

2001

Casey Martin, Ford Olinger and the Struggle to Define the Limits of the Americans with Disabilities Act in Professional Golf

Christopher E. Tierney

Follow this and additional works at: <https://scholarship.law.edu/lawreview>

Recommended Citation

Christopher E. Tierney, *Casey Martin, Ford Olinger and the Struggle to Define the Limits of the Americans with Disabilities Act in Professional Golf*, 51 Cath. U. L. Rev. 335 (2002).

Available at: <https://scholarship.law.edu/lawreview/vol51/iss1/13>

This Comments is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Catholic University Law Review by an authorized editor of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.

CASEY MARTIN, FORD OLINGER AND THE STRUGGLE TO DEFINE THE LIMITS OF THE AMERICANS WITH DISABILITIES ACT IN PROFESSIONAL GOLF

Christopher E. Tierney⁺

The Americans with Disabilities Act presents us all with an historic opportunity. It signals the end to the unjustified segregation and exclusion of persons with disabilities from the mainstream of American life. As the Declaration of Independence has been a beacon for people all over the world seeking freedom, it is my hope that the Americans with Disabilities Act will likewise come to be a model for the choices and opportunities of future generations around the world.¹

Casey Martin and Ford Olinger are like many golfers in the United States: they dream of playing professional golf as their career.² Unfortunately, because their unique disabilities prevent them from walking a golf course's traditional eighteen holes without extensive pain, this dream is much more difficult to accomplish.³

⁺ J.D. Candidate, May 2002, The Catholic University of America, Columbus School of Law.

1. Statement on Signing the Americans with Disabilities Act of 1990, PUB. PAPERS OF GEORGE BUSH (July 26, 1990).

2. See Mike Cullity et al., *Special Report: Casey Martin v. PGA Tour, Inc.*, GOLF WEEK, Jan. 24, 1988 at <http://www.golfonline.com/news/golfweek/1998/january/caseybio0124.html>; see also Brian D. Shannon, *Brief of the Klippel-Trenaunay Syndrome Support Group, As Amicus In Support of Appellee*, 1 VA. J. SPORTS & L. 93, 101-03 (1999) (noting that while disabled golfers Casey Martin and Ford Olinger are trying to make it in the world of professional golf, they are not the first disabled athletes to try to become professionals); Jim Abbott, *It's Easy to Accommodate*, GOLF WORLD, Feb. 20, 1998 at 59 (highlighting the fact that the author, Jim Abbott, who was born without a right hand played professional baseball for several years with two American League teams); Murray Chass, *Pro Football: 63 Yard Field Goal*, N.Y. TIMES, Nov. 9, 1970, at 58; (explaining that Tom Dempsey, a former place kicker for the New Orleans Saints, who was born with only half a foot, still holds the record, along with current Denver Broncos kicker Jason Elam, for the longest field goal in National Football League history).

3. See *Martin v. PGA Tour Inc.*, 204 F.3d 994, 996 (9th Cir. 2000), *aff'd* 531 U.S. 1049 (2001) (indicating that Martin's disorder has caused such pain and atrophy that it reduces walking to a potentially dangerous activity that could result in a significant risk of fracture or hemorrhage in his leg); see also *Olinger v. United States Golf Ass'n*, 55 F.

Casey Martin suffers from Klippel-Trenaunay-Weber Syndrome⁴ (KTW), a circulatory disease that affects the blood flow in his lower right leg.⁵ This lack of circulation has led to bone deterioration and atrophy and puts Martin at a heightened risk of fracturing his leg.⁶ Due to the increased risk of causing permanent damage to his leg, it is medically unsafe for Martin to walk for extended periods of time.⁷ Consequently, for Martin to compete and play golf in the Professional Golf Association (PGA) tournaments, he must use a golf cart to move between shots.⁸ In the majority of their tournaments, the PGA has refused to allow golfers to use carts unless the PGA Tour Rules Committee grants permission, which it does seldomly.⁹ Therefore, in order to force the PGA to permit Martin to use a cart, he has successfully invoked the protections provided by Title III of the Americans with Disabilities Act of 1990 (ADA).¹⁰

Conversely, Ford Olinger, an aspiring professional golfer having virtually the same disability as Casey Martin, has not received the same accommodation.¹¹ Olinger, like Martin, suffers from a disability that

Supp. 2d 926, 929 (N.D. Ind. 1999), *aff'd*, 205 F.3d 1001 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001) (finding that Olinger's disability severely limits his ability to walk the golf course).

4. See Cullity, *supra* note 2 (explaining that KTW is a congenital and extremely rare disease first diagnosed in 1900). In 1984, there were only 150 known cases of KTW worldwide. *Id.* KTW is a vascular disease that affects the circulation of blood to the extremities. *Id.* In Martin's case, blood recirculates to his leg and foot but does not always circulate back to the heart, causing intense pain and swelling. *Id.* KTW is degenerative in nature and doctors have advised Martin that his condition is likely to worsen as he ages. *Id.* Accordingly, it is questionable whether he will be able to continue playing golf even with the aid of a cart as his condition degenerates. *Id.* There is also strong evidence that doctors could recommend amputation of the limb in the future, but the need for this is not a universal diagnosis. *Id.* Currently, Martin wears a stocking to help support his leg when he walks the golf course. *Id.* See generally *Klippel-Trenaunay-Weber Syndrome*, at <http://medicinenet.com/Script/Main/Art.asp?li=MNI&ArticleKey=6477> (last visited Oct. 30, 2000) (finding that there is little evidence to suggest that KTW is a genetic disease and may occur solely as a result of certain birth defects).

5. See *Martin*, 204 F.3d at 996.

6. See *id.*

7. See *id.*

8. See *Martin v. PGA Tour, Inc.*, 984 F. Supp. 1320, 1322 (D. Or. 1998).

9. See *Martin v. PGA Tour, Inc.*, 994 F. Supp. 1242, 1249 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 531 U.S. 1049 (2001).

10. See Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (1994).

11. See *Olinger v. United States Golf Ass'n*, 205 F.3d 1001, 1007 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001) (holding that while Olinger qualifies as a person with a disability under the ADA and although the United States Golf Association operates as a place of public accommodation, he was nevertheless not allowed to use a cart because it would fundamentally alter the nature of competition); see also Joe Cavanaugh, *Despite Similarities with Casey Martin Case, Olinger Must Walk*, CHICAGO TRIB., Mar. 8, 2000, available at http://www.empowerd.com/news/article.php3?article_id=84 (highlighting the

makes it medically hazardous for him to walk between golf shots.¹² Olinger's disability arises from bilateral avascular necrosis (BAN).¹³ Similar to KTW, BAN severely reduces circulation to Olinger's hips, causing extreme pain with any prolonged walking.¹⁴ Although Olinger takes medication that reduces the pain, a side effect of the medication impairs "his lung capacity, dulls his senses, and causes fatigue," which makes it even more difficult for him to play golf.¹⁵

Ironically, despite the golfers' similar disabilities, a split in the federal circuits has resulted in allowing only Martin to use a cart to help keep his dream of playing professional golf alive.¹⁶

This Comment focuses on the Casey Martin and Ford Olinger decisions, which have resulted in a split between the Seventh and Ninth Circuit Courts of Appeal.¹⁷ First, this Comment examines the legislative efforts prior to the enactment of the ADA that attempted to provide legal protection to persons with disabilities. Next, this Comment analyzes the legislative history of the ADA, focusing particularly on the statute's policy goals, by evaluating each of the ADA's relevant titles. Finally, this Comment assesses the Martin and Olinger decisions in light

inconsistency in the two Circuit Court of Appeals decisions when, as the author indicates, there is little difference between the facts in each case); *Judge Denies Olinger in Cart Case*, SALT LAKE TRIB., May 18, 2000, at C3; Mark Hayes, *Qualifying for Open Pains Disabled Golfer*, USA TODAY, May 24, 2000, at 2B.

12. *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).

13. *Id.*; see also *Aseptic Necrosis (Avascular Necrosis or Osteonecrosis)*, at <http://www.medicinenet.com/Script/Main/Art.asp?li=MNI&AtricleKey=288> (last visited Oct. 30, 2000) (mentioning that avascular necrosis is a condition that results from poor blood supply to an area of bone, causing it to die). This condition is extremely serious because the dead areas of the bone do not function properly and are likely to become brittle. *Id.* The condition can be caused by trauma or damage to the blood vessels surrounding the bone or an embolism that stops normal blood flow. *Id.* Treatment of avascular necrosis depends on the stage it is diagnosed. *Id.* Early detection can be treated surgically by removing the bone from the diseased area and grafting new bone to the area. *Id.* Late detection, as in Olinger's case, leads to serious bone damage and requires an extremely painful procedure that replaces the entire joint. *Id.*

14. See *Olinger*, 55 F. Supp. 2d at 929.

15. *Id.*

16. See *Martin v. PGA Tour, Inc.*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 531 U.S. 1049 (2001) (holding that the provision of a golf cart was a reasonable accommodation under the ADA); *Olinger*, 205 F.3d at 1001 (denying the use of a cart under the ADA); see also Ashbel S. Green, *PGA Appeals Martin's Use of Motorized Cart on Tour the Filing Before the U.S. Supreme Court Faces Long Odds Despite a Similar Suit*, PORTLAND OREGONIAN, July 6, 2000, at D5; Paul Novoselick, *More Golfers are Facing Challenges to Cart Use*, GRAND RAPIDS PRESS, July 20, 2000, at C2.

17. *Martin*, 204 F.3d at 994; *Olinger*, 205 F.3d at 1001. These cases were decided within one day of each other.

of prior case law and the ADA's policy goals. This Comment concludes that both cases should have been decided in favor of the golfers.

I. THE ADA AND EARLY LEGISLATIVE ATTEMPTS AT ASSISTING AMERICANS WITH DISABILITIES

Title III of the ADA, the federal legislation that both Casey Martin and Ford Olinger invoked in their suits, claiming that the PGA Tour and the United States Golf Association (USGA) are obligated to permit them to use golf carts during professional competition, was not the first attempt by the federal government to provide redress for discrimination against persons with disabilities.¹⁸ Congress' first attempt to give rights to persons with handicaps can be traced back as early as 1948.¹⁹

A. *Anti-Discrimination Laws Concerning the Disabled Prior to the ADA*

When many disabled veterans returned from World War II, Congress enacted the Act of June 10, 1948 (the Act).²⁰ The Act addressed employment discrimination in the Civil Service against handicapped veterans who suffered physical disabilities that occurred during their service in World War II.²¹ Almost twenty years after this initial effort, Congress expanded protection to those with physical handicaps by passing the Architectural Barrier Act (ABA) in 1968.²² The ABA provided that all buildings constructed, altered, or financed by the federal government had to be accessible to individuals with disabilities.²³

As a result of the civil rights movement of the 1960s and early 1970s, Congress enacted the Rehabilitation Act of 1973.²⁴ The Rehabilitation Act²⁵ was much more aggressive than prior legislation at combating disability discrimination, and it served as a template for the ADA.²⁶ The Rehabilitation Act prohibits the federal government, as well as federally sanctioned programs, from discriminating against disabled persons.²⁷

18. Act of June 10, 1948, Pub. L. No. 617, ch. 434, 62 Stat. 351.

19. *Id.*

20. *Id.*

21. *Id.*; see also Lowell P. Weicker, Jr., *Historical Background of the Americans with Disabilities Act*, 64 TEMP. L. REV. 387 (1991).

22. See Act of Aug. 12, 1968, Pub. L. No. 90-480, 82 Stat. 718 (codified at 42 U.S.C. §§ 4151-4157 (1994)).

23. *Id.*

24. The Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as 29 U.S.C. §§ 790-794 (1994)).

25. *Id.*

26. *Id.*

27. *Id.*

Furthermore, Title V of the Rehabilitation Act prohibits any program that receives federal financial assistance from discriminating against disabled persons.²⁸ The Rehabilitation Act also requires that federal executive agencies develop and update affirmative action plans for the hiring and advancement of persons with disabilities.²⁹ The most controversial portion of the Rehabilitation Act requires the use of reasonable accommodations for those with disabilities.³⁰

In 1975, Congress supplemented the Rehabilitation Act by enacting the Education of All Handicapped Children Act³¹ and the Developmentally Disabled Assistance and Bill of Rights Act.³² Both acts expanded coverage in the education arena by offering individuals with disabilities new programs and equal access to educational facilities.³³

Despite its many protections for persons with disabilities, the

28. 29 U.S.C. § 794 (1994). In 1978, an amendment was passed that expanded Title V coverage to activities conducted by federal executive agencies and the U.S. Postal Service. *Id.* § 794(a), (b).

29. *Id.* § 791(b) (1994).

30. *See* S.E. Cmty. Coll. v. Davis, 442 U.S. 397, 410 (1979). An initial problem with the language of the Rehabilitation Act was that it provided little definition of its prohibitions. For example, the term “reasonable accommodations” was never specifically defined in the Act. The federal courts did not aid in clarifying the confusion. For example, in *Davis*, the Supreme Court determined that an accommodation is reasonable unless it “constitute[s] an unauthorized extension of the obligations imposed.” *Id.*; *see also* 29 U.S.C. § 792 (1994) (indicating that the Rehabilitation Act created the Architectural and Transportation Barriers Compliance Board, which oversaw compliance with the previously established Architectural Barrier Act); 42 U.S.C. § 3604 (1994) (referencing the term “reasonable accommodation”).

31. Education of All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (codified as amended at 20 U.S.C. §§ 1232, 1401, 1405-1420, 1453 (1994)). This Act guaranteed children with disabilities equal access to appropriate public education. *Id.* at 775.

32. Developmentally Disabled Assistance and Bill of Rights Act, Pub. L. No. 94-103, 89 Stat. 486 (1975) (expanding the rights and programs available to individuals with specific developmental disabilities at the university level). Other laws passed to aid the disabled since the 1973 Act have included the Voting Accessibility for the Elderly and Handicapped Act, Pub. L. No. 98-435, 98 Stat. 1678 (1984) (codified as amended at 42 U.S.C. § 1973 (1994)); the Air Carrier Access Act of 1986, Pub. L. No. 99-435, 100 Stat. 1080 (codified as amended at 42 U.S.C. § 1374 (1988)); the Handicapped Children’s Protection Act of 1986, Pub. L. No. 99-372, 100 Stat. 796 (codified as amended at 20 U.S.C. § 1415(e)(4)(B)-(G) (1994)); the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Pub. L. No. 99-319, 100 Stat. 478 (codified as amended at 42 U.S.C. § 10801 (1994)); the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988) (codified as 20 U.S.C. § 1681 (1994)); and the Fair Housing Amendment’s Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1994) (codified at 28 U.S.C. §§ 2341, 2342 (1988), 42 U.S.C. §§ 3601, 3602, 3604-3608, 3610-3619, 3631 (1994)).

33. Education of All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773, 775; *see also* Developmentally Disabled Assistance and Bill of Rights Act, Pub. L. No. 94-103, 89 Stat. 486 (1975).

Rehabilitation Act had some significant shortcomings.³⁴ Specifically, it did not protect disabled persons from being discriminated against in places of private employment.³⁵ In addition, the Rehabilitation Act did not protect disabled persons while using public accommodations, transportation, and many state and local services.³⁶

In 1977, approximately 3,700 delegates from across the United States attended the White House Conference on Handicapped Individuals.³⁷ The conference focused on deficiencies in federal legislation directed at disability-based discrimination, and encouraged the passage of an amendment to the 1964 Civil Rights Act that would protect persons with physical or mental disabilities as a group.³⁸ However, despite a concerted effort, Congress did not enact such an amendment.³⁹

Congress made another attempt to deal with some of the inadequacies of the Rehabilitation Act of 1973 when it enacted legislation in 1978 that established a National Council on the Handicapped (Council) in the Department of Health, Education, and Welfare.⁴⁰ The Council was charged with reviewing all federal laws and programs that affect persons with disabilities and submitting a report to both the President and Congress recommending improvements to the existing legislation.⁴¹

In 1986, the Council released its report, entitled *Toward Independence*.⁴² The report contained close to fifty recommendations to Congress aimed at supplementing current disability laws.⁴³ The Council's primary recommendation was to draft the ADA.⁴⁴ As part of its findings, the Council recommended that Congress "enact a comprehensive law

34. See Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355. For example, under the Rehabilitation Act, it was still possible to discriminate against those with disabilities in private places of employment and many non-federal arenas. *Id.* at 394.

35. *Id.*

36. Weicker, *supra* note 21, at 388 (1991).

37. The White House Conference on Handicapped Individuals: Summary Final Report 1 (1977).

38. *Id.* at 115-16.

39. *Id.*

40. See Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. No. 95-602, 92 Stat. 2955, 2977 (codified as amended at 29 U.S.C. §§ 780-786 (1994)). In 1984, additional amendments were added that reestablished the Council as an independent agency to serve as the leader in federal disability policy. See Rehabilitation Amendments of 1984, Pub. L. No. 98-221, 98 Stat. 17, 26 (codified as amended at 29 U.S.C. § 780 (1994)).

41. See Rehabilitation Amendments of 1984, 1984, Pub. L. No. 98-221, 98 Stat. 17, 26 (codified as amended at 29 U.S.C. § 780 (1994)).

42. See National Council on the Handicapped, *Toward Independence* (1986).

43. *Id.* at 11-39.

44. *Id.* at 11.

requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of [a] handicap.”⁴⁵ Such recommendations would serve as the guide for the construction and passage of the ADA.⁴⁶

Based in part on the Council’s recommendations, ADA legislation was introduced in both houses of Congress in 1988.⁴⁷ However, despite strong bipartisan support for the measure, the initiative died because it failed to reach a vote in either house before the end of the legislative session.⁴⁸

B. The Final Product: The Americans with Disabilities Act of 1990

1. Legislative History of the ADA

In 1989, ADA legislation was again introduced in Congress.⁴⁹ Senator Tom Harkin introduced the ADA’s precursor in the Senate.⁵⁰ On the House side, Representative Tony Coelho sponsored his version of disability legislation.⁵¹ Over the next several months, both houses of Congress held public hearings on the matter and worked out a final bill in conference committee.⁵² After floor votes for the measure, the ADA

45. *Id.*

46. *Id.*

47. See H.R. 4498, 100th Cong. (1988); S. 2345, 100th Cong. (1988).

48. *See id.*

49. *See id.*

50. *See* S. 993, 101st Cong. (1989)

51. *See* H.R. 2273, 101st Cong. (1989); *see also* *Tony Coelho Supports Casey Martin’s Quest to Use Golf Cart*, PRESIDENT’S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES, Feb. 3, 1998, at <http://www.dol.gov.ztesxtver/archives/press/spring98/martin.htm> (quoting Coelho as saying, “[e]xcluding Martin on the basis of an arbitrary rule prevents him from reaching the pinnacle of his career, which violates his employment rights”).

52. *See generally* *Americans with Disabilities Act of 1989: Hearings on H.R. 2273 Before the House Comm. of the Judiciary and the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 101st Cong., 1st Sess. (1989); *Americans with Disabilities Act: Hearing on H.R. 2273 and S. 933 Before the Subcomm. on Transp. and Hazardous Materials of the House Comm. on Energy and Commerce*, 101st Cong., 1st Sess. (1989); *Americans with Disabilities Act: Hearings on H.R. 2273 Before the Subcomm. on Surface Transp. of the House Comm. on Public Works and Transp.*, 101st Cong., 1st Sess. (1989); *Americans with Disabilities: Telecomm. Relay Services, Hearing on Title V of H.R. 2273 Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce*, 101st Cong., 1st Sess. (1989); *Americans with Disabilities Act of 1989: Hearing on H.R. 2273 Before the Subcomm. on Select Educ. And Employment Opportunities of the House Comm. on Educ. and Labor*, 101st Cong., 1st Sess. (1989); *Field Hearing on Americans with Disabilities Act: Hearing Before the Subcomm. on Select*

overwhelmingly passed both houses of Congress.⁵³ In fact, over ninety percent of the voting members of Congress voted for the legislation.⁵⁴ President George Bush, Sr. signed the bill into law on July 26, 1990.⁵⁵

The ADA provides for a comprehensive national mandate to eliminate discrimination against individuals with disabilities and ensures that the federal government plays a leading role in the enforcement of that mandate.⁵⁶ In reaching this goal, the ADA has been called "one of the

Educ. And Employment Opportunities of the House Comm. on Educ. and Labor, 101st Cong., 1st Sess. (1989); *Hearing on H.R. 2273, The Americans with Disabilities Act of 1989: Joint Hearing on H.R. 2273 Before the Subcomm. on Employment Opportunities and Select Educ. of the House Comm. on Educ. and Labor*, 101st Cong., 1st Sess. (1989); and *Americans with Disabilities Act of 1989: Hearings on S. 933 Before the Senate Comm. on Labor and Human Resources and the Subcomm. on the Handicapped*, 101st Cong., 1st Sess. (1989).

53. See 136 Cong. Rec. H4614, at H4629-30 (July 12, 1990); 136 Cong. Rec. S9684, at S9695 (July 13, 1990).

54. *Id.*

55. See *supra* note 1; see also Pub. L. No. 101-336, 104 Stat. 327 (1990).

56. 42 U.S.C. § 12101(b)(1994); see also *id.* § 12101(a). Section 12101 indicates that in creating the ADA 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; (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; (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; (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination; (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities; (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; (7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society; (8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and (9) the continuing existence of unfair and

most important and far-reaching pieces of Congressional legislation” in recent history.⁵⁷ What makes the ADA so potentially significant is its breadth of coverage: it “applies to private employers of fifteen or more employees, nonfederal government entities of any size, and places of public accommodation.”⁵⁸ The ADA also includes provisions that regulate certain areas of public transportation.⁵⁹

a. Title I: Combating Discrimination in Employment

Title I⁶⁰ of the ADA generally applies to employment discrimination.⁶¹ Congress designed Title I to prevent discrimination against a qualified individual with respect to job application procedures, hiring, promoting, or discharging of employees, as well as other employment privileges.⁶² The ADA defines a “qualified individual” as “an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position”⁶³ The statute

unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

Id. § 12101(a).

57. William D. Goren, UNDERSTANDING THE AMERICANS WITH DISABILITIES ACT: AN OVERVIEW FOR LAWYERS ix-x (American Bar Association 2000).

58. *Id.* at 2.

59. 42 U.S.C. §§ 12141-12150 (1994).

60. Jonathan R. Mook, 2 *Americans with Disabilities Act: Employee Rights and Employer Obligations*, § 9.05 (Matthew Bender & Co. eds. 1998) (indicating that a relationship exists between Titles I and III and requires that the two Titles be read together despite that fact that Title I covers discrimination as it relates to job applicants and employees and Title III covers discrimination concerning the general public, i.e., clients, customers, and patrons).

61. 42 U.S.C. §§ 12111-12117 (1994). As required by the ADA, the Equal Employment Opportunity Commission is responsible for the enforcement of Title I. 29 C.F.R. §§ 1630.1-16 (2000). These regulations were drafted because the EEOC was required to issue guidelines and regulations to govern private sector employment within one year after the ADA’s passage. *Id.*

62. 42 U.S.C. § 12112(a)-(b) (1994). Other areas covered by Title I include employee compensation and job training. *Id.* Title I makes it discriminatory to deny a job or benefit to an otherwise qualified individual on the basis of their handicap or to use qualification standards for employment that tend to screen out persons with disabilities. *Id.* Further, Title I defines discrimination to include limiting or classifying a job applicant in a way that negatively affects the applicant’s opportunity for employment and not making reasonable accommodations for any known physical or mental limitations of a qualified employee. *Id.*; see also Jean Fitzpatrick Galanos & Stephen H. Price, Comment, *Title I of the Americans with Disabilities Act of 1990: Concepts & Considerations for State and Local Employers*, 21 STETSON L. REV. 931, 942 (1992).

63. 42 U.S.C. § 12111(8) (1994); see also *Johnston v. Morrison, Inc.*, 849 F. Supp. 777, 780 (N.D. Ala. 1994) (holding that a restaurant does not have to comply with the ADA if

further states that the employer shall be given some leeway, but not complete autonomy, in determining which functions of a job are essential.⁶⁴ The term “reasonable accommodation” includes making existing facilities readily accessible to the disabled, job restructuring, potentially reassigning an individual to another vacant position, or other appropriate modifications.⁶⁵

While its coverage is broad, the ADA does not require an employer to give an accommodation if doing so would result in an undue hardship to the employer.⁶⁶ The term “undue hardship” is often difficult to define because of the many factors that need to be considered.⁶⁷ The undue hardship concept is a relative one: a certain accommodation may be unduly burdensome to one employer, but not to another.⁶⁸ While the factors listed in the ADA are useful, they do not provide a concrete rule of law.⁶⁹ This generally results in courts analyzing the facts and circumstances of each individual case and making case specific findings to determine whether a particular accommodation would impose an undue hardship on the employer.⁷⁰

the claimant is not a qualified individual within the boundaries of the ADA). The employee in this case could not succeed in her ADA claim because she could not perform the essential functions of being a waitress, and thus was not a qualified individual in need of protection under the ADA. *Id.*

64. 42 U.S.C. § 12111(8) (1994).

65. *Id.* § 12111(9).

66. *Id.* § 12111(10). See generally Jeffery O. Cooper, Comment, *Overcoming Barriers to Employment: The Meaning of Reasonable Accommodations and Undue Hardship in the Americans with Disabilities Act*, 139 U. PA. L. REV. 1423 (1991).

67. 42 U.S.C. § 12111(10)(B) (1994). The factors include: (1) the nature of the cost associated with making the reasonable accommodation; (2) the overall financial resources of the facility involved, the number of persons employed and the impact on expenses and resources that the accommodation would incur; (3) the overall financial resources of the employer in question; and (4) the type of operations of the employer, including the composition of the employer. *Id.*

68. *Id.* § 12111 (10)(B).

69. See generally Steven B. Epstein, Note, *In Search of a Bright Line: Determining When an Employer's Financial Hardship Becomes "Undue" Under the Americans with Disabilities Act*, 48 VAND. L. REV. 391, 392-400 (1995) (arguing that the ambiguities inherent in the term “undue hardship” cause neither employers nor employees to be certain about what level of accommodation the ADA really requires and proposing a quantitative methodology for determining what is an undue hardship).

70. See *Vande Zande v. Wis. Dep't of Admin.*, 44 F.3d 538 (7th Cir. 1995) (holding that despite finding an employee had a disability requiring the employer to make reasonable accommodations, the requested accommodation of working at home or installing a computer at home was an undue burden in relation to the benefits of the accommodation to the disabled worker, as well as to the employer's resources); see also *Gardner v. Morris*, 752 F.2d 1271, 1284 (8th Cir. 1985) (holding that an increase in medical staff at the employee's worksite and the presence of an on-site blood testing facility would

b. Title III: Leveling the Playing Field in Places of Public Accommodation

Under Title III of the ADA, Congress sought to prohibit discrimination⁷¹ against individuals with disabilities who receive services provided by private entities in places of public accommodation.⁷² The

create an undue financial burden on the employer); *Frank v. Am. Freight Sys. Inc.*, 398 N.W.2d 797, 803 (Iowa 1987) (finding that an employer would suffer an undue cost burden if it was required to hire extra employees to help unload cargo because it was unsafe for the disabled truck driver to handle it).

71. 42 U.S.C. § 12182(b)(2)(A) (1994). This section states in part that discrimination includes:

(1) the imposition or application of eligibility criteria that screen out . . . an individual with a disability . . . from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered; (2) 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; (3) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden.

Id.

72. *Id.* § 12181. Title III requires the Departments of Justice and Transportation to issue regulations concerning the areas of Title III that are relevant to their jurisdictions. *Id.* § 12186. Additionally, the language of the ADA requires that the Justice Department periodically review compliance by private entities and investigate alleged violations. *Id.* § 12188(b). While this Comment does not analyze them, the ADA has three other Titles which protect against discrimination: Titles II, IV, and V. *See generally id.* §§ 12202, 12131-12134; 12141-12150; *id.* § 225. The purpose of Title II of the ADA was to prohibit discrimination in the public service arena. *Id.* §§ 12131-12134; 12141-12150. Title II specifically outlaws the exclusion of any individual with a disability from participation in or denied the benefits of a public entity. *Id.* § 12132. The term, "public entity," as referred to in this title, includes "any State or local government [or] any department, agency [of that state] and the National Railroad Passenger Corporation, and any commuter authority . . ." *Id.* § 12131. Title IV of the ADA applies to the Federal Communications Commission and requires the agency to comply by providing special services for those with hearing and speech disabilities. 47 U.S.C. § 225 (1994). Under one provision of Title IV, any public service announcement that is funded by a federal agency is required to include closed captioning capabilities. *Id.* § 611. Title V contains several miscellaneous provisions that deal with issues such as state immunity and maintains that a state shall not be immune under the Eleventh Amendment of the United States Constitution from an action in federal or state court for a violation of the ADA. 42 U.S.C. § 12202 (1994). Title V pertains to Congress and the agencies of the legislative branch by setting forth procedures to remedy a violation of the ADA in the House of

Martin and Olinger suits against the PGA and the USGA relied on the protections of Title III.⁷³ Title III lists the types of private entities that are considered public accommodations for purposes of enforcement of the ADA.⁷⁴ Among the private entities covered by the law are places like restaurants, museums, a variety of retail and service stores, places of public recreation, and specifically, golf courses.⁷⁵

Title III requires private entities that are considered places of public accommodation to provide reasonable modifications or accommodations for disabled persons.⁷⁶ However, if an entity can demonstrate that the modification would fundamentally alter the nature of the goods, services, or facilities provided, or result in an undue burden, the entity is relieved from complying with this provision of the ADA.⁷⁷

One early contention with Title III of the ADA, as applied to athletics, was whether its provisions concerning public accommodations apply to the actual playing field or just the areas surrounding the field and the

Representatives or Senate in matters of employment or otherwise. *Id.* § 12209. Additionally, Title V encourages the means and use of alternative dispute resolution in settling disputes under the ADA, through mediation, arbitration, and settlement negotiations. *Id.* § 12212.

73. *Martin v. PGA Tour, Inc.*, 984 F. Supp. 1320, 1321 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001); *Olinger v. United States Golf Ass'n*, 55 F. Supp. 2d 926, 930 (N.D. Ind. 1999), *aff'd*, 205 F.3d 1001 (7th Cir. 2000), *vacated*, 121 S. Ct. 1879 (2001).

74. 42 U.S.C. § 12181(7) (1994).

75. *Id.* Specific places listed as public accommodations are as follows:

[R]estaurant[s], bar[s], or other establishments serving food or drink; a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment; an auditorium, convention center, lecture hall, or other place of public gathering; a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment; 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; a terminal, depot, or other station used for specified public transportation; a museum, library, gallery, or other place of public display or collection; a park, zoo, amusement park, or other place of recreation; a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education; a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and a gymnasium; health spa; bowling alley; golf course, or other place of exercise or recreation.

Id.

76. *Id.* § 12182(b)(2)(A) (1994).

77. *Id.*; *see also id.* § 12187 (indicating that in addition to the fundamental alteration exception, private clubs and religious organizations are exempt from ADA requirements governing public accommodations and services).

stands.⁷⁸ Several courts have held that it applies to both.⁷⁹ Most prominent in establishing this notion was *Anderson v. Little League Baseball*⁸⁰ where a federal district court in Arizona held that Title III applied to a coach's box on a baseball field.⁸¹ As a result, a disabled baseball coach was allowed to use his wheelchair while coaching from the field.⁸² In emphasizing the importance of the ADA, the court held that the extent of non-participation by individuals with disabilities is alarming and that Americans with disabilities must be brought fully into the mainstream of society through "full participation in and access to *all* aspects of society."⁸³

Additionally, although a facility may not be entirely public because it limits access to certain places, this does not deprive the facility of its overall character as a place of public accommodation.⁸⁴ For example, in *Independent Living Resources v. Oregon Arena Corp.*,⁸⁵ a disabled attorney brought an action against the owner and operator of a sports arena alleging that the arena had violated the ADA and similar state laws when it did not provide wheelchair access.⁸⁶ A significant question presented in the case was whether the arena's executive suites were places of public accommodation within the meaning of the Act.⁸⁷ The plaintiff maintained that these "suites need not be open to every member of the public in order to be a public accommodation."⁸⁸ The Oregon

78. *Martin v. PGA Tour, Inc.*, 204 F.3d 994, 997-98 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001).

79. *See, e.g.*, *Bowers v. NCAA*, 9 F. Supp. 2d 460, 483-90 (D.N.J. 1998); *Tatum v. NCAA*, 992 F. Supp. 1114, 1121 (E.D. Mo. 1998); *Ganden v. NCAA*, No. 96C6953, 1996 WL 680000, at *8-11 (N.D. Ill. Nov. 21, 1996) (holding, collectively, that the underlying premise in cases of disabled athletes is that Title III applies to the playing field, not just the stands).

80. 794 F. Supp. 342 (D. Ariz. 1992).

81. *Id.* at 345.

82. *Id.* at 346.

83. *Id.*; *see also* H.R. No. 101-485(II) at 35, *reprinted in* 1990 U.S.S.C.A.N. 263, 316-17 (including comments from the Attorney General about the then current status of Americans with disabilities).

84. *See generally* *Indep. Living Res. v. Oregon Arena Corp.*, 982 F. Supp. 698, 759 (D. Or. 1997).

85. *Id.*

86. *Id.* at 758-59. The arena was ultimately charged with violating ADA laws that govern the number, placement, and spacing of wheelchair spaces and that require the arena parking garage to comply with regulations governing protruding objects. *Id.* at 707-24, 779-80.

87. *Id.* at 758-60.

88. *Id.* at 759. The opinion also states that "[a] gymnasium or golf course may be open only to authorized members and their guests, but that does not necessarily preclude it from being classified as a place of public accommodation." *Id.*; *see also* 42 U.S.C. §

District Court agreed with the plaintiff and held, among other things, that the arena violated the requirements under Title III of the ADA and determined that the executive suites were places of public accommodation.⁸⁹

2. Challenging the PGA and the USGA Under Title III

a. Casey Martin

In 1997, Casey Martin sought to join the ranks of the PGA by taking the traditional route of earning his Tour card through the PGA's qualifying school.⁹⁰ After making it through the first two of three rounds of the school, which allowed the use of golf carts, Martin sought permission to use a golf cart for the third round, which required players to walk and use caddies.⁹¹ In *Martin v. PGA Tour, Inc.*,⁹² Casey Martin sought relief under Title III of the ADA because the PGA Tour⁹³ refused to allow him the use of a golf cart during the third stage of the qualifying school and potentially using a cart on the Nike and regular PGA Tours should he qualify.⁹⁴

The Oregon district court granted a preliminary injunction directing the PGA Tour to allow Martin to use a cart in the final round of qualifying school.⁹⁵ The court extended the injunction to permit Martin

12181(7) (1994) (listing places of public accommodation).

89. See *Indep. Living Res.*, 982 F. Supp. at 758-59.

90. *Martin v. PGA Tour Inc.*, 984 F. Supp. 1320, 1321 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 531 U.S. 1049 (2001). To enter the PGA qualifying school, a prospective player must pay a \$3,000 fee and submit two letters of reference. *Id.*

91. *Id.* at 1322.

92. 984 F. Supp. 1320 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 531 U.S. 1049 (2001).

93. *Id.* at 1321. The PGA Tour is a non-profit association of professional golfers headquartered in Columbia, Maryland. *Id.* The PGA sponsors and co-sponsors professional golf tournaments on three levels: the traditional PGA Tour, with approximately 200 golfers at any given time, the Senior PGA Tour, with about 100 golfers, and the Nike Tour (currently the Buy.com Tour), with about 170 players. *Id.*

94. *Id.* The principle way of gaining access to the tour is through a three-stage qualifying school tournament. *Id.* The top qualifiers are then invited to play on the regular PGA Tour. *Id.* In the first two stages of the qualifying school, the golfers are allowed to use carts, but not in the third. *Id.* When the PGA Tour denied Martin's request to use a cart after he made it through the first two rounds of the qualifying school, he filed for injunctive relief under the ADA. *Id.*

95. *Id.* If one does not score well enough in the qualifying school to make the PGA Tour, one can still be eligible for the Nike Tour if the player is one of the next seventy best golfers from the qualifying school. *Id.* As a result of Martin's play in the last round of the qualifying school, he was offered a spot on the Nike Tour. *Id.* at 1322. The Nike Tour is run by the PGA and serves as the junior version of the regular PGA Tour.

to use a cart in the first two tournaments on the Nike Tour.⁹⁶ The PGA attempted to prove that it was exempt from the ADA because it was a private non-profit establishment and, in the alternative, that even if it was not exempt from the private status, PGA and Nike Tour competitions are not places of public accommodation.⁹⁷ However, the district court found that the PGA Tour, as host of golf tournaments, fits within the ADA definition of a public accommodation and is required to make reasonable accommodations for Martin by allowing him to use a golf cart.⁹⁸

The PGA challenged this ruling in federal district court by relying on two alternative propositions.⁹⁹ First, the PGA argued that the ADA does not apply to its professional tournaments because it was a private club and its tournaments were not conducted at places of public accommodation.¹⁰⁰ Second, it maintained “that the requirement of walking is a substantive rule of [] competition and that a waiver of the rule would [] result in a fundamental alteration of its competitions”¹⁰¹ The PGA, citing limited case law arising from disputes involving eligibility rules and not specifically involving the physical act of playing the sport,¹⁰² asserted that the court should determine that the rule requiring walking in golf is one that does not define who is eligible to

96. *Id.*

97. *Id.* at 1323.

98. *Id.* at 1320-21.

99. See *Martin v. PGA Tour, Inc.*, 994 F. Supp. 1242, 1244 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 531 U.S. 1049 (2001).

100. *Id.*

101. *Id.*

102. The PGA relied primarily on the following cases to support their challenge to the preliminary injunction: *McPherson v. Michigan High Sch. Athletic Ass'n*, 199 F.3d 453, 462 (6th Cir. 1997) (holding that allowing a student to exceed the high schools eight semester limitation on athletes was not in violation of the ADA as applied to a student with a learning disability that prevented him from completing high school in eight years because waiving the rule would cause a fundamental alteration in the sports program); *Sandison v. Michigan High Sch. Athletic Ass'n*, 64 F.3d 1026, 1035 (6th Cir. 1995) (maintaining that the waiver of an age regulation in high school sports would fundamentally alter the athletic programs by allowing an older student to compete with younger ones); *Pottgen v. Missouri State High Sch. Athletic Ass'n*, 40 F.3d 926, 931 (8th Cir. 1994) (determining that an age requirement was essential to a high school athletic program and that an inquiry into the need for the requirement was unnecessary); *Bowers v. NCAA*, 974 F. Supp. 459, 467 (D.N.J. 1997) (holding that an abandonment of a course requirement would fundamentally alter the nature of National Collegiate Athletic Association (NCAA) programs). In *Bowers*, however, the court noted that a rule authorizing waivers on a case-by-case basis was sufficient to accommodate students with learning disabilities. *Id.*

compete, but rather how the game is played.¹⁰³ The PGA argued that if the walking rule is determined to be a substantive rule of the game, then the rule cannot be modified without fundamentally altering the nature of the competition.¹⁰⁴ This argument is akin to the PGA claiming that it alone can set the rules of competition without concern for the provisions of the ADA.¹⁰⁵ The district court disagreed with the PGA and determined that the Rules of Golf do not require walking and noted that nothing in the recognized rules of the game, as determined by the PGA's publications, defines walking as a part of the game.¹⁰⁶ The court further held that Martin sustained his burden by proving that his request for a golf cart was a reasonable modification and should be allowed.¹⁰⁷

The PGA appealed this second unfavorable district court decision to the Ninth Circuit.¹⁰⁸ Beginning its analysis with Title III, the Ninth Circuit found that Martin sought to enjoy the facilities of a place of public accommodation.¹⁰⁹ The PGA did not dispute that a golf course can be considered a place of public accommodation, but it claimed that these accommodations are limited to the spectator areas.¹¹⁰ Based on this

103. *Id.* at 1246.

104. *Id.*

105. *Id.*

106. *Id.* at 1248-49. The PGA Rules state under paragraph 6 (Transportation-Appendix I) that "players shall walk at all times during a stipulated round unless permitted to ride by the PGA Tour Rules Committee." *Id.* at 1249. However, no written policy exists for determining the Committee's discretion when making a decision to ride. *Id.* Furthermore, the PGA specifically allows carts in the first two preliminary rounds of the Qualifying School Tournaments and during the Senior Tour for golfers over fifty. *Id.* at 1248 n.9.

107. *Id.* at 1248. The district court also found that because the PGA Tour specifically allows the use of a cart in the Senior Tour and at the first two stages of the Qualifying School, the use of a cart is not an unreasonable accommodation. *Id.* In addition, the court noted that the NCAA and the PAC 10 Athletic Conference "permit the use of carts as an accommodation to disabled collegiate golfers," thus lending credence to the idea that a request for a cart is not an unreasonable modification. *Id.*; see also *Johnson v. Gambrinus Co.*, 116 F.3d 1052, 1059 (5th Cir. 1997) (standing for the principle that the plaintiff can meet the burden of proving that the modification requested is reasonable by "introducing evidence that the requested modification is reasonable in the general sense"); *Crowder v. Kitagawa*, 81 F.3d 1480, 1486 (9th Cir. 1996) (holding that the determination of what constitutes a reasonable modification is highly fact-specific and must be made on a case-by-case basis).

108. *Martin v. PGA Tour, Inc.*, 204 F.3d 994, 996 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001).

109. *Id.* at 996.

110. *Id.* at 997; see also *Indep. Living Res. v. Oregon Arena Corp.*, 982 F. Supp. 698, 759 (D. Or. 1997) (finding that while entry to a portion of a place may be restricted, this alone does not allow a place of public accommodation to fall beyond the reach of the ADA).

foundation, the PGA then attempted to argue that because the general public was not allowed to enter the competition area, the golf course itself and the area Martin sought to use his golf cart, was not a place of public accommodation.¹¹¹

The Ninth Circuit, restating what was determined in the lower court, held that while it is true that the general public is not allowed “inside the ropes,” competitors, caddies, and other personnel are permitted access.¹¹² Thus, the ADA should apply because the area inside the ropes is not inherently private.¹¹³ Additionally, the court confirmed the general holding of *Independent Living Resources*, that just because entry into a place of public accommodation may be limited, it does not change the facility’s overall character as a place of public accommodation.¹¹⁴

After finding that the PGA tournaments were places of public accommodation, the Ninth Circuit addressed whether Martin’s use of a golf cart was a reasonable accommodation under Title III.¹¹⁵ The court also considered whether the use of a cart would fundamentally alter the nature of future PGA competitions.¹¹⁶ Upon holding that the reasonableness of the accommodation had been answered in the district court, the Ninth Circuit then addressed the fundamental alteration of the game argument.¹¹⁷ The court reasoned that because Martin endures greater fatigue even with a cart than the other competitors do by walking, he gains no competitive advantage by using a cart and thus no fundamental alteration of the competition would result.¹¹⁸ After its third defeat, the PGA appealed the Ninth Circuit’s decision to the Supreme Court, which granted a writ of certiorari on September 26, 2000.¹¹⁹

b. Ford Olinger: A Similar Situation with an Opposite Result

While not getting the attention that Casey Martin received in his pursuit of relief, Ford Olinger also sought ADA protection on the golf

111. *Martin*, 204 F.3d at 998.

112. *Id.*

113. *Id.*

114. *Id.* at 997-98; *see also* Americans with Disabilities Act of 1990: U.S. Department of Justice Technical Assistance Manuals Title II and III, III-1.2000 (indicating that if a day care center is run in a private home, the private areas of the home may still be deemed places of public accommodation).

115. *Martin*, 204 F.3d at 999.

116. *Id.*

117. *Id.* at 1001

118. *Id.* at 1000-01.

119. *PGA Tour, Inc. v. Martin*, 530 U.S. 1306 (2000).

course.¹²⁰ Olinger is an aspiring golfer who suffers from a degenerative hip disorder that significantly impairs his ability to walk.¹²¹ However, the USGA¹²² denied Olinger's request to use a motorized cart in a United States Open qualifying round in 1999.¹²³ Olinger then filed suit in Indiana,¹²⁴ maintaining that the USGA, like the PGA, operates places of public accommodation, and that the assistance of a cart in the qualifying rounds is a reasonable accommodation.¹²⁵ The USGA countered that it was a "membership organization with no close connection to a particular facility" and was "without affiliation to a place open to the public," and therefore should not be considered a place of public accommodation as defined in the ADA.¹²⁶ The district court disagreed and held that

120. *Olinger v. United States Golf Ass'n*, 55 F. Supp. 2d 926, 928 (N.D. Ind. 1999), *aff'd*, 205 F.3d 1001 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001).

121. *Id.* at 929; *see also Judge Denies*, *supra* note 11 (noting that Olinger's condition is so severe that when he tried to play eighteen holes without the assistance of a motorized cart, the pain was so intense he could not get out of bed for three days).

122. *See Olinger v. United States Golf Ass'n*, 205 F.3d 1001, 1002 (7th Cir. 2000) (stating that "[t]he USGA is a private, not-for-profit association of member golf clubs and courses, chartered for the purpose of promoting and conserving the best interests and the true spirit of the game of golf." *Id.* The USGA conducts tournaments in thirteen categories such as the U.S. Woman's Open, U.S. Senior Open, and the U.S. Amateur. *Id.* The U.S. Open is the men's national championship and has been held every year except from 1917-18, and 1942-45 because of world wars. *Id.* The U.S. Open is held at a different course each year. *Id.*; *see also The USGA Story*, at www.usga.org/about/good_of_the_game.html (last visited Oct. 26, 2000). This source indicates that "[t]he USGA has served as the national governing body of golf since its formation in 1894" and is an "organization run by golfers for the benefit of golfers." *Id.* Additionally, "[m]ore than 9,100 private and public golf courses, clubs and facilities make up the USGA." *Id.* There is "[a]n Executive Committee of 15 volunteers [that] oversees the Association." *Id.* There are "[m]ore than 1,200 volunteers from all parts of the country [that] serve on more than 30 USGA committees." *Id.* There is "[a] professional staff of approximately 250 [that] directs the Association's day-to-day functions from Golf House, the USGA's headquarters in Far Hills, New Jersey." *Id.* Finally, "approximately 800,000 players from around the nation are USGA Members." *Id.*

123. *Olinger*, 55 F. Supp. 2d at 928. The USGA hosts qualifying tournaments at ninety sites across the United States in the weeks prior to the U.S. Open. *Id.* The site of the qualifying tournament changes each year. *Id.* The USGA requires that to participate in the local qualifying round a golfer must carry a handicap index of 1.4 (shooting, on average only 1.4 stroke(s) above par) or better for amateurs, or have status as a professional in order to play in the qualifying event. *Id.* In 1998, 6,881 golfers competed in the U.S. Open qualifying matches and 750 advanced to the sectional qualifier, which consists of thirty-six holes that are played in one day. *Id.* In 1998, Olinger, with the help of a temporary restraining order, used a cart in the local qualifying round, but failed to place high enough to make the regional qualifier. *Id.* at 929.

124. *Id.* at 926.

125. *Id.* at 930.

126. *Id.* at 931; *see also Welsh v. Boy Scouts of Am.*, 993 F.2d 1267, 1270-71 (7th Cir. 1993) (the USGA relied on the majority in *Welsh*, which rejected the argument that

because the USGA leases the golf courses where it hosts its events, it qualifies as an operator of a public accommodation.¹²⁷

Upon finding that the USGA was within the ADA's reach, the district court analyzed whether the use of a cart would fundamentally alter the nature of its competitions.¹²⁸ The district court in Indiana came to the opposite conclusion of the *Martin* court and found that while the game of golf does not forbid the use of golf carts, allowing one for Olinger would give him an unfair advantage over the rest of the field.¹²⁹ The district court found that there is a strong basis to conclude that a golfer who rides a cart is likely to have some advantage when it comes to fatigue over a golfer who walks, all things being equal.¹³⁰ Finding that the only fair alternative would be to allow all U.S. Open competitors to use a cart, the district court held for the USGA and prohibited the use of a cart.¹³¹

Olinger appealed this decision to the Seventh Circuit.¹³² In a rather concise opinion, the court reiterated the points argued in the lower court and again found that while the USGA involved itself in places of public

"places of public accommodation" include membership organizations lacking a close connection to a specific facility, because the USGA rents the golf courses at which it plays its tournaments); *Elitt v. U.S.A. Hockey*, 922 F. Supp. 217, 223 (E.D. Mo. 1996) (holding that local and national hockey associations do not constitute places of public accommodation because they play their games in several different arenas).

127. *Olinger*, 55 F. Supp. 2d at 931-32; see also *Stoutenborough v. Nat'l Football League*, 59 F.3d 580, 583 (6th Cir. 1995) (holding that hearing disabled fans could not sue the National Football League (NFL) under the ADA because the NFL did not own, operate, or lease the Cleveland stadium that was denying disabled fans television broadcasts of home games).

128. *Olinger*, 55 F. Supp. 2d at 935-38.

129. *Id.* at 938; see also *Martin v. PGA Tour, Inc.*, 994 F. Supp. 1242, 1248 n.9 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 531 U.S. 1049 (2001) (indicating that the rules allow for golf carts for the senior tour and for the preliminary rounds of the Nike Tour).

130. *Olinger*, 55 F. Supp. 2d at 935-36. Dr. James Rippe, an expert in the physiology of walking concluded, based on a study of medical literature, that the average able-bodied twenty-five to thirty-five year old golfer who uses a cart on an average summer day (eighty degrees Fahrenheit with fifty percent relative humidity) has a significant advantage over an otherwise average able-bodied twenty-five to thirty-five year old who does not use a cart. *Id.* at 935. Significantly absent from Olinger's case were the opinions of expert witness, Gary Klug, who testified at the *Martin* trial about the effects of fatigue on golfers. See *Olinger v. United States Golf Ass'n*, 52 F. Supp. 2d 947, 947-48 (N.D. Ill. 1999). His absence was a result of the USGA's successful motion in limine to exclude his testimony on the basis of unreliability. *Id.*

131. *Olinger*, 55 F. Supp. 2d at 938. *But see USGA Makes Adjustment in Olinger Case*, May 18, 2000 at http://www.ilru.org/dbtac/BreakingNews_.html (indicating that the USGA allowed Olinger to use a walker with wheels, instead of a cart, during the local qualifying round of the U.S. Open).

132. *Olinger v. United States Golf Ass'n*, 205 F.3d 1001 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001).

accommodation, it did not have to comply with the ADA by allowing Olinger to use a cart because it would fundamentally alter the nature of the competition.¹³³

These decisions put the Seventh and Ninth Circuits at odds with each other concerning whether the use of a golf cart by a disabled golfer would fundamentally alter the nature of the competition.¹³⁴ It is now up to the Supreme Court to resolve the inconsistency among the circuits.¹³⁵

II. DO THESE CASES EVEN BELONG BEFORE THE FEDERAL COURTS?

It has been argued that the ADA should not be used to regulate professional sports because there is a risk that judicial tampering will negatively affect athletic competitions.¹³⁶ In fact, in its appeal to the

133. *Id.* at 1005-07. The circuit court relied heavily on the testimony of Ken Venturi, a former professional golfer who won the U.S. Open in 1964 despite one hundred degree temperatures and ninety-seven percent humidity. *Id.* at 1006-07. He testified that if another competitor would have been riding a cart in those conditions, he would have had a "tremendous advantage" over the other players. *Id.* at 1006.

134. See generally *Martin v. PGA Tour, Inc.*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 121 S. Ct. 1879 (2001); *Olinger*, 205 F.3d at 1001.

135. You tell Us . . . Final Results, *Casey Martin and the Cart*, at <http://www.golfonline.com/polls/1998/martin0113/final.html> (last visited Oct. 27, 2000) (indicating the results of an on-line poll that was conducted asking voters whether walking is an important part of professional golf and whether carts should be allowed in the Casey Martin situation). The results of the poll indicated that fifty-four percent of those responding answered in the negative. *Id.*

136. See, e.g., Christopher M. Parent, *Martin v. PGA Tour: A Misapplication of the Americans with Disabilities Act*, 26 J. LEGIS. 123 (2000) (arguing that in light of prior judicial determinations which held that sports organizations are not covered under the ADA, the *Martin* decision will open the door to possible future ADA claims by individuals of discrimination on the actual playing field of professional sports that may thwart the ADA's chief objectives); 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 (1998) (arguing that the Casey Martin decision in the Oregon District Court may encourage others to use the ADA as a means of seeking a remedy from sports discrimination against the disabled); Radley Balko, *Casey at the Bar*, AM. PARTISAN MAG., July 31, 2000, at <http://www.americanpartisan.com/cols/balko/073100.htm> (stating that in light of the *Martin* decision in the Ninth Circuit, all of sports' governing organizations should "sit up and take notice" because the courts have now entered the business of dictating the rules of sport, and "sport as we know it will be subject to the whims and discrepancies of appellate judges across the country"); Trey Garrison, *Court in Casey Martin Golf Case "Slices" Up the Constitution*, DALLAS BUS. J., Feb. 20, 1998, at 62 (comparing the *Martin* district court victory to Kurt Vonnegut's satire *Harrison Bergeron*, where the government sets restrictions on the most successful and talented people in every conceivable activity so that everyone can achieve fairness and equality in society). Garrison claims that federal judges have intruded into "private affairs outside the scope of their constitutional powers"; see also Reed Mackenzie, *Issues Raised by Casey Martin Case Impact Golf at all Levels*, at http://www.mngolf.org/content_news/casey_martin_article.htm (last visited Oct. 27, 2000)

Supreme Court, the PGA maintained that no judicial body should be able to interfere with and force the PGA to waive a legitimate competitive rule in order to allow a particular individual to compete.¹³⁷

Tim Finchem, the PGA Commissioner, has stated publicly that to give Martin a cart will result in a competitive advantage.¹³⁸ He also claims that allowing Martin a cart “is neither fair nor wise, and it is inconsistent with a fundamental aspect of sport: that the playing field be level for all competitors.”¹³⁹

In addition, several professional golfers voiced their dissent when Martin was allowed to use a cart after his initial district court victory.¹⁴⁰ Even Fred Couples, one of golf’s foremost ambassadors, called the court’s decision to let Martin use a cart a “farce.”¹⁴¹ He further commented that, “[i]f it works that Casey can play and use a golf cart, what’s to prevent anyone with a physical problem or any other ailment to petition to use a cart?”¹⁴²

(highlighting that Casey Martin’s first case which was heard by Magistrate Coffin, a “non-golfer,” resulted in him deciding the case incorrectly). The author of this article, Reed Mackenzie, was also the USGA Vice President. *Id.* But see Sean Baker, *The Casey Martin Case: Its Possible Effects on Professional Sports*, 34 TULSA L. J. 745, 746 (1999) (arguing that while the *Martin* decision breaks new ground it “will not have a detrimental effect on the world of professional sports because of the unique aspects of professional golf as compared to other sports, and also due to varying public policy concerns”).

137. Associated Press, *Martin’s Case Going to Highest Court*, USA TODAY, Sept. 27, 2000, available at <http://www.usatoday.com/sports/golf/sgp/sgpfs27.htm>; see also Patty Maitland, *Riding a Cart on Golf’s “Unfairways”: Martin v. PGA Tour*, 29 GOLDEN GATE U. L. REV. 627, 628 (1999) (arguing that the Oregon District Court’s decision in favor of Martin raises practical concerns for sports organizations that formerly possessed absolute rulemaking authority over member participation because their previous autonomy is now subject to the judicial interpretations of challenges from athletes with debilitating conditions).

138. Mark Gray, *Casey Martin and the Golf War*, ABILITY MAG., at http://www.abilitymagazine.com/alex_casey.html (last visited Oct. 27, 2000).

139. *Id.*

140. John Garrity, *Taking One for the Team - Battered by the Martin Case, Tim Finchem Nonetheless Deserves Respect*, SPORTS ILLUSTRATED, Feb. 23, 1998, at 63. Quoted in this article was noted golfer Arnold Palmer, who remarked that with changes like the one allowed for Martin, the Tour may disappear in the future. *Id.*; see also Lynn Zmistowski, *Golf is a Walking Game: Leave the Carts Behind*, July 16, 1999 at <http://www.rockies.golf.com/walk.htm> (adding to the critique of Martin’s use of a golf cart, Zmistowski argues that the use of carts will lead to the downfall of golf and compares a golfer using a cart to be as illogical as a runner accepting a ride in a car).

141. Kevin Cook, *Golf Plus/News & Notes*, SPORTS ILLUSTRATED, Feb. 23, 1998, at G4. But see Doug Ferguson, *Tour Should Save its Battle for Another Cart*, Mar. 8, 2000, at <http://detnews.com/2000/golf/0003/10/03080045.htm> (noting that while Arnold Palmer has publicly made statements condemning Martin’s cart use, he still invited him to the Bay Hill Invitational, a tournament which Palmer hosts annually).

142. Leonard Shapiro, *Martin Driven by a Will to Win*, WASH. POST, May 28, 2000 at

Curtis Strange, another well known golf celebrity, has echoed Couple's feelings.¹⁴³ He argues that riding a cart will almost certainly give Martin an unfair advantage over the rest of the field.¹⁴⁴ Strange further commented that one cannot be sympathetic to Martin while still protecting the rest of the golfers on tour.¹⁴⁵

Some advocates of keeping the PGA course free from carts have not been as civil as Palmer and Strange.¹⁴⁶ In May of 2000, at the Kemper Open in Potomac, Maryland, one irate fan tried to start an altercation with Martin over his use of a golf cart.¹⁴⁷

Juxtaposed with this onslaught of opposition are those who maintain that the ADA has an appropriate role in rooting out disability-based discrimination in professional sports.¹⁴⁸ Ben Crenshaw, the U.S. Ryder Cup captain in 1999, and one of golf's most candid conservatives, said: "I understand [the Tour's] point and they have their reasons [but] . . . I personally think they should drop it, and let him just get on with it and play."¹⁴⁹ Senator Tom Harkin, co-author of the ADA, has weighed in on

D1; see also Brad Neuville, *Casey Martin: To Ride or Not to Ride*, VIRTUAL MINER, Feb. 4, 1998, at <http://www.umn.edu/~miner/virtual-paper/980204/sports4.html> (noting that another legend who is opposed to Martin's use of a golf cart in PGA tournaments is Jack Nicklaus). However, the author points out the irony in Nicklaus' position since he runs a golf school in Florida for budding young golfers (called the Golden Bear Tour) where the players are allowed to use golf carts. *Id.*

143. Curtis Strange, *Strange Views: Protecting the Game*, GOLF MAG., Mar. 1998, at 32. Strange writes that the PGA should reconsider why it allows golf carts in the Qualifying Tournament (Q-School) and on the Senior Tour, indicating that in the latter, players over fifty are more fit than they were twenty-five years ago. *Id.* Strange closes by claiming that he has a responsibility to protect the game and that we are sometimes forced to make decisions that are unfair in pursuit of this responsibility. *Id.*

144. *Id.*

145. *Id.*

146. Kathy Orton, *Martin, Fan Nearly Fight Over His Use of Golf Cart*, WASH. POST, June 5, 2000, at D9.

147. *Id.* The fan reportedly instigated the confrontation by shouting at Martin, "too bad cheater," after he missed a birdie putt on the twelfth green. *Id.*

148. See, e.g., Todd A. Hentges, *Driving in the Fairway Incurs No Penalty: Martin v. PGA Tour, Inc. and Discrimination Boundaries in the Americans with Disabilities Act*, 18 LAW & INEQ. 131, 137 (2000) (arguing that the ADA has a broad purpose and one that should include professional sports despite its creation to remedy discrimination in the work place).

149. Shapiro, *supra* note 142; see also Thomas Bonk, *Love, O'Meara Think Tour is Going to Lose Casey Case*, L.A. TIMES, Jan. 30, 1998, at C3 (noting that professional golfer Mark O'Meara favors the PGA moving away from the Casey Martin case because of the bad publicity it is creating for the PGA); Doug Ferguson, *Tour Should Save its Battle for Another Cart*, Mar. 8, 2000, at <http://detnews.com/2000/golf/0003/10/03080045.htm> (advocating that while the PGA has a duty to protect its form of competition, it should let Martin use a cart because his mediocre performance this year on Tour does not indicate a competitive advantage over

the debate and indicated that the PGA's no-cart rules are "just another way to systematically deny others the right to play."¹⁵⁰ Former Senator Bob Dole lamented that the whole issue boils down to a basic question of fairness and favors allowing Martin to use a cart.¹⁵¹

Despite these polarized views, there are strong arguments that the ADA applies to professional golf. Since the ADA's inception, it has been applied, although not always successfully, to several areas of sports, including youth,¹⁵² high school,¹⁵³ college,¹⁵⁴ and recreational activities.¹⁵⁵ In addition to these cases, the Ninth and Seventh Circuits, while disagreeing in their ultimate outcomes, both held that Title III was

the rest of the field and because of Martin's disability, his playing days are numbered).

150. Gray, *supra* note 138; see also Associated Press, *Sen. Harkin: PGA Tour Should Drop Cart Opposition*, GOLF MAG., Jan. 1998, at http://www.golfonline.com/news/1998/harkin_carts0116.html (stating that "the PGA stance could send the wrong message to millions of Americans with disabilities").

151. Gray, *supra* note 138. Former Senator Bob Dole suggested that "perhaps the PGA should allow Martin to walk nine holes instead of [eighteen], or allow any player who wants to ride a cart to do so." *Id.*

152. See, e.g., *Anderson v. Little League Baseball, Inc.*, 794 F. Supp. 342, 344-45 (D. Ariz. 1992); *Elitt v. U.S.A. Hockey*, 922 F. Supp. 217, 223 (E.D. Mo. 1996).

153. See, e.g., *Dennin v. Connecticut Interscholastic Athletic Conference*, 94 F.3d 96, 101 (2d Cir. 1996) (holding that a mentally retarded student athlete entering his senior year of high school at age nineteen was barred from participation on the swim team because of a maximum age eligibility rule); see also *Johnson v. Florida High Sch. Activities Ass'n, Inc.*, 102 F.3d 1172, 1173 (11th Cir. 1997) (finding, under facts similar to those of *Dennin*, that Johnson was a qualified individual with a disability, but a variance from the age requirement would constitute a fundamental alteration to the program); *McPherson v. Michigan High Sch. Athletic Ass'n*, 119 F.3d 453, 462-63 (6th Cir. 1997) (holding that waiving the high school's eight semester limitation on athletes was not in violation of the ADA as applied to a student with a learning disability that prevented him from completing high school in eight years because such a waiver would require a fundamental change to the sports program); *Sandison v. Michigan High Sch. Athletic Ass'n*, 64 F.3d 1026, 1037 (6th Cir. 1995) (maintaining that the waiver of an age regulation in high school sports fundamentally alters the athletic programs); *Pottgen v. Missouri State High Sch. Activities Ass'n*, 40 F.3d 926, 931 (8th Cir. 1994) (determining that an age requirement was essential to a high school athletic program).

154. See, e.g., *Bowers v. NCAA*, 974 F. Supp. 459, 467 (D.N.J. 1997) (holding that an abandonment of a course requirement would fundamentally alter the nature of NCAA programs). *Ganden v. NCAA*, No. 96C6953, 1996 WL 680000, at *8-11 (N.D. Ill. Nov. 21, 1996) (holding that the underlying premise in cases of disabled athletes is that Title III applies to the playing field, not just the stands); *Butler v. NCAA*, 74 F. Supp. 2d 1021, 1024 (W.D. Wash. 1999) (holding that a learning disabled student athlete failed to establish causal connection between his lawsuit and the actions of the association despite the fact that he would lose his scholarship if he was denied eligibility).

155. See, e.g., *Brown v. 1995 Tenet ParaAmerica Bicycle Challenge*, 959 F. Supp. 496 (N.D. Ill. 1997) (holding that being denied a chance to participate in a bike race on public city streets was not a violation of the ADA because the race organizers were not a controller, operator, or lessor of the area where the event took place).

applied properly to the golf courses used by the PGA and USGA.¹⁵⁶ The Ninth Circuit even declared that if a golf course is not a place of public exercise or recreation as the PGA maintained, it is a place of public exhibition or entertainment, and Title III of the ADA applies nonetheless.¹⁵⁷ The real issue then is not *whether* the ADA should apply to the Martin and Olinger controversies, but *how* the ADA should be applied.¹⁵⁸

A. Support From the ADA Language

In addition to case law, the language of the ADA presents a convincing indication that the Act was meant to cover professional sports.¹⁵⁹ As previously mentioned, Title III was specifically created to deal with places of public accommodation.¹⁶⁰ It is undisputed that when the drafters of the ADA created the list of places that were deemed public accommodations for purposes of regulation under the ADA, it chose to include gymnasiums, golf courses, or other place of exercise or recreation.¹⁶¹ If Congress intended that the ADA not regulate sports, as the PGA and USGA claim,¹⁶² it seems rather peculiar that Congress chose specifically to list these sport venues in the text of Title III.¹⁶³

B. Prior Case Law: A Road Map or a Dead End?

Many of the previous decisions that apply the ADA involved eligibility issues, and have not dealt directly with rules concerning the actual playing of a sport.¹⁶⁴ As a result, this presents a problem for the *Martin*

156. See *Martin v. PGA Tour, Inc.*, 204 F.3d 994, 997 (9th Cir. 2000), *aff'd*, 531 U.S. 1049 (2001); *Olinger v. United States Golf Ass'n*, 205 F.3d 1001, 1004 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001).

157. See *Martin*, 204 F.3d at 997; see also *Olinger*, 205 F.3d at 1004-05 (indicating that there may be some logic to the USGA's argument that a golf course, while being identified as a public accommodation, may be properly considered a "mixed use" facility for U.S. Open purposes). The USGA maintains that as a mixed use facility it is not subject to the requirements for public accommodations. *Id.* While subscribing to this logic, the Seventh Circuit never decided the case on this issue because it held that the use of a cart would be a fundamental alteration of the competition. *Id.* at 1005.

158. See *Ganden*, 1996 WL 680000, at *8-11; *Anderson v. Little League Baseball, Inc.*, 794 F. Supp. 342 (D. Ariz. 1992).

159. 42 U.S.C. § 12181(7) (1994).

160. *Id.* §§ 12181(7), 12182.

161. *Id.* § 12181(7)(L).

162. See generally *Martin*, 204 F.3d at 994; *Olinger v. United States Golf Ass'n*, 55 F. Supp. 2d 926 (N.D. Ind. 1999), *aff'd*, 205 F.3d 1001 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001).

163. 42 U.S.C. § 12181(7)(L) (1994).

164. See generally *McPherson v. Michigan High Sch. Athletic Ass'n*, 119 F.3d 453 (6th

and *Olinger* litigations because the decisions in the two cases rely largely on the testimony of expert witnesses.¹⁶⁵

One case, however, concerning the playing rules of a sport was resolved in favor of a disabled athlete, albeit in a non-professional context.¹⁶⁶ In *Schultz v. Hemet Youth Pony League, Inc.*,¹⁶⁷ the proceedings sought to answer the question of whether a youth baseball program is a place of public accommodation, and thus obligated to modify its traditional policies, rules, and regulations concerning age limits to accommodate the needs of a child with cerebral palsy.¹⁶⁸ The plaintiff argued that in order to provide the child with an opportunity to participate, it “is both appropriate for his needs as a person with a disability that substantially limits his mobility, and equivalent to opportunities provided to his non-disabled peers,” to allow him to participate in a lower age group.¹⁶⁹ The California district court agreed and held in favor of the disabled child.¹⁷⁰ The court ordered that the child be reasonably accommodated by being allowed to play baseball with children in a younger age group, even though the age requirement had been a longstanding rule.¹⁷¹ Thus, to level the playing field in *Schultz*, the court mandated that an older disabled child could participate with younger children because he gained no competitive advantage.¹⁷²

Similar to the disabled baseball player in *Schultz*, Martin and Olinger asked the PGA and USGA to augment the traditions of golf to allow the golfers an opportunity to compete equally with the rest of the field.¹⁷³ In addition, like the impact of the modification in *Schultz*, permitting Martin and Olinger to use a cart during competition will not result in a competitive advantage. Like the accommodation in *Schultz*, the

Cir. 1997); *Sandison v. Michigan High Sch. Athletic Ass'n*, 64 F.3d 1026 (6th Cir. 1995); *Pottgen v. Missouri State High School Athletic Ass'n*, 40 F.3d 926 (8th Cir. 1994); *Bowers v. NCAA*, 974 F. Supp. 459 (D.N.J. 1997).

165. *Olinger v. United States Golf Ass'n*, 205 F.3d 1001, 1006-07 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001); *Martin v. PGA Tour, Inc.*, 994 F. Supp. 1242, 1244, 1250-52 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 531 U.S. 1049 (2001).

166. *See, e.g.*, *Schultz v. Hemet Youth Pony League, Inc.*, 943 F. Supp. 1222, 1225-26 (C.D. Cal. 1996).

167. *Id.*

168. *Id.* at 1224.

169. *Id.*

170. *Id.* at 1225-26.

171. *Id.*

172. *Id.*

173. *Martin v. PGA Tour, Inc.*, 204 F.3d 994, 1000-02 (9th Cir. 2000), *aff'd*, 531 U.S. 1049 (2001); *Olinger v. United States Golf Ass'n*, 205 F.3d 1001-03 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001).

accommodation in these two cases simply brings all the competitors to an even playing field and does not favor those with the disability. Furthermore, while it could be conceded that mistakes could be made and competitive advantages may inadvertently seep into athletic settings, this is certainly not evinced by Martin's play while using a cart.¹⁷⁴ In fact, Martin has not won a single tournament and is dangerously close to losing his Tour eligibility for next season despite the use of a cart.¹⁷⁵

III. CASEY MARTIN AND FORD OLINGER'S COMPETITIVE ADVANTAGE: FACT OR FICTION?

The PGA Tour and the USGA have argued throughout these extensive litigations that giving either Martin or Olinger a golf cart would result in giving them an unfair advantage over other golfers.¹⁷⁶ This argument is based upon the belief that by riding a cart, while other golfers are walking, Martin and Olinger will gain an advantage in terms of stamina and endurance over other golf professionals.¹⁷⁷

This contention makes sense if the competitors are not disabled, but the facts, as they relate to Martin and Olinger, are not that simple.¹⁷⁸ These cases raise the issue of whether competitive disadvantage manifests itself when the player permitted to use a cart has a disability as described in the ADA.¹⁷⁹ The answer to this question may depend on the specific facts of each case and the condition of each golfer.¹⁸⁰

174. *Martin's Case Going to Highest Court*, *supra* note 137 (indicating that Martin is in serious jeopardy of losing his tour card by not playing well enough to earn an exemption for next season).

175. *Id.*

176. *Martin v. PGA Tour, Inc.*, 994 F. Supp. 1242 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 531 U.S. 1049 (2001); *Olinger*, 205 F.3d at 1001.

177. *Martin*, 204 F.3d at 999-1000; *Olinger*, 205 F.3d at 1005-06; *see also Martin*, 994 F. Supp. at 1250-52. Perhaps the best evidence suggesting the fatigue that occurs during the game of golf is a psychological phenomenon and not caused by walking was offered by Dr. Gary Klug, a professor in physiology at the University of Oregon. *Id.* at 1250. He claimed at trial, among other things, that "the fatigue factor injected into the game of golf by walking the course cannot be deemed significant under normal circumstances." *Id.* Even considering the circumstances of the 1964 United States Open, when golfer Ken Venturi sustained near-fatal exhaustion, as a result of one hundred degree temperatures, Dr. Klug maintained that Venturi's fatigue was the result of dehydration and heat exhaustion, not the result of walking the golf course, since other spectators were treated for exhaustion and did not walk the course. *Id.* at 1250-51.

178. *Martin*, 994 F. Supp. at 1250-52; *Olinger v. United States Golf Ass'n*, 55 F. Supp. 2d 926, 928-29 (N.D. Ind. 1999), *aff'd*, 205 F.3d 1001 (7th Cir. 2000), *vacated*, 121 S. Ct. (2001).

179. *Martin*, 994 F. Supp. at 1250-52.

180. *Id.* at 1250-51

In the case of Casey Martin, the district court found that the fatigue he endures just from coping with his circulatory disorder while golfing is *undeniably* greater than the fatigue suffered by the other golfers who walk in tournament play.¹⁸¹ Furthermore, the court emphasized the tremendous pain Martin sustains while walking from his cart to the ball.¹⁸² Literally, with each step, Martin puts himself at risk of fracturing his tibia and causing severe hemorrhaging.¹⁸³ Thus, even though Martin is walking only twenty-five percent of the golf course, he endures far greater fatigue than those who are able to walk the entire eighteen holes.¹⁸⁴

Something critics fail to realize is that Martin's disability prevents him from ever getting in better physical condition.¹⁸⁵ He is not a finely conditioned athlete looking to conserve energy through the use of a cart,¹⁸⁶ rather he needs the cart in order to compete at a basic level.¹⁸⁷ Martin must conserve the amount of time he spends walking and practicing in order to have the energy to participate in regular tournaments.¹⁸⁸ Martin's legs are slowly deteriorating and the length of his professional career is truly uncertain.¹⁸⁹ Consequently, he does not even participate in many of the practice rounds prior to a match, preferring to save his stamina for tournament play.¹⁹⁰ Unlike other golfers, Martin cannot spend hours at the practice range working on his swing before or after any given round.¹⁹¹ Too much practice could jeopardize his infirm legs, which would cause him to potentially lose sleep as well as concentration on the course the next day.¹⁹² In addition to the mentally fatiguing stress of competition that all golfers have, Martin must deal with the stress of potentially suffering from serious injury with every step he takes.¹⁹³

181. *Id.* at 1251-52.

182. *Id.* at 1251.

183. *Id.*

184. *Id.* at 1251-52.

185. Shapiro, *supra* note 142.

186. Gray, *supra* note 138; *see also* Shapiro, *supra* note 142.

187. Shapiro, *supra* note 142.

188. *Id.*

189. Gray, *supra* note 138; Shapiro, *supra* note 142 (indicating that if Martin was not restricted by KTW he would be among the top twenty-five golfers because of his talent).

190. Shapiro, *supra* note 142.

191. *Id.*

192. *Id.* Martin's main weapon against the pain caused by KTW is regularly taking Advil. *Id.* Advil is not a sponsor of Casey Martin. *Id.*

193. Martin v. PGA Tour, Inc., 994 F. Supp. 1242, 1251-52 (D. Or. 1998), *aff'd*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 531 U.S. 1049 (2001); *see also* Shapiro, *supra* note 142

Ford Olinger's degenerative hip condition causes similar fatigue and stress.¹⁹⁴ Like Martin, Olinger risks the possibility of serious injury with one misstep.¹⁹⁵

Coupled with the unique circumstances of Martin and Olinger's disorders of fatigue and stress is the seemingly irrefutable evidence of Martin's mediocre performance against other golfers since being allowed to use a cart in competition.¹⁹⁶ In the 1999-2000 season, Martin's first as a professional, he has "made the cut in only 12 of his 23 events on the PGA Tour."¹⁹⁷ As a result, he is in danger of losing his Tour card for next year since only the top 125 golfers on the money list are allowed back the following year and Martin is close to \$400,000 short of making the cut.¹⁹⁸ Martin's best finish of the year was a tie for seventeenth in the Tucson Open in February 2000, a tournament in which sixty-five of the world's best golfers were not even competing.¹⁹⁹ This information seems to cast real doubt on the PGA's prophecy that permitting a disabled golfer to use a cart will allow for a competitive advantage, since Martin may be cut from the tour after one season as a professional at the PGA level.²⁰⁰

A University of Maryland study casts further doubt on the competitive advantage argument.²⁰¹ The study's findings indicate that among the golfers who participated in the study, there was no significant effect on scoring performance of those who chose to ride versus those who chose

(noting that "[d]uring this year's Nissan Open . . . , Martin stepped into a hole hiding a sprinkler and admitted afterward he wondered if his golf career would be over just as he was getting started on the PGA Tour").

194. *Olinger v. United States Golf Ass'n*, 55 F. Supp. 2d 926, 929 (N.D. Ill. 1999), *aff'd*, 205 F.3d 1001 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001) (mentioning that unlike Martin, Olinger takes medication that directly causes fatigue while golfing, whereas Martin's fatigue is directly related to his disability).

195. *Judge Denies*, *supra* note 11.

196. *Martin's Case Going to Highest Court*, *supra* note 137.

197. *Id.*; see also *PGA Tour Statistics*, at <http://espn.go.com/golfonline/tours/pga/statistics/drivingdistance/html> (last modified Sept. 24, 2000) (stating that despite his less than spectacular record at making the cut in the PGA's tournaments, which generally requires you to be within ten shots of the leader after two rounds, Martin is ranked third in driving distance among all PGA golfers behind only John Daly and Tiger Woods).

198. *Martin's Case Going to Highest Court*, *supra* note 137. At the time of this Comment, there were only eight tournaments left on the PGA Tour's calendar for Martin to make enough money to be invited back for another year and retain his Tour card. *Id.* If he fails to retain his tour card, in order to become a player on the PGA Tour, he will have to go back to the Tour's Qualifying School. *Id.*

199. *Id.* The Tucson Open occurred during the same time that the top sixty-five players in the world were at the Match Play Championship. *Id.*

200. *Id.*

201. Brian Hewitt, *Study: Finding No Advantage*, *GOLF WEEK*, Feb. 21, 1998, at <http://www.golfonline.com/news/golfweek/1998/martin/study0221.html>.

to walk.²⁰² If anything, those that chose to walk received the long term advantage of increased fitness.²⁰³ Moreover, “walking improves [one’s] circulation, helps regulate breathing, keeps a player loose, and puts a player in touch with the more aesthetic aspects of the game.”²⁰⁴ These are all benefits that Martin and Olinger do not receive and the PGA and USGA find of no consequence.²⁰⁵

IV. DOES THE USE OF A GOLF CART FUNDAMENTALLY ALTER THE NATURE OF COMPETITION?

At the center of the PGA and the USGA’s competitive advantage argument is the suggestion that the use of a cart will fundamentally alter the nature of their competitions.²⁰⁶ The PGA and USGA contend that walking the course is fundamental to the game of golf and if the walking rule were eliminated from the competitions, their tournaments would essentially be altered.²⁰⁷

However, the game of golf is defined as “playing a ball from the *teeing ground* into the *hole* by a *stroke* or successive strokes in accordance with the *Rules*.”²⁰⁸ Additionally, as indicated by the Oregon District Court, there is nothing in the Rules of Golf or the PGA’s rules that specifically indicates that walking is required.²⁰⁹ Essentially, walking the golf course

202. *Id.*

203. *Id.*

204. Taylor Spalding, *A Call to Arms, Er. . . Legs!*, Mar. 10, 1998, at <http://www.e-sports.com/goldengolf/right/martin.asp> (claiming that riding a cart is not an advantage). Spalding cites Michael Laughlin in his book, *Radical Golf*, to prove her point. *Id.* Laughlin describes riding a cart as: “Ride, bounce, get out, practice your swing, hit the ball, get back in the cart, and repeat the whole process over again. This adds 5 strokes, maybe more to anyone’s game.” *Id.*

205. *Id.*

206. *Martin v. PGA Tour, Inc.*, 204 F.3d 994, 1000-01 (9th Cir. 2000), *aff’d*, 531 U.S. 1049 (2001); *Olinger v. United States Golf Ass’n*, 205 F.3d 1001, 1004-05 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001); *see also* S.E. Cmty. Coll. V. Davis, 442 U.S. 397 (1979). In light of this case, which held that a requested modification by a deaf nursing student to substitute different work was unreasonable, several courts have held that the ADA does not require entities to change their basic nature, character, or purpose to accommodate a disabled individual. *Id.*

207. *Martin*, 204 F.3d at 1000-01; *Olinger*, 205 F.3d at 1004-05.

208. *The Rules of Golf*, available at www.usga.org/rules/index (last visited Sept. 26, 2000).

209. *Id.*; *see also* *Martin v. PGA Tour, Inc.*, 994 F. Supp. 1242, 1248 (D. Or. 1998), *aff’d*, 204 F.3d 994 (9th Cir. 2000), *aff’d*, 531 U.S. 1049 (2001) (finding that this rule admittedly does not apply to all events). *But see* *Martin*, 204 F.3d at 999-1000. The PGA added to the Rules of Golf what is known as the walking rule that indicates that “[p]layers shall walk at all times during a stipulated round unless permitted to ride by the PGA Tour Rules Committee.” *Id.*

is a “tradition, not a rule.”²¹⁰ Evidence from the district court in the *Martin* case even proved that golf cart use is not completely foreign to the PGA or its tournaments.²¹¹

Golf in its simplest form, is about making better shots in fewer strokes than your opponent.²¹² It is a game of strategy, technique, and accuracy, but not about walking.²¹³ Golf is not about racing your opponent to your ball in the fairway.²¹⁴ What makes a great golfer is the ability to make the fewest shots, not the ability to finish walking the course the quickest.²¹⁵ No one goes to the U.S. Open or the Masters Championship to watch how well Tiger Woods walks.²¹⁶ They go to watch his tremendous shot making capabilities.²¹⁷ In golf’s long and storied history, no one has ever won a PGA or USGA event based on their ability to walk.²¹⁸

Casey Martin and Ford Olinger are not asking for any help in playing the game, they are simply asking for help getting to their ball.²¹⁹ In essence, all that the cart does for these two golfers is permit them access to a type of competition in which they otherwise could not engage due to their disabilities.²²⁰ This is *precisely* the purpose of the ADA.²²¹ Arguably, the use of a golf cart is simply access to Martin and Olinger’s workplace.²²² It does not tip the balance of the competition, but merely

210. Spalding, *supra* note 205.

211. *Martin*, 204 F.3d at 1000 (noting that on occasion, the PGA Committee in charge of allowing golf cart use during competition has allowed golfers to use carts when a large distance exists between a green and the next tee or when a golfer loses his first tee shot and after looking unsuccessfully can be given a ride back to the tee box to save time); *see also Martin*, 994 F. Supp. at 1248 n.9 (noting that the PGA specifically allows the use of carts in its Senior Tour and during the first two qualifying rounds at the Qualifying School).

212. Gray, *supra* note 138; *see also* Shannon, *supra* note 1.

213. Gray, *supra* note 138.

214. *See id.*

215. *See id.*

216. *See id.*

217. *See id.*

218. *See id.*

219. Rick Reilly, *Give Casey Martin a Lift*, SPORTS ILLUSTRATED, Feb. 9, 1998, at 140.

220. *Martin v. PGA Tour, Inc.*, 204 F.3d 994, 1000 (9th Cir. 2000), *aff’d*, 531 U.S. 1049 (2001); *see also* 42 U.S.C. § 12101(a)(5) (1994); *He’s Got a Ticket to Ride*, OREGON LIVE, at <http://www.oregonlive.com/oped/index.ssf?/oped/00/03/ed030709/frame> (last visited Oct. 30, 2000).

221. *Martin*, 204 F.3d at 1000.

222. John M. Williams, *No Tee – or Sympathy – for Casey Martin: Why is the PGA Going all the Way to the U.S. Supreme Court to Stop the Disabled Golfer From Using a Cart on the Pro Tour?*, BUS. WEEK, Sept. 27, 2000, available at http://www.businessweek.com/bwdaily/dnflash/sep2000/nf20000927_942.htm.

puts them “on equal footing with golfers who walk from hole to hole.”²²³

In conjunction with the argument that the use of a golf cart will fundamentally alter the nature of competitions, critics have advanced the theory that if golfers such as Martin and Olinger are allowed to use golf carts it will lead down a slippery slope of requiring other sports to make game altering modifications to accommodate the disabled, such as moving forward the three point line in basketball or allowing disabled baseball players to have four strikes instead of three, and so on.²²⁴ The Seventh Circuit seemed tacitly to accept this logic when it declared that the ADA might apply to places like Green Bay’s Lambeau Field or Chicago’s Wrigley Field if the ADA were permitted to apply to mixed use facilities like golf courses.²²⁵ While this argument may be persuasive to some, this logic is misguided.²²⁶

There is abundant ADA legislative history, fully supported by case law, that states that a resolution of issues regarding a reasonable modification under the ADA is a fact and case-specific inquiry that is not to be made concerning classes of individuals.²²⁷ This finding undercuts the strength of the PGA, USGA, and other critics’ assumption that once Martin and Olinger are allowed to use a cart, every other sport will be forced to abandon their rules and bend to the weight of the ADA.²²⁸

In discussing the implications of the ADA, the House Committee on Education and Labor noted that public accommodations are required to be made on facts applicable to individuals *only* and not on the basis of

223. *Id.*

224. Shannon, *supra* note 2, at 106 (summarizing Casey Martin’s argument in favor of using a golf cart as a reasonable accommodation and finding that the Oregon District Court correctly held that Title III of the ADA applies to the PGA because it owns, leases, and operates places of public accommodation).

225. Olinger v. United States Golf Ass’n, 205 F.3d 1001, 1005 (7th Cir. 2000), *vacated*, 121 S. Ct. 2212 (2001).

226. Anderson v. Little League Baseball, 794 F. Supp. 342, 345 (D. Ariz. 1992); Crowder v. Kitagawa, 81 F.3d 1480, 1486 (9th Cir. 1996).

227. Anderson, 794 F. Supp. at 345 (indicating that the Little League’s banning all coaches in wheelchairs from the coach’s box and allowing for no individual analysis was a blanket rule and therefore invalid); Crowder, 81 F.3d at 1486 (stating that the determination of “what constitutes reasonable modification is highly fact-specific, requiring a case-by-case inquiry”); see also Staff of House Comm. on Educ. & Labor, 101st Cong., Legis. History of Pub. L. 101-336, *reprinted in* 1990 U.S.S.C.A.N. 267, 385. *But see Martin’s Case Going to Highest Court, supra* note 137 (stating that the PGA’s lawyers think upholding the Ninth Circuit ruling will allow an abundance of “workplace discrimination lawsuits by independent contractors and other non-employees”).

228. Anderson, 794 F. Supp. at 345; Crowder, 81 F.3d at 1486; see also Staff of House Comm. on Educ. & Labor, 101st Cong., Legis. History of Pub. L. 101-336, *reprinted in* 1990 U.S.S.C.A.N. 267, 385.

facts presumed to be applicable to a class of individuals.²²⁹ Further, in *Anderson v. Little League Baseball*,²³⁰ the district court held that an assessment by the Little League that banned all disabled coaches from the coaches' box and disallowed an individual analysis was a blanket rule and thus invalid under the spirit and objectives of the ADA.²³¹ Additionally, in *Crowder v. Kitagawa*,²³² the Ninth Circuit stated that the determination of what constitutes a reasonable modification under Title III of the ADA is a highly fact sensitive inquiry requiring a case-by-case analysis.²³³ In fact, to presume that once one person is allowed a reasonable modification, that any other disabled individual will get one regardless of individual circumstances, is not in tune with the intentions of Congress when they enacted the ADA, nor the interpretation of some of the federal courts that have spoken on the issue.²³⁴

V. CONCLUSION

When the Supreme Court hears the *Martin* appeal in January of its October 2000 term, it will have the opportunity to clarify the debate concerning the limits, if any, of the ADA in the world of professional golf, and possibly to sports in general. While controversy and emotion surround many of the issues in these two cases, the underlying focus remains whether professional golf associations should be required to allow disabled golfers the use of a golf cart during their tournaments. Based on Congress' intent when it drafted the ADA, it seems that while the legislation was never specifically created to deal with discrimination in the professional golf circuit, its goal of providing a comprehensive national mandate for the elimination of discrimination against individuals with disabilities may not be fully recognized if the Court allows the provisions of the ADA to stop at the sidelines of competitive events such as professional golf tournaments. Further, if disability-based discrimination turns out to cause inadvertent competitive advantages for disabled golfers, the remedy is a legislative amendment – not disregarding the clearly expressed will of the Congress. If the Court

229. Staff of House Comm on Educ. & Labor, 101st Cong., Legis. History of Pub. L. 101-336, reprinted in 1990 U.S.S.C.A.N. 267, 385.

230. 794 F. Supp. 342 (D. Ariz. 1992).

231. *Id.* at 345.

232. 81 F.3d 1480 (9th Cir. 1996).

233. *Id.* at 1486.

234. Staff of House Comm on Educ. & Labor, 101st Cong., Legis. History of Pub. L. 101-336, reprinted in 1990 U.S.S.C.A.N. 267, 385; see also *Anderson*, 794 F. Supp. at 345; *Crowder*, 81 F.3d at 1486.

chooses to disregard the plain intent of Congress when it passed the historic legislation, the goal envisioned by President Bush when he signed the ADA in 1990 of allowing the legislation to serve as a model for the choices and opportunities of future generations around the world may never be fully realized.

ADDENDUM

Since this Comment was composed, the Supreme Court handed down its decision in *PGA Tour, Inc. v. Martin*.²³⁵ Justice Stevens authored a seven to two opinion holding that Title III of the ADA, “by its plain terms,” prevents the PGA from refusing Martin equal access to its tournaments on the basis of his disability.²³⁶ The Court went on to hold that allowing Martin to use a golf cart during PGA tournaments would not fundamentally alter the nature of tour events, nor would a cart give Martin an advantage over other golfers.²³⁷ In fact, the Court noted that the essence of the game of golf is shot-making,²³⁸ and the use of carts during a game of golf is not inconsistent with the fundamental character of the game.²³⁹

In response to the PGA Tour’s argument that using a golf cart is against the rules, the majority responded by noting, “[t]here is nothing in the Rules of Golf that either forbids the use of carts, or penalizes a player for using [one].”²⁴⁰ The so called walking rule was held not to be an

235. *PGA Tour, Inc. v. Martin*, 121 S. Ct. 1879 (2001).

236. *Id.* at 1890. The PGA Tour argued for the first time at the Supreme Court that Title III is concerned with discrimination against clients and customers who seek to obtain goods and services from public accommodations and Title I of the ADA protects people who work at these places. *Id.* at 1891. On this assumption, the PGA claimed that they did not maintain a golf course during PGA events, but “a place of exhibition or entertainment.” *Id.* (citation omitted). Therefore, Martin was a provider rather than a consumer of entertainment and thus could not bring a suit under Title III because he is not one of the clients or customers covered under the public accommodation language in Title III. *Id.* The PGA maintained that Martin’s discrimination was job related and could only be raised under Title I and would be unsuccessful because he is deemed an independent contractor (who are not covered by Title I) and not an employee. *Id.*

237. *Id.* at 1895-97.

238. *Id.* at 1894 (“The Game of Golf consists in playing a ball from the *teeing ground* into the *hole* by a *stroke* or successive strokes in accordance with the *rules*.”) (citation omitted).

239. *Id.* at 1893.

240. *Id.* at 1895 (noting that the PGA Tour allows golf carts to be used during the Senior Tour, the first two stages of the Qualifying, or Q-School, and the open qualifying events for PGA tournaments); *see also id.* at 1885 n.3 (indicating that the Appendix to the Rules of Golf lists a number of “optional” conditions, one of which relates to transportation).

essential attribute of the game itself nor an indispensable feature of tournament golf.²⁴¹ Moreover, the majority found that “the walking rule is at best peripheral to the nature of petitioner’s athletic events, and thus it might be waived in individual cases without working a fundamental alteration.”²⁴²

The PGA Tour’s claim that the fatigue endured by golfers having to walk the course was uprooted by a finding that the fatigue from walking a golf course, traditionally five miles, could not be deemed significant.²⁴³ The Court noted that during the time professional golfers walk the course (about five hours), they have several intervals for rest and the resulting fatigue is largely psychological in nature.²⁴⁴ Furthermore, based on Martin’s particular disability the majority held that to find that giving him a cart results in a competitive advantage is a “gross distortion of reality.”²⁴⁵

In closing, while acknowledging that providing a reasonable modification for the disabled under Title III can be circumvented if that modification fundamentally altered the nature of their tournaments, the Court held that “a modification [Martin’s use of a cart] that provides an exception to a peripheral tournament rule without impairing its purpose cannot be said to ‘fundamentally alter’ the tournament.”²⁴⁶

In response to the decision, PGA Tour Commissioner Tim Finchem presented the opinion as a narrow one whose ramifications would not extend far beyond the facts of Martin’s particular situation.²⁴⁷ In contrast, however, some viewed the decision as allowing future plaintiffs in ADA cases considerable latitude in maintaining that certain job requirements are not necessarily “fundamental” and are amenable to modification.²⁴⁸ But Chai Feldbaum, one of the original drafters of the ADA, indicated that the likelihood of mass exceptions is not likely since any disabled

241. *Id.* at 1896.

242. *Id.*

243. *Id.* (highlighting the district court’s finding that the calories expended while walking a traditional golf course is equivalent to only 500 calories, or nutritionally less than a Big Mac).

244. *Id.* (discussing that under normal conditions, the major factors leading to fatigue were found to be stress and motivation, and under conditions of severe heat and humidity, fatigue could be traced to fluid loss rather than exercise from walking).

245. *Id.* at 1887-88 (citing *Martin v. PGA Tour, Inc.*, 994 F. Supp. 1242, 1251-52 (D. Or. 1998)).

246. *Id.* at 1897.

247. See Charles Lane, *Disabled Pro Golfer Wins Right to Use Cart: Court Grants Martin Exception to PGA Rule*, WASH. POST, May 30, 2001, at A4.

248. *Id.*

person seeking the ADA's protections still has to show an individualized need before any reasonable modification will be mandated.²⁴⁹

Regardless of the potential legal implications, the decision has produced mixed reviews among professional golfers and the media.²⁵⁰ Some have characterized the decision as "utterly wrongheaded" because it allows sports to be victimized by legal intervention anytime someone feels left out,²⁵¹ while others have steadfastly claimed that the decision simply allows Martin a chance to compete.²⁵² Despite its criticism and praise, it will likely take some time before the true ramifications of this decision are really known. As for Casey Martin, with his long struggle with the PGA now over, he observed after the decision, "[t]here's no guarantee that golf will be in my future forever, but I can look back on this and know I prevailed Maybe this will make people making decisions think twice. Now I'm prepared to play golf, just like everyone else."²⁵³

249. Joan Biskupic and Harry Blauvelt, *Ruling to Reach Beyond Golf*, USA TODAY, May 30, 2001, at 2A.

250. Sally Jenkins, *A Good Walk is Truly Spoiled*, WASH. POST, May 30, 2001 at D1; see also Sal Ruibal, *Many Sports Groups Affected*, USA TODAY, May 30, 2001, at 3C (arguing that the decision was the equivalent of opening a modern day Pandora's box).

251. Jenkins, *supra* note 250.

252. Jon Saraceno, *Justice is Served in Martin Case*, USA TODAY, May 30, 2001, at 3C.

253. Leonard Shapiro, *PGA Commissioner Finshem Says Ruling is Lone Exception*, WASH. POST, May 30, 2001, at D3.

