No. 98-35309

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CASEY MARTIN,

Plaintiff-Appellee

v.

PGA TOUR, INC.,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

CASES (continued): **PAGE**

CASES (continued): **PAGE**

STATUTES:

STATUTES (continued): **PAGE**

REGULATIONS:

MISCELLANEOUS:

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STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. 1331, 1343, and 42 U.S.C. 12188(a). The district court entered final judgment in favor on the plaintiff on March 4, 1998 (R. 91; E.R. 179).[1/] The defendant filed a timely notice of appeal on March 20, 1998 (R. 102; E.R. 182). This Court has appellate jurisdiction under 28 U.S.C. 1291.

INTEREST OF THE UNITED STATES

Plaintiff is a professional golfer who seeks a modification of the PGA Tour's no-cart rule under Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12181 et seq., to permit

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[1/] References to "R. __" are to docket numbers on the district court docket sheet. References to "E.R. __" are to page numbers in the Excerpts of Record filed along with appellant's opening brief. References to "Tr. __" are to page numbers in the trial transcript. References to "Br. __" are to page numbers in appellant's opening brief.

him to use a golf cart in certain golf tournaments. Plaintiff has a permanent disability in his right leg that precludes him from walking an eighteen-hole golf course. Title III prohibits discrimination against persons with disabilities in places of public accommodation, including by failing to make a reasonable modification of existing policies or practices, unless doing so would "fundamentally alter" the nature of the services offered. 42 U.S.C. 12182(b)(2)(A)(ii).

The Department of Justice has substantial enforcement responsibilities under Title III. 42 U.S.C. 12188(b). Pursuant to 42 U.S.C. 12186(b) and 12206(c)(3), the Department has also issued regulations and a Technical Assistance Manual interpreting Title III. See 28 C.F.R. Pt. 36 (1997); The Americans with Disabilities Act Title III Technical Assistance Manual (November 1993). Because this appeal presents fundamental questions addressing the nature of a public accommodation as defined in 42 U.S.C. 12181(7), and application of the reasonable modification provision to the rules of athletic competitions, the Court's decision in this case could affect the Department's enforcement of Title III.

STATEMENT OF THE ISSUES

1. Whether the PGA Tour operates a "place of public accommodation" subject to Title III of the ADA on the golf courses on which it conducts its tournaments for eligible golfers.

2. Whether the PGA Tour violated Title III of the ADA by refusing to modify its no-cart rule for Casey Martin, who requested such a modification because of his disability that substantially limits his ability to walk.

STATEMENT OF THE CASE

1. a. Casey Martin is a professional golfer. He has a rare permanent congenital malformation of his right leg, known as Klippel-Trenaunay Syndrome. This condition affects the circulation process; the blood can circulate into his lower right leg, but the veins fail to circulate the blood back to his heart. As a result, the leg becomes engorged in blood. The condition often leads to amputation. See generally Martin v. PGA Tour, Inc., 994 F. Supp. 1242, 1243-1244 (D. Or. 1998) (Martin II); Tr. 95, 99, 119-120.

Because of this condition Martin's right leg is severely atrophied and weakened. This condition also causes severe pain and discomfort, even while Martin is engaging in daily activities or resting. It makes walking particularly painful, difficult, and even dangerous. Walking places Martin at significant risk of fracturing his tibia because of his increasing loss of bone stock and weakening of the bone. Walking also places Martin at significant risk of hemorrhaging and developing blood clots. To help alleviate these problems, Martin uses a double set of support stockings to force blood up through the leg and promote circulation. He also seeks to elevate his leg when possible to

assist in the recirculation of blood. See generally Martin II, 994 F. Supp. at 1243-1244; Tr. 81-100; 550-563.

Martin's condition was first diagnosed when he was a child, and has steadily worsened over time. See Tr. 81-88. Although he used to be able to walk the entire golf course, he can no longer do so. His treating physician, Dr. Donald Jones, testified that it is medically necessary for Martin to use a cart to play the game of golf. See generally Martin II, 994 F. Supp. at 1249-1250.

b. The defendant PGA Tour, Inc., is a non-profit association of professional golfers. Martin v. PGA Tour, Inc., 984 F. Supp. 1320, 1321 (D. Or. 1998) (Martin I). The PGA sponsors and cosponsors professional golf tournaments on three tours: the regular PGA Tour (with approximately 200 players in a given year); the Senior PGA Tour (approximately 100 players, all of whom must be at least 50 years old); and the Nike Tour (approximately 170 players).[2/] There are various ways to gain playing privileges on these tours. Of relevance here is the PGA's three-stage qualifying school tournament for the regular PGA and Nike Tours. The first and second stages consist of the 72 holes each; the top scorers in the first stage advance to the second stage. In 1997, approximately 1,200 competitors played in

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[2/]The PGA conducts most, but not all, of the professional golf tournaments in the United States. For example, the United States Golf Association (USGA), an association of golf clubs and golf courses (and regarded as the governing body of golf in the United States that, among other things, promulgates the Rules of Golf), conducts the United States Open golf championship. See Brief for the United States Golf Association as Amicus Curiae at 1-2.

the first stage of the qualifying tournament (E.R. 9). After the second stage, the top qualifiers (approximately 168 players) advance to the final stage, which consists of 108 holes. The top 35 finishers (plus ties) qualify for the regular PGA Tour, and the next 70 finishers qualify for the Nike Tour. A player who qualifies for the Nike Tour (but not the PGA Tour) may obtain playing privileges on the PGA Tour by winning three Nike Tour events in a season. In addition, the top 15 players on the Nike Tour money list qualify for the PGA Tour. To enter the qualifying school tournament, a prospective player must pay a $3,000 fee and submit two letters of reference. See generally E.R. 8-9; Martin I, 984 F. Supp. at 1321-1322.

In the first two stages of the qualifying tournament, players are permitted to use golf carts; in the third stage, they are not. Martin I, 984 F. Supp. at 1322. Prior to 1997, however, players were permitted to use carts in all three stages of the qualifying tournament (Tr. 848-849). Both the regular PGA Tour and the Nike Tour require players to walk. The Senior PGA Tour permits the use of carts. Martin I, 984 F. Supp. at 1322 & n.1.

c. The general "Rules of Golf," promulgated by the United States Golf Association (USGA) and the Royal and Ancient Golf Club of St. Andrews, Scotland (see E.R. 133-140), do not require walking or prohibit the use of carts. Rule 1-1 provides that "[t]he Game of Golf consists in playing a ball from the teeing ground into the hole by a stroke or successive strokes in

accordance with the rules." See Martin II, 994 F. Supp. at 1249. The USGA and the Royal and Ancient Golf Club issue decisions interpreting the rules. These decisions provide that it is permissible to ride a cart unless it is prohibited by local rules defining the conditions of competition for a particular event. Ibid. Moreover, Appendix I to the Rules of Golf -- setting forth, pursuant to Rule 33-1, the Conditions of Competition under which a particular competition shall be governed -- provides under the heading "Transportation" that "[i]f it is desired to require players to walk in a competition, the following condition is suggested: Players shall walk at all times during a stipulated round." Ibid.; E.R. 140. The PGA and the Nike Tour have both adopted walking as a "condition of competition"; they have not adopted the mandatory language suggested in Appendix I. See Br. 10 & n.8. The Conditions of Competition for both the Nike Tour and the PGA Tour provide that players "shall walk at all times * * * unless permitted to ride by the * * * Rules Committee. See E.R. 141; Br. 10 n.8.

The district court found that the parties had not cited any written policy governing the PGA Tour's Rules Committee exercise of discretion regarding a waiver of the walking requirement. When the walking requirement has been waived, it has been waived for all competitors, for example, to shuttle players between holes when considerable distance is involved. The court found that no waiver has ever been granted for individualized

circumstances, such as a disability. Martin II, 994 F. Supp. at 1249.[3/]

2. In November 1997, Martin entered the PGA's qualifying school tournament (E.R. 9). He successfully participated in the first and second qualifying stages (using a cart), and therefore qualified for the third and final stage of the qualifying tournament, which was set to begin on December 3, 1997 (R. 1 at 3-4). Martin requested that he be permitted use of a cart for the third stage (E.R. 9). The PGA denied the request (Tr. 442).

On November 26, 1997, Martin filed suit against the PGA Tour, Inc., seeking to enjoin defendant's no-cart rule during the third stage of the qualifying tournament, as well as the Nike Tour and the regular PGA Tour (if he qualified for those tours) (R. 1). He asserted that he has a disability that substantially limits his ability to walk, and that if he "is not permitted to use a golf cart he will be forced to play in substantial pain and with significant physical disadvantage and will not be able to minimally compete in the Final Qualifying Stage * * *, the PGA

[3/]Martin graduated in 1995 from Stanford University, where he was awarded a golf scholarship (Tr. 547). Although collegiate rules prohibit the use of golf carts (and caddies), when Martin's condition worsened his disability was accommodated and he was permitted to use a golf cart, as needed, in the collegiate competitions. See Tr. 353-356, 565-567; R. 65 at 3-4. After graduation, Martin turned professional and played in some mini-tournaments. In 1996 and 1997, he played on the Hooters Tour, where carts are not allowed. When his condition worsened, he asked for permission to use a cart, but his request was denied. Although he continued to play in some tournaments, he was restricted in the number of tournaments he could play. Martin also played on another mini-tour in late 1996 and early 1997, known as the Tommy Armour Tour, which is smaller than the Hooters Tour and permits the use of carts. See generally R. 65 at 4-5.

Tour or the Nike Tour" (R. 1 at 4-5). Martin alleged that by failing to reasonably modify its policies to permit him to use a golf cart to afford him equal participation in defendant's golf tournaments defendant violated Title III of the ADA, 42 U.S.C. 12182(b)(2)(A)(ii).[4/]

On the same day, Martin filed a motion for a preliminary injunction permitting him to use a cart during the third stage of the qualifying tournament (R. 3). On November 28, 1997, the court granted the motion (R. 9). As a result, the defendant lifted the no-cart rule for all competitors in the third stage of the qualifying tournament. See Martin I, 984 F. Supp. at 1322. Martin scored well enough in the third stage of the qualifying tournament to earn playing privileges on the Nike Tour (but not on the regular PGA Tour). By agreement between the parties, the injunction was extended to include the first two tournaments on the Nike Tour. Ibid.; E.R. 9. Martin won the first tournament (E.R. 9).[5/]

On December 24, 1997, the PGA Tour moved for summary judgment, asserting that the PGA Tour was a private club exempt from the ADA and that, in any event, the ADA did not apply to the

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[4/]Martin also alleged that defendant violated Title III because the qualifying competitions constitute "examinations or courses" under 42 U.S.C. 12189 (requiring "examinations or courses" for professional purposes to be offered in a manner accessible to persons with disabilities) (R. 1 at 4).

[5/]On December 19, 1997, Martin filed an amended complaint, adding a new claim that the PGA violated Title I of the ADA (the employment discrimination provisions) because Martin was an applicant or employee under that Title (R. 13 at 8-9).

PGA Tour because its golf competitions are not places of "public accommodation" under Title III of the ADA (R. 20). The PGA Tour also argued that the Nike Tour is not an "examination or course," and that plaintiff is not an "employee" of the PGA Tour under Title I of the ADA. Martin opposed the motion, and filed a motion for partial summary judgment on the same issues (R. 44, 54).

3. On January 30, 1998, the district court issued a decision, denying the PGA Tour's motion for summary judgment, and granting Martin's motion in part. R. 69; E.R. 20-35; Martin I, 984 F. Supp. 1320. The court held that the PGA Tour was not exempt from the ADA as a private club, and that the PGA Tour operates a place of "public accommodation" at the golf courses at which it conducts its tournaments. Martin I, 984 F. Supp. at 1323-1327. The court deferred ruling on the employment discrimination and "examinations and courses" claims. Id. at 1327.

4. A bench trial was held February 2-11, 1998. On February 19, 1998, the district court issued its decision, holding that the PGA Tour violated Title III of the ADA, 42 U.S.C. 12182(b)(2)(A)(ii), by failing to modify its no-cart rule for Martin in view of his disability that substantially limits his ability to walk. R. 88; Martin II, 994 F. Supp. 1242.[6/] The

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[6/]The court rejected Martin's claims that the Nike Tour is a "examination[] or course[]" under Title III of the ADA, and that he was an "employee" under Title I. Martin II, 994 F. Supp. at 1247 & n.7.

court first rejected the PGA's broad argument that the walking requirement is a substantive rule of its competition, and that any modification of such rules necessarily results in a fundamental alteration of its competitions.[7/] The court emphasized that "the ADA does not distinguish between sports organizations and other entities when it comes to applying the ADA to a specific situation." Id. at 1246. The court also rejected the argument that waiving the walking requirement would fundamentally alter its golf competitions. The court noted that the asserted purpose of the walking rule is to inject the element of fatigue into the game, but that "[t]he fatigue [Martin] endures just from coping with his disability is undeniably greater than the fatigue injected into tournament play on the able-bodied by the requirement that they walk from shot to shot." Id. at 1251.

On March 4, 1998, the court entered judgment in favor of Martin on Count I of the amended complaint (reasonable modification under Title III), and in favor of the PGA Tour on Counts II and III (the "examination or course" and "employee" claims) (R. 91; E.R. 179-180). The court entered a permanent injunction requiring the PGA Tour to provide Martin with a golf cart in Nike and PGA Tour competitions for which he is eligible (R. 91; E.R. 180).

[7/] The PGA Tour did not contest that Martin has a disability within the meaning the ADA, or that his disability prevents him from walking during a round of golf. See Martin II, 994 F. Supp. at 1244.

5. On March 20, 1998, the PGA Tour filed a timely notice of appeal (R. 102; E.R. 182).[8/]

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Casey Martin is a highly skilled golfer who has successfully competed in numerous golf competitions as an amateur and professional. In some of these golf tournaments he has walked, in others he has used a golf cart. Because of a rare congenital malformation of his right leg, however, walking has become increasingly difficult, painful, and even dangerous. As a result, in late 1997 Martin requested that the PGA Tour waive its rule requiring competitors to walk and permit him to use a golf cart in the PGA's tournaments. Without evaluating Martin's particular condition, the PGA refused. The district court found that the PGA's refusal to modify its no-cart rule violated Title III of the Americans With Disabilities Act because Martin's request was reasonable and would not "fundamentally alter" the nature of the golf competitions. See 42 U.S.C. 12182(b)(2)(A)(ii). We believe that decision is correct.

1. On appeal, the PGA first argues that Title III does not apply in these circumstances because the playing areas of the golf courses are not open to the general public and thus are not "places of public accommodation" under Title III. Title III,

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[8/]On April 6, 1998, Martin filed a cross-appeal on the issues whether he is an employee of the PGA under Title I of the ADA and whether the Nike Tour is an "examination[] or course[]" under Title III (R. 116). In June 1998, that appeal was voluntarily dismissed pursuant to an order of this Court permitting Martin to raise these issues in his brief as appellee as alternate grounds for affirmance. We do not address these issues.

however, defines a place of public accommodation to include a golf course (as a "place of exercise or recreation"), as well as a stadium (as a "place of exhibition or entertainment"). Thus, even if the golf course is viewed as not being used for exercise and recreation during a golf tournament, it is certainly being used as a place of exhibition or stadium, and is covered as such. In either circumstance, there is no basis for carving out a "private" zone of a place of public accommodation that would fall outside the coverage of Title III. Although facilities that are not generally a place of public accommodation may, in some of their operations, be subject to the statute (such as the public tours given by a factory), it does not work the other way. A place of public accommodation cannot create a zone that is exempt from the Act simply by imposing more restrictive admission or eligibility requirements for that area. Further, the PGA has abandoned its argument (rejected by the district court) that it is a "private club" exempt from the Act.

Moreover, the mere fact that access is strictly controlled does not mean that a facility is not a place of public accommodation. Many facilities that are not open to the general public but are open only to specific invitees are nevertheless places of public accommodation. For example, even the most selective private school -- with rigorous admissions criteria and limited openings -- is a place of public accommodation under the Act. And in this case, the fact that it is athletic skill, and not some other criteria, that restricts access to all but a very

few does not mean that the playing areas of the golf course cannot be a place of public accommodation. The fact is, any golfer who pays the required fee and qualifies for eligibility based on his performance in the qualifying tournament can play in the PGA's tournaments.

If the PGA is correct and Title III of the ADA does not apply to the playing areas of the golf course, the PGA could not only refuse to accommodate similar requests for reasonable modifications by disabled competitors, it could bar their participation altogether. For example, the PGA could bar golfers who are deaf or infected with asymptomatic HIV even if those disabilities have no bearing on the golfers' ability to compete in the tournament and do not affect other competitors. Such a result would clearly run afoul of Congress's intent in enacting the ADA to broadly ensure that individuals with disabilities participate fully in our society. See 42 U.S.C. 12101(a).

2. On the merits, the PGA argues that the walking rule is a "substantive" rule of its golf competitions and therefore any modification of the rule would necessarily fundamentally alter the competition because not all competitors would be playing by the same rules. The PGA's argument reaches too far. As an initial matter, rules of athletic competitions are not categorically excluded from the ADA, whether characterized as "substantive" or otherwise. Although some kinds of rules of competition cannot be modified without fundamentally altering the nature of the competition, others can. The court must examine

the nature and purpose of the rule, along with the disabled person's individual circumstances, to determine whether the rule can be reasonably modified without fundamentally altering the competition.

In our view, in this context two general principles apply to this determination: First, modification of the rule will likely result in a fundamental alteration if the rule defines what competitors actually must do to play the game and complete the competition (e.g., the physical activities that comprise the game), or if the rule otherwise defines the skill level of the competition. Thus, for example, all participants in a PGA tournament may be expected to start from the same tees to hit a similar golf ball into the same holes with the same number of clubs. These rules must apply equally to all competitors, and such rules need not be modified to accommodate a lesser skill level. Second, in other circumstances, such as when the purpose of a rule is not to test the skill of the individual but to impose a general condition on the player -- in this case, added stress and fatigue -- the rule should be modified but only if the particular modification would not give the disabled person a competitive advantage. That determination requires a highly factual individualized assessment of the disabled person, the nature of the competition, and the purpose of the rule.

In this case, the rule requiring walking between golf shots is not a rule that defines what golfers actually do in a competition. The record makes clear that the Rules of Golf do

not require walking and that the PGA itself permits the use of carts in some of its tournaments. Moreover, even in the regular PGA and Nike Tour events where walking is generally required, the PGA's rules provide that its Rules Committee may permit competitors to use carts. A rule that sometimes allows use of a cart and sometimes does not can hardly be an essential element of the game of golf. Further, Casey Martin is a highly skilled golfer who has successfully performed at the professional level; permitting him to use a cart does not accommodate a lesser skill level because walking has nothing to do with the skill it takes to execute golf shots during a competitive golf tournament.

The record also makes clear that in view of the purpose of the no-cart rule and Martin's particular condition, permitting him to use a cart will not give him a competitive advantage. According to the PGA, the purpose of the no-cart rule is to increase the elements of stress and fatigue in the game. But the district court found that because of Martin's condition, the fatigue he endures even with a cart is greater than that experienced by other golfers who walk, and the PGA has not challenged this conclusion.

Clearly the PGA is entitled to establish the rules of its own competitions and require all participants to follow them. But if a rule that does not define what the competitors actually do to play the game can be modified for an individual player with a particular proven disability without affording him a competitive advantage, that single modification cannot be viewed

as a fundamental alteration of the competition. To conclude otherwise would be to exempt athletics from one of the basic requirements of the ADA -- that practices may have to be modified to accommodate the needs of those with disabilities -- that applies to employers, state and local governments, and other public accommodations. There is no basis in law for such an exemption.

ARGUMENT

I

THE GOLF COURSES ON WHICH THE PGA TOUR CONDUCTS ITS TOURNAMENTS ARE PLACES OF "PUBLIC ACCOMMODATION" UNDER TITLE III OF THE AMERICANS WITH DISABILITIES ACT

The PGA concedes that those areas of the golf courses accessed by the spectators are places of public accommodations (Br. 27-28 & n.19), but asserts that the playing area of the course is not a place of public accommodation because that area is not open to the general public. In the PGA's view, during its tournaments the golf course has dual zones, one public and one private, and Title III does not apply to the latter. The district court correctly rejected this argument.

1. Title III of the ADA proscribes discrimination by private entities in their operation of places of public accommodation. 42 U.S.C. 12182(a) provides that:

> [n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. 12182(a). A "place of public accommodation" is a facility, operated by a private entity, whose operations affect commerce and fall within one of the 12 broad categories of facilities listed in the statute. See 42 U.S.C. 12181(7). These categories include such facilities as places of lodging, establishments serving food or drink, places of "exhibition or entertainment," and places of "exercise or recreation." See generally 28 C.F.R. Pt. 36, App. B at 613 (1997).[9/]

The golf courses at which the PGA conducts its tournaments fall squarely within the coverage of Title III. "[G]olf course[s]" are specifically listed as a "place of exercise or recreation" in the statutory definition of public accommodation. 42 U.S.C. 12181(7)(L). Alternatively, even if the golf course is not being used for exercise or recreation during a PGA tournament, it is certainly being used as a "place of exhibition," which is precisely analogous to a "stadium." 42 U.S.C. 12181(7)(C). Thus, the golf course must be a place of public accommodation under one of these provisions. Finally, there is also no dispute that the PGA Tour is a private entity

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[9/]The regulations define a "public accommodation" to be a private entity that owns, leases, or operates a "place of public accommodation." 28 C.F.R. 36.104 (1997). A "place of public accommodation" is the facility operated by a private entity that falls within one of the 12 listed categories. Ibid. It is the "public accommodation" (the private entity), and not the "place of public accommodation," that is subject to Title III's nondiscrimination requirements; however, the discrimination must relate to private entity's management of a "place of public accommodation." See 28 C.F.R. Pt. 36, App. B at 613 (1997).

that owns, leases, or operates the golf courses on which it conducts its golf tournaments (see, e.g., Br. 6).

2. The PGA makes the narrow argument that the golf courses are places of public accommodation only in those areas actually accessed by the public at large, but that the area where the players play is not a place of public accommodation because it is restricted to eligible players (Br. 27-28). The PGA supports this argument by emphasizing the ordinary meaning of the word "public," which it argues means open to the general public (e.g., Br. 23). The PGA thus argues that it is permissible for an entity operating a place of public accommodation to carve out a "private" area of the place of public accommodation, which it restricts to eligible persons under its own admissions criteria, where the statute does not apply. This argument is wrong.

First, since Title III specifically defines covered "public accommodations," courts must construe that definition in applying the statute, not what the word "public" might generally mean standing alone or in some other context. As noted above, the term "public accommodation" is specifically defined to include a golf course. The statute does not further limit the reach of that definition to golf courses (or other listed public accommodations) that are open to the public generally, as opposed to being open only to those members of the public who meet specific admission requirements. The only limit in the statute on the public nature of a place of public accommodation is the exemption for genuine private clubs (and religious

organizations). See 42 U.S.C. 12187. As the district court noted, the PGA's argument that a golf course (or other place of public accommodation) is not a place of public accommodation in those areas not open to the public at large would render that exemption superfluous. Under the PGA's rationale, a golf course or similar facility could avoid the mandate of Title III, even if it did not meet the private club exemption, so long as limited public access in some way.[10/] See Martin I, 984 F. Supp. at 1326. Such a result would also be at odds with the ADA's broad remedial purpose and the well-settled rule that such statutes are interpreted expansively. See, e.g., Kirkingburg v. Albertson's, Inc., 143 F.3d 1228, 1233 (9th Cir. 1998); Castellano v. City of New York, 142 F.3d 58, 68-69 (2d Cir. 1998), petition for cert. filed, 66 U.S.L.W. 3790 (U.S. May 27, 1998) (No. 97-1961); Arnold v. United Parcel Serv., Inc., 136 F.3d 854, 861 (1st Cir. 1998).[11/]

[10/]The PGA Tour argued below that it is exempt from Title III because it is a "private club" under 42 U.S.C. 12187. The district court rejected that argument, and the PGA Tour has not raised it on appeal. Title III's private club exemption exempts private clubs or establishments that would be exempt from coverage under Title II of the Civil Rights Act of 1964, 42 U.S.C. 2000a(e). Because the PGA Tour is a commercial enterprise and eligibility is based on a golfer playing his way in based on his golf skills, without regard to other criteria protecting freedom of association values, the PGA Tour does not fit within this exemption.

[11/]Moreover, a person need not be a member of the general public to be protected by Title III. 42 U.S.C. 12182(a), the anti-discrimination provision of Title III, applies to any "individual" who enjoys the "goods, services, facilities, privileges, advantages, or accommodations" of a place of public accommodation.

Second, courts have made clear that the fact that access to a facility may be strictly controlled, or that only a narrow group of individuals may be eligible for admission, has little bearing on whether it is a place of public accommodation under the Act. For example, in Independent Living Resources v. Oregon Arena Corp., 982 F. Supp. 698, 759 (D. Or. 1997), the court held that the executive suites in a sports arena were places of public accommodation under Title III of the ADA. The court stated that the "suites need not be open to every member of the public in order to be a public accommodation." Ibid. The court noted that "[m]any facilities that are classified as public accommodations are open only to specific invitees":

> For instance, a facility that specializes in hosting wedding receptions and private parties may be open only to invitees of the bride and groom, yet it clearly qualifies as a public accommodation. Attendance at a political convention is strictly controlled, yet the convention center is still a place of public accommodation. A gymnasium or golf course may be open only to authorized members and their guests, but that does not necessarily preclude it from being classified as a place of public accommodation. A private school may be open only to enrolled students, but it is still a place of public accommodation.

Ibid. (citations omitted). Indeed, the example of a private school -- specifically included among the 12 categories of facilities listed in the statute, 42 U.S.C. 12181(7)(J) -- makes particularly clear that the fact that a facility limits admission to a select few does not mean that it is not a place of public accommodation. See also Rothman v. Emory Univ., 828 F. Supp.

537, 541 (N.D. Ill. 1993) (private law school a place of public accommodation).[12/]

The cases holding that eligibility requirements to play high school or college sports are subject to Title III also support this conclusion. In these cases, the playing area of the place of public accommodation (e.g., the gymnasium or sports facility) is similarly open only to the athletes eligible to participate. See, e.g., Bowers v. National Collegiate Athletic Ass'n, No. 97-2600, 1998 WL 300552 at *28, *31 (D.N.J. June 8, 1998); Tatum v. National Collegiate Athletic Ass'n, 992 F. Supp. 1114, 1121 (E.D. Mo. 1998); Dennin v. Connecticut Interscholastic Athletic Conference, Inc., 913 F. Supp. 663, 670 (D. Conn. 1996), vacated as moot, 94 F.3d 96 (2d Cir. 1996); Ganden v. National Collegiate Athletic Ass'n, No. 96-6953, 1996 WL 680000 at *8-*11 (N.D. Ill. Nov. 21, 1996); see also Anderson v. Little League Baseball, Inc., 794 F. Supp. 342 (D. Ariz. 1992) (no dispute that Title III applies to access to coaches box on baseball field).[13/]

[12/]The United States Golf Association, as amicus, suggests that because a fan who goes "inside the ropes" onto the playing area of the golf course could be arrested for trespassing, that area cannot be a place of public accommodation. Brief for the United States Golf Association as Amicus Curiae at 10-11. That suggestion, however, is just another version of the argument since a facility is limited to specific invitees, it is not place of public accommodation. For example, a member of the general public cannot wander into a private school building anytime he pleases, but that does not change the fact that the private school is a place of public accommodation.

[13/]The PGA concedes (Br. 29 n.20) that the competition areas of some sporting events may constitute a place of public accommodation, at least when "virtually any member of the public can participate." This suggests that for the PGA, the central

(continued...)

Thus, in the instant case, the fact that the playing area of the golf course is open only to "specific invitees" -- i.e., those players who have satisfied the PGA's eligibility criteria -- does not mean that it is not a place of public accommodation. And as a practical matter, although prospective players must pay a substantial fee and qualify for eligibility based on their performance in another golf tournament, anyone (i.e., any member of the public) who does so can play in the PGA's tournament. Thus, the fact that it is athletic skill, and not some other criteria -- such as those restricting who may be admitted to a particular private school, or to a political convention -- that restricts access to only a small percent of the public does not mean that the PGA does not operate the playing areas of the golf course as a place of public accommodation for purposes of Title III.[14/]

Finally, the PGA's argument that places of public accommodation may have public and private areas for purposes of

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[13/](...continued)
point is not that the facility in question is the playing area of a sporting event, but rather that only a select few are eligible to participate.

[14/]In this light, the conclusion that the playing areas of the golf courses are places of public accommodation overlaps with the fact that the PGA Tour is not a private club under Title III. See note 10, supra. The hallmark of the private club exemption is the genuine selectivity of the membership. See, e.g., Brown v. Loudoun Golf & Country Club, Inc., 573 F. Supp. 399, 402-403 (E.D. Va. 1983). Since membership in the PGA Tour is essentially open to any golfer who finishes above a certain position in the qualifying tournament, the PGA Tour is not genuinely selective on any basis relevant to genuine privacy concerns. See Martin I, 984 F. Supp. at 1324-1325.

ADA application has no basis (see Br. 30-32). The PGA rests this argument on examples in the regulations discussing facilities not otherwise covered by Title III but that are open to the public for a limited purpose, such as a factory or movie studio that offers tours of its facilities, or a produce company that operates a roadside stand. See 28 C.F.R. Pt. 36, App. B at 614-615 (1997). In these circumstances, the regulations make clear that the requirements of Title III apply only to the operations open to the public. Ibid. These examples, however, are inapposite; the starting point is that the facility is not covered as a place of public accommodation, but the regulations provide that some of its operations nevertheless may be. That conclusion is fully consistent with the broad reach of a remedial statute.[15/] By contrast, in the instant case, the golf course is plainly covered as a place of public accommodation, but the PGA seeks to carve out a zone of the golf course that is not. There is no basis for doing so.[16/] Although the regulations provide

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[15/]That conclusion is also consistent with the regulations governing the private club exemption, which provide that the exempt status of a private club does not extend to facilities of the club made available for use by nonmembers as a place of public accommodation. See 28 C.F.R. Pt. 36, App. B, Sec. 36.201 (1997); Title III Technical Assistance Manual at III-1.6000. As the district court noted, however, the regulations limiting the private club exemption are "a far cry from the proposition that an operator of place of public accommodation can create private enclaves within the facility of public accommodation and thus relegate the ADA to hop-scotch areas." Martin I, 984 F. Supp. at 1326-1327.

[16/]The other example cited by the PGA is a "mixed use" facility such as a hotel that operates a separate residential apartment wing. See 28 C.F.R. Pt. 36, App. B at 614-615 (1997). But in

(continued...)

that portions of a non-covered entity may be covered by Title III, no such regulations provide that portions of a covered entity may be exempt from coverage. Cf. United States v. Lansdowne Swim Club, 713 F. Supp. 785, 791 (E.D. Pa. 1989) (under Title II of the Civil Rights Act of 1964, "[o]nce an establishment is determined to be a place of entertainment, the entire facility is identified as such") (citing cases), aff'd, 894 F.2d 83 (3d Cir. 1990).[17/]

[16/](...continued)
that circumstance, the facility is really two separate entities; they are not "zones" of a single place of public accommodation. In any event, the residential wing would be covered by the similar provisions of the Fair Housing Act. See 42 U.S.C. 3604(f)(3)(B) (requiring "reasonable accommodations" to afford handicapped persons equal opportunity to use and enjoy a dwelling).

[17/]The PGA asserts that nothing in the legislative history of Title III suggests an intent to apply the Title to the competition areas of professional sports (Br. 32 n.22; see also Br. 24). The Supreme Court, however, in rejecting the similar argument that Title II of the ADA (addressing public entities) does not apply to state prisons, stated that the fact that the statute's statement of findings and purpose did not mention prisons and prisoners was of no moment "in the context of the unambiguous statutory text." Pennsylvania Dep't of Corrections v. Yeskey, 118 S. Ct. 1952, 1955-1956 (1998). The Court emphasized that "the fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth." Id. at 1956 (internal quotation marks omitted); see also Daniel v. Paul, 395 U.S. 298, 307 (1969) (scope of public accommodation provision of Civil Rights Act of 1964 should not "be restricted to the primary objects of Congress' concern when a natural reading of its language would call for broader coverage"). Here, as we have noted, the statute squarely includes golf courses as a place of public accommodation.

II

THE PGA TOUR VIOLATED TITLE III'S REASONABLE MODIFICATION PROVISION BY REFUSING TO PERMIT CASEY MARTIN TO RIDE A CART IN ITS TOURNAMENTS

Title III defines unlawful discrimination to include the "failure to make reasonable modifications in policies, practices, or procedures" when such modifications are necessary to afford a disabled individual the equal enjoyment of services or privileges, unless the modification would "fundamentally alter" the nature of such services or privileges. 42 U.S.C. 12182(b)(2)(A)(ii). The district court held that the PGA Tour violated this provision by refusing to modify its no-cart rule for Casey Martin, rejecting the PGA's argument that permitting Martin to use a cart would "fundamentally alter" the nature of the golf competition. We believe the district court's decision is correct. As discussed below, permitting Martin to use a cart is not a fundamental alteration because (1) use of a cart does not affect a rule defining what competitors actually do in a golf competition or accommodate a lesser skill level, and (2) in view of the asserted purpose of the no-cart rule and Martin's disability, permitting Martin to use a cart would not give him an unfair competitive advantage.

1. Casey Martin is a highly skilled professional golfer. As the PGA has recognized, however, Martin has a disability within the meaning of the ADA, which prevents him from walking during a round of golf. Martin II, 994 F. Supp. at 1244. Because of this disability, Martin requested that the PGA modify

its no-cart rule by permitting him to ride a cart in the PGA's tournaments, which the district found to be a reasonable modification. Id. at 1248. Thus, under Title III the PGA must make the requested modification unless it meets its burden of establishing that the requested modification would fundamentally alter the nature of its program. See, e.g., Johnson v. Gambrinus Co./Spoetzl Brewery, 116 F.3d 1052, 1059-1060 (5th Cir. 1997) (defendant has burden of showing that requested modification would result in fundamental alteration).[18/]

In making this determination, the court must make an individualized assessment focusing specifically on Martin's disability and the PGA tournaments in which Martin seeks to compete. In Johnson, for example, the court emphasized that defendant's evidence that the requested modification would fundamentally alter the nature of the public accommodation must focus on "specifics of the plaintiff's * * * circumstances and not on the general nature of the accommodation." 116 F.3d at

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[18/]It is the plaintiff's burden to establish that he is an individual with a disability, that it is necessary for the defendant's policies to be modified to afford him equal enjoyment of privileges or services offered, that he requested a modification, and that the modification was "reasonable." The district court found that the requested modification was reasonable because evidence showed that carts are often used in the game of golf, including in some other professional tournaments. Martin II, 994 F. Supp. at 1248. In so concluding, the court determined that the requested modification was reasonable "in the general sense, that is in the general run of cases." Ibid. Although the court's conclusion is correct, we believe that the reasonableness inquiry should focus on whether the requested modification would effectively provide the plaintiff with access to the services and privileges offered, so that innovative solutions to problems faced by individuals with disabilities are not excluded from consideration.

1060; see also Staron v. McDonald's Corp., 51 F.3d 353, 356 (2d Cir. 1995) (need fact-specific inquiry); Powers v. MJB Acquisition Corp., 993 F. Supp. 861, 868 (D. Wyo. 1998) (same); cf. Crowder v. Kitagawa, 81 F.3d 1480, 1485-1486 (9th Cir. 1996) (under Title II of the ADA, fundamental alteration question is "highly fact-specific, requiring case-by-case inquiry"); Heather K. v. City of Mallard, 946 F. Supp. 1373, 1387-1389 (N.D. Iowa 1996) (Title II case); Dennin, 913 F. Supp. at 668-670 (addressing Rehabilitation Act and Title III of the ADA); D'Amico v. New York State Bd. of Law Examiners, 813 F. Supp. 217, 221 (W.D.N.Y. 1993) (ADA Title II case). Thus, the ultimate question is whether permitting Martin (not some other eligible golfer with some other disability, or all golfers) to ride a cart in the PGA's Nike and regular golf tournaments (and not in some other tournaments or in a round of golf generally) would result in a "fundamental alteration" of those golf competitions.[19/]

2. As an initial matter, the PGA's no-cart rule is not shielded from modification under Title III simply because the PGA characterizes walking as a "substantive rule" of its golf

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[19/]Analogously, courts have held that the ADA requires a case-by-case analysis of the disabled individual and the benefits he seeks when determining whether the person poses a "direct threat" to the health and safety of others (in which case a public accommodation may deny such person services or benefits, see 42 U.S.C. 12182(b)(3)). See, e.g., Stillwell v. Kansas City, Mo. Bd. of Police Comm'rs, 872 F. Supp. 682, 687 (W.D. Mo. 1995) (must be an individualized assessment to determine what risks, if any, the person poses to themselves or the public); Anderson v. Little League Baseball, Inc., 794 F. Supp. at 345; see generally School Bd. of Nassau County v. Arline, 480 U.S. 273, 278-287 (1987).

competitions. See Br. 41 (exempting a competitor from a "substantive rule of the competition necessarily fundamentally alters the nature of such competitions"). Rules governing athletic competitions are not categorically excluded from the scope of the ADA. As the district court noted, "the ADA does not distinguish between sports organizations and other entities when it comes to applying the ADA to a specific situation." Martin II, 994 F. Supp. at 1246; see also note 21, infra (citing sports eligibility cases); Anderson v. Little League Baseball, Inc., 794 F. Supp. at 344-345. Moreover, many other entities -- businesses, schools, medical facilities -- operate in spheres where their operations are also governed by technical rules (including those defining skill levels), and these rules are not categorically exempt from the ADA. Title I of the ADA, for example, requires an employer to make reasonable changes to its ordinary work rules, terms, and conditions in order to enable a disabled individual to work. See 42 U.S.C. 12112(b)(5). The mere existence of such rules does not mean that the employee will not be doing the same job for which he was hired if a rule is modified to accommodate a disability. The employee will simply be doing the same job in a slightly different manner.

Thus, in the present circumstances, the purpose of the rule at issue must be examined to determine whether the rule can be modified for the particular individual without fundamentally altering the nature of the competition. We agree with the district court that a "court has the independent duty to inquire

into the purpose of the rule at issue, and to ascertain whether there can be a reasonable modification made to accommodate plaintiff without frustrating the purpose of the rule." Martin II, 994 F. Supp. at 1246. As the court in Ganden explained, "a court must look to the underlying purposes of [the rule] to determine if the modification would undermine those purposes in the circumstances of the plaintiff. Otherwise, any modification of a rule rationally tailored to the denied privilege would be unreasonable." Ganden, 1996 WL 680000 at *15; see also Dennin, 913 F. Supp. at 668-669; Johnson v. Florida High Sch. Activities Ass'n, 899 F. Supp. 579, 584 (M.D. Fla. 1995), vacated as moot, 102 F.3d 1172 (11th Cir. 1997); cf. McPherson v. Michigan High Sch. Athletic Ass'n, 119 F.3d 453, 461 (6th Cir. 1997) (en banc). There is no basis, then, for the general proposition that sports organizations cannot be required by Title III to reasonably modify rules that may broadly be labeled as "substantive rules of competition."[20/]

[20/] Thus, the United States Golf Association's assertion that the organizer of an athletic competition has "the right to define its event and the rules of its competition," while maybe true as a general matter, misses the whole point of the reasonable modification provision of Title III of the ADA. See Brief for the United States Golf Association as Amicus Curiae at 26. Since disabled persons have specific needs, the Act recognizes that simply treating them the same (i.e., subjecting them to the same policies, practices, or procedures to which non-disabled persons are subject) may in fact result in treating them unequally. The public accommodation therefore has the obligation under the Act to determine whether a requested modification to a particular rule can be made, in view of the individual's particular disability, without fundamentally altering the nature of the services offered.

3. All athletic competitions are governed by a variety of "substantive rules." Not all such rules, however, define the competition in the same way. There are, for example, rules governing the uniforms and clothing the competitors may wear; rules governing the circumstances under which the competition is played and who is eligible to compete; and rules governing what the competitors actually do in the competition itself. Whether the modification of a rule of competition may fundamentally alter the competition necessarily depends on the particular rule at issue.

Of course, certain generalizations may follow. It is difficult to imagine, for example, that modifying a rule requiring golfers to wear long pants (to allow, e.g., a golfer with a disabling skin condition to wear shorts) could ever be said to fundamentally alter the nature of the competition. On the other hand, modifications to rules that define the set of physical activities that comprise the game (i.e., what the competitors must do to play the game and to complete the competition) would generally constitute a fundamental alteration. The competition is a test of skills used to perform those physical activities, and reasonable modifications are not meant to change the essential activities that comprise the competition or accommodate a lesser skill level. Rules governing the circumstances under which the competition is played, such as eligibility rules, fall in between. That is, they can be modified without fundamentally altering the nature of the game so

long as the requested modification would not result in an unfair advantage.[21/]

4. Permitting Martin to use a cart will not fundamentally alter the nature of the golf competitions because (1) it does not affect a rule defining what competitors actually do in a golf competition or accommodate a lesser skill level, and (2) it would not give him an unfair competitive advantage.

a. First, the rule requiring walking between golf shots is not a rule that defines what the golfers actually do in a competition. As noted above, the Rules of Golf do not require or define walking as part of the sport. See Martin II, 994 F. Supp. at 1249; pages 5-6, supra. Rather, the rules make clear that the sport involves hitting the ball from the tee into the hole by successive strokes. In fact, the USGA has interpreted its rules to permit competitors to ride a cart unless it is prohibited by local rules defining the conditions of competition for a

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[21/] Compare Dennin v. Connecticut Interscholastic Athletic Conference, Inc., 913 F. Supp. 663 (D. Conn.) (age requirement for high school sports not fundamental), vacated as moot, 94 F.3d 96 (2d Cir. 1996), and Johnson v. Florida High Sch. Activities Ass'n, 899 F. Supp. 579 (M.D. Fla. 1995) (same), vacated as moot, 102 F.3d 1172 (11th Cir. 1997), with McPherson v. Michigan High Sch. Athletic Ass'n, 119 F.3d 453 (6th Cir. 1997) (en banc) (eight semester eligibility rule fundamental to high school sports program); Sandison v. Michigan High Sch. Athletic Ass'n, 64 F.3d 1026, 1036-1037 (6th Cir. 1995) (age restriction for high school sports is fundamental); and Pottgen v. Missouri State High Sch. Activities Ass'n, 40 F.3d 926 (8th Cir. 1994) (same). The courts in Dennin and Johnson specifically rejected the reasoning and conclusion in Pottgen. See Dennin, 913 F. Supp. at 668-669; Johnson, 899 F. Supp. at 584-585. The varying results in these cases reflect that the rules governing high school athletics implicate numerous issues apart from the competition itself, including educational concerns, maximizing the number of students who can compete, and safety.

particular event. It is difficult to see how a rule that sometimes applies and sometimes does not can help define what competitors must actually do in a given sport.

Moreover, the PGA itself permits competitors to use carts in some of its tournaments, including the senior tournaments and the early rounds of the qualifying tournament. That fact alone belies the notion that walking is an essential element of competitive golf. And even in the regular PGA and Nike Tour events where walking is generally required, the PGA Tour's Conditions of Competition provide that the Tour's Rules Committee may permit competitors to use carts. Further, although collegiate golf prohibits both carts and caddies, Martin was permitted to use a cart as needed in his college tournaments. Finally, there is no suggestion in any of the circumstances permitting the use of a cart that doing so is intended to accommodate, or is even in any way related to, a lesser skill level.

The conclusion that permitting walking between golf shots is not a fundamental alteration is reinforced by contrasting the no-cart rule to other rules of athletic competitions that define the essential activities that comprise the competition. For example, a request by a swimmer with a disability weakening his leg or arm muscles that the rules be modified so that he is given a head start (or can swim a shorter distance) would fundamentally alter the nature of the competition, since the competition is swimming a specified distance. Similarly, a request by a swimmer to swim

a different stroke in a particular race would fundamentally alter the competition where the competition is defined as a race between competitors doing the same stroke. Cf. New York Roadrunners Club v. State Div. of Human Rights, 447 N.Y.S.2d 908 (N.Y. 1982) (state law claim seeking use of wheelchair in New York City Marathon rejected since Marathon is not any kind of race, but is a footrace). Further, a participant in the Nordic biathlon could not avoid either the cross-country skiing or target shooting element of the competition, since the event, by definition, is a test of those two skills. Cf. Br. 43 n.26. And finally, a rule such as one setting the distance for a three-point shot in basketball would also be fundamental because it also defines what the players must do to play the game. Analogously, Casey Martin is not asking that the length of a hole be shortened for him (cf. that the three-point line be moved closer to the basket). Martin, relying on his own skills, will be doing everything that all of the other competitors must do in executing golf shots to hit the ball from each tee into each hole.

b. Second, permitting Martin to use a cart will not give him an unfair competitive advantage. The PGA argues that an essential aspect of any athletic competition is that all competitors follow the same rules, even if those rules do not define the way in which the game is played (Br. 40), and that permitting Martin to use a cart will upset this principle. We agree that rules of athletic competitions that define the

physical activities that make up the game and what the competitors must do to complete the competition should apply equally to all competitors, and thus generally cannot be modified without fundamentally altering the nature the competition. But, as noted above, many rules governing athletic competitions -- such as those addressing the conditions under which the competition is conducted -- do not fall into that category. In our view, such rules may be modified without fundamentally altering the nature of the competition as long as, in view of the purpose of the rule, the modification does not give a competitor an unfair advantage.

In this case, the no-cart rule is such a rule. In view of the purpose of this rule, the record makes clear that permitting Martin to use a cart will not give him an unfair competitive advantage.

According to the PGA, "the walking requirement, by design, adds an important element of additional stress and fatigue that players must overcome to demonstrate that they are the best in the competition. Given that only a few strokes separate the winners from the losers in the highly competitive Nike Tour, such a condition makes an important difference." R. 66 at 10; see also Br. 10 (walking rule introduces elements of stress and fatigue); Martin II, 994 F. Supp. at 1250. The district court found, however, that because of Martin's condition, "[t]he fatigue [he] endures just from coping with his disability is undeniably greater than the fatigue injected into tournament play

on the able-bodied by the requirement that they walk from shot to shot." Martin II, 994 F. Supp. at 1251. The court explained:

> [Martin] is in significant pain when he walks, and even when he is getting in and out of the cart. With each step, he is at risk of fracturing his tibia and hemorrhaging. The other golfers have to endure the psychological stress of competition as part of their fatigue; Martin has the same stress plus the added stress of pain and risk of serious injury. As he put it, he would gladly trade the cart for a good leg.

Id. at 1251-1252. The PGA has not challenged this conclusion.[22/] Moreover, the court noted that Martin does walk approximately 25% of the course even with use of a cart (e.g., from the cart to his shot and back to the cart, and while on or around the greens), and thus on "a course roughly five miles in length, Martin will walk 1 1/4 miles." Id. at 1251.

[22/]As the district court noted, the PGA did not make any inquiry into Martin's level of fatigue when it rejected his requested modification. Martin II, 994 F. Supp. at 1253. In the PGA's view, there was no reason for it to do so because it maintains that an individualized determination is not necessary. The PGA argues that it is simply too burdensome to make individualized assessments of the unique circumstances of each disabled competitor. See, e.g., Br. 47. But, as we have noted (pages 26-27, supra), the ADA does require an individual assessment in determining whether a requested modification would result in a fundamental alteration. The court made that assessment based on the evidence Martin presented and reached the conclusion, quoted above, that because of his disability Martin suffers greater fatigue using a cart than other competitors do by walking.

In any event, even if there may be a rare case where it would be difficult to determine whether the requested accommodation, in view of the plaintiff's disability, would result in an unfair advantage, this is clearly not that case. Here, in view of the nature and seriousness of Martin's condition that clearly limited his ability to walk substantial distances, and the obvious accommodation of permitting him to use a cart, it hardly would have burdensome for the PGA to determine that providing him a cart would not give him an unfair advantage.

Since Martin, in view of his condition, "easily endures greater fatigue even with a cart than his able-bodied competitors do by walking," he does not gain a competitive advantage by using a cart. Martin II, 994 F. Supp. at 1252. It therefore follows, as the district court concluded, that "it does not fundamentally alter the nature of the PGA Tour's game to accommodate [Martin] with a cart." Ibid.; cf. Pottgen v. Missouri State High Sch. Activities Ass'n, 40 F.3d 926, 932-933 (8th Cir. 1994) (Arnold, C.J., dissenting) ("if a rule can be modified without doing violence to its essential purposes, * * * I do not believe that it can be 'essential' to the nature of the program or activity to refuse to modify the rule").[23/]

[23/] The district court's conclusion was also supported by its finding that the "fatigue factor injected into the game of golf by walking the course cannot be deemed significant under normal circumstances." Martin II, 994 F. Supp. at 1250. The court noted the PGA does not require golfers to walk rapidly between shots, and that walking a slow pace is a natural act for the able-bodied. Id. at 1251 & n.14. The court also noted that "most PGA Tour golfers appear to prefer walking as a way of dealing with the psychological factors of fatigue," asking rhetorically that "[i]f the majority of able-bodied [golfers] elect to walk in 'carts optional' tournaments, how can anyone perceive that [Martin] has a competitive advantage by using a cart given his condition?" Id. at 1251. Finally, the court stated that to the extent the purpose of the no-carts rule is simply tradition, that purpose was not entitled to any weight under the ADA. Id. at 1250 n.11.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

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CERTIFICATE OF COMPLIANCE

Pursuant to Ninth Circuit Rule 32(e)(4), I certify that the Brief for the United States as Amicus Curiae uses a monospaced typeface at 10.5 characters per inch, is appropriately double-spaced, and contains 10,257 words.

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