FOURTEENTH AMENDMENT – AMERICANS WITH DISABILITIES ACT OF 1990 – PUBLIC ACCOMMODATIONS – PROFESSIONAL ATHLETIC ASSOCIATION PROHIBITED FROM DENYING GOLFER AFFLICTED WITH A DEGENERATIVE CIRCULATORY DISORDER EQUAL ACCESS TO ITS TOURNAMENTS AND QUALIFYING STAGES, BECAUSE THE USE OF A GOLF CART IS NOT A MODIFICATION THAT WOULD "FUNDAMENTALLY ALTER THE NATURE" OF PROFESSIONAL TOURS OR EVENTS – *PGA Tour, Inc. v. Martin*, 121 S. Ct. 1879 (2001).

*Timothy J. Lowry**

It is nothing new or original to say that golf is played one stroke at a time. But it took me many years to realize it. [1]

I. INTRODUCTION

The Equal Protection Clause, found in the Fourteenth Amendment, forbids discrimination against select classes of people.[2] The Supreme Court has echoed

---

* J.D., anticipated 2002. The author wishes to thank his close friend, Heidi, for all of her patience, support and dedication.

[1] Mike Logan, Bruce Manclark & Cory Eberhart, 10k Truth Quotes on Golf, *at* http://www.10ktruth.com/the_quotes/golf.htm (Oct. 26, 2001). Arguably the best golfer of all time, Bobby Jones was a lawyer, mechanical engineer and master of English literature. Golfeurope ltd., *Bobby Jones*, (2001) *at* http://www.golfeurope.com/almanac/players/jones.htm (Oct. 26, 2001). Finally retiring from professional golf in 1930, Jones is the only golfer in history to win every "major" tournament in a single year. *Id.* Winning thirteen national championships, Bobby Jones, in total, proved victorious four times at the US Open and US Amateur, thrice at the Open and once at the British Amateur. *Id.* He also won thirteen national championships in eight years. *Id.*

[2] U.S. CONST. amend. XIV. The Equal Protection Clause of the Fourteenth Amendment provides, "nor [shall any State] deny to any person within its jurisdiction the *equal protection of the laws*." *Id.* (emphasis added). Proponents of the Fourteenth Amendment have vigorously argued that the purpose of the statute was intended to blur and eliminate any legal distinctions among "all persons born or naturalized in the United States." Brown v. Bd. of Educ. of Topeka, 347 U.S. 483, 489 (1954) (citing U.S. CONST. amend. XIV). For a good discussion regarding the legislative history of the Fourteenth Amendment Equal Protection Clause, see generally Alexander M. Bickel, *The Original Understanding and the Segregation Decision*, 69 HARV. L. REV. 1, 15 (1955) (historicizing the foundations and socio-political underpinnings to the Fourteenth Amendment Equal Protection Clause).

that the "rights created by the . . . Fourteenth Amendment are, by its terms, guaranteed to the individual."[3] Combating discrimination against individuals of discrete and insular minorities that have been subject to a history of discrimination and that have possessed immutable characteristics has been a painstakingly difficult process for the United States Supreme Court.[4] In addition to judicial efforts,

---

[3] City of Richmond v. J.A. Croson Co., 488 U.S. 469, 490 (1989) (citing Shelly v. Kraemer, 334 U.S. 1, 22 (1948)).

[4] With regard to the legal analytical framework for Equal Protection claims, the following indicia, in the aggregate, trigger strict scrutiny, the most stringent level of judicial review: the individual is of an easily identifiable and politically silent class, her physical characteristics are such that they cannot change, and there exists a history of discrimination against her class. San Antonio Indep. Sch. Dist. v. Rodriquez, 411 U.S. 1, 28 (1973).

The mechanical analysis of equal protection claims has evidenced three degrees of judicial review for courts to employ when analyzing laws for their constitutional validity. Cleburne Living Ctr. v. City of Cleburne, 726 F.2d 191, 195 (1984). The three degrees of scrutiny are as follows: "strict scrutiny," "intermediate" or "heightened" scrutiny, and "rational review." *Id.* (citing Plyer v. Doe, 457 U.S. 202 (1982)). If the challenged authority impinges upon a suspect class or the exercise of a fundamental right, then the courts will invoke strict scrutiny review, and the court will require the challenged sovereignty to demonstrate that the proscription "has been precisely tailored to serve a compelling governmental interest." *Plyer*, 457 U.S. at 216-17. If the challenged authority, "while not facially invidious, nonetheless give[s] rise to recurring constitutional difficulties," then the courts will exact a heightened or intermediate level of judicial review. *Plyer*, 457 U.S. at 217. To withstand heightened scrutiny, the challenged authority must be substantially related to the accomplishment of important government objectives. Craig v. Boren, 429 U.S. 190, 197 (1976). Finally, if neither heightened nor strict scrutiny is appropriate, then the statute must pass rational basis review; the challenged authority must rationally relate to some legitimate public interest. *Plyer*, 457 U.S. at 216.

However, determining what is, in fact, a "suspect class" and what is the appropriate level of judicial review has been no easy task for the Supreme Court. In the context of race, see, for example, *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954) (concluding "separate but equal" has no place in public schools and ordering the desegregation of all public schools); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (city may not institute program to set aside contracts for minority firms in the absence of direct discrimination by city or its prime contractors); *Korematsu v. United States*, 323 U.S. 214 (1944) (finding Japanese internment camps were justified by military necessity, thus, surviving strict scrutiny review). In the context of gender, see, for example, *Reed v. Reed*, 404 U.S. 71 (1971) (declaring Idaho statute that established a hierarchy of persons entitled to handle estate of a decedent, preferring men over women unconstitutional); *United States v. Virginia*, 518 U.S. 515 (1996) (disallowing women in all male military academy ruled unconstitutional). With regard to alienage, see, for example, *Oyama v. California*, 332 U.S. 633 (1948) (invalidating a California state law, which restricted the right of aliens to own land); *Nyquist v. Mauclet*, 432 U.S. 1 (1977) (New York law targeted at aliens deemed unconstitutional); *Sugarmann v. Dougall*, 413 U.S. 634 (1973) (carving out an exception where governments may deny jobs based on one's alienage). In the context of sexual orientation, see, for example, *Romer v. Evans*, 517 U.S. 620 (1996)

Congress, in furtherance of the Fourteenth Amendment guarantee of equal protection, has promulgated statutes directly forbidding the practice of discrimination.[5] One such statute is the Americans with Disabilities Act of 1990 ("ADA" or "Act").[6]

Signed into law on July 26, 1990,[7] advocates hailed the ADA as a "historic new civil rights Act. . .the world's first comprehensive declaration of equality for people with disabilities."[8] After considerable empirical information had painted a dismal portrait of the effects of living in America with a disabling condition, the ADA was deemed a necessary weapon by Congress to combat disability discrimination.[9] Overall, three principles propelled the proscription against disabil-

---

(holding that homosexuality cannot be singled out for disfavorable treatment).

[5] *See, e.g.,* Age Discrimination in Employment Act, 29 U.S.C. §§ 621-633a (2001); Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 – 12213 (2001); Civil Rights Act of 1991, 42 U.S.C. § 1981 (2001); Congressional Accountability Act, 2 U.S.C. § 1301 (2001); Equal Pay Act, 29 U.S.C. § 206(d) (2001); Fair Labor Standards Act, 29 U.S.C. § 201 (2001); Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 (2001); Immigration Reform and Control Act, 8 U.S.C. § 1324b (2001); National Labor Relations Act, 29 U.S.C. §§ 151-169 (2001); Rehabilitation Act of 1973, 29 U.S.C. §§ 706-794a (2001); Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-15 (2001). In the context of public accommodations discrimination, see generally, Paul V. Sullivan, *The Americans With Disabilities Act of 1990: An Analysis of Title III and Applicable Case Law*, 29 SUFFOLK U. L. REV. 1117 (1995) (briefly summarizing Title III case law).

[6] 42 U.S.C. §§ 12101 – 12213 (2001). The statute reads: "[One of the many purposes of the ADA is to] invoke the sweep of congressional authority, including the power to enforce the [F]ourteenth [A]mendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities." 42 U.S.C. § 12101(b)(4) (2001).

[7] Pub. L. No. 101-336, 104 Stat. 327 (1990) (illustrating the ADA as signed into law and in its original form).

[8] Robert L. Burgdorf Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 HARV. C.R.-C.L. L. REV. 413, 413-14 (1991) (quoting President George Bush [Sr.], Remarks by the President During Ceremony for the Signing of the Americans with Disabilities Act of 1990, 2 (July 26, 1990)) (on file with the Harvard Civil Rights-Civil Liberties Law Review). President Bush stated that "[w]ith today's signing of the landmark Americans with Disabilities Act, every man, woman, and child with a disability can now pass through the once-closed doors into a bright new era of equality, independence, and freedom." *Id.*

[9] *See* Burgdorf, *supra* note 8, at 416 (comprehensively deconstructing every title and significant provision of the ADA).

ity discrimination, and solidified the structural underpinnings for the ADA:[10] disabled individuals have been subjected to an extensive amount of overt discrimination; such individuals are severely disadvantaged and underprivileged; and, the "resulting economic dependency of such individuals is costing the nation tremendous sums in support expenditures."[11] Considered a "second-generation civil rights statute" exceeding pre-existing anti-discrimination statutes, Congress declared the ADA to be the most expansive and far-reaching bill ever passed.[12]

Upon finding overwhelming anecdotal and statistical evidence historicizing discrimination against individuals with disabilities,[13] Congress promulgated the

---

[10] *Id.* at 426.

[11] *Id.* Burgdorf details, at length, the many findings by Congress, which prompted promulgation and passage of the Act. *Id.* Burgdorf presents substantial anecdotal evidence confirming widespread instances of discrimination on the basis of one's disability. *Id.* at 418. In one such example, managers of an auction house attempted to remove a wheelchair-confined woman, because she was "disgusting to look at," and offended the auctioneers. *Id.* (citing S. REP. NO. 101-116, at 6-7 (1989) (statement of Judith Heumann)). Burgdorf also presents statistical evidence demonstrating the devastating effects of disability discrimination. *Id.* at 420. One such disturbing statistic was that "forty percent of people with disabilities did not finish high school." *Id.* at 424 (citing LOUIS HARRIS AND ASSOCIATES, THE ICD SURVEY OF DISABLED AMERICANS: BRINGING DISABLED AMERICANS INTO THE MAINSTREAM 23,25 (1986)).

[12] *See* 135 CONG. REC. 10,789 (1989).

[13] 42 U.S.C. § 12101(a) (2001). Congress listed, in total, nine findings precipitating the ADA. *Id.* Some of those findings are as follows:

> [S]ome 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;
>
> 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;
>
> 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;
>
> unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination

three main titles of the ADA[14] to serve one primary purpose – the elimination of discrimination against individuals with disabilities.[15] Title I bars "covered entities" from discriminating against disabled individuals in all employment situations.[16] Title II, covering all programs, activities, and services of state and local government, prohibits public entities from discriminating against disabled individuals in most every public service, program or activity.[17] Title III expressly prohibits places of public accommodation from discriminating against individu-

---

on the basis of disability have often had no legal recourse to redress such discrimination;

(9) the continuing existence of unfair and 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 nonproductivity.

Id.

[14] 42 U.S.C. §§ 12111-12117 (2001) (Title I – regulating private employers); 42 U.S.C. §§ 12131-12165 (2001) (Title II – regulating public entities); 42 U.S.C. §§ 12181-12189 (2001) (Title III – regulating places of public accommodation). Although not as central to the ADA as the first three titles, Title V is worth noting. 42 U.S.C. §§ 12201-12213 (2001) (Title V – detailing miscellaneous provisions).

[15] *See* 42 U.S.C. § 12101 (2001). Congress presented the following purposes for the ADA:

(1) [T]o provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and (4) to invoke the sweep of congressional authority, including the power to enforce the [F]ourteenth [A]mendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Id.

[16] 42 U.S.C. § 12112 (2001) (prohibiting, generally, employer discrimination against an individual with a disability).

[17] 42 U.S.C. § 12132 (2001) (barring discrimination by public entities); 29 U.S.C. § 794(a) (2001) (prohibiting disability discrimination concerning any federally funded program).

als.[18]

[18] 42 U.S.C. § 12182(a) (2001). The statute reads:

> [n]o individual shall be discriminated against on the basis of disability in the full and equal treatment 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.

Id.

42 U.S.C. § 12181(7) (2001) defines and provides examples to serve as guidelines when determining whether an entity is, indeed, a place of public accommodation. The following "private entities" are considered public accommodations:

> [A]n 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;
>
> a restaurant, bar, or other establishment 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 display or collection;
>
> a park, zoo, amusement park, or other place of recreation;

Although the ADA's conceptual genesis is rooted in the public accommodations provisions of the Civil Rights Act of 1964,[19] the coverage and definition of public accommodations pursuant to Title III of the ADA ("Title III") is much more expansive.[20] Congress defined twelve categories that are, without limitation, a place of public accommodation,[21] which, when coupled with the expansive language of the Act, envelop practically every conceivable facet of American commerce in which a place of business or other establishment touches the general public.[22] Title III includes a comprehensive provision that forbids discrimination "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,"[23] and specifically prohibits numerous forms of discrimination.[24]

---

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. (emphasis added).

[19] 42 U.S.C. §§ 2000a – 2000a(6) (2001). The first draft of the ADA, as produced by the National Council on the Handicapped, forbade disability discrimination by "any public accommodation covered by Title II of the Civil Rights Act of 1964." Burgdorf, *supra* note 8, at 470 (citing NATIONAL COUNCIL ON THE HANDICAPPED, ON THE THRESHOLD OF INDEPENDENCE 11-18 (1988)).

[20] Burgdorf, *supra* note 8, at 470-71.

[21] 42 U.S.C. § 12181(7) (2001); *see* statute cited *supra* note 18.

[22] Burgdorf, *supra* note 8, at 471.

[23] 42 U.S.C. § 12182(a) (2001).

[24] 42 U.S.C. § 12182(b)(1) (2001). The Act generally prohibits a number of discriminatory actions. *Id.* For example, the Act explains that "[i]t shall be discriminatory" to deny disabled individuals equal access, provide unequal treatment to individuals with disabilities, afford a separate benefit to a disabled individual, with one exception, or exclude an opportunity to a disabled individual or one who associates with an individual with a disability. *Id.* The Act specifically prohibits many forms of discrimination. *Id.* For example, the Act states that

With regard to individual disparate treatment claims alleging discrimination by way of circumstantial evidence,[25] the Supreme Court has directed such claims to follow the legal analytical framework established in *McDonnell Douglas Corp. v. Green*[26] and *Texas Department of Community Affairs v. Burdine*.[27] Plaintiffs seeking redress pursuant to Title III of the ADA, or any other anti-discrimination statute, must initially make out a prima facie showing of disability discrimination.[28] In the context of a Title III claim, plaintiffs satisfy the prima facie factual showing by the following four-pronged conjunctive test: (1) existence of a qualified disability; (2) premises in question constitutes a place of public accommodation; (3) plaintiff was denied full or equal access as a result of that disability; and, (4) denial of access was possibly based on plaintiff's disability.[29] Under the framework, once the plaintiff establishes the prima facie factual demonstration, the burden shifts to the defendant to rebut the evidence by adducing some legitimate, nondiscriminatory reason as to why the plaintiff was denied access.[30] Defendant need only produce some legitimate evidence which rebuts

---

"[f]or purposes of subsection (a), discrimination includes [specifically]. . .(i) criteria that screen[s] out [a disabled individual]. . .(ii) a failure to make reasonable modifications. . .(iii) a failure to take [reasonable] steps as may be necessary. . .(iv) a failure to remove architectural barriers. . .where such removal is readily achievable." *Id.*

[25] Plaintiffs may prove individual disparate treatment by direct or circumstantial evidence. Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) (demonstrating procedure regarding proving individual disparate treatment via direct evidence).; McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973) (establishing the legal analytical framework regarding proving individual disparate treatment circumstantially). However, most claims alleging disability discrimination pursuant to the ADA involve claims of both individual disparate treatment and failure to reasonably accommodate. Borkowski v. Valley Central School District, 63 F.3d 131 (2nd Cir. 1995) (establishing the legal analytical framework concerning a mixed claim alleging both individual disparate treatment and failure to reasonably accommodate).

[26] 411 U.S. 792 (1973).

[27] 450 U.S. 248 (1981).

[28] *McDonnell Douglas*, 411 U.S. at 802; *Burdine*, 450 U.S. at 252-53.

[29] Jairath v. Dyer, 972 F. Supp. 1461, 1468 (N.D. Ga. 1997) (assuming *arguendo* plaintiff had standing to bring suit, a "direct threat" or "significant risk" precluded a covered entity from extending its public accommodations pursuant to the ADA); United States v. Morvant, 898 F. Supp. 1157, 1161 (E.D. La. 1995) (summary judgment is proper in a blatant, Title III discrimination suit where defendant refused to administer to HIV patients and subsequent defenses proved pretextual); Mayberry v. Von Valtier, 843 F. Supp. 1160, 1164 (E.D. Mich. 1994) (defendant's refusal to administer health care services to a deaf woman, and additional evidence, solidified prima facie claim of disability discrimination).

[30] *McDonnell Douglas*, 411 U.S. at 802; *Mayberry*, 843 F. Supp. at 1166; *Morvant*, 898

the presumption of discrimination created by the prima facie showing.[31] To do so, defendants may demonstrate that denial of access was based on the fact that reasonable modifications could not be made, or that such a reasonable modification would fundamentally alter the nature of the accommodations.[32] Once the defendant has rebutted the presumption, the burden shifts back to the plaintiff to prove that the reasons proffered by defendant were pretextual.[33] Importantly, the burden remains with the plaintiff to ultimately persuade the trier of fact of the alleged discrimination.[34]

Some scholars predicted that Title III would inevitably create "more conflicts in implementation than any other aspect of the ADA."[35] Although most courts have interpreted the provisions of Title III "logically and with minimal adverse impact on private organizations,"[36] two courts in particular have provided conflicting interpretations regarding the application of Title III to professional golf courses.[37] In *PGA Tour, Inc. v. Martin*, the United States Supreme Court resolved the questions regarding the application of Title III to a professional athletic association and concluded that Title III prevents said professional association from denying a disabled golfer equal access to its tournaments and

---

F. Supp. at 1161.

[31] Benson v. Northwest Airlines, 62 F.3d 1108, 1114 (8th Cir. 1995) (once plaintiff facially demonstrates that an alternative accommodation is possible, the burden shifts to the defendant to produce evidence that such a reasonable accommodation is not feasible).

[32] 42 U.S.C. § 12182(b)(2)(A)(ii) (2001) (providing reasonable modification defense to a discrimination claim).

[33] *McDonnell Douglas*, 411 U.S. at 804.

[34] *Benson*, 62 F.3d at 1112.

[35] John W. Parry, *Public Accommodations Under the Americans with Disabilities Act: Nondiscrimination on the Basis of Disability*, MENTAL & PHYSICAL DISABILITY L. REP., Jan.-Feb. 1992, at 92 (arguing that Title III of the ADA will falter on its own terms).

[36] Sullivan, *supra* note 5, at 1117-18.

[37] Olinger v. United States Golf Association, 205 F.3d 1001, 1005 (7th Cir. 2000) (professional golf courses are places of public accommodation pursuant to 42 U.S.C.S. § 12181(7), however, the use of a golf cart *would* "fundamentally alter the nature" of respondent's golf tournament); Martin v. PGA Tour, Inc., 204 F.3d 994, 996 (9th Cir. 2000) (golf courses are places of public accommodation and the use of a golf cart was a reasonable accommodation to respondent's disability, which *would not* fundamentally alter the nature of petitioner's tournaments).

qualifying stages.[38]

II. STATEMENT OF THE CASE

In view of the inconsistency between the Seventh and Ninth Circuits' recent opinions concerning the application, coverage and extent of Title III protections as applied to professional golf tournaments, the United States Supreme Court granted certiorari to resolve the split among the Courts of Appeals.[39] The Court held that Title III prohibits PGA from denying a qualified, disabled golfer equal access to its tournaments.[40] Likewise, the Court decided that the use of a golf cart, notwithstanding PGA's walking requirement, was clearly not a modification that would "fundamentally alter the nature" of petitioner's tours or qualifying events.[41]

FACTS

PGA Tour, Inc. ("PGA")[42] is a nonprofit corporation, which sponsors and co-sponsors three professional golf tournaments: the PGA Tour, the Buy.com Tour,[43] and the Senior PGA Tour.[44] In addition, PGA owns, leases, and operates golf courses and supporting facilities to host tour competitions and qualifying stages.[45] Golfers may utilize a number of means to gain admission into a par-

---

[38] 121 S. Ct. 1879 (2001).

[39] *Id.* at 1888-89.

[40] *Id.* at 1890-93.

[41] *Id.* at 1897.

[42] To avoid confusion, hereinafter "PGA" will refer to the entity, PGA Tour, Inc. and "PGA Tour" will refer to the competitions sponsored by PGA Tour, Inc.

[43] Formerly known as the "Nike Tour," hereinafter the "Nike Tour" and the "Buy.com Tour" will be used interchangeably to identify the same tour.

[44] *Martin*, 121 S. Ct. at 1884. In sum, approximately 200 golfers play in the PGA Tour, 170 golfers participate in the Nike Tour, and 100 golfers, age fifty and over, compete in the Senior PGA Tour. *Id.* The foregoing tournaments are usually four-day competitions; those who survive the first two days of qualifying rounds, play and compete for prize money on Saturday and Sunday. *Id.* Generating around $300 million a year in revenues, most of the revenues received by the PGA is distributed in prize money to the tournament winners. *Id.*

[45] *Id.* at 1890.

ticular tour.[46] The most common avenue traveled by golfers seeking either PGA or Buy.com Tour admission is the successful completion of a three-stage qualifying event, identified as the "Q-School."[47] Of the thousand or more contenders enrolling annually in the Q-School, only an estimated forty-two players qualify for membership in the PGA Tour.[48]

The tournaments and qualifying rounds are governed by the following three sets of rules: the "Rules of Golf," the "Conditions of Competition and Local Rules," and the "Notices to Competitors."[49] The "Rules of Golf" (the "Rules") are imposed mutually by the United States Golf Association as well as the Royal and Ancient Golf Club of Scotland and apply generally to the game of golf as it is played, irrespective of the level.[50] Although the Rules set forth that golfers should "walk at all times," the Rules do not expressly forbid the use of golf carts at any time.[51] The "Conditions of Competition and Local Rules," known to players as the "hard card(s)," apply exclusively to the PGA, Buy.com and Senior PGA Tours.[52] The hard cards require players to walk during competition unless otherwise permitted by the PGA Tour Rules Committee.[53] The "Notices to Competitors" ("Notices") are tour-specific conditions set forth for that particular event.[54] Typically, the Notices explain how the Rules should be interpreted and

---

[46] *Id.* at 1884. The Court suggested a couple of ways in which a player may earn the right to play in a tour. *Id.* One such avenue, a golfer who wins three Buy.com tournaments in the same year or earns a place "among the top-15 money winners on that tour," earns the privilege to participate in the PGA Tour. *Id.*

[47] *Id.* Typically, any person may enter the Q-School by furnishing a $ 3,000 entry fee and tendering two letters of reference from, *inter alia,* current PGA Tour or Buy.com Tour members. *Id.* The entry fee covers the cost of golfers' greens fees and use of golf carts. *Id.* Golf carts are allowed throughout the first two stages of the Q-School, but are prohibited during the third stage. *Id.*

[48] *Id.* With regard to the Buy.com Tour, only an estimated one hundred and twenty five golfers are admitted yearly. *Id.*

[49] *Id.* at 1884-85.

[50] *Martin*, 121 S. Ct. at 1884. Whether the level is amateur or professional, or Ladies' or Mens', the Rules of Golf codify what one "can and cannot" do when playing the game. *Id.*

[51] *Id.* at 1885.

[52] *Id.*

[53] *Id.*

[54] *Id.*

applied in a given situation.[55] The Rules, hard cards and Notices apply equally to all golfers in all of petitioner's tournaments and events.[56]

Casey Martin ("Martin") is an exceptional, professional golfer.[57]As an amateur, Martin won seventeen Oregon Golf Association junior competitions, won the Oregon state championship in golf, and led the Stanford University golf team to a win at the 1994 National Collegiate Athletic Association tournament.[58] As a professional athlete, Martin qualified for both the Nike and PGA Tours.[59] In 1999, he entered twenty-four competitions, qualified thirteen times and finished in the top-ten six times, placing second twice and third once.[60] Moreover, Martin is disabled, protected against discrimination pursuant to the Americans with Disabilities Act of 1990.[61] Since birth, he has suffered from a degenerative circulatory disorder, known as Klippel-Trenaunay-Weber Syndrome, which "obstructs the flow of blood from his right leg back to his heart."[62] Because of this progressive, congenital disorder, Martin's right leg has atrophied severely; his deformity has advanced so badly that walking not only causes him pain, but also creates serious, life-threatening risks.[63]

After turning professional and entering the Q-School, Martin was not prohib-

---

[55] *Id.* The Court pointed out that, at times, some Notices expressly permit the use of golf carts. *Id.*

[56] *Martin*, 121 S. Ct. at 1885.

[57] *Id.* at 1885.

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *Id.* at 1885. *See* 42 U.S.C. § 12102(2) (2001). The Act provides, in pertinent part: "[t]he term 'disability' means. . .(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual." *Id.* It is worth noting that the United States District Court for the District of Oregon, United States Court of Appeals for the Ninth Circuit, and the Supreme Court of the United States unanimously recognized Martin as an individual with a disability pursuant to the ADA. PGA Tour, Inc., v. Martin, 121 S. Ct. 1879, 1885 (2001); PGA Tour, Inc. v. Martin, 204 F.3d 994, 996 (2001); Martin v. PGA Tour, Inc., 994 F. Supp 1242, 1243 (2001).

[62] *Martin*, 121 S. Ct. at 1885.

[63] *Id.* at 1885-86. The Court articulated that, for Martin, "[w]alking not only caused him pain, fatigue, and anxiety, but also created a significant risk of hemorrhaging, developing blood clots, and fracturing his tibia so badly that an amputation might be required." *Id.*

ited from using a golf cart during his successful advancement through the first two rounds.[64] Approaching the third and final round, Martin petitioned the PGA Rules Committee and requested permission to use a golf cart throughout the third round.[65] Petitioner refused to review Martin's medical records or waive its walking rule for the third round of the school.[66]

PROCEDURAL HISTORY

As a result of the PGA's denial of waiver of its rule against the use of golf carts, Martin filed suit in the United States District Court for the District of Oregon seeking declaratory and injunctive relief regarding the application, coverage and measure of the ADA to professional golf tournaments and events.[67] Issuing a preliminary injunction, the district court ruled in favor of Martin.[68] Denying PGA's motion for summary judgment, the district court determined that the tournaments and events squared with the statutory definition of public accommodation.[69] Addressing whether waiving the walking rule would fundamentally alter the nature of petitioner's tour competitions,[70] the district court found, after

---

[64] *Id.* at 1886. In fact, the hard card permitted Martin to use a golf cart throughout the first two rounds of the Q-School. *Id.*

[65] *Id.*

[66] *Id.*

[67] Martin v. PGA Tour, Inc., 994 F. Supp. 1242, 1243 (D. Or. 1998). The district court found that the ADA does apply to defendant's professional golf tournaments and events and that, in light of plaintiff's disability, the requested accommodation was not unreasonable. *Id.*

[68] *Id.* at 1253. Concluding that Martin was an independent contractor, the district court rejected plaintiff's Title I claim and questioned only plaintiff's Title III public accommodation claim. *Id.* at 1247.

[69] *Id.* at 1243. Petitioner's motion for summary judgment argued it was exempt from liability pursuant to Title III's "private club or establishment" exemption, codified at 42 U.S.C. § 12187 (2001), or, alternatively, that its tournaments did not meet the statutory definition of "public accommodation" within Title III. *Id.* The district court concluded that petitioner should be observed as a "commercial enterprise operating in the entertainment industry for the economic benefit of its members." *Id.* The district court further noted that a "golf course" expressly fell within the statutory definition of a public accommodation. *Id.*

[70] *Id.* Petitioner did not argue that Martin was an individual with a disability, protected by the statute, or that his disability prevented Martin from walking petitioner's tours or qualifying stages of play. *Id.*

considerable testimony,[71] that the primary intent of the rule was to "inject. . .fatigue into the skill of shot-making."[72] Realizing Martin's severe physical disadvantage, the trial court stated, "[t]o perceive that the cart puts him – with his condition – at a competitive advantage is a gross distortion of reality."[73] The district court conceived that the use of a cart would not fundamentally alter the nature of the professional tours or events, and entered a permanent injunction prohibiting petitioner from denying Martin the use of a golf cart on tour and at qualifying events.[74]

On appeal, the United States Court of Appeals for the Ninth Circuit affirmed the decision of the district court.[75] Finding no real distinction between a private university and a golf course,[76] the court of appeals agreed with the district court and concluded that petitioner's golf courses remain places of public accommodation.[77] The court centered its inquiry on whether permitting Martin to use a golf cart during tour competitions and qualifying stages would fundamentally alter the nature of the game of golf.[78] Declaring that such an issue "turned on an in-

---

[71] It is worth mention that such famous professional golfers as Arnold Palmer, Jack Nicklaus and Ken Venturi testified that fatigue can play a major role in tournament play. *Martin*, 121 S. Ct. at 1887.

[72] *Martin*, 994 F. Supp. at 1250. The court maintained that, even with the use of a golf cart, the fatigue and physical strain Martin suffers by way of his disability is "undeniably greater" than any stress or psychological pressure experienced by his able-bodied competitors. *Id.* at 1251.

[73] *Id.* at 1252.

[74] *Id.*

[75] *Martin*, 204 F.3d at 996.

[76] *Id.* at 998-99. The Ninth Circuit interpreted the statute, 42 U.S.C. § 12181(7)(J) (2001), as not to blur any lines between a private university, which is specifically defined as a place of public accommodation, and a golf course. *Id.* In essence, the court reasoned golf tournaments, like private universities, are intensely competitive in their selection processes, and those processes alone are not sufficient to exclude petitioners from liability. *Id.* at 999.

[77] *Id.* Noting that PGA Tour did not question the lower court's rejection of its "private club" claim, the court questioned only whether or not the golf course at issue is a public accommodation. *Id.* at 997-99. Additionally, it is important to note that the court found no grounds for differentiating between "use of a place of public accommodation for pleasure and use in the pursuit of a living." *Id.* at 999.

[78] *Id.* The court found that no genuine dispute existed concerning Martin's use of a golf cart as both a reasonable and necessary remedy, which would make tournament play accessible. *Id.* Further, the court of appeals questioned not "whether use of carts *generally* would

tensely fact-based inquiry," the Ninth Circuit agreed with the decision by the lower court and held that the use of a golf cart, in Martin's case, would not fundamentally alter the nature of the game.[79]

Because the courts of appeals were divided concerning both the initial threshold coverage issue and the fundamental alteration question,[80] the Supreme Court granted certiorari to resolve such questions regarding the ADA's reach and application.[81] Per the initial threshold coverage issue, the Court found that, given the general rule and expansive definition of "public accommodation," petitioner's tour competitions, qualifying stages and facilities "fit comfortably within the coverage of Title III."[82] Because satisfaction of that issue precipitated further inquiry to gauge petitioner's liabilities, the majority next questioned whether a reasonable modification, i.e., the use of a cart by Martin, would "fundamentally alter the nature" of petitioner's tours and events.[83] The Court concluded, despite petitioner's walking requirement and administrative burden, that in light of such unique facts, the modification would not alter the nature of the game.[84] Accordingly, the Court affirmed the decision of the Ninth Circuit.[85]

III. PRIOR CASE HISTORY

While *PGA Tour, Inc. v. Martin* may arguably be a case of first impression, the United States Supreme Court has previously addressed similar issues of discrimination in like contexts.[86] Alluding to statutory law, legislative history and findings, and parallel case law, the Court reaffirmed prohibitions against disabil-

---

fundamentally alter the competition, but whether the use of a cart *by Martin* would do so." *Id.* at 1000 (emphasis added).

[79] *Id.* at 1002.

[80] *See Olinger*, 205 F.3d at 1005; *see also Martin*, 204 F.3d at 1002; *see also supra* note 37.

[81] *Martin*, 121 S. Ct. at 1889.

[82] *Id.* at 1890.

[83] *Id.* at 1893.

[84] *Id.* at 1897.

[85] *Id.* at 1898.

[86] *Id.* at 1892. The Court declared that its conclusions are consistent with analogous case law concerning the application of Title II of the Civil Rights Act of 1964. *Id.*

ity-based discrimination.[87]

A. TITLE II OF THE CIVIL RIGHTS ACT OF 1964

Of the many purposes served by the expansive, far-reaching statute, Title II of the Civil Rights Act of 1964 ("Title II") was intended to secure the complete enjoyment of the many places of public accommodation for all citizens, regardless of race, color, religion or national origin.[88] However, the primary antagonist Congress intended to combat via Title II was the removal of daily affront, overall unfairness, insult, and humiliation involved when amenities presumably open to the general public discriminatorily deny access to individuals.[89] While Title II does not specifically prohibit discrimination on the basis of disability, the Court has impliedly suggested that the underpinnings constructed by Title II are analogous to those of the ADA.[90] Thus, case law pursuant to Title II has been used to delineate the prohibitions set forth by the ADA.[91] The *Martin* Court stated that the following cases supported its conclusion that the PGA is "a public accommodation during its tours and qualifying rounds," and, accordingly, may not discriminate against either viewers or players on the basis of disability.[92]

---

[87] *Martin*, 121 S. Ct. at 1889-98.

[88] Miller v. Amusement Enters., Inc., 394 F.2d 342 (5th Cir. 1968) (interpreting Title II of the Civil Rights Act of 1964, the court found that citizens of all color should be afforded equal enjoyment of places of public accommodation).

Title II prohibits public accommodations from discriminating against an individual on the basis of race, color, religion, or national origin. 42 U.S.C. § 2000a (2001). The statute reads, "[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin." *Id.*

[89] Daniel v. Paul, 395 U.S. 298, 308 (1969) (citing H.R. REP. NO. 88-914 (1964)).

[90] *See Martin*, 121 S. Ct. at 1889-90.

[91] *Id.* at 1892-93.

[92] *Id.* at 1893.

B. *DANIEL V. PAUL*: APPLYING TITLE II, A "PLACE OF EXHIBITION OR ENTERTAINMENT" IS A PUBLIC ACCOMMODATION

In *Daniel v. Paul*,[93] the Supreme Court granted certiorari to resolve whether a privately owned amusement facility was a "place of public accommodation," and thus, whether the denial of equal access to respondents, a class of African-Americans denied admission solely on account of their race, violated Title II.[94] In reversing the opinion by the Court of Appeals for the Eighth Circuit, Justice Brennan, writing for a seven-member majority, held that Title II covered the recreational area.[95] The Court rejected petitioner's argument, which stated that, pursuant to the statute, "'places of entertainment' refers only to establishments where patrons are entertained as spectators or listeners rather than those where entertainment takes the form of direct participation in some sport or activity."[96] The Court noted that the legislative intent justifying Title II ran contrary to petitioner's argument.[97] Agreeing with the Fifth Circuit's decision in *Miller v. Amusement Enters., Inc.*,[98] the Court concluded that the language of the statute, "place of entertainment," should be liberally construed and applied to amuse-

---

[93] 395 U.S. 298 (1969).

[94] *Id.* at 302.

[95] *Id.* at 305. The Court noted that so long as a snack bar is "principally engaged in selling food for consumption on the premises," then that is sufficient to bring the entire amusement park within coverage of Title II. *Id.* at 304-05.

[96] *Id.* at 306.

[97] *Id.* Specifically, the Court observed remarks by President Kennedy, Senator Hubert Humphrey and Senator Magnuson. *Id.* at 306-07. President Kennedy stated, "no action is more contrary to the spirit of our democracy and Constitution – or more rightfully resented by a Negro citizen who seeks only equal treatment – than the barring of that citizen from . . . public accommodations and facilities." *Id.* at 306 (citing Special Message to the Congress on Civil Rights and Job Opportunities, 1963 PUB. PAPERS 485 (June 19, 1963). Senator Hubert Humphrey noted, "[t]he spectacle of national church leaders being hauled off to jail in a paddy wagon demonstrates the absurdity . . . of the arguments of those who oppose [T]itle II of the President's omnibus civil rights bill." *Id.* at 307 (citing 109 CONG. REC. 12276 (1963)). Senator Magnuson exclaimed, "[m]otion picture theaters which refuse to admit Negroes will obviously draw patrons from a narrower segment of the market than if they were open to patrons of all races . . . These principles are applicable not merely to motion picture theatres but to *other establishments which receiver supplies, equipment, or goods through the channels of interstate commerce*." *Id.* (citing 110 CONG. REC. 7402 (1964)) (emphasis in original).

[98] 394 F.2d 342 (5th Cir. 1968) (holding that an amusement park is an establishment covered by the Civil Rights Act of 1964).

ment and recreational areas.[99]

C. *EVANS V. LAUREL LINKS, INC.*: TITLE II APPLIES TO BOTH SPECTATORS AND PLAYERS WHEN THE PLACE OF ENTERTAINMENT OPENS ITSELF TO THE PUBLIC

The United States District Court for the Eastern District of Virginia in *Evans v. Laurel Links, Inc.*[100] questioned whether the defendant golf establishment, albeit an independent social group, violated Title II when it refused to permit African-American golfers to play on its course. The court held that the golf establishment did violate Title II where the course opened itself to the public,[101] and, therefore the golf course was, in fact, a place of public accommodation.[102] Judge Butzner, writing for the court, articulated that something as small and simple as a lunch counter, which affected commerce, was sufficient to place the entire golf course within the jurisdiction of the ADA.[103] The court further maintained that Title II is not limited to spectators "if the place of exhibition or entertainment provides facilities for the public to participate in the entertainment."[104] Interpreting Title II, the court concluded that the plaintiffs were to be provided equal access to said premises on the same basis as white customers.[105]

D. *WESLEY V. CITY OF SAVANNAH, GEORGIA*: PRIVATE ASSOCIATION VIOLATES TITLE II WHEN IT LIMITS ENTRY BY RACE

In *Wesley v. City of Savannah, Georgia*,[106] the United States District Court for the Southern District of Georgia addressed the issue of whether a golf tournament limited solely to white members and played on a golf course owned by the municipality contravened the provisions of the Fourteenth Amendment and

---

[99] *Daniel*, 395 U.S. at 308.

[100] 261 F. Supp. 474, 474-75 (E.D. Va. 1966).

[101] *Id.* at 476.

[102] *Id.* at 476-77.

[103] *Id.* at 476.

[104] *Id.* at 477.

[105] *Id.* (interpreting 42 U.S.C. § 2000a(a)).

[106] 294 F. Supp. 698 (S.D. Ga. 1969).

the Civil Rights Act of 1964.[107] After defendants conceded to the fact that the particular golf association was a place of public accommodation,[108] the court held that the defendants, in segregating its tournaments, violated both the Civil Rights Act and the Equal Protection Clause of the Fourteenth Amendment.[109] As a postscript, the court commented that because the "tournament is too prestigious, too traditional and provides too much challenge," the highly competitive tour competition patently falls within coverage of the foregoing statutes.[110]

IV. *PGA TOUR, INC. V. MARTIN*: PROFESSIONAL GOLF COURSES, TOURNAMENTS AND QUALIFYING EVENTS ARE PLACES OF PUBLIC ACCOMMODATION, AND, AS SUCH, MUST PERMIT A HANDICAPPED GOLFER THE USE OF A GOLF CART, A MODIFICATION WHICH DOES NOT FUNDAMENTALLY ALTER THE NATURE OF SAID TOURS OR EVENTS

In the wake of the ostensible inconsistencies regarding the breadth and application of the ADA as applied to professional golf courses by the Seventh and Ninth Circuits,[111] the United States Supreme Court granted certiorari to resolve the divergence among the circuits.[112] The Court first held that professional golf tours, courses and their respective qualifying events, according to Title III, are places of public accommodation.[113] Advancing beyond the initial threshold question, the Court next held that, pursuant to the statute, the use of a golf cart by an individual with a disability is a "reasonable modification" that would not "fundamentally alter the nature" of petitioner's events.[114]

---

[107] *Id.*

[108] *Id.* at 701.

[109] *Id.* at 703.

[110] *Id.*

[111] On the day following the Ninth Circuit's opinion, the Seventh Circuit concluded that the ADA does *not* require the United States Golf Association (USGA) to shoulder "the administrative burdens of evaluating requests to waive the walking rule and permit the use of a golf cart [by a disabled golfer]." Olinger v. U.S. Golf Assn., 205 F.3d 1001, 1007 (7th Cir. 2000).

[112] *Martin*, 121 S. Ct. at 1889.

[113] *Id.* at 1890.

[114] *Id.* at 1897.

A. JUSTICE STEVENS' MAJORITY OPINION

Writing for a seven-member majority, Justice Stevens delivered the opinion of the Court in *PGA Tour, Inc. v. Martin*.[115] Justice Stevens perceived only two issues worth resolution.[116] First, as a threshold matter, the Justice addressed whether the Act reached to professional golf tournaments and protected qualified entrants with a disability against denial of equal access.[117] The Court agreed with the findings by the lower courts and concluded that petitioner's tournaments were, indeed, within the reach of the Act and respondent was an individual with a disability.[118] Second, the Court analyzed whether an entrant with a disability could be denied access to said tours and events.[119] Specifically, the Court questioned whether, despite petitioner's walking rule and administrative burden, the use of a golf cart would fundamentally alter the nature of the tournaments.[120] Due to the specific facts of the case and the expansive breadth of the Act, as intended by Congress, the Court affirmed the findings and rulings by the Ninth Circuit in favor of respondent, Casey Martin, and concluded that making such an accommodation did not alter the nature of the tournaments, and therefore Martin could not be denied access to said tours and events.[121]

---

[115] *Id.* at 1884. Chief Justice Rhenquist and Justices O'Connor, Kennedy, Souter, Ginsberg and Breyer joined in the opinion.

[116] *Id.*

[117] *Id.* Initially, to proceed on such a claim, the Court must first determine whether petitioner's tournaments and events are places of "public accommodation." *Id.* Title III of the ADA details, generally, "[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." 42 U.S.C. § 12182(a) (2001). *See supra* note 18 and accompanying text.

[118] *Martin*, 121 S. Ct. at 1887, 1893.

[119] *Id.* at 1890.

[120] *Id.* Specifically, the Court questioned whether the use of a golf cart would infringe the "essential aspect" of the game, and, whether the use of a golf cart would fundamentally alter the nature of the competition by bestowing an unfair advantage to the disabled individual over other nondisabled participants. *Id* at 1893-95.

[121] *Id.* at 1898.

1. WHETHER RESPONDENT IS OF THE CLASS PROTECTED BY THE STATUE

Beginning the majority's analysis, Justice Stevens explained the primary justifications and historical underpinnings underlying enactment of the ADA.[122] Reaffirming Congressional findings, the Justice echoed, "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination . . . continue to be a serious and pervasive social problem."[123] Further expressing the depths of Congressional investigation, the Court reiterated the justifications for the Act, which demanded a "compelling need' for a clear and comprehensive national mandate'" to vilify and eradicate discrimination against disabled individuals, and to reconnect them with the socio-economic fabric of American life.[124] Characterizing the Act as a "milestone on a path to a more decent, tolerant, progressive society,"[125] Justice Stevens proceeded to answer the threshold coverage issue – whether Title III applies to petitioner's tour competitions and events.[126]

At the outset, Justice Stevens announced Title III's basic rule,[127] which gen-

---

[122] *Id.* at 1889-92. The Justice wrote, "[i]n studying the need for such legislation, Congress found that 'historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continues to be a serious and pervasive social problem.'"

Id. at 1889 (citing 42 U.S.C. § 12101(a)(2) (2001)).

[123] *Id.* at 1889-90 (citing 42 U.S.C. § 12101(a)(2) (2001)). The Court also directed the reader's attention to 42 U.S.C. § 12101(a)(3), which states: "[d]iscrimination 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." *Id.*

[124] *Martin*, 121 S. Ct. at 1889 (citing S. REP. NO. 101-116, at 20 (1989); H.R. REP. NO. 101-485, pt. 2, at 50 (1990)).

[125] *Id.* (citing Bd. of Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356, 357 (2001)). For more discussion regarding the application and coverage of the ADA, see generally *supra* notes 8-35 and accompanying text.

[126] *Martin*, 121 S. Ct. at 1889.

[127] 42 U.S.C. § 12182(a) (2001). The provision reads in full: "[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." *Id.*

erally prohibits discrimination against an individual on the basis of disability.[128] The Justice additionally noted that the legislative history intended the definition of the phrase, public accommodation,[129] to be "construed liberally" to enable individuals with disabilities "equal access" to the numerous establishments open to disabled persons.[130]

Justice Stevens, first, albeit superficially, entertained petitioner's arguments that the golf courses and tournaments at issue do not fall within the scope of Title III,[131] but quickly explained why the PGA's arguments were meritless.[132] In light of the absence of any such explicit "client or customer" limitation to Title III's expansive general rule,[133] the Court discarded petitioner's argument and asserted that petitioner's construction of the statute falters both on its own terms and by way of the text of the statute.[134] The Court emphasized that "[i]f Title III's protected class were limited to 'clients or customers,' it would be entirely appropriate to classify the golfers . . . as petitioner's clients or customers."[135] Realizing that both spectators and players may, in fact, be clients or customers, Justice Stevens pronounced that it would run contrary to the plain text, as well as

---

[128] *Martin*, 121 S.Ct. at 1890.

[129] 42 U.S.C. § 12181(7) (2001).

[130] *Martin*, 121 S. Ct. at 1890 (citing S. REP. NO. 101-116, at 59; H.REP. NO. 101-485, pt. 2, at 100 (1990)).

[131] *Id.* at 1890. Justice Stevens noted that the tours in question occur on "golf courses," a category expressly identified by the ADA as a public accommodation. *Id.* (citing 42 U.S.C. § 12181(7)(L) (2001)). In addition, the Justice highlighted the fact that PGA "leases" and "operates" golf courses. *Id.* (citing 42 U.S.C. § 12182(a) (2001)). In view of the foregoing, Justice Stevens concluded, at first glance, that the plain terms of Title III would forbid petitioner from denying respondent equal access to its competitions and events on the basis of his disability. *Id.* (referring to Pa .Dep't of Corr. v. Yeskey, 524 U.S. 206, 209 (1998)).

[132] *Martin*, 121 S. Ct. at 1890-91. Justice Stevens declared that petitioners did not raise defenses asserted at trial, rather, petitioner "reframe[d] the coverage issue by arguing that the competing golfers [we]re not members of the class protected by Title III." *Id.* Specifically, Justice Stevens repeated petitioner's argument that Martin cannot bring a claim under Title III, because Title III is concerned primarily with "clients and customers" and not with employees. *Id.* The Justice restated petitioners theory that Martin's claim of discrimination must be brought pursuant to Title I and not Title III, because Martin is not a "client or customer," rather, an independent contractor. *Id.*

[133] 42 U.S.C. § 12182(a) (2001).

[134] *Martin*, 121 S. Ct. at 1891-92.

[135] *Id.*

the broad, sweeping purpose of the Act to interpret Title III's scope any differently.[136]

Finding the conclusions consistent with analogous interpretations pursuant to Title II of the Civil Rights Act of 1964,[137] the Court supported it decision finding PGA's tour competitions, courses and events covered under Title III of the ADA.[138] Because case law buttressed the Court's findings, Justice Stevens concluded that PGA, as a public accommodation, could not discriminate against an individual with a disability, regardless of whether the individual is a spectator or competitor.[139] The Court then advanced to address the second prong of the analysis.[140]

2. WHETHER THE USE OF A GOLF CART BY RESPONDENT IS A MODIFICATION FUNDAMENTALLY ALTERING THE CHARACTER OF PETITIONER'S TOURS AND EVENTS

Identifying the statutory definition of "discrimination,"[141] Justice Stevens

---

[136] *Id.* at 1892. The Court also footnoted that, despite Justice Scalia's dissent, its decision did not overstep its bounds, for the golfers are not constrained by any obligation and play at their own leisure. *Id.* at 1892 n.33. The Court further noted that, unlike professional athletes in other sports, such as baseball, golfers participating in tour competitions and events are not employed by petitioner or any other related organization. *Id.*

[137] Daniel v. Paul, 395 U.S. 298 (1969) (privately owned amusement facility is a place of public accommodation under Title II of the Civil Rights Act); Wesley v. Savannah, 294 F. Supp. 698 (S.D. Ga. 1969) (golf tournament violated Title II when it limited competition solely to white contestants); Evans v. Laurel Links, Inc., 261 F. Supp. 474 (E.D. Va. 1966) (Title II of the Civil Rights Act applies to both spectators and players when a golf course opens itself to the public).

[138] *Martin*, 121 S. Ct. at 1892-93.

[139] *Id.* at 1893.

[140] *Id.*

[141] 42 U.S.C. § 12182(b)(2)(A)(ii) (2001). Discrimination is defined as the following:

> [A] failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

Id.

posited whether petitioner's denial of equal access violated the statutory proscription.[142] Narrowing the question at issue, the Court focused on whether Martin's use of a golf cart, in spite of the walking rule, was a "modification" that would "fundamentally alter the nature" of PGA tournaments and qualifying events.[143] Hypothesizing two modifications that could conceivably alter petitioner's golf tournaments,[144] the Court maintained that a waiver of the walking requirement, in Martin's case, would not fundamentally alter the character of petitioner's events.[145] The majority then weighed the essential aspects of the game of golf, and observed that the walking rule is not an essential element of the game itself.[146] Further deducing that "the walking rule is not an indispensable feature of tournament golf," Justice Stevens downplayed petitioner's contrary positions.[147]

Next, the Court proceeded to address petitioner's "outcome-affecting" argument.[148] Defining golf as a game of chance, Justice Stevens rejected petitioner's

---

[142] *Martin*, 121 S. Ct. at 1893.

[143] *Id.* The Court noted that petitioner did not challenge that the use of a golf cart by Martin was a reasonable accommodation. *Id.* Because of the absent challenge, Justice Stevens found it easy to distinguish Martin's claim from other claims where the party's afflictions might be less severe. *Id.*

[144] The Court displayed two examples of alterations fundamentally altering the character of petitioner's events: a changing of such an essential component of the game such that it would unacceptably affect all competitors equally, i.e. "changing the diameter of the hole from three to six inches;" and, a less important change that has only "a peripheral impact on the game itself," which provided a disabled competitor with an advantage over the other, nondisabled competitors. *Id.*

[145] *Id.*

[146] *Id.* at 1893. The Court rationalized its findings by pointing to the fact that many changes have already befallen upon the game. *Id.* at 1893-94. Whether it was the addition of new and improved clubs, caddies or handcarts or the improvements in course design, the Court elicited that the most essential aspect of the game was "playing a ball from the teeing ground into the hole by a stroke or successive strokes in accordance with the rules." *Id.* at 1894.

[147] *Id.* at 1895. In addition, PGA distinguished the game of golf as it is played professionally from the game played by individuals of ordinary skill. Petitioner's Brief at 13. PGA argued that waiving any "outcome-affecting" rule for an athlete would violate principles of competition and fairness. *Id.* at 37.

[148] *Martin*, 121 S. Ct. at 1895. Petitioner's argument asserted that the PGA Tour, Buy.com Tour and the third stage of the Q-School were all competitions at the "highest level" in golf, and, therefore, the waiving any such "outcome-affecting" rule would fundamentally alter the nature of the game at its most elite level of play. *Id.* Petitioners further contended that the purpose of the walking rule was "to inject the element of fatigue into the skill of shot-

contention by articulating that it is impossible to guarantee equal competition among all golfers.[149] Specifically, the Court accentuated that "pure chance" could have a larger impression on the result of these professional golf competitions than the fatigue produced as a result of the walking regulation.[150] The majority further bolstered the opinion by highlighting the district court's factual determination, "that the fatigue from walking during one of petitioner's 4-day tournaments cannot be deemed significant."[151]

Citing *Sutton v. United Air Lines, Inc.*,[152] the Court's opinion further targeted the purposes justifying the modification provisions in the ADA.[153] The Court reasoned that, according to the statute[154] and its legislative underpinnings,[155] independent analysis must be invoked to resolve whether an explicit modification for an individual's disability would be reasonable and compulsory, without fundamentally altering the character of the accommodation.[156] Moreover, Justice Stevens responded to Justice Scalia's attacks on this point, and directed all grievances one might have regarding the Court's ability to address the modification question as applied to professional sports to Congress.[157] Justice Stevens expressly stated that Congress, in enacting the ADA, did not carve out any specific exception for elite athletics.[158]

---

making." *Id.*

[149] *Id.*

[150] *Id.*

[151] *Martin*, 121 S. Ct. at 1896 (citing *Martin*, 994 F. Supp. at 1250). The Court also pointed to other factual determinations, some of which concluded that "fatigue from the game is primarily a psychological phenomenon in which stress and motivation are the key ingredients." *Id.* The Court also noted that, when provided with an option to use a cart, most professional golfers elected to walk. *Id.*

[152] 527 U.S. 471 (1999) (determining that whether an individual possesses a qualified disability is an individualized inquiry).

[153] *Martin*, 121 S. Ct. at 1896.

[154] 42 U.S.C. § 12182(b)(2)(A)(ii) (2001).

[155] S. REP. NO. 101-116, at 61; H.R. REP. NO. 101-485, pt. 2, at 102 (1990).

[156] *Martin*, 121 S. Ct. at 1896.

[157] *Id.* at 1897.

[158] *Id.* Addressing Justice Scalia's contentions, Justice Stevens thundered, "Congress

Affirming the findings and judgment by the district court,[159] the Court concluded by repeating that the use of a golf cart by Martin, despite the walking rule, would not "fundamentally alter" the character of petitioner's tours or events.[160] While the Act obliged some administrative responsibilities, the Court realized that Congress expected the PGA to provide individualized attention to disabled individuals, like Martin, so that they could compete just as any other golfer.[161]

B. JUSTICE SCALIA, WITH WHOM JUSTICE THOMAS JOINS, DISSENTING IN THE JUDGMENT

Arguing that the majority incorrectly applied "the text of Title III, the structure of the ADA, and common sense," Justice Scalia, with whom Justice Thomas joined, dissented from the Court's opinion.[162] In part I of the dissent, Justice Scalia condemned the Court's holding that a professional sport was a place of public accommodation and respondent was a "customer" of "competition" when he competed in that sport.[163] The Justice also stressed that Title III, by its terms, applied only to customers and not to independent contractors.[164] In part II of the dissent, Justice Scalia criticized the majority's analysis, and argued condescendingly that the Court erroneously responded to the second question presented.[165] The Justice articulated, with hubris, that the Court should never have responded to such a question, and in so doing, the Court overstepped its bounds.[166] Justice Scalia finalized his dissenting opinion sarcastically denouncing the "Court's

---

made no such exception for athletic competitions, much less did it give sports organizations carte-blanche authority to exempt themselves from the fundamental alteration inquiry by deeming any rule, no matter how peripheral to the competition, to be essential." *Id.*

[159] *Id.* (citing *Martin*, 994 F. Supp. at 1252).

[160] *Id.*

[161] *Id.* at 1897-98.

[162] *Martin*, 121 S. Ct. at 1898 (Scalia, J., dissenting).

[163] *Id.* (referring to *maj. op.* at 1891-92).

[164] *Id.* at 1899 (Scalia, J., dissenting).

[165] *Id.* at 1901-05 (Scalia, J., dissenting).

[166] *Id.* at 1902-03 (Scalia, J., dissenting).

Kafkaesque" or "Alice in Wonderland determination."[167]

In part I of the dissent, Justice Scalia posited that the correct interpretation of Title III would ensure the rights of all customers.[168] Looking to the plain terms of the statute,[169] judicial interpretation[170] and regulations promulgated by the Department of Justice,[171] Scalia attacked the majority's conclusions on the initial threshold issue of whether the PGA's tournaments and qualifying events were places of public accommodation.[172]

Continuing to defend his proposition, the dissent noted, "the words of Title II must be read 'in their context and with a view to their place in the overall statutory scheme.'"[173] Justice Scalia stated that Congress expressly excluded certain entities and types of employees from Title I, among such, independent contractors.[174] Because the district court concluded that Martin was an independent contractor and since Title I expressly did not apply to independent contractors, Justice Scalia resounded, "[i]t is an entirely unreasonable interpretation . . . to say that these exemptions so carefully crafted in Title I are entirely eliminated by Title III . . . ."[175] Maintaining that the Court misinterpreted case law and common sense, Justice Scalia chided the Court's opinion and stated, "no one in their right mind would think that [professional athletes] are customers . . . ."[176] As-

---

[167] *Id.* at 1905 (Scalia, J., dissenting).

[168] *Martin*, 121 S. Ct. at 1898 (Scalia, J., dissenting).

[169] 42 U.S.C. § 12181(7) (2001). Justice Scalia noted that the provision listed twelve specific types of places that qualify as public accommodations, and that the statute "plainly envisions that the person 'enjoying' the 'public accommodation' will be a *customer*." *Martin*, 121 S. Ct. at 1898-99 (Scalia, J., dissenting).

[170] Citing *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995), Justice Scalia argued that the majority's opinion ran contrary to previous Title III applications. *Martin*, 121 S. Ct. at 1898 (Scalia, J., dissenting).

[171] 28 C.F.R. § 36.307 (2000).

[172] *Martin*, 121 S. Ct. at 1899 (Scalia, J., dissenting).

[173] *Id.* (citing Davis v. Michigan Dep't of Treasury, 489 U.S. 803, 809 (1989)). Concerned with the possible effects the majority's opinion might have on future public accommodations law, Justice Scalia argued that the majority's opinion overextended the protection intended by Congress. *Id.*

[174] *Id.*

[175] *Id.*

serting that professional athletes sell entertainment and are not "customers buying or selling recreation or entertainment," the dissent emphasized that independent contractors, like Martin, are not customers, protected by Title III.[177]

Although concluding that the Court erred in its extension of protection to professional athletes, Justice Scalia, in part II of the dissent, further admonished the majority's findings.[178] The Justice argued that the majority incorrectly assessed the "fundamental alteration" issue.[179] Additionally, Justice Scalia rationalized that PGA's tours and qualifying events are, as all games are, entirely arbitrary in their administration of rules and procedures.[180] As such, the dissent underscored that there is no firm foundation for which even the Supreme Court could denounce these rules or make findings as to the essentiality of such rules and procedures.[181] Sharply criticizing the majority, Justice Scalia sardonically censured the Court's opinion and advised that the Court should never have answered "this incredibly difficult and incredibly silly question."[182]

---

[176] *Id.* at 1900 (Scalia, J., dissenting).

[177] *Id.* at 1901 (Scalia, J., dissenting). Justice Scalia noted that Martin did not intend to "exercise" or "recreate" at petitioner's tournaments or events. *Id.* Rather, his sole objective was to earn compensation. *Id.* The Justice suggested this fact alone excluded Martin as a qualified individual with whom Title III protects. *Id.* at 1901-02 (Scalia, J., dissenting).

[178] *Martin*, 121 S. Ct. at 1901 (Scalia, J., dissenting).

[179] *Id.* at 1902 (Scalia, J., dissenting). Justice Scalia claimed that the following two questions, as posed by the Court, did not fit under the rubric of Title III analysis: "whether the 'essence' or an 'essential aspect' of the sport of golf has been altered; and, second, whether the change, even if not essential to the game, would give the disabled player an advantage over others and thereby 'fundamentally alter the character of the competition.'" *Id.* (citing *maj. op.* at 1887-88).

[180] *Id.*

[181] *Id.*

[182] *Id.* at 1903 (Scalia, J., dissenting). Justice Scalia articulated the following:

> I am sure that the Framers of the Constitution, aware of the 1457 edict of King James II of Scotland prohibiting golf because it interfered with the practice of archery, fully expected that sooner or later the paths of golf and government, the law and the links, would once again cross, and that the judges of this august Court would some day have to wrestle with that age-old jurisprudential question, for which their years of study in the law have so well prepared them: Is someone riding around a golf course from shot to shot *really* a golfer?

Id. at 1902 (Scalia, J., dissenting). Justice Scalia insisted that the Court, in answering the

In blasting the Court for answering its second question regarding the "competitive effects of waiving this nonessential rule," Justice Scalia condemned the Court for not attributing enough credit to the athletes who participated in petitioner's events.[183] The Justice argued that the use of a golf cart substantially increased Martin's *chances* in competition, and the Court's imposition of additional variables will always favor one player over another.[184]

Further criticizing the Court's reasoning, Justice Scalia posited that the text of Title III "provides no basis for this individualized analysis that is the Court's last step on a long and misguided journey."[185] Justice Scalia noted that the Court failed to narrow its opinion, and as a result, paved the way for nonessential litigation, thus needlessly complicating a relatively simple issue.[186] Justice Scalia maintained the Court twisted the plain meaning of Title III,[187] and as such, impermissibly overstepped its bounds as defined by Congress.[188]

Concluding his dissent, Justice Scalia indicated that the question posed before the Court was one for the professional golf association to answer independently, for it is the role of the athletic sponsor to determine whether or not otherwise permissible alterations to a game should be tolerated.[189] Justice Scalia echoed

---

question whether something is "essential" to a given achievement, overstepped its bounds, for "it is quite impossible to say that any of a game's arbitrary rules is 'essential.'" *Id.* at 1903 (Scalia, J., dissenting).

[183] *Id.* at 1903 (Scalia, J., dissenting). Scalia remarked the following, "I guess that is why those who follow professional golfing consider Jack Nicklaus the *luckiest* golfer of all time, only to be challenged of late by the phenomenal *luck* of Tiger Woods." *Id.* (emphasis in original).

[184] *Martin*, 121 S. Ct. at 1903 (Scalia, J., dissenting).

[185] *Id.* at 1904 (Scalia, J., dissenting).

[186] *Id.* Justice Scalia illustrated that the effect of the Court's interpretation of Title III could possibly permit a child four strikes in a little league baseball game, so long as a court finds that the child has a disability that makes it 25% more difficult for said individual to hit the ball. *Id.*

[187] *Id.* at 1904 (Scalia, J., dissenting). Justice Scalia stated that the correct question the Court should entertain is not "that his disability will not deny him an *equal chance to win*," rather, whether a person's disability is the reason why he was denied equal access to athletic competitions. *Id.* (emphasis in original).

[188] *Id.* Justice Scalia stated in part, "[a]nd I have no doubt Congress did not authorize misty-eyed judicial supervision of such a revolution." *Id.*

[189] *Id.* at 1904 (Scalia, J., dissenting).

that conclusions, like the majority's, will *not* perpetuate a "decent, tolerant, [and] progressive" society, but will compel courts to analyze the rules of athletic competitions for fundamentalness and necessitate such organizations to defend proactively the necessity of every law.[190] The Justice closed his dissent sharply attacking the competence of the Court, because its "Kafkaesque,"[191] "Alice in Wonderland" and "Animal Farm"[192] determinations fantasized the Congressional intentions behind the ADA, incompetently defined "public accommodations," and impermissibly classified professional athletes as "customers."[193]

V. CONCLUSION

Certainly, one must appreciate Justice Scalia's colorful arguments and witty banter. Nevertheless, the majority correctly interpreted and applied Title III of the ADA in *PGA Tour, Inc. v. Martin*. The Court's decision reaffirmed Congressional aims and delivered a powerful message to public forums nationwide – if you cater to the public and you fall within the statutory coverage of Title III, you must reasonably accommodate disabled individuals, irrespective of who you think you are, *or else*.[194] Moreover, the Court's decision rejects any contentions professional athletic associations may argue, pleading for exemption.[195] Whether the Court granted certiorari because of the high profile nature of Martin's case,[196] or because the Court simply wanted to define the depths of Con-

---

[190] *Martin*, 121 S. Ct. at 1904-05 (Scalia, J., dissenting) (emphasis provided).

[191] *See* FRANZ KAFKA, THE METAMORPHOSIS AND OTHER STORIES 219 (Donna Freed trans., Barnes & Noble, Inc. 1996). Born in 1883, Franz Kafka was an Austrian Jewish philosopher, author and lawyer famous for such novellas as "In the Penal Colony" and "The Metamorphosis." *Id.*

[192] Written by George Orwell, ANIMAL FARM was a direct criticism of socialism, and more sharply, communism.

[193] *Martin*, 121 S. Ct. at 1905 (Scalia, J., dissenting).

[194] *See Martin*, 121 S. Ct. at 1884.

[195] *See id.*

[196] *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, 424-6 (2000). With regard to the Martin's case, Rothstein implied that, because of the press coverage and high profile nature of the case, the Court granted certiorari. *Id.* Some scholars suggest the courts were forced to misapply the ADA in Martin's case because of the political environs eclipsing the issue. Christopher M. Parent, *Martin v. PGA Tour: A Misapplication of the Americans with Disabilities Act*, 26 J. LEGIS. 123, 145 (2000) (asserting that courts misapplied the ADA to deliver the more politically correct opin-

gressional intentions to protect disabled Americans against discrimination, the Court rightly employed the Title III legal analytical framework and landmarked judicial repugnance for disability discrimination in the United States.

As the "great dissenter," Justice Oliver Wendell Homes, once opined: "[t]he object of our study, then, is *prediction*, the prediction of the incidence of the public force through the instrumentality of the courts."[197] Holmes further articulated that "[i]f you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict."[198] The Americans with Disabilities Act was promulgated to combat the evils inherent within disability discrimination.[199] The Act was created to insulate disabled Americans against the wrongful discrimination society had so often inflicted upon these individuals.[200] Regardless of whether one feels empathy for Casey Martin, Congress, the public force, clearly expressed its intentions and forbade discrimination against disabled individuals.[201] Martin clearly qualified for protection pursuant to the statute. Therefore, the only issues worth resolution were whether PGA was a place of public accommodation and, as such, whether its failure to reasonably accommodate Martin in lieu of his disability constituted discrimination, irrespective of the moral consequences involved.[202]

To survive summary judgment, Martin was required to establish a prima facie showing of disability discrimination. Neither side contested his status as a qualified individual with a disability, nor did either side contest that the use of a golf

---

ion).

[197] Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 458 (emphasis added) (philosophizing and tracing the underpinnings of the common law).

[198] *Id.* at 461. The author wishes to preface that the Holmes' passages are elicited simply to profess that, in understanding how the courts will resolve issues, attorneys must examine the law separate and apart from morality, because logic is the primary force at work in the development of the law. Legal minds must not be influenced by the nature of Martin's case. Law must not be persuaded by emotion or passion. Martin's case must be decided solely on the measure of the law, so as to impose strength and integrity upon the following disability discrimination claims.

[199] *See supra* note 8 and accompanying text.

[200] *See supra* note 15 and accompanying text.

[201] 42 U.S.C. §§ 12101 – 12213 (2001) (the Americans with Disabilities Act – proscribing discrimination against qualified individuals with disabilities).

[202] *Martin*, 121 S. Ct. at 1884.

cart was an unreasonable modification.[203] Martin was required only to establish that PGA and its tours and accompanying events were places of public accommodations, pursuant to Title III of the ADA. This begs the question – what is a place of public accommodation? Forget the fact Congress specifically defined a "golf course" as a place of public accommodation.[204] And forget the fact previous case law had identified amusement parks and golf courses as places of public accommodation. Logic and common sense dictate, despite what Justice Scalia contended, that golf courses indeed are places of public accommodation. For if one were to argue to the contrary and maintain that petitioner's tours and events were not places of public accommodation, then one must also contend that forums such as concert halls and football stadiums are not places of public accommodation.[205] To hold that a golf course is not a place of public accommodation would pave the way for theaters and arenas nationwide to argue exemption from Title III coverage – a notion that is not only perverse to legislative history, but also ludicrous in theory.[206]

While the majority did not entirely bolster its opinion regarding the "clients or customers" argument, the Court's references to previous case law solidified its position declaring PGA and its tours and events as places of public accommodation. Citing case law holding everything from physicians' offices to amusement parks and golf courses to be places of places of public accommodation, the Court unequivocally reinforced public accommodation law.[207] Close examination of

---

[203] *Martin*, 994 F. Supp. at 1244 (explaining that PGA Tour did not contest that Martin was a qualified individual with a disability).

[204] 42 U.S.C. § 12181(7)(L) (2001) (explicitly defining golf courses as places of public accommodation).

[205] At both forums, individuals pay to watch professionals or entertainers perform. At both places, people gather to observe skilled athletes or artists excel at what they do best. Courts have consistently held that theatres and stadiums are places of public accommodation. *See, e.g.*, Fiedler v. American Multi-Cinema, Inc., 871 F. Supp. 35 (D.D.C. 1994) (concluding that a theatre was a place of public accommodation within the meaning of the ADA). *See also* 42 U.S.C. § 12181(7)(c) (2001) (specifically defining theaters, halls, and stadiums as places of public accommodation within the meaning of the ADA).

[206] *But see* Stephen J. Lautz, *A Good Walk Spoiled: The ADA's Intrusion Into Professional Athletics*, 10 KAN. J.L. & PUB. POL'Y 238 (2000) (explaining that Title III should not be interpreted to bestow an unfair advantage upon disabled athletes, thus, altering the rules of golf).

[207] *See* Jairath v. Dyer, 972 F. Supp. 1461, 1468 (N.D. Ga. 1997) (holding that a physician's office is a place of public accommodation); Wesley v. City of Savannah, Georgia, 294 F. Supp. 698, 703 (S.D. Ga. 1969) (finding that a golf course is a place of public accommodation); Miller v. Amusement Enters., Inc., 394 F.2d 342, 353 (5th Cir. 1968) (concluding that an amusement park is a place of public accommodation).

Title III case law supports affirmation of the Ninth Circuit's opinion regarding the applicability of the ADA to Martin's case.

Therefore, the case hinged on resolution to the question, whether or not granting Martin the use of a golf cart would fundamentally alter the nature of petitioner's tournaments and qualifying events.[208] Some scholars assert that such a question demands an objective, factual inquiry which the courts are unable to fully appreciate.[209] Other legal minds in accord with Justice Scalia argue that determining what rules of professional sports may be modified is a task unsuitable for judicial resolution.[210] Moreover, to say that the Court lacks jurisdiction to hear matters pertaining to the PGA and its rules and guidelines is an argument which flys in the face of the historical underpinnings justifying the foundation of the Supreme Court.[211] Irrespective of the criticism, the Court researched into the rules of the game and evaluated the most fundamental, essential and critical rules of golf. Only after careful deliberation did the Court recognize that the use of a golf cart would not fundamentally alter the character of golf.[212] After all, at most levels of play, golf carts are permitted. In light of Martin's severe physical disadvantage and the fact that most professionals would refuse to use a cart even if allowed, the Court concluded, the use of a golf cart by Martin would not fundamentally alter the nature of the game.[213]

So, did the Court drive a hole in one, or did the Court spoil a good day's

---

[208] *Martin*, 121 S. Ct. at 1893.

[209] Michael Waterstone, *Let's Be Reasonable Here: Why the ADA Will Not Ruin Professional Sports*, 2000 B.Y.U. L. REV. 1489, 1525-26 (2000) (arguing that factual, independent analysis in a Title III case may pose a significant difficulty for judicial resolution).

[210] Alex B. Long, *A Good Walk Spoiled: Casey Martin and the ADA's Reasonable Accommodation Requirement in Competitive Settings*, 77 OR. L. REV. 1337, 1381 (2000) (explaining that courts focusing on a specific rule of athletic competition and interpreting what shall be a reasonable accommodation may create an unfair advantage).

[211] *See* THE FEDERALIST NO. 78 (Alexander Hamilton) (arguing "the courts were designed to be an intermediate body between the people. . .in order, among other things, to keep the latter within the limits assigned to their authority," and "the courts of justice are to be considered as the bulwarks of a limited Constitution"); THE FEDERALIST NO. 80 (Alexander Hamilton) (proposing the depths of judicial authority); THE FEDERALIST NO. 81 (Alexander Hamilton) (stating, "the Supreme Court will possess an appellate jurisdiction both as to law *and* fact") (emphasis added).

[212] *Martin*, 121 S. Ct. at 1897-98.

[213] *But see* Adam Jay Golden, *A Good Walk Spoiled: The Americans With Disabilities Act and the Casey Martin Case*, 7 SPORTS LAW J. 161, 182 (2000) (finding that the Court's ruling needlessly bestowed an unfair advantage upon individuals protected under the ADA).

walk?[214] Scoring for disabled individuals, more specifically disabled athletes, the Court drove a long shot and landed a hole in one. Disabled athletes will no longer fear trying out for sports. Disabled individuals will step one foot closer to equality on the socio-economic carpet of American life. Society is now forced to recognize these individuals in all aspects and arenas. The nation must realize the awesome potential of these "disabled" individuals. This case represents an achievement for the disabled American.

Yet, will associations, as Scalia argued, be ever so diligent in not making exceptions for disabled athletes? Will the courts face a flood of litigation with respect to Title III disability discrimination claims? It is important to realize that, although this case represents a win for disabled Americans nationwide, the holding of this case is narrowed by the facts and circumstances of Casey Martin. *PGA Tour, Inc. v. Martin* stands for the proposition that, in most disability discrimination cases, an individualized inquiry must be effectuated to promote justice and enforce Congressional declarations.[215] Finally, while the vast majority of ADA cases brought each year gravitate around the issue whether said individual is a qualified individual with a disability, it is difficult to imagine a shift in jurisprudence so great so as to revolve around the question whether said facilities is a place of public accommodation.[216] Accordingly, the figurative tides of litigation will not burst any reinforced, judicial flood-gates and the fears of Justice Scalia will not ultimately be realized.

---

[214] *See* KarmaKazi Inc, Famous Mark Twain Quotes, (1999), *at* http://www.easylit.com/marktwain/twainquotes.htm (Oct. 15, 2001). Samuel Langhorne Clemens (a.k.a. Mark Twain) was noted for stating, "[g]olf is a good walk spoiled." *Id.*

[215] *See* David Bennet Ross and Tracy C. Missett, *Reviewing Casey Martin's Supreme Court Win*, NEW YORK LAW JOURNAL, August 3, 2001, Friday (summarizing the Court's decision as a correct interpretation of Title III of the ADA).

[216] Tanya R. Sharpe, *Casey's Case: Taking a Slice Out of the PGA Tour's No-Cart Policy*, 26 FLA. ST. U. L. REV. 783, 807 (1999) (citing Michael Grunwald, *Casey Martin Ruling Should Be a Milestone for All Disabled*, FT. WORTH STAR-TELEGRAM, Feb. 15, 1998, at 3) (noting that an overwhelming majority of ADA cases will concern the question of whether claimant is a qualified individual pursuant to the Act).