Golden Gate University Law Review

Volume 29
Issue 3 *Notes and Comments*

Article 9

January 1999

Riding a Cart on Golf's "Unfairways": Martin v. PGA Tour

Patty Maitland

NOTE

RIDING A CART ON GOLF'S "UNFAIRWAYS": *MARTIN v. PGA TOUR*

I. INTRODUCTION

Professional tennis player Jimmy Connors once asked "how golf could be a sport when nobody runs?"[1] Following the ruling in *Martin v. PGA Tour, Inc.*[2] which required the Professional Golf Association (PGA) to make an exception to its ban on players' use of motorized golf carts during tournament play, one sportswriter rephrased Connors' question as "how can golf be a sport when nobody even walks?"[3]

Twenty-five year old Casey Martin, a professional golfer with an ambulatory disability, requested the use of a cart during PGA tournament play.[4] The PGA denied Martin's request

1. Jim Murray, *Golf's Athletic Challenges Must be Met to Compete*, L.A. TIMES, Feb. 5, 1998, at C8.

2. Martin v. PGA Tour, Inc., 994 F. Supp. 1242 (D. Or. 1998).

3. Jim Murray, *Golf's Athletic Challenges Must be Met to Compete*, L.A. TIMES, Feb. 5, 1998, at C8.

4. *See* Martin v. PGA Tour, Inc., 984 F. Supp. 1320, 1322 (D. Or. 1998). Martin requested the use of a cart during the third and final round of the PGA's Qualifying School Tournament that would determine whether Martin would receive playing privileges on the following year's regular PGA Tour. *See id.* *See also* Thomas Bonk, *Much is Riding on Wheels of Justice*, L.A. TIMES, Jan. 25, 1998, at C1.

stating that, with the exception of its senior tour events, carts were banned from use in its tournaments.[5]

After the PGA denied his request, Martin petitioned the United States District Court for the District of Oregon under the Americans with Disabilities Act (ADA) for an order allowing him to use a cart.[6] Casey Martin's lawsuit against the PGA was the first suit brought by a physically disabled professional athlete alleging violations of the ADA.[7] Other courts had previously addressed only the rights of learning disabled, amateur athletes under the ADA.[8] Consequently, no precedent existed that applied to the facts of Martin's case.[9] The court applied the ADA to professional sports in this case of first impression, and ordered the PGA to allow Martin to use a cart during PGA tournament play.[10]

This Note begins with the background of the ADA and the PGA. Next, this Note provides the factual and procedural background of *Martin v. Professional Golf Association Tour, Inc.*,[11] and then examines the court's analysis of the case. This Note includes a critique of the court's conclusion that the PGA operates its tournaments as a public accommodation and, as such, is not a private club exempt from ADA compliance. Finally, this Note concludes that the *Martin* court's ruling raises practical concerns for professional sports organizations. These concerns arise because such organizations are now subject to challenges from athletes with debilitating conditions to the ex-

---

5. *See* Thomas Bonk, *Much is Riding on Wheels of Justice*, L.A. TIMES, Jan. 25, 1998, at C1.

6. *See Martin*, 984 F. Supp. 1320.

7. *See* Mark Conrad, *After Martin Decision, The Debate Rages On*, 219 N.Y..L.J. 5 (1998). *See also* Dale Gardner, *Martin vs. Tour Trial Being 'Discussed'*, GOLFWEEK, Dec. 13, 1997, at 6.

8. *See* Dale Gardner, *Martin vs. Tour Trial Being 'Discussed'*, GOLFWEEK, Dec. 13, 1997, at 6.

9. *See* Mark Conrad, *After Martin Decision, The Debate Rages On*, 219 N.Y..L.J. 5 (1998). *See also* Dale Gardner, *Martin vs. Tour Trial Being 'Discussed'*, GOLFWEEK, Dec. 13, 1997, at 6.

10. *See* Thomas Bonk, *Much is Riding on Wheels of Justice Jurisprudence*, L.A. TIMES, Jan. 25, 1998, at C1.

11. 984 F. Supp. 1320 (D. Or. 1998); 994 F. Supp. 1242 (D. Or. 1998).

tent such challenges require reasonable accommodation under the ADA.

II. BACKGROUND

This section provides the background to Martin's suit, beginning with a general discussion of the ADA and the scope of the ADA. Next, this section provides an overview of the application of the ADA to athletic programs in recent lawsuits. Finally, this background section concludes with an overview of the PGA organization.

A. THE AMERICANS WITH DISABILITIES ACT

Congress introduced the Americans with Disabilities Act (ADA) in 1988.[12] Prior to passing the ADA, Congress held hearings to make factual findings concerning the disabled population in the United States and to determine the extent to which the disabled are discriminated against as a class, by virtue of a physical and/or mental disability.[13] Congress found

---

12. *See* A&P LH Contents P.L. 101-336. Co-authored by Senator Bob Dole and Senator Tom Harkin, the ADA contains requirements for new construction, alterations or renovations to older buildings and facilities, and for improved access to existing facilities of private companies providing goods or services to the public. *See id. See also The Cart Case Goes to Washington, Senators Support Martin in His Battle with Golf's Rules,* STAR-TRIB. (MINNEAPPOLIS-ST. PAUL), Jan. 29, 1998, at 2C. Martin traveled to Washington four days prior to his trial where both Bob Dole and Senator Harkin publicly endorsed his cause at a press conference called specifically for that purpose. Dole, a non-golfer, stated that allowing Martin the use of a cart would neither fundamentally alter the nature of the PGA's tournaments nor give Martin an unfair advantage. *See id.*

13. *See* 42 U.S.C. § 12101 (1990). Section 12101 states: The Congress finds that--
(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older; (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services; (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination; (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make

that approximately 43,000,000 Americans had disabilities, either physical, mental or both.[14] Congress further discovered that many of these individuals were discriminated against in the areas of employment, housing, public accommodations, education, recreation, transportation, communications, health services, and access to public services.[15] Congress found that discrimination against disabled persons was pervasive and concluded that no adequate state or federal law existed to remedy such discrimination.[16]

Congress drafted the ADA to prohibit discrimination based on physical or mental disability in employment, and in programs and services provided by state and local governments.[17] The ADA also prohibited discrimination in the supply of goods and

---

modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities; (6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally; (7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society; (8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and (9) the continuing existence of unfair and 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. *See id.*

15. *See id.*

16. *See id.*

17. *See* 42 U.S.C. § 12101(b) (1990). Section 12101(b) states:

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

Id.

services by private entities within commercial facilities.[18] Congress voted to enact the ADA and on July 26, 1990, President George Bush signed the bill into law, effective July 26, 1992.[19]

1. *The Scope of the ADA*

The ADA is divided into four major Titles.[20] Title I of the ADA provides that no employer may discriminate against a qualified individual with a disability.[21] Acts of employer discrimination include failing to hire qualified job applicants who are disabled and assigning otherwise qualified disabled persons to low income positions without opportunity for advancement.[22] Title II prohibits all entities providing public transportation from excluding or discriminating against people with disabilities.[23] Title III prohibits discrimination against disabled people

---

18. *See* 42 U.S.C. § 12181(6) (1990). "The term 'private entity' means any entity other than a public entity as defined in § 12131(1)." *Id. See also* 42 U.S.C. § 12131(1) (1990) defines a public entity as any State or local government; any department, agency, special purpose district, or other instrumentality of a State or States or local government; and the National Railroad Passenger Corporation, and any commuter authority as defined in section 502(8) of Title 45. *See id. See also* 42 U.S.C. § 12181 (2) (1990). The term "commercial facilities" means facilities that are intended for nonresidential use and whose operations will affect commerce. *See id.*

19. *See* A&P 136 Cong. Record S9684. The bill was originally introduced to Congress in 1988, however, a new Congress took over in 1989 and the bill was passed by the House of Representatives by a 403 to 20 vote. The Senate voted 91 to 6 in favor of the bill. *See id.*

20. *See supra* notes 20-31 and accompanying text for the scope of the ADA.

21. *See* 42 U.S.C. § 12112(a) (1990). Section 12112 states: "No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." *Id. See also* 42 U.S.C. § 12111(8) (1990). Section 12111(8) defines a qualified individual with a disability:

> The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

Id.

22. *See* 42 U.S.C. § 12112 (1990). Section 12112 defines the term "discriminate" as applied to employment practices. *See id.*

23. 42 U.S.C. § 12184 (1990). Section 12184 states: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of

in public and private facilities that service the public.[24] Finally, Title IV provides telecommunications accessibility requirements applicable to disabled persons.[25]

The ADA defines a disabled person as someone who has a physical or mental impairment limiting one or more major life activities.[26] Under the ADA, a qualified individual is a person with a disability who can perform the essential functions of the job with or without reasonable accommodation.[27] A reasonable accommodation for a qualified individual may include altering existing facilities and equipment or modifying work schedules and duties to accommodate that person's particular disability.[28]

---

specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce." *Id.*

24. *See* 42 U.S.C. § 12182 (1990). Section 12182 states: "No 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.*

25. *See* 42 U.S.C. § 12102 (1990). Section 12102 defines the types of auxiliary aids and services that can be utilized to accommodate individuals with hearing impairments as: interpreters or other methods of delivering aural materials, and acquisition or modification of equipment or devices. *See id.*

26. *See* 42 U.S.C. § 12102(2) (1990). Section 12102(2) states: "the term 'disability' means, with respect to an individual--(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." *Id. See also* Martin v. PGA Tour, Inc., 994 F. Supp. at 1248 (D. Or. 1998) (citing 28 C.F.R. § 36.104(2)). According to Section 36.104(2), the phrase "major life activity" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The *Martin* court also cited 29 C.F.R. § 1630.2(j)(2) which lists the factors to be considered in determining whether an individual's major life activity is substantially limited, including the nature and severity of the impairment, the duration of the impairment, and the permanence of the impairment. *See id.* at 1248.

27. *See* 42 U.S.C. § 12111(8) (1990). Section 12111(8) states:

> The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

Id.

28. *See* 42 U.S.C. § 12111(9) (1990). Section 12111(9) provides:

Entities and employers may claim that making an accommodation creates an undue hardship because such an accommodation is either too difficult to achieve or requires a significant financial investment.[29] Entities and employers may also claim that such accommodations would alter the essential functions of the job.[30] Additionally, entities and employers may be exempt from ADA compliance on the basis of their private entity status.[31]

2. *Application of the ADA to Athletic Programs in Recent Lawsuits*

Several courts have applied the ADA to high school and college athletic programs.[32] Generally, these courts held that

---

> The term "reasonable accommodation" may include--(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Id.

29. *See* 42 U.S.C. § 12111(10) (A), (B) (1990). Section 12111(10) (A), (B) 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.

30. *See id.*

31. *See* 42 U.S.C. § 12187 (1990). According to Section 12187, private clubs and religious organizations are exempt from ADA requirements governing public accommodations and services. *See id.*

32. *See generally* Sandison v. Michigan High School Athletic Ass'n, 64 F.3d 1026 (6th Cir. 1995); McPherson v. Michigan High School Athletic Ass'n, 119 F.3d 453, 456 (6th Cir. 1997); Pottgen v. Missouri State High School Activities Ass'n, 40 F.3d 926 (8th

making the requested accommodations would fundamentally alter the nature of the athletic program.[33] The most commonly challenged rules of scholastic sports programs under the ADA are those designating age requirements or limiting student athletes to a maximum of eight semesters of participation.[34] The learning disabled students that filed these complaints claimed the limitations violated the ADA because they were prevented from participating to the same extent as those students without learning disabilities.[35]

In the 1995 case *Sandison v. Michigan High School Athletic Association*,[36] a nineteen-year-old learning disabled high school senior sued the Michigan High School Athletic Association (MHSAA) under the ADA for refusing to allow him to participate in high school track and cross-country athletic competitions on the basis of his age.[37] The district court granted preliminary injunctive relief and ordered the MHSAA to permit Sandison to run on the cross-country and track teams.[38] The United States Court of Appeals for the Sixth Circuit, however,

---

Cir. 1994); Bowers v. National Collegiate Athletic Ass'n, 974 F. Supp. 459, 461 (D.N.J. 1997). *Id.*

33. *See generally Sandison*, 64 F.3d 1026; *McPherson*, 119 F.3d 453, 456; *Pottgen*, 40 F.3d 926; *Bowers*, 974 F. Supp. 459, 461.

34. *See Martin*, 994 F. Supp. at 1245. *See generally Sandison*, 64 F.3d 1026; *McPherson*, 119 F.3d 453, 456; *Pottgen*, 40 F.3d 926; *Bowers*, 974 F. Supp. 459, 461. *Id.*

35. *See Martin*, 994 F. Supp. at 1245. *See also Sandison*, 64 F.3d at 1028; *McPherson* 119 F.3d at 456; *Pottgen*, 40 F.3d at 928; *Bowers*, 974 F. Supp. at 462. The learning disabled students in all of these cases failed to meet age or semester requirements, repeated grades, and were either older than their contemporaries or attended high school longer than eight semesters.

36.64 F.3d 1026 (6th Cir. 1995).

37. *See id.* MHSAA rules prohibited students who turned nineteen years old on or before September 1 of the current school year from participating in interscholastic high school sports. Ronald Sandison was placed in a special preschool program when he was four years old because he had difficulty processing speech and language. Sandison started kindergarten at age six, rather than age five, and was not considered a student in kindergarten until he was seven years old. This two-year delay placed Sandison two school grades behind his age group. At age eleven, Sandison was diagnosed with auditory input disability, which hampered his ability to distinguish between similar sounds. With the help of special education support, Sandison attended Rochester Adams High School in regular classrooms and graduated in June 1995. Sandison ran on Adams's cross-country and track teams during his first three years of high school. MHSAA refused to allow Sandison to compete in his senior year of high school because he had turned nineteen years old in May 1994 just prior to commencing his senior year. *See id.* at 1028.

38. *See id.* at 1028.

reversed the district court and held that waiver of the age limitation rule would fundamentally alter the sports program because age was an essential eligibility requirement for participating in MHSAA's athletic programs.[39] Additionally, the court of appeals found that an individual evaluation of each older student's abilities to determine whether they possessed an unfair competitive advantage was not a reasonable accommodation under the ADA.[40]

Likewise, in the 1997 case *McPherson v. Michigan High School Athletic Association,*[41] the Court of Appeals for the Sixth Circuit considered whether a MSHAA rule violated the ADA by limiting student participation in interscholastic sports competitions to athletes who had completed less than eight semesters of high school.[42] In *McPherson,* a high school student suffering from an undiagnosed attention deficit and seizure disorder attended high school for more than eight semesters.[43] The school prohibited the student from further participation in competitive interscholastic sports.[44] The appellate court upheld the age restriction limiting participation in the athletic program on the

---

39. *See id.* at 1037.

40. *See id. See also Pottgen,* 40 F.3d 926. Edward Pottgen had repeated two grades in elementary school due to a learning disability. By his senior year of high school, Pottgen had already turned nineteen years of age which made him ineligible to play interscholastic baseball under MSHSAA eligibility requirements. Pottgen's petition to the MSHSAA for a hardship exception due to his learning disabilities was rejected by the MSHSAA and he filed suit claiming a violation of the ADA. The Eighth Circuit Court of Appeal ruled that an individual evaluation of each athlete was inappropriate and that the age requirement was an essential element of the sports program. *See id.* at 927-30.

41. 119 F.3d 453 (6th Cir. 1997).

42. *See id.* at 455. Representatives of the MHSAA testified regarding the organization's reasons for its "eight-semester rule." The Association stated the rule created fair competition by limiting the level of athletic experience and skill of the players in order to create a more level playing field for the competitors. MHSAA also stated the absence of such a rule would lead to players being held back academically in order for the student to gain greater physical and athletic maturity and ability. Additionally, the MHSAA maintained that the rule was essential to preserving the philosophy that students attend school for an education and athletics are secondary to that goal. *See id.* at 456.

43. *See id.*

44. *See id.*

basis that waiving the rule would fundamentally alter the sports program.[45]

In the 1997 case *Bowers v. National Collegiate Athletic Association* (NCAA),[46] the United States District Court for the District of New Jersey decided that waiving the NCAA's core course requirements would fundamentally alter the nature of its collegiate athletic programs.[47] Bowers, a college freshman diagnosed with a learning disability, did not meet the academic eligibility standard and filed suit against the NCAA seeking to be declared as a "qualifier" for participation in freshman intercollegiate athletics and athletic scholarships.[48] The academic standard established by the NCAA required a student to pass at least thirteen high school core courses and graduate from high school.[49] Additionally, the NCAA bylaws excluded core courses taught below a high school's regular academic instructional level, including remedial and special education courses.[50] However, a learning disabled student, like Bower, who graduated from high school and pursued college athletics, could obtain a waiver of the NCAA core course requirements.[51] An applicant obtained a waiver by submitting a written statement from the high school principal to the NCAA indicating that the learning disabled student attended remedial classes but was expected to obtain the same knowledge as students taught at

---

45. *See id.* MHSAA acknowledged that waivers of the "eight semester rule" had been granted in the past, but the attendant circumstances were narrow. Waivers were limited to situations in which the athlete applied for the waiver prior to the expiration of the eight semesters, and to cases in which students were physically unable to attend school for a medical reason. *See id.* at 456.

46. 974 F. Supp. 459 (D.N.J. 1997).

47. *See id.* at 467.

48. *See id.* at 461. In order to be certified as a "qualifier," NCAA bylaws provided that a student must graduate from high school, pass at least thirteen classes in what the NCAA defines as a "core course" with a minimum grade-point average that varies based on the strength of the student's standardized test score. *Id.* From the time Michael Bowers was in second grade, until his graduation from high school, he received special education and related services to accommodate a learning disability. *See id.* at 462.

49. *See id.* at 461. The NCAA defined a core course as a "recognized academic course that offers fundamental instructional components in a specified area of study." *Id.*

50. *See id.*

51. *See Bowers,* 974 F. Supp. at 461-2.

the school's regular academic level.[52] The court reasoned that the NCAA bylaws provided a reasonable accommodation for students with learning disabilities because of the written verification waiver.[53] Additionally, the court held that waiving the NCAA's core course requirements for ADA purposes would fundamentally alter the nature of the athletic program.[54]

Casey Martin's case, however, was different from those of student athletes claiming ADA violations by amateur athletic associations on the basis of their learning disabilities.[55] Martin's claim alleged ADA violations by the PGA because he was *physically* disabled.[56] As a result, the PGA was the first professional sports organization to defend itself against a physically disabled, professional athlete's claims of ADA violations.[57]

B. THE PROFESSIONAL GOLF ASSOCIATION OF AMERICA

The PGA, a non-profit association, is the largest sports organization in the world with over 23,000 professional golf playing members.[58] It sponsors three professional golf tours: the regular PGA Tour, the Senior PGA Tour, and the Nike Tour.[59] The annual prize fund for all PGA sponsored tournaments is presently over $40,000,000.00.[60] Professional golfers participating in PGA tournaments often compete for single tournament prize money in excess of $1,000,000.[61] The PGA Tour is consid-

---

52. *See id.*

53. *See id.* at 467.

54. *See id.*

55. *See* Dale Gardner, *Martin vs. Tour Trial Being 'Discussed'*, GOLFWEEK, Dec. 13, 1997, at 6.

56. *See Martin*, 984 F. Supp. at 1322 (D. Or. 1998); Martin v. PGA Tour, Inc., 994 F. Supp. at 1248 (D. Or. 1998).

57. *See Martin*, 984 F. Supp. 1320; *Martin*, 994 F. Supp. 1242.

58. *See* Mick Elliott, *Golf Extra: Struggling to Bridge Gender Gap*, TAMPA TRIB., Sept. 3, 1998, at 6. *See also* Leonard Shapiro, *The "Other" PGA*, GOLF MAGAZINE, Aug. 1, 1998, at 52. In 1916, the department store magnate, Rodman Wanamaker, hosted a luncheon for a group of golf professionals in the New York area. The purpose of the meeting was to discuss forming a national golf organization that would promote interest in the sport and elevate the game to a professional level. The PGA championship trophy still bears Wanamaker's name. *See id.*

59. *See Martin*, 984 F. Supp. at 1321.

60. *See* Thomas Bonk, *Old Money*, GOLF MAGAZINE, June 1, 1997, at 92. In 1997, the PGA's total prize money exceeded $41,400,000.00. *See id.*

61. *See id.*

ered the ultimate venue for professional golfers in terms of potential earnings.[62]

To qualify to play on the PGA Tour, players pay a $3,000 fee and submit two letters of reference to enter a qualifying school tournament.[63] At the qualifying school tournament, successful players advance through three stages of elimination.[64] In the first stage, the participants play 72 holes of golf and the lowest scoring players advance to the next level.[65] Participants play another 72 holes in the second stage with the top qualifiers advancing to the third and final stage.[66] In the final qualifying stage, the remaining golfers play 108 holes.[67] At the conclusion of the third stage of play, the lowest thirty-five scorers are awarded PGA Tour playing privileges and the next lowest scoring players obtain Nike Tour playing privileges.[68] If a Nike Tour player wins three Nike Tour events in a single season or ranks among the top fifteen finishers on the Nike Tour money list, the player may participate in the next season's PGA Tour events.[69] Players may use motorized golf carts in the first and second

---

62. *See* Derek Lawrenson, *Headed for a Fall? European Tour Golf,* GOLF MAGAZINE, Sept. 1, 1997, at 36. In addition to the American PGA Tour, the golf association also sponsors the European PGA Tour which ranks second in potential earnings for professional golfers. *See id. See also* Vartan Kupelian, *Watts Faces Crossroad,* GANNETT NEWS SERVICE, Aug. 4, 1998. Another PGA sponsored tour, the Japanese PGA Tour, is extremely lucrative but access by foreign players is limited to those golfers who obtain the Asian Order of Merit which provides players with an exemption to play on the Japanese PGA Tour. *See id.*

63. *See Martin,* 984 F. Supp. at 1322. *See also Martin,* 994 F. Supp. at 1248 . Qualifying school is the name given to the tournaments where would-be professionals compete for membership in the PGA Tour and Nike Tour. The PGA Tour admits the most skilled golfers and the Nike Tour admits the next highest level of skilled golfers. *See id* at 1248 n.9.

64. *See Martin,* 984 F. Supp. at 1321.

65. *See id.*at 1321-2. Golf is scored by the minimum number of strokes taken to put the golf ball into the cup. The lowest scoring players advance to the next round. *See id.*

66. *See id* at 1322.

67. *See id.*

68. *See Martin,* 984 F. Supp. at 1322.

69. *See id.* The PGA's qualifying school tournament is held at the end of each year. Successful competitors gain the privilege of playing on the next consecutive PGA Tour. *See id. See also,* Martin Beck, Steve Kresal, *Another Trip on the PGA Tour,* L.A. TIMES, Nov. 2, 1998, at D14. A money list is the PGA and Nike Tour ranking of players based on money earned in tournament play. *See id.*

stages of qualifying play, but are prohibited from using carts in the third and final qualifying stage.[70]

Prior to Martin's case against the PGA, claims of ADA violations had been brought only against amateur athletic associations on the basis of learning, or mental disabilities.[71] *Martin* was the first case to determine the applicability of the ADA to professional sport's organizations on the basis of an athlete's physical disability.[72]

III. FACTS OF *MARTIN v. PGA TOUR, INC*[73]

Professional golfer Casey Martin was born with a disease known as Klippel-Trenaunay-Weber Syndrome.[74] Klippel-Trenaunay-Weber Syndrome is a congenital condition which curtails blood circulation.[75] This condition causes blood to pool in Martin's right leg, resulting in swelling, significant atrophy in the lower leg and bone deterioration of the tibia.[76] As Martin has aged, his disability has worsened.[77] The simple act of walking while playing golf and during normal daily activities causes Martin severe pain.[78] Despite his pain, Martin can perform all the functions required during a round of golf except walking to and from the golf ball while it is in play.[79]

---

70. *See id.*

71. *See Martin*, 994 F. Supp. at 1245-6. *See generally Sandison*, 64 F.3d 1026; *McPherson*, 119 F.3d 453, 456; *Pottgen*, 40 F.3d 926; *Bowers*, 974 F. Supp. 459, 461. *Id. See also* Dale Gardner, *Martin vs. Tour Trial Being 'Discussed'*, GOLFWEEK, Dec. 13, 1997, at 6.

72. *See* Mark Conrad, *After Martin Decision, The Debate Rages On*, 219 N.Y. L.J. 5 (1998).

73. 984 F. Supp. 1320 (D. Or. 1998); Martin v. PGA Tour, Inc., 994 F. Supp. 1242 (D. Or. 1998).

74. *See Martin*, 984 F. Supp. at 1320.

75. *See id.* at 1321.

76. *See id.* at 1322. *See also*, Thomas Bonk, *Much is Riding on Wheels of Justice*, L.A. TIMES, Jan. 26, 1998, at C8.

77. *See Martin*, 994 F. Supp. at 1244.

78. *See id.* at 1243.

79. *See id.*

When Martin was six years old, his father cut down a set of clubs for him and taught him how to play golf.[80] By the age of fourteen Martin had won seventeen Oregon Golf Association junior events including the Oregon State Golf Association junior title.[81] Despite his medical condition, Martin continued playing amateur competitive golf throughout high school, winning the Oregon state championship and making the first-team all-state for three consecutive years.[82]

Martin quickly rose to the top of national amateur golf rankings, first earning national attention in 1991 at the United States Amateur Honors Course during a tie-breaking, nineteenth hole playoff against then number one ranked amateur Phil Mickelson.[83] In 1994, while earning a degree in economics, Martin led the Stanford University golf team to its first Pac-10 title in seventeen years.[84] At that time, the Pac-10 coaches unanimously voted to suspend the NCAA's "no cart rule" for Martin and allowed him to use a golf cart during tournament play.[85]

In 1997, after two years of playing professional golf, Martin entered the PGA's qualifying school tournament in an attempt to win playing privileges on the PGA Tour.[86] Martin advanced through the first and second stages of qualifying school tournament play using a cart.[87] After the PGA denied his request to use a cart for the third stage of the tournament, Martin

---

80. *See* Mike Cullity, et al., *Special Report: Casey Martin vs. PGA Tour Inc.*, GOLFWEEK, Jan. 24, 1998, at 6.

81. *See id.*

82. *See id. See also Martin*, 994 F. Supp. at 1244.

83. *See* Mike Cullity, et al., *Special Report: Casey Martin vs. PGA Tour Inc.*, GOLFWEEK, Jan. 24, 1998, at 6.

84. *See id.*

85. *See Martin*, 994 F. Supp. at 1248. *See also* William Wiswall, *Fairway, or Out of Bounds?*, SUN-SENTINEL (Ft. Lauderdale Fla.), Feb. 2, 1998, at 10C. Prior to Martin's participation in NCAA golf, the "no-cart rule" for the PGA, NCAA and Pac-10 organizations and tournaments had been the same. *See id.*

86. *See Martin*, 984 F. Supp. at 1322. *See also* Mike Cullity, et al., *Special Report: Casey Martin vs. PGA Tour Inc.*, GOLFWEEK, Jan. 24, 1998, at 6.

87. *See Martin*, 984 F. Supp. at 1322.

sought a permanent injunction to enjoin the PGA's enforcement of the "no-cart rule."[88]

IV. PROCEDURAL HISTORY

Martin filed suit in the United States District Court for the District of Oregon seeking an injunction compelling the PGA to make its tournaments accessible to individuals with disabilities, in compliance with the ADA.[89] Martin's suit stated three claims for relief from the PGA's alleged violations of Titles I and III of the ADA.[90] First, Martin alleged that the PGA denied him the opportunity to participate in and benefit from its tournaments by prohibiting him from using a cart on the Nike and PGA Tours.[91] Second, because the PGA offered professional credentials, Martin asserted that the PGA failed to make its professional development circuit accessible to him by prohibiting his use of a cart.[92] Finally, based on his physical disability, Martin alleged that the PGA's prohibition on cart use during its tournaments constituted employment discrimination.[93]

The PGA's "no-cart rule" did not prevent Martin from participating in the final round of the PGA's qualifying school tournament.[94] In November 1997, prior to the final round of the PGA qualifying school tournament, Judge Coffin of the United States District Court for the District of Oregon issued a temporary injunction against the "no-cart rule."[95] The court ordered the PGA to accommodate Martin's physical disability by allowing him to use a cart in the third stage of the qualifying school tournament.[96] Consequently, the PGA suspended

---

88. *See id.*
89. *See* Martin v. PGA Tour, Inc., 984 F. Supp. 1320, 1322 (D. Or. 1998).
90. *See id.* at 1323.
91. *See id.* at 1323.
92. *See id.*
93. *See id.*
94. *See Martin,* 984 F. Supp. at 1322. *See also* Jeff Barnard, *Federal Ruling Sends PGA Tour to Trial,* STATE J. REG. (Springfield, Ill.), Jan. 27, 1998, at 23.
95. *See Martin,* 984 F. Supp. at 1322. *See also* Jeff Barnard, *Federal Ruling Sends PGA Tour to Trial,* STATE J. REG. (Springfield, Ill.), Jan. 27, 1998, at 23.
96. *See Martin,* 984 F. Supp. at 1322. *See also* Jeff Barnard, *Federal Ruling Sends PGA Tour to Trial,* STATE J. REG. (Springfield, Ill.), Jan. 27, 1998, at 23.

the "no-cart rule" for all players in the third and final stage of play.[97]

Ultimately, Martin did not qualify to play for the regular PGA Tour.[98] However, because he placed forty-sixth, Martin qualified to play on the Nike Tour.[99] The Nike Tour voluntarily granted Martin permission to use a cart in the first two tour events in which he participated.[100] Martin won his first Nike Tour tournament on January 16, 1998, but failed to qualify the following week.[101] Martin's initial Nike Tour win, while riding a cart, put him only two tournament victories away from obtaining playing privileges on the following season's regular PGA Tour.[102]

The PGA filed a motion for summary judgment with the district court on all of Martin's allegations claiming that, as a private entity, it was exempt from complying with the ADA.[103] Alternatively, the PGA argued that if it was not a private club, Martin's use of a cart during tournament play fundamentally altered the nature of its golf competitions.[104]

Martin filed a cross-motion for partial summary judgment requesting the court to find that the PGA operated a place of public accommodation and, therefore, was not a private entity

---

97. *See Martin*, 984 F. Supp. at 1322. *See also* Bill Plaschke, *Verplank Can Read Martin the Ride Act*, L.A. TIMES, Feb. 27, 1998, at C10.

98. *See* Thomas Bonk, *Much is Riding on Wheels of Justice Jurisprudence*, L.A. TIMES, Jan. 26, 1998, at C8.

99. *See id.*

100. *See* Tim Finchem, *Fair Way, or Out of Bounds? Use of a Cart Would Disrupt Competitive Balance on the PGA Tour*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Feb. 2, 1998, at 10C.

101. *See* Thomas Bonk, *Much is Riding on Wheels of Justice Jurisprudence*, L.A. TIMES, Jan. 26, 1998, at C8. Martin's first Nike Tournament was played in Lakeland, Florida. His second Nike Tour tournament was the South Florida Classic. *See id.*

102. *See Martin*, 984 F. Supp. at 1322.

103. *See id.* at 1323 (referencing 42 U.S.C. § 12187 (1990)). Section 12187 states that private clubs and religious organizations are exempt from ADA requirements regarding public accommodations and services. *See* 42 U.S.C. § 12187. *See* FED. R. CIV. P. 56(c). Rule 56(c) states that summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *See id.*

104. *See Martin*, 984 F. Supp. at 1323. *See also* note 129 and accompanying text for an explanation of the private entity exemption under 42 U.S.C. § 12181(6).

exempt from ADA requirements.[105] On January 30, 1998, the district court denied the PGA's motion for summary judgment and granted Martin's cross-motion for partial summary judgment, holding that the PGA was neither a private club nor exempt from complying with the ADA.[106] The court deferred until trial judgment on the second and third claims: whether the Nike Tour was a course or examination and whether the PGA was an employer.[107]

In February, 1998, Judge Coffin presided over a seven day bench trial on the remaining claims and ruled that providing Martin with a cart would not fundamentally alter the PGA's golf competitions.[108] The court's ruling, that the use of a cart was a reasonable accommodation for a disabled golfer, applied only to Casey Martin.[109] Any future ADA claims filed by other golfers must be determined on a case-by-case basis.[110] The PGA announced shortly after the ruling that it would appeal the court's decision in the United States Court of Appeals for the Ninth Circuit.[111] In the meantime, Martin is allowed to use a cart when participating in any of the PGA's golf tournaments.[112]

---

105. *See Martin*, 984 F. Supp. at 1320.

106. *See id. See also Martin*, 994 F. Supp at 1247. The *Martin* court rejected "without detailed elaboration" the claims that the PGA was an employee and that the Nike Tour was a course or examination. *Id.* In a footnote, the *Martin* court incorporated by reference the PGA's argument against these two claims. *See id.* at 1247 n.7.

107. *See Martin*, 984 F. Supp. at 1327.

108. *See Martin*, 994 F. Supp. 1242. *See also* Jeff Barnard, *Golfer Wins His Case for a Cart*, STAR-LEDGER (Newark N.J.), Feb. 12, 1998, at 1. Judge Coffin deliberated two hours before announcing his ruling. *See id.*

109. *See* Mike Cullity, *Ticket to Ride: The Casey Martin Decision, Analysis: Ruling sets up additional drama*, GOLFWEEK , Feb. 21, 1998, at 32. The court's ruling did not put the PGA Tour under an obligation to accommodate any player other than Martin. Other players seeking a similar accommodation will have to demonstrate they possess an ADA-defined disability. *See id.*

110. *See* Mike Cullity, *Ticket to Ride: The Casey Martin Decision, Analysis: Ruling sets up additional drama*, GOLFWEEK , Feb. 21, 1998, at 32.

111. *See* Jeff Barnard, *Golfer Wins His Case for a Cart*, STAR-LEDGER (Newark N.J.), Feb. 12, 1998, at 1. *See also* Mike Cullity, *Ticket to Ride: The Casey Martin Decision, Tour Not Giving Up, Appeal in Progress*, GOLFWEEK, Feb. 21, 1998, at 32. An appeal to the Ninth Circuit Court of Appeals in San Francisco could take from eighteen months to two years before a final decision is rendered. *See id. See also Daly Done with Tour Events in '98*, NEWS & OBSERVER (Raleigh N.C.), Aug. 19, 1998, at C5. At

V. COURT'S ANALYSIS

Ruling on the PGA's motion for summary judgment, the court held the PGA was not a private club and the PGA operated places of public accommodation within the meaning of the Americans with Disabilities Act (ADA).[113] With no precedent from the Ninth Circuit applying the ADA to athletic programs or professional sports organizations, the district court determined at the bench trial that allowing Martin to use a golf cart during tournament play was a reasonable accommodation.[114] The court also found that Martin's use of a cart did not fundamentally alter the nature of a professional golf tournament.[115] In reaching its decision at trial, the court relied heavily on its own prior ruling on the PGA's motion for summary judgment.[116]

A. PGA's MOTION FOR SUMMARY JUDGMENT

The district court's analysis of the PGA's motion for summary judgment determined that the PGA operated a place of public accommodation at the golf courses where its tournaments were held.[117] The PGA argued that the fairways and greens were not areas of public accommodation during its tournaments because the general public could not access those areas.[118] The

---

the date of this publication, the PGA had filed its appeal but the Court of Appeals for the Ninth Circuit had not indicated when it will hear the case. *See id.*

112. *See* Mike Cullity, *Ticket to Ride: The Casey Martin Decision, Analysis: Ruling sets up additional drama,* GOLFWEEK, Feb. 21, 1998 at 32. *See also* Paul Moran, Dan DeRosalia, *Arena,* NEWSDAY, Mar. 27, 1998, at A75. The United States Golf Association (USGA) announced that although it was not a party to Martin's lawsuit, it would abide by the spirit of the court's decision and provide Martin with a cart for play during the U.S. Open in June, 1998 if he qualified to participate. *See id. See also Martin Rides into PGA Event,* GREENSBORO NEWS & REC., Jul. 2, 1998, at C7. PGA tour card members are entitled to enter every regular PGA event. Additionally, a PGA tournament sponsor can extend invitations to other golfers to participate in the tournament. *See id. See also* Ron Sirak, *PGA on Hot Seat Tour Must Balance Compassion, Competition as Martin Returns to Action,* PITT. POST-GAZETTE, Mar. 3, 1998, at C7. Athletic equipment sponsors, such as Nike, Ping, and Top-Flite, provided Casey Martin with athletic equipment for his use. *See id.*

113. *See* Martin v. PGA Tour, Inc., 984 F. Supp. 1320, 1326 (D. Or. 1998).

114. *See* Martin v. PGA Tour Inc., 994 F. Supp. 1242, 1253 (D. Or. 1998).

115. *See id.* at 1253.

116. *See id.* at 1244.

117. *See Martin,* 984 F. Supp. at 1326.

118. *See id.*

court reasoned that, although the public was not allowed inside the playing area at PGA tournaments, the greens and fairways were places of public accommodation under the ADA.[119] The court also determined that the PGA had not met the burden of showing it was a private club for purposes of the ADA and, therefore, was required to comply with the ADA's public accommodation requirements when operating tournaments for membership participation.[120]

1. *The PGA is a Commercial Enterprise*

The court classified the PGA as a commercial enterprise rather than a private club exempt from ADA guidelines, by defining the PGA as an organization formed to promote and operate tournaments with the main purpose of conferring economic benefit on its members.[121] The court reasoned that the success of the PGA depended on the revenues generated by public attendance at its tournaments.[122] Without paying spectators, the PGA Tour could not achieve its goal.[123] The court stated that the PGA was a commercial enterprise because it was part of the entertainment industry that benefits from sponsorships, generates advertising revenue and awards prize money to its members.[124] On establishing that the PGA was a commercial enterprise, the court then determined that the PGA was not a pri-

---

119. *See id.*

120. *See id.* The PGA cited 42 U.S.C. § 12181 which provides that private clubs and religious organizations are exempt from providing ADA required public accommodations and services. The *Martin* court also utilized the analysis set forth in United States v. Lansdowne Swim Club, 713 F. Supp. 785 (E.D. Pa. 1989) to determine whether the PGA was a private club. *See id.* at 1323.

121. *See id.* at 1323.

122. *See Martin,* 984 F. Supp. at 1323. The *Martin* court stated the Tour's successful generation of revenues was in direct proportion to public participation. *See id.*

123. *See id.* The *Martin* court stated the Tour's purpose was to promote and operate tournaments for the economic benefit of its members, a highly skilled group of professional golfers. *See id.*

124. *See id.* The *Martin* court neither defined a commercial enterprise, nor cited any case law or statute that supported its analysis in determining the PGA was a commercial enterprise. *See id.*

vate entity exempt from providing public accommodations and services under Title III of the ADA.[125]

2. *The PGA is not a Private Entity*

The court relied on *Quijano v. University Federal Credit Union*,[126] a 1980 case that did not involve ADA issues, to determine whether the PGA qualified as a private entity.[127] According to *Quijano*, a private entity under the Civil Rights Act is an organization that promotes some common literary, scientific or political objective.[128] Additionally, the *Quijano* court held that the members' common purpose must be legitimate and private and the entity must maintain meaningful conditions of membership.[129] In applying this definition of a private entity to the PGA, the *Martin* court determined that the PGA's eligibility requirement for membership measured golfing skill and not beliefs protected by freedom of association.[130] Thus, the *Martin* court rejected the PGA's argument that it was a private entity

---

125. *See id. See also* 42 U.S.C. § 12187 (1990). According to Section 12187, private clubs and religious organizations are exempt from ADA requirements governing public accommodations and services. *See id.*

126. 617 F.2d 129 (5th Cir. 1980). In *Quijano*, an employee of a federal credit union filed suit against her employer charging violations of 42 U.S.C. § 2000e, Title VII of the Civil Rights Act of 1964, which banned discrimination in employment and provisioning of services on the basis of race, color, religion, sex or national origin. *See id.*

127. *See Martin*, 984 F. Supp. at 1324 (citing Quijano v. University Federal Credit Union, 617 F.2d 129 (5th Cir. 1980)). Quijano alleged that the credit union discriminated in its employment practices by failing to hire or promote Black, Spanish surnamed, or female individuals on an equal basis with White males, and by failing to compensate females or assign job responsibilities to females on an equal basis with males. Quijano also claimed that the credit union maintained segregated job classifications according to race, national origin, or sex. *See Quijano*, at 130, 131.

128. *See Quijano*, 617 F.2d at 131. The *Quijano* court cited the definition of a private entity under Title VII of the Civil Rights Act of 1964, § 701(b)(2), 42 U.S.C. § 2000e(b)(2). These sections define a private entity as "a bona fide private membership club . . . which is exempt from taxation under section 501(c) of Title 26." *Id.*

129. *See id.* at 131. The *Quijano* court defined "legitimate (as opposed to sham), private (as opposed to public) and must require some meaningful conditions of membership." *Id.*

130. *See Martin*, 984 F. Supp. at 1325. The court stated it was social, moral, spiritual, or philosophical beliefs that were at the core of the private club exemption. *See id.*

and concluded that the PGA was not exempt from complying with the provisions of the ADA.[131]

The court further based its rejection of the PGA's private entity status on the holding in *Welsh v. Boy Scouts of America*.[132] The *Welsh* court determined that selectivity in membership requires a nexus between an organization's purpose and its membership.[133] The *Martin* court surmised that generating revenues for PGA members was not a protectable interest that Congress envisioned when it excluded private clubs from coverage under the ADA.[134] Accordingly, the *Martin* court concluded that the PGA's non-profit status did not confer an exemption from complying with ADA requirements.[135]

3. *The PGA Is Not a Bona Fide Private Club*

After concluding that the PGA was not a private entity, the court proceeded to apply an abbreviated, seven factor analysis extracted from *United States v. Lansdowne Swim Club*,[136] to determine whether the PGA was a bona fide private club.[137] In *Lansdowne*, the government brought an action against the Lansdowne Swim Club alleging racial discrimination in violation of the Civil Rights Act of 1964.[138] The *Lansdowne* court utilized the *eight* factor analysis listed in the Civil Rights Act to determine that the swim club was a place of public accommodation and not a private club exempt from complying with

---

131. *See id.* at 1324-25.

132. 993 F.2d 1267 (7th Cir. 1993). *See Martin*, 984 F. Supp. at 1324.

133. *See Martin*, 984 F. Supp. at 1324 (citing Welsh v. Boy Scouts of America, 993 F.2d 1267, 1277 (7th Cir. 1993)). The PGA cited the *Welsh* definition of private club status. The *Welsh* court focused on the nexus between the purpose of the club and the membership. The *Welsh* court found the membership requirements did not deprive the Boy Scouts of America of its private club status when the requirements were consistent with the purpose of the group. The Boy Scouts of America was found to be a private club notwithstanding its membership total of over five million scouts. *See id.* at 1277. However, the *Martin* court rejected the application of *Welsh* to the PGA's argument. *See Martin*, 984 F. Supp. at 1324.

134. *See Martin*, 984 F. Supp. at 1324.

135. *See id.*

136. 713 F. Supp. 785 (E.D. Pa. 1989).

137. *See Martin*, 984 F. Supp. at 1324 (citing United States v. Lansdowne 713 F. Supp. 785 (E.D. Pa. 1989).

138. *See Lansdowne*, 713 F. Supp. at 785.

the provisions of the Civil Rights Act.[139] The eight factors utilized by the *Lansdowne* court were: the genuine selectivity in membership admissions, the membership control over the operations of the club, the history of the organization, the non-members' use of club facilities, the club's purpose, the club's advertisements for membership, the club's non-profit status, and the formalities observed by the club.[140] Of these eight factors, the *Lansdowne* court considered the genuine selectivity factor most important.[141] The *Martin* court performed an analysis utilizing seven of the eight *Lansdowne* factors and concluded the PGA was not a bona fide private club.[142]

a. The PGA's Genuine Selectivity

The *Lansdowne* court stated that the features that reflect the genuine selectivity of an entity are the substantiality of the membership fee, the numerical limit on membership, the membership's control over the selection of new members, the formality of the selection process, and the standards or criteria for admission.[143] In determining whether membership in the PGA was genuinely selective, the *Martin* court relied on civil rights values central to freedom of association such as social, moral, spiritual, and philosophical beliefs.[144] Although the PGA contended that its qualifying school tournaments ensured its members were chosen by an exceptionally selective process, the *Martin* court rejected this argument stating the PGA's eligibility requirements measured skill and were not designed to screen members on the basis of freedom of association values.[145]

---

139. *See id.* at 796-97.

140. *See id.*

141. *See id.* at 797.

142. *See Martin*, 984 F. Supp. at 1324-26.

143. *See Lansdowne*, 713 F. Supp. at 797-802. The *Lansdowne* court found that although the swim club had substantial membership fees, placed a limit on the number of shareholder members, and utilized a formal admission process, it lacked genuine selectivity because no criteria or standard for admission existed. *See id.*

144. *See Martin*, 984 F. Supp. at 1325. *See generally* Quijano v. University Federal Credit Union, 617 F.2d 129 (5th Cir. 1980); Welsh v. Boy Scouts of America, 993 F.2d 1267 (7th Cir. 1993); United States v. Jordan, 302 F. Supp. 370 (E.D. La. 1969). These courts considered whether the club had a civic, fraternal, or social purpose.

145. *See Martin*, 984 F. Supp. at 1324-25. The PGA contended that the process was exceptionally selective because very few golfers possess the necessary skill to become members. *See id.*

Additionally, the court stated that the "weeding out" process inherent in the PGA's qualifying school tournament would always involve a relatively small number of applicants, and therefore, was not genuinely selective.[146] The *Martin* court concluded that the PGA's selective process in determining its membership was insufficient to confer private entity status.[147]

b. The PGA's Membership Control

The *Martin* court next evaluated PGA members' control over the organization.[148] The court, citing *United States v. Jordan*,[149] rejected the PGA's contention that the voting rights of its members were sufficient to establish its status as a private entity.[150] In *Jordan*, another civil rights case, a public restaurant was converted into a corporation and called a "dining club" which remained open only to the general white public.[151] The *Jordan* court held that the restaurant did not qualify for a private club exemption under the Civil Rights Act of 1964 because the restaurant was converted to a corporate dining club for the sole

---

146. *Id. See also Lansdowne*, 713 F. Supp. at 789. The swim club had a maximum number of 500 shareholders, but the number of associate members varied from year to year. Originally, membership in the swim club was limited to Lansdowne residents. *See id.*

147. *See Martin*, 984 F. Supp. at 1324-25.

148. *See id.* at 1325.

149. 302 F. Supp. 370 (E.D. La. 1969).

150. *See Martin*, 984 F. Supp. at 1325 (citing United States v. Jordan, 302 F. Supp. 370, 376 (E.D. La. 1969)). Professional golfers who play in fifteen or more regular PGA Tour events in a year have voting rights for electing player directors from candidates chosen by the existing directors. New members are not nominated into the PGA, but instead compete to become members. The court found this type of membership control did little to make the PGA private. *See Martin* 984 F. Supp. at 1325. *See also Lansdowne*, 713 F. Supp. at 789. Since 1979, club members annually voted whether to admit applicants to the swim club. Admission required a ninety percent approval of existing members. Prior to the vote, letters of recommendation from two active club members and a completed application were submitted and reviewed by the membership committee. The application contained the name, address, phone number, occupation, name of spouse, names and birth dates of children and the names of two sponsors. A member of the membership committee interviewed the potential applicants at their homes. Prior to a vote, the only information provided to members were the applicant's names, addresses, names and ages of children, and the identities of the endorsers. At the time of submission, applicants were expected to tender the required fees. The swim club did not conduct any background investigation of the applicants. *See id.*

151. *See Jordan*, 302 F. Supp. 370.

purpose of excluding black patrons.[152] The *Jordan* court considered whether the existing members had any control over the admission of new applicants to determine the existing members' control over the entity.[153] The *Jordan* court found that a three-member committee controlled the dining club's membership and non-committee members had no control over admissions or revocations of memberships.[154] The *Jordan* court concluded that the restaurant was not a private entity.[155]

Similarly, the *Martin* court found that new members of the PGA were not voted in by current members, but instead "played their way in."[156] The limited right of existing PGA members to vote for player directors from pre-selected candidates was insufficient to show member control over new admissions to the PGA.[157] Thus, the *Martin* court determined that PGA member control over new membership was insufficient to establish this factor of the bona fide private club test.[158]

c. History of the PGA

Next, the court examined the PGA's history as an organization.[159] The court found the PGA to be a bona fide organization

---

152. *See id.*

153. *See id.* at 375-77. In *Jordan*, existing members had no control over the admission of applicants for membership. Membership determination was made solely by a three person membership committee and the vote of only two of the three members was necessary. Members could not deny any applicant for membership, were not notified of pending applications for membership, and were not notified of membership acceptances. Existing members could not revoke memberships and were not given notice of pending revocations. The rules of the club provided for a hearing in the event of revocation, but in practice one member of the membership committee revoked memberships when necessary. *See id.*

154. *See id.* at 377.

155. *See id.* at 378.

156. *See Martin*, 984 F. Supp. at 1325.

157. *See id.* at 1325 n.4. PGA member voting rights consisted of the members voting for player directors from a slate of candidates chosen by the existing player directors. Four of the nine members of the PGA policy board, are player directors. *See id.*

158. *See id.* at 1325.

159. *See id. See also Lansdowne*, 713 F. Supp. at 802-03. The *Lansdowne* court looked at the history of the swim club to determine whether it had been created to avoid civil rights legislation. Because the club was created prior to the enactment of Title II of the Civil Rights Act of 1964, it was not found to have been formed to evade civil rights. *Id.* at 802. The *Lansdowne* court declined to adopt the Equal Employment

not formed to evade the ADA because it existed prior to the effective date of the ADA.[160] However, the court stated that the PGA's bona fide organization status alone was insufficient to establish that it was a private entity under the ADA.[161]

d. Use of PGA Facilities by Non-Members

The court relied upon two civil rights cases, *Smith v. YMCA*[162] and *Evans v. Laurel Links, Inc.*,[163] in analyzing the use of the PGA's facilities by non-members.[164] Both the *Smith* and *Evans* courts found that an organization's reliance on revenues generated by public participation subjected it to compliance with the Civil Rights Act.[165] The *Martin* court found the PGA's reliance on the revenues generated by non-member participation, such as vendors, reporters, score keepers, volunteers, and members of the gallery demonstrated that non-

---

Opportunity Commission's Policy Statement that referred to 42 USC § 2000e for the definition of a bona fide private membership club as one that is tax exempt under § 501 (c) of Title 26. *See id.* at 797 n.23. Instead the *Lansdowne* court deferred to the definition in *Quijano v. University Federal Credit Union*, 617 F.2d 129, 131 (5th Cir. 1980) that stated for an organization to be considered exempt from coverage by Title VII of the Civil Rights Act of 1964, "an association of persons for social or recreational purposes, or for the promotion of some common literary, scientific or political objective, must also be legitimate (as opposed to sham), private (as opposed to public) and must require some meaningful conditions of limited membership." *See Quijano*, 617 F. 2d at 131.

160. *See Martin*, 984 F. Supp. at 1325.

161. *See id.* The court did not elaborate on this portion of its analysis, and did not define a "bona fide organization" in the context of a private club analysis for ADA exemption purposes. *See id.*

162. 462 F.2d 634 (5th Cir. 1972).

163. 261 F. Supp. 474 (E.D.Va. 1966).

164. *See Martin*, 984 F. Supp. at 1325.

165. *See id.* (citing Smith v. YMCA, 462 F.2d at 634, 648 (5th Cir. 1972); Evans v. Laurel Links, Inc., 261 F. Supp. 474 (E.D. Va. 1966)). The *Smith* court ruled that the Young Men's Christian Association was not a private club because it received a substantial amount of revenue from the general public. *See Smith*, 462 F.2d at 648. *See Evans*, 261 F. Supp. 474. The *Evans* court held that a golf club restaurant which generated revenue and was open to the general public subjected the entire golf course to the Civil Rights Act because it served or offered to service interstate travelers. The Civil Rights Act provides that an establishment that affects commerce is subject to the Act. *See id.* at 476.

members utilized PGA facilities and thereby did not support its alleged private status.[166]

e. The PGA's Purpose

The court briefly restated its previous determination that the PGA was a "commercial enterprise" when deciding whether the PGA's purpose supported its alleged private club status.[167] Accordingly, the court reiterated that the PGA Tour was formed for the commercial purpose of promoting and operating tournaments for the economic benefit of its members.[168] The *Martin* court concluded the PGA's activities were commercial in nature and the organization's purpose did not support private club status for the purposes of ADA exemption.[169]

f. The PGA Advertised for Members

The *Martin* court relied on *Wright v. Salisbury Club, Ltd.*,[170] another civil rights case, to consider the PGA's advertisement practices for members.[171] In *Wright*, a black man and his wife filed suit against the Salisbury Country Club alleging racial discrimination.[172] The *Wright* court held that the country club's advertising practices to recruit new members caused it to lose

---

166. *See Martin*, 984 F. Supp. at 1325. *See also Lansdowne*, 713 F. Supp. at 803-04. The *Lansdowne* court looked at the non-members who used the swim club: guests of members, house guests of members, the general public attending hosted swim meets and parties, and the general public using the volleyball and basketball facilities. The swim club also permitted the Lansdowne Boy's Club to conduct an annual public Christmas tree sale in its parking lot. Based on these uses by non-members, the *Lansdowne* court found the swim club's integration into the community did not support its claim as a private club. *See id.*

167. *See Martin*, 984 F. Supp. at 1323, 1325.

168. *See id.*

169. *See id.* at 1325. The court stated: "The mercantile purpose of the PGA Tour weighs heavily against private club status." *See id.*

170. 632 F.2d 309 (4th Cir. 1980).

171. *See Martin*, 984 F. Supp. at 1325 (citing Wright v. Salisbury Club, Ltd., 632 F.2d 309 (4th Cir. 1980)).

172. *See Wright*, 632 F.2d 309. The couple had purchased a home in the residential development of Salisbury. There was no link between the housing development and the country club. However, the club was used in the developer's advertising for potential home buyers, and the club actively recruited residents of the Salisbury development by placing advertisements which offered reduced membership fees and incentives to residents. *See id.*

its private club exemption within the Civil Rights Act of 1964.[173] In contrast, the *Martin* court found the PGA Tour had no need to advertise for members because its activities and tournaments were extensively covered by the media.[174] Therefore, the court concluded that the advertising factor carried "little weight" in determining whether a professional sports organization was a private entity.[175]

g. The PGA is a Non-Profit Organization

Lastly, the *Martin* court recognized that the PGA was indeed a non-profit entity.[176] However, the court again followed *Quijano v. University Federal Credit Union.*[177] The *Quijano* court ruled that credit unions exist for purely mercantile purposes and members join for profit motives.[178] Additionally, the *Quijano* court determined that the tax-exempt status of a non-profit organization was not an indication that Congress intended that organization to be exempt from Title VII of the Civil Rights Act.[179] Accordingly, the *Martin* court ruled that the non-profit PGA corporation, which furthered the commercial interests of its members, did not qualify as a private entity under the ADA.[180]

The court summarized its analysis of the *Lansdowne* factors considered in determining whether the PGA was a private club and found that the PGA had satisfied only the history and non-

---

173. *See Wright*, 632 F.2d at 313. The Salisbury Club had no selective membership policy, and advertised extensively within the Salisbury subdivision for new members. Additionally, the club permitted the subdivision developer to advertise the club's existence throughout the area and to use it as an incentive for potential residence purchasers. *See id. See also Martin*, 984 F. Supp. at 1325.

174. *See Martin*, 984 F. Supp. at 1325. The court analogized the PGA to a National Basketball Association team stating that because the PGA is well known, even to the most casual golfer, it has no need to advertise for golfers any more than the Chicago Bulls need to advertise for basketball players. *See id.*

175. *Id.*

176. *See id.* at 1325-26.

177. Quijano v. University Federal Credit Union, 617 F.2d 129 (5th Cir. 1980). *See Martin*, 984 F. Supp. at 1325.

178. *See Quijano*, 617 F.2d at 133.

179. *See id.*

180. *See Martin*, 984 F. Supp. at 1325-26. *See also Quijano*, 617 F.2d 129. *See supra* notes 305-312 for further discussion of *Quijano*.

profit status factors.[181] Satisfaction of these two factors alone, however, was insufficient to designate the PGA as a private club.[182] Therefore, the PGA was not exempt from complying with the ADA.[183]

4. *The PGA Operates as a Public Accommodation*

The court then considered the PGA's alternative assertion that its tournaments did not constitute places of public accommodation because the golf course playing areas were not open to the general public during tournament play.[184] The court noted that golf courses were specifically included in the list of public accommodations contained in the ADA.[185] However, the PGA asserted that the playing course was a "private sphere" within a public place by analogizing a golf course to a major league baseball stadium.[186] A baseball stadium is both a private and public place of accommodation: the bleachers in a baseball stadium are subject to ADA regulation because the public is seated there, but the dugout is not because the public is not admitted in the dugout.[187] In rejecting the dual use argument, the *Martin* court stated that a major league baseball team could not refuse to construct a wheelchair ramp to the visitor's dugout to accommodate the disabled manager of an opposing ball club simply because spectators are not admitted in the dugout.[188] The court concluded that the PGA operated

---

181. *See Martin*, 984 F. Supp. at 1326.

182. *See id.*

183. *See id.*

184. *See id.* at 1326.

185. *See id.* (citing 42 U.S.C. § 12181(7)). Section 12181(7) provides a listing of entities considered public accommodations, including motion picture houses, theaters, concert halls, stadiums, or other places of exhibition or entertainment; auditoriums, convention centers, lecture halls, or other places of public gathering; museums, libraries, galleries, or other places of public display or collection; parks, zoos, amusement parks, or other places of recreation; and gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation. *See id.*

186. *See id.* at 1327.

187. *See Martin*, 984 F. Supp. at 1327.

188. *See id.* at 1327. The court quoted 42 U.S.C. § 12181(7) which provides that "[a] gymnasium or golf course may be open only to authorized members and their guests, but not necessarily preclude it from being classified as a place of public accommodation." *Martin*, 984 F. Supp. at 1327.

areas of public accommodation during tournament play and, therefore, was not exempt from compliance under the ADA.[189]

B. THE BENCH TRIAL OF *MARTIN V. PGA TOUR, INC.*[190]

One month after denying the PGA's motion for summary judgment, the district court conducted a seven day bench trial to consider the PGA's alleged ADA violations.[191] In its ruling, the court first determined that Martin was disabled as defined by the ADA and then considered whether Martin's use of a golf cart was a reasonable accommodation for his disability.[192] Judge Coffin rejected the PGA's argument that walking was a requirement of playing professional golf and concluded that Martin's use of a golf cart did not fundamentally alter the nature of the PGA's tournaments.[193]

---

189. *See id.* at 1327.

190. *See* Martin v. PGA Tour, Inc., 994 F. Supp. 1242 (D. Or. 1998).

191. *See Martin,* 994 F. Supp. 1242.

192. *See id.* at 1244, 1248. *See also* 42 U.S.C. § 12182(b)(2)(A)(i-iii) (1990). The ADA neither requires an entity to fundamentally alter the nature of its business or programs to accommodate a disabled person, nor is the entity required to do so if it results in an undue hardship on the entity. Sections 12182(b)(2)(A) states in part:

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

Id.

193. *See Martin,* 994 F. Supp. at 1253.

1. *Martin is Disabled*

The court first decided that Martin was disabled as defined by the ADA by referencing extensive medical information regarding Martin's physical condition.[194] Additionally, the court viewed a video tape of Martin's right leg and found it to represent compelling evidence of the nature and extent of his disability.[195] Upon reviewing this evidence, the court found that Martin had adequately met the burden of demonstrating that he was disabled as defined under the ADA.[196]

2. *Using a Cart is a Reasonable Accommodation*

Martin successfully illustrated that using a cart during tournaments would be a reasonable accommodation.[197] The court defined reasonable as "reasonable in the general sense, that is, in the general run of cases" and applied this definition to the PGA.[198] The court noted that the PGA allowed carts at certain stages of their qualifying school tournaments, as well as in its Senior tournaments, and did not impose any penalties on players who chose to use a cart when permitted.[199] Based on

---

194. *See id.* at 1248. *See also* 42 U.S.C. § 12102(2). The ADA defines a disabled individual as one who possesses a physical or mental impairment that substantially limits one or more major life activities. *See id.*

195. *See Martin*, 994 F. Supp. at 1243-44. The court described the video. "The right leg appears to be about half the size of plaintiff's left leg. When plaintiff removes his double set of support stockings and stands upright, the leg immediately discolors and swells in size ...." *Id.* at 1244.

196. *See id.* at 1248.

197. *See id.*

198. *Id.* (citing Johnson v. Gambrinus Co., 116 F.3d 1052 (5th Cir. 1997)). In *Johnson*, the Court of Appeal affirmed the District Court's ruling that Johnson, a blind individual who sued a beer brewery owner for refusing to allow him to take the public brewery tour with his guide dog, was entitled to protection under the ADA. The court ordered the owner to make the reasonable accommodation of modifying the brewery's policies to permit access by disabled persons with guide dogs. The court also held that the owner failed to show the modification would either fundamentally alter the nature of the public accommodation or jeopardize public safety. The *Johnson* court defined reasonable as "reasonable in the general sense, that is, in the general run of cases." *Id.*. at 1059.

199. *See Martin*, 994 F. Supp. at 1248. The PGA Tour permits the use of carts at two of its tournament stages; the Nike Tour qualifying school tournament and Senior PGA Tour events. The court also noted that the NCAA and Pac 10 Athletic Conference also permitted the use of carts to accommodate disabled collegiate golfers. *See id. See also* William Wiswall, *Fairway, or Out of Bounds?*, SUN-SENTINEL (Ft. Lauderdale

this analysis, the court found that Martin met his burden of proof showing that his request for a cart was reasonable.[200] The court then addressed whether the reasonable accommodation of allowing Martin to use a cart would fundamentally alter the nature of professional golf.[201]

3. *Walking Is Not a Requirement of Professional Golf*

The court stated that Martin's disability required an individual assessment of walking as a necessity of competing in professional golf tournaments before determining whether the use of a cart fundamentally altered the nature of the game.[202] Although the PGA argued that an individualized inquiry was inappropriate, the court again relied on *Johnson v. Gambrinus*[203] to support its rejection of walking as a requirement of golf.[204] The court first examined the United States Golf Asso-

---

Fla.), Feb. 2, 1998, at 10C. Prior to 1994 the NCAA had also had a "no-cart" rule but suspended it when Martin played for Stanford University in 1994. *See id.*

200. *See Martin*, 994 F. Supp. at 1248.

201. *See id.* at 1249. *See also* 42 U.S.C. § 12111(9) (1990). Section 12111(9) states that a reasonable accommodation may include making existing facilities readily accessible to individuals with disabilities. *See also* 42 U.S.C. § 12182(b)(2)(A)(ii). Section 12182(b)(2)(A)(ii) does not require an entity to make an accommodation if the accommodation creates a fundamental alteration of the entity. *See id.*

202. *See Martin*, 994 F. Supp. at 1249.

203. 116 F.3d 1052, 1059 (5th Cir. 1997). *See Martin*, 994 F. Supp. at 1249-50.

204. *See Martin*, 994 F. Supp. at 1249-50. The PGA relied on the various high school athletic association cases in which the courts had ruled that individualized assessment of the student was unreasonable. The PGA argued that walking is fundamental to the game of golf and that allowing Martin to use a cart would alter the nature of its competitions. Additionally, the PGA stated that as an athletic competition, golf requires a combination of mental and physical skills under a variety of conditions. The PGA contended that allowing one player to use a cart, gives that player an unfair advantage over those players walking the course. *See id. See also* Jeff Barnard, *Witnesses Bolster Martin's Case*, FLA. TIMES UNION (Jacksonville), Feb. 4, 1998, at D1. Martin's lawyers called several witnesses to testify and counter the argument that golf carts give players an advantage. The witnesses included Eric Johnson, the Nike Tour's leading money winner; Stanford University golf Coach Wally Goodwin who recruited Martin for his 1994 team; and Gary Klug, professor of physiology at the University of Oregon who specialized in the study of muscle fatigue. Klug's testimony asserted the physical activity required when playing golf is so low, it could not be considered physiologically taxing. On cross examination, Klug refused to concede that walking four to five miles during the course of 18 holes of golf produced fatigue. PGA Tour Commissioner Tim Finchem and Judy Bell, immediate past president of the U.S. Golf Association, testified that allowing Martin to ride a cart would render the playing field uneven for the other competitors. *See id.*

ciation (USGA) Official Rules of Golf and did not find walking a requirement of the golf game.[205] The court then noted that the PGA utilized USGA rules with a modification allowing the use of a cart at the discretion of the PGA Tour Rules Committee.[206] Additionally, the court discovered that in the past, when the PGA Tour Rules Committee had waived the "no-cart rule," it waived the rule for all competitors in a tournament.[207] Based on these findings, the court held that walking was not a requirement of the game of golf.[208]

Considering extensive testimony from Martin's doctor, the court then determined that Martin could compete in the Nike Tour only if he was allowed to use a cart.[209] Accordingly, the court then rephrased the issue before it to be whether the "no-cart rule" may be modified to accommodate Casey Martin "without fundamentally altering the nature of the game being played at the PGA Tour's tournaments?"[210]

4. *Cart Use Does Not Fundamentally Alter the Nature of Professional Golf*

Upon determining that walking was not a requirement of the game of golf, the court addressed whether Martin's use of a cart would fundamentally alter the PGA's golf competitions.[211] In considering whether the use of a cart fundamentally altered professional golf, the court noted that the "no-cart rule" was

---

205. *See Martin*, 994 F. Supp. at 1249.

206. *See id.*

207. *See id. See also* Jeff Barnard, *Martin Describes Pain, Cries on Stand*, SAN DIEGO UNION & TRIB., Feb. 5, 1998 at D1. Richard Ferris, a chairman of the PGA Tour policy board, testified regarding the different rules for the regular PGA Tour events and the Senior PGA Tour events. Ferris stated that the Senior Tour was largely a nostalgia event and the rule difference was based on economic factors. Ferris said: "If Arnold Palmer has an arthritic hip and can't walk 18 holes . . . he's an economic draw. That's why we allow them to use the carts." *Id.* Harry Toscano, Senior Tour player, testified that the Senior Tour accommodates older players like Lee Trevino and others who are allowed to wear plastic arm braces even though it violates the USGA Rules of Golf. *See id.*

208. *See Martin*, 994 F. Supp. at 1252.

209. *See id.* at 1249-50. Martin's doctor testified that Martin had utilized several alternative walking aids in an attempt to alleviate his discomfort when golfing. *See id.*

210. *Id.* at 1250.

211. *See id.* at 1249.

designed to inject an element of fatigue into competitive golf.[212] Nevertheless, the court concluded that the fatigue created by walking was insignificant.[213] Consequently, the court ruled that Martin's use of a golf cart during PGA Tour tournament play would neither frustrate the purpose of the association's "no-cart rule" nor fundamentally alter the nature of the professional golf competition.[214]

Concluding its analysis of whether the use of a cart fundamentally altered the nature of professional golf, the court again referred to the USGA Rules of Golf.[215] The court questioned whether certain rules could be modified to accommodate a blind golfer and noted that certain rules had been modified for the purpose of enabling a blind golfer to compete with able-bodied players.[216] Specifically, a blind golfer may possess both a caddie and a coach and may accept advice from either a playing partner, coach or caddie.[217] The court found this authority inconsistent with the PGA's assertion that any modification of the rules of golf fundamentally alters the nature of

---

212. *See id.* at 1250. The court recognized the PGA's position as a cognizable interest which was allowable under ADA standards. Had the rule been based merely on the tradition of the game, it would not be entitled to any weight. *See id.*

213. *See Martin*, 994 F. Supp. at 1250. *See also*, Jeff Barnard, Venturi: *Walking Central to Golf, Palmer, Nicklaus Also Testify on PGA's Behalf*, PITT. POST-GAZETTE, Feb. 6, 1998, at B3. Ken Venturi, Arnold Palmer and Jack Nicklaus testified for the PGA that walking is fundamental to golf as it tests athleticism and stamina. *See id. See also* and Bill Plaschke, *Verplank Can Read Martin the Ride Act*, L.A. TIMES, Feb. 27, 1998, at C1. Professional golfer Scott Verplank, a diabetic, testified regarding his use of a cart after Martin's temporary injunction suspended the no cart rule for all players in the third stage of the qualifying school tournament. Verplank rode in a cart and won the qualifying school tournament by six strokes. Verplank stated that the use of a cart conserved his strength during the six day, 108 hole competition. At Martin's trial, Verplank testified regarding his use of a cart: "I sat all day in that comfortable seat." *Id.*

214. *See Martin*, 994 F. Supp. at 1252.

215. *See id.* The *Martin* court cited USGA rules 6-4, 8 and 8-1 to support its opinion that the "no-cart rule" could be modified without fundamentally altering the game of golf. Rule 6-4 states that a player may have only one caddie at a time. Rule 8 defines "advice" as counsel or suggestion that would influence a player in determining how to make a particular play. Rule 8 further defines "line of play" as the direction a player wishes his ball to take after a stroke which extends vertically upwards from the ground, but does not extend beyond the hole. Rule 8-1 regarding advice dictates a player may give advice only to his partner and may not accept advice from anyone other than his partner or caddie. *See id.*

216. *See id.* (citing A Modification of the Rules of Golf for Golfers with Disabilities).

217. *See* Martin, 994 F. Supp. at 1252-53.

its competitions.[218] Therefore, the court ruled that Martin's requested accommodation, the use of a cart, was reasonable in view of his disability and did not fundamentally alter the nature of professional golf.[219]

In summary, the district court ruled on Martin's claims in a motion for summary judgment[220] and a subsequent bench trial.[221] In its first ruling, the court denied the PGA's motion for summary judgment and rejected the PGA's argument that it was exempt from compliance with the ADA because it was a private, non-profit organization.[222] In the second ruling, the court found that Martin's use of a cart was a reasonable accommodation, which neither fundamentally altered the nature of golf nor resulted in undue hardship to the PGA.[223] Although the PGA announced its intention to appeal the court's decisions, the PGA allowed Martin to use a cart during PGA tournament play until the Ninth Circuit renders a decision.[224]

VI. CRITIQUE

Having no binding precedent from the Ninth Circuit to follow, the *Martin* court relied heavily on civil rights and ADA cases decided in the Fifth and Seventh Circuits.[225] The *Martin* court employed the analysis set forth in *Lansdowne* to deter-

---

218. *See id.* at 1253. In rejecting the PGA's argument that an assessment of Martin's disability was unreasonable, the court found that in the case of a blind golfer, the PGA must first recognize that the player was blind. Upon that recognition, the PGA must then consider whether the use of a coach gave the blind golfer a competitive advantage over other golfers. *See id.*

219. *See id.*

220. *See Martin*, 984 F. Supp. 1320.

221. *See Martin*, 994 F. Supp. 1242.

222. *See Martin*, 984 F. Supp. 1320.

223. *See Martin*, 994 F. Supp. 1242.

224. *See infra* note 112 and accompanying text for information on sponsorship exemptions to PGA tournaments. *See also* Peter Farrell, *PGA Tour Begins Martin Appeal*, PORTLAND OREGONIAN, Mar. 24, 1998, at D02.

225. *See* Martin v. PGA Tour Inc., 984 F. Supp. 1320, 1324 n.3 (D.Or. 1998). In a footnote of the opinion, the court stated: "[a]lthough the Welsh case involved the Civil Rights Act, the ADA and the Civil Rights Act are interrelated in terms and application." *Id.* However, the court provides no citations indicating the genesis of this conclusion. *See id. See also* Welsh v. Boy Scouts of America 993 F.2d 1267 (7th Cir. 1993); Quijano v. University Federal Credit Union, 617 F.2d 129 (5th Cir. 1980).

mine whether the PGA was a private club.[226] However, Judge Coffin misapplied certain factors of that analysis and ignored the weight of others.[227] Further, the *Martin* court erroneously relied on Fifth and Sixth Circuit case law in determining whether Martin's use of a cart was a reasonable accommodation.[228] Lastly, the PGA rules provide a reasonable accommodation for physically disabled players.[229] Had the *Martin* court performed a complete *Lansdowne* analysis, and utilized authoritative case law, it would have found that the PGA was a private club and, thus, exempt from compliance with the ADA.[230]

A. THE PGA IS A PRIVATE ENTITY UNDER A *LANSDOWNE* ANALYSIS

The eight *Lansdowne* factors used to determine whether a club is private are: the genuine selectivity in membership admissions; the membership control over the operations of the club; the history of the organization; the non-members' use of club facilities; the club's purpose; the club's advertisements for membership; the club's non-profit status; and the formalities observed by the club.[231] The *Martin* court found that the PGA satisfied only two of these factors.[232] A comprehensive *Lansdowne* analysis, however, supports the PGA's status as a private club.[233]

---

226. *See Martin*, 984 F. Supp. at 1324. *See also* United States v. Lansdowne Swim Club, 713 F. Supp. 785, 796-97 (E.D. Pa. 1989).

227. *See Martin*, 984 F. Supp at 1324-26. The *Martin* court's analysis utilized only seven factors and omitted the "formalities observed by the club" factor. *See id.* The *Lansdowne* court set forth eight factors to use in determining whether an organization was a private club. *See Lansdowne*, at 796-97.

228. *See infra* notes 334-51 and accompanying text for an analysis of the case law relied upon by the *Martin* court.

229. *See infra* notes 352-65 and accompanying text for an analysis of the PGA's rules.

230. *See supra* notes 231-334 for an analysis of all eight Lansdowne factors.

231. *See Lansdowne*, 713 F. Supp. 796-97.

232. *See Martin*, 984 F. Supp. at 1326.

233. *See Lansdowne*, 713 F. Supp. 797-805.

1. Membership in the PGA is Genuinely Selective

The *Lansdowne* court considered genuine selectivity the most important of these factors and stated that the five features of an entity that reflect genuine selectivity are: substantiality of a membership fee; the numerical limit on membership; the membership control over the selection of new members; the formality of the club's admission procedures; and the standards or criteria for admission into the club.[234] Of the five features to be considered when determining genuine selectivity, the *Martin* court evaluated only two: the formality of the PGA's selection process and the amount of control current members possessed over the admission of new members.[235]

Had the *Martin* court considered the three remaining features of genuine selectivity, it may have found that the PGA was genuinely selective in its membership.[236] The *Martin* court failed to consider that the PGA limits its membership through its substantial application fee of $3,000.00.[237] Further, the PGA limits the number of new members it annually accepts into the regular PGA Tour to thirty-five.[238] While PGA members do not vote to admit new players, the current members' golf performance serves as the standard to which new members must aspire.[239] For example, a potential member with a plus fifteen handicap could not readily gain membership to the PGA if the

234. *See id.* at 797.

235. *See Martin*, 984 F. Supp. at 1324-25. The *Martin* court concluded that the PGA was not genuinely selective. *See id.* at 1325.

236. *See id. See also Lansdowne*, 713 F. Supp. at 797. The five features that indicate genuine selectivity are: substantiality of the membership fee, the numerical limit on membership, the membership's control over the selection of new members, the formality of the selection process, and standards or criteria for admission. *See id.*

237. *See Martin*, 984 F. Supp. at 1322. *See also Lansdowne*, 713 F. Supp. at 798. A shareholder member of the swim club paid a $250.00 initial fee, $32.00 annual dues for up to three family members, and $14.00 for each additional family member. An associate member of the swim club paid $230.00 per season. In Lansdowne, the government stipulated that these fees were "not insignificant." *Id.*

238. *See Martin*, 984 F. Supp. at 1321-22. *See also* John Feinstein, *Stay Out of This School*, GOLFWEEK, Jan. 1, 1995, at 200. In 1995, the PGA Tour qualifying school began in October with 800 players in regional qualifying tournaments. By the process of elimination, 190 players participated in the final qualifying school tournament. *See id.*

239. *See Martin*, 984 F. Supp. at 1325 n.4.

average current member plays at five below par.[240] In essence, the excellence of current PGA members' skills controls the admission of new members to the PGA.[241] Finally, the PGA maintains a strict standard of admission that is the same for every golfer: only the best scoring golfers at the qualifying school tournaments are eligible to join.[242] Thus, the *Martin* court utilized and relied upon an abridged version of the *Lansdowne* analysis of the genuine selectivity factor.[243] Under a complete *Lansdowne* analysis, the PGA satisfies the standards of genuine selectivity in membership factor.[244]

2. *Members Have Control Over the PGA's Operations*

The second factor of the *Lansdowne* analysis is the degree of membership control over the operations of the organization.[245] The *Martin* court, however, incorrectly applied membership control "over new members" rather than "over operations of the organization" as the second *Lansdowne* factor.[246] This factor should have been analyzed as one of several features under the genuine selectivity factor.[247] The *Lansdowne* membership control factor the court refers to is "membership control over the

---

240. *See* Mark Herrman, *Subtracting Handicap is Par for the Course*, NEWSDAY, Aug. 3, 1997, at B13. A handicap is the rating of amateur players based on the average of their scores which they record for each round of golf. The number would be used to gauge the number of strokes a player would either add or subtract from his score. This rating of a handicap is used in non-professional U.S.G.A. governed events to equalize the competition. *See id. See also* THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 515 (1975). Par is the standard score for each hole of golf or collection of eighteen holes in a single golf course. *See id.*

241. *See* Martin, 984 F. Supp. at 1321-22. *See also* Martin Beck, Steve Kresal, *Another Trip on the PGA Tour*, L.A. TIMES, Nov. 2, 1998, at D14. Only the top 125 players on the PGA's annual money earned list retain their PGA membership for the next year. Any players falling below the top 125 money winners return to qualifying school to again compete for their PGA playing privileges. Therefore, the skills of the top 125 money winners set the threshold which new members must attain. *See id.*

242. *See Martin*, 984 F. Supp. at 1321-22. *See also* Phil Richards, *Painful as it May Be, Golfer Pursues Dream*, INDIANAPOLIS STAR, May 21, 1998, at D1. Of the 26 million golfers in the United States, only the top 125 PGA Tour money winners in a given year are fully exempt from re-qualifying for the following year's PGA Tour at the qualifying school tournament. *See id.*

243. *See Martin*, 984 F. Supp. at 1324-25.

244. *See Lansdowne*, 713 F. Supp. 796-805.

245. *See id.*

246. *See id.*

247. *See Martin*, 984 F. Supp. at 1325. *See also Lansdowne*, 713 F. Supp. at 796-97.

operation of the establishment."[248] The *Lansdowne* court found that shareholder members controlled the operation of the swim club through their election of the board of directors.[249] Thus, the swim club satisfied the requirement of member control over the operations of the establishment.[250] Instead of considering the overall operational aspect of this factor, the *Martin* court analyzed the voting rights of PGA members only in the process of admitting new members.[251] The court stated that current members' rights to elect player directors to the PGA's policy board were insufficient to satisfy the standard under this factor of the analysis.[252] However, the player directors are initially elected by the PGA membership and the incumbent player directors, in turn, present a slate of candidates to the current members for the next year's election.[253] Thus, continuity of the PGA membership's control over the organization is maintained from season to season.[254] Therefore, the *Martin* court ignored evidence illustrating that PGA members had sufficient control

---

248. *Lansdowne* 713 F. Supp. at 796-97 (citing Durham v. Red Lake Fishing and Hunting Club, Inc., 666 F. Supp. 954 (W.D. Tex. 1987); United States v. Jordan, 302 F. Supp. 370 (E.D. La. 1969)). The *Jordan* court adopted the approach contained in the government's brief for its private club analysis. The *Jordan* court stated that control over the operations of an establishment was a factor to consider in determining whether a club was private. *See Jordan*, 302 F. Supp. at 375-76. In *Durham*, the court cited the private club analysis as set forth in *Jordan* and stated that the "core" factors that determine whether a club is private are genuine selectivity and the measure of control the members have over the operations of the establishment. *See Durham*, 666 F. Supp. at 960.

249. *See Lansdowne*, 713 F. Supp. at 804.

250. *See id.* The *Lansdowne* court found the swim club met the criteria for member control over operations, did not advertise for members, had an appropriate purpose, and had formal membership procedures, but held these features were insufficient to attain private club status. The *Lansdowne* court ruled the club was not private because the history of the organization showed the swim club's membership procedures were not genuinely selective on a reasonable basis because the origins of the club suggest it was intended to serve as a community pool, and the club's facilities were regularly used by nonmembers. *See id.* at 800-04.

251. *See Martin*, 984 F. Supp. at 1325.

252. *See id.* at n.4. Current PGA members vote for player directors from a slate of candidates chosen by the existing player directors. Four members of the policy board are player directors. *See id.* The *Martin* court summarized its analysis of membership control by stating that membership control of the organization does little to make it or keep it "private." *See id.* at 1325.

253. *See id.* at 1325 n.4.

254. *See id.* at 1325.

over the organization's operations to satisfy the standard under the membership control factor of the analysis.[255]

3. *The PGA's History Demonstrates that it is a Bona Fide Private Club*

The next *Lansdowne* factor the *Martin* court considered in determining whether the PGA was a private club was the history of the organization.[256] In *Lansdowne*, the court specifically rejected the definition of a bona fide private membership club contained in the Civil Rights Act and instead utilized the definition adopted in *Quijano v. University Federal Credit Union.*[257] The *Quijano* court stated that a bona fide private membership club must be for social or recreational purposes, or for the promotion of some common literary, scientific or political objective.[258] The club must also be legitimate (as opposed to sham), private (as opposed to public), and must require some meaningful conditions of limited membership.[259]

Examination of the PGA's origin and history shows that it met all four requirements of the *Quijano* definition for status as a bona fide private club.[260] First, the PGA's initial constitution and bylaws written in 1916 include objectives that could be considered political in nature; formation of a relief fund for needy colleagues, and employment assistance for the unemployed.[261] Second, the *Martin* court stated that the PGA was not a "sham" because it was not formed to evade the ADA.[262] Third, membership in the PGA was not unilaterally open to the

---

255. *See Lansdowne*, 713 F. Supp. at 796-802, 804.

256. *See Martin*, 984 F. Supp. at 1325.

257. *See* Quijano v. University Federal Credit Union, 617 F.2d 129, 131 (5th Cir. 1980). *See also Lansdowne*, 713 F. Supp. at 797 n.23.

258. *See Quijano*, 617 F.2d at 131-32.

259. *See id.* The *Quijano* court derived this definition from consulting Webster's Dictionary. The term private club (as opposed to public) is defined as a private club or other establishment not in fact open to the public. *See id.*

260. *See id.*

261. *See* Leonard Shapiro, *The "Other" PGA*, Vol. 40, GOLF MAGAZINE, Aug. 1, 1998, at 52. The original constitution and bylaws of the PGA, established on April 10, 1916, stated the following objectives: a relief fund for deserving down-on-their-luck colleagues, helping unemployed professionals find new jobs, and accomplish any other objective which may be determined by the association from time to time. *See id.*

262. *See Martin*, 984 F. Supp. at 1325.

public because members must successfully compete with other applicants to join.[263] Finally, the PGA possessed meaningful conditions of limited membership because the number of members admitted annually may be no more than thirty-five, and those applicants are admitted only through a selective process of athletic competition.[264] Therefore, because the PGA satisfies the requirements of a bona fide private club as set forth by the *Quijano* court and adopted by the *Lansdowne* court, the *Martin* court correctly found the PGA satisfied this factor of the analysis.[265]

4. Non-Members Do Not Use the PGA's Facilities

The *Martin* court relied on *Evans v. Laurel Links, Inc.*[266] and *Smith v. YMCA*[267] in determining that the participation of numerous non-members in PGA golf tournaments weighed heavily against its private club status.[268] In *Evans*, the golf course, Laurel Links Inc., permitted the Laurel Golf Association, an independent club limited to seventy-five dues-paying members, to conduct tournaments on its course.[269] The plaintiffs in *Evans* did not seek membership in the independent golf association, but instead sought the right to play on the Laurel Links commercial golf course.[270] Because the golf association was merely a customer of the golf course, the *Evans* court determined the

263. *See infra* notes 63-70 and accompanying text for the PGA's qualifying school tournament admission process.

264. *See infra* notes 63-70 and accompanying text for the PGA's qualifying school tournament admission process.

265. *See Quijano*, 617 F.2d at 129, 131-32; *Lansdowne*, 713 F. Supp. at 797 n.23.

266. 261 F. Supp. 474 (E.D.Va. 1966).

267. 462 F.2d 634 (5th Cir. 1972).

268. *See Martin*, 984 F. Supp. at 1325 (citing Smith v. YMCA, 462 F.2d 634 (5th Cir. 1972)). The *Smith* court found the Montgomery YMCA was open to the public, freely admitted almost all who applied for membership without question, enjoyed a substantial amount of revenue from the general public, operated a quasi-public agency, and was neither owned nor governed by its members. Based on these reasons, the Smith court found the YMCA failed to meet the standards required for private club exemption under the Civil Rights Act. *See* Martin, 984 F. Supp. at 1325. *See also Evans*, 261 F. Supp. at 476. The *Evans* court found that a golf club which opened its lunch counter to the public and generated revenues subjected the entire golf course to the Civil Rights Act. *See id.*

269. *See Evans*, 261 F. Supp. at 475.

270. *See id.* at 477.

association did not violate the Civil Rights Act.[271] The *Evans* court ultimately dismissed the golf association as a party to the suit.[272]

In Martin's case, his claims were based on the PGA's refusal to let him use a cart in the qualifying school tournament which, in turn, would determine whether he would became a PGA member.[273] Based on these facts, the *Martin* court's reliance on *Evans*, in which membership in a golf association was not at issue, and in which the golf association was ultimately dismissed as a party to the suit is inaccurate, was misplaced.[274]

The *Martin* court also relied on *Smith v. YMCA* in determining that the PGA was not exempt from the ADA as a private club because non-members used PGA facilities.[275] In *Smith,* the court found that the YMCA was not exempt from the Civil Rights Act under the private club exception because it was open to the public, freely admitted almost all who applied for membership, enjoyed substantial revenue from the general public, operated as a quasi-public agency, and was neither owned nor governed by its members.[276]

---

271. *See id.*

272. *See id.*

273. *See Martin*, 984 F. Supp. at 1322. Martin's claim that the PGA Tour violated ADA arose during his attempt to gain membership to the PGA via the Tour's qualifying school tournment. *See id.*

274. *See id.* at 1325 (citing Evans v. Laurel Links, Inc., 261 F. Supp. 474 (E.D.Va. 1966)).

275. *See Martin*, 984 F. Supp. at 1325.

276. *See Smith*, 462 F.2d at 648. In *Smith*, the YMCA had entered into a cooperative agreement with the City of Montgomery to operate their programs in coordination with the city's Park and Recreation Department. The *Smith* court found that this agreement transferred some of the authority of the City of Montgomery to the YMCA. This transfer of authority resulted in the YMCA serving as a municipal, rather than private agency. *See id.* Therefore, the lower court had determined: "the YMCA, in its discriminatory actions, had acted as a quasi-public agency and under "color of law." *Id.* at 641. *See also* BLACK'S LAW DICTIONARY 265-66 (6th ed. 1990). "Color of Law" refers to "the appearance or semblance, without the substance of legal right. Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state . . ." *Id.*

Unlike the YMCA in *Smith*, the PGA does not freely admit all who apply for membership.[277] Instead, the PGA employs a strict application process through its qualifying school tournament which allows only the best thirty-five applicants to become PGA members, and the next seventy best players to obtain Nike Tour playing privileges each year.[278] Additionally, the facts did not indicate that the PGA operated a quasi-public agency in holding its golf tournaments.[279] Finally, the voting process by which PGA members elect player directors indicated a sufficient degree of membership control over the organization's operations.[280]

In applying the *Smith* court's definitions of a private club to the PGA, the *Martin* court should have found that the PGA's facilities were not used by non-members.[281] The PGA did not freely admit all who applied for membership, did not operate a quasi-public agency, and was, to a sufficient degree, governed by its members.[282] Therefore, the *Martin* court should have found that non-members did not utilize PGA facilities.[283]

5. *The PGA's Purpose as a Club*

In determining that the PGA's commercial purpose weighed heavily against its private status, the *Martin* court noted that public participation and the resulting revenues were necessary to achieve the PGA's purpose.[284] However, the court failed to recognize an analogy to the long standing tradition of the private status of religious organizations based on their non-profit form of organization.[285] Religious organizations have system-

277. *See Martin*, 984 F. Supp. at 1321-22.
278. *See id.*
279. *See id.* at 1325. *See also Smith*, 462 F.2d at 641.
280. *See Martin*, 984 F. Supp. at 1325 n.4.
281. *See Smith*, 462 F.2d at 648.
282. *See Martin*, 984 F. Supp. at 1325.
283. *See Smith*, 462 F.2d at 648.
284. *See Martin*, 984 F. Supp. at 1323, 1325.
285. *See id.* at 1321. The *Martin* court states the PGA is a non-profit association of professional golfers. *See id. See also* I.R.C. § 501(c)(3). To qualify for federal nonprofit tax exemptions, an organization must operate a nonprofit corporation for charitable, religious, literary, educational or scientific purposes. This federal tax exemption relieves the organization from having to pay federal corporate income taxes, allows it to

atic tithing and donative programs.[286] Additionally, religious organizations routinely establish charitable programs for which they actively campaign for monetary donations from outside the congregation.[287] In turn, these donations are invested for the purpose of generating additional revenues to support various philanthropic enterprises.[288] Frequently, the charitable programs established by a religious group are utilized by members of the congregation, as well as the general public.[289] Without the financial contributions of participating members as well as donations from the general public, these religious organizations and their assistance programs could not exist.[290]

The *Martin* court's declaration of the PGA's commercial purpose is inadequate to support a finding that the PGA fails the organizational purpose factor of the *Lansdowne* analysis.[291] Similar to a religious charity's reliance on donations from the public, the PGA's purpose of promoting and educating the gen-

---

apply for exemption from other state taxes (such as excise, sales, franchise, etc.) and usually makes it eligible for a state income tax exemption. It also enables people who donate money to the organization to deduct their contributions on their federal (and, usually, their state) income tax returns. *See id.*

286. *See* Leith Anderson, *Clocking Out: Women are Choosing to Leave the Work Force in Increasing Numbers*, CHRISTIANITY TODAY, Sep. 12, 1994, at 30. A tithe is one-tenth of a member's annual income paid in support of a church. *See id.*

287. *See* Rachel Weissman, *Who'll Pay for the Christmas Goose?*, AM. DEMOGRAPHICS, Dec. 1, 1998, at 46. Of the $143.46 billion that was donated to charity in 1998, religious charities that operate in the United States garnered forty-seven percent of the total donations. *See id.*

288. *See World Council of Churches and Eastern European Churches Cold-War Record Upheld*, THE CHRISITIAN CENTURY, Dec. 3, 1997, at 1117. In 1996, Americans donated over $25.9 billion to the nation's 400 largest charities. To be included in this list, a charity organization must have raised at least $17.1 million in donations. The charities that reached this threshold are: Catholic Charities, Young Men's Christian Association, The Christian Appalachian Project, The Salvation Army (raised over $1 billion) and The American Red Cross. *See id. See also* Uzi Rebhun, *Geographic Mobility and Religioethnic Identification: Three Jewish Communities in the United States*, Vol. 34, Num. 4, J. FOR THE SCI. STUDY RELIGION, Dec. 1, 1995, at 485. According to this study, seventy-four percent of the people living in the groups polled contribute to Jewish charities. *See id.*

289. *See* Don Lattin, Lynda Glenhill, *A Look at Religious Charities' Missions in San Francisco*, S.F. CHRON, Sep. 15, 1998, at A9 (provides a comprehensive listing of religious charities and the various services they provide to the community regardless of religious affiliation).

290. *See* Rachel Weissman, *Who'll Pay for the Christmas Goose?*, AM. DEMOGRAPHICS, Dec. 1, 1998, at 46.

291. *See Martin*, 984 F. Supp. at 1323, 1325.

eral public about the sport of golf also depends on the public's willingness to contribute funds in the form of tournament admission and concession revenues.[292] Although a portion of the revenues generated are put into the prize funds awarded to the top players, the remainder funds the PGA's operating expenses and its contributions to various charities.[293]

The PGA is equivalent to other non-profit organizations that solicit donations from the public and use a portion of that money to support the infrastructure, as well as fund charitable causes it chooses to support.[294] Although the PGA's activities are commercial in the abstract sense that they generate revenue, its operations lack a profit motive at the organization level.[295] Commercial activity is not the equivalent of a commercial purpose because the latter is generally limited to profit making endeavors.[296] Therefore, the PGA satisfied the purpose of the organization factor of the *Lansdowne* analysis.[297]

6. *The PGA does not Advertise for Members*

In *Welsh v. Boy Scouts of America*,[298] a case relied on by Judge Coffin, the court specifically stated that an organization should not be penalized for its popularity.[299] Under the *Martin* court's *Lansdowne* analysis, the PGA was penalized because it was presumed to have advertised due to the extensive media

---

292. *See id.* at 1323. *See also See* Leonard Shapiro, *The "Other" PGA*, GOLF MAGAZINE, Aug. 1, 1998, at 52. The PGA has built, and continues to build, golf learning centers staffed with PGA members that educate the public about the game of golf. *See id. See also* Timothy W. Finchem, *Commissioner's Message, Professional Golf Association*, GOLF MAG., Jan. 1, 1997, at 92. Since 1938, the PGA Tour has donated over $300 million to charity, more than all other major sports charitable contributions combined. *See id.*

293. *See* Timothy W. Finchem, *Commissioner's Message, Professional Golf Association*, GOLF MAG., Jan. 1, 1997, at 92.

294. *See infra* notes 284-97, 305-314 and accompanying text regarding the PGA's purpose and non-profit status.

295. *See Martin*, 984 F. Supp. at 1321.

296. *See Lansdowne*, 713 F. Supp. at 804. The Lansdowne court found that the swim club's nonprofit organization supported its claim as a private club. *See id.*

297. *See id.*

298. 993 F.2d 1267 (7th Cir. 1993).

299. *See Martin*, 984 F. Supp. at 1325.

coverage it receives.[300] Because the *Martin* court presumed that the PGA's extensive media coverage was the substantial equivalent of advertising, the court penalized the PGA for being in the public eye.[301] While the PGA advertises its tournaments to television audiences, the purpose of the advertising is to generate enthusiasm for golf and educate the public about PGA charity events, not to recruit membership.[302] The court should have found that the PGA did not actively advertise for members and that the media coverage merely benefits its purpose as a non-profit organization.[303] Under such an analysis, the PGA should have satisfied the relevant criteria under this element of the *Lansdowne* test.[304]

7. *The PGA is a Non-Profit Entity*

The Martin court stated that the PGA's non-profit status did not support its private entity status because it exists to further the commercial interests of its members.[305] The *Martin* court relied on definitions and analysis from the Fifth Circuit Court of Appeal's case *Quijano v. University Federal Credit Union.*[306] However, a closer reading of *Quijano* indicates that the *Martin* court misapplied the *Quijano* analysis of whether an

---

300. *See id.*

301. *See id.* The Martin court stated: "The advertising factor carries little weight in the arena of professional sports." *Id.*

302. *See Landmarks: The Week of February 2, 1998*, ADVERT. AGE, Feb. 2, 1998, at 50. The PGA spent an undisclosed "millions" of dollars on its "These Guys Are Good" advertising campaign. *Id. See also* John Kunda, *Golf Tours Big Tease for Shut-Ins*, ALLENTOWN MORNING CALL, Jan. 20, 1998, at C1. Tim Finchem, PGA Tour Commissioner, commented on the PGA's "These Guys Are Good" advertising campaign: "We want to capitalize on the growing enthusiasm for golf by exposing fans to the tremendous competitive drama of our game. At the same time, we will continue to tell our fans about the strong support provided to charity through the PGA Tour Events." *Id.*

303. *See* John Kunda, *Golf Tours Big Tease for Shut-Ins*, ALLENTOWN MORNING CALL, Jan. 20, 1998, at C1.

304. *See Lansdowne*, 713 F. Supp. at 804. The *Lansdowne* court found the swim club's lack of advertising a countervailing consideration even though the club held a solicitation drive prior to the opening of the pool which effectively advertised the pool to the surrounding community when it first opened. *See id.* at n.40.

305. *See Martin*, 984 F. Supp. at 1325-26.

306. *See Quijano*, 617 F.2d 129. The *Quijano* case addressed racially discriminatory practices in violation of Title VII of the Civil Rights Act of 1964. *See id.*

entity is private based on its non-profit status.[307] In *Quijano*, the court drew an analogy between a non-profit credit union and an automobile club and held that these types of organizations were not private clubs because their members did not commingle, but merely pooled funds for common economic benefit.[308] Based on that finding, the *Quijano* court stated that the credit union could not be a private club because it existed purely for commercial purposes.[309] Therefore, by implication, the *Quijano* court required an element of commingling among the members of a non-profit organization for it to be considered a private club.[310]

The *Martin* court did not consider the commingling element of the *Quijano* court's analysis when it determined that the commercial interests of the PGA members did not support ADA exempt status.[311] Had the *Martin* court utilized both the non-profit and commingling elements defined in the *Quijano* case, it would have found that PGA members do socially commingle and do not merely pool their funds for commercial economic benefit.[312] Rather, PGA members regularly meet to participate in tournaments.[313] Additionally, because a PGA member must successfully compete in order to win prize money, a member has no guarantee that he will receive any commercial economic benefit from his membership in the PGA.[314] Therefore, under the complete analysis as stated in *Quijano*, the *Martin* court

---

307. *See Quijano*, 617 F.2d at 132. *See also Martin*, 984 F. Supp. at 1325.

308. *See Quijano*, 617 F.2d at 132. The *Quijano* court stated: "It is thought that there must be at least some sort of commingling of members to constitute a club." *Id.* The *Quijano* court described commingling as associating personally with others for any social, civic, political, business, or any other purpose. *See id.* at 129.

309. *See id.* at 133.

310. *See id.*

311. *See Martin*, 984 F. Supp. at 1325-26.

312. *See id.* at 1321-23. The PGA co-sponsors professional golf events on the regular PGA Tour, with approximately 200 golfers, the Nike Tour with approximately 170 golfers and the PGA Senior Tour with approximately 100 players. *See id.* at 1321. *See also* Leonard Shapiro, *The "Other" PGA*, GOLF MAGAZINE, Aug. 1, 1998, at 52. The PGA originally began as a fraternal organization of golfers. *See id.*

313. *See Martin*, 984 F. Supp at 1321, 1323.

314. *See Martin*, 984 F. Supp. at 1323. Prize money is awarded to PGA members that successfully compete in the golf tournaments. *See id. See also* Martin Beck, Steve Kresal, *Another Trip on the PGA Tour*, L.A. TIMES, Nov. 2, 1998, at D14. Only the top 125 players on the PGA's annual money earned list retain their PGA membership for the next year. *See id.*

should have found the PGA's non-profit status sufficient to support the ADA private club exemption.

8. The PGA Observes Formalities in its Processes

The *Martin* court neglected to analyze the final *Lansdowne* factor of formalities observed by a club.[315] In defining the type of club processes that satisfy the standard under this factor, the *Lansdowne* court stated that membership cards, bylaws, and meetings were indicative of formal processes in support of private club status.[316] Players qualifying to play on the PGA Tour were provided with a membership card.[317] The *Martin* court also referred to the PGA's rules and policy boards, as well as the regular meeting of players at tournament events.[318] Had the *Martin* court included this factor in its analysis, it should have found that the PGA also satisfied the requirements of this element of the *Lansdowne* analysis to determine private club status.[319]

Based on a comprehensive analysis of the *Lansdowne* criteria for establishing the existence of a private club, the PGA satisfies each of the *Lansdowne* factors.[320] The PGA is genuinely selective in its membership, a factor which the *Lansdowne* court stated deserved the most consideration when determining whether an entity is a private club.[321] PGA members

---

315. *See Martin*, 984 F. Supp. at 1325-26. The court concluded its analysis of the Lansdowne factors with whether the PGA was non-profit organization and rejected the PGA's argument that it was a private club. *See id.*

316. *See Lansdowne*, 713 F. Supp. at 797, 804.

317. *See* Bill Plaschke, *Verplank Can Read Martin the Ride Act*, L.A. Times, Feb. 27, 1998, at C8. A golfer obtaining the privilege to play on the PGA Tour is referred to as one who has "[picked] up his tour card." *Id.*

318. *See Martin*, 984 F. Supp. at 1325 n.4. *See also Martin*, 994 F. Supp. at 1248-49, 1250, 1252-53. The court frequently referenced the various rules of golf promulgated by the PGA. *See id.*

319. *See Lansdowne*, 713 F. Supp. at 796-805.

320. *See id.*

321. *See id.* at 785 (citing 42 U.S.C. § 2000a(e)). The *Lansdowne* court considered genuine selectivity the most important factor and stated the five features of genuine selectivity are: substantiality of the membership fee, the numerical limit on membership, the membership's control over the selection of new members, the formality of the selection process, and standards or criteria for admission. *See id.* at 797.

retain control over the organization because they possess voting rights to elect player directors.[322] The PGA's history shows that it is a bona fide club and not created to evade ADA compliance.[323] Although non-members of the PGA tangentially participate in tournaments, the PGA satisfies the use of facilities by non-members factor of the *Lansdowne* analysis under the standard set forth in *Smith v. YMCA*.[324] The purpose of the PGA is to promote and educate individuals about the sport of golf.[325] Although the PGA awards a portion of its revenues to its members as prize money, those awards do not differentiate it in any significant manner from other non-profit charitable organizations.[326] Although the PGA is extensively covered by the media, it does not advertise for members and should not be penalized for the popularity of its activities.[327] Finally, the PGA observes sufficient formalities in its processes to satisfy the eighth factor of a *Lansdowne* analysis.[328] Accordingly, the PGA should be exempt from ADA compliance.[329]

Of the three claims that Martin alleged against the PGA, two were rejected by the court.[330] The court rejected Martin's claims that the PGA was an employer and that the Nike Tour was a "course or examination" under the ADA.[331] Instead, the *Martin* court ruled only on the issue of whether the PGA operated a public accommodation.[332] Had the court found the PGA

---

322. *See Martin*, 984 F. Supp at 1325.

323. *See id.*

324. *See id.*

325. *See infra* notes 305-14 and accompanying text regarding the non-profit status of the PGA.

326. *See infra* notes 305-14 and accompanying text regarding the non-profit status of the PGA.

327. *See Martin*, 984 F. Supp. at 1325. *See also* Welsh, 993 F.2d at 1277.

328. *See Martin*, 984 F. Supp. at 1321-22.

329. *See* 42 U.S.C. § 12187 (1990). According to section 12187 of the ADA, private clubs and religious organizations are exempt from ADA requirements regarding public accommodations and services. *See id.*

330. *See Martin*, 994 F. Supp. at 1247 n.7. The court incorporated by reference the PGA's arguments that Martin was not a PGA employee and the Tour was not a course or examination. *See id.*

331. *See id.* at 1247.

332. *See id.*

exempt from ADA compliance, Martin would have had no claim for relief.[333]

B. THE *MARTIN* COURT'S CHOICE OF PERSUASIVE AUTHORITY

The court stated that its inquiry into the facts of Martin's particular disability was necessary to determine whether his request for a cart was reasonable.[334] While the court relied on the ruling in *Johnson v. Gambrinus*[335] regarding the necessity of a determination based on individual inquiry, it neglected other cases that ruled differently when applying the ADA to athletic programs.[336] For example, in *Sandison*,[337] the Sixth Circuit ruled that individual evaluation of the student seeking relief under the ADA would fundamentally alter the nature of the athletic program.[338] Sandison was a nineteen-year-old student whose learning disability caused him to fall two grades behind his age group.[339] Sandison was prevented from participating in high school athletics because the rules declared nineteen-year-olds ineligible to compete.[340] The *Sandison* court

333. *See Martin*, 994 F. Supp. at 1247. The *Martin* court rejected two of Martin's claims for relief: that the PGA was an employer, and the Nike Tour was a course or examination. The remaining claim that the PGA operated a place of public accommodation would not have been reached if the PGA were a private entity and exempt from ADA compliance. *See id.* at n.7.

334. *See id.* at 1248. The PGA objected to the introduction of a graphic video tape of Martin's leg on the grounds of relevance and hearsay. The relevance objection was based on the PGA's concession that Martin had a disability. *See id. See also* FED. R. EVID. 401. As defined by the statute, relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. *See id. See also* FED. R. EVID. 801(C). Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. *See id.*

335. 116 F.3d 1052, (5th Cir. 1997).

336. *See Martin*, 994 F. Supp. at 1248. The *Martin* court relied on the *Johnson* court's definition of what was reasonable. *See id. See also Johnson*, 116 F.3d at 1058-59. *See supra* note 347 and accompanying text for the *Johnson* court's definition of reasonable.

337. Sandison v. Missouri High School Athletic Ass'n., 64 F.3d 1026 (6th Cir. 1995).

338. *See id.* at 1035.

339. *See id.* at 1028.

340. *See id.*

specified that an individual evaluation to determine if an unfair advantage existed was not a reasonable accommodation.[341]

Similarly, in *McPherson*,[342] the Sixth Circuit found that a high school sports program would be fundamentally altered if the school waived its eligibility rule to accommodate a mentally disabled student.[343] However, the *Martin* court did not follow *Sandison* or *McPherson*, in which individual evaluation of a disabled athlete were not deemed a reasonable accommodation.[344] Instead, the *Martin* court limited its review to *Johnson*, which determined the more remotely related issue of whether the use of a seeing eye dog on a public tour of a beer brewery was permissible.[345]

Judge Coffin further cited *Johnson* when defining a reasonable accommodation under the ADA.[346] Examination of *Johnson*, however, reveals that the court's definition of reasonable accommodation in the context of the ADA was "reasonable in the general run of cases" when confronted with the defense of fundamental alteration.[347] The *Johnson* court stated that evi-

---

341. *See id.* at 1035.

342. McPherson v. Michigan High School Athletic Ass'n., 119 F.3d 453 (6th Cir. 1997).

343. *See id.* at 462.

344. *See Sandison*, 64 F.3d at 1026; *McPherson*, 119 F.3d 453.

345. *See Johnson*, 116 F.3d at 1052, 1059. *See also infra* note 198 and accompanying text for a discussion ofJohnson.

346. *See Martin*, 994 F. Supp. at 1248 (citing Johnson v. Gambrinus Co., 116 F.3d at 1052, 1059 (5th Cir. 1997)). The *Martin* court also cited a Ninth Circuit case, Crowder v. Kitagawa, 81 F.3d 1480, 1486 (9th Cir.1996), to support its definitions of reasonable and the necessity of case-by-case inquiry. However, the *Crowder* case involved the quarantine of a seeing eye dog in Hawaii. *See Crowder*, 81 F.3d at 1486.

347. *See Johnson*, 116 F.3d at 1059. The *Johnson* court outlined the plaintiff's and the defendant's respective burdens of proof when an accommodation is requested under either Title I or Title III of the ADA. The *Johnson* court stated:

> The plaintiff has the burden of proving that a modification was requested and that the requested modification is reasonable. The plaintiff meets this burden by introducing evidence that the requested modification is reasonable in the general sense, that is, reasonable in the general run of cases. While the defendant may introduce evidence indicating that the plaintiff's requested modification is not reasonable in the run of cases, the plaintiff bears the ultimate burden of proof on the issue. . . If the plaintiff meets this burden, the defendant must make the requested modification unless the defendant pleads and meets its burden of proving that the requested modification would fundamentally alter the nature of the public accommodation. The type of evidence that satisfies this burden focuses on the specifics of the plaintiff's or defendant's circumstances and not on the general nature of the

dence focusing on specific circumstances was relevant to showing that the requested accommodation fundamentally altered an organization, but was irrelevant to show that an accommodation was reasonable.[348]

The PGA argued that providing Martin with a cart would fundamentally alter the nature of its golf competitions.[349] Because the PGA mounted a fundamental alteration defense, the "general run of cases" applicable to the PGA's position were the *Sandison* and *McPherson* cases that stated individual evaluation fundamentally alters the nature of the athletic competition.[350] Had the court not mistakenly relied on *Johnson* for the purpose of determining reasonable accommodation of Martin's disability, the court would likely have held that the use of a cart was not a reasonable accommodation because it fundamentally altered the nature of the PGA's golf tournaments.[351]

C. PGA RULES PROVIDE A REASONABLE ACCOMMODATION FOR DISABLED GOLFERS

Finally, in the *Martin* court's examination of the USGA and PGA rules of golf, the court found no requirement for walking and specifically stated that the collegiate athletic associations, the Pac-10 and the NCAA, permitted disabled players to use carts.[352] However, until Martin began to play for Stanford in 1994, the NCAA also had a "no-cart rule."[353] At that time, the NCAA and Pac-10 coaches voted to suspend the rule to accommodate Martin's disability.[354] What the *Martin* court failed to

---

> accommodation . . . such evidence is relevant only to a fundamental alteration defense and not relevant to the plaintiff's burden to show that the requested modification is reasonable in the run of cases.

Id.

348. *See id.* at 1059-60.

349. *See Martin*, 994 F. Supp. at 1244.

350. *See Sandison*, 64 F.3d at 1035; *Pottgen*, 40 F.3d at 930; *McPherson*, 119 F.3d at 462.

351. *See Martin*, 994 F. Supp. at 1248-49.

352. *See id.* at 1248.

353. *See* William Wiswall, *Fairway, or Out of Bounds?*, SUN-SENTINEL (Ft. Lauderdale Fla.), Feb. 2, 1998, at 10C.

354. *See id.*

note was that in *Bowers v. NCAA*,[355] the college athletic organizations' rules provided a reasonable accommodation for a disabled player by allowing the coaches to vote on whether to suspend the "no-cart rule."[356] Similarly, in the *Martin* case, the PGA allowed for waiver of a rule at the discretion of the PGA Tour Rules Committee.[357] The PGA Tour Rules Committee denied Martin's request to use a cart, however, that did not mean the PGA lacked a method of providing reasonable accommodation to disabled golfers.[358] Rather, the Rules Committee merely decided a course of action.[359] Therefore, instead of insisting upon Martin's use of a cart as the only reasonable accommodation, the court could have found that the PGA's ability to modify its rules was a sufficiently reasonable accommodation.[360] Because the PGA Tour Rules Committee considered Martin's request for a waiver of the "no-cart rule," the court should have granted summary judgment in favor of the PGA on the issue of reasonable accommodation.

Additionally, the *Martin* court referenced a USGA rule pamphlet in determining that an alteration of the PGA's rules would not fundamentally alter the nature of the its tournaments.[361] The court specifically referred to the rules applicable to a blind golfer.[362] However, the USGA rules also provided

---

355. *See* Bowers v. National Collegiate Athletic Assoc., 974 F. Supp. 459, 465 (D.N.J. 1997). In *Bowers*, the court held that for purposes of the ADA, NCAA bylaws provided more than adequate reasonable accommodation for students with learning disabilities and complete abandonment of the "core course" requirement would fundamentally alter the nature of the program, and, thus, was not required. *Id. See also infra* notes 46-54 and accompanying text for a discussion of *Bowers*.

356. *See* William Wiswall, *Fairway, or Out of Bounds?*, SUN-SENTINEL (Ft. Lauderdale Fla.), Feb. 2, 1998, at 10C.

357. *See Martin*, 994 F. Supp. at 1249. PGA modification of USGA Rule 6 Transportation states: "Players shall walk at all times during a stipulated round unless permitted to ride by the PGA Tour Rules Committee." *Id.*

358. *See id.* at 1244. *See also Bowers*, 974 F. Supp. at 465.

359. *See Martin*, 994 F. Supp. at 1249.

360. *See Bowers*, 974 F. Supp. at 467.

361. *See Martin*, 994 F. Supp. at 1252-53. The court referred to a pamphlet published by the United States Golf Association entitled, A Modification of Rules of Golf for Golfers with Disabilities, which contains permissible modifications to the rules of golf for use by disabled golfers. *See id.*

362. *See id.*

alternatives for five distinct categories of disabled golfers.[363] In addition to blind golfers, the USGA has modified rules for amputee golfers, golfers requiring canes or crutches, golfers requiring wheelchairs, and mentally disabled golfers.[364] Considering that at least two of these categories are more closely related to Martin's particular disability, golfers requiring canes or crutches and golfers requiring wheelchairs, the court's choice to draw an analogy to a blind golfer to bolster its rejection of the PGA's argument was unfounded.[365]

VII. CONCLUSION

The United States District Court for the District of Oregon determined that the PGA was not a private club and that it operated a place of public accommodation during its golf tournaments.[366] Accordingly, the PGA was not exempt from the ADA and had to provide reasonable accommodation to Casey Martin unless such accommodation fundamentally altered the nature of its golf tournaments.[367]

The *Martin* case stands for the principle that an entity must establish the essential functions of a task prior to any dispute if it hopes to mount a successful fundamental alteration defense.[368] This includes defining what minimum physical requirements are necessary to perform a given task.[369] Next, the entity must establish what reasonable accommodations would

---

363. THE UNITED STATES GOLF ASSOCIATION, A MODIFICATION OF RULES OF GOLF FOR GOLFERS WITH DISABILITIES, 1997.

364. *See id.*

365. *See Martin*, 994 F. Supp. at 1252-53. The preface to the United States Golf Association, A Modification of Rules of Golf for Golfers with Disabilities pamphlet states that the publication contains permissible modifications to the rules of golf for use by disabled golfers. Judy Bell, former president of the USGA offered specific testimony that the pamphlet is intended for use by recreational golfers, not by PGA members. *See id.*

366. *See* Martin v. PGA Tour, Inc., 984 F. Supp. 1320 (D. Or. 1998); Martin v. PGA Tour, Inc., 994 F. Supp. 1242, 1253 (D. Or. 1998).

367. *See Martin*, 984 F. Supp. 1320; *Martin*, 994 F. Supp. 1242, 1253.

368. *See* Eric Matusewitch, ADA Update: *Courts are Ruling on Essential Job Functions*, ANDREWS EMPLOYMENT LITIG. REP., Mar. 10, 1998, at 3.

369. *See id. See also Martin*, 994 F. Supp. at 1249. The *Martin* court stated that nothing in the PGA's rules requires or defines walking as a part of the game. *See id.*

be for a person with a qualified disability.[370] If an essential function is not identified, a physically disabled individual could expect a reasonable accommodation.[371]

The *Martin* court's decision sparked a well publicized controversy.[372] Additionally, the court's decision raises practical concerns for sports organizations that formerly possessed absolute rulemaking authority over member participation.[373] That authority is now subject to the judicial interpretations of challenges from athletes with debilitating conditions.[374] Reit-

---

370. *See id.* The court rephrased the issue as: "whether allowing plaintiff, given his individual circumstances, the requested modification would fundamentally alter PGA and Nike Tour golf competitions." *Id.*

371. *See Martin*, 994 F. Supp. at 1253. In finding the rules of golf did not require walking, the court stated; "[t]he rules, as demonstrated, are not so sacrosanct. The requested accommodation of a cart is eminently reasonable in light of Casey Martin's disability." *Id.*

372. *See Daly Done with Tour Events in '98*, NEWS & OBSERVER (Raleigh NC), Aug. 19, 1998, at C5. *See also* Mike Cullity, *Ticket to Ride: The Casey Martin Decision, Tour Not Giving Up, Appeal in Progress*, GOLFWEEK , Feb. 21, 1998 at 32. The PGA announced that it would appeal the court's decision. *See id. See also* Jim Murray, *Golf's Athletic Challenges Must be Met to Complete*, L.A. TIMES, Feb. 5, 1998 at C1. This sportswriter drew an analogy between Casey Martin and a one-legged baseball pitcher, Monty Stratton, rhetorically asking if the rules of baseball should have been changed to outlaw bunting. The author then states that if bunting had been outlawed, a player like Maury Wills (a former player for the Los Angeles Dodger who was renowned for bunting) would probably never have made it to first base. The article also recalls that the rules of baseball were not changed for Pete Gray, a one-armed outfielder who played professional baseball during World War II. Had the rules been modified, the author supposed the rule would have been that no runner can take another base while the handicapped player changed the ball from glove to throwing hand. *See id. See also* Patrick Reusse, *The Casey Martin Scam*, STAR-TRIB. (Minneappolis-St. Paul), Mar. 11, 1998, at 01C. Reusse wrote: "It was a cinch U.S. Magistrate Thomas Coffin would bow to political pressure and side with Martin. The common sense argument -- that physical limitations prevent thousands of people from competing in professional sports endeavors -- never had a chance after Bob Dole and still-serving politicians jumped on Martin's bandwagon." *Id.*

373. *See* Thomas Heath, *Judge Rules in Golfer's Favor*, WASH. POST, Feb. 12, 1998, at A1. The Martin case raised the issue of whether courts and judges can use the ADA to make rules for professional sports leagues. *See id.*

374. *See id.* PGA Tour Commissioner, Tim Finchem, criticized the judicial system that allowed PGA rules to be decided by a judge who did not play golf. *See id. See also* Jim Murray, *Golf's Athletic Challenges Must Be Met To Compete*, L.A. TIMES, Feb. 5, 1998, at C1. This sports editorialist asks: "suppose I yearn for a big league baseball career. But I couldn't hit a curve ball. Should I go to a lawyer to file suit, get an injunction against the pitchers throwing me a curve ball? Say it interferes with my right to make a living." The author continues, stating: "Congress didn't invent the game of golf and it has no business dictating how it should be played." *Id.*

erating that the PGA should retain sole rulemaking authority over its golf tournaments, Tour Commissioner Tim Finchem summed up the organization's philosophy for establishing equitable playing conditions for all participants in its events: "Play the course as you find it; play the ball as it lies; and, if you can't do either, do what's fair."[375]

Patty Maitland[*]

375. *See* Tim Finchem, *Fair Way, or Out of Bounds?* SUN-SENTINEL (Ft. Lauderdale Fla.), Feb. 2, 1998, at 10C. Tim Finchem quoted a three step blueprint by Richard Tufts in "Principles Behind the Rules of Golf" for writing golf rules and regulations. *See id.*

* Golden Gate University School of Law, J.D. Candidate, 1999; B.S. Telecommunications Management, Golden Gate University, 1996. This article is first and foremost dedicated to my mother, but I thank my significant other, Ralph Roque, for his unending supply of patience and golf knowledge. I would also like to thank Maestro Cole Harkness for his insight on accommodating physically disabled individuals in professional athletic competitions. Most importantly, I thank my sisters without whose fore"bear"ance this paper would not have been possible.