰

Title II prohibits public entities from discriminating against qualified individuals with a disability.⁷¹ In addition, Title IV applies to telecommunication and common carriers, requiring each to offer special services for the hearing and speech impaired.⁷² Finally, Title V outlines general anti-discrimination provisions, and more importantly, prohibits retaliation against the disabled.⁷³

3. Title III of the ADA

The ADA provision most applicable to the *Martin* decision is Title III, which applies to services provided by public accommodations and commercial facilities.⁷⁴ Specifically, Title III prohibits discrimination against the disabled in the enjoyment of "goods, services, facilities,

69. 42 U.S.C. § 12112(b). The ADA defines a disability as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such impairment." 42 U.S.C. § 12102(2). A reasonable accommodation includes making facilities readily accessible for the disabled or providing "job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices . . . and other similar accommodations." 42 U.S.C. § 12111(9).

70. 42 U.S.C. § 12111(b)(5)(A). An undue burden includes an action requiring either "significant difficulty or expense." 42 U.S.C. § 12111(10)(A). In determining whether a requested accommodation imposes an undue burden, factors to be considered include: the nature and cost of the accommodation; the financial resources of the employer in being able to make the accommodation; and the type of business or operation from which the employee is requesting the accommodation. 42 U.S.C. § 12111(10)(B). In *Frank v. American Freight Systems, Inc.*, for example, the Iowa Supreme Court held that it would be an undue burden for an employer to restructure the job of a truck driver with a back ailment by hiring a second employee to load and unload the goods that the truck driver could not handle. *Frank v. Am. Freight Sys., Inc.*, 398 N.W.2d 797, 803 (Iowa 1987).

71. 42 U.S.C. § 12132. A public entity is defined as a state or local government, or a department, agency or instrumentality of such government. 42 U.S.C. § 12131(1). Under Title II, a qualified individual is specifically defined to include one "who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2).

72. 42 U.S.C. §§ 12141–12165.

73. 42 U.S.C. §§ 12201–12213.

74. 42 U.S.C. §§ 12181–12189. A public accommodation is a private entity which "owns, leases, (or leases to) or operates a place of public accommodation." 28 C.F.R. § 36.201 (2001). A commercial facility is defined as a facility that is intended for non-public use and "whose operations affect commerce." 42 U.S.C. § 12181(2).

privileges, advantages or accommodations” by an owner, operator, or lessor of a public accommodation.⁷⁵ The Department of Justice is given the authority to implement the provisions of Title III.⁷⁶

In order to succeed under a Title III claim, a claimant must prove three elements.⁷⁷ First, a plaintiff must prove that he has a qualifying disability listed under the ADA.⁷⁸ Second, the plaintiff must establish that the defendant owns, leases, or operates the place of public accommodation.⁷⁹ Finally, a plaintiff must prove that he was discriminated against on the basis of a disability in the equal enjoyment of “goods, services, facilities, privileges, advantages or accommodations.”⁸⁰

A plaintiff must initially demonstrate that he suffers from a qualifying disability in one of three ways.⁸¹ An individual can have a physical or mental impairment⁸² that acts to substantially limit a major life activity.⁸³ Alternatively, maintaining a record of such a physical or

75. 42 U.S.C. § 12182(a).

76. 42 U.S.C. § 12188; 28 C.F.R. § 36.101. In order to implement Title III, the Department of Justice issues regulations and guidelines under the Code of Federal Regulations. 28 C.F.R. § 36.101.

77. *Bowers v. NCAA*, 9 F. Supp. 2d 460, 480 (D. N.J. 1998) (identifying the three requirements for a Title III claim); *see also Shultz By & Through Shultz v. Hemet Youth Pony League*, 943 F. Supp. 1222, 1225 (C.D. Cal. 1996); *Howe v. Hull*, 873 F. Supp. 72, 78 (N.D. Ohio 1994) (detailing a prima facie Title III case).

78. 42 U.S.C. § 12182(a); *Bowers*, 9 F. Supp. 2d at 480; *see also infra* notes 81-85 and accompanying text (defining the requirement of a qualified disability).

79. 42 U.S.C. § 12182(a); *Bowers*, 9 F. Supp. 2d at 480; *see also infra* notes 87-88 and accompanying text (detailing the public accommodations requirement).

80. 42 U.S.C. § 12182(a); *Bowers*, 9 F. Supp. 2d at 480; *see also infra* notes 89-92 and accompanying text (defining the discrimination requirement).

81. 42 U.S.C. § 12102(2).

82. 28 C.F.R. § 36.104(1) (2001). The Department of Justice guidelines define a physical or mental impairment as “any physiological disorder or condition, cosmetic disfigurement, or anatomical loss . . . any mental or psychological disorder . . . and specific learning disabilities . . .” *Id.*

83. 42 U.S.C. § 12102(2). A major life activity includes “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” 28 C.F.R. § 36.104(2). In determining whether a disability restricts a major life activity, the “nature and severity of impairment, the duration or expected duration of the impairment, and the permanent or long term impact of or resulting from the impairment” is considered. 28 C.F.R. § 1630.2(j)(2) (2001).

mental impairment can show a qualifying disability.⁸⁴ Finally, an individual can ultimately be regarded as having such an impairment.⁸⁵

Upon establishing the disability, the plaintiff must then prove that the defendant owns, leases, or operates a place of public accommodation.⁸⁶ Section 12181(7) delineates a detailed list of facilities that qualify as places of public accommodation.⁸⁷ Most relevant to the *Martin* decision, Title III specifically encompasses a golf course as a place of public accommodation in section 12181(7)(L).⁸⁸

Finally, a disabled individual must prove that he has been discriminated against in the equal enjoyment of “goods, services,

84. 42 U.S.C. § 12102(2). Maintaining a record of an impairment includes having a “history of, or being misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.” 28 C.F.R. § 36.104(3). Examples include individuals with a history of mental or emotional illness, heart disease, and cancer. 28 C.F.R. § 36, app. B.

85. 42 U.S.C. § 12102(2). Being “regarded as” having an impairment is defined as a physical or mental impairment which does not substantially limit a major life activity, an impairment which only impairs a major life activity because of the attitude of others, or one who does not have an impairment but is treated as having a physical or mental impairment by a private entity. 28 C.F.R. § 36.104(4).

86. Title III states that “[n]o individual shall be discriminated against on the basis of disability . . . in any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

87. 42 U.S.C. § 12181(7). A public accommodation is defined as:

- (A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
- (B) a restaurant, bar, or other establishment serving food or drink;
- (C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
- (D) an auditorium, convention center, lecture hall, or other place of public gathering;
- (E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
- (F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
- (G) a terminal, depot, or other station used for specified public transportation;
- (H) a museum, library, gallery, or other place of public display or collection;
- (I) a park, zoo, amusement park, or other place of recreation;
- (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
- (K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- (L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

Id.

88. *Id.* § 12181(7)(L).

facilities, privileges, advantages or accommodations.”⁸⁹ Because the PGA refused to modify the “no-cart” rule in order to allow Casey Martin to use a golf cart, the relevant Title III discrimination provision involves public accommodations which fail to make reasonable accommodations when the accommodations are necessary to afford goods, services, or accommodations to the disabled, unless the modification would fundamentally alter the nature of the good, service, or accommodation.⁹⁰ Thus, under this definition of discrimination, the plaintiff must prove that the requested accommodation is reasonable.⁹¹ If the plaintiff meets this burden, the defendant must make the requested accommodation, unless he can show that the accommodation would fundamentally alter the public accommodation or impose an undue administrative or financial burden.⁹²

Congress provided two exemptions from this three-prong test by specifically exempting private clubs⁹³ and religious entities⁹⁴ from the

89. See *supra* notes 77-80 and accompanying text (detailing a prima facie case for Title III); see also 42 U.S.C. § 12182(b)(2)(A)(i)-(iv) (defining discrimination under Title III). Second, a public accommodation can discriminate by prohibiting disabled individuals from “fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations” unless it can be shown that the criteria is necessary for the goods, service, or accommodation being offered.” 42 U.S.C. § 12182(b)(2)(A)(i). Third, a public accommodation discriminates by failing to take the necessary steps to ensure that the disabled are provided with auxiliary aids and services unless the aid or service would fundamentally alter the good, service, or accommodation being offered. 42 U.S.C. § 12182(b)(2)(A)(iii). Finally, a public accommodation can discriminate by failing to remove architectural, communication, and transportation barriers in existing facilities and vehicles where such removal is “readily achievable.” 42 U.S.C. § 12182(b)(2)(A)(iv).

90. 42 U.S.C. § 12182(b)(2)(A)(ii).

91. See *Johnson v. Gambrinus Co.*, 116 F.3d 1052, 1059 (5th Cir. 1997) (holding that the claimant has the burden of proof to show that he actually requested an accommodation and that the accommodation is reasonable). Although there is no statutory definition of a reasonable accommodation, courts have consistently held that an accommodation is not reasonable if it either imposes an undue financial and administrative burden on the defendant or if the accommodation fundamentally alters the nature of the good or service being offered. See, e.g., *Sch. Bd. v. Arline*, 480 U.S. 273, 287 (1987); *Sandison v. Mich. High Sch. Athletic Ass’n*, 64 F.3d 1026, 1035 (8th Cir. 1994) (holding that undue administrative and financial burdens are not reasonable accommodations); see also 42 U.S.C. § 12182(b)(2)(A)(ii) (stating that an accommodation is not reasonable when it fundamentally alters the good or service being provided by the public accommodation).

92. *Johnson*, 116 F.3d at 1059.

93. 42 U.S.C. § 12187 (exempting private clubs from Title III prohibitions). Neither Congress nor the courts have defined a private club. In *Wright v. Cork Club*, a civil rights case, the Southern District of Texas stated that “there is no single definition of ‘private club.’ Courts consider a multitude of factors, no one of which is dispositive.” *Wright v. Cork Club*, 315 F. Supp. 1143, 1150 (S.D. Tex. 1970). Furthermore, the ADA itself does not provide a statutory definition of a private club. 42 U.S.C. § 12187. Rather, courts have used a balancing test which considers seven factors: genuine selectivity, membership control, history of the organization, use of the facility by non-members, purpose of the club, whether the club advertises for new

scope of Title III.⁹⁵ However, because the ADA does not specifically exempt professional sports from its scope, athletes have sought to use Title III to prevent sports organizations and rule-making bodies from discriminating against the disabled.⁹⁶

B. *The ADA in the Sports Setting*

Although Casey Martin is the first athlete to successfully sue a professional sports organization under the ADA,⁹⁷ he was not the first litigant to utilize the ADA in the sports arena.⁹⁸ Prior to the Supreme Court's decision in *Martin*, athletes used the ADA to challenge rule-making bodies at the high school,⁹⁹ intercollegiate,¹⁰⁰ and professional

members, and non-profit club status. *United States v. Lansdowne Swim Club*, 713 F. Supp. 785, 796 (E.D. Pa. 1989), *aff'd*, 894 F.2d 83 (3d Cir. 1990).

94. 42 U.S.C. § 12187 (exempting religious establishments from Title III prohibitions). A religious entity is defined as a "religious organization, including a place of worship." 42 U.S.C. § 12187; 28 C.F.R. § 36.104 (2001). *White v. Denver Seminary* was the first case to address the scope of the religious entity definition. *White v. Denver Seminary*, 157 F. Supp. 2d 1171, 1173 (D. Colo. 2001). In *White*, a learning disabled student filed a Title III action against the Denver Seminary for, among other things, requiring him to enter into a learning contract and mandating that he take medication for his disability. *Id.* at 1172. In holding that the seminary was a religious organization, the court stated that the religious entity exemption is "very broad, encompassing a wide variety of situations. Religious organizations and entities controlled by religious organizations have no obligations under the ADA. Even when a religious organization carries out activities that would otherwise make it a public accommodation, the religious organization is exempt from ADA coverage." *Id.* at 1174 (citing 28 C.F.R. § 36.104).

95. 42 U.S.C. § 12187 (exempting private clubs and religious establishments).

96. Prior to the enactment of the ADA, the only congressional discussion involving the ADA and professional sports occurred during a floor debate surrounding the ADA's effects on the drug testing policies of professional sports organizations. See H.R. REP. NO. 101-485(II), at 80 (1990). Through Title I, Congress sought to prevent employers who require pre-employment drug testing from discriminating against disabled individuals who take prescribed medication for a disability but who choose not to disclose their medical condition prior to employment. *Id.* Floor debate on this issue concerned whether Title I's drug testing policy complied with the policies already in place in professional sports organizations. *Id.* Ultimately, Congress agreed that the ADA was in compliance with these drug testing policies. *Id.* The report stated that the ADA is not intended to "disturb the legitimate and reasonable disciplinary rules and procedures established and enforced by professional sports leagues." *Id.*

97. See *Davis*, *supra* note 11, at 25 (noting that *Martin* "was the first to apply federal disability laws to professional sports").

98. See *infra* Part II.B.1-3 (outlining the use of the ADA in high school sports, collegiate athletics, and professional sports).

99. See *infra* Part II.B.1 (discussing how high school athletes have attempted to utilize the ADA in order to gain exemptions from high school age eligibility requirements).

100. See *infra* Part II.B.2 (outlining the unsuccessful attempts to use the ADA by college athletes who were denied the ability to play collegiate sports due to their disability).

sports levels.¹⁰¹ These challenges, however, met with varying degrees of success.¹⁰²

1. High School Sports

Disabled high school students have attempted to use the ADA in order to gain exemptions from athletic age requirements, but have met with mixed results.¹⁰³ High school athletic associations set age eligibility requirements in order to prohibit high school students nineteen years of age and older from participating in high school sports.¹⁰⁴ Age eligibility requirements are designed to protect younger and presumably smaller players from injury, and to guard against competitive advantages by older athletes.¹⁰⁵ These age eligibility rules, however, consistently collide with athletes who are held back in school because of a disability, and therefore become too old to play high school sports.¹⁰⁶

When challenged by these students, courts initially waived the age eligibility requirement and required the high school to accommodate the disabled individual.¹⁰⁷ Today, however, the courts are split with respect

101. See *infra* Part II.B.3 (noting both successful and unsuccessful attempts to use the ADA by professional athletes against professional sports organizations).

102. See *infra* notes 103-23 and accompanying text (outlining the mixed results disabled student athletes experience when attempting to obtain waivers of high school age eligibility requirements).

103. See, e.g., *Sandison v. Mich. High Sch. Athletic Ass'n*, 64 F.3d 1026, 1035 (6th Cir. 1995) (refusing to grant a waiver of an age eligibility rule); *Pottgen v. Mo. State High Sch. Activities Ass'n*, 40 F.3d 926, 931 (8th Cir. 1994) (holding that the age eligibility rule could not be waived without fundamentally altering the purpose of the rule); *Dennin v. Conn. Interscholastic Athletic Conference, Inc.*, 913 F. Supp. 663, 669 (D. Conn. 1996), *vacated as moot*, 94 F.3d 96 (2d Cir. 1996) (stating that the purpose of an age eligibility rule is not undermined by granting a learning disabled athlete a waiver); *Interscholastic League v. Buchanan*, 848 S.W.2d 298, 301-02 (Tex. App. 1993) (waiving the age eligibility rule for a disabled athlete because the purpose of the rule would not be undermined by granting a waiver).

104. See Julia A. Kasperski, Comment, *Disabled High School Athletes and the Right to Participate: Are Age Waivers Reasonable Modifications Under the Rehabilitation Act and the Americans with Disabilities Act?*, 49 BAYLOR L. REV. 175, 186-92 (1997) (discussing the purpose of age eligibility requirements).

105. *Id.* at 186. Athletes who delay their education or intentionally repeat a grade in order to become more athletically mature may gain a competitive advantage over younger, less athletically mature players. *Id.*

106. See, e.g., *Sandison*, 64 F.3d at 1035; *Pottgen*, 40 F.3d at 931; *Dennin*, 913 F. Supp. at 669; *Buchanan*, 848 S.W.2d at 301-02.

107. See *Buchanan*, 848 S.W.2d at 301-02. In *Buchanan*, the plaintiff had a learning disability that held him back in school, rendering him ineligible to play football due to the school's age eligibility requirement. *Id.* at 300. After the organization that regulated competitive high school athletics refused to grant Buchanan a waiver, he filed suit under the Rehabilitation Act. *Id.* The court, in waiving the age requirement for Buchanan, held that an individual assessment must be used. *Id.* at 301-02. The court stated that the purpose of the age eligibility rule was not to

to the application of age eligibility rules to disabled athletes.¹⁰⁸ The deciding factor is whether or not the court conducts an individualized inquiry to determine whether the waiver of an age eligibility rule is a reasonable accommodation under Title III.¹⁰⁹

Courts that do not conduct an individualized inquiry under Title III are unlikely to require school districts to waive age eligibility requirements.¹¹⁰ For example, in *Pottgen v. Missouri State High School Activities Ass'n*, the Eighth Circuit rejected an individualized inquiry approach and held that any modification of an age eligibility requirement constitutes a fundamental alteration of the nature of age eligibility rules.¹¹¹ Pottgen was a baseball player who was forced to repeat two grades because of his learning disability.¹¹² By the time Pottgen reached his senior year in high school, he was nineteen and restricted from playing baseball by a high school association by-law that precluded nineteen-year-old students from participating in interscholastic sports.¹¹³

After the school association denied Pottgen a waiver, he filed a lawsuit under the Rehabilitation Act and Title III of the ADA.¹¹⁴ Ultimately, the Eighth Circuit held that an individualized inquiry is inappropriate because individualized assessments impose an undue administrative and financial burden on a defendant and the court

prevent disabled students from participating in high school sports. *Id.* at 302. Because Buchanen had a learning disability, Buchanen was held back due to his disability and not in order to gain a competitive advantage. *Id.* In this case, because Buchanen was of average size, and was not intentionally held back in order to gain an athletic advantage, the court held that Buchanen must be granted a waiver to play high school football. *Id.*

108. Compare *Dennin*, 913 F. Supp. at 666, and *Buchanen*, 848 S.W.2d at 301-02 (using an individualized determination in granting a disabled athlete a waiver of the age eligibility rule), with *Sandison*, 64 F.3d at 1035, and *Pottgen*, 40 F.3d at 931 (using a generalized inquiry in holding that an eligibility rule fundamentally alters the rule's purpose).

109. See *infra* note 110 and accompanying text (noting that a claimant is normally only successful when the court adopts an individualized inquiry approach).

110. Compare *Sandison*, 64 F.3d at 1026, and *Pottgen*, 40 F.3d at 931 (using a generalized requirement in refusing to waive age eligibility requirements), with *Dennin*, 913 F. Supp. at 666 (using an individualized inquiry in waiving an age eligibility requirement).

111. *Pottgen*, 40 F.3d at 929-30.

112. *Id.* at 927-28. After Pottgen's elementary school diagnosed him with several learning disabilities, Pottgen was placed on an individualized program that allowed him to progress at a normal rate and prevented him from being held back further. *Id.* at 928.

113. *Id.*

114. *Id.* at 928-29. The court held that Pottgen could not prevail under the Rehabilitation Act because Pottgen was not a qualified individual under the Rehabilitation Act. *Id.* at 930. The court held that the Rehabilitation Act protects only those individuals who are potentially able to meet the eligibility requirements of a program or activity. *Id.* Because Pottgen was nineteen and could never meet the age eligibility rule, he was not a qualified individual and was therefore not protected under the Rehabilitation Act. *Id.*

system.¹¹⁵ In holding that Pottgen did not have a qualifying disability under the ADA, the court held that an age eligibility rule is essential to high school sports.¹¹⁶ Because age eligibility rules are essential, the court held that a reasonable accommodation cannot be made in order to accommodate a student who can no longer meet the age requirement.¹¹⁷

Contrary to *Pottgen*, a district court judge in Connecticut used an individualized assessment to hold that a similar age-eligibility rule violated the ADA.¹¹⁸ In *Dennin v Connecticut Interscholastic Athletic Conference, Inc.*, a nineteen-year-old student with Down's syndrome sought a waiver of a high school eligibility rule so that he could participate on his school's swim team.¹¹⁹ After he was denied a waiver, he filed suit under the Rehabilitation Act and the ADA.¹²⁰ The district court held that the age eligibility requirement violated the ADA, and stated that the purpose of the rule was not frustrated by waiving the age restriction rule for an individual who was not attempting to gain a competitive edge.¹²¹ Furthermore, an individualized assessment would not pose an undue burden on the high school athletic league.¹²² Thus, the plaintiff was successful in seeking an exemption to the age eligibility rule in *Interscholastic League*, although most plaintiffs are not so fortunate.¹²³

115. *Id.* at 931. In ruling against an individualized inquiry, the court stated that an entity could never know the outer bound of "services, programs or activities." *Id.* As a result, the entity would have to create a "fact-finding mechanism" each time an individual seeks a waiver of a program requirement. *Id.*

116. *Id.* The court held that the age eligibility rule was "of immense importance in any interscholastic sports program" because it reduces competitive advantage, protects younger athletes from potential harm, and discourages red-shirting. *Id.*

117. *Id.* at 929-30. The Eighth Circuit stated that since Pottgen was already older than nineteen, the only possible accommodation would be to waive the age restriction. *Id.* at 930. Because Pottgen could never meet the eligibility restriction and no method existed to satisfy the age limit, he was not a qualified individual with a disability. *Id.*

118. *Dennin v. Conn. Interscholastic Athletic Conference, Inc.*, 913 F. Supp. 663, 666 (D. Conn. 1996), *vacated as moot*, 94 F.3d 96 (2d Cir. 1996).

119. *Id.* Due to his Down's syndrome, Dennin was forced to spend an extra year in junior high, rendering him nineteen before the start of his senior year of high school. *Id.*

120. *Id.*

121. *Id.* at 669-70. Because Dennin was known to be the slowest swimmer on the team and was not intentionally held back in order to gain a competitive advantage, the court held that a waiver would not fundamentally alter the age eligibility rule. *Id.* at 669.

122. *Id.* The court held that the defendant would not be flooded with applicants seeking a waiver of the age eligibility rules because the league is not required to grant a waiver to all applicants who cannot meet the age requirements, only disabled applicants. *Id.*

123. *See supra* note 103 and accompanying text (citing cases where plaintiffs were unsuccessful in seeking waivers of age eligibility rules).

2. Collegiate Athletics

In the arena of collegiate sports, few plaintiffs have successfully utilized the ADA to challenge colleges and universities.¹²⁴ Instead, courts have held that a disabled athlete's ability to play collegiate sports is not a major life activity, and therefore does not qualify for protection under the ADA.¹²⁵ In *Knapp v. Northwestern University*, the Seventh Circuit held that athletic sports did not constitute a major life activity for a collegiate student athlete.¹²⁶ Knapp was a basketball player who suffered a heart attack in his high school gym prior to attending Northwestern University.¹²⁷ As a result of his heart attack, a defibrillator was implanted into Knapp's stomach.¹²⁸ At Northwestern, Knapp was allowed to travel with the basketball team, but was not allowed to practice or compete.¹²⁹ After Knapp filed a lawsuit against Northwestern, the district court held that Knapp's ailment impaired a major life activity for Knapp, playing basketball.¹³⁰ Because a defibrillator was a reasonable accommodation and effective in preventing further complications for Knapp, the court held that the university violated the ADA by not allowing Knapp to compete on the team.¹³¹ The Seventh Circuit reversed, however, and held that Knapp was not disabled because not playing basketball did not substantially limit Knapp's major life activity of learning while at the university.¹³²

124. See *infra* notes 125-39 and accompanying text (citing examples where collegiate athletes have unsuccessfully challenged colleges and universities under the ADA).

125. *Knapp v. Northwestern Univ.*, 101 F.3d 473, 481-82 (7th Cir. 1996).

126. *Id.*; see also *supra* note 83 and accompanying text (defining a major life activity).

127. *Knapp v. Northwestern Univ.*, 942 F. Supp. 1191, 1193 (N.D. Ill. 1996), *rev'd*, 101 F.3d 473 (7th Cir. 1996). The school was aware of Knapp's condition prior to Knapp signing a National Letter of Intent to attend Northwestern. *Id.*

128. *Id.* The automatic defibrillator was placed in Knapp's stomach in order to restart his heart if Knapp were to have another heart attack. *Id.* The defibrillator acts to recognize an irregular heart arrhythmia and restore the arrhythmia to normal. *Id.* at 1194-95.

129. *Id.* at 1194. Northwestern's team physician rendered Knapp medically ineligible to play basketball based upon Knapp's medical record, medical guidelines, and consultation with other physicians. *Id.*

130. *Id.* at 1195. The district court stated that intercollegiate sports played a major role in Knapp's educational process and helped instill discipline, confidence, leadership, and teamwork. *Id.* Thus, playing basketball for Knapp is a major life activity. *Id.*

131. *Id.* at 1198.

132. *Knapp v. Northwestern Univ.*, 101 F.3d 473, 481-82 (7th Cir. 1996); see also *supra* note 83 and accompanying text (defining a major life activity). Using a generalized analysis, the Seventh Circuit held that playing intercollegiate sports does not deprive the majority of college students from being able to learn and succeed in college. *Knapp*, 101 F.3d at 480. Furthermore, under an individualized inquiry, Knapp's ability to learn is not substantially limited by not being allowed to play intercollegiate basketball, as Knapp still is able to retain his scholarship at the university and can fulfill a role on the basketball team other than as a basketball player. *Id.* at

Similar to age eligibility requirements in high school athletics, courts have held that academic core-course requirements are essential requirements in intercollegiate athletics.¹³³ In *Bowers v. National Collegiate Athletic Ass'n*, a prospective football player for Temple University suffered from a learning disability.¹³⁴ As a result of his learning disability, Bowers took special education courses in high school, and therefore, was unable to meet the NCAA established core-course requirements.¹³⁵ Bowers filed suit under Title III of the ADA and the Rehabilitation Act, seeking a waiver of the core course requirement.¹³⁶ Finding in favor of the NCAA, the court held that academic eligibility rules are an essential part of collegiate athletics.¹³⁷ The court noted that Bowers asked for the elimination of the core-course requirement, not simply a modification as required by the ADA.¹³⁸ Thus, the court concluded that because academic eligibility rules are essential, abandoning the core-course requirement would fundamentally alter the nature of the NCAA's programs.¹³⁹ As a consequence of this holding, athletes have subsequently been unsuccessful in gaining protection from the ADA in college athletics.

3. Sports Organizations and Associations

Finally, litigants seeking the protection of Title III against a sports organization have been largely unsuccessful in arguing that the

481. Similarly, in *Pahulu v. University of Kansas*, a football player was disqualified from participating with the team after team doctors discovered that he had a "congenitally narrow cervical canal" which created an increased risk of neurological injury. *Pahulu v. Univ. of Kan.*, 897 F. Supp. 1387, 1388 (D. Kan. 1995). Pahulu subsequently filed suit under the Rehabilitation Act. *Id.* Although the court in *Pahulu* held that playing sports may be a major life activity for a college athlete, disqualifying Pahulu from playing with the team did not act to substantially limit his ability to learn. *Id.* at 1393. The court reasoned that Pahulu was still able to retain the benefit of an athletic scholarship and participate on his team in other roles. *Id.*

133. *Bowers v. Nat'l Collegiate Athletic Ass'n*, 974 F. Supp. 459 (D. N.J. 1997).

134. *Id.* at 462.

135. *Id.* Because Bowers had satisfied only three of the required thirteen core-courses, the NCAA declared him ineligible to play football. *Id.* at 463. A core-course is defined as a "recognized academic course that offers fundamental instruction components in a specified area of study." *Id.* at 461. As a general matter, remedial and special education courses are specifically excluded from meeting the core-course requirements. *Id.*

136. *Id.* at 463.

137. *Id.* at 467. The court held that the core-course requirement is essential because its purpose is to maintain collegiate sports as an integral part of an athlete's academic program, and ensures that athletes progress in their educational plans. *Id.* at 466.

138. *Id.* The court stated that "[p]laintiff seeks a virtual elimination of the 'core course' requirement, rather than merely the 'modification' or 'accommodation' required by the ADA." *Id.*

139. *Id.*

organization is a public accommodation.¹⁴⁰ In *Stoutenborough v. National Football League*,¹⁴¹ a hearing-impaired individual filed suit against the NFL due to a blackout rule, which prohibited the television broadcast of home football games.¹⁴² Specifically, Stoutenborough argued that the blackout rule violated Title III by discriminating against hearing impaired individuals, because a television broadcast was the only way for the hearing impaired to take in the game.¹⁴³ In rejecting Stoutenborough's claim, the Sixth Circuit held that an NFL broadcast does not amount to a public accommodation under the ADA.¹⁴⁴ The court noted that neither the NFL nor a sports league is listed as a public accommodation under Title III.¹⁴⁵ Furthermore, the NFL is not a facility even though games are played in arenas, which are places of public accommodation under Title III.¹⁴⁶ Because both the hearing and hearing-impaired fans are prohibited from viewing the game under the blackout rule, the NFL did not discriminate against the hearing impaired.¹⁴⁷

Similarly, in *Brown v. Tenet ParaAmerica*,¹⁴⁸ the Northern District of Illinois held that a group organizing a bicycle race was not a public accommodation under Title III.¹⁴⁹ In *Brown*, a cross-country bicycle tour required all competitors to wear helmets.¹⁵⁰ Brown, a paraplegic, argued that the design of his tricycle was linked to his disability and was

140. See *infra* notes 141-60 and accompanying text (outlining attempts to use Title III against professional sports and professional associations).

141. *Stoutenborough v. Nat'l Football League*, 59 F.3d 580 (6th Cir. 1995).

142. *Id.* at 581-82.

143. *Id.* Stoutenborough claimed that the blackout rule violated Title III because the rule deprived the hearing impaired of "substantially equal" access to the game, a service offered by a public accommodation. *Id.* at 582.

144. *Id.* at 583. Similar to the ruling in *Stoutenborough*, a district court has held that a hockey league is not a public accommodation under Title III. *Ellitt v. U.S.A. Hockey*, 922 F. Supp. 217, 223 (E.D. Mo. 1996). In *Ellitt*, a child diagnosed with Attention Deficit Disorder filed a Title III action against a hockey organization when the league refused to allow a family member to be on the ice with Elliott during practices in order to keep the child "focused." *Id.* at 218. The court held that a hockey league was not a place of public accommodation because the league was a membership organization, which is not sufficiently similar to any of the twelve public accommodations in Title III. *Id.* at 223; see also 42 U.S.C. § 12181(7) (1994) (defining a public accommodation).

145. *Stoutenborough*, 59 F.3d at 583. Furthermore, the court reasoned that viewing a blacked-out football broadcast was a service that did not involve a place of public accommodation. *Id.*

146. *Id.* However, the Sixth Circuit held that the NFL's buildings, parking lots, and places owned by the NFL are covered under Title III. *Id.*

147. *Id.* at 582.

148. *Brown v. Tenet ParaAmerica*, 959 F. Supp. 496 (N.D. Ill. 1997).

149. *Id.* at 499.

150. *Id.* at 497.

not conducive to the use of a helmet.¹⁵¹ In denying Brown's claim under Title III, the court held that Title III was not applicable to the organizers of the bike race because they were not an "association" or "organizing group."¹⁵²

Recently, however, some courts have expressed a willingness to expand the definition of a public accommodation.¹⁵³ In *Anderson v. Little League*, the United States District Court for Arizona held that the Little League is a public accommodation subject to Title III.¹⁵⁴ In *Anderson*, a baseball coach who used a wheelchair claimed that the Little League violated Title III of the ADA when it passed a rule forbidding individuals in wheelchairs from coaching Little League games.¹⁵⁵ The court, in applying an individualized determination, held that the Little League violated Title III.¹⁵⁶ The court reasoned that Little League baseball falls within Title III because the Little League operates places of public accommodation.¹⁵⁷ However, notwithstanding a victory in *Anderson*, most litigants have been unsuccessful in their suits against sports organizations.¹⁵⁸

In conclusion, disabled Americans have been largely unsuccessful in their attempts to seek the protections of the ADA in the sports arena.¹⁵⁹

151. *Id.* at 499.

152. *Id.* The court held that as an organizing group, the defendant was not a public accommodation. *Id.* at 498. Furthermore, the court pointed out that although the bicycle tour took place on public roads, public roads are not places of public accommodation because they are not "operated, owned, or leased by a private entity." *Id.* at 499.

153. See *Anderson v. Little League Baseball, Inc.*, 794 F. Supp. 342, 344 (D. Ariz. 1992).

154. *Id.*

155. *Id.* at 343-44. *Anderson* had coached Little League baseball for three years prior to the adoption of the rule forbidding individuals in wheelchairs from coaching. *Id.* at 343. The Little League claimed this rule was to protect the safety of the players. *Id.* at 344.

156. *Id.* at 345. The court stated that the Little League's policy "amounts to an absolute ban . . . regardless of the coach's disability. Regrettably, such a policy—implemented without public discourse—falls markedly short of the requirement enunciated in the Americans with Disabilities Act." *Id.* The court relied on the fact that *Anderson* had coached for three years without experiencing any problems. *Id.* Furthermore, the court held that by being allowed to coach, *Anderson* will be able to benefit the young players by providing them with an example of how to overcome a personal challenge. *Id.*

157. *Id.* at 344.

158. See *supra* notes 140-58 and accompanying text (discussing ineffective efforts to seek protection under the ADA against professional sports organizations).

159. See *supra* notes 103-58 and accompanying text (outlining the largely unsuccessful challenges brought by disabled Americans in amateur and professional sports).

Prior to Casey Martin's suit, no litigant attempted to utilize the ADA against the Professional Golf Association.¹⁶⁰

C. *The Professional Golf Association*

The Professional Golf Association (PGA) is a golf association whose players have the opportunity to earn millions of dollars and become instant celebrities.¹⁶¹ Because the PGA offers elite golf tournaments, competitors seeking entrance to a PGA tournament must first qualify for the privilege to play.¹⁶² During qualification and throughout participation in a PGA tournament, competitors are required to abide by numerous rules.¹⁶³ However, since the beginnings of professional golf in America, categories of golfers have been denied the opportunity to compete.¹⁶⁴ Most recently, the disabled have been the subject of this discrimination.¹⁶⁵

1. Qualifying for the PGA Tour

More than three centuries after golf was developed in the United States,¹⁶⁶ the Professional Golf Association was formed.¹⁶⁷ The PGA is

160. Davis, *supra* note 11, at 3. Although the PGA has been the subject of several lawsuits, Casey Martin was the first claimant to file an ADA action against the PGA. *Id.* (noting that Martin "was the first to apply federal disability laws to professional sports").

161. See Brief for Petitioner at 3, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1706732. The PGA states that "these elite tournaments . . . test the ability of professional golfers to perform at the highest level of golf competition." *Id.* Tiger Woods is the most notable example of a professional golfer who has been successful in the game and has gained celebrity status. Gary Smith, *The Chosen: Tiger Woods was Raised to Believe that his Destiny is not only to be the Greatest Golfer Ever, but also to Change the World. Will the Pressures of Celebrity Grind Him Down First?*, SPORTS ILLUSTRATED, Dec. 23, 1996, at 28, available at 1996 WL 12549456.

162. See *infra* Part II.C.1 (defining how a player can gain access to a PGA tournament).

163. See *infra* Part II.C.2 (discussing the rules governing competition during PGA tournaments).

164. See *infra* Part II.C.3 (noting the PGA's long history of discrimination).

165. See *infra* Part II.C.4 (discussing Ford Olinger and his struggle to use a golf cart during the U.S. Open tournament).

166. Davis, *supra* note 11, at 27 (citing AL BARKOW, GOLF'S GOLDEN GRIND: THE HISTORY OF THE TOUR 28 (1974)). Although it is unknown where and when golf first began as a sport, it is thought that golf began in Scotland in the mid-1400s. LARRY DENNIS, A BEGINNER'S GUIDE TO GOLF 5 (1994). At its beginnings, a normal round of golf did not consist of eighteen holes, but varied depending upon the amount of land that was available for the course. *Id.* at 6. The game of golf, as it is known today, did not take shape until the eighteenth century. *Id.* Golf came to the United States during the 1700s, but it wasn't until the late 1800s when golf took off as an American sport. *Id.*

167. Davis, *supra* note 11, at 28 (citing AL BARKOW, GOLF'S GOLDEN GRIND: THE HISTORY OF THE TOUR 56 (1974)). Thirty-five chartered members founded the PGA in New York in 1916, after a number of amateur golf professionals met to discuss the feasibility of forming a national

a non-profit organization whose purpose is to promote golf tournaments for PGA members and to further the professional golf careers and interests of PGA members.¹⁶⁸ Consistent with this mission, the PGA conducts three professional golf tours each year: the PGA Tour;¹⁶⁹ the Buy.com Tour;¹⁷⁰ and the Senior PGA Tour.¹⁷¹ PGA events typically include four days of competition played on golf courses that are owned or leased by the PGA, and often require golfers to walk twenty to twenty-five miles per competition.¹⁷²

There are three ways of gaining entry into the PGA Tour.¹⁷³ First, a competitor who wins three events on the Buy.com Tour in the same year, or is among the top fifteen money winners on the Buy.com Tour, will be given an opportunity to play on the PGA Tour.¹⁷⁴ Secondly, a competitor can gain entry into a PGA Tour tournament through the open qualifying rounds, which are typically conducted one week before a PGA competition, and generally allow a competitor to use a golf cart.¹⁷⁵ The third and most common way of gaining entry into the PGA Tour is through the qualifying school, commonly known as the Q-School.¹⁷⁶ In order to compete in the Q-School, a competitor must have two

association for golf professionals. PGA of America, *Chronology of Events 1916-1919*, at http://www.pga.org/FAQ/History/chronolgy_1.html (last visited Feb. 1, 2002).

168. Brief for Respondent at 2, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1706762 (citing PGA Tour's Concise Statement of Material Facts, Dec. 24, 1997, at 3). From its inception, the mission of the PGA has been to: promote interest in golf; protect the interests of PGA members; and offer tournaments for the benefit of members. PGA Links, *History of the PGA of America*, at <http://www.pgalinks.com/pro/history.cfm> (last visited Feb. 1, 2002).

169. The United States PGA Tour is the world's biggest and richest professional golf tour. Worldbook Encyclopedia, *PGA and Pro Golf*, available at <http://www2.worldbook.com/features/golf/html/golf.htm> (last modified Jan. 9, 2002). The Tour offers annual prize money in excess of \$130 million to approximately 200 players who compete. *Id.*; *Martin I*, 984 F. Supp. 1320, 1321 (D. Or. 1998).

170. Approximately 170 players compete on the Buy.com Tour on an annual basis. *Martin I*, 984 F. Supp. at 1321. The Buy.com Tour was known as the Nike Tour during Martin's lawsuit. *Martin IV*, 121 S. Ct. 1879, 1884 n.1 (2001). This Note will, at all times, refer to the former Nike Tour by its current name, the Buy.com Tour.

171. *Martin I*, 984 F. Supp. at 1320. In order to qualify for the Senior PGA Tour, a golfer must be fifty years of age or older. Brief for Petitioner at 3 n.2, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1706732.

172. *Martin IV*, 121 S. Ct. at 1884; Brief for Petitioner at 4, *Martin IV* (No. 00-24).

173. *Martin IV*, 121 S. Ct. at 1884; *Martin I*, 984 F. Supp. at 1321.

174. *Martin IV*, 121 S. Ct. at 1884.

175. *Id.* at 1884-85.

176. *Id.* at 1884; *Martin I*, 984 F. Supp. at 1321.

recommendations and pay a \$3000 entry fee.¹⁷⁷ The first two rounds of the Q-School consist of seventy-two holes per round.¹⁷⁸ The third round consists of 108 holes.¹⁷⁹ However, unlike the first two rounds, which allow the use of golf carts, players must walk and use a caddie¹⁸⁰ during the third round of the Q-School.¹⁸¹ After the third round, thirty-five of the lowest scoring competitors receive a spot on the PGA Tour.¹⁸²

2. Rules Governing Play

Players must abide by numerous rules during a PGA competition.¹⁸³ Three major sources of rules govern play during PGA tournaments.¹⁸⁴ The primary source of rules are the Official Rules of Golf promulgated by the United States Golf Association (USGA) and the Royal and Ancient Golf Club of St. Andrews, Scotland.¹⁸⁵ The Official Rules of Golf define golf as “playing a ball from the teeing ground into the hole by a stroke or successive strokes in accordance with the Rules.”¹⁸⁶ Amateurs and professionals worldwide, as well as the PGA, USGA,¹⁸⁷

177. *Martin IV*, 121 S. Ct. at 1884. A qualifier is required to get two recommendations from a member of the PGA Tour. Brief for Respondent at 3, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1846091.

178. *Martin I*, 984 F. Supp. at 1321. Although a normal round of golf consists of eighteen holes, Rule 2-3 of the official Rules of Golf specifically states that a match can consist of a stipulated round. UNITED STATES GOLF ASSOCIATION, *supra* note 16, at 24.

179. *Martin I*, 984 F. Supp. at 1321.

180. UNITED STATES GOLF ASSOCIATION, *supra* note 16, at 10. A caddie is defined as “one who carries or handles a player’s clubs during play and otherwise assists him in accordance with the Rules.” *Id.*

181. *Martin I*, 984 F. Supp. at 1322.

182. *Id.* at 1321-22. The next seventy lowest scorers are given an opportunity to play on the Buy.com Tour. *Id.* at 1321.

183. Initially, golf was a sport without any official rules. DENNIS, *supra* note 166, at 6.

184. *Martin IV*, 121 S. Ct. 1879, 1884 (2001); Brief for Petitioner at 4 n.3, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1706732; UNITED STATES GOLF ASSOCIATION, *supra* note 16, at 6.

185. See United States Golf Association, *For the Good of the Game*, at http://www.usga.org/about/good_of_the_game.html (last visited Feb. 1, 2002) [hereinafter *For the Good of the Game*]. In cooperation with the Royal and Ancient Golf Club of St. Andrews, the United States Golf Association writes and interprets the Rules of Golf in order to “guard the tradition and integrity of the game.” *Id.*

186. UNITED STATES GOLF ASSOCIATION, *supra* note 16, at 23.

187. *For the Good of the Game*, *supra* note 185. The USGA is a private, non-profit association created “for the purpose of promoting and conserving throughout the United States the best interests and the true spirit of the game of golf as embodied in its ancient and honorable traditions.” Barry A. White et al., *Brief of the United States Golf Association as Amicus Curiae in Support of Appellant*, 1 VA. J. SPORTS & L. 110, 111 (1999). The USGA has been the United State’s national governing body of golf since 1894, when it was founded in an effort to conduct national championships and improve the game’s integrity. DENNIS, *supra* note 166, at 6-7; *For*

and the Ladies Professional Golf Association (LPGA) utilize these rules.¹⁸⁸

The Official Rules of Golf do not specifically prohibit the use of a cart or require players to walk during a competition.¹⁸⁹ However, Rule 33-1 authorizes the committee overseeing a tournament, such as the PGA, to set forth optional conditions of the game, which are listed in the appendix to the Official Rules of Golf.¹⁹⁰ Appendix I to the Rules states that “if it is desired to require players to walk in a competition, the following condition is suggested: ‘Players shall walk at all times during a stipulated round.’”¹⁹¹

A second source of rules governing golf competitions is the “Conditions of Competition and Local Rules,” also known as the hard card.¹⁹² The PGA Tour and Buy.com Tour hard cards apply to all events on their respective tours, and require all competitors to walk unless they are competing in an open qualifying round.¹⁹³ Finally, the committee in charge of a competition issues “Notices to Competitors” to all players before a tournament, and these notices only cover a specific tournament.¹⁹⁴ For example, a notice might authorize the use of a cart to speed up play when there is a long distance between holes.¹⁹⁵ Thus, although the Official Rules of Golf do not specifically

the Good of the Game, *supra* note 185. In addition to co-writing and interpreting the Rules of Golf, the USGA conducts thirteen annual championships (the U.S. Open, the U.S. Women’s Open, the U.S. Senior Open, and ten national amateur and state team championships).

188. *Martin IV*, 121 S. Ct. at 1884. The LPGA, founded in 1950, is the “longest running women’s professional sports organization in the world” whose purpose is to promote and advance women’s golf. LADIES PROFESSIONAL GOLF ASSOCIATION, LPGA’S GUIDE TO EVERY SHOT 187 (2000).

189. See UNITED STATES GOLF ASSOCIATION, *supra* note 16, at 23-121 (outlining the rules of play). The Rules do not specifically require a player to walk the course between holes, nor do they prohibit the use of motorized devices, such as a golf cart. See *id.*

190. *Id.* at 144. The Rules of Golf include local rules that are made by a local committee. *Id.* at 118.

191. *Id.* at 149.

192. Brief for Petitioner at 4 n.3, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1706732. The PGA creates and issues the hard card rules for each of the three tours that are offered by the PGA. *Id.* at 3-4. As an example, a rule dictated in the hard card prohibits competitors from using golf balls which do not conform to USGA standards. *Id.* at 4 n.4.

193. *Id.* at 4. The PGA’s “hard card” requires that “[p]layers shall walk at all times during a stipulated round unless permitted to ride by the PGA Tour Rules Committee.” *Id.* at 5 n.5. The hard card for the Buy.com Tour contains virtually the same language. *Id.* The PGA Rules Committee may permit players to use a cart for safety reasons, in order to avoid requiring them to cross a street, or when the configuration of the course does not make it feasible for them to walk. *Id.*

194. *Id.* at 4 n.3.

195. *Martin IV*, 121 S. Ct. 1879, 1885 (2001). Other examples include notices of how the Rules should be applied to a water hazard or a man-made obstruction on the course. *Id.*

prohibit carts, the PGA is able to use the hard card to prohibit competitors from using a cart.¹⁹⁶

3. History of Discrimination

Since the beginnings of golf in the United States, there have been several disputes relating to discrimination.¹⁹⁷ These disputes have centered around racial discrimination¹⁹⁸ and discrimination based on disability.¹⁹⁹ Racial discrimination has been evident in golf since the creation of professional golf in America.²⁰⁰ For example, the PGA's original constitution required that all players be Caucasian.²⁰¹ Black applicants were consistently denied membership to the PGA, resulting in anger and humiliation, as well as difficulty maintaining their status as professionals.²⁰² This type of racial discrimination continued until 1961, when the "Caucasian Only" clause was removed from the PGA's constitution.²⁰³ However, the removal of the clause was not the end of racial discrimination, as the first black male was not invited to play in the Masters Tournament until 1975.²⁰⁴ Racial discrimination continued to be evident in the PGA through the 1990s.²⁰⁵ Most recently, in 1997, professional golfer Fuzzy Zoeller commented that Tiger Woods, upon

196. See *supra* note 193 and accompanying text (detailing the rules governing play during a professional golf tournament).

197. See *infra* notes 198-214 and accompanying text (noting how the PGA has discriminated in the areas of race and disability).

198. See *infra* notes 200-07 and accompanying text (exploring the racial discrimination that has been evident in the PGA).

199. See *infra* notes 208-14 and accompanying text (outlining professional golf's involvement with disability discrimination).

200. See CALVIN H. SINNETTE, *FORBIDDEN FAIRWAYS: AFRICAN AMERICANS AND THE GAME OF GOLF* 122 (1998). For example, in 1928, two African-American golfers took legal action against the USGA after they were disqualified from competing in a USGA sponsored tournament. *Id.* The men were successful, and the tournament was suspended until the men were reinstated by the USGA. *Id.* The men were subsequently reinstated, but withdrew from the tournament having proved their point. *Id.*

201. *Id.* at 125. Section One of Article III of the PGA constitution stated that membership in the association was limited to "Professional Golfers of the Caucasian race." *Id.*

202. *Id.* Without membership in the PGA, African-American players were denied the large tournament money that only went along with a PGA tournament. *Id.* Because African-American golfers were denied access to all but three white tournaments in the mid-1940s, players had a difficult time maintaining their skills as professionals. *Id.*

203. Davis, *supra* note 11, at 29.

204. *Id.* Lee Elder was the first African-American player to be invited to the Master's Tournament. Dave Hannigan, *Driving Out Prejudice*, SUNDAY HERALD (Scotland), Feb. 4, 2001, at 17, available at 2001 WL 8470385.

205. See John Leland, *From the Rough. Disabled Golfer Denied Use of a Golf Cart During Qualifying Tournament*, NEWSWEEK, Mar. 9, 1998, at 48, available at 1998 WL 9578186. The PGA continued to frequent clubs that barred African-Americans up until the 1990s. *Id.*

winning the Master's Tournament, would likely be serving up the stereotypical black staple of "fried chicken and collard greens" at the Champion's dinner.²⁰⁶ Thus, racism continues to invade professional golf.²⁰⁷

Beyond racial discrimination, disability discrimination has plagued professional golf.²⁰⁸ In fact, Casey Martin's request to use a golf cart was not the first time that professional golf tackled the issue of deciding whether to allow a disabled player to use a golf cart.²⁰⁹ In 1987, the PGA denied Charlie Owens, a player who sustained an injury in a parachuting accident, the use of a cart for the 1987 Senior Open.²¹⁰ Owens walked the first nine holes on crutches in protest of the denial and then withdrew from the tournament.²¹¹ Similarly, the PGA denied Lee Elders the use of a cart for the 1995 Senior Open after he suffered a heart attack.²¹² However, in the 1990s, players such as Paul Asinger and Scott Verplank, professional golfers suffering from cancer and diabetes, respectively, chose to walk without requesting the use of a cart.²¹³ Most recently, Ford Olinger and Casey Martin, both suffering from debilitating diseases, requested the use of a cart and, like those before them, were denied by the USGA and the PGA.²¹⁴

4. Ford Olinger

Ford Olinger is a professional golfer afflicted with bilateral avascular necrosis, a degenerative condition that significantly impairs his ability to walk.²¹⁵ In 1998, Olinger petitioned the USGA for the right to use a

206. Hannigan, *supra* note 204, at 17. In commenting on Zoeller's statement, Woods declared "I forgive him but I can't forget." *Id.*

207. *See id.*

208. *See infra* notes 209-14 and accompanying text (outlining how professional golf has discriminated against the disabled).

209. Morfit, *supra* note 24, at G6. Since 1986, the USGA has had thirteen requests from individuals desiring to use a golf cart during a PGA event. *Olinger v. United States Golf Ass'n*, 205 F.3d 1001, 1003 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001).

210. Morfit, *supra* note 24, at G6.

211. *Id.*

212. *Id.*

213. Davis, *supra* note 11, at 30. Asinger continued to walk the course despite battling the effects of chemotherapy. *Id.* Prior to Martin's case, Scott Verplank chose to walk rather than ask to use a cart even though he suffers from diabetes. *See Nightline, supra* note 2.

214. *See infra* Parts III.C.4, III.D (discussing Ford Olinger and Casey Martin's struggle to use a cart during professional golf tournaments).

215. *Olinger v. United States Golf Ass'n*, 205 F.3d 1001, 1003 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001). Due to Olinger's disability, he can no longer walk an entire round of golf. *Olinger v. United States Golf Ass'n*, 55 F. Supp. 2d 926, 929 (N.D. Ind. 1999), *aff'd*, 205 F.3d 1001 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001).

golf cart during the qualifying rounds of the U.S. Open.²¹⁶ Like those before him requesting the use of a cart, the USGA denied his request.²¹⁷ Thereafter, Olinger filed an action under the ADA.²¹⁸ The United States District Court for the Northern District of Indiana granted Olinger a temporary restraining order, allowing him to utilize a cart in his attempt to qualify for the U.S. Open.²¹⁹ After a full trial, the district court ruled against Olinger.²²⁰ First, the court held that the golf course operated by the USGA was a place of public accommodation under Title III.²²¹ Second, the district court ruled that allowing Olinger to utilize a golf cart would fundamentally alter the nature of the competition.²²²

On appeal, the Seventh Circuit affirmed the ruling of the district court.²²³ The court assumed that the USGA was an operator of a place of public accommodation, and chose instead to decide the case on

216. *Olinger*, 205 F.3d at 1004.

217. *Id.* Since 1895, only one player has used a cart while competing in the U.S. Open. *Id.* at 1003.

218. *Id.*

219. *Olinger*, 55 F. Supp. 2d at 929. The temporary restraining order was granted after the court found that excluding Olinger from the qualifying rounds would have meant that he could not participate in the 1998 U.S. Open and that the U.S. Open had previously made arrangements so that Casey Martin would be allowed to use a cart during qualifying. *Id.* at 929 n.1. Despite the district court's order, Olinger did not fare well, and failed to make it to the second round of qualifying for the Open. *Olinger*, 205 F.3d at 1004.

220. *Olinger*, 55 F. Supp. 2d at 928.

221. *Id.* at 931-32. The court held that the USGA itself cannot be a public accommodation because it is a membership organization, thus falling out of Title III's definition of a public accommodation. *Id.* at 931. However, as the lessor and operator of golf courses which are used for the U.S. Open and qualifying, the USGA is an operator of a place of public accommodation. *Id.* While operating these courses, the USGA restricts the normal operation of the course and reserves the course to its competitors. *Id.* Thus, Title III applies to the USGA as an operator of a place of public accommodation. *Id.* at 933.

222. *Id.* at 934. In ruling on the reasonableness of allowing Olinger to use a cart, the court stated that "the golf cart has become so ubiquitous in the sport that any such challenge (to the reasonableness of using a golf cart) would seem doomed." *Id.*; see also *supra* note 91 (defining a reasonable accommodation). In holding that a cart would fundamentally alter the nature of the championship, the court concluded that allowing a player to use a golf cart would provide a player with a competitive advantage. *Olinger*, 55 F. Supp. 2d at 935. Citing a report by an expert in the physiology of walking, the court stated that an able-bodied golfer who uses a cart on the average summer day "has a significant and unfair advantage over an average able-bodied 25-35 year-old golfer who is walking. The person who walks the course under those conditions performs the same amount of physiologic work as if he had run 11-minute miles for 2.5 hours." *Id.* Furthermore, removing walking would remove stamina from the qualities to be tested during a competition. *Id.* at 934.

223. *Olinger*, 205 F.3d at 1007.

whether a cart fundamentally alters the nature of the U.S. Open.²²⁴ In holding that Olinger's request would fundamentally alter the nature of the golf competition, the Seventh Circuit accepted the findings of the district court that riding fundamentally alters the nature of the U.S. Open by removing stamina from the game.²²⁵ Although it might seem that Ford Olinger's case is a rare one in which a disabled golfer is able to make it to the top ranks of professional golf, Olinger's case is oddly similar to that of another disabled golfer, Casey Martin.²²⁶

D. Casey Martin

Casey Martin was diagnosed with Klippel-Trenaunay-Weber syndrome,²²⁷ a rare circulatory disorder, at the age of three.²²⁸ This permanent, progressive deformity causes blood to pool in Martin's lower right leg.²²⁹ As blood pools in his leg, Martin's entire leg from the hip down becomes swollen and disfigured.²³⁰ Because Martin lacks

224. *Id.* at 1005. The Seventh Circuit stated that while there was some logic to the contention that the USGA does not operate a place of public accommodation, "we hesitate to embrace it for we can resolve this appeal . . . on a more narrow ground." *Id.*

225. *Id.* at 1006-07. The Seventh Circuit relied on the district court's holding that using a cart removes stamina from the game and the fatigue, heat, and humidity associated with the game would be of lesser importance in the game. *Id.* at 1006; *Olinger*, 55 F. Supp. 2d at 937. The court also agreed with the district court's holding that waiving the "no-cart" rule would force the USGA to "develop a system and a fund of expertise to determine whether a given applicant truly needs, or merely wants, or could use but does not need, to ride a cart to compete." *Olinger*, 205 F.3d at 1007; *Olinger*, 55 F. Supp. 2d at 937.

226. See *infra* Part II.D (outlining Martin's struggle to utilize a cart in the PGA Tour).

227. *Martin IV*, 121 S. Ct. 1879, 1885 (2001). Klippel-Trenaunay-Weber syndrome is a vascular disorder characterized by a birth mark, varicose veins, and bony and soft tissue enlargement or atrophy in an extremity. Sturge-Weber Foundation, *Health and Wellness: KT-What is It?*, at <http://www.sturge-weber.com/aboutkt.htm> (last modified Aug. 20, 2001). Bleeding, skin infections, and significant amounts of pain are also associated with this disease. *Id.* However, each case of the disease is different, with patients exhibiting varying abnormalities and degrees of severity. *Id.* While enlargement of one or more limbs is the most common ailment with this disease, atrophy of the affected limb can also occur. *Id.* Both of these symptoms impair the ability of the limb to function normally, often times affecting a person's mobility. *Id.* In rare instances, amputation of the affected limb may be necessary. *Id.*

228. *Nightline*, *supra* note 2; Brief for Respondent at 1 n.1, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1846091. Martin's disease is so rare that only 1000 cases are known to exist in the world. *Nightline*, *supra* note 2.

229. Garrity, *supra* note 15, at G10. Blood in Martin's leg is able to circulate to his right leg, but a blockage at his knee prevents recirculation of the blood back to the heart. *Nightline*, *supra* note 2.

230. *Martin II*, 994 F. Supp. 1242, 1243 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001). Because of the swelling in Martin's leg, he must wear a double set of specially designed support stockings in order to remain upright. *Id.*; see also *Nightline*, *supra* note 2 (discussing Casey Martin's need to wear a stocking to reduce the swelling in his right leg). Compression garments worn on the afflicted limb are a common form of treatment which is used to reduce stress and swelling in the limb. Sturge-Weber Foundation, *supra* note 227.

a normal circulatory system in his leg, his bones below the knee have become weak and brittle, resulting in severe atrophy of his right leg.²³¹ Not only is walking painful for Martin, but it also places him at significant health risks, including the development of blood clots, fracturing of his tibia, and the possible need for amputation above his right knee.²³²

Despite his susceptibility to a wide range of medical problems, Casey Martin started playing sports at an early age.²³³ Martin first began to play golf at the age of six, while utilizing a splint to support his right leg.²³⁴ He also developed into a star shooter on his sixth and seventh grade basketball teams.²³⁵ Martin's athleticism caused significant problems, however, and the strain on his leg eventually eroded the cartilage in Martin's right knee.²³⁶ His condition did not stop Martin's athletic pursuits, and as a young golfer Martin won seventeen amateur championships before the age of fifteen.²³⁷

During his collegiate years from 1990 to 1995, Martin attended Stanford University on a golf scholarship, where he became a two-time Academic All American.²³⁸ While at Stanford, Martin's condition worsened.²³⁹ Initially, Martin wore a splint on his right leg to help ease

231. Brief for Respondent at 1, *Martin IV* (No. 00-24), available at 2000 WL 1846091; see also *Nightline*, *supra* note 2. Martin's orthopedic surgeon describes Martin's right knee as "that of a 70- or 80-year-old," making it nearly impossible for him to play golf. Garrity, *supra* note 15, at G10.

232. *Martin II*, 994 F. Supp. at 1243. Should Martin stumble or fall, amputation would almost certainly be necessary because of the loss of bone stock and atrophy of the tibia which has occurred during Martin's lifetime. Garrity, *supra* note 15, at G10; Christopher M. Parent, Note, *Martin v. PGA Tour: Misapplication of the American with Disabilities Act*, 26 J. LEGIS. 123, 132 (2000). Casey Martin stated that his right leg has prevented him from "living a normal life." Thomas Health, *Martin Gives Emotional Testimony in Courtroom; Golfer Recounts Pain From Leg Disorder*, WASHINGTON POST, Feb. 5, 1998, at C1, available at 1998 WL 2466034. Martin states that his leg has caused him "such immense pain that he has been unable to sleep uninterrupted for many years" and that he takes at least five Advils a day, and "no longer runs, exercises or drives." *Id.*

233. See Morfit, *supra* note 24, at G6.

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.* Despite the pain and disability associated with Martin's illness, Martin often chose to walk rather than use a cart. *Id.*

238. Brief for Respondent at 1, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1706762. While at Stanford, Martin studied economics, tutored Hispanic youth, studied the Bible, and was even known to play the piano at fraternity parties. Garrity, *supra* note 15, at G10.

239. Morfit, *supra* note 24, at G6.

the discomfort, but after developing shinsplints,²⁴⁰ Martin was left with two alternatives: walk in pain or request that the NCAA allow him to use a cart during competitions.²⁴¹ Martin thereafter requested permission to use a cart during the 1994 NCAA championship, and both the NCAA and Pacific 10 Conference gave him permission to use a cart for the remainder of his collegiate career,²⁴² where Martin led his team to the NCAA national championship.²⁴³

After graduating from Stanford, Martin turned professional and played on the Hooters Mini-Tour²⁴⁴ for two years, where tour officials prohibited the use of carts.²⁴⁵ Despite his success on the Hooter's Mini-Tour, Martin occasionally chose to play on the Tommy Armour Mini-Tour²⁴⁶ because it allowed the use of carts.²⁴⁷ After playing on the Hooters Mini-Tour for two years, Casey Martin entered the PGA's Q-School tournament.²⁴⁸ Martin played well in the first two rounds, and utilized a cart as allowed by the PGA rules.²⁴⁹ Before the third round, Martin requested to use a cart, and submitted medical data as evidence of his disability.²⁵⁰ After the PGA commissioner denied Martin's request, Martin filed a lawsuit against the PGA.²⁵¹ He sought an injunction under the ADA that would require the PGA to waive the "no-cart" rule for the third round of the Q-School tournament, the Buy.com

240. TABER'S CYCLOPEDIA MEDICAL DICTIONARY 1751-52 (18th ed. 1997). Shinsplints are defined as "pain in the anterior, posterior, or posterolateral compartment of the tibia." *Id.* Shinsplints usually occur following "strenuous or repetitive exercise." *Id.*

241. Morfit, *supra* 24, at G6.

242. *Id.*; Garrity, *supra* note 15, at G10.

243. Davis, *supra* note 11, at 32.

244. NGA Hooters Tour, *Tour History*, at <http://ngahooterstour.com/history.html> (last modified Aug. 15, 2001). The Hooters Tour is a development tour designed to provide a chance to "compete in a professional atmosphere as well as achieve financial success." *Id.*

245. Morfit, *supra* note 24, at G6. To deal with the fact that he could not use a cart, Martin often curtailed his schedule, competing for a few weeks and then resting his leg. *Id.*

246. The Tommy Armour Mini-Tour was a professional tour designed to provide aspiring golfers who did not make a PGA Tour a chance to compete at the professional level. Alan Byrd, *Training for the Top: Local Mini-Tour Helps Develop Golfers, Prepare Them for the PGA Tour* (Mar. 21, 1997), at <http://orlando.bizjournals.com/orlando/stories/1997/03/24/focus1.html> (last visited Feb. 1, 2002).

247. Morfit, *supra* note 24, at G6.

248. *See id.*

249. *Martin I*, 984 F. Supp. 1320, 1322 (D. Or. 1998), *aff'd*, 204 F. 3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001).

250. *Martin IV*, 121 S. Ct. 1879, 1886 (2001). Because Martin was able to use a cart during the first two rounds of the Q-School, he did not request the use of a cart until the third round. *Martin I*, 984 F. Supp. at 1322.

251. *Martin I*, 984 F. Supp. at 1322.

Tour, and the PGA Tour.²⁵² After a preliminary injunction was granted, which allowed Martin to use a cart for the third round of the Q-School, Martin played well enough to qualify for the Buy.com Tour.²⁵³ Thereafter, the stage was set for Casey Martin's legal battle.²⁵⁴

III. DISCUSSION

The Supreme Court's decision in *Martin* was the culmination of a long legal battle in which Casey Martin sought the protection of the ADA in order to compete on the PGA Tour.²⁵⁵ The United States District Court for the District of Oregon, as well as the United States Court of Appeals for the Ninth Circuit, held that the PGA violated Title III by not allowing Casey Martin to use a golf cart.²⁵⁶ Despite successfully petitioning the Supreme Court for certiorari, the PGA fared no better, and found themselves faced with a 7-2 decision in favor of Martin and a strong dissent written by Justice Scalia.²⁵⁷

A. District Court: Motion for Summary Judgment and Dispositive Opinion

In a two-part opinion, the United States District Court for the District of Oregon held that the PGA's "no-cart" rule violated Title III of the ADA.²⁵⁸ Martin filed his suit under the main premise²⁵⁹ that the PGA,

252. *Id.*

253. *Id.* Casey Martin missed qualifying for the PGA Tour by two strokes. Davis, *supra* note 11, at 33 (citing Peter Keratosis, *PGA's Rule Takes Martin for a Ride*, FLORIDA TODAY, Jan. 18, 1998, at 1C). Thereafter, a stipulation was reached between the PGA and Casey Martin where Martin was allowed to use a cart during the first two rounds of the Buy.com Tour. Morfit, *supra* note 24, at G6. Martin won the first Buy.com Tour event he played in, beating his nearest competitor by one stroke. *Id.*

254. See *infra* Part III (discussing Martin's legal battle against the PGA).

255. See *Martin I*, 984 F. Supp. at 1322.

256. See *infra* Part III.A (discussing the holding and reasoning of the district court's opinion in *Martin*); see *infra* Part III.B (outlining the Ninth Circuit's opinion).

257. *Martin IV*, 121 S. Ct. 1879, 1883, 1889, 1898, 1902 (2001); see also *infra* Part III.C.1 (outlining the majority's opinion); Part III.C.2 (discussing the dissenting opinion).

258. *Martin II*, 994 F. Supp. 1242, 1252 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001). The district court issued two opinions in *Martin*, a ruling on the PGA's motion for summary judgment and the dispositive opinion. *Id.*; *Martin I*, 984 F. Supp. at 1326. For purposes of this Note, both opinions will be combined.

259. *Martin I*, 984 F. Supp. at 1323. As part of his Title III claim, Martin argued that the PGA was subject to the requirement that any person offering licensing or credentialing must do so in a manner accessible to the disabled. *Id.* In addition to the Title III claim, Martin also argued that Title I applied. *Id.* As an employer, Martin argued that the PGA "is prohibited from discrimination against a qualified individual with a disability . . . in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job

as a private entity which owns or operates a place of public accommodation, violated Title III of the ADA.²⁶⁰ In response to Martin's claim, the PGA moved for summary judgment and claimed that the ADA does not apply to PGA tournaments.²⁶¹ The PGA argued that it was not a place of public accommodation because it was exempt from Title III as a private entity.²⁶² In addition, the PGA argued that it was a "mixed use" facility, where the areas inside the competition are not subject to Title III because they are not available to the general public.²⁶³ Alternatively, the PGA asserted that even if it constituted a public accommodation, allowing the use of a golf cart would fundamentally alter the nature of the golf game.²⁶⁴

In ruling on Martin's Title III claim,²⁶⁵ the district court applied a seven factor balancing test to reject the PGA's argument that as a private club, it was exempt from Title III.²⁶⁶ Specifically, the court

training, and other terms, conditions, and privileges of employment." *Id.* (citing 42 U.S.C. § 12112(a) (1994)); *see also supra* notes 67-70 and accompanying text (outlining Title I).

260. *See* 42 U.S.C. § 12182 (1994); *Martin I*, 984 F. Supp. at 1323. A public accommodation must make a reasonable modification for Martin unless the modification would fundamentally alter the nature of the accommodation. *See* 42 U.S.C. § 12182; *see also supra* notes 90-92 and accompanying text (outlining a reasonable accommodation).

261. *Martin I*, 984 F. Supp. at 1323. In response to Martin's Title I claim, the PGA argued that Martin was not an employee of the PGA Tour. *Id.*

262. *Id.* The PGA claimed that it was a non-profit organization, which should be exempted under Title III as a private club. *Id.*

263. *Id.* at 1326. A "mixed use" facility argument states that certain accommodations are composed of different zones, only some of which are available to the public. *Id.* Areas that are available to the public are considered public accommodations under Title III. *Id.* However, areas which are not available to the public are not public accommodations, and thus inapplicable to Title III. *Id.*

264. *Martin II*, 994 F. Supp. 1242, 1244 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001). This defense was based on the argument that Title III does not require an entity to make an accommodation for the disabled if the modification would fundamentally alter the nature of its program. *See id.*; *see also supra* notes 91-92 and accompanying text (outlining when an owner or operator of a place of public accommodation does not have to make an accommodation for an individual's disability).

265. *Martin II*, 994 F. Supp. at 1247. Judge Coffin quickly rejected Martin's Title I claim that the PGA was an employer, as well as the argument that the PGA is an entity offering courses and examinations. *Id.* Specifically, the court stated "I reject (without detailed elaboration) plaintiff's claims that he is a PGA Tour employee and that the [Buy.com Tour] is a 'course or examination' under the Act." *Id.* (citing 42 U.S.C. § 12182 (1994)).

266. *Martin I*, 984 F. Supp. at 1324-26. The seven factor balancing test includes consideration of: genuine selectivity, amount of membership control, history of organization, use by non-members, purpose of the club, advertising for membership, and non-profit status. *Id.* Under the genuine selectivity factor, consideration is given to whether the club screens out members based on "social, moral, spiritual, or philosophical beliefs." *Id.* at 1325 (citing *Quijano v. Univ. Fed. Credit Union*, 617 F.2d 129 (5th Cir. 1980)). The membership control factor looks at the amount of control that members possess in deciding who is able to join the club. *Id.* The history of the organization determines whether the organization was formed as a "sham" to

noted that the PGA is a nonprofit entity organized to generate revenue for its employees and was not the type of interest Congress sought to protect under the private club exemption.²⁶⁷ The court also determined that PGA tournaments were not limited to PGA members,²⁶⁸ and that the private club exemption was not designed to protect the PGA's ability to select members based on athletic skill.²⁶⁹

After holding that the PGA was not exempt from Title III as a private club, the district court held that the PGA Tour was a place of public accommodation subject to Title III.²⁷⁰ The court relied on the fact that a golf course is specifically included in the definition of a public accommodation under Title III.²⁷¹ In holding that PGA tournaments are public accommodations, the court rejected the PGA's argument that its tournaments were mixed-use facilities where the areas inside the ropes were not part of a public accommodation because these areas were not accessible to the public.²⁷² In rejecting this claim, the court pointed out

prevent a sector of the population from joining, or whether the club is a "bona fide" organization. *Id.* The non-member use prong determines the extent to which non-members are allowed access to the club, as reliance on non-members for revenue or use of membership amenities will weigh against private club status. *Id.* Under the club's purpose factor, a mercantile purpose for a club will weigh against private club status. *Id.* In analyzing whether the club advertises for new membership, organizations that advertise for new members cannot fall within the private club exemption. *Id.* Finally, under the non-profit status prong, the fact that an organization is non-profit will not be enough for private club status if the organization's purpose is to create revenue for its members. *Id.*

267. *Id.* at 1326. Non-profit status does not mean that an entity will be exempted under Title III. *Id.* at 1324 (citing *Quijano*, 617 F.2d at 131, 133). In this case, the court held that "generating revenue for its members scarcely seems to qualify as the type of protectable interest Congress had in mind when it excluded private clubs from coverage." *Id.*

268. *Id.* at 1325. A large number of non-members are allowed access to Tour events, including vendors, scorekeepers, and the media. *Id.* In addition, the court held that a large degree of non-membership use exists because the PGA relies on the public to generate revenue. *Id.* The court cited *Smith v. YMCA*, where the Fifth Circuit held that the YMCA could not be a private club because it enjoyed a large amount of revenue from the general public. *Id.* (citing *Smith v. YMCA*, 462 F.2d 634, 648 (5th Cir. 1972)).

269. *Id.* at 1324-25. The court held that traditional selectivity revolves around "social, moral, spiritual, or philosophical beliefs," and not the natural "weeding out" of individuals which is inherent at the top level of professional sports. *Id.* at 1325.

270. *Id.* at 1326.

271. *Id.* Title III specifically includes a "golf course, or other place of exercise or recreation" in the definition of Title III. 42 U.S.C. § 12181(7)(L) (1994).

272. *Martin I*, 984 F. Supp. at 1327. The PGA contended that "since the public gallery is not allowed inside the playing area, the fairways and greens of its golf courses are not places of public accommodation." *Id.* at 1326. The PGA analogized a golf course to a baseball stadium, where the bleachers were subject to Title III, but the dugout is not because the public cannot access the dugout. *Id.* at 1327. In rejecting this argument, the district court subsequently relied on *Independent Living Resources v. Oregon Arenas Corp.*, where the court held that the executive suites of a sports arena are subject to Title III even though they are not available to the public. *Id.* (citing *Indep. Living Res. v. Or. Arenas Corp.*, 982 F. Supp. 698 (D. Or. 1997)).

that people who are not PGA Tour members are given access to the areas of the course inside the rope, including caddies, thus rendering the PGA's mixed use argument inapplicable.²⁷³

After determining that the PGA was a place of public accommodation, the district court considered whether allowing Martin to use a golf cart would be a reasonable accommodation under the ADA.²⁷⁴ The court held that Martin successfully demonstrated that using a golf cart was reasonable considering the nature of the game of golf.²⁷⁵ Furthermore, golf carts are used in other PGA events, such as certain rounds of the Q-School and the Senior PGA Tour, and the NCAA and Pacific 10 Conference allow carts to be used in order to accommodate a disabled player.²⁷⁶

Finally, the court addressed whether a modification of the "no-cart" rule fundamentally alters the nature of a PGA tournament.²⁷⁷ The district court held that a court must make an individualized determination rather than a generalized inquiry into the nature of the accommodation.²⁷⁸ Thus, the court's role was not to determine if waiving the "no-cart" rule would give a normal golfer an advantage, but whether it would specifically give Casey Martin an advantage over other golfers.²⁷⁹ The court held that the use of a cart was a necessary

273. *Id.* at 1327.

274. *Martin II*, 994 F. Supp. 1242, 1247 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001); *see also* notes 90-92 and accompanying text (defining Title III's requirement of a reasonable accommodation).

275. *Martin II*, 994 F. Supp. at 1249. The court reasoned that the official Rules of Golf do not require a player to walk the course. *Id.*

276. *Id.* The court also relied on the fact that when the PGA allows carts to be used, it imposes no handicap system when a player chooses to utilize a cart. *Id.*

277. *Martin II*, 994 F. Supp. at 1248; *see also supra* notes 90-92 and accompanying text (outlining when a modification fundamentally alters the nature of a good or privilege).

278. *Martin II*, 994 F. Supp. at 1249. The court cited *Johnson v. Gambrinus Co.* in stating that "the type of evidence [which] satisfies" the burden of proving a reasonable accommodation "focuses on the specifics of the plaintiff's or defendant's circumstances and not on the general nature of the accommodation." *Id.* (quoting *Johnson v. Gambrinus Co.*, 116 F.3d 1052, 1059 (5th Cir. 1997)). In *Johnson*, a blind man who used the aid of a guide dog filed suit against a brewery company who refused to allow him to take a public tour of the brewery with the aid of his guide dog. *Johnson*, 116 F.3d at 1056. *Johnson* filed suit under Title III of the ADA. *Id.* In determining which party had the burden of proof in showing that a reasonable accommodation had been requested, the court held that the plaintiff has the burden of proof in showing that he requested an accommodation and that the accommodation is reasonable. *Id.* at 1059. The court held that because a service animal was a reasonable accommodation, *Johnson* must be allowed access to the brewery tour using the aid of his guide dog. *Id.* at 1064.

279. *See Martin II*, 994 F. Supp. at 1249.

requirement for Martin in order to provide him with an opportunity to compete in PGA tournaments.²⁸⁰

Although the court accepted the PGA's argument that the purpose of the "no-cart" rule is to inject fatigue into the game, the court held that walking is not a significant element of golf under normal circumstances.²⁸¹ First, the body of the Official Rules of Golf do not specifically require golfers to walk the course.²⁸² Second, the court accepted the testimony of experts in psychology and fatigue who stated that the fatigue created from walking a round of golf is insignificant.²⁸³ Rather than being oppressive, the fatigue related to walking the course is considered low intensity exercise, causing psychological and not physical exhaustion.²⁸⁴ Thus, although walking a round of golf created an element of fatigue in the game, the fatigue of the average player was not nearly as high as what Martin must deal with in playing golf.²⁸⁵ Because Title III applies to the PGA, and Martin had successfully shown that a waiver of the "no-cart" rule was a reasonable accommodation that would not fundamentally alter the nature of the game, the district court granted Martin a permanent injunction, allowing Martin to use a cart during tour and qualifying events.²⁸⁶

280. *Id.* at 1253. During the hearing, Martin's doctor testified that Martin had previously made several unsuccessful attempts to use artificial devices, such as shoe inserts and various braces, in an effort to play without the use of a cart. *Id.* at 1250.

281. *Id.* at 1250.

282. *Id.* at 1249. The court stated that nothing in the Rules defines walking as part of the game or requires players to walk. *Id.* Rather, it is the optional provisions in the Appendix where a PGA specific rule requires players to walk unless permitted to use a cart by the PGA Rules Committee. *Id.*; see also *supra* notes 183-96 and accompanying text (outlining the Rules of Golf by which PGA professionals must abide).

283. *Martin II*, 994 F. Supp. at 1250. Expert testimony indicated that the calories expended during a round of golf are less than the total calories in a McDonald's Big Mac, and are expended during a five hour period, where the slow pace of the game and frequent opportunities to rest can easily replace the lost calories. *Id.* In determining that walking was an insignificant element of the game, the court also pointed to the fact that most golfers prefer to walk even if given a chance to ride. *Id.* at 1251. Thus, walking could not be a significant and oppressive element in the game if golfers would choose to walk. *Id.*

284. *Id.* The court stated that walking five miles during a golf tournament is not as physiologically exhausting as a "a requirement of running, or even walking 5 miles at a continuous gait." *Id.* at 1251 n.12.

285. *Id.* at 1251. Judge Coffin noted that Martin is not completely free from walking the course even with a cart. *Id.* With a cart, Martin must still walk one-quarter of the course during a round of golf. *Id.*

286. *Id.* at 1253.

B. Ninth Circuit Opinion

The Ninth Circuit affirmed the ruling of the district court, and held that PGA tournaments are places of public accommodation and that allowing Casey Martin to use a golf cart would not fundamentally alter the nature of the sport.²⁸⁷ Although the PGA declined to appeal the district court's holding that it was not a private entity, the PGA asserted new defenses as to why its tournaments were not public accommodations.²⁸⁸ Specifically, the PGA argued that its golf courses are not places of exercise or recreation because the players are competing in order to win money.²⁸⁹ In addition, the PGA argued that Title III is inapplicable because the PGA's competitions are not open to the public.²⁹⁰

In holding that the PGA operated a place of public accommodation, the Ninth Circuit stated that a golf course is unambiguously a public accommodation.²⁹¹ In so holding, the Ninth Circuit rejected the PGA's mixed use facility argument that the areas of competition are not open to the public and thus not public accommodations, stating that the argument too narrowly construed the definition of a public accommodation.²⁹² In addition, the court stated that the mixed-use facility argument was inconsistent with cases where courts have held that Title III applies to the playing field and not just the stands.²⁹³

287. *Martin III*, 204 F.3d 994, 1002 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001).

288. *Id.* at 997-99. The PGA also continued to argue that it operated a mixed-use facility. *Id.* at 998.

289. *Id.* at 997. The PGA stated that under the definition of a public accommodation, a golf course is listed with "other place[s] of exercise or recreation." *Id.* However, the PGA argued its golf courses do not fall within this definition because PGA courses are not used as places of recreation, but are used in order to make money. *Id.*

290. *Id.* Under this approach, the PGA claimed that its golf courses are not places of public accommodation because they are restricted to the best golfers, and hence not open to the public. *Id.*

291. *Id.* at 997. In addition, the court held that if a PGA tournament does not fall under the definition of a golf course, then it qualifies as a "place of exhibition or entertainment." *Id.*

292. *Id.*; *see also supra* note 263 and accompanying text (explaining the PGA's "mixed use" facility argument). The court noted that members of the general public who are not competitors, such as caddies and the media, are allowed inside the course. *Martin III*, 204 F.3d at 997

293. *Id.* at 998; *see, e.g.*, *Tatum v. NCAA*, 992 F. Supp. 1114, 1121 (E.D. Mo. 1998); *Anderson v. Little League Baseball, Inc.*, 794 F. Supp. 342, 344 (D. Ariz. 1992). In *Tatum*, a learning disabled student filed an ADA action against the NCAA when it refused to recognize an untimed ACT score in determining Tatum's eligibility to participate in intercollegiate sports. *Tatum*, 992 F. Supp. at 1116. In holding that Title III applied to the NCAA, the court reasoned that the NCAA exerted control over the operations of stadiums and auditoriums, and in the case of championships, leases facilities. *Id.* at 1119-21; *see also supra* notes 154-58 and accompanying text (stating that the Little League is a public accommodation under Title III as an operator of a baseball competition).

The Ninth Circuit also rejected the PGA's contention that its competition was not open to the public, and thus not subject to Title III.²⁹⁴ The court stated that being selective in choosing competitors is irrelevant, and thus a facility does not lose its status as a public accommodation merely because entry to the facility is limited.²⁹⁵ The court held that the Q-School is clearly a public accommodation because it is an open competition.²⁹⁶ Thus, PGA Tours can be no less of a public accommodation once the PGA restricts competition to the best athletes.²⁹⁷

Upon holding that a PGA tournament is a public accommodation, the Ninth Circuit then concluded that Casey Martin's use of a cart is a reasonable accommodation under Title III.²⁹⁸ Specifically, the Ninth Circuit noted that a cart allows Martin to access golf tournaments and poses minimal difficulty for the PGA in accommodating this request.²⁹⁹ Furthermore, the court noted that the PGA allows golfers to use carts during certain other competitions.³⁰⁰

Third, the Ninth Circuit stated that allowing the use of golf carts does not fundamentally alter the nature of golf.³⁰¹ Because it concluded that walking is not fundamental to the game of golf, the court rejected the PGA's argument that waiving a substantive sports rule always amounts to a fundamental alteration of the game.³⁰² Agreeing with the district

294. *Martin III*, 204 F.3d at 998. The PGA argued that its tournaments cannot take place on places of public accommodations because they are restricted to the best golfers, and not the public. *Id.*

295. *Id.* at 998-99. In stating that selectivity is irrelevant, the court analogized to elite universities that are selective in choosing whom to admit to the university. *Id.* at 998. The court stated that while those schools are highly selective, it does not mean that the students who are admitted to the university cannot utilize Title III. *Id.*

296. *Id.* at 999. The court stated that the Q-School was available to the public because anyone with \$3000 and two recommendations has the opportunity to compete. *Id.*

297. *Id.*

298. *Id.* at 999-1000.

299. *Id.* at 999. The court held that it was both reasonable and necessary to allow Martin to use a golf cart. *Id.* A cart is reasonable in that it solves Martin's access to the competition. *Id.* Allowing Martin to use a cart is also necessary, as Martin's disability makes it nearly impossible for him to walk the course. *Id.*

300. *Id.* at 1000.

301. *Id.* at 1000-02. The court affirmed an individualized inquiry approach in deciding whether a golf cart is a fundamental alteration of the game. *Id.* at 1002. The court reasoned that the PGA failed to show that an individualized inquiry acts as an "intolerable" burden to the PGA. *Id.*

302. *Id.* at 1000-01. The PGA argued that once a rule is determined to be substantive because it may affect the outcome of the sport, a modification of the rule would alter the nature of the game. *Id.* In defending this argument, the court stated that Title III does not prohibit all

court, the Ninth Circuit held that that the game of golf does not require walking, and noted that the PGA does not consider walking to be essential to golf as golf carts are allowed on the Senior Tour and the first two rounds of the Q-School.³⁰³ In addition, the court accepted the district court's findings that fatigue is insignificant to the game.³⁰⁴

Finally, the Ninth Circuit rejected the PGA's argument that allowing Martin to use a golf cart gives him a competitive advantage.³⁰⁵ The court noted that Martin must not only walk one quarter of the course with a cart, but also must endure significant pain and stress while getting in and out of the cart.³⁰⁶ In addition, Martin does not gain any advantage in shot making, which is ultimately where a golf tournament is won or lost.³⁰⁷ Therefore, the Ninth Circuit held that allowing Martin to use a golf cart is not a fundamental alteration, but merely permits Martin access to a type of competition in which he otherwise would not be able to engage.³⁰⁸ Thus, the court held that the PGA violated Title III by not allowing Martin to use a cart during competitions.³⁰⁹

C. United States Supreme Court Opinion

The United States Supreme Court granted certiorari in *Martin* in order to resolve a circuit split between the Seventh and Ninth circuits.³¹⁰ The Supreme Court faced two issues in *PGA Tour, Inc. v. Martin*.³¹¹ First, the Court sought to determine whether the ADA protects access to

alterations of a good or service, but only those which fundamentally alter the nature of the good or service. *Id.*

303. *Id.* at 999. Like the district court, the Circuit Court held that walking was not essential to the game of golf and found that the Official Rules of Golf do not specifically require a player to walk. *Id.*; *Martin II*, 994 F. Supp. 1242, 1248 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001).

304. *Martin III*, 204 F.3d at 1000. The court accepted the district court's findings that fatigue is primarily psychological. *Id.* Most golfers choose to walk even if given the chance to use a cart, and the PGA does not levy a handicap penalty if a golfer does use a cart. *Id.*

305. *Id.*

306. *Id.*; *see also supra* notes 227-32 and accompanying text (discussing Martin's condition and the pain he must endure while living with the condition).

307. *Martin III*, 204 F.3d at 1000.

308. *Id.*

309. *Id.* at 1002.

310. *Martin IV*, 121 S. Ct. 1879, 1889 (2001). The Seventh Circuit, in a result differing from the Ninth Circuit's opinion in *Martin*, held that waiving the "no-cart" rule would act as a fundamental alteration to the game of golf. *Olinger v. United States Golf Ass'n*, 205 F.3d 1001, 1006-07 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001); *see also supra* Part II.C.4 (discussing the Seventh Circuit opinion in *Olinger*).

311. *Martin IV*, 121 S. Ct. at 1884.

PGA tournaments by a qualified disabled competitor.³¹² Second, the Court faced the issue of whether a disabled competitor may be denied the use of a cart because the cart fundamentally alters professional golf.³¹³ The majority, in holding that the PGA violated Title III, held that PGA tournaments are places of public accommodation and that allowing Martin to use a golf cart does not fundamentally alter the nature of professional golf.³¹⁴ The dissent disagreed, stating that the PGA's tournaments are not places of public accommodation and allowing Martin to use a cart fundamentally alters the type of "no-cart" golf game that the PGA offers.³¹⁵

1. Majority Opinion

In a 7-2 opinion written by Justice Stevens, the Supreme Court affirmed the Ninth Circuit, and resolved both issues in favor of Casey Martin.³¹⁶ First, the Court held that PGA tournaments were public accommodations under Title III of the ADA.³¹⁷ Second, the Court held that the PGA discriminated against Casey Martin by not allowing him the use of a cart because a cart is a reasonable accommodation that does not fundamentally alter the nature of professional golf.³¹⁸

Initially, the majority held that the PGA's golf tours and qualifying rounds "fit comfortably" within Title III and Martin's disability "within its protection."³¹⁹ Without breaking from the conclusions reached by the lower courts, the Supreme Court relied on the fact that Title III specifically lists golf courses as places of public accommodation.³²⁰ The Court stated, however, that even if PGA tournaments did not fall under Title III as a golf course, its tournaments would be considered places of exhibition.³²¹ As an operator of a place of public accommodation, the Court held that the PGA cannot discriminate

312. *Id.* At the Supreme Court level, the PGA conceded that "its tournaments are conducted at places of public accommodation." *Id.* at 1890.

313. *Id.* at 1884.

314. *Id.* at 1890, 1894-98.

315. *Id.* at 1898-1903 (Scalia, J., dissenting).

316. *Id.* at 1884, 1897-98.

317. *Id.* at 1890.

318. *Id.* at 1893-98.

319. *Id.* at 1890.

320. *Id.*; see also *supra* note 87 and accompanying text (defining a public accommodation).

321. *Martin IV*, 121 S. Ct. at 1892. The Court relied on *Daniel v. Paul*, where the Court held that the definition of a "place of exhibition or entertainment" covers those who participate in "some sport or activity," as well as "spectators or listeners." *Martin IV*, 121 S. Ct. at 1892 (citing *Daniel v. Paul*, 395 U.S. 298, 306 (1969)).

against individuals in the full and equal enjoyment of the PGA's privileges.³²²

After holding that Title III was applicable to PGA competitions, the majority rejected the PGA's argument that its professional golfers are not members of the class sought to be protected under Title III because they are not "clients or customers" seeking to obtain the services of a public accommodation.³²³ The majority stated that the general parameters of Title III are broad and do not contain a client or customer limitation.³²⁴ Alternatively, even if Title III only applied to clients or customers, the Court held that a golfer who pays \$3000 to compete in the Q-School is clearly a client or customer who qualifies for Title III protection.³²⁵

Next, the Court considered whether the PGA discriminated against Casey Martin by denying him the use of a golf cart.³²⁶ Because the PGA did not challenge the lower courts' determination that a cart is a reasonable accommodation, the Court only needed to determine whether the use of a cart fundamentally altered the game of golf.³²⁷ To answer this issue, the majority concluded that professional golf could be modified in two ways.³²⁸ Initially, a change or elimination of a rule can alter an essential aspect of a sport to the point where it would not be acceptable even if it altered the game equally for all competitors.³²⁹

322. *Id.* at 1890. The majority stated that the PGA offers two privileges to the public, those of watching the competition and of being able to compete in the competitions. *Id.* at 1892. Members of the general public can compete in the competition through the qualifying tournament if they have \$3000 and two letters of recommendation. *Id.* Because Martin qualified through the Q-School, the PGA cannot discriminate against Martin in the privilege of the opportunity to compete and play on the tour. *Id.* at 1890.

323. *Id.* at 1890-92. In this argument, raised for the first time at the Supreme Court level, the PGA argued that the ADA protects only clients or customers of places of exhibition or entertainment. *Id.* at 1890-91. The PGA argued that it does not operate tournaments, but places of "exhibition or entertainment." *Id.* at 1891. Martin, the PGA claimed, was a provider and not a consumer of the PGA's services, similar to an actor in a theatrical production. *Id.* Therefore, Title III should not apply because Martin is not a client or customer. *Id.*

324. *Id.* The Court noted that the client or customer limitation applies to "clients or customers of the covered public accommodation that enters into a contractual, licensing or other arrangement," and not the entire provisions of Title III. *Id.* (quoting 42 U.S.C. § 12182(b)(1)(A)(iv) (1994)).

325. *Id.* at 1891-92.

326. *Id.* at 1893. The court reiterated that the standard for discrimination under a Title III claim is whether there was a failure to make a reasonable modification unless the PGA could demonstrate that the requested modification would fundamentally alter the nature of the sport. *Id.* (quoting 42 U.S.C. § 12182(b)(2)(A)(ii)).

327. *Id.*

328. *Id.*

329. *Id.* Justice Stevens stated that an unacceptable modification of the game would be a modification of "such an essential aspect of the game . . . that it would be unacceptable even if it

Alternatively, a modification could cause a less significant change, which is peripheral to the game, but might give a disabled player an advantage over other players.³³⁰ The majority held, however, that allowing Martin to use a cart does not amount to either type of modification.³³¹

First, the majority held that waiving the “no-cart” rule does not fundamentally alter the game because the use of a golf cart is not inconsistent with the character of golf.³³² The court initially noted that the Rules of Golf dictate that the essence of golf is shot-making,³³³ and not walking.³³⁴ Moreover, the Rules of Golf do not require players to walk, nor do they forbid the use of carts or penalize players for using a cart.³³⁵ Finally, the Court noted that the “no-cart” rule is not an indispensable feature of golf tournaments because carts are allowed on a number of professional tournaments and during a portion of the Q-School and PGA tournaments.³³⁶

Second, the majority rejected the PGA’s argument that allowing the use of a cart creates a competitive advantage, and fundamentally alters the outcome of a tournament by removing the element of fatigue from the game of golf.³³⁷ The majority noted that it is impossible to

affected all competitors equally . . .” *Id.* An example would be changing the diameter of the hole from three to six inches. *Id.*

330. *Id.* The Court did not cite an example of this type of fundamental alteration, but makes it clear that Martin’s case does not fall into this category. *See id.*

331. *Id.*

332. *Id.*

333. *Id.* at 1893-94; *see also supra* notes 183-96 and accompanying text (discussing the Rules of Golf and the rules governing play during a PGA tournament).

334. *Martin IV*, 121 S. Ct. at 1894-95. The majority stated that “[f]rom 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.” *Id.* at 1893-94 (citing KENNETH CHAPMAN, RULES OF THE GREEN 14-15 (1997)). The majority also pointed out that golf carts are widely used and encouraged today because the number of golf clubs have increased since the inception of the game, carts speed up play, and cart fees produce a large amount of revenue. *Id.* at 1894.

335. *Id.* Although the majority conceded that a “no-cart” rule appears in the “hard card,” the majority pointed out that the “no-cart” rule is based on an optional condition in the Appendix to the Rules of Golf. *Id.* at 1894-95. Therefore, the Court held the rule is not essential to the game of golf. *Id.* at 1895.

336. *Id.* The majority pointed out that carts are allowed during the first two rounds of the Q-School, the entire Senior PGA tournament, and the Senior Amateur and the Senior Women’s Amateur tournaments sponsored by the USGA. *Id.* The court also noted that carts are even allowed during certain rounds of the PGA and Buy.com Tours, although usually only in cases where there is a large distance between holes and a cart is needed to speed-up play. *Id.*

337. *Id.* at 1895-96. The PGA argued that the goal of golf at the highest level is to compare performance, which can only be meaningful if competitors are subjected to identical rules. *Id.* at 1895. Therefore a waiver of an outcome-affecting rule, such as the “no-cart” rule, would violate

guarantee that all competitors will play under the same conditions or that an individual's ability will be the sole determinant of a player's success.³³⁸ For example, factors such as the weather and luck may ultimately play a key role in determining a player's success.³³⁹ The majority also held that the fatigue from walking a four day PGA tournament is not significant enough to affect the outcome of the tournament.³⁴⁰

In concluding that walking does not significantly affect the outcome of a tournament, the majority reiterated the principle that the ADA requires a court to make an individualized inquiry into whether the use of a cart fundamentally alters the game.³⁴¹ The Court stated that if the purpose of the "no-cart" rule is truly to inject fatigue into the game, then an individualized inquiry shows that Martin endures greater fatigue with a cart than others do by walking.³⁴² Therefore, allowing Martin to use a cart does not compromise the purpose of the "no-cart" rule.³⁴³ Rather, the cart is a modification that provides an exception to a rule without impairing the purpose of the rule.³⁴⁴ Therefore, because the PGA is an operator of a place of public accommodation, and allowing Martin to use a golf cart does not fundamentally alter the game of professional golf, the majority held that the PGA must permit Martin to use a cart during all PGA tournaments.³⁴⁵

this equality and fundamentally alter the nature of the "highest level athletic event." *Id.* In rejecting the PGA's argument, the court pointed out that Title III did not provide an exemption for elite athletics, and thus the PGA did not have carte-blanche to determine which of its rules are essential. *Id.* at 1896, 1897 & n.51.

338. *Id.* at 1895.

339. *Id.* The Court stated that weather may have a significant impact on the success of the players. *Id.* As an example, the court stated that changes in weather could potentially create a harder playing green and increased wind, which could affect competitors differently. *Id.* A lucky bounce could also play a significant role, such that pure chance may have a greater impact on a player's success than fatigue. *Id.*

340. *Id.* at 1896. The majority relied on evidence showing that when players are given the chance to use a cart, most players still prefer to walk, as walking helps relieve the players' stress, allows them to keep the rhythm of their game, and gives the players a sense of the elements. *Id.* The majority also accepted the expert testimony heard in the district court, which concluded that fatigue from the game is primarily psychological. *Id.*

341. *Id.* at 1896-97. The court stated that an individualized inquiry must be used to determine "whether a specific modification for a particular person's disability would be reasonable under the circumstances as well as necessary for that person, and yet at the same time not work a fundamental alteration." *Id.* at 1896 (citing S. REP. NO. 101-116, at 61 (1989); H.R. REP. NO. 101-485, pt. 2, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 303, 385)).

342. *Id.* at 1897.

343. *Id.*

344. *Id.*

345. *Id.* at 1890-97.

2. Dissenting Opinion

The dissent, authored by Justice Scalia, disagreed with the majority opinion that PGA tournaments are places of public accommodation covered under Title III and that allowing Casey Martin to use a golf cart will not fundamentally alter the nature of professional golf.³⁴⁶ First, Justice Scalia determined that PGA tournaments are not places of public accommodation, and as a result, Title III does not protect Casey Martin.³⁴⁷ Second, Justice Scalia stated that a golf cart is not a reasonable accommodation because it forces the PGA to offer a different game of golf than that which it typically offers.³⁴⁸ Finally, he declared that the Court was not in a position to decide whether any athletic rule has a fundamental impact upon a competition.³⁴⁹

To begin, Justice Scalia disagreed with the majority's holding that Title III applies to sports organizations such as the PGA.³⁵⁰ First, he criticized the majority for reading the statutory definition of a public accommodation too broadly and in a way that would apply to individuals who were clearly not covered under Title III.³⁵¹ Second, Justice Scalia opined that Title III does not apply to Casey Martin because Title III is only meant to protect customers, of which Casey Martin is not.³⁵² Justice Scalia stated that the traditional understanding of public accommodation laws, such as Title III, is that they provide

346. *Id.* at 1898, 1902 (Scalia, J., dissenting). Justice Thomas joined Justice Scalia in the dissent.

347. *Id.* at 1898 (Scalia, J., dissenting); *see infra* notes 350-60 and accompanying text (outlining the dissent's view that the PGA does not operate places of public accommodation).

348. *Martin IV*, 121 S. Ct. at 1901-02 (Scalia, J., dissenting); *see infra* notes 361-65 and accompanying text (discussing the dissents opinion that a golf cart is not a reasonable accommodation for Casey Martin).

349. *Martin IV*, 121 S. Ct. at 1902-03 (Scalia, J., dissenting); *see infra* notes 366-74 and accompanying text (exploring the dissent's determination that allowing Martin to use a cart fundamentally alters professional golf).

350. *Martin IV*, 121 S. Ct. at 1898 (Scalia, J., dissenting).

351. *Id.* at 1898-99 (Scalia, J., dissenting). Justice Scalia stated that the majority's reading "muddles" the ADA and creates an unreasonable interpretation of Title III. *Id.* at 1899 (Scalia, J., dissenting). With this reading, Scalia opined that Title III would cover employees and independent contractors even though Title I excludes employers of less than fifteen employees and independent contractors from its provisions. *Id.* (Scalia, J., dissenting). He further argued that Congress has no reason to give employees and independent contractors protections that other employees are unable to receive because they do not work at a place of public accommodation. *Id.* (Scalia, J., dissenting).

352. *Id.* at 1900 (Scalia, J., dissenting). Furthermore, Justice Scalia stated that Title III did not apply to Martin because Title III only applies to privileges and not competitions or tryouts. *Id.* at 1900-01 (Scalia, J., dissenting). Scalia stated that the Q-School for which Martin sought a waiver of the "no-cart" rule was not a privilege, but rather a competition for entry, and thus not protected by Title III. *Id.* at 1900 (Scalia, J., dissenting).

rights for customers only and not providers.³⁵³ The dissent determined that the definition of a public accommodation envisions that customers will enjoy these goods and services.³⁵⁴ Because Martin and the PGA provide entertainment to customers, the dissent concluded that Martin is a provider of entertainment rather than a customer.³⁵⁵ Thus, because Martin is a provider, Title III cannot apply to Martin's case.³⁵⁶

Subsequently, Justice Scalia argued that even if Title III is applicable, the PGA Tour is not a public accommodation.³⁵⁷ Although he conceded that Title III names a golf course as a place of public accommodation, a golf course could also be a place of exercise or recreation.³⁵⁸ According to Justice Scalia, because a competitor's purpose is to make money and not exercise or recreate, a PGA tournament cannot be a place of public accommodation.³⁵⁹ Thus, Title III cannot be applied to protect Casey Martin.³⁶⁰

After considering whether Title III applied, Justice Scalia focused on how the majority failed to address whether a golf cart was a reasonable accommodation.³⁶¹ Justice Scalia pointed out that Title III does not regulate the content of a good, privilege, or service, but only requires that the disabled have access to the same goods, services, and privileges that the non-disabled enjoy.³⁶² Thus, Title III does not regulate the

353. *Id.* at 1898 (Scalia, J., dissenting). The dissent stated that when a law addresses discrimination by places of public accommodation through "contractual" arrangements, Title III only applies to clients or customers and not other parties. *Id.* at 1899 (Scalia, J., dissenting). In addition, Department of Justice regulations state that the purpose of a public accommodation requirement "is to ensure accessibility to the goods offered by a public accommodation." *Id.* (Scalia, J., dissenting) (quoting 28 C.F.R. § 36 (2000)).

354. *Id.* at 1898-99 (Scalia, J., dissenting). Justice Scalia used an auditorium or place of public gathering as an example. *Id.* at 1899 (Scalia, J., dissenting). Gathering, he stated, is the enjoyment derived from the auditorium. *Id.* (Scalia, J., dissenting). Thus, Title III covers those gathering but not those who clean the auditorium because they are working and not gathering. *Id.* (Scalia, J., dissenting).

355. *Id.* at 1900 (Scalia, J., dissenting). Justice Scalia stated that the PGA is a professional event that provides entertainment. *Id.* (Scalia, J., dissenting). Professional golfers do not enjoy the entertainment of the tour, but rather participate in the entertainment. *Id.* (Scalia, J., dissenting). Thus, Martin cannot be a customer. *Id.* (Scalia, J., dissenting).

356. *Id.* at 1899 (Scalia, J., dissenting).

357. *Id.* at 1900 (Scalia, J., dissenting).

358. *Id.* (Scalia, J., dissenting).

359. *Id.* (Scalia, J., dissenting). The dissent stated that because competitors on PGA tours are not buying recreation or entertainment, but are selling it, the PGA cannot be a public accommodation as a "golf course, or other place of exercise or recreation." *Id.* (Scalia, J., dissenting) (quoting 42 U.S.C. § 12181(7)(L) (1994)).

360. *Id.* (Scalia, J., dissenting).

361. *Id.* (Scalia, J., dissenting).

362. *Id.* (Scalia, J., dissenting).

content that a public accommodation must offer.³⁶³ Specifically, the Code of Federal Regulations states that a public accommodation is not required to alter its inventory in order to include special goods which can be used by the disabled.³⁶⁴ Justice Scalia concluded that allowing Martin to use a cart conflicts with the PGA's ability to provide a game of "walking-only" golf, and thus is an impermissible attempt to regulate content.³⁶⁵

In addition, Justice Scalia concluded that a waiver of the "no-cart" rule acts as a fundamental alteration to the game of golf because walking is an essential element of the game.³⁶⁶ He stated that because sports exist to provide entertainment, many rules of sport are arbitrary.³⁶⁷ Thus, Justice Scalia argued that a court of law is ill suited to determine which rules are essential to a particular game.³⁶⁸ Furthermore, he stated that the PGA should be free to create its own game of golf if it wishes.³⁶⁹

Finally, Justice Scalia noted that even if the PGA bears a legal obligation to offer its competitors the opportunity to play the traditional game of golf, walking is still essential to that game.³⁷⁰ He disagreed with the majority's conclusion that chance can play as significant a role in a player's success as allowing Martin to use a cart, because chance is

363. *Id.* (Scalia, J., dissenting).

364. *Id.* (Scalia, J., dissenting). Justice Scalia discussed a camera shop as an example of this argument. *Id.* (Scalia, J., dissenting) (citing *Doe v. Mutual of Omaha Ins. Co.*, 179 F.3d 557, 560 (7th Cir. 1999)). He stated that because Title III does not regulate content, an owner of the shop is not required to provide a special camera for a visually disabled person if he would not provide this item as a normal part of his business. *Id.* (Scalia, J., dissenting).

365. *Id.* at 1902 (Scalia, J., dissenting).

366. *Id.* at 1902-04 (Scalia, J., dissenting). Justice Scalia recognized that although the PGA cannot deny Martin access to the game, "it need not provide him a different game." *Id.* at 1902 (Scalia, J., dissenting).

367. *Id.* (Scalia, J., dissenting). Justice Scalia notes that all sports are 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 . . . deems it to be essential." *Id.* (Scalia, J., dissenting).

368. *Id.* at 1903 (Scalia, J., dissenting). Justice Scalia argued that because rules of sport are arbitrary and oftentimes based on tradition, a court cannot consider a rule to be insignificant if the rulemaking body deems the rule to be essential. *Id.* (Scalia, J., dissenting). As examples, the dissent stated that playing eighteen holes during a round of golf, and requiring a ten foot high basketball hoop are arbitrary rules that are impossible for the court to determine if they are essential to their sport. *Id.* (Scalia, J., dissenting).

369. *Id.* at 1902 (Scalia, J., dissenting). Justice Scalia stated that the PGA is not required to create a game of classic golf, and should be free to create its own rules, as the American League did in baseball when it created the designated hitter. *Id.* (Scalia, J., dissenting).

370. *Id.* at 1902-03 (Scalia, J., dissenting).

randomly distributed.³⁷¹ Allowing Martin to use a cart, Justice Scalia concluded, gives Martin a consistent advantage over other golfers.³⁷² Ultimately, Justice Scalia rationalized that the ADA only requires the PGA to give Martin equal access to its Q-School and tournaments, but not an equal chance to win.³⁷³ Justice Scalia therefore concluded that PGA tournaments were not places of public accommodation and that the PGA should not be required to offer its competitors a different game of golf by allowing Casey Martin to use a golf cart.³⁷⁴

IV. ANALYSIS

In *PGA Tour, Inc. v. Martin*, the United States Supreme Court correctly concluded that the PGA's Q-School and tournaments are places of public accommodation under Title III, and that waiving the "no-cart" rule for Martin is a reasonable accommodation that would not fundamentally alter the nature of professional golf.³⁷⁵ First, this Section demonstrates that the Court correctly read the provisions of Title III when it held that PGA tournaments fall within the definition of a public accommodation.³⁷⁶ Second, this Section discusses how the majority correctly utilized an individualized determination when it held that allowing Casey Martin to use a cart is a reasonable accommodation.³⁷⁷ This Section then determines that the majority correctly concluded that a waiver of the "no-cart" rule is not an outcome-affecting rule that fundamentally alters the nature of the game.³⁷⁸ Finally, this Section discusses the dissent's mistaken argument that allowing Martin to use a

371. *Id.* at 1903 (Scalia, J., dissenting).

372. *Id.* (Scalia, J., dissenting). The dissent determined that chance matters at the margin, but a cart substantially improves Martin's competitive prospects beyond a few strokes. *Id.* (Scalia, J., dissenting).

373. *Id.* at 1904 (Scalia, J., dissenting). Justice Scalia stated that giving an exemption to a rule that emphasizes a player's weakness destroys the nature of a competitive sport, which relies on the application of uniform rules. *Id.* (Scalia, J., dissenting).

374. *Id.* at 1898, 1901-02 (Scalia, J., dissenting).

375. *See supra* Part III.C.1 (discussing the majority's holding that Title III applies to PGA tournaments and allowing Martin to use a cart does not fundamentally alter the game).

376. *See infra* Part IV.A (demonstrating the majority's correct interpretation that PGA golf courses and tournaments are places of public accommodation under Title III).

377. *See infra* Part IV.B (stating that the majority correctly utilized an individualized inquiry in holding that a golf cart is reasonable in light of Martin's disability).

378. *See infra* Part IV.C (determining that the majority correctly held the fatigue element in the "no-cart" rule is insignificant and cannot fundamentally alter professional golf).

golf cart provides Martin with a competitive advantage over other players.³⁷⁹

A. Public Accommodation

The Supreme Court correctly employed a broad interpretation of Title III when it determined that the PGA was a public accommodation.³⁸⁰ First, the Court correctly emphasized that the ultimate purpose behind the ADA was to eliminate discrimination against the disabled.³⁸¹ Consistent with this broad goal, Congress did not exempt professional sports organizations from the provisions of Title III.³⁸² If Congress wanted to exempt professional sports organizations from Title III, it could have created the same exemptions given to religious organizations and private clubs.³⁸³ Because Congress did not provide this exemption, professional sports organizations must abide by Title III.³⁸⁴

In addition, the Court correctly held that the PGA is a public accommodation because it operates golf courses for its Q-School and professional tournaments.³⁸⁵ Title III specifically lists golf courses as

379. See *infra* Part IV.D (discussing why the dissent incorrectly concluded that a golf cart provides Martin with a competitive advantage); see also *Martin IV*, 121 S. Ct. at 1902-04 (Scalia, J., dissenting).

380. See *supra* notes 317-25 and accompanying text (discussing the majority's holding that PGA tournaments are public accommodations). The majority stated that the PGA's "golf tours and their qualifying rounds fit comfortably within the coverage of Title III . . ." *Martin IV*, 121 S. Ct. at 1890.

381. *Martin IV*, 121 S. Ct. at 1889. The Court reiterated that there was a compelling need "to eliminate discrimination against disabled individuals, and to integrate them 'into the economic and social mainstream of American life.'" *Id.*; see also *supra* notes 3-4 and accompanying text (noting the congressional purposes behind the ADA).

382. *Martin IV*, 121 S. Ct. at 1890-91 (stating that the PGA's golf tournaments are places of public accommodation under Title III). Congress only provided a Title III exemption for private clubs and religious organizations, and makes no mention of professional sports. 42 U.S.C. § 12187 (1994); see also *supra* notes 93-96 and accompanying text (discussing the ADA's exemption for private clubs and religious organizations).

383. See 42 U.S.C. § 12187. As the district court in *Martin* held, professional sports organizations such as the PGA are not private clubs because the purpose of the organizations are to generate revenue, and non-members such as the media are allowed access to sporting events. *Martin I*, 984 F. Supp. 1320, 1324-26 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001); see also *supra* notes 265-69 and accompanying text (detailing the district court's holding that the PGA is not a private club exempt from Title III).

384. *Martin IV*, 121 S. Ct. at 1890-91; see also *Martin II*, 994 F. Supp. 1242, 1246 (D. Or. 1998) (stating that the ADA "does not distinguish between sports organizations and other entities when it comes to applying the ADA to a specific situation"), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001).

385. See *supra* notes 319-22 and accompanying text (noting that because the PGA operates golf courses, it cannot discriminate against the disabled in the equal enjoyment of the privileges that the PGA offers).

places of public accommodation under Title III, and as an operator of these courses, discriminatory conduct on the part of the PGA is prohibited.³⁸⁶ Without exception, all playing surfaces fall within Title III's scope if they are specifically listed as a public accommodation.³⁸⁷ To hold otherwise would not only require courts to determine when to hold a public accommodation exempt, but would also leave courts with too much discretion in determining when a public accommodation should be subject to Title III.³⁸⁸ For example, should a private tournament at a golf club or private university be exempt from Title III because it has leased a public golf course for competitive purposes and not recreation?³⁸⁹ Clearly, when Congress enacted a statute as broad as the ADA, it did not intend to place this type of restriction on the list of public accommodations.³⁹⁰ Thus, the majority correctly determined that the PGA, as a public accommodation, must comply with Title III.³⁹¹

B. Reasonable Accommodation and Individualized Determination

Second, the *Martin* majority correctly recognized the importance of an individualized determination in applying the provisions of Title III, as using a generalized inquiry is inconsistent with the broad provisions of the ADA.³⁹² Under a generalized inquiry, allowing an able-bodied player to use a golf cart would not be a reasonable accommodation

386. 42 U.S.C. § 12181(7). A public accommodation is specifically defined to include a "golf course, or other place of exercise or recreation." *Id.* An operator of a place of public accommodation cannot discriminate against a disabled individual in the enjoyment of "goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation." 42 U.S.C. § 12182(a).

387. *See* 42 U.S.C. § 12181(7). A public accommodation is defined broadly to include a variety of public entities. *Id.* Furthermore, Title III does not provide an exemption for public accommodations under certain situations, such as when the public is restricted from utilizing the public accommodation. *See id.*

388. *See* 42 U.S.C. § 12187. As written, Congress only provided a Title III exemption for private clubs and religious organizations. *Id.*

389. *See supra* note 93 and accompanying text (discussing how courts have determined whether an entity qualifies for a private club exemption); *see also supra* note 266 and accompanying text (defining the seven factor test used by courts in determining the applicability of the private club exemption).

390. *See supra* notes 3-4 and accompanying text (discussing the purpose behind the ADA). Specifically, the ADA was enacted in order to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b); *see also* Michael Waterstone, *Let's Be Reasonable Here: Why the ADA Will Not Ruin Professional Sports*, 2000 BYU L. REV. 1489, 1548-49 (2000). Waterstone warns that exempting professional sports from the ADA would send the wrong message that the disabled are second-class citizens who cannot be competitive at the highest levels of professional sports. Waterstone, *supra*.

391. *See Martin IV*, 121 S. Ct. 1879, 1896-97 (2001).

392. *See id.* at 1896.

since there is likely no reason why the able-bodied golfer cannot walk the course.³⁹³ Under an individualized inquiry, however, Casey Martin is clearly unable to walk a round of golf.³⁹⁴ First, Martin's disability is not only painful, but has also resulted in severe atrophy of his right leg, creating a high risk of amputation should Martin fall while on the course.³⁹⁵ Second, Martin must still walk one-quarter of the course even when he uses a cart,³⁹⁶ and he is more fatigued with the use of a cart than his able-bodied competitors who walk the entire course.³⁹⁷ As a result of this fatigue, Casey Martin will not be able to gain a competitive advantage over his able-bodied competitors, but will only be allowed a chance to compete.³⁹⁸ In light of these facts, modifying the "no-cart" rule is a reasonable accommodation for Martin's disability.³⁹⁹

C. Fundamental Alteration

Next, the Court correctly determined that allowing Casey Martin to use a golf cart during PGA tournaments does not fundamentally alter the nature of these professional tournaments.⁴⁰⁰ In holding that the "no-cart" rule is not outcome affecting, the majority correctly pointed out the inconsistency between the PGA's statements that walking is a fundamental part of the game, and the PGA's own actions in allowing competitors to use golf carts in a variety of other situations.⁴⁰¹ For example, the PGA's Q-School began in 1965, and qualifiers were allowed to use a cart during all three rounds of the Q-School up until 1997.⁴⁰² Current Q-School competitors, however, are only allowed to use a cart during the first two rounds.⁴⁰³ If the PGA allows carts in the

393. *See id.* The majority stated that the "waiver of an essential rule of competition for anyone would fundamentally alter the nature of petitioner's tournaments." *Id.*

394. *See id.* The majority points out that the PGA did not even contest that a golf cart is a reasonable accommodation for Casey Martin. *Id.* at 1893.

395. *Id.* at 1885-86.

396. *Martin II*, 994 F. Supp. 1242, 1251 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001); *see also supra* note 285 and accompanying text (discussing why Martin must still walk one-quarter of the golf course even with a cart).

397. *Martin IV*, 121 S. Ct. at 1897; *Martin II*, 994 F. Supp. at 1252.

398. *Martin IV*, 121 S. Ct. at 1897.

399. *See id.* at 1896.

400. *Id.* at 1897; *see also supra* notes 337-45 and accompanying text (discussing the majority's holding that a golf cart does not fundamentally alter the game of golf).

401. *Martin IV*, 121 S. Ct. at 1895; *see also supra* note 336 and accompanying text (outlining the Court's discussion in pointing out the PGA's inconsistent arguments that walking is essential to the game of golf).

402. *Martin IV*, 121 S. Ct. at 1884, 1895.

403. *Id.* at 1895.

first two rounds in order to speed up the competition, the PGA is affirming the argument that walking is not an important part of the game and that allowing the use of a cart does not create a competitive advantage.⁴⁰⁴

In addition to the Q-School, competitors are allowed to use a cart during the open qualifying events, which are conducted prior to the beginning of each tournament, and during all rounds of the Senior PGA Tour.⁴⁰⁵ Likewise, players on the PGA and Buy.com Tours are also allowed to use a cart for the convenience of the PGA, such as when a player's ball is lost.⁴⁰⁶ Surely if walking was fundamental and outcome affecting, the PGA would not allow its players to use a cart under any circumstances.

Second, the majority correctly concluded that allowing Martin to use a cart would not fundamentally alter the game of golf because the essential element of the game, shot-making, is not affected by allowing a disabled player to use a cart.⁴⁰⁷ In addition, the element of walking is not unique to the sport.⁴⁰⁸ Unlike driving and putting, walking is not something professional golfers train to do.⁴⁰⁹ Golfers likely do not incorporate a high degree of physical fitness and physical training into their activities like a tennis player or sprinter.⁴¹⁰ Thus, the essential element of golf, shot-making, is not affected if a player decides to walk the course or use a motorized cart.⁴¹¹ Because shot-making and not

404. *See id.*

405. *Id.*

406. Brief for Respondent at 7, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1706762. When a player's ball is lost, the PGA allows the player to take a cart back to the tee. *Id.* In addition, the PGA allows all competitors to ride from one hole to another when the distance between holes is too great. *Id.*

407. *Martin IV*, 121 S. Ct. at 1893-97.

408. Waterstone, *supra* note 390, at 1543. Waterstone notes that instead of walking being a skill that is unique to golf, it is a skill that most individuals are able to perform. *Id.*

409. *Id.* Golfers likely do not practice walking in the way that a basketball player practices making baskets or the way that a baseball player practices hitting the baseball. *Id.*

410. *Id.* Although a number of professional golfers are beginning to incorporate physical fitness into their training regimens, it is unlikely that any of these individuals are practicing the act of walking. *Id.*

411. *See Martin IV*, 121 S. Ct. at 1893-94. The Amicus Curiae brief of the Klippel-Trenaunay-Weber Support Group stated:

Golf . . . is not a contest in which speed, mobility, size, or quickness is essential (in contrast to sports like tennis, soccer, basketball, football, and running). The lowest score wins in PGA events. There is no bonus reduction in strokes for fast play; no style points for speed or walking form; no requirement run between shots; and no penalty for moving up the fairway too slowly (although time limits apply once a ball is reached and before it is struck). The game is about skilled shot-making, not walking.

walking is the essential element of the game, a player gains no competitive advantage by using a cart.⁴¹² A player using a cart must endure the same weather elements when playing the ball on the course regardless of whether or not he arrives at the ball in a cart.⁴¹³ Although a single stroke can make all the difference, it is equally likely that a one stroke difference could be the result of changes in the weather, crowd reaction, the type of club used, and of course, luck.⁴¹⁴

Finally, the majority correctly concluded that the fatigue created in walking a round of golf is insignificant to the outcome of the game.⁴¹⁵ If walking is essential in order to inject fatigue into the game, then the PGA ought to forbid the use of caddies, and instead, require the players to carry their own clubs. Unlike basketball or football, where players use a large amount of energy throughout a game, golfers expend relatively few calories by walking a round of golf.⁴¹⁶ These calories are expended over a long period, as golfers walk slowly over the entire course.⁴¹⁷ Thus, the amount of stamina required to walk a five mile course is small and does not play a role in a golfer's performance in the same way, for example, that stamina plays a role in the performance of a basketball player during the fourth period.⁴¹⁸ Therefore, the majority

Brief of Amicus Curiae K-T Support Group at 24, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1846088.

412. See *Martin IV*, 121 S. Ct. at 1893-94. The Rules of Golf define golf as "playing a ball from the *teeing ground* into the hole by a *stroke* or successive strokes in accordance with the Rules." UNITED STATES GOLF ASSOCIATION, *supra* note 16, at 23 (emphasis in original).

413. See Brian Pollock, Note, *The Supreme Court Appeal of the Casey Martin Case: The Court's Two Opinions- Martin's Hole-in-One or Olinger's Slice into the Bunker*, 10 DEPAUL-LCA J. ART & ENT. L. & POL'Y 391, 438 (2000). Pollock notes that "[a]ll golfers must endure the same elements; thus, the fact that a golfer uses a cart does not make him less susceptible to heat and humidity." *Id.* at 437-38.

414. See *Martin IV*, 121 S. Ct. at 1895.

415. *Id.* at 1896; see also *supra* notes 337-40 and accompanying text (outlining the majority's holding that fatigue is insignificant to the game of golf). Ken Venturi, the 1964 U.S. Open winner, has testified that mental fatigue, and not physical fatigue, is the primary source of fatigue in a PGA competition. Brief for Respondent at 38, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1706762.

416. *Martin II*, 994 F. Supp. 1242, 1250 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001). Expert testimony during Martin's trial indicated that approximately 500 calories are expended during a round of golf. *Id.*

417. *Id.* Expert testimony concluded that the calories expended during a round of golf are expended over a five-hour period, and players frequently have a chance to drink refreshments and rest. *Id.*

418. See *Martin IV*, 121 S. Ct. at 1896 (citing the low intensity of the golf game, the small amount of energy used, and the many opportunities for rest and refreshment as reasons for concluding that the fatigue created from walking a golf course is not significant enough to affect the outcome of a tournament).

was correct in holding that the use of a golf cart does not fundamentally alter the nature of professional golf.⁴¹⁹

D. Dissent

In his dissent, Justice Scalia incorrectly argued that allowing Casey Martin to use a golf cart was not a reasonable accommodation.⁴²⁰ First, the dissent incorrectly stated that the majority impermissibly regulated content in holding that a golf cart was a reasonable accommodation for Martin.⁴²¹ In stating that the PGA is not required to provide a game of golf different than what it normally offers, the dissent erroneously analogizes to a case in which a camera store owner would not be required to stock a special camera for a visually impaired individual.⁴²² Unlike Scalia's analogy, Martin does not want the PGA to offer a different game of golf, but is simply requesting that he be allowed equal access to the course by using a cart as transportation from hole to hole.⁴²³ Furthermore, the PGA does not suffer economically by allowing Martin to use a cart in the same way that a storeowner would suffer by stocking a special camera for the visually impaired.⁴²⁴

In addition, the dissent incorrectly concluded that allowing Martin to use a cart creates a competitive advantage in his favor.⁴²⁵ In fact, Martin is more disadvantaged than his able-bodied competitors even with the use of a cart.⁴²⁶ Martin is still required to walk about one-

419. See *id.* at 1898; see also *supra* notes 337-45 and accompanying text (discussing the majority's holding that allowing Martin to use a golf cart does not fundamentally alter the game of golf).

420. *Martin IV*, 121 S. Ct. at 1901-02 (Scalia, J., dissenting).

421. *Id.* (Scalia, J., dissenting); see also *supra* notes 361-65 and accompanying text (outlining the argument by the dissent that Casey Martin was impermissibly regulating content by seeking to use a cart during PGA tournaments).

422. *Martin IV*, 121 S. Ct. at 1901 (Scalia, J., dissenting). Under the Code of Federal Regulations, the store owner would not have to stock special cameras for the visually impaired if these items are not stocked as a part of the store's everyday business. *Id.* (Scalia, J., dissenting).

423. See 42 U.S.C. § 12182(a) (1994). Title III ensures that the disabled receive equal access to the "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations" offered by an owner or operator of a place of public accommodation. *Id.*

424. See Pollock, *supra* note 413, at 436. The author states that the cost of a golf cart is a minimal imposition on the financial resources of a professional sports organization. *Id.* The author also notes that the PGA is a multi-million dollar empire, evident by the award money it grants and its lucrative network television contract. *Id.* at 435.

425. *Martin IV*, 121 S. Ct. at 1903 (Scalia, J., dissenting); see also *supra* note 372 and accompanying text (discussing Scalia's argument that Casey Martin will have a competitive advantage by using a golf cart).

426. See *Martin II*, 994 F. Supp. 1242, 1251 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001). The district court stated that the fatigue Martin endures

quarter of the course merely because the cart cannot be driven on certain parts of the course.⁴²⁷ Furthermore, just getting in and out of the cart for Martin can be more physically exhausting than the entire five-mile walk for other golfers.⁴²⁸ Because Casey Martin is not given an advantage by using a cart, but is only put on an equal footing with those who can walk the entire course, the dissent's conclusion that Martin gains a competitive advantage through the use of a cart is unfounded.⁴²⁹

V. IMPACT

In the wake of the Supreme Court's decision in *PGA Tour, Inc. v. Martin*, Americans have yet to see its impact on professional sports.⁴³⁰ Because the Supreme Court found Title III applicable to PGA tournaments, other professional sports could be required to make reasonable accommodations in order to accommodate a disabled athlete.⁴³¹ However, because the Court decided *Martin* on narrow grounds, its decision will not lead to an all out modification of the rules, which will forever change the nature of professional sports.⁴³² Nevertheless, the Court's decision will ultimately create an increased administrative and financial burden for professional sports organizations and the court system when determining whether a requested modification is reasonable and whether it fundamentally alters the nature of the particular game.⁴³³

from dealing with his disability is greater than the fatigue injected on the "able-bodied by the requirement that they walk from shot to shot." *Id.*

427. *Id.*; see also *supra* note 285 and accompanying text (discussing why Martin must still walk one-quarter of the golf cart even with the use of a cart).

428. *Martin III*, 204 F.3d 994, 1000 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001). The Ninth Circuit noted that Martin must endure significant pain and stress while getting in and out of the cart. *Id.*; see also *supra* notes 227-32 and accompanying text (discussing Martin's condition and the pain he must endure while living with the condition).

429. *Martin IV*, 121 S. Ct. at 1903 (Scalia, J., dissenting); see also *supra* notes 370-74 and accompanying text (discussing Scalia's argument that Casey Martin will gain a competitive advantage by using a golf cart).

430. Adam Jay Golden, *A Good Walk Spoiled: The Americans with Disabilities Act and the Casey Martin Case*, 7 *SPORTS LAW. J.* 161, 178 (2000). Golden notes that it "may take years before the full effects of *Martin* are felt in professional sports." *Id.*

431. *Martin IV*, 121 S. Ct. at 1890-91; see *infra* Part V.A (discussing the positive implications that *Martin* will have on other professional sports organizations); see also Davis, *supra* note 11, at 44. Davis states that "[t]he ADA has finally made a foray into the world of professional sports. This event is significant, for it may encourage others to wield the ADA as a means of seeking redress in this field . . ." *Id.*

432. See *infra* Part V.B (stating that *Martin* will not lead to an all out modification of the rules of professional sports).

433. See *infra* Part V.C (noting that *Martin* will result in increased administrative and financial burdens for professional sports organizations and the courts).

A. Professional Sports Organizations Are Not Exempt From the Law

The Court's decision in *Martin* limited the autonomy of professional sports to set its own rules and regulations governing play.⁴³⁴ Consistent with the ADA, which does not exempt professional sports leagues from its provisions, these organizations must adhere to the requirements of the law and are prohibited from discriminating against the disabled.⁴³⁵ Sports organizations can no longer refuse to make reasonable accommodations for disabled athletes, as professional sports are not exempt from accommodating the disabled any more than employers are prohibited from discriminating against the disabled in job related matters.⁴³⁶

B. Martin Will Not Alter Essential Rules of Sports

Many critics of the Court's decision in *Martin* incorrectly argue that the decision will lead to an all out modification of the rules of professional sports at the hands of the court system.⁴³⁷ Critics claim that the PGA will soon be required to expand the diameter of a golf hole to accommodate a legally blind golfer, or that a disabled basketball player must be allowed to use spring-loaded shoes.⁴³⁸ However, arguing that that the *Martin* decision will create an all out modification of the professional rules of sports is simply unfounded. First, only a few sports easily lend themselves to accommodating the disabled.⁴³⁹

434. William E. Spruill, Note, *Giving New Meaning to "Handicap:" The Americans with Disabilities Act and its Uneasy Relationship with Professional Sports in PGA Tour, Inc. v. Martin*, 35 U. RICH. L. REV. 365, 389 (2001) (noting that the role of professional sports organizations in creating and regulating their rules will now be questioned).

435. See Waterstone, *supra* note 390, at 1524. Waterstone applauds the Court for rejecting the argument that professional sports are exempt from the ADA and notes that those that say professional sports should be exempted from the ADA are putting professional sports on a pedestal. *Id.* at 1524, 1547. He further states that "[t]he ADA must be applied equally to professional sports because Congress . . . did not say that it should not." *Id.* at 1546.

436. See *id.* at 1547-48. Waterstone captures the absurdity in those who argue that professional sports should be exempt from the ADA by questioning whether competitions in sports are more important than getting a legal job in a prestigious law firm. *Id.* at 1548.

437. See Meadows, *supra* note 24, at C4 (citing extreme examples of the potential impact of *Martin* on professional sports). Meadows cites examples such as whether a disabled runner will be given a head start in a track competition, and whether a visually challenged baseball player will be allowed four strikes, as opposed to three strikes, before they are called out. *Id.*

438. See Joe Cappel, *Next, NBA Lowers Goals for Vertically Impaired*, CRAIN'S CHI. BUS., Mar. 9, 1998, at 8, available at 1998 WL 7284598. Cappel questions whether the PGA should now be forced to accommodate the blind, elderly, and obese golfers who desire to play on the PGA Tour, or whether the NBA should be forced to lower the height of the basketball rim to eliminate any advantage which taller players enjoy. *Id.*

439. See *infra* notes 441-44 and accompanying text (noting that golf is only one of a few sports where modifications can be made which will not change the nature of the game).

Second, because the ADA limits the modifications that must be made to accommodate an individual by requiring that the modifications be reasonable, sports fans will not see a complete reversal of the rules of professional sports.⁴⁴⁰

First, golf is one of only a few sports that easily lends itself to modification under the ADA without changing the nature of the game.⁴⁴¹ For example, using a strobe light during swimming or track and field meets will successfully allow hearing-impaired athletes to compete, but will not have an effect on the hearing athletes' ability to be the fastest in their respective heat.⁴⁴² However, not all sports can reasonably accommodate a disabled athlete without fundamentally altering the game. Casey Martin, for example, would not be able to request a modification of the rules of baseball, which require a player to run the bases.⁴⁴³ Waiving this type of rule in baseball is an extreme modification that would result in a fundamental alteration to the game.⁴⁴⁴

Second, the text of the ADA places limitations on the modifications used to accommodate a disabled individual. One such limitation is that the ADA requires an individual be "disabled" within the meaning of the ADA.⁴⁴⁵ Thus, the inability to jump is not a disability that would force the National Basketball Association to lower the height of the basketball rim from ten to eight feet.⁴⁴⁶ A second limitation is that the requested

440. See *infra* notes 445-54 and accompanying text (noting that the specific requirements of a Title III claim will prevent an all out modification of the rules of sports).

441. Alex B. Long, *A Good Walk Spoiled: Casey Martin and the ADA's Reasonable Accommodation Requirement in Competitive Settings*, 77 OR. L. REV. 1337, 1377 (1998). The author states that "[i]n reality, it may turn out that professional golf is one of the few sports where an accommodation of one of the major rules of play might not fundamentally alter the nature of the game." *Id.* Unlike golf, where walking is secondary to the sport, Long notes that "[t]he same cannot be said of most other sports." *Id.* at 1377-78.

442. *Id.* at 1377. The author notes that modifying starting procedures during a swimming meet will not have any effect on able-bodied competitors and can provide an easy remedy for a disabled competitor. *Id.*

443. The Klippel-Trenaunay-Weber Syndrome Support Group notes that because Klippel-Trenaunay-Weber Syndrome afflicts one or more limbs, an athlete afflicted with this disease would not be able to request a head start in a swimming competition, as this would fundamentally alter competitive swimming. See Brief of Amicus Curiae K-T Support Group at 28, *Martin IV*, 121 S. Ct. 1879 (2001) (No. 00-24), available at 2000 WL 1846088.

444. See *Martin IV*, 121 S. Ct. at 1893. The majority notes that a modification can alter "such an essential aspect of the game of golf that it would be unacceptable even if it affected all competitors equally." *Id.*

445. See *supra* notes 77-80 and accompanying text (defining a prima facie claim under Title III).

446. See 28 C.F.R. § 36.104(1) (2001). The Department of Justice guidelines define a physical or mental impairment as "[a]ny physiological disorder or condition, cosmetic

accommodation must be reasonable.⁴⁴⁷ Although allowing a disabled athlete to use a cart is a reasonable accommodation in golf, accommodations in other sports cannot be made so easily, while still complying with Title III. For example, lowering the height of the rim in basketball is clearly not reasonable because the accommodation interferes with the essence of the game, to make the shot.⁴⁴⁸

Finally, the ADA does not require a sports organization to make even a reasonable accommodation if doing so fundamentally alters the nature of the sport.⁴⁴⁹ In other words, the ADA does not require a sports organization to completely change the rules just so that a disabled player may compete.⁴⁵⁰ Many rules cannot be changed because they would fundamentally alter the nature of the game.⁴⁵¹ For example, lowering the height of a basketball rim, reducing the number of holes that must be played in a round of golf, and reducing the length of a marathon to accommodate a disabled individual would clearly be a fundamental alteration of those respective sports.⁴⁵² If a rule can be reasonably changed without fundamentally altering the game, however,

disfigurement, or anatomical loss . . . [and] any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities . . .” *Id.*

447. See *supra* notes 77-80 and accompanying text (defining a prima facie claim under Title III).

448. Waterstone, *supra* note 390, at 1528-29. The author states that there are elements to professional sports that cannot and should not be modified because they create a compelling change in the nature of the game. *Id.* at 1528.

449. 42 U.S.C. § 12182(b)(2)(A)(ii) (1994). Title III defines discrimination, in part, as 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.

Id.

450. See *id.*

451. Waterstone, *supra* note 390, at 1528-29. In analogizing to the employment context, the author notes that there are certain elements to professional sports that cannot be changed without fundamentally altering the sport no matter how compelling a disabled individual’s case may be. *Id.*

452. See *Martin III*, 204 F.3d 994, 1001 (9th Cir. 2000), *aff’d*, 121 S. Ct. 1879 (2001). The Ninth Circuit determined that “we have little doubt” that a request of a disabled runner to be given a head start or a request that a “growth impaired” basketball player be allowed to shoot a three-point shot from inside the three-point line “would result in rulings that those accommodations fundamentally altered the competitions.” *Id.* Other examples of modifications that fundamentally alter the nature of a sport include requests by disabled sprinters to begin a race inside the starting point, and requests by disabled basketball players to lower the height of a basketball rim. Waterstone, *supra* note 390, at 1528.

the ADA requires that it be done.⁴⁵³ Determining whether such a requested modification can be made without fundamentally altering the nature of the sport will likely result in an increased burden for both the sports organization and the court system.⁴⁵⁴

C. *Martin* Will Result in Increased Administrative Burden

The impact of the *Martin* decision will be felt in the increased administrative and financial burdens facing professional sports organizations and the court system. Assuming that a qualified disabled athlete possesses the skills necessary to compete in professional sports, both amateur and professional sports organizations will now be required to determine on a case-by-case basis whether an athlete's requested accommodation is reasonable in light of that athlete's specific disability.⁴⁵⁵ Although, this individualized inquiry standard is consistent with the provisions in Title III, sports organizations will see increased financial and administrative costs in conducting these inquiries.⁴⁵⁶

Furthermore, the *Martin* decision leaves sports organizations and governing bodies with little guidance in determining whether a requested modification is reasonable, as the Court simply failed to create a standard for determining when a modification must be made.⁴⁵⁷

453. See *supra* note 449 and accompanying text (describing when a reasonable modification must be made by a place of public accommodation).

454. See *infra* Part V.C (noting that *Martin* will result in increased administrative and financial burdens for professional sports organizations and the courts).

455. *Martin IV*, 121 S. Ct. 1879, 1896 (2001). The majority stated that an individualized inquiry must be made to determine whether a requested accommodation is reasonable and necessary for the disabled individual and whether the accommodation would fundamentally alter the good being provided. *Id.*

456. *Id.* at 1897-98. The majority stated that the "ADA admittedly imposes some administrative burdens on the operators of places of public accommodation that could be avoided by strictly adhering to general rules and policies that are entirely fair with respect to the able-bodied but that may indiscriminately preclude access by qualified persons with disabilities." *Id.* at 1897; see also Spruill, *supra* note 434, at 389. One author notes that professional sports organizations should expect to see increased financial burdens as a result of the *Martin* case. Spruill, *supra* note 434, at 389. Although the author notes that the magnitude of the financial burden is unknown, he speculates that this burden should not be large, as there are relatively few disabled athletes in professional sports. *Id.*

457. Waterstone, *supra* note 390, at 1527. Waterstone notes that the *Martin* court was ambiguous in creating a standard for determining when a modification can be made without fundamentally altering a sport. *Id.* He states that "it is not clear whether the court would have forced the defendant to present individualized proof if the court had found that walking a course had more of an impact on competition." *Id.*

As such, this ambiguity will likely create confusion.⁴⁵⁸ For example, in determining whether a request is a reasonable accommodation, how much deference should be given to the traditional rules of the sport, such as the fact that the basketball rim has traditionally been ten feet high?⁴⁵⁹ Because the Supreme Court provided little guidance to these questions in *Martin*, the lower courts will be left to determine standards of reasonable accommodation and fundamental alteration on their own.

VI. CONCLUSION

In *Martin*, the United States Supreme Court correctly held that PGA tournaments are places of public accommodation under Title III. Utilizing an individualized inquiry, the majority also correctly recognized that allowing Casey Martin to use a golf cart is a reasonable accommodation in light of his disability, and that doing so does not fundamentally alter the nature of professional golf. The broad language of Title III and Congress' intent to eliminate discrimination against the disabled support the Court's decision. Although *Martin* questions the autonomy of a sports organization to promulgate its own rules of play, the specific requirements of Title III will prevent abuse of the ADA by disabled athletes seeking to gain a competitive advantage. Finally, although *Martin* will not open the floodgates, mandating an individualized determination under Title III will create an increased administrative and financial burden for professional sports organizations and the court system.

458. *Id.* at 1526. As examples of the ambiguity created by *Martin*, Waterstone notes that it is now unclear as to whether a defendant must show that a rule modification will fundamentally alter a sport or whether the defendant is required to present any proof if the rule is fundamental to the sport or activity which is sought to be modified. *Id.*

459. National Basketball Association, *Official Rules of the National Basketball Association, Rule No.1—Court Dimensions—Equipment*, at http://www.nba.com/analysis/rules_index.html (last visited Mar. 11, 2002). Rule one, Section II(e) states that “[e]ach basket ring shall be securely attached to the backboard with its upper edge 10' above and parallel to the floor and equidistant from the vertical edges of the board.” *Id.*