Caught in the Rough of the PGA Tour and USGA Rules: Casey Martin and Ford Olinger's Fight for the Use of a Golf Cart Under the Americans with Disabilities Act

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COMMENT

CAUGHT IN THE ROUGH OF THE PGA TOUR AND USGA RULES: CASEY MARTIN AND FORD OLINGER’S FIGHT FOR THE USE OF A GOLF CART UNDER THE AMERICANS WITH DISABILITIES ACT

I. INTRODUCTION

Freddy Couples, a well-known and respected professional golfer, once said that even when they are not playing well, professional golfers should “count their blessings” because most people do not have the same opportunity to at least “be out on a beautiful course.”1 For a disabled person, the possibility that he or she will be blessed with the opportunity to play professional golf is even less. With this unfortunate circumstance in mind, in PGA Tour, Inc. v. Martin,2 the United States Supreme Court, on May 29, 2001, decided the issue of whether the Americans With Disabilities Act (“ADA”) requires the Professional Golfers’ Association (“PGA”) to bend its rules and allow tour professional Casey Martin, who has a severe circulatory ailment in his right leg, to ride in a cart rather than walk, during its competitions.3 The Court’s decision resolved a split between the Ninth and Seventh Circuit Courts of Appeals over whether the use of a golf cart by a disabled professional golfer is a reasonable accommodation under the ADA.4

Prior to the Court’s decision, the Ninth Circuit, on March 6, 2000, held that giving Casey Martin a golf cart for use in PGA tournaments would not be an unreasonable accommodation, because it would not

3. See generally id.
4. See id. at 1888-89; see also Charles Lane, High Court to Hear Disabilities Act Case, WASH. POST, Sept. 27, 2000, at A8.
fundamentally alter the nature of the competition.\textsuperscript{5} Only one day later, the Seventh Circuit held that giving a golf cart to Ford Olinger, a professional golfer with a degenerative hip condition, for use in the U.S. Open tournament, would be an unreasonable accommodation as it \textit{would} fundamentally alter the nature of the competition.\textsuperscript{6}

The majority opinion of the Supreme Court held that under the ADA, the PGA must waive for Casey Martin its general requirement that competitors walk during its tournaments.\textsuperscript{7} This Comment submits that the Supreme Court was correct in affirming the decision of the Ninth Circuit.

Part II of this Comment examines the ADA. This examination includes the background against which the ADA was passed, Congress’ intent in passing the Act, and a detailed analysis of the Act’s provisions that are relevant to the \textit{Martin} and \textit{Olinger} cases. Part III analyzes the creation of the circuit split. It includes a comprehensive summary of the \textit{Martin} and \textit{Olinger} decisions, with much of the analysis focused on the dividing issue of whether the use of a golf cart by Casey Martin or Ford Olinger would fundamentally alter the nature of the competition. Part IV reviews the Supreme Court’s decision. Part V discusses the validity of the Supreme Court’s decision, focusing on how it correctly followed the Ninth Circuit’s individualized inquiry into Casey Martin’s disability which led the Court to find that his use of a golf cart would not fundamentally alter the nature of the competition. Additionally, Part V examines the Seventh Circuit’s error in performing a generalized analysis in finding that giving a golf cart to a disabled golfer would fundamentally alter the nature of the competition. Part V concludes with three public policy contentions in support of the Court’s decision. First, Congress’ intent and the remedial purpose of the ADA both encourage a decision in Martin and Olinger’s favor. Second, the Court’s decision will not lead to a slippery slope of ADA cases in professional sports in general, as contended by many critics of the \textit{Martin} decision. Third, the Court’s decision will help the PGA, the United States Golf Association (“USGA”), and the sport of golf itself, more than it would hurt them.

\textsuperscript{5} See \textit{Martin v. PGA Tour, Inc.}, 204 F.3d 994, 1002 (9th Cir. 2000), \textit{aff’d}, 121 S. Ct. 1879 (2001).


II. THE AMERICANS WITH DISABILITIES ACT

The ADA was enacted on July 26, 1990, to address the discrimination faced by disabled Americans in numerous areas of life. At the time, Congress noted that "some 43,000,000 Americans have one or more physical or mental disabilities," and that these persons have been typically subjected to discrimination. Further, Congress noted that the "failure to make modifications to existing facilities and practices, [and] exclusionary qualification standards and criteria" had operated to discriminate against disabled persons. Congress intended to compensate for past mistreatment of disabled individuals in society, and provide them with additional opportunities for equal treatment under the law. A failure to do so would be to "den[y] people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous."

In passing the ADA, Congress intended "to encourage employers to take on qualified individuals, regardless of their disability." Title I of the ADA encompasses the employment rights of disabled individuals. Title II addresses discrimination in services provided by state and local governments. Title III covers discrimination in public accommodations and services offered by private entities. Title IV addresses retaliation, coercion, state immunity, discrimination in telecommunications, and other miscellaneous provisions.

9. Id. § 12101(a)(1).
10. See id. § 12101(a)(2) (stating that "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"); see also id. § 12101 (a)(3)-(5), (7). With regard to disabled Americans, Congress also found that these individuals are discriminated against in employment, housing, public accommodations, education, transportation, recreation, health, and public services; have no legal recourse; continually encounter discrimination, including overprotective rules and policies and the failure to make modifications to existing facilities and practices; and are politically powerless and stereotyped. See id.
11. Id. § 12101(a)(5).
17. See id. §§ 12181-12189.
18. See id. §§ 12201-12213.
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The Martin and Olinger decisions rest on Title III of the ADA. Title III prohibits discrimination, of any kind, by places of public accommodation or by those who own and operate them. Title III specifically defines "public accommodation" to encompass certain places, such as a golf course. Further, discrimination under Title III is defined as the "failure to make reasonable modifications . . . when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities." However, an entity can avoid liability for discrimination under Title III if it can demonstrate that the modification "would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations."

In order for an individual to qualify for coverage under Title III, he or she must satisfy three requirements. First, the individual must be "disabled" pursuant to the ADA's definition. Second, he or she must

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19. See id. §§ 12181-12189.
20. See id. § 12182(a) (stating the general rule of Title III as "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation").
21. The term "public accommodation" includes:
   (A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor; (B) a restaurant, bar, or other establishment serving food or drink; (C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment; (D) an auditorium, convention center, lecture hall, or other place of public gathering; (E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment; (F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment; (G) a terminal, depot, or other station used for specified public transportation; (H) a museum, library, gallery, or other place of public display or collection; (I) a park, zoo, amusement park, or other place of recreation; (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education; (K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and (L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

Id. § 12181(7) (emphasis added).
22. Id. § 12182(b)(2)(A)(ii).
23. Id.
24. See id. § 12182(a); see also id. § 12102(2) (defining "disability" with respect to an individual as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment").

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demonstrate that the private entity involved is a "public accommodation." Lastly, the aggrieved individual must prove that the entity is engaging in discrimination, as prohibited under Title III.

III. CREATION OF THE CIRCUIT SPLIT

A. Martin v. PGA Tour, Inc.27

Casey Martin is a disabled professional golfer who was born with, and still suffers from, Klippel-Trenaunay-Weber Syndrome, a congenital, degenerative circulatory disorder that causes him severe pain, atrophy, and malformation in his right leg. The simple act of walking exposes him to a serious risk of fracture or hemorrhaging, as the condition has caused significant atrophy in his lower leg and bone deterioration of the tibia. Martin attended Stanford University on an athletic scholarship for golf, where he became a two-time All-American and captained the team to a national championship. Midway through his college career, Martin developed severe shin splints as the bones and muscles in his leg deteriorated. Consequently, in his junior year Martin asked the National Collegiate Athletic Association ("NCAA") for permission to use a golf cart in the 1994 NCAA Championship. The NCAA not only allowed Martin to use a cart in the championship, but also permitted him to use one in competition for the rest of his college career. After graduating from Stanford, Martin spent two years competing on mini-tours without the use of a cart before attempting to qualify for the PGA Tour.

25. See id. § 12181(7) (providing examples of public accommodations).
26. See id. § 12182(b)(2)(A) (defining discrimination under Title III of the ADA).
27. 204 F.3d 994 (9th Cir. 2000), aff'd, 121 S. Ct. 1879 (2001).
28. See id. at 996.
29. See id.
30. See Martin v. PGA Tour, Inc., 984 F. Supp. 1320, 1322 (D. Or. 1998), aff'd, 204 F.3d 994 (9th Cir. 2000), aff'd, 121 S. Ct. 1879 (2001); see also John Garrity, Out on a Limb: His Parents Hoped Casey Martin Would Lead a Normal Life, Instead He's Living An Extraordinary One, SPORTS ILLUSTRATED, Feb. 9, 1998, at G10 (describing Martin's disorder as one that causes blood to pool in his lower right leg, which results in the bones below the knee becoming increasingly brittle).
32. See id.
33. See id.
34. See id.
35. See id. at 32-33.
The PGA is a non-profit association of professional golfers that sponsors and co-sponsors professional golf events on three tours: the regular PGA Tour, the Senior PGA Tour, and the Nike Tour. In order to qualify to play on the PGA or Nike Tour, a player must compete in a three stage qualifying tournament. The best scorers in that tournament qualify for the PGA Tour, and the next-best finishers qualify for the Nike Tour. In the first two stages of the qualifying tournament, players are allowed to use golf carts. However, in the third stage, as well as on the regular PGA Tour and Nike Tour, players are required to walk.

Having entered the 1997 qualifying school tournament and successfully advanced through the first two stages with the use of a cart, Martin requested permission from the PGA to use a golf cart for the third and final stage. The PGA denied Martin’s request, and Martin filed for an injunction under the ADA, seeking to enjoin the PGA from upholding its “no cart” rule for the third stage of the qualifying tournament as well as for the PGA and Nike Tours. The United States District Court for the District of Oregon granted Martin a preliminary injunction ordering the PGA to allow Martin to use a cart during the third stage of the qualifying tournament. The PGA responded by lifting its “no cart” rule for all of the players playing in the third stage. Martin failed to qualify for the PGA Tour, but obtained playing privileges on the Nike Tour.

36. See Martin v. PGA Tour, Inc., 204 F.3d 994, 996 (9th Cir. 2000), aff’d, 121 S. Ct. 1879 (2001). The PGA Tour is the most competitive tour. The Nike Tour is one step down from the PGA Tour. The Senior PGA Tour is restricted to professional golfers age fifty and over. See id.

37. See id. The first stage of the qualifying tournament consists of seventy-two holes. Those who score well enough advance to the second stage, where they complete another seventy-two holes. The top qualifiers, approximately 168 golfers, move to the third and final stage which consists of 108 holes. See 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).

38. See Martin, 204 F.3d at 996. The lowest thirty-five finishers, plus ties, are awarded playing privileges on the PGA Tour, and the next seventy lowest finishers are allowed to play on the Nike Tour. A player on the Nike Tour may earn the right to play on the PGA Tour by winning three Nike Tour tournaments in one season or by finishing in the top fifteen places on the Nike Tour money list. See Martin, 984 F. Supp. at 1321.

39. See Martin, 204 F.3d at 996.

40. See id.

41. See id.; see also Davis, supra note 31, at 33.

42. See Martin, 984 F. Supp. at 1322. Martin’s legal theory was that by failing to provide him with a golf cart, the PGA Tour failed to make its tournaments accessible to persons with disabilities in violation of the ADA. See id.

43. See id.

44. See id.

45. See id.
injunction by stipulation of both parties to include Martin’s first two tournaments on the Nike Tour.\textsuperscript{45}

Subsequently, the PGA Tour moved for summary judgment, arguing that the ADA does not apply to it or its tournaments.\textsuperscript{47} The PGA Tour’s motion for summary judgment was predicated on two legal theories. First, it claimed to be a private club, and therefore exempt from the ADA’s coverage.\textsuperscript{48} Second, it argued that even if the court did not find it to be a private club, the PGA Tour did not operate a place of public accommodation as defined under the ADA.\textsuperscript{43} Casey Martin made a cross motion for summary judgment on the theory that the PGA Tour “is a private entity which is or operates a place of public accommodation,” and is therefore “subject to the ADA’s prohibition of discrimination on the basis of disability in the full and equal enjoyment” of such accommodations.\textsuperscript{50}

On January 30, 1998, the United States District Court for the District of Oregon held that the PGA Tour is not a private club within the meaning of the ADA exception.\textsuperscript{51} The court further held that the PGA Tour operates a place of public accommodation at the golf courses on which it conducts its tournaments.\textsuperscript{52} In holding that the PGA Tour was not a private club, the court reasoned that the association operated as a “commercial enterprise,” because it is “an organization formed to promote and operate tournaments for the economic benefit of its members,” and generates revenue for its members “in direct proportion to public participation as spectators and viewers of the Tour’s tournaments.”\textsuperscript{53} It further asserted that “[g]enerating revenue for members scarcely seems to qualify as the type of protectable interest Congress had in mind when it excluded private clubs from coverage under the ADA.”\textsuperscript{54} In its analysis of the public accommodation issue, the

\begin{footnotes}
\footnote{46. See id.}
\footnote{47. See id.}
\footnote{48. See id. at 1323.}
\footnote{49. See id.; see also 42 U.S.C. § 12181(7) (1994), which defines a public accommodation under the ADA.}
\footnote{50. Martin, 984 F. Supp. at 1323.}
\footnote{51. See id. at 1326.}
\footnote{52. See id.}
\footnote{53. Id. at 1323. The court used specific factors as set forth in \textit{United States v. Lansdowne Swim Club}, 713 F. Supp. 785, 796-97 (E.D. Pa. 1989), in determining whether the PGA Tour was a bona fide private club. These factors included: (1) genuine selectivity; (2) membership control; (3) history of the organization; (4) use of the facilities by non-members; (5) the club’s purpose; (6) whether the club advertises for its members; and (7) whether the club is non-profit. See Martin, 934 F. Supp. at 1324-25.}
\footnote{54. Id. at 1324.}
\end{footnotes}
district court used the language of the ADA itself to hold that the PGA Tour operates places of public accommodation when it operates golf courses for its tournaments. The court recognized that the ADA specifically listed a "golf course" as a place of "public accommodation." It further dismissed the PGA Tour's argument that only those areas accessible to the public should be subject to the ADA, since "[m]any facilities that are classified as public accommodations are open only to specific invitees." In justifying its dismissal, the court reasoned that "people other than [the PGA's] own Tour members are... allowed within the boundary lines of play during its tournaments." As a result of these holdings, the court denied the PGA's motion for summary judgment, and granted Martin partial summary judgment on the issues of whether the PGA Tour is exempt from the ADA and whether the PGA Tour operates a place of public accommodation.

On February 19, 1998, the Oregon federal district court decided the merits of Martin's ADA claim. The court held that providing Martin with a golf cart for use in PGA Tour tournaments was a reasonable accommodation that did not fundamentally alter the nature of PGA golf competition. The court first allocated the burdens of the respective parties. Martin had the burden of proving that he was disabled, and that he requested a reasonable accommodation. The court found that Martin was clearly disabled since he had presented sufficient evidence to that effect, and because the PGA Tour had not contested Martin's disability.

Next, the court found that Martin proved the reasonableness of using a
case by introducing evidence that the requested modification is reasonable in the general sense, that is, in the general run of the cases." In making its decision, the court used evidence that the Rules of Golf do not require walking, the PGA Tour permits cart use in two of its four types of tournaments, and the NCAA and PAC 10 athletic conference permit cart use as an accommodation to disabled collegiate golfers. The court concluded that under the ADA, the PGA Tour must provide the reasonable accommodation of a cart to Martin unless it proves that the use of a cart would fundamentally alter the nature of its competitions. It further found that in satisfying this burden, the evidence presented by the PGA must focus on the specifics of Martin's circumstances and not on the general nature of the accommodation. The court accepted the PGA Tour's assertion that its purpose in its rule for walking is to inject an element of fatigue into the skill of shot-making. However, it also found that Martin "easily endures greater fatigue even with a cart than his able-bodied competitors do by walking." Therefore the court held that

65. Id. at 1248 (quoting Johnson v. Gambrinus Co./Spoolz Brewery, 116 F.3d 1052, 1059 (5th Cir. 1997)).

66. The "'Rules of Golf" are promulgated by the United States Golf Association (USGA) and the Royal and Ancient Golf Club of St. Andrews, Scotland." Id. at 1249. Rule 1-1 provides: "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." Id. (quoting Rule 1-1). "Nothing in the Rules of Golf requires or defines walking as part of the game." Id.

67. See id. at 1248. The PGA Tour stages four tournaments: the PGA Tour, the Senior PGA Tour, the Nike Tour, and the Qualifying School Tournament. The PGA Tour allows the use of carts on the Senior PGA Tour and in the first two stages of the Qualifying School Tournament. See id. at 1248 n.9.

68. See id. at 1248.

69. See id. at 1249.

70. The district court in Martin relied on Johnson, 116 F.3d at 1059, which suggested an individualized inquiry; Crowder v. Kitagawa, 81 F.3d 1480, 1486 (9th Cir. 1996), which required a case-by-case inquiry; and Stillwell v. Kansas City Board of Police Commissioners, 872 F. Supp. 682, 687 (W.D. Mo. 1995), which also required an individualized assessment. See Martin, 994 F. Supp. at 1249.

71. See Martin, 994 F. Supp. at 1250. The PGA Tour rules which govern its PGA Tour and Nike Tour competitions are found in a pamphlet entitled "Conditions of Competition and Local Rules." Id. at 1249. The document provides that the rules of the USGA govern play, as modified by the PGA Tour. One of those modifications states, "[p]layers shall walk at all times during a stipulated round unless permitted to ride by the PGA Tour Rules Committee." Id. No waiver has ever been granted by the PGA Tour for individualized circumstances, such as a disability. See id.

72. Id. at 1252. In making this finding, the court used a variety of evidence. First, it used the expert testimony of Dr. Gary Klug, a physiology professor at the University of Oregon and an expert on the physiological basis for fatigue, to find that "the fatigue factor injected into the game of golf by walking the course cannot be deemed significant under normal circumstances." Id. at 1250. Klug calculated that approximately 500 calories are expended in walking a golf course, which in terms of energy expenditure is "nutritionally ... less than a Big Mac." Id. According to Dr. Klug, stress and motivation are the key fatigue factors in lower intensity exercise. See id. at 1251. Second,
accommodating Martin with a cart does not fundamentally alter the nature of the PGA Tour's game. In closing, the court asserted that the PGA Tour's rules were "not so sacrosanct" as the PGA Tour might want to believe.

The Ninth Circuit affirmed the decision of the Oregon district court, holding that golf courses are "place[s] of public accommodation" within the meaning of the ADA when they are being used for the PGA Tour's tournaments. The court further affirmed that permitting Casey Martin to use a golf cart is a reasonable accommodation that does not fundamentally alter the nature of the competition.

In concluding that golf courses are places of public accommodation while a PGA tournament is being conducted on them, the court used reasoning similar to that of the district court. First, the court recognized that golf courses are defined as public accommodations under the language of the ADA itself. Second, the court agreed with the district court that a golf course cannot be compartmentalized as a public accommodation with regard to the spectator areas, and not a public accommodation in the competitors' area behind the ropes. In making this conclusion, the court followed the district court's reasoning that not only can competitors enter the area inside the ropes, but caddies and certain other personnel can as well. The court went further, stating that even if it were to find that a golf course is not a place of exercise or recreation, as the PGA contends, then it would be a place of exhibition or entertainment, and therefore a public accommodation under the

in accordance with Klug's testimony, the court found that most PGA Tour golfers appear to prefer walking as a way of dealing with these psychological factors of fatigue. See id. The vast majority of the golfers on the Senior PGA Tour or PGA Tour Qualifying Tournament, in which golf carts are available, have opted to walk. See id. Third, the court found that even with a cart Martin must walk approximately twenty-five percent of the course, with each step risking a fracture and hemorrhaging of his right leg. See id. Therefore, Martin must face this stress of serious injury and coping with his disability in addition to the normal psychological stress of competition that all golfers must endure. See id. at 1251-52.

73. See id. at 1252.
74. Id. at 1253.
75. See Martin v. PGA Tour, Inc., 204 F.3d 994, 1002 (9th Cir. 2000), aff'd, 121 S. Ct. 1879 (2001).
76. See id.
77. See id. at 997 (analyzing 42 U.S.C. § 12181(7)(L) (1994), which lists a "golf course, or other place of exercise or recreation" as "public accommodations").
78. See id.
79. See id.
80. See id. The PGA Tour countered that "the restricted area is not being used as a 'place of exercise or recreation,' within the meaning of [42 U.S.C.] § 12181(7)(L), because the competitors are trying to win money, not exercise or recreate." Id.
ADA. Lastly, the court found that contrary to the PGA Tour's argument, the fact that users of the golf course during a tournament are highly selected does not mean that the golf course cannot be a place of public accommodation.

In finding that permitting Martin to use a golf cart during the PGA tournaments was a reasonable accommodation that did not fundamentally alter the nature of the competition, the court continued to follow the analysis of the district court. It first found that the use of a golf cart was reasonable in the general sense because golf carts are used in other PGA tournaments, such as the Senior Tour, and it is not difficult as a practical matter to permit them. Next the court analyzed whether the use of a cart by Martin would fundamentally alter the nature of the

81. See id. (citing 42 U.S.C. § 12181(7)(C) (1994), which defines “public accommodation” to include a “theater, . . . stadium, or other place of exhibition or entertainment”). Under this reasoning the court found that even though the entry to part of a public accommodation is limited, that does not deprive the facility of its public accommodation status. See id. at 997-98. The court buttressed its finding, relying on a case where an arena’s executive suites contracted by businesses were held to be public accommodations, and on cases dealing with disabled student athletes where the courts held that Title III applied to not only the stands, but the playing field as well. See id. at 997-98 (citing Bowers v. Nat’l Collegiate Athletic Ass’n, 9 F. Supp. 2d 460, 483-90 (D.N.J. 1993); Tatum v. Nat’l Collegiate Athletic Ass’n, 992 F. Supp. 1114, 1121 (E.D. Mo. 1998); Indep. Living Res. v. Or. Arena Corp., 982 F. Supp. 698, 759 (D. Ore. 1997); Ganden v. Nat’l Collegiate Athletic Ass’n, No. 96-C-6953, 1996 WL 680000, at *8-11 (N.D. Ill. Nov. 21, 1996); Anderson v. Little League Baseball, Inc., 794 F. Supp. 342, 344 (D. Ariz. 1992)). The court also distinguished the two examples set forth in regulations that are relied upon by the PGA Tour. See id. at 998. The first example is of a “mixed use facility” in the form of a large hotel with a residential wing. See id. (citing 28 C.F.R. pt. 36, app. B (1999)). The non-public residential wing is not a place of public accommodation but the hotel wing would qualify under 42 U.S.C. § 12181(7)(A) as “an inn, hotel, motel, or other place of lodging.” Martin, 204 F.3d at 998 (citing 28 C.F.R. pt. 36, app. B). Here the court distinguished that the residential wing never functioned as a hotel, but a golf course serves as a golf course during a tournament. See id. The second example is that of a commercial facility that allows tours over specific routes at certain times. See id. The Tour is a public accommodation but the parts of the facility viewed are not. See id. The court finds this unpersuasive because it applies to commercial facilities that are “not otherwise a place of public accommodation,” and the example is not analogous since Martin is not a spectator seeking to use a golf cart within the competitor’s area of a tournament. See id.

82. The PGA Tour argued that the fact that its tournaments are restricted to the best golfers in the nation means that the courses the PGA uses for its tournaments cannot be places of public accommodation. See id. at 998-99. The court supported this finding by making an analogy to elite private schools where the competition for admission is very intense, and only a select few are admitted. See id. at 998. The fact that only a select few attend the school does not remove the school from its public accommodation status under 42 U.S.C. § 12181(7)(A) (1994), which includes “secondary, undergraduate, or postgraduate private school[s].” Id. (alteration in original). Although the rest of the public is excluded, the admitted students are members of the public using the schools as places of public accommodation. See id.

83. See id. at 998-99.

84. See id. at 999.
In beginning its analysis, the court recognized that "walking is not essential to the generalized game of golf." It then, however, acceded to the PGA Tour's argument that the PGA is not offering the generalized game of golf in its PGA and Nike Tours, but is instead offering a particular competition in which the rules require the players to walk. Thus, the court framed the issue as whether the use of a cart by Martin would fundamentally alter the nature of the PGA and Nike Tour competitions. Relying on the district court's finding that the purpose of requiring players to walk "was to inject a fatigue factor into the shot-making of the game," and that "Martin 'easily endures greater fatigue even with a cart than his able-bodied competitors do by walking,'" the court held that permitting Martin to use a cart in the PGA and Nike Tour competitions would not fundamentally alter the nature of those competitions. The court concluded that "[t]he central competition in shot-making would be unaffected by Martin's accommodation." The court further justified its decision by finding that permitting Martin to use a cart to give him access to a competition, in which he otherwise could not engage due to his disability, is "precisely the purpose of the ADA." In conclusion, the circuit court addressed the PGA's two arguments against a finding that permitting Martin to use a cart would

85. See id.
86. Id. (discussing Rule 1-1 of the Rules of Golf). Moreover, the PGA does not require players to walk in the early stages of the qualifying school or in the Senior Tour. See id. at 999.
87. See id. at 999-1000 (discussing the "Conditions of Competition" for the Nike and PGA Tours). Further, when the PGA Tour Rules Committee has permitted players to ride, the waiver has applied to all competitors. See id. at 1000.
88. See id. This was the same issue that was fully tried in the district court. See id.
89. Id. (quoting Martin v. PGA Tour, 994 F. Supp. 1242, 1250, 1252 (D. Or. 1998)). The court, in adhering to the district court's finding that Martin endured greater fatigue than his competitors, used the findings concerning the ingredient of fatigue made by the district court. Among those findings were: (1) the fatigue factor in golf is primarily a psychological one full of stress and motivation, and that the fatigue injected by walking is insignificant under normal circumstances; (2) when given the option to use carts in other tours, large numbers of players chose to walk; (3) in the events in which the PGA allows the use of carts, it does not penalize those who ride as opposed to those who walk; (4) even with a cart, Martin must walk approximately twenty-five percent of the course because the cart cannot be brought near the ball in many cases; and (5) Martin endures significant pain while walking and getting in and out of a cart. See id.
90. Id.
91. Id. at 1000 & n.8 (noting that the NCAA and Pac-10 rules of competition require players to walk, yet they waived the rule for Martin, and citing 42 U.S.C. § 12101(a)(5) (1994) (providing that discrimination against the disabled includes "failure to make modifications to existing facilities and practices"); Crowder v. Kitagawa, 81 F.3d 1480, 1483 (9th Cir. 1996) ("Congress intended the ADA to cover discriminatory impact of facially neutral barriers.").
fundamentally alter the competition. The PGA’s first argument was that permitting a player to use a cart alters the competition, and this ends the inquiry. The court rejected this contention on the grounds that the ADA mandates an individualized inquiry into whether the use of a cart by Martin himself would fundamentally alter the competition, not whether the use of carts in general would do so. The court concluded that this type of individual analysis is an intensively fact-based inquiry, which the district court correctly performed. The PGA’s second argument was that requiring it to determine whether disabled individuals using carts would have an advantage over able-bodied competitors places an undue burden on it. However, the court found that “[n]othing in the record establishes that an individualized determination would impose an intolerable burden on [the] PGA,” noting that the district court “appeared to have little difficulty making the factual determination that providing Martin with a golf cart would not give him an unfair advantage over his competitors.”

92. Martin, 204 F.3d at 1001-02.
93. See id. at 1001.
94. See id. “The evidence must ‘focus[] on the specifics of the plaintiff’s or defendant’s circumstances and not on the general nature of the accommodation.’” Id. (alteration in original) (quoting Johnson v. Gambrinus Co./SpectziL Brewery, 116 F.3d 1052, 1060 (5th Cir. 1997)).
95. See id. Here, the court also rejected the PGA’s argument that its decision would open the door to future decisions requiring disabled runners or swimmers to be given head starts in races, or growth-impaired basketball players to be allowed to shoot three-point baskets from inside the three-point line. See id. It reasoned that fact-based inquiries would most likely result in rulings finding that such accommodations fundamentally alter the competitions. See id.
96. See id. The PGA essentially relied on the three cases that upheld eligibility requirements for high school athletes on the ground that it would be an undue burden to require high school coaches and hired physicians to determine whether various factors give a student’s age an unfair competitive advantage. See id. (citing McPherson v. Mich. High Sch. Athletic Ass’n, 119 F.3d 453, 462 (6th Cir. 1997); Sandison v. Mich. High Sch. Athletic Ass’n, 64 F.3d 1026, 1035 (6th Cir. 1995); Pottgen v. Mo. State High Sch. Activities Ass’n, 40 F.3d 926, 931 (8th Cir 1994)).
97. Martin, 204 F.3d at 1002. In support of its finding, the court distinguished the cases relied upon by the PGA. See id. at 1001-02. It concluded that those cases, where the courts found that a rule against older, more experienced high-school athletes was necessary to protect competition in the lower age group, were not similar to the district court’s finding in Martin that the fatigue factor in walking was not significant. See id. Moreover, the Ninth Circuit expressed that it did not agree with the hostility toward individual determinations that was reflected in those cases. It stated that it instead preferred the approach in the dissenting opinion in Pottgen, which concluded that there must be an individualized inquiry of the plaintiff’s characteristics, and that such would find that the age requirement could be modified without hurting the beneficial purposes underlying the rule. See id. at 1002 (citing Pottgen v. Mo. State High Sch. Activities Ass’n, 40 F.3d 926, 932 (8th Cir. 1994)) (dissenting opinion). Lastly, the Ninth Circuit cited Washington v. Indiana High School Athletic Ass’n, 181 F.3d 840, 852 (7th Cir.), cert. denied, 528 U.S. 1046 (1999), where it was held that making an individualized inquiry into the learning disability of a student would not place an undue administrative or financial burden on the Indiana High School Athletic Association because there would only be a few case-by-case analyses that would need to be conducted. See id. The court
B. Olinger v. United States Golf Ass'n

Ford Olinger is a professional golfer who "suffers from bilateral avascular necrosis, a degenerative condition that significantly impairs his ability to walk." He takes medication to reduce the pain, but the medication "impairs his lung capacity, dulls his senses, and causes fatigue." Olinger claims that if he was not disabled, he would rather walk a golf course than ride in a cart because he believes walking "helps his rhythm, enhances his feel for the game and the competition, and improves his ability to identify the ground texture." Due to his condition, however, Olinger cannot complete eighteen holes of golf without the use of a cart.

The USGA "is a private, not-for-profit association of member golf clubs and golf courses, chartered for the purpose of promoting and conserving the best interests and the true spirit of the game of golf" throughout the United States. The golfing community regards the USGA as the governing body of golf in the United States. It conducts thirteen national championship tournaments each year, including the U.S. Open. The U.S. Open is the men's national championship of golf in America, and is considered the greatest test in golf by the golfing world.
Mr. Olinger wanted to play in the May 24, 1999 local qualifying tournament for the U.S. Open, but the USGA forbids the use of carts by participants in the U.S. Open and its qualifying rounds. The USGA requires competitors to walk because it believes that their physical stamina is an important aspect of the tournament competition. Therefore it denied Olinger’s request for the use of a cart. Olinger subsequently sought an order from the United States District Court for the Northern District of Indiana allowing him to use a golf cart in the U.S. Open tournament.

On May 20, 1999, after a two-day trial, the district court held that the USGA operates places of public accommodation during its tournaments and is therefore subject to the ADA. Nevertheless, the court held that the use of a golf cart would fundamentally change the nature of the U.S. Open and is thus not mandated by the ADA.

In its analysis of whether the USGA operates places of public accommodations, the court focused its inquiry on the golf course itself, not the U.S. Open event. Through this generalized inquiry, the court recognized that a golf course is specifically defined as a place of public accommodation under the ADA. It also acknowledged that the ADA prohibits discrimination on the basis of disability by any person who

predominately private golf clubs across the United States. See Olinger, 55 F. Supp. 2d at 928-29. All professional golfers can play in local qualifying rounds, along with amateurs who carry at least a 1.4 certified USGA handicap index. See id. Local qualifying rounds may reduce the field to around 750 for the sectional qualifying rounds, from which close to 100 survivors join the sixty exempt players to play in the U.S. Open. See Olinger, 205 F.3d at 1002.

107. See Olinger, 55 F. Supp. 2d at 929. The U.S. Open is controlled by the “Rules of Golf,” which do not require walking as part of the game. See Olinger, 205 F.3d at 1003. However, the rules empower tournament competition committees to set conditions for an event, including whether to prohibit the use of carts. See id. And since 1955, the entry forms for every U.S. Open have notified competitors that “[p]layers shall walk at all times during a stipulated round.” Id. (alteration in original).

108. See Olinger, 55 F. Supp. 2d at 929.
109. See Olinger, 205 F.3d at 1003.
110. See id. at 1004.
111. See Olinger, 55 F. Supp. 2d at 928.
112. See id. at 933.
113. See id. at 933, 937. In its analysis, the court first found that Ford Olinger is a disabled individual within the meaning of the ADA. See id. at 928.
114. See id. at 930-31 (recognizing that Congress, under 42 U.S.C. § 12181(7)(1994), chose to list places, not events or activities, as public accommodations).
115. See id. at 929-30 (citing § 12181(7)(L), which defines “a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation” as a “place of public accommodation”).
owns, leases, or operates a place of public accommodation. 116 The court found that the USGA exercises substantial control over the operations of the golf courses used in its local and sectional qualifying tournaments, and its championship tournaments, because it operates the qualifying sites, and both operates and leases its championship site. 117 On that basis, the court concluded that the USGA is a lessor of a public accommodation, and is thereby subject to the ADA. 118

In making this decision, the court dismissed two arguments made by the USGA. First, the court rejected the argument that the areas inside the ropes on the golf course during the U.S. Open were private and therefore not a place of public accommodation, because they were off limits to the general public. 119 The court reasoned that there are many facilities that are classified as public accommodations that are only open to specific invitees. 120 Further, it found that courts in similar cases concerning the NCAA’s determination of the eligibility of college athletes did not find Title III to be limited by the roped-off portion of fields, courts, pools, or other areas off limits to the public. 121

116. See id. at 929 (citing § 12182(a), which provides that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation”).

117. See id. at 932. The USGA operates ninety golf courses for its qualifying rounds, and twelve golf courses for its sectional qualifying rounds, for a day in May of each year. See id. at 931. It restricts the normal operation of these courses as it reserves them exclusively for the USGA entrants, and supervises the play and provides the rules. See id. at 931. The USGA’s control over the U.S. Open is even more extensive, and in 1998 consisted of a lease granting the USGA some form of control over the Olympic Club in San Francisco for nearly four years. See id.

118. See id. at 933.

119. See id. at 932. The USGA argued that the area inside the ropes is more analogous to a place of exhibition or entertainment under § 12181(7)(C), not a place of exercise or recreation, because the U.S. Open is conducted to identify the national champion. See id.

120. See id. (citing Indep. Living Res. v. Or. Arena Corp., 982 F. Supp. 698, 759 (D. Or. 1997)).

121. See id. (citing Bowers v. Nat'l Collegiate Athletic Ass'n, 9 F. Supp. 2d 460 (D.N.J. 1998); Tatum v. Nat'l Collegiate Athletic Ass'n, 992 F. Supp. 1114 (E.D. Mo. 1998) (basketball player with a generalized anxiety disorder and a specific phobia related to testing); Ganden v. Nat'l Collegiate Athletic Ass'n, No. 96-C-6953, 1996 WL 680000, at *1 (N.D. Ill. Nov. 21, 1996) (swimmer with a learning disability); Butler v. Nat'l Collegiate Athletic Ass'n, No. C96-1656D, 1996 WL 1058233, at *1 (W.D. Wash. Nov. 8, 1996) (football player with a learning disability)). In each of these cases the NCAA denied these athletes eligibility because of their disabilities. See id. The courts found that the NCAA was an operator of these facilities because it exercised enough control over them as places of exercise and recreation, as well as places of exhibition or entertainment. See id. The athletes in these cases were performers just like the golfers in the U.S. Open. See id.
Second, the court discarded the USGA’s argument that the organizers of the U.S. Open have the legal right to define the rules for that specific competition. It reasoned that the USGA’s contention was simply another version of its argument that it is exempt from the ADA, which it is not, so long as it operates a place of public accommodation.

In holding that the use of a cart fundamentally alters the nature of the U.S. Open, the court first recognized that discrimination under the ADA includes “the failure . . . ‘to make reasonable modifications . . . unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, . . . or accommodations.’” The court also noted the undue hardship defense provided by the Rehabilitation Act, which it stated was “‘easily transferrable to the Title III [ADA] reasonable modifications context.’”

Next, the court analyzed the reasonableness of the use of a golf cart by Olinger through the respective burdens of the parties. It found that Olinger must prove that the requested modification is reasonable in the general sense, and, subsequently, the USGA must prove that the modification would fundamentally alter the nature of the competition. The court found Olinger satisfied his burden as the USGA did not appear to contest the reasonableness of cart use, and since the use of a golf cart is so omnipresent in the sport that any challenge would most likely not succeed. However, the court held that the use of a cart was

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122. See Olinger, 55 F. Supp. 2d at 932-33 (citing N.Y. Roadrunners Club v. State Div. of Human Rights, 432 N.E.2d 780, 781 (N.Y. 1982) (holding that because the New York City Marathon is a foot race, its organizers had no obligation to allow other means of locomotion)).
123. See id. at 933 (following Martin v. PGA Tour, Inc., 994 F. Supp. 1242, 1246 (D. Or. 1998)).
125. Id. (quoting Johnson v. Gambrinus Co/Spatz1 Brewery, 116 F.3d 1052, 1059 (5th Cir. 1997)). The “fundamentally alter” concept originated in the Supreme Court’s discussion of the reasonableness of an accommodation under the Rehabilitation Act in Southeastern Community College v. Davis, 442 U.S. 397, 410 (1979).” Id. The Rehabilitation Act defines discrimination to include “not making reasonable accommodations . . . unless [the defendant] can demonstrate that the accommodation would impose an undue hardship.” Id. (alteration in original) (quoting 42 U.S.C. § 12112(b)(5)(A) (1994)). “[T]he ADA provides a fundamental alteration defense, with fundamental alteration merely a particular type of undue hardship.” Id.
126. See Olinger, 55 F. Supp. at 934.
127. See id.
128. See id.
129. See id. In finding the use of a cart to be “ubiquitous in the sport” of golf, the court recognized that the game of golf does not forbid the use of carts. Id. The Rules of Golf, which are prepared by the USGA, acknowledge the potential use of carts: Section I cautions the golfer to observe strictly local notices involving the movement of carts and Section II defines a golf cart and everything in it as equipment of a player involved in its movement. See id.
unreasonable because the USGA had satisfied its burden as well.\textsuperscript{130} The court was convinced by two arguments advanced by the USGA that the use of a golf cart would constitute a fundamental alteration in the nature of the U.S. Open. First, the court was persuaded that the use of a cart can provide a golfer with a competitive advantage over golfers who walk.\textsuperscript{131} It reasoned that on any particular day a substantial competitive advantage might exist due to factors beyond the golfer’s control, such as heat, humidity, terrain, etc.\textsuperscript{132} Second, the court agreed with the USGA that a ruling in favor of Olinger would impose an undue administrative burden on the USGA, as it would “need to develop a system and a fund of expertise to determine whether a given applicant truly needs, or merely wants, or could use but does not need, to ride a cart to compete.”\textsuperscript{133}

In summarizing its opinion, the court conceded that giving a cart to Olinger may not give him a competitive advantage over other able-bodied golfers, but claimed it must consider the impact of its decision.\textsuperscript{134} The impact would be that a decision to give a cart to Olinger might lead to giving a future competitor a potential advantage denied to others, which would fundamentally alter the nature of the U.S. Open competition.\textsuperscript{135}

\begin{itemize}
\item \textsuperscript{130} See id. at 937.
\item \textsuperscript{131} See id. at 934-37. In making this finding, the court relied on a study from Dr. James Rippe, an expert in the physiology of walking, that provides an average able-bodied 25-35 year-old golfer who rides a cart for an average summer day (eighty degrees Fahrenheit, fifty-percent relative humidity) has a significant and unfair advantage over an average able-bodied 25-35 year-old golfer who is walking. See id. at 935. The court, as well as Dr. Rippe, conceded:

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[The] study reveals nothing about whether an able-bodied golfer who walks without pain would be disadvantaged in any way by a golf cart for Ford Olinger, for whom the very act of walking is fatiguing, and who, to play the sport even with the aid of a cart, does more walking than strictly necessary for locomotion so as better to evaluate his next shot.
\end{quote}

Id. at 936.
\item \textsuperscript{132} See id. at 936.
\item \textsuperscript{133} Id. at 937. The court concedes that Olinger, even with the use of a cart, is likely to be more fatigued than a healthy Tiger Woods or David Duvall, but believes the competitive advantage issue broadens and becomes more difficult once the inquiry moves beyond Olinger. See id. To show the difficulty of future inquiries, the court uses the example of whether next year’s applicant for permission to ride would be given a competitive advantage over Olinger if allowed to ride, or whether either would have an advantage over the other. See id.
\item \textsuperscript{134} See id.
\item \textsuperscript{135} See id. The court found that the only alternative to ensure no potential competitive advantage would be to allow all U.S. Open competitors to ride golf carts if they choose. See id. The effect of this would be to remove stamina from the competition, which would result in the conditions beyond the golfers’ control, such as fatigue from heat and hills, lessening in importance. See id. The U.S. Open is designed to test the shot-making ability of competitors under greater than
\end{itemize}
The Seventh Circuit affirmed the district court decision, holding that the use of a cart would fundamentally alter the nature of the U.S. Open competition.136 The court did not address the issue of whether the golf courses upon which the USGA holds the qualifying and championship tournaments for the U.S. Open are places of public accommodation.137 The court instead focused its analysis on how the use of a cart would fundamentally alter the nature of the U.S. Open competition.138

In its analysis, the circuit court first found that giving a golfer a cart would remove the stamina element from the U.S. Open, thereby changing the nature of its competition.139 In making this finding, the court accepted the district court’s conclusion that the U.S. Open is designed to test a golfer’s shot-making ability under greater than usual mental and physical stress.140 Further, the court was persuaded by the testimony of Ken Venturi, the winner of the 1964 U.S. Open, who claimed that physical and mental fatigue and a uniform set of rules for all golfers are an integral part of championship-level golf.141 Next, the court found that a ruling in favor of Olinger would impose an undue usual mental and physical stress. See id. at 937-38. Therefore, the nature of the competition would again be fundamentally altered. See id.


137. See id. at 1004-05. The court acknowledged that there may be some logic to the USGA’s argument that a golf course is only classified as a public accommodation when it is used for “exercise or recreation,” and not when it used to identify America’s national golf champion. See id. at 1005. However, the court decided it could resolve the appeal on a more narrow ground, the “fundamentally alter” defense. See id.

138. See id. at 1005-07.

139. See id. at 1006. The court followed the district court’s conclusion that “the nature of the competition would be fundamentally altered” if the walking rule were eliminated because it would “remove stamina (at least, a particular type of stamina) from the set of qualities designed to be tested in this competition.” Id. (quoting Olinger v. United States Golf Ass’n, 55 F. Supp. 2d 926, 937 (N.D. Ind. 1999)). And, therefore, “[c]onditions that now affect a golfer’s performance, but which lie beyond the golfer’s ability to control—the fatigue born of hills, of heat, of humidity—would lessen in importance to the competition.” Id. (alteration in original) (quoting Olinger, 55 F. Supp. 2d at 937).

140. See id.

141. See id. at 1006-07. Venturi won the 1964 U.S. Open while on the verge of collapse due to dehydration resulting from walking the course during stifling 100-degree heat and ninety-seven percent humidity. See id. at 1006. Venturi claimed that another competitor would have had “a tremendous advantage” if given use of a cart. Id. Further, Venturi testified that Ben Hogan, a Hall of Fame golfer, who was injured severely in an automobile accident, was never offered the use of a cart in the U.S. Open, and wouldn’t have taken one anyway. See id. at 1007. The court offered Venturi’s testimony because it felt the testimony “emphasize[d] the importance and tradition of walking in championship-level tournament golf competition.” Id.
burden on the USGA. It, like the district court, noted that "under both the Rehabilitation Act and the ADA, courts consistently have concluded that an accommodation is not reasonable if it imposes an undue financial and administrative burden." It therefore agreed with the district court that it would be an undue administrative burden on the USGA to require that it develop a system to evaluate the requests of golfers to waive the walking rule and permit the use of a golf cart. In summarizing its opinion, the Seventh Circuit asserted that "the decision on whether the rules of [golf] should be adjusted to accommodate [Olinger] is best left to those who hold the future of golf in trust."

IV. THE SUPREME COURT’S RESOLUTION OF THE CIRCUIT SPLIT

On May 29, 2001, the Supreme Court decided PGA Tour, Inc. v. Martin, holding seven to two that, under the ADA, the PGA Tour must waive for Casey Martin its general requirement that competitors walk during its tournaments. The majority concluded that the PGA Tour is a "public accommodation" during its golf tours and qualifying rounds and, therefore, is bound by the ADA’s anti-discrimination provisions. Further, the Justices found that, based on the Act’s requirement that a

142. See id. at 1005-06.
143. Id. (citing Sch. Bd. v. Arline, 480 U.S. 273, 287 n.17 (1987) (discussing the Rehabilitation Act); Sandison v. Mich. High Sch. Athletic Ass’n, 64 F.3d 1026, 1035 (6th Cir. 1995) (discussing the ADA where the court held that it was an undue burden to require high school coaches and physicians to determine whether various factors render a student athlete’s age an unfair competitive advantage). The Seventh Circuit noted “[b]ecause the ADA is patterned in large measure on the Rehabilitation Act, decisions interpreting the Rehabilitation Act and its implementing regulations provide useful guidance as to ‘the meaning of the same terms in the new law.’” Id. at 1005 n.6 (quoting Vande Zande v. Wis. Dep’t of Admin., 44 F.3d 538, 542 (7th Cir. 1995)).
144. See id. at 1007. The district court concluded that the USGA “would need to develop a system and a fund of expertise to determine whether a given applicant truly needs, or merely wants, or could use but does not need, to ride a cart to compete.” Id. (quoting Olinger, 55 F. Supp. 2d at 937).
145. Id. This implies that the rules of golf should be left up to the USGA, not the legal system.
146. 121 S. Ct. 1879 (2001).
147. See id. at 1880.
148. See id. at 1890. The PGA did not assert that its tournaments were not played at places of public accommodation, as it did in the District Court. See id. at 1890-91. Furthermore, the PGA did not claim that the competitors’ area “behind the ropes” is not a public accommodation, as it did in both the District Court and the Court of Appeals. See id. Rather, the PGA argued that Martin had no claim under Title III of the ADA because competing golfers were not members of the class of “clients or customers” of the covered public accommodation who are protected by Title III. Id. at 1891. Nevertheless the majority rejected this argument, finding that “Title III’s broad general rule contains no express ‘clients or customers’ limitation.” Id. The dissent, conversely, agreed with the PGA. Justice Scalia claimed that “Title III’s protections extend only to customers.” Id. at 1899 (Scalia, J., dissenting).
disabled person must be evaluated on an individual basis, "we have no doubt that allowing Martin to use a golf cart would not fundamentally alter the nature of petitioner's tournaments." In concluding its opinion, the majority clarified the administrative burden imposed on the PGA by the ADA, finding that Congress intended that an entity such as the PGA not only give individualized attention to the handful of requests that it might receive from talented but disabled athletes for a modification or waiver of a rule to allow them access to the competition, but also carefully weigh the purpose, as well as the letter, of the rule before determining that no accommodation would be tolerable.

The dissent claimed it was irrelevant whether walking is essential to the game of golf, and saw no basis for considering whether the rules of the tournaments must be altered. See id. at 1902 (Scalia, J., dissenting). Justice Scalia referred to the majority's individualized analysis as its "last step on a long and misguided journey." Id. at 1904 (Scalia, J., dissenting). He reasoned that the purpose of the ADA is "to assure that a disabled person's disability will not deny him equal access to (among other things) competitive sporting events—not that his disability will not deny him an equal chance to win competitive sporting events." Id. (Scalia, J., dissenting).
V. THE SUPREME COURT CORRECTLY AFFIRMED THE NINTH CIRCUIT'S DECISION THAT PROVIDING CASEY MARTIN WITH A GOLF CART IS A REASONABLE ACCOMMODATION THAT DOES NOT FUNDAMENTALLY ALTER THE NATURE OF THE GAME OF GOLF

A. The Ninth Circuit Performed the Proper Legal Analysis

Although both the Ninth and Seventh Circuit courts found that the golfers in their respective cases are disabled, and that the use of a golf cart is a reasonable accommodation in a general sense, they were divided over whether the use of a golf cart by Casey Martin or Ford Olinger is a reasonable accommodation under the ADA. Under Title III of the ADA, the PGA and the USGA, as lessors of public accommodation courses, must provide Martin and Olinger with golf carts, unless they can demonstrate that doing so would fundamentally alter the nature of the golf competition. Because “fundamental alteration” is not defined under the ADA, construction of the term has relied on purpose, intent, and case law. In the context of the Rehabilitation Act (from which the ADA borrows its terminology), the Supreme Court has explained that

151. See Martin v. PGA Tour, Inc., 204 F.3d 994, 996, 999-1000 (9th Cir. 2000), aff’d, 121 S. Ct. 1879 (2001); Olinger v. United States Golf Ass’n, 205 F.3d 1001, 1006 (7th Cir. 2000), overruled by PGA Tour, Inc. v. Martin, 121 S. Ct. 1879 (2001). Although the Ninth Circuit in Martin found that the PGA operated places of public accommodation when it leased and operated golf courses for its tournaments, see Martin, 204 F.3d at 999, the Seventh Circuit in Olinger declined to decide the issue of whether the USGA was operating places of public accommodation when it operated golf courses for its tournaments. See Olinger, 205 F.3d at 1005. The district court in Olinger, however, did hold that the USGA was operating places of public accommodation when using golf courses for its tournaments. See Olinger v. United States Golf Ass’n, 55 F. Supp. 2d 926, 933 (N.D. Ind. 1999), aff’d, 205 F.3d 1001, 1006 (7th Cir. 2000), overruled by PGA Tour, Inc. v. Martin, 121 S. Ct. 1879 (2001).

152. Under Title III of the ADA, an owner, operator, lessee, or lessor of public accommodations must “make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, [or] facilities . . . to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, . . . or accommodations[.]” 42 U.S.C. § 12182(b)(2)(A)(ii) (1994).


154. See Vande Zande v. Wis. Dep’t of Admin., 44 F.3d 538, 542 (7th Cir. 1995) (finding that because the ADA is patterned in large part on the Rehabilitation Act, decisions interpreting the Rehabilitation Act and its regulations provide helpful guidance as to “the meaning of the same terms in the new law”); see also Johnson v. Gambrinus Co/Spoetzl Brewery, 116 F.3d 1052, 1059 n.4 (5th Cir. 1997) (stating that “[t]he Rehabilitation Act is the predecessor to the ADA, and Rehabilitation Act precedent is to be used in interpreting the ADA”).
the purpose of these remedial statutes was to ensure "'evenhanded treatment and the opportunity for [disabled] individuals to participate in and benefit from’" services, programs or activities offered by covered entities.\textsuperscript{155} In order to accomplish this, courts must examine the proposed accommodation in light of the purposes underlying the rule.\textsuperscript{155} Moreover, the result of an expanding pool of cases is that "'[w]hether a particular accommodation is reasonable depends on the circumstances of the individual case.'"\textsuperscript{157} Lawyers have followed these courts’ guidance, finding that the ADA requires an individualized inquiry.\textsuperscript{153}

The Ninth Circuit performed an accurate ADA analysis and framed the issue as "not whether use of carts generally would fundamentally alter the competition, but whether the use of a cart by Martin would do so."\textsuperscript{159} The court followed applicable case law, finding that the evidence "must focus[] on the specifics of the plaintiff's or defendant's circumstances and not on the general nature of the accommodation."\textsuperscript{153}

The Court additionally found that the purpose of the no-walking rule, as

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\item \textsuperscript{155} Hentges, supra note 153, at 172-73 (alteration in original) (quoting Alexander v. Choate, 469 U.S. 287, 288 (1985)).
\item \textsuperscript{156} See Adam A. Milani, Can I Play?: The Dilemma of the Disabled Athlete in Interscholastic Sports, 49 ALA. L. REV. 817, 882 (1998)
\item \textsuperscript{157} Barnett v. U.S. Air, Inc., 157 F.3d 744, 748 (9th Cir. 1998), vacated by 201 F.3d 1256 (9th Cir. 2000); see also Sch. Bd. v. Arline, 480 U.S. 273, 287 (1987) ("Such an inquiry is essential if [the law] is to achieve its goal of protecting handicapped individuals from deprivations based on prejudice, stereotypes, or unfounded fear."); Johnson v. Gambrinus Co./Speetzl Brewery, 116 F.3d 1052, 1059 (5th Cir. 1997) (suggesting an individualized inquiry); Crowder v. Kitagawa, 81 F.3d 1480, 1486 (9th Cir. 1996) (stating that "the determination of what constitutes reasonable modification is highly fact-specific, requiring case-by-case inquiry"); Staron v. McDonald's Corp., 51 F.3d 353, 356 (2d Cir. 1995) (finding that the determination of whether a particular modification is reasonable involves a fact-specific, case-by-case inquiry); Dennin v. Conn. Interscholastic Athletic Conference, Inc., 913 F. Supp. 663, 668-69 (D. Conn. 1996) ("It would be an anathema to the goals of the Rehabilitation Act to decline to require an individualized analysis."); Johnson v. Fla. High Sch. Activities Ass'n, 599 F. Supp. 579, 585 (M.D. Fla. 1989) (stating that the court should focus on the effect that modification of the requirement for the individual would have on the program); Stillwell v. Bd. of Police Commrs, 872 F. Supp. 682, 687 (W.D. Mo. 1995) (finding an individualized assessment necessary as both the Rehabilitation Act and ADA have been interpreted to require a case-by-case analysis); Anderson v. Little League Baseball, Inc., 794 F. Supp. 342, 345 (D. Ariz. 1992) (holding that a public accommodation must make an individualized assessment).
\item \textsuperscript{158} See Laura F. Rothstein, Don't Roll in My Parade: The Impact of Sports and Entertainment Cases on Public Awareness and Understanding of the Americans with Disabilities Act, 19 REV. LITIG. 399, 412 (2000) (concluding that the correct approach is an individualized assessment); William D. Goren, Casey Martin v. Ford Olinger: a Dissenting View., AM. L. MEDIA (April 10, 2000) (stating that "[i]t has to be remembered that the ADA is an individually based act and so an individually based analysis is entirely appropriate").
\item \textsuperscript{159} Martin v. PGA Tour, Inc., 204 F.3d 994, 1001 (9th Cir. 2000), aff'd, 121 S. Ct. 1879 (2001).
\item \textsuperscript{160} Id. (alteration in original) (quoting Johnson v. Gambrinus Co./Speetzl Brewery, 116 F.3d 1052, 1060 (5th Cir. 1997)).
\end{itemize}
\end{quote}
alleged by the PGA, is to inject fatigue into the golfers.\textsuperscript{161} It then looked to the factual findings made by the district court, which concluded that Martin experiences more bodily fatigue in playing a round of golf with use of a cart, than his able-bodied competitors do walking.\textsuperscript{162} Therefore, the court properly focused on the specific circumstances surrounding Martin's disability instead of the general nature of the accommodation. It was through this precise analysis that the Ninth Circuit found that allowing Martin to use a golf cart would not fundamentally alter the nature of the PGA competition, and therefore was not an unreasonable accommodation under the ADA.\textsuperscript{163}

Contrarily, the Seventh Circuit failed to recognize the importance of making an individualized inquiry into Olinger's particular disability. The court instead followed the district court's generalized conclusion that "the nature of the competition would be fundamentally altered" if the walking rule were eliminated because it would 'remove stamina (at least, a particular type of stamina) from the set of qualities designed to be tested in [USGA tournament] competition.'\textsuperscript{164} The district court recognized the need to make an individualized decision, but then ignored the rule on the basis that it must consider the accommodation's impact on the general nature of the activity.\textsuperscript{165} Premised on this inaccurate consideration, the court found that "to allow one competitor a potential advantage denied to others would fundamentally alter the nature of the competition."\textsuperscript{166} Consequently, the court ignored significant case law establishing that courts must make individual fact-based inquiries when

\textsuperscript{161.} See id. at 1000 (citing Martin v. PGA Tour, Inc. 994 F. Supp. 1242, 1250 (D. Or. 1998) where the district court accepted the PGA Tour's claim that its walking rule's purpose is to inject the element of fatigue into the skill of shot-making).

\textsuperscript{162.} See id. at 1001-02. The district court used expert testimony to find that the fatigue factor injected into the game of golf by the walking rule is insignificant under normal circumstances. See Martin, 994 F. Supp. at 1250. The court also found that, even with a cart, Martin must still walk approximately twenty-five percent of the course, all the while risking fracture and hemorrhaging of his right leg. See id. at 1251. This, the court found, resulted in higher physiological stress for Martin, as he not only had to cope with the stress of competition, but also the stress of possible serious injury. See id. at 1251-52; see also supra note 72 for a detailed analysis of the district court's findings.

\textsuperscript{163.} See Martin, 204 F.3d at 1000, 1002.


\textsuperscript{165.} See Olinger, 55 F. Supp. 2d at 937 (finding that "[a] court deciding a case under the ADA must make an individualized decision ... but a court evaluating a requested accommodation's impact on the nature of an activity or program also must give full consideration to that impact").

\textsuperscript{166.} Id.
deciding whether an accommodation is reasonable under the ADA. The Seventh Circuit incorrectly affirmed the district court because it never once recognized the need for an individualized inquiry under the ADA.

The Seventh Circuit offered another rationale for its decision: Under both the Rehabilitation Act and the ADA, courts have consistently concluded that an accommodation is not reasonable if it imposes an undue financial and administrative burden. An undue burden is something requiring significant difficulty or expense when considered in light of the size of the entity, the extent of its resources, and the cost of the accommodation. The appeals court concluded, based on the district court’s decision, that a ruling in favor of Olinger would impose an undue burden on the USGA, because the entity would have to “develop a system and a fund of expertise” to determine whether an applicant truly needs a cart to compete. However, the court is clearly exaggerating the reality of the situation. The procedural burden of reviewing claims of disabled individuals would be insignificant, considering the minute number of individuals who have the ability to

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167. See supra note 157 and accompanying text for cases holding that individual inquiries are to be made when making such a decision under the ADA.

168. See Olinger, 205 F.3d at 1006.


170. See 42 U.S.C. § 12111(10) (1994). Section 12111(10) states:

(A) In general: The term “undue hardship” means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered: In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

Id. § 12111(10).

171. Olinger, 205 F.3d at 1007.
play golf at the professional level, especially when they are disabled." Olinger noted during the trial that, "in the last 13 years, only 11 golfers have asked permission to ride in the U.S. Open." This hardly amounts to an undue burden on the USGA. Further, large entities such as the PGA and USGA are organizations of extensive financial resources. The Ninth Circuit recognized this in Martin, and found that making individualized inquiries would impose no undue burden on the PGA, as the district court had little difficulty in making a factual determination that giving Martin a cart would not give him an unfair advantage. The Ninth Circuit indicates that if a district court could make such a finding without an undue burden, organizations of considerable wealth and size, such as the PGA and USGA, could certainly do so as well. Therefore, an individualized assessment of a reasonable accommodation in the sport of golf would create neither undue financial nor undue administrative burdens on the PGA or USGA. Hence, providing Olinger with a golf cart for use in the U.S. Open tournament would not have been an unreasonable accommodation.

B. The Supreme Court's Decision Accords with Public Policy and Will Positively Impact the Sport of Golf.

The Supreme Court decision in favor of Casey Martin furthers public policy by effectuating congressional intent and properly implementing the remedial purpose of the ADA. Further, the decision will not cause a slippery slope in which a large number of ADA claims will rise in the professional sports arena. Lastly, the decision is in the best interests of the PGA, the USGA, and the sport of golf.

172. See Hentges, supra note 153, at 174-75 (concluding that the procedural burden imposed on the PGA of reviewing claims from disabled individuals would be insignificant "considering the small number of individuals who have developed abilities commensurate with successful competition in professional golf"); Editorial, A Smart Cart for the PGA, N.Y. TIMES, Jan. 18, 1998, at 16 (rationalizing that "the PGA Tour is never going to be inundated with applications from afflicted walkers who possess professional swings because such skills are rare in the population at large").


174. See Hentges, supra note 153, at 175 (stating that the PGA Tour is an organization of considerable financial resources).

175. See Martin v. PGA Tour, Inc., 204 F.3d 994, 1002 (9th Cir. 2000), aff'd, 121 S. Ct. 1879 (2001).

176. See id. The court states that "[n]othing in the record establishes that an individualized determination would impose an intolerable burden on PGA." Id.
1. Congressional Intent and the Remedial Purpose of the ADA

The decision in favor of Casey Martin furthers the intent of Congress and the remedial purpose of the ADA. In enacting the ADA, Congress recognized the mistreatment of disabled persons that existed in society, and sought to provide them with equal opportunities. Congress looked to accomplish this by eliminating nationwide discrimination against disabled individuals, and ensuring that the federal government would enforce the standards of the ADA on behalf of the disabled. The language of the ADA itself suggests Congress' intent not only to legislate against outright discrimination, but also against passive, institutional structures that discriminate against the disabled through the failure to make reasonable accommodations.

Disabled professional athletes such as Casey Martin and Ford Olinger are extremely rare. Very few individuals are graced with the physical ability to compete in any sport at the professional level, let alone do so while being encumbered with a physical disability. However, Martin and Olinger possess this ability, and their shot-making skills rival those of other professional golfers. Nevertheless, solely because of their disabilities, they cannot compete in golf competition without the use of a golf cart. The Martin and Olinger courts found that shot-making and fatigue are part of the competition in these golf tournaments, but they also found that Martin and Olinger experience greater fatigue playing a round of golf with the use of a cart, than their able-bodied competitors do walking. Therefore, giving Martin or Olinger a cart will not affect the competition in the PGA or USGA golf tournaments because any effect fatigue has on a golfer's shot-making ability will surely hinder Martin and Olinger more than their non-

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177. See supra note 12 and accompanying text.
179. See id. § 12182(b)(2)(A)(ii) (stating that discrimination under the ADA includes the failure "to make reasonable ... accommodations to individuals with disabilities"); see also id. § 12101(a)(5) (discrimination against the disabled includes "failure to make modifications to existing facilities and practices"); Crowder v. Kitagawa, 81 F.3d 1480, 1483 (9th Cir. 1996) (stating that Congress intended the ADA to cover discriminatory impact of facially neutral barriers).
180. See Olinger v. United States Golf Ass'n, 205 F.3d 1001, 1005 (7th Cir. 2000), overruled by PGA Tour, Inc. v. Martin, 121 S. Ct. 1879 (2001); Martin v. PGA Tour, Inc., 204 F.3d 994, 1000 (9th Cir. 2000), aff'd, 121 S. Ct. 1879 (2001). However, the courts disagree as to the importance of fatigue. Compare Olinger, 205 F.3d at 1006 (using testimony of Ken Venturi, the winner of the 1964 U.S. Open who won on the verge of collapse, to conclude that the fatigue factor is significant), with Martin, 204 F.3d at 1000 (agreeing with district court's findings that the fatigue level is insignificant).
181. See Martin, 204 F.3d at 1000; Olinger v. United States Golf Ass'n, 55 F. Supp. 2d 926, 937 (N.D. Ind. 1999), aff'd, 205 F.3d 1001 (7th Cir. 2000), overruled by PGA Tour, Inc. v. Martin, 121 S. Ct. 1879 (2001).
disabled competitors. Hence, providing them with golf carts will not give them an unfair advantage, and is a reasonable accommodation under the ADA, as it would not fundamentally alter the nature of the competition.

It is cases such as these, where, without a reasonable accommodation, one would not be able to compete because of his disability, that Congress intended to cover under the ADA. Further, as the district court in Martin noted, professional sports are "not so sacrosanct" as to be above the law. This reflects Congress' intent under the ADA to have the federal government enforce the ADA, and protect all disabled individuals from discrimination by institutions such as the PGA and USGA. Because the PGA and USGA walking rules effectively bar Martin and Olinger from competing professionally due to their disabilities, not allowing them to compete is discrimination. This is exactly what the ADA prohibits.

2. Impact on Professional Sports

The decision in favor of Martin will not result in a slippery slope in which a large number of ADA claims requesting accommodations will be brought in other professional sports. Unlike the Martin and Olinger cases, most of the nation's 15,000 annual ADA cases concern whether

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182. See Martin, 204 F.3d at 1000; see also Tanya R. Sharpe, Note, Casey's Case: Taking a Slice Out of the PGA Tour's No-Cart Policy, 26 STA. U. L. REV. 783, 808 (1999) (asserting that the cart is necessary for Martin to work, and that "without a liberal interpretation of the ADA, persons with disabilities will continue to be locked out of jobs and careers, clearly contrary to congressional intent"); Richard Sandomir, Martin Receives Support on Capitol Hill for his PGA Suit, N.Y. TIMES, Jan. 29, 1998, at C4 (noting that U.S. Senators Tom Harkin and Bob Dole, who worked together to pass the ADA, aligned themselves with Martin, portraying him as "exemplary of those for whom the law, which bars employment, educational, recreational or social discrimination on the basis of disability, was enacted in 1990").


184. See Dina Marie Pascarelli, Comment, Casey Martin v. PGA Tour, Inc.: A New Significance to a Golfer's Handicap, 8 DEPAUL-LCA J. ART & ENT. L. 303, 323 (1998) (concluding that although the PGA has "a duty to its players to uphold the tradition of its rules against frivolous and unsubstantiated challenges," it has "a greater duty to humankind, disabled and able-bodied, to comply with the law").

185. See supra note 12 and accompanying text.

186. See supra notes 178-79 and accompanying text.

187. See Marcia Chambers, Just How Level a Playing Field? Casey Martin Says He Needs a Cart to Play; the PGA Says No, N.Y. TIMES, Jan. 15, 1998, at C1 (quoting Stephen F. Gold, an expert on the ADA, who claimed, "[h]e [Martin] is a worker. He is making a living. He is not asking for pity or charity. He wants an equal opportunity to hit the ball, and the [ADA] gives him that right.").
the plaintiff fits under the definition of a disabled individual. Further, it will be an extremely rare situation in professional sports when a disabled athlete will otherwise have the skill necessary to compete at the highest level, as do Martin and Olinger. Therefore, the professional sports arena is unlikely to confront many cases where disabled individuals will require only a slight accommodation in order to compete at the professional level. Lastly, the inherent differences between the game of golf and more rigorous sports, such as football, basketball, hockey and baseball, simply make it frivolous to argue that a ruling giving golf carts to specific disabled golfers would have a serious negative impact on other sports. Golf requires far more skill than athleticism, and walking is not an integral part of the game. Contrarily, in professional sports such as baseball, hockey, football, and basketball, where the best athletes in the world dominate the game, walking, running, or skating is a vital part of the game.

188. See Michael Grunwald, Casey Martin Ruling Should Be a Milestone for All Disabled, FORT WORTH STAR-TELEGRAM, Feb. 15, 1998, at 3; see also 42 U.S.C. § 12102(2) (1994) (defining “disability” with respect to an individual as “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such impairment; or (C) being regarded as having such an impairment”).

189. See supra note 172 and accompanying text.


191. Even the Supreme Court’s choice of language indicates that walking is not a fundamental part of the game. See Hentges, supra note 153, at 175. “‘Fundamental’ means ‘being an essential part of’” and “‘essential’ means either ‘absolutely necessary[,] indispensable,’” or “‘a basic or necessary element.’” Id. (quoting WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY 663, 776 (1996)). Walking is clearly not an absolute necessity to the game of golf as even the PGA Tour itself allows the use of carts in its own Senior Tour. See id. at 175-76.

The courts are not alone on this issue either. The media and even other professional golfers have argued that walking is not a fundamental part of the game. Sports Illustrated magazine noted that “no one has succeeded at tournament golf by virtue of his walking ability.” Davis, supra note 31, at 36 (quoting Garrity, supra note 30, at G10). Time Magazine pondered “how many golfers really look like they’ve done a lot of distance training?” Id. (quoting Kathleen Adams et al., Notebook: Winners & Losers Spanning the World, TIME, Feb. 16, 1998, at 25). Even the New York Times argued “[t]he essence of golf is how the golfer thinks and how the golfer swings the club, not whether the golfer rides a cart from the tee shot to the next shot to the green.” Dave Anderson, Give Martin a Ticket to Ride, N.Y. TIMES, Jan. 15, 1998, at C1. Professional golfers Greg Norman and Tom Watson claim, “shotmaking is paramount in golf, and the game will not be harmed if the Tour accommodates a disabled player.” Garrity, supra note 30, at G10. For further discussion of the applicable rules of golf, see supra note 66 and accompanying text.

192. See, e.g., MAJOR LEAGUE BASEBALL, OFFICIAL BASEBALL RULES 1.02, 5.04 (2009 ed.), available at http://www.mlb.com/NASApplmlblmlbfbaseballbasics/mlb_basics_foreward. (last visited Sept. 23, 2001) (stating that the objective of the game of baseball is “to win by scoring more runs than the opponent,” and that the offensive team’s objective is to “have its batter become a runner, and its runners advance”).
3. The Interests of the PGA, USGA, and the Game of Golf

The decision in favor of Martin is in the best interests of the PGA, the USGA, and the game of golf as a whole. Golf, unlike other sports, has always carried a certain stigma as a game for white, upper-class males. The expense and image as a game for the privileged, has harmed its popularity in the past. However, other sports praise their diversity as young athletes from all races and cultures have overcome the odds, often going from poor to rich. Many of the greatest heroes in sports are perceived as such, not necessarily for their athletic ability, but because of their diversity. The average American can more easily identify with these diverse athletes than they can with the many PGA players coming from upper-class families and communities.

A clear example is Tiger Woods, who has drawn attention and attraction to the game of golf in an astounding and unprecedented fashion. Even more than his success and ability, his diversity has inspired many children and adults, from all ethnic backgrounds, to follow and take up the game of golf. This has increased the popularity, media attention, and advertising of the PGA and USGA more than ever. It is in this context that allowing Casey Martin and Ford Olinger,
golfers who are different from most people because of their disabilities, to play golf would benefit the PGA, USGA and the game of golf itself. They are inspirational success stories—golfers who have overcome their disabilities to compete with the best in the world. This is precisely what brought so much media attention to these cases in the first place, especially the Martin case. They are the type of people the public wants to see; and they, like Tiger Woods, will help the PGA and USGA shed the game's for-privileged-only reputation, and make it just as enticing and popular as other sports.

VI. CONCLUSION

The Supreme Court correctly affirmed the Ninth Circuit Court of Appeal’s decision that providing Casey Martin with a golf cart is a reasonable accommodation that would not fundamentally alter the nature of the PGA Tour competition. The purpose and intent of the Americans With Disabilities Act and public policy demand that disabled golfers, such as Martin and Olinger, be accommodated. If the Court allowed the PGA or USGA to deny them such an accommodation, it would essentially be authorizing just the type of discrimination the ADA was enacted to remedy. The Court was wise in preventing the PGA from depriving Martin of the rare and rewarding opportunity to play professional golf just because he needs a cart.

In a case likely to be debated over and over again in country clubs across the land, I offer one last thought for those golfers who criticize
the Supreme Court's decision, arguing that it breaks the rules of golf, and gives Martin an unfair advantage. In the words of a witty columnist,

Truth to tell, many golfers give themselves "mulligans" or fail to penalize themselves when the ball moves at address. And sadly, many have not memorized the first rules of golf, published in 1744 for a tournament in Scotland: "If a Ball be stopp'd by an person, Horse, Dog, or any thing else, The Ball so stopp'd must be play'd where it lyes."

*Charles A. Omage*