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Green Jackets in Men's Sizes Only: Gender Discrimination at Private Country Clubs

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ABSTRACT

On November 3, 2009, the Supreme Court of Ireland held that the Portmarnock Golf Club could maintain its rule prohibiting female membership free from the sanctions of Ireland's antidiscrimination laws. Portmarnock is representative of the numerous private golf clubs that continue to promote discrimination against women. Despite significant advances in gender equality, private country clubs in the United States, the United Kingdom, and Ireland remain bastions of codified gender discrimination. Many of the most prominent golf clubs hold firmly to discriminatory policies established generations ago. Opposition to these policies has come in various forms of protest and litigation, with mixed results. The private clubs have frequently asserted the right to free and exclusive association to defend their actions. Moreover, some of golf's most famous private clubs continue to practice egregious forms of discrimination against women largely free from legal challenges. This Note examines the existing legal status of gender discrimination at private country clubs in the United States, the United Kingdom, and Ireland and offers a three-prong approach to litigation against clubs engaging in disparate treatment of women.

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Throughout the twentieth century, the women's rights movements in the United States and Europe made great strides in the fight against gender discrimination. Landmark victories included advancement in the fields of voting rights, education, and employment.[1] However, at certain country clubs in the United States, Ireland, and the United Kingdom, discrimination against women remains par for the course.[2] Many private clubs continue to cling to decades-old, or even century-old, policies that deny women equal access to club facilities.[3] Even clubs that are home to golf's most revered courses continue to prohibit women from becoming members or even setting foot on the tee as players.[4]

The last two decades have witnessed a growth in litigation challenging various gender-biased practices at country clubs in the United States and Ireland.[5] The cases illustrate the tension between public policies favoring gender equality and the traditional claims of private clubs to freedom of association.[6] While numerous private country clubs have voluntarily granted equal status to women, many still stand firm behind exclusionary policies.[7] Challenging these policies through the court system has been marginally effective in the

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1. MARCIA CHAMBERS, THE UNPLAYABLE LIE: THE UNTOLD STORY OF WOMEN AND DISCRIMINATION IN AMERICAN GOLF 23 (1995).

2. *R&A Defends All Male Policy*, GOLF TODAY, http://www.golftoday.co.uk/news/yeartodate/news03/randa2.html (last visited Mar. 20, 2011).

3. CHAMBERS, *supra* note 1, at 5.

4. Randy Cohen, *Is Golf Unethical?*, N.Y. Times, Nov. 20, 2009, http://ethicist.blogs.nytimes.com/2009/08/18/is-golfunethical/?scp=2&sq=martha%20burk&st=cse.

5. *E.g.*, Warfield v. Peninsula Golf & Country Club, 896 P.2d 776 (Cal. 1995); Yolles v. Golf Club of Avon, Inc., No. CV–000802636, 2004 WL 203325, at *1 (Conn. Super. Ct. Jan. 6, 2004); Wethersfield Country Club Members for Fair Play v. Wethersfield Country Club, No. CV 98–0085780, 1998 WL 646842, at *1 (Conn. Super. Ct. Aug. 12, 1998); State v. Burning Tree Club, Inc., 554 A.2d 366 (Md. 1989); Equal. Auth. v. Portmarnock Golf Club, [2009] I.E.S.C. 73 (Ir.), *available at* http://www.bailii.org/ie/cases/IESC/2009/S73.html.

6. *Equal. Auth.*, [2009] I.E.S.C. 73.

7. *R&A Defends All Male Policy*, *supra* note 2.

United States, with successes limited primarily to small, local clubs.[8] In Ireland, the Supreme Court's recent decision in *Equality Authority v. Portmarnock Golf Club* has quelled early optimism that clubs would abandon all-male membership policies.[9] In British courts, the issue of gender discrimination at private country clubs has gone largely unaddressed.[10] As a result, world-famous country clubs on both sides of the Atlantic remain accessible to men only.[11]

Part I of this Note outlines the historical treatment of women at private golf country clubs and the emergence of women seeking membership on equal terms with men. Part II reviews recent litigation and legislation concerning gender discrimination at private country clubs in the United States, the United Kingdom, and Ireland. Lastly, Part III proposes a three-prong approach to oppose gender discrimination at country clubs in each of the three countries.

I. HISTORICAL BACKGROUND

Understanding the continued existence of discriminatory policies at country clubs requires understanding the history and evolution (or lack thereof) of these clubs over the last century.[12] Golf is a game rooted in tradition. The Royal & Ancient Golf Club of St. Andrews (R&A), the club credited with inventing golf, still promulgates the rules and regulations of the game.[13] The R&A also retains the power to authorize courses as suitable for the Open Championship, the "oldest and most revered" Major Championship in golf.[14] Professional golf's four "Majors," the Open Championship, the U.S. Open, the PGA Championship, and the Masters, are still played on courses that hosted the tournaments more than seventy-five or one hundred years

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8. *See Warfield*, 896 P.2d at 776 (involving the Peninsula Golf & Country Club); *Yolles*, 2004 WL 203325, at *1 (involving the Golf Club of Avon, Inc.); *Wethersfield*, 1998 WL 646842, at *1 (involving thirty members of the Wethersfield Country Club); *Burning Tree*, 554 A.2d at 366 (involving the Burning Tree Country Club).

9. *Equal. Auth.*, [2009] I.E.S.C. 73.

10. Eunice Song, Note, *No Women (and Dogs) Allowed: A Comparative Analysis of Discriminating Private Golf Clubs in the United States, Ireland, and England*, 6 WASH. U. GLOB. STUD. L. REV. 181, 196 (2007).

11. *See* CHAMBERS, *supra* note 1, at 24–25, 29, 31, 37 (listing a few remaining male-only golf clubs).

12. *See id.* at 6 (noting the exclusive, all-white, male, Anglo-Saxon Protestant origin of country clubs).

13. *R&A Defends All Male Policy*, *supra* note 2.

14. The Open Championship, also known as the British Open, uses a nine-course rotation, and the R&A has the authority to determine that a course is no longer qualified to host the "oldest and most revered golf championship in existence." David Brice, *Turnberry to Host Its Fourth British Open Championship*, PGA TOUR (Dec. 11, 2005), http://www.pgatour.com/story/9090864.

ago.[15] Several of the clubs that host the Majors also maintain some of the most restrictive rules barring access to women.[16] Many of the membership rules of the prominent clubs—at least in terms of rules pertaining to women—have gone unchanged for a century or more.[17] As Marcia Chambers acknowledged in her comprehensive study of gender discrimination at country clubs, "If the world of golf were starting fresh, without the cultural weight of old traditions, a different set of policies might have evolved."[18]

British country clubs came to prominence during the early 1800s, and their American counterparts emerged at the end of the nineteenth century.[19] Golf arose as an outdoor pastime of the eminently wealthy, along with hunting and cricket.[20] The game was first played on private estates and then at private country clubs.[21] Early country clubs were sanctuaries for the elite, and membership correlated with high social status.[22] Members of the first British country clubs included dukes, earls, and lords as well as wealthy businessmen and landed gentry.[23] Early American clubs included members of distinguished families, including preeminent politicians, lawyers, and entrepreneurs.[24] Country clubs in all three countries not only limited membership to the wealthiest social class, but also

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15. The 2010 Open Championship marked the twenty-eighth time that St. Andrews has hosted the event, the first time being in 1873. *Previous Opens*, THE OPEN CHAMPIONSHIP, http://www.opengolf.com/en/History/PreviousOpens.aspx?venue=Turnberry&currenteventid=2009&view=venue&eventid=2005044&view=venue (last visited Mar. 20, 2011). Royal Carnoustie has hosted the Open seven times since 1931, and Royal Lytham and St. Anne's have each hosted it ten times since 1926. *Id.* The U.S. Open has been played at Baltusrol Golf Club seven times since 1903 and at Oakmont Country Club seven times since 1927. *Open Records*, U.S. OPEN GOLF CHAMPIONSHIP, http://usga.usopen.com/2009/history/usopen-records.html#course (last visited Mar. 20, 2011). Olympia Fields Country Club was the site of the 1925 and 1961 PGA Championships, and the 1928 and 2003 U.S. Opens. *Olympia Fields Country Club: History*, Olympia Fields Country Club, http://www.ofcc.info/Default.aspx?p=DynamicModule&pageid=242724&ssid=97785&vnf=1 (last visited Mar. 20, 2011). The Masters has been played at Augusta National Golf Club every year since 1934. *History at a Glance*, THE MASTERS, http://www.masters.com/en_US/history/index.html (last visited Mar. 20, 2011).

16. *See* CHAMBERS, *supra* note 1, at 25, 30, 31 (noting that St. Andrews and Augusta National have never allowed female members, and The Olympic Club, home of the 1987 U.S. Open, did not allow women as members until a lawsuit was brought against the club). *But see id.* at 25 (discussing professional female tournaments held at St. Andrews).

17. *See id.* at 5 (stating that golf clubs' values seem to be stuck in the 1920s).

18. *Id.* at 6.

19. *See* JAMES M. MAYO, THE AMERICAN COUNTRY CLUB: ITS ORIGINS AND DEVELOPMENT 10, 63–66 (1998) (noting the evolution of city clubs to country clubs).

20. CHAMBERS, *supra* note 1, at 4.

21. *Id.*

22. *See generally* MAYO, *supra* note 19 (tracing the role of elites in shaping the origins and progression of country clubs).

23. *Id.* at 10–11.

24. *Id.* at 63–66.

adopted formal or informal policies of discrimination, restricting access on the basis of race, religion, and ethnicity.[25] In the nineteenth century, white, male, Anglo-Saxon Protestants established private country clubs for the exclusive use of white, male, Anglo-Saxon Protestants.[26] The clubs denied membership to Catholics, Jews, and Italians, and the possibility of black members was never even considered.[27] As the excluded groups founded their own clubs, they too instituted discriminatory restrictions.[28] Some club bylaws included express provisions that membership was for "Caucasians [o]nly."[29] While the degree of women's access varied from club to club,[30] women were universally prohibited from membership regardless of their ethnicity, religious affiliation, or relationship to male members.[31]

A. *Women's Roles at the British and American Country Clubs in the Early 1900s*

Despite their disparate treatment, women golfers were present since the establishment of the first American country clubs.[32] A women's national championship tournament was played in Britain as early as 1893, and in the United States two year later.[33] However, in the early twentieth century, British and American clubs classified women as "guests" or "associates" of their male counterparts.[34] Although many clubs were accessible to women, governing authority was consolidated in the hands of the male membership.[35] Men monopolized elected positions within the clubs, promulgated club rules, and controlled finances.[36] If a club did not deny women access outright, they were relegated to a secondary status.[37] Furthermore, a woman was generally only admitted to the facilities if she was married to a member.[38] Sons of members were groomed for future membership while daughters were not.[39] In a case of divorce, a

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25. *Id.* at 193.
26. CHAMBERS, *supra* note 1, at 6.
27. *Id.*
28. *See id.* (noting that some Jewish clubs admitted German Jews, but barred Eastern European Jews from membership).
29. *Id.*
30. *See id.* at 6 (discussing staggered transition periods throughout the country and the attendant tensions of such periods).
31. *Id.*
32. *Id.* at 4.
33. *Id.*
34. *Id.*
35. RICHARD J. MOSS, GOLF AND THE AMERICAN COUNTRY CLUB 184 (2001).
36. *Id.*
37. *Id.*
38. CHAMBERS, *supra* note 1, at 4.
39. *Id.*

member's daughters and former wife lost club privileges, while he and any sons retained membership rights.[40]

Women played a predominantly social role at the country clubs of this era. Women were regarded as "adornments of their spouses" and "colorful additions" to the atmosphere.[41] Men preferred to find their "guests" relaxing on the verandas as they approached the clubhouse.[42] Women's use of the course was strictly regulated and frequently prohibited on weekends or limited to Sunday afternoons.[43] Restrictions varied, and clubs that permitted women to play the course often designated a specific weekday referred to as "ladies' day."[44] Many clubs also excluded women from certain dining facilities, establishing men-only grilles and cafes within the clubhouse.[45] For example, St. Andrews Golf Club in Yonkers, New York, prohibited women from using the main entrance way or the main dining room, while its namesake, the R&A, excluded women from the clubhouse altogether.[46] At St. Andrews in Yonkers, women were labeled as "guests," and the extent of their activity at the club consisted of congregating in secluded reception and dining areas that were significantly less lavish than the men's facilities.[47]

Business Women and the Modern American Country Club

While women's roles in society evolved dramatically throughout the twentieth century, discriminatory policies at many private country clubs endured remarkably unchanged.[48] The 1960s and 1970s witnessed the growth of the civil rights and feminist movements as well as landmark antidiscrimination legislation.[49] Title VII of the Civil Rights Act of 1964 banned gender-based discrimination in private employment, and Title IX of the Education Amendments of 1972 prohibited sex discrimination at educational institutions receiving federal funding.[50] During the same era, notable private universities, including Princeton, Yale,[51] and Notre Dame,[52]

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40. *Id.*
41. *Id.* at 12.
42. *Id.*
43. *Compare id.* (noting that women were only permitted to play on Sundays at some clubs), *with* MAYO, *supra* note 19, at 66 (noting that women were absolutely prohibited from playing on Sundays at The Country Club in Brookline, Massachusetts).
44. MOSS, *supra* note 35, at 185.
45. MAYO, *supra* note 19, at 111.
46. CHAMBERS, *supra* note 1, at 13, 25.
47. *Id.* at 13–14.
48. *See id.* at 23 (noting that discriminatory practices endured throughout the 1960s, 1970s, and into the 1980s).
49. *Id.*
50. *Id.*
51. *Id.*
52. *Pioneering Leadership—About Notre Dame*, U. NOTRE DAME, http://www.nd.edu/aboutnd/history/pioneering-leadership (last visited Mar. 20, 2011).

opened their doors to women for the first time.[53] Women in Ireland and the United Kingdom made similar progress. In 1970, the British Parliament enacted the Equal Pay Act to prohibit unfair treatment in wages or conditions of employment based on gender.[54] In 1975, the Sex Discrimination Act was passed, further prohibiting gender discrimination in employment, education, and the provision of goods and services.[55] The University of Oxford became coeducational in 1974,[56] and Cambridge University began admitting women to the men's colleges in 1972.[57] From 1971 to 1996, the number of women in the Irish workforce nearly doubled.[58] A relative latecomer, the Irish Parliament passed the Employment Equality Act in 1998 as the first of several major pieces of antidiscrimination legislation.[59] In one generation, the greater availability of higher education has led to a proliferation of female professionals in practically every field, from business, to politics, to law, to medicine.[60] In Ireland and the United Kingdom women have risen to the pinnacle of power, serving as the nations' heads of state.[61] Gender barriers to the corporate boardroom, military service, and the corridors of political power are crumbling.

During the same period, private country clubs have grown in popularity and become a business- and family-friendly environment for the middle and upper-middle class, not merely the very wealthy.[62] For years, corporate executives have used a round at a private course to woo potential clients, reward employees, and return business favors.[63] Businesswomen seek access to the amenities of private clubs to entertain business associates and share time with family

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53. CHAMBERS, *supra* note 1, at 23.

54. Equal Pay Act, 1970, c. 41 (Eng.).

55. Sex Discrimination Act, 1975, c. 65 (Eng.).

56. Jenifer Hart, *Women at Oxford Since the Advent of Mixed Colleges*, 15 OXFORD REV. OF EDUC. 217 (1989); *Women at Oxford*, U. OXFORD, http://www.ox.ac.uk/about_the_university/introducing_oxford/women_at_oxford/index.html (last visited Mar. 20, 2011).

57. *Women at Cambridge: A Chronology*, CAMBRIDGE U., http://www.admin.cam.ac.uk/news/press/factsheets/women2.html (last visited Mar. 20, 2011).

58. Goretti Horgan, *Changing Women's Lives in Ireland*, INT'L SOCIALISM J., Summer 2001, *available at* http://pubs.socialistreviewindex.org.uk/isj91/horgan.htm.

59. Employment Equality Act of 1998 (Act No. 21/1998) (Ir.), *available at* http://www.irishstatutebook.ie/1998/en/act/pub/0021/index.html.

60. *Id.*

61. Margaret Thatcher became the first female Prime Minister of the United Kingdom in 1979, while Mary Robinson (1990–1997) and Mary McAleese (1997–Present) were the first female Presidents of Ireland. *Women Political Leaders—Historical and Current*, INFOPLEASE, http://www.infoplease.com/ipa/A0801534.html (last visited Mar. 20, 2011).

62. CHAMBERS, *supra* note 1, at 5.

63. *Id.*

members.[64] However, the rules of many private country clubs have failed to keep pace with the advancements in gender equality. Many businesswomen are frustrated that clubs cling to gender distinctions viewed as archaic in other spheres of their lives.[65]

In the United States, private clubs were exempted from Title VII's prohibitions on discrimination out of deference for privacy rights and the freedom of association.[66] Antidiscrimination laws in Ireland and the United Kingdom also exclude private clubs from the requirements to varying degrees.[67] In the absence of laws mandating change, many country clubs have retained their discriminatory policies.[68] "Often today one finds private clubs whose values seem frozen in the social milieu of the mid-1920s, when many clubs were started. That was a different America, a place where women were just beginning to emerge as persons with equal claims to citizenship."[69] Following the feminist movement and women's dramatic influx into the workforce, many women began to challenge the entrenched male authority and privileges at these country clubs.[70]

Gender discrimination at the modern country club does not usually take the form of an outright ban.[71] Instead, female "members" are generally relegated to a secondary status inferior to male members.[72] Many clubs still impose tee time and dining area restrictions against women and deny women property and voting interests in the club itself.[73] These restrictions are common at country clubs across the United States and the United Kingdom.[74] More and more women now work fulltime, and weekday tee times that were conducive to housewives are no longer satisfactory.[75] Businesswomen desire weekend tee times for leisure play and to host

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64. *Id.* at 10.

65. *Id.* at 4.

66. *Id.* at 23.

67. *See* Equal Status Act of 2000 §§ 8–10 (Act. No. 8/2000) (Ir.), *available at* http://www.irishstatutebook.ie/2000/en/act/pub/0008/print.html (imposing a lighter sanction on private clubs for discriminatory practices and providing for certain outright exemptions); *Sex Discrimination as a Consumer: Your Rights*, EQUALITY & HUM. RTS. COMMISSION, http://www.equalityhumanrights.com/advice-and-guidance/your-rights/gender/sex-discrimination-as-a-consumer/sex-discrimination-as-a-consumer-your-rights (last visited Mar. 20, 2011) (noting the exemption of truly private clubs from the Sex Discrimination Act).

68. *See* CHAMBERS, *supra* note 1, at 28 (noting the extent to which attitudes about women at private clubs are deeply rooted).

69. *Id.* at 5.

70. MOSS, *supra* note 35, at 185.

71. CHAMBERS, *supra* note 1, at 3.

72. *Id.*

73. *Id.*

74. MOSS, *supra* note 35, at 185; *UK Golf Clubs Face Equal Rights Battle*, BBC NEWS, Oct. 30, 1998, http://news.bbc.co.uk/2/hi/uk_news/204471.stm.

75. MOSS, *supra* note 35, at 185.

business clients.[76] Furthermore, a woman's access to the club is still frequently contingent on her husband's membership and the club may revoke access if the marriage dissolves.[77] Many clubs deny women a property right in club membership even if she has paid the dues.[78] The clubs that do admit women as members often employ a stratified membership system to exclude women from the club's governing body.[79]

The simplest method for resolving issues of women's access is for clubs to address the problems internally.[80] Most country clubs have transitioned to allow equal access to women without much dispute.[81] However, litigation has been the avenue of resolution when internal efforts to end discrimination have failed.[82]

The issue of equal membership rights for women at private country clubs was brought to the forefront in recent years because of a proliferation of legal challenges against certain notable clubs that promulgated the most stringent and discriminatory membership policies.[83] Public awareness of racial discrimination at private country clubs was awakened when Shoal Creek Country Club in Birmingham, Alabama, hosted the 1990 PGA Championship.[84] In response to questions about the club's whites-only membership rules, club founder Hall Thompson maintained that the club would not change its policy, announcing that "[t]his is our home, and we pick and choose who we want . . . . We have the right to associate or not associate with whomever we choose."[85] Despite the rhetoric, the club succumbed to public pressure after African American groups vowed to hold protest rallies at the club and sponsorship boycotts threatened the ABC and ESPN broadcasts with a $2 million loss in advertising revenue.[86] Nine days before the PGA Championship, Shoal Creek amended its membership policy to allow African Americans to join.[87]

The Professional Golf Association now requires that all courses hosting PGA, LPGA, or Champions Tour events to state in the contract agreement that the clubs' membership requirements do not

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76. *Id.*

77. *See* Warfield v. Peninsula Golf & Country Club, 896 P.2d 776, 782 (Cal. 1995) (involving a case in which a woman's membership was revoked at a club when her marriage dissolved).

78. CHAMBERS, *supra* note 1, at 3.

79. MOSS, *supra* note 35, at 185.

80. *Id.* at 186.

81. *Id.* at 187.

82. *Id.*

83. Benjamin Leedy, *Recent Trends in Anti-Discrimination Lawsuits Against Private Golf Clubs*, CLUB MGMT., Oct. 2006, at 24, 24.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

discriminate on the basis of sex, race, religion, or ethnicity.[88] However, with the exception of the PGA Championship, the preeminent tournaments in professional golf, the Majors, are not sponsored by the PGA Tour, and the courses that host the Majors are not required to sign antidiscrimination agreements.[89] Therefore, clubs home to some of the most famous courses in golf continue to shut their doors to women.[90] Most notably, women are still denied membership at perhaps the two most well-known clubs, Augusta National Golf Club in Augusta, Georgia, and the Royal & Ancient Golf Course of St. Andrews in Scotland.[91] While the clubs that completely exclude women are few in number, they remain significant because they hold a status to which all other country clubs aspire to attain.[92]

B. *Augusta National and Other Prominent Male-Only Clubs in the United States*

Augusta National was founded in 1932.[93] Golf legend Bobby Jones was among the club's founding members.[94] Since its inception, the club has counted some of the most prominent men in the United States among its members. Charter members included the president of U.S. Steel Eugene Grace and world heavyweight-boxing champion Gene Tunney.[95] President Dwight Eisenhower was a member of Augusta and vacationed there during his presidency.[96] Today, members come from across the globe and include Warren Buffett, Bill Gates, and former General Electric CEO Jack Welch, among other Fortune 500 executives.[97] Since 1934, Augusta has hosted the Masters,[98] the "most prestigious" and most watched tournament in golf, where winners are presented with the iconic green jacket.[99] In 2009, more than forty-two million viewers tuned in to the weekend coverage of the Masters.[100] The tournament is the only one of the four Major Championships that is played at the same course every

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88. Jill Lieber, *Golf Club Doors Slightly Ajar*, USA TODAY, Apr. 10, 2003, at 1C.
89. *R&A Defends All Male Policy*, *supra* note 2.
90. *Id.*
91. *Id.*
92. CHAMBERS, *supra* note 1, at 27–28.
93. *Id.* at 31.
94. *Id.* at 30.
95. *Id.*
96. *Id.*
97. *Augusta National Golf Club Members List*, USA TODAY (Aug. 4, 2004), http://www.usatoday.com/sports/golf/masters/2002-09-27-augusta-list.htm.
98. CHAMBERS, *supra* note 1, at 31.
99. *Survey: Respondents Willing to Act Against Masters*, ESPN (Sept. 8, 2002), http://sports.espn.go.com/espn/print?id=1428918&type=story.
100. *TV Ratings for Masters' Final Round Down Slightly*, GOLF.COM (Apr. 14, 2009), http://www.golf.com/golf/tours_news/article/0,28136,1891099,00.html.

year.[101] *Sports Business Journal* once ranked the Masters as the most prestigious sporting event in America.[102]

The proverbial stain on Augusta's green jackets is a long history of discrimination against women and African Americans. The Masters was held for forty years before Lee Elder became the first African American to play in the tournament.[103] Augusta National did not admit its first African American member until 1990.[104] At that time, several club members who served as CEOs raised concerns that they might have to resign from Augusta if it remained exclusively white. Then, the controversy at Shoal Creek sent Augusta's administration scrambling to quickly admit an African American.[105] Breaking the color barrier of Augusta's membership circle, however, did not mean that the club's gender distinctions vanished.[106] Women are only allowed to play the course with an invitation from, and in the company of, one of the club's male members.[107] Several LPGA professionals have privately stated that they have never received an invitation.[108] Former chairman Hord Hardin explained it thus, "We love our women; we just don't want any fussin' with 'em."[109]

In June 2002, Martha Burke, the chairwoman of the National Council of Women's Organizations (NCWO), contacted Augusta National's then-chairman Hootie Johnson, urging the club to accept women as members.[110] Johnson responded that Augusta's membership policies were private and that the NCWO would not "bully" the club into accepting women as full members.[111] He exclaimed, "There may well come a day when women will be invited to join our membership, but that timetable will be ours and not at the point of a bayonet."[112] The NCWO then attempted to exert pressure on sponsors of the Masters, in the hope that lost advertising revenue would force a change as it did at Shoal Creek in 1990.[113] But Augusta National did not budge; the club simply sidestepped the

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101. *A Major Tournament that Means More than Golf*, 2008 MASTERS TOURNAMENT, http://www.majorschampionships.com/masters/2008/news/04/09/more_than_golf/index.html (last visited Mar. 20, 2011).

102. Tim McDonald, *Is the Masters Really the Most Prestigious Sporting Event in America?*, WORLD GOLF (Feb. 25, 2008), http://www.worldgolf.com/column/masters-most-prestigious-sporting-event-in-america-6559.htm.

103. CHAMBERS, *supra* note 1, at 32.

104. *Survey: Respondents Willing to Act Against Masters*, *supra* note 99.

105. CHAMBERS, *supra* note 1, at 31.

106. *Survey: Respondents Willing to Act Against Masters*, *supra* note 99.

107. CHAMBERS, *supra* note 1, at 33.

108. *Id.*

109. *Id.* at 31.

110. *Augusta Loses First Member over All-Male Policy*, ESPN (Dec. 3, 2003), http://sports.espn.go.com/golf/story?id=1470263.

111. Leedy, *supra* note 83, at 24

112. *Id.*

113. *Id.*

problem, as Johnson agreed, in two successive years, for the tournament to be televised without commercials,[114] foregoing a total of $12 million in revenue.[115] This was no small feat, but, due to an accomplished membership roll of millionaires (and billionaires), the club can operate the Masters tournament without television revenue for support.[116] Additionally, the club retains immense control over the tournament broadcast rights and the manner in which the club is presented. It holds CBS to a year-to-year contract while the other networks eagerly wait in the wings should the relationship between Augusta National and CBS ever sour.[117] As a result, the protests against Augusta National have lost most of their steam[118] and the membership continues to be male-only.[119]

Several other prestigious courses in the United States have held firm to exclusively male membership.[120] Preston Trail Golf Club in Dallas, Texas, was home to the PGA's Byron Nelson Classic from 1968 to 1982.[121] Past members include Herman Lay, chairman of the Frito-Lay Corporation; Lamar Hunt, founder of the American Football League and former owner of the Kansas City Chiefs; and baseball legend Mickey Mantle.[122] During the PGA event, the club prohibited women from entering the clubhouse,[123] and to this day, women are only allowed to play the course on Valentine's Day.[124] Burning Tree, an all-male club in Bethesda, Maryland, was played by Presidents Eisenhower, Nixon, and Ford as well as foreign royalty and prime ministers.[125] Cabinet members, senators, and congressman frequent the course, but it has never permitted a woman to play there.[126] Butler National of Oak Brook, Illinois, was the site of the PGA's Western Open for fifteen years before the club chose to forego hosting the tournament rather than agree to the PGA's requirement that it admit women.[127] While it hosted the

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114. Richard Hinds, *Why Masters Coverage Is So Polite*, THE AGE, Apr. 5, 2007, at 14, 14.

115. *Troon Out of Tune with Ladies*, INDEPENDENT (London), May 3, 2004, http://www.independent.ie/sport/golf/troon-out-of-tune-with-ladies-170006.html.

116. Hinds, *supra* note 114, at 14.

117. *Id.*

118. *Id.*

119. *Augusta National, Inc.*, HOOVERS, http://www.hoovers.com/company/Augusta_National_Inc/sstyri-1.html (last visited Mar. 20, 2011).

120. CHAMBERS, *supra* note 1, at 34–36.

121. *Byron Nelson Classic Past Champions*, ESPN (May 9, 2000), http://espn.go.com/golfonline/tours/s/2000/0509/524152.html.

122. CHAMBERS, *supra* note 1, at 30.

123. *Id.*

124. *Preston Trail Golf Club*, TEX. TRAVEL STOP, http://www.texastravelstop.com/features/golfcourses/dallas/prestontrailgolfclub.html (last visited Mar. 20, 2011).

125. CHAMBERS, *supra* note 1, at 35.

126. *Id.*

127. *Id.* at 36.

tournament, women were only allowed on the course if they were working the event.[128] Sharon Golf Club in Sharon Center, Ohio, which hosted the U.S. Senior Amateur Championship in 1972 and an annual U.S. Open qualifier until 1993, has never allowed a woman to play its course.[129]

Pine Valley Golf Club has resorted to drastic measures to shield itself from laws aimed to permit women to initiate business at private clubs, as men have done for years.[130] The New Jersey club, home to *Golf Digest*'s number one course in the world,[131] has never invited a woman to become a member.[132] Women can play the course only on Sundays after 3 p.m., with an invitation from a member.[133] Pine Valley is its own legally incorporated municipality.[134] It does not host any events that could be considered public functions, such as weddings or parties.[135] The dining area is open only to members and their invited guests.[136] In order to protect itself from federal and state antidiscrimination laws, the club even requires members to pledge that they will not engage in business activity at the club.[137]

C. *Notable Male-Only Clubs in Ireland and the United Kingdom*

Similar to the situation in the United States, the country clubs in Britain and Ireland that cling to male-only membership policies are few,[138] but notable.[139] The most famous is the Royal & Ancient Golf Club of St. Andrews.[140]

Many historians believe the game of golf was invented in 1522 at the Royal & Ancient Golf Club of St. Andrews.[141] Nicknamed "The Home of Golf," St. Andrews's Old Course hosted the British Open for the twenty-eighth time in 2010.[142] The R&A serves as the governing

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128. *Id.*
129. *Id.* at 29.
130. *Id.* at 37.
131. Joe Passov, *Top 100 Courses in the U.S. and the World*, GOLF.COM (Aug. 15, 2007), http://www.golf.com/golf/courses_travel/article/0,28136,1650520,00.html.
132. CHAMBERS, *supra* note 1, at 37.
133. *Id.*
134. *Id.*
135. *Id.*
136. *Id.*
137. *Id.* at 37–38.
138. *See* Equal. Auth. v. Portmarnock Golf Club, [2009] I.E.S.C. 73 (noting that only two clubs in Ireland prohibit female membership).
139. *R&A Defends All Male Policy*, *supra* note 2.
140. *Id.*
141. CHAMBERS, *supra* note 1, at 25.
142. David Brice, *Play the Best Open Venues, then Watch Golf's Event of the Year*, PGA TOUR (Jan. 30, 2008), http://www.pgatour.com/2008/tourlife/travel/01/30/trans_atlantic/index.html; *The Open Championship at St. Andrews*, ST. ANDREWS LINKS, http://www.standrews.org.uk/2010-Open/The-Open-at-the-Old-Course.aspx (last visited Mar. 20, 2011).

body for all golf played outside of the United States and Mexico.[143] The Old Course is public, but the historic clubhouse is open to members only.[144] The R&A has 2,400 members, none of whom are women.[145] The club has never considered a woman for membership.[146] St. Andrews's fidelity to a members-only clubhouse is demonstrated in an anecdote recounted in Marcia Chambers's *The Unplayable Lie*.[147] The story goes that a thunderstorm interrupted one of the Ladies' British Open Amateur Championships at the Old Course.[148] Female officials huddled together under umbrellas next to the clubhouse in order to get out of the rain.[149] When a club employee came to speak to the female officials, they were sure he would invite them inside.[150] Instead, the employee informed the women that club members had requested that the ladies fold down their umbrellas because they obscured the view of the course from the smoking room.[151]

St. Andrews is not the only British Open site to engage in gender discrimination.[152] Scotland's Royal Troon Golf Club, the location of six Open Championships, does not accept female members,[153] but does allow women to play the course.[154] One woman recalls asking a club employee if she could wear golf spikes in the clubhouse, to which the employee responded, "[S]pikes are [allowed], ladies are not."[155] Even when Troon hosts the Open, employees direct female reporters to the side entrance and a separate lounge while their male counterparts utilize the main entrance and congregate in the smoking room.[156] Similarly, Royal St. George's Golf Club in Sandwich, England is "an exclusive all-male bastion."[157] The prestigious club, which will host its fourteenth British Open in July 2011,[158] once erected a sign proclaiming that "dogs and women" were not welcome on the premises.[159] The sign no longer stands and women can in fact

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143. CHAMBERS, *supra* note 1, at 25.
144. *Id.*
145. *R&A Defends All Male Policy*, *supra* note 2.
146. CHAMBERS, *supra* note 1, at 25.
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.* at 25–26.
151. *Id.* at 26.
152. *Id.* at 24.
153. *Troon Out of Tune with Ladies*, *supra* note 115.
154. CHAMBERS, *supra* note 1, at 24.
155. *Id.* (internal quotation marks omitted).
156. *Troon Out of Tune with Ladies*, *supra* note 115.
157. CHAMBERS, *supra* note 1, at 24.
158. *Open Championship 2011*, ROYAL ST. GEORGE'S GOLF CLUB, http://www.royalstgeorges.com/index.lasso?pg=4067927197ebc839&mp=d85d5ab3bb43dfe2 (last visited Mar. 20, 2011).
159. CHAMBERS, *supra* note 1, at 24.

play the course, but only because St. George's has adopted a bizarre position, declining to officially recognize the existence of women.[160] As golf chronicler Peter Dobereiner noted, "[W]hat does not exist cannot be asked to pay a greens fee."[161] Thus, women can play the course—on certain days—so long as they play along with the fiction, essentially by refraining from interfering with the play of male members.[162] This policy became an issue for the club in the early 1990s when the Cambridge University team arrived for its annual match at St. George's with a female player.[163] The elders of St. George's, after some debate, responded by declaring the female player an honorary man for the match before allowing her to compete.[164]

In Ireland, only two country clubs continue to have exclusively male membership.[165] One is the Portmarnock Golf Club, the oldest country club in Ireland.[166] Portmarnock has been embroiled in a litigation battle over its men-only policy for nearly a decade.[167] This litigation is discussed in Part II.C.[168] Like its British counterparts, Portmarnock does allow women to play the course; however, the club prohibits all women from becoming members, except for the President of Ireland, Mary McAleese.[169]

D. *Impact of Male-Only Clubs*

While clubs that flatly prohibit female membership are a small minority,[170] they have immense clout in the golf world.[171] The notable male-only clubs "reinforce . . . attitudes and beliefs about women that permeate the private clubs."[172] A local club can more easily justify its disparate treatment of women, at least to its own members, when it can point to the discrimination at Augusta or at St. Andrews, the home of golf's rulemaking body.[173] While St. George's

160. *Id.* at 24–25.
161. *Id.* at 25.
162. *Id.*
163. *Id.*
164. *Id.*
165. Equal. Auth. v. Portmarnock Golf Club, [2009] I.E.S.C. 73.
166. *Id.*
167. *Id.*
168. *See infra* Part II.C (discussing the Supreme Court of Ireland's decision in *Equality Authority v. Portmarnock* and the procedural posture of the case).
169. *Portmarnock Can Remain Men Only*, GOLF DIG., Nov. 4, 2009, http://www.golfdigest.com/golf-tours-news/2009-11/golf_portmarnock_1104.
170. Leedy, *supra* note 83, at 24.
171. CHAMBERS, *supra* note 1, at 28.
172. *Id.*
173. *See id.* ("[I]t is not surprising to find that attitudes so deeply rooted in the culture of the private golf club seep into the world of public golf as well.").

ignores women, other less renown clubs view them as an inferior group "to be barely tolerated."[174]

In the United States, claims of gender discrimination have generally involved clubs of little notoriety and accusations of more insidious forms of unequal treatment.[175] In addition to accusations of membership discrimination, women have brought suits against clubs in the United States over tee time policies, access to dining facilities, and discrimination against divorced women.[176] The most famous clubs, buoyed by powerful members and beloved by fans of their well-cultivated image, have been largely immune to protests and free from litigation.[177] Whether the clubs are well known or anonymous, American, British, or Irish, they all echo similar justifications in defense of their disparate treatment of women. First and foremost, the clubs argue that their members have a right to freely associate and thus can exclude others, even on a discriminatory basis.[178] Second, the clubs argue that their amenities are for leisure, and the exclusion of women from such settings does not cause the same detrimental impact that results from discrimination in employment or education.[179] Third, many of the members view their club as a necessary haven from the demands and expectations of wives and girlfriends.[180] Lastly, club apologists argue that golf is a sport played among friends and that the clubs provide a unique avenue for male bonding.[181]

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174. *Id.* at 25 (internal quotation marks omitted).

175. *See* cases cited *supra* note 8.

176. *See* Warfield v. Peninsula Golf & Country Club, 896 P.2d 776, 782 (Cal. 1995) (denying a woman membership rights after the finalization of her divorce); Yolles v. Golf Club of Avon, Inc., No. CV–000802636, 2004 WL 203325, at *2 (Conn. Super. Ct. Jan. 6, 2004) (restricting women's access to the course to certain times); Wethersfield Country Club Members for Fair Play v. Wethersfield Country Club, No. CV 98–0085780, 1998 WL 646842, at *3 (Conn. Super. Ct. Aug. 12, 1998) (involving policies restricting membership and tee times for women); State v. Burning Tree Club, Inc., 554 A.2d 366, 369 (Md. 1989) (restricting access to club facilities).

177. *See* Equal. Auth. v. Portmarnock Golf Club, [2009] I.E.S.C. 73 (holding that Portmarnock Golf Club was exempt from the antidiscrimination clause); Chambers, *supra* note 1, at 35 (noting that Burning Tree chose to pay higher taxes rather than admit women); Hinds, *supra* note 114, at 14 (noting that Augusta National has not changed its policies in the face of women's rights advocates).

178. CHAMBERS, *supra* note 1, at 28; *see also Equal. Auth.*, [2009] I.E.S.C. 73.

179. CHAMBERS, *supra* note 1, at 28.

180. *Id.*

181. *Id.*

II. LEGAL CHALLENGES TO DISCRIMINATORY PRACTICES

A. *Litigation in the United States*

In the 1980s, women in the United States began seeking legal redress for the discriminatory practices of private clubs.[182] Litigants challenging disparate treatment at American country clubs have relied almost exclusively on state statutes.[183] Some states have passed statutes that specifically target discrimination at private country clubs, and plaintiffs have had success in these jurisdictions.[184] In states that have not specifically addressed the issue through legislation, women have brought claims under broad antidiscrimination statutes and challenged the status of clubs as truly private.[185] Lastly, plaintiffs have argued for courts to rescind certain state licenses and tax benefits from clubs that practice discrimination.[186] These actions have had mixed success in ending club practices favoring men.[187] Furthermore, the suits were primarily brought against "local" country clubs, and the discriminatory practices of the most prominent country clubs have gone relatively unchallenged in U.S. courts.[188]

An early Maryland case illustrates one of the few occasions in which plaintiffs have challenged the policies of a nationally known country club.[189] In 1983, State Senator Stewart Bainum and his wife, Barbara Renschler, filed suit against Burning Tree Club of Bethesda, Maryland.[190] Burning Tree restricted membership to men, and the only non-members who could use the club were male guests of members.[191] Burning Tree had entered into an agreement with the State of Maryland that the club would keep its grounds as

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182. *See, e.g.*, Warfield v. Peninsula Golf & Country Club, 896 P.2d 776 (Cal. 1995); State v. Burning Tree Club, Inc., 554 A.2d 366 (Md. 1989).

183. See *Warfield*, 896 P.2d at 776; Yolles v. Golf Club of Avon, Inc., No. CV–000802636, 2004 WL 203325, at *1 (Conn. Super. Ct. Jan. 6, 2004); Wethersfield Country Club Members for Fair Play v. Wethersfield Country Club, No. CV 98–0085780, 1998 WL 646842, at *1 (Conn. Super. Ct. Aug. 12, 1998); *Burning Tree*, 554 A.2d at 366.

184. *Wethersfield*, 1998 WL 646842, at *7.

185. *E.g.*, *Warfield*, 896 P.2d at 782 (challenging policy under the Unruh Civil Rights Act).

186. *Burning Tree*, 554 A.2d at 370.

187. *Compare Warfield*, 896 P.2d at 776 (finding club policy a violation of state civil rights laws), *with Burning Tree*, 554 A.2d at 366 (finding that club could continue policy at the cost of foregoing favorable tax treatment).

188. *See* cases cited *supra* note 8.

189. *Burning Tree*, 554 A.2d at 366.

190. *Id.* at 369.

191. *Id.*

undeveloped, "open spaces" in exchange for a favorable property tax assessment.[192] Renschler sought membership at Burning Tree, and after she was denied, she and her husband brought suit to revoke the club's tax exemption because of its discrimination against women.[193] Maryland state law allowed country clubs to contract with the state for a tax break, if the club agreed to keep its land undeveloped.[194] The statute prohibited clubs that discriminated on the basis of race, color, creed, sex, or national origin from entering into contract with the state for the tax exemption.[195] However, the statute also provided that "[i]f the country club excludes certain sexes on specific days or at specific times on the basis of sex, the country club does not discriminate."[196] Burning Tree was the only club allowed to contract with the state under this exemption.[197]

The Maryland Court of Appeals held that this "periodic discriminatory provision" violated the Equal Rights Amendment of the Maryland constitution and was severable from the statute.[198] Therefore, clubs could not receive the tax break under the exemption.[199] The outcome was that Burning Tree could no longer benefit from the "open spaces" tax exemption.[200] Although Burning Tree lost the suit, the result was not an end to gender discrimination at the club.[201] Burning Tree now simply pays the higher tax rate while maintaining all-male membership.[202]

Litigants have also utilized broad antidiscrimination statutes to confront club policies disfavoring women.[203] In *Warfield v. Peninsula Golf & Country Club*, the Supreme Court of California held that the country club was a "business establishment" within the meaning of California's Unruh Civil Rights Act and that the application of the Act did not violate the members' constitutionally protected freedom of association.[204] The Unruh Civil Rights Act provides that "[a]ll persons within the jurisdiction of [the] state are free and equal, and no matter what their *sex,* race, color, religion, ancestry, national origin, or disability, . . . are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all

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192. *Id.*
193. *Id.*
194. *Id.*
195. *Id.* at 370.
196. *Id.*
197. *Id.* at 369.
198. *Id.* at 389.
199. *Id.*
200. MOSS, *supra* note 35, at 184.
201. *Id.*
202. *Id.*
203. *E.g.*, Warfield v. Peninsula Golf & Country Club, 896 P.2d 782 (Cal. 1995) (bringing suit under the Unruh Civil Rights Act).
204. *Id.* at 798.

business establishments of every kind whatsoever."[205] In 1970, Peninsula Golf & Country Club changed its membership policy to stipulate that the club would grant "Regular Family Membership" only to "adult male persons" and not to women or minors.[206] The revised policy also provided that upon divorce or annulment, the husband would remain the Regular Family Member and retain all rights and privileges attached to the membership.[207] Lastly, if the membership interest was granted to the female spouse via a judicial action, the male spouse was required to purchase the female spouse's interest or the club would terminate the membership.[208]

In *Warfield*, the plaintiff's husband obtained a Regular Family Membership in 1970, and the plaintiff made extensive use of the club's facilities until 1981.[209] In addition to the social rewards of the club, the plaintiff testified that she obtained her first real estate job through a member of the club and that the club was an important source of contacts for her residential real estate business.[210] She divorced her husband in 1981, and the settlement granted her "all right, title, and interest" in the membership to Peninsula.[211] The Peninsula board of directors voted to terminate the membership and sent Ms. Warfield a check for the membership redemption value.[212] Ms. Warfield returned the check without endorsement, and Peninsula responded by offering her the opportunity to apply for a new class called a "golfing membership."[213] She declined the offer.[214] She termed the membership as a "second class citizenship" based on her status as a woman.[215]

In finding Peninsula to be a business establishment subject to the Unruh Civil Rights Act, the Supreme Court of California noted that, although a majority of the club's income came from membership fees, the club received direct and indirect benefits from a variety of activities.[216] The club allowed non-members to use the facilities for a fee during events sponsored by a club member.[217] The court found that the club acted as the functional equivalent of a commercial caterer and commercial recreational resort in conjunction with these

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205. CAL. CIV. CODE § 51 (West 2006) (emphasis added).
206. *Warfield*, 896 P.2d at 781.
207. *Id.*
208. *Id.*
209. *Id.*
210. *Id.* at 781–82.
211. *Id.* at 782.
212. *Id.*
213. *Id.*
214. *Id.*
215. *Id.*
216. *Id.* at 792.
217. *Id.*

events.[218] The club also obtained a regular income from fees charged to invited guests of members.[219] Lastly, the club indirectly benefited from the sales of the golf and tennis pro shops that were open to the public.[220] The court concluded that these regular business transactions with non-members were enough to classify Peninsula as a business establishment for the purposes of the Act, and thus Peninsula could not deny Ms. Warfield membership privileges based on her gender.[221]

In 1997, the Connecticut state legislature passed the Act Concerning Gender Discrimination at Golf Country Clubs (Conn. Country Club Act).[222] The Act was passed in response to public outcry over the history of discriminatory actions at Connecticut country clubs, such as denials of equal access for women to dining facilities, playing privileges, and voting rights at the clubs.[223] The Conn. Country Club Act was passed to eliminate the "invidious discrimination among existing members of Connecticut golf country clubs on the basis of sex, marital status and other impermissible considerations."[224] The Act covers any club of twenty or more members that "maintains a golf course of not less than nine holes" and "receives payment for dues, fees, use of space . . . meals or beverages, directly or indirectly, from . . . nonmembers or holds a permit to sell alcoholic liquor."[225] All clubs subject to the statute are prohibited from denying membership or any class of membership to any person on the basis of, among other categories, sex.[226] Connecticut clubs must also offer each spouse participating in a shared membership equal access to the club's facilities.[227] The statute provides that a club violating the Act may have its liquor license suspended and may be subject to civil action brought by an aggrieved party.[228]

The Conn. Country Club Act went into effect January 1, 1998, and soon after thirty members of the Wethersfield Country Club (WCC) in Wethersfield, Connecticut, filed a claim against the club.[229] The group of members, calling themselves the Wethersfield Country

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218. *Id.*
219. *Id.*
220. *Id.* at 793.
221. *Id.*
222. CONN. GEN. STAT. ANN. § 52–571d (West 2009).
223. Yolles v. Golf Club of Avon, Inc., No. CV–000802636, 2004 WL 203325, at *9 (Conn. Super. Ct. Jan. 6, 2004).
224. *Id.*
225. § 52–571d(a).
226. § 52–571d(b).
227. § 52–571d(d).
228. § 52–571d(g)–(h).
229. Wethersfield Country Club Members for Fair Play v. Wethersfield Country Club, No. CV 98–0085780, 1998 WL 646842, at *1 (Conn. Super. Ct. Aug. 12, 1998).

Club Members for Fair Play (Fair Play), claimed the club was in violation of the newly enacted antidiscrimination law.[230] Prior to 1991, WCC allowed a woman to have "golfing spouse" privileges, if her husband was a resident member.[231] "Golfing spouses" were prohibited from playing during restricted tee times: before 12:30 p.m. on Saturdays and before 10:30 a.m. on Sundays and holidays.[232] In 1991, WCC made resident membership available to women; however, as of the time of Fair Play's suit, the club had only one female resident member.[233] In response to the Conn. Country Club Act, WCC revised its bylaws concerning membership.[234] The revised rules did not affect families who had joined the club after 1991, who continued to designate either spouse as the resident member.[235] However, a "golfing spouse," whose husband joined the club prior to 1991, would now have the option to become a resident member for an additional fee of $4,000.[236]

Fair Play claimed that WCC had denied women equal access by failing to allow pre-1991 members to choose whether the husband or wife would have access as the resident member.[237] The Connecticut Superior Court ruled that although the additional fee was not impermissible, the club violated the statute when it "assumed that the male member of all couples was the full member of the club with unrestricted golfing privileges."[238] The club could not apply the assumption to pre-1991 family memberships, because these couples had never had the opportunity to designate the wife as the sole resident member.[239] The court ordered WCC to offer pre-1991 members the option to make this designation.[240]

In a similar case in 2004, Anne Yolles filed suit against the Golf Club of Avon under the Conn. Country Club Act claiming that the club had discriminated against her because of her gender.[241] She alleged that Avon scheduled all women's tournaments during weekdays when businesswomen could not participate, while all tournaments primarily or exclusively for men were scheduled on weekends.[242] She also claimed that Avon instituted a two-tier

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230. *Id.*
231. *Id.*
232. *Id.*
233. *Id.*
234. *Id.* at *2.
235. *Id.*
236. *Id.* The standard initiation fee for a resident membership was $6,000. *Id.* at *1.
237. *Id.* at *6.
238. *Id.*
239. *Id.*
240. *Id.* at *7.
241. Yolles v. Golf Club of Avon, Inc., No. CV–000802636, 2004 WL 203325, at *1 (Conn. Super. Ct. Jan. 6, 2004).
242. *Id.* at *2.

membership system, where "Primary Membership" was cost prohibitive for women.[243] The system stipulated that only one member of a "Family Membership" could enjoy the privileges of Primary Membership unless the family paid an additional fee to entitle multiple people in the family to primary privileges.[244] Lastly, she claimed that Avon discouraged women from competing in Primary Member tournaments by requiring all competitors, regardless of sex, to play from the back (men's) tees.[245]

A Connecticut superior court granted summary judgment for Avon.[246] The court rejected Yolles's claim that Avon violated the Act by allegedly charging an excessive initiation fee prohibitive to women.[247] The court noted that subsection (d) of the Conn. Country Club Act required only that clubs provide "equal access" to facilities and that the subsection allowed a club to charge fees that it deemed appropriate for multiple member privileges.[248] Charging an additional fee for a second Primary Member in a single family did not violate the statute.[249] The court also found that the two-tier membership system was gender-neutral because it allowed a family to decide who would enjoy Primary Member status; unlike the policy in *Wethersfield*, it did not "presumptively designat[e]" the privilege to the husband.[250] Furthermore, the additional fee for a second Primary Member was not cost prohibitive because the fee was the same whether the second member was the husband or wife and was $2,000 cheaper than the normal membership fee.[251] The court concluded that if the club were truly attempting to restrict access to women, it would not have offered families the opportunity to choose a Primary Member or have offered the second Primary Membership at a reduced rate.[252]

The court also rejected Yolles's claim that the club's policy to have all Primary Member tournaments contested from the back tees denied her equal access and enjoyment of the club.[253] The court noted that plaintiff and other women had "competed effectively" in the tournaments after the policy was instituted.[254] Furthermore, the club had adopted the USGA Handicap System in scoring the

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243. *Id.*
244. *Id.* at *5.
245. *Id.* at *2.
246. *Id.* at *28.
247. *Id.* at *17.
248. *Id.*
249. *Id.*
250. *Id.* at *18.
251. *Id.* The fee for a second Primary Membership in the family was $4,500, while the regular initiation fee was $6,500. *Id.*
252. *Id.*
253. *Id.* at *20.
254. *Id.*

tournament to ensure that no player was unduly disadvantaged by the tee placement.[255] Thus, the court held that the tournament rules did not constitute the type of unequal access that the law was intended to prohibit.[256]

The divergent outcomes of the two Connecticut cases demonstrate some of the difficulties and tension that arise when country clubs attempt to impose gender-neutral policies.[257] Strong antidiscrimination rhetoric and government intervention can make it difficult for clubs to draw a line between discrimination and innocuous gender distinctions.[258] Kaye Brooks Bushel, who was assigned by the Maryland Department of Assessment and Taxation to monitor the policies of private country clubs, remarked that "once you get the government involved . . . everything has to fit into a category. We got rid of harmless things, like ladies' and men's days."[259] The unintended result was to turn businesswomen seeking equality against retired or non-businesswomen who value the weekday, ladies' day.[260] Thus, it is imperative that the legislature and judicial system not be used as blunt instruments to change club policies. Those attacking innocuous practices, such as distinct tee boxes or men's and women's tournaments, will likely inspire an adverse reaction in many potential supporters. Instead, women and men seeking to alter club policies should focus on insuring that women are recognized as full members, with equal say in club administration and with equal access to all facilities.

B. *Litigation and Legislation in the United Kingdom*

Legal actions against British country clubs practicing gender discrimination are rather lacking.[261] Despite the significant number of legal challenges to gender discrimination in U.S. courts, courts in the United Kingdom have yet to address the issue as it pertains to golf clubs.[262] Women have brought suits against other types of private clubs for failing to provide equal treatment.[263] However, the

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255. *Id.*

256. *Id.*

257. *Compare id.* at *20 (granting summary judgment in favor of the golf club but allowing plaintiff to continue with a suit for damages for being denied equal access to the club's facilities), *with* Wethersfield Country Club Members for Fair Play v. Wethersfield Country Club, No. CV 98–0085780, 1998 WL 646842, at *7 (Conn. Super. Ct. Aug. 12, 1998) (holding that the golf club did not violate plaintiff's rights but that it would have to allow members the option to designate wives as the resident member).

258. MOSS, *supra* note 35, at 187–88.

259. *Id.* at 188.

260. *Id.*

261. Song, *supra* note 10, at 196.

262. *Id.*

263. Bateson v. Young Men's Christian Ass'n, [1980] N.I. 135 (Q.B.) (N. Ir.).

judicial precedent and current status of antidiscrimination law provide little reason for women to be optimistic about bringing down gender barriers at British golf clubs.[264]

Current legislation in the United Kingdom does not expressly address policies of gender discrimination at private country clubs.[265] Britain's most significant piece of antidiscrimination legislation is the Sexual Discrimination Act of 1975.[266] The Act establishes broad prohibitions on disparate treatment of women, but focuses mainly on reducing gender discrimination and sexual harassment in the workplace.[267] It does not specifically place any restrictions on clubs that are truly inaccessible to the public.[268]

Bateson v. Young Men's Christian Association is an example of an early British case stemming from gender discrimination at a private club.[269] The plaintiff filed suit against the Young Men's Christian Association (YMCA) after being denied entrance to the club's snooker room.[270] The district court dismissed the claim, reasoning that the YMCA was a private club and therefore was not subject to antidiscrimination laws.[271] On appeal, the High Court found in favor of the plaintiff, holding that because a part of the snooker room was open to the public, the club could not limit access to the room.[272]

Although the court found for the plaintiff, *Bateson* is not of much value for women taking legal action against private country clubs.[273] The court's ruling hinged on the finding that the room was open to male members of the *public* and, therefore, female members could not be excluded.[274] Whether a British court will accept an argument that one of the male-only country clubs is sufficiently public to be subject to the statute is yet to be determined. The level of access that members of the public have to the club (the ability to play the course, enter the clubhouse, etc.) will likely [275] be the determining factor.

In 1998, Britain's Equal Opportunities Commission (EOC) urged the government to address gender discrimination at golf clubs.[276]

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264. Song, *supra* note 10, at 196.
265. *Id.*
266. *Id.*
267. *Id.*
268. *See Sex Discrimination as a Consumer: Your Rights*, *supra* note 67 (noting that truly private clubs would be excepted from the Sex Discrimination Act in the provision of services to members).
269. Bateson v. Young Men's Christian Ass'n, [1980] N.I. 135 (Q.B.).
270. Song, *supra* note 10, at 196.
271. *Bateson*, [1980] N.I. 135.
272. *Id.*
273. Song, *supra* note 10, at 196.
274. *Id.*
275. *See Bateson*, [1980] N.I. 135 (laying out factors that determine level of public access).
276. *UK Golf Clubs Face Equal Rights Battle*, *supra* note 74.

The EOC advocated a "comprehensive overhaul of sex discrimination laws" to force private members' clubs to put men and women on equal footing.[277] The EOC was acting in response to hundreds of complaints citizens had lodged against golf clubs regarding tee times, male-only bars, and outright refusals to admit women.[278] Public attention was raised when a male star of a British soap opera complained that female golfers lacked proper understanding of the rules and etiquette and were "taking over [the game] like cockroaches."[279] Critics of the EOC complained that antidiscrimination legislation would overturn golfing traditions built up for more than a century.[280] The debate even inspired Audi to address the issue in a commercial that aired in Britain.[281] The car company's advertisement depicted chauvinist male golfers, and it implied that they were not fit to drive Audis.[282] Public outcry led many British clubs to voluntarily end discriminatory policies.[283] However, as in the United States, the holdout clubs were notable not for their numbers, but for their name recognition.[284]

Some members of Parliament have attempted to answer the calls to end discrimination at private country clubs.[285] In 2002, Labor Party and Parliament Member Parmjit Dhanda proposed a bill to prohibit gender discrimination at private clubs.[286] The bill required that clubs with more than twenty-five members grant women equal status as members and equal access to club facilities.[287] On the floor of the House of Commons, Dhanda remarked, "There is a loophole for clubs to be able to discriminate against women .... It is ridiculous that this still goes on."[288] Despite the efforts of Dhanda and his fellow Labor Party members, Conservative Party members blocked the legislation and it failed to pass.[289]

C. *Litigation in Ireland*

The extent of litigation in Ireland challenging disparate treatment of women at country clubs consists of the long-running

277. *Id.*
278. *Id.*
279. *Id.*
280. *Id.*
281. *Id.*
282. *Id.*
283. *R&A Defends All Male Policy*, *supra* note 2.
284. *See supra* notes 15–16 and accompanying text (listing various country clubs that host Major Championships, some of which continue to discriminate against women).
285. Song, *supra* note 10, at 197.
286. *Id.*
287. *Id.*
288. *R&A Defends All Male Policy*, *supra* note 2.
289. *Id.*

battle between the Equality Authority of Ireland and the Portmarnock Golf Club.[290] The legality of Portmarnock's male-only policy turns on the interpretation of specific sections of Ireland's Equal Status Act.[291] The Act prohibits discrimination in various areas of public and private life.[292] A private club is subject to the Act's antidiscrimination requirements unless it falls under a specific exemption for clubs whose "principal purpose" is to cater to a specific group.[293] The Supreme Court of Ireland held that Portmarnock Golf Club was included in the Act's exemption and could retain its male-only membership policy free from sanction.[294]

i. Portmarnock Golf Club Rules and the Equal Status Act of Ireland

Portmarnock Golf Club was established in 1884.[295] Club Rule Three states that all members "shall be gentlemen properly elected and who shall conform with the rules of amateur status, for the time being prescribed by the Royal and Ancient Golf Club of St. Andrews."[296] Although women are not permitted as members, they may use the club's golf course under the same terms as male non-members.[297] As one of the most prestigious courses in Ireland, Portmarnock's visitor terms include greens fees ranging from $180 to $300.[298] The only female who may be granted membership is Irish President Mary McAleese, who is permitted due to her position as the symbolic head of state.[299]

Pursuant to a European Union directive, the Irish legislature passed the Equal Status Act in 2000.[300] The stated purpose of the Act is to "promote equality and prohibit types of discrimination, harassment and related behavior in connection with the provision of services, property and other opportunities to which the public generally or a section of the public has access."[301] The Act prohibits discrimination on the basis of gender, marital status, family status, sexual orientation, religion, age, disability, race, or membership in a

290. Equal. Auth. v. Portmarnock Golf Club, [2009] I.E.S.C. 73.
291. *Id.*
292. Amma Nyarko Appiah, *Equal Access to Fish and Chips: Irish Redress for Discrimination Under the Equal Status Act*, 9 NEW ENG. J. INT'L & COMP. L. 549, 558 (2003).
293. *Equal. Auth.*, [2009] I.E.S.C. 73.
294. *Id.*
295. *Id.*
296. *Id.*
297. *Id.*
298. *Court Rules Club Can Bar Women*, ESPN (Nov. 3, 2009), http://sports.espn.go.com/golf/news/story?id=4619638.
299. *Id.*
300. Appiah, *supra* note 292, at 558.
301. Equal Status Act of 2000 pmbl. (Act. No. 8/2000).

traveler community.[302] It provides redress for discrimination in the context of "employment, vocational training, advertising, collective agreements, the provision of goods and services and other opportunities to which the public generally have access on nine distinct grounds."[303] The Act applies to private clubs with licenses to distribute liquor, stipulating that a club is discriminatory if "it has any rule policy or practice which discriminates against a member or an applicant for membership."[304] However, § 9 of the Act provides an exclusion stating that "a club shall not be considered to be a discriminating club . . . if its principal purpose is to cater only for the needs of—persons of a particular gender, marital status, family status, sexual orientation, religious belief, age, disability, nationality or ethnic or national origin."[305]

ii. Litigation Against Portmarnock

On June 10, 2003, the Equality Authority of Ireland, the government enforcement arm of the Equal Status Act, issued a civil summons against Portmarnock, asserting that the club engaged in discriminatory practices under § 8 of the Equal Status Act.[306] The Equality Authority requested that the Dublin District Court suspend the club's liquor license for a period not exceeding thirty days.[307] On June 11, trustees of the Portmarnock Golf Club issued proceedings against the Equality Authority and the Attorney General of Ireland.[308] The proceedings demanded a finding that the club was not a discriminatory club under the Equal Status Act, or, in the alternative, that §§ 8, 9, and 10 of the Act violated the club members' constitutionally protected right to freedom of association.[309]

On February 20, 2004, Judge Mary Collins of the District Court ruled that Portmarnock was a "discriminating club" under the meaning of the Equal Status Act.[310] On appeal before the High Court of Ireland,[311] Justice O'Higgins reversed the District Court, and held that Portmarnock fell under the savings clause in § 9 that exempts clubs whose principal purpose is to cater to the needs of a particular

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302. *Id.*
303. Appiah, *supra* note 292, at 558.
304. Equal Status Act of 2000 § 8–(2)(a)(i). The Equal Status Act of 2000 has since been amended by the Equality Act of 2004. Equality Act of 2004 (Act. No. 24/2004) (Ir.).
305. Equal. Auth. v. Portmarnock Golf Club, [2009] I.E.S.C. 73.
306. *Id.*
307. *Id.*
308. *Id.*
309. *Id.*
310. *Id.*
311. *Id.*

group.[312] He rejected the Equality Authority's argument that there had to exist a logical connection between the particular group and its "needs" and noted that the Equality Authority could not cite a club that met such criteria.[313]

On November 11, 2009, the Supreme Court of Ireland, in a 3–2 decision,[314] affirmed the decision of the High Court.[315] The Court held that Portmarnock fit the definition of a discriminating club under § 8 of the Equal Status Act, but was exempted by § 9(1)(a), and was thus entitled to keep its liquor license.[316]

All five Justices acknowledged that Portmarnock was a discriminating club within the meaning of § 8 because it denied membership to women on the basis of gender.[317] Therefore, the case turned entirely on the issue of whether Portmarnock could rely on the § 9(1)(a) exemption in order to continue to serve "intoxicating liquor."[318] Again, § 9(1)(a) provides that "a club shall not be considered to be a discriminating club . . . if its principal purpose is to cater only for the needs of—persons of a particular gender, marital status, family status, sexual orientation, religious belief, age, disability, nationality or ethnic or national origin."[319] Justice Hardiman, writing as part of the three-Justice majority, deduced that given that only two genders exist, the phrase "persons of a particular gender" meant it was permissible for clubs to cater only to women or only to men, and he noted that this was compatible with the constitutionally protected freedom of association.[320] Therefore, the outcome of the case rested on the Court's determination of the degree of nexus between the "needs" and the "particular gender" that § 9 requires.[321]

The Equality Authority reiterated the argument it advanced before the High Court—that there has to be a "logical connection" between the "needs" and the particular group to which the club restricts membership.[322] The Court interpreted the Equality Authority's position to mean that a club exclusively for Bulgarians would not be a discriminating club; however, a bridge club restricted to Bulgarians would be discriminatory because being Bulgarian is not logically connected to playing bridge.[323] Thus, under the Equality

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312. *Id.*
313. *Id.*
314. *Court Rules Club Can Bar Women*, *supra* note 298.
315. *Equal. Auth.*, [2009] I.E.S.C. 73.
316. *Id.*
317. *Id.*
318. *Id.*
319. *Id.*
320. *Id.*
321. *Id.*
322. *Id.*
323. *Id.*

Authority's reasoning, Portmarnock had to be devoted to "needs" that are specific to men.[324] The majority rejected this position for a number of reasons. Justice Hardiman held that the statute did not require the "need" to be specific to the particular group and warned that such an interpretation would have drastic results.[325] He reasoned that if an activity were required to be a need of "women qua women," then it followed that the activity had to be a need of all women.[326] He continued that seeking to classify an activity as a need of all women would amount to gender stereotyping.[327] The majority also reasoned that § 9 was meant to apply to existing clubs, not theoretical ones.[328] Like the High Court, the majority found it noteworthy that the Equality Authority could not point to an existing club that would qualify for the § 9(1)(a) exemption under its proposed definition.[329] The Equality Authority only offered a hypothetical one, a club of men disgruntled with family courts.[330] The majority found that it was highly unlikely that the legislature could have contemplated such a club in writing § 9's exemption and especially unlikely that such a club would be registered with a liquor license.[331]

Rejecting the argument that "needs" refers to the requirements of a particular group,[332] Justice Hardiman found "needs" broad enough to encompass social, cultural, and sporting needs.[333] Thus, a golfing need could be a need of a particular gender.[334] Similarly, Justice Geoghegan noted that "needs" could refer to not only absolute necessities, but necessities under certain circumstances.[335] He contended that the clause "catering only to the needs of a particular . . . gender" is more logically read to mean providing for necessities that arise under certain circumstances.[336] Therefore, a particular gender, i.e., men, could have a golfing need and Portmarnock could cater to that need while still falling within the § 9 exemption.[337]

The fact that female non-members were allowed to play at Portmarnock did not sway the majority.[338] The Equality Authority cited this as evidence that Portmarnock did not cater "*only* to the

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324. *Id.*
325. *Id.*
326. *Id.*
327. *Id.*
328. *Id.*
329. *Id.*
330. *Id.*
331. *Id.*
332. *Id.*
333. *Id.*
334. *Id.*
335. *Id.*
336. *Id.*
337. *Id.*
338. *Id.*

needs of a particular gender."[339] The majority held that the availability of the course to the public was secondary to the club's principal purpose of catering to the needs of its male members.[340] Justice Geoghegan reasoned that the legislature intended the term "only" to distinguish between clubs with single-sex membership and clubs with "dual structure" membership.[341] Dual structure clubs are clubs with both male and female members that engage in disparate treatment based on gender, such as restricting the tee times of female members or favoring male applicants for admission.[342] Justice Geoghegan concluded that § 9 exempted clubs with all-male membership, but not dual structure clubs.[343] Justice Hardiman also found that the availability of the course to women was not determinative.[344] He reasoned that because the course was open to the general public, Portmarnock had a duty under § 5 of the Equal Status Act—separate from the requirements of §§ 8 and 9—to allow women to play the course as members of the public.[345]

The dissenting Justices, Denham and Fennelly, were not persuaded that Portmarnock's "principal purpose" was to "cater only to the needs" of its male members[346] or that the legislature intended the Act to address only dual structure membership policies.[347] First, Justice Denham concluded that the "principal purpose" of Portmarnock was golf,[348] noting that the club's first two rules established it as a "Golf Club" governed by the R&A's rules of golf.[349] Second, women had access to the club's golf course, bar, restaurant, and other clubhouse facilities.[350] She thus concluded that the club catered to both men and women, just differently because women were not allowed to be members.[351] Finally, Justice Denham concluded that the term "needs" implied necessity and, therefore, there had to be a logical connection between the gender catered to and the "needs."[352] Justice Fennelly concluded that the majority was correct that "needs" included "subjective, social and cultural needs" and that the club would be exempt if it catered only to the needs of male golfers.[353] However, he found that since women had substantial

339. *Id.* (emphasis added).
340. *Id.*
341. *Id.*
342. *Id.*
343. *Id.*
344. *Id.*
345. *Id.*
346. *Id.*
347. *Id.*
348. *Id.*
349. *Id.*
350. *Id.*
351. *Id.*
352. *Id.*
353. *Id.*

access to the club's facilities, the club did not meet § 9's requirements.[354]

The Supreme Court's decision means that, at least for the time being, Portmarnock can retain its license to sell alcohol and continue to exclude women from membership.[355] The dicta from the Court's opinion indicate that a dual structure club would not qualify for the § 9 exemption.[356] However, even if a club is found not to be exempt, it would still only be subject to the suspension or revocation of its liquor license.[357] Therefore, like the club in *Burning Tree*,[358] a discriminating Irish country club still has the option to forego the government benefit and maintain its discriminatory policies.[359]

III. THREE-PRONG APPROACH TO GENDER DISCRIMINATION AT PRIVATE COUNTRY CLUBS

Women have employed a variety of methods in opposition to disparate treatment at private clubs.[360] In addition to litigation based on civil rights law, tax codes, and public accommodations laws,[361] gender discrimination opponents have protested at the clubs,[362] resigned from membership,[363] supported antidiscrimination legislation, and issued requests for investigation and enforcement.[364] Litigation and internal pressures have precipitated changes at local clubs in the United States and Ireland. However, litigants and activists seeking to end gender discrimination at the most world-renowned golf clubs have been unsuccessful.[365]

If the advocates' goal is to eradicate the disparate treatment of women at private country clubs, then the appropriate course of action is through the courts. The courts are the appropriate venue because internal processes, legislation, and protest suffer from significant

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354. *Id.*

355. *Id.*

356. *Id.*

357. *See id.* ("The sole effect of the declaration that a club is a discriminating club is to prevent the club from making alcoholic drinks available to its members."); *see also* Equal Status Act of 2000 § 8–(7) (Act No. 8/2000).

358. CHAMBERS, *supra* note 1, at 35.

359. Equal Status Act of 2000 § 8–(7); *see also Equal. Auth.*, [2009] I.E.S.C. 73 (noting that a finding that a club has discriminatory practices does not affect the lawfulness of the club's existence).

360. CHAMBERS, *supra* note 1, at 198.

361. *Id.* at 225–28.

362. *Augusta Loses First Member Over All-Male Policy*, *supra* note 110.

363. *Id.* (noting the resignation of former CBS Chief Executive Thomas Wyman from his membership at Augusta National).

364. CHAMBERS, *supra* note 1, at 205–07.

365. *See supra* notes 15–16 and accompanying text (listing well-known country clubs that exclude females from membership and noting the lack of change over time).

infirmities. Stricter antidiscrimination laws at the national level in any of the three countries risk infringing upon the freedom of association. State-level legislation in the United States would require piecemeal implementation of laws that few states are willing to adopt. Internal processes and boycotting, by themselves, cannot sufficiently motivate the most notable clubs to change their ways. Even members who oppose discriminatory policies have understandable qualms about stirring up controversy at their own clubs, and clubs such as Augusta National have not balked at lost revenue from boycotts, whether the revenue is from commercial advertising or mere membership dues and green fees.

This Note proposes a three-prong litigation-based approach aimed at eliminating gender discrimination at private country clubs. First, parties looking to bring suit should identify plaintiffs that are strategically situated, ideally women who have ties to the challenged club, and whose exclusion from equal membership evokes a clear perception of injustice. Second, the litigation should target clubs that are nationally and globally known. Third, each claim brought against a club should seek the revocation of the club's license to sell alcohol.

A. *Strategic and Sympathetic Plaintiffs*

The first step in the three-prong process is to identify persons in the best position to challenge a club's policy of gender discrimination. This tactic is well-proven: gun-rights activists have hand-picked plaintiffs to assert Second Amendment claims,[366] and opponents of affirmative action have sought out potential plaintiffs who were detrimentally impacted by affirmative action policies to an extraordinary degree.[367] Opponents of gender discrimination would benefit from identifying women whose exclusion from these clubs appears to create a particularly harsh injustice offensive to the public policy against discrimination.

Ideal plaintiffs include women who have used a club's facilities for many years—particularly spouses of members—and yet are still denied the full privileges of membership. Also, women who are refused membership despite being particularly successful in the game of golf or in other fields of endeavor, such as business or politics,

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366. Laura E. Davis, *Supreme Court to Hear Gun-Rights Case that Reaches Beyond 2nd Amendment*, YAHOO! NEWS (Feb. 26, 2010), http://news.yahoo.com/s/ynews/ynews_ts1165.

367. *See, e.g.*, Ricci v. DeStefano, 129 S. Ct. 2658 (2009) (invalidating passing test scores of white firefighters on promotional exam because no black firefighters passed); Grutter v. Bollinger, 539 U.S. 306 (2003) (challenge by white law school applicant denied admission through system that gave extra weight to an applicant's minority status).

would be good candidates.[368] For example, the plaintiff in *Warfield* was not only a longtime patron of the club, but her real estate business was dependent upon the connections at the club.[369] A member's daughter or wife who has strong social and economic ties to the club could fit this role. Furthermore, a club that denies membership to a woman who has played golf professionally, served as CEO of a company, or served her country is particularly offensive to common notions of fairness. The *Portmarnock* case may have been decided differently had the Equality Authority drawn the Court's attention to a woman who was disproportionately harmed by the club's male-only policy.

When a woman brings suit against a club, or when the government brings suit on her behalf, she has many advantages compared to a suit brought on the government's own initiative. First, she stands before the court as a victim of discrimination. She provides a face for those who the challenged policy adversely affects as well as a narrative detailing the disparate treatment and its impact. Furthermore, as cases against private country clubs involve conflicts between gender equality and the freedom of association,[370] an executive branch plaintiff evokes the idea of government encroaching on the right to freely associate.[371] In contrast, a woman bringing suit against a prominent club arouses all the advantageous perceptions associated with a member of a protected class challenging an elite, restrictive institution.[372] Litigants against country clubs cannot allow cases to be framed as an issue of groups' ability to freely associate. Instead, the issue must be characterized as the latest example of power institutions perpetuating discrimination on the basis of immutable traits—a practice that Western civilization has come to reject. A plaintiff who can tell her compelling story can focus on the archaic and misogynistic practices of these clubs.

Potential plaintiffs must not only have a compelling story; they must also have the fortitude to initiate litigation and accept the consequences that follow. As Dr. Martin Luther King, Jr. advocated in his historic *Letter from a Birmingham Jail*, before taking direct action against injustice, it is necessary to engage in a process of self-purification—meaning an individual must internally question his or her willingness to accept the repercussions of opposing

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368. *See* Warfield v. Peninsula Golf & Country Club, 896 P.2d 776, 781 (Cal. 1995) (noting that the plaintiff was an active participant on the club's competitive golf team and had won the annual club-hosted ladies tournament on multiple occasions).

369. *Id.* at 781–82.

370. *See, e.g.*, Equal. Auth. v. Portmarnock Golf Club, [2009] I.E.S.C. 73.

371. *See id.* (asserting that the Equality Authority may have overstepped its bounds in bringing the claim against Portmarnock Golf Club).

372. *E.g.*, *Warfield*, 896 P.2d at 776.

discrimination.[373] Before filing a lawsuit against a country club, a potential plaintiff must recognize that, win or lose, the club membership may ostracize her and her family. Regardless of a lawsuit's outcome, there is no guarantee that the club's patrons and members will accept an individual who sued their establishment. The backlash seems almost inevitable.

Furthermore, although attacking the club's government benefits is an effective approach, there is no certainty that the club will yield and admit women. The Maryland court's decision in *Burning Tree* demonstrates such a hollow victory.[374] If a court rules that a discriminatory club cannot maintain its tax exemption or liquor license, then the club still has a choice: it can change club policy or forfeit the state privilege and continue to discriminate.[375] A plaintiff must be able to accept that defeat at trial, animosity from fellow members, or a club's unyielding commitment to policies may mean that she will never be fully accepted as a member.

B. *Targeting the Well-Known Country Clubs*

Part two of the proposed approach is to focus litigation efforts against the most notable clubs that engage in discriminatory practices. Particularly important among this group are the clubs that host the Major Championships, such as St. Andrews, Royal Troon, and Augusta National. The *Portmarnock* case notwithstanding, these clubs' discriminatory policies have been largely unchallenged in court.[376] Undoubtedly, drawbacks exist to targeting clubs like Augusta and St. Andrews. Challenges to their time-honored traditions are sure to be met with staunch opposition.[377] Furthermore, these clubs have the wealth to drag out litigation for years.[378] However, even if satisfactory results against these clubs are unattainable via the judicial process, simply bringing suit against the prominent clubs can do a great deal to reduce gender discrimination. The litigation will maximize possible media attention, thus reinvigorating and spreading public awareness of the practices. The lawsuits can also deter less renowned and more litigation-averse clubs from mimicking the policies of elite clubs.

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373. *See* Martin Luther King, Jr., Letter from a Birmingham Jail, Apr. 16, 1963, *available at* http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.

374. State v. Burning Tree Club, Inc., 554 A.2d 366 (Md. 1989).

375. *See id.* at 375 (noting that Burning Tree retained the option to continue its policy at the cost of forfeiting the preferential tax treatment).

376. *See supra* notes 15–16 and accompanying text.

377. *See Augusta Loses First Member Over All-Male Policy*, *supra* note 110 (discussing former Augusta Chairman Hootie Johnson's response to the 2002 protests and noting that a majority of club members were opposed to a change in policy).

378. *See* CHAMBERS, *supra* note 1, at 31 (listing several Fortune 500 CEOs who are members at Augusta National).

Bringing suit against the world-famous country clubs keeps issues of gender discrimination at all private country clubs in the spotlight.[379] When controversies arise at clubs like Augusta, Portmarnock, and Royal St. Andrews, the world takes notice.[380] Furthermore, unlike protests, which usually do not last longer than the host tournament,[381] litigation can yield an ongoing narrative that keeps the story in the headlines.[382] Next, the courses that host the Major Championships are the envy of country clubs throughout the golf world.[383] Local country clubs take their cues from Augusta, Royal Troon, and St. Andrews.[384] As evident from the Shoal Creek controversy in 1990, when a club of this stature is forced to abandon a discriminatory policy, many other clubs follow.[385] Additionally, the traditional, well-established, and well-known country clubs tend to practice the most egregious forms of discrimination.[386] In the local club setting, disparate treatment usually takes the form of invidious discrimination, such as granting women unfavorable tee times.[387] Meanwhile, Augusta and several of the British Open sites flatly prohibit female membership.[388] Burning Tree and Preston Trail will not even let women on the course.[389] To substantially diminish gender discrimination at private country clubs, the most blatant offenders must be addressed.

C. *Liquor Licensing*

The final prong of the suggested approach is that plaintiffs seek revocation of clubs' liquor licenses. As noted above, plaintiffs have brought a variety of causes of action against country clubs for discriminatory practices with varying degrees of success.[390] Precedents in Ireland and the United Kingdom have not given

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379. *See Augusta Loses First Member Over All-Male Policy*, *supra* note 110 (noting the media response to the 2002 controversy at Augusta).

380. *See, e.g.*, *Court Rules Club Can Bar Women*, *supra* note 298; *R&A Defends All Male Policy*, *supra* note 2; *Survey: Respondents Willing to Act Against Masters*, *supra* note 99.

381. Hinds, *supra* note 114, at 14.

382. *See Court Rules Club Can Bar Women*, *supra* note 298 (reporting on the nearly decade-long litigation against Portmarnock Golf Club).

383. CHAMBERS, *supra* note 1, at 28.

384. *Id.*

385. *Id.* at 6.

386. *Id.* at 24–29 (reviewing the nature of the discriminatory practices at several well-known private country clubs).

387. *Id.* at 3–4.

388. *Id.* at 24–29.

389. *Id.* at 30, 34–35.

390. *See supra* Part II (discussing litigation in Ireland, the United Kingdom, and the United States); *see generally* CHAMBERS, *supra* note 1 (discussing several domestic legal challenges to discriminatory club policies).

potential plaintiffs many reasons to be optimistic.[391] In the United States, outcomes were largely dependent on the specificity of state antidiscrimination laws and fact-intensive inquiries into the public nature of private country clubs.[392] These antidiscrimination laws also risk running afoul of country clubs' constitutionally protected right to freedom of association.[393] Suits challenging liquor licenses avoid many of the pitfalls and hurdles of suits based on antidiscrimination laws.

The basic argument for revocation of a country club's liquor license rests on recognized public policies against discrimination. In the United States, state and local governments control liquor licensing, and several cities and states have expressly prohibited the issuance of licenses to discriminatory private clubs, essentially refusing to endorse the discriminatory policies in any manner.[394] Even where there is no statutory language expressly requiring that clubs not engage in discrimination, plaintiffs have still brought claims seeking revocation of liquor licenses.[395] Although the U.S. Supreme Court has held that a state's grant of a liquor license to a discriminatory club does not constitute state action under the Fourteenth Amendment,[396] the question of whether this practice violates the equal protection clauses of state constitutions is largely unanswered.[397]

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391. *See supra* Part II.B–C (discussing litigation in the United Kingdom and Ireland, respectively).

392. *See supra* Part II.A (discussing litigation in the United States).

393. *See, e.g.*, Warfield v. Peninsula Golf & Country Club, 896 P.2d 776, 794 (Cal. 1995).

394. *See* Coalition for Open Doors v. Annapolis Lodge No. 622, Benevolent & Protective Order of Elks, 635 A.2d 412 (Md. 1994) (holding that a city ordinance conditioning a liquor license on nondiscriminatory membership policy was nevertheless consistent with a state public accommodations law that excluded private clubs); Beynon v. St. George-Dixie Lodge No. 1743, Benevolent & Protective Order of Elks, 854 P.2d 513 (Utah 1993) (holding that the Elks Club was an "enterprise regulated by the state" under the state antidiscrimination statute and could not retain its liquor license if it denied membership on the basis of gender); *see also* CHAMBERS, *supra* note 1, at 227.

395. *See, e.g.*, Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 165 (1972) (seeking revocation of a state-granted liquor license on the ground that the club's allegedly discriminatory practices constituted state action and violated the Equal Protection Clause of the Fourteenth Amendment).

396. *Id.* at 163.

397. Only one case of record was found addressing the legality, under the state constitution, of a liquor licensee who discriminated in membership. Davis v. Attic Club, 371 N.E.2d 903, 904 (Ill. App. Ct. 1977). The *Davis* case did not even answer whether the grant of a liquor license to a discriminatory bar constituted state action in violation of the Illinois equal protection clause. *See id.* at 911 (indicating that no state action had been alleged). Instead, the court addressed whether the state liquor licensing allowed a license to be granted to a discriminating club and whether the Illinois Equal Protection Clause permitted discriminating clubs in general. *Id.* at 906.

In Ireland, the Equal Status Act, at issue in *Equality Authority v. Portmarnock*,[398] sanctions discriminatory clubs with suspension or revocation of their liquor licenses.[399] While British licensing laws do not include express antidiscrimination provisions, the Licensing Act of 2003 does contain statutory language that could be construed against discriminatory clubs. The Act provides that a club must be "established and conducted in good faith."[400] Although the issue has not been raised in a British court, there is at least a colorable argument that clubs that practice discrimination are not established and operated "in good faith." Therefore, plaintiffs in British courts can conceivably argue that these clubs are not entitled to liquor licenses.

One of the main advantages of legislation and litigation that restrict liquor licensing is that they do not constitute infringements on club members' right to freely associate. The U.S. Supreme Court has held that the right to associate for expressive purposes may not be infringed unless the government has a compelling interest, unrelated to the suppression of ideas.[401] The Court has further held that "[t]he forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that person affects [significantly] the group's ability to advocate public and private viewpoints."[402] In *Boy Scouts of America v. Dale*, the Court held, 5–4, that the Boys Scouts were an "expressive association" and that the forced inclusion of homosexuals into the Boy Scouts would significantly affect the group's ability to "instill values in young people" in the manner articulated in the Boy Scouts' mission statement.[403] In this context, private country clubs do not likely rise to the level of expressive associations, even in comparison to the Boy Scouts. The country clubs in question are social organizations, not political. They are devoted to leisure pursuits, not expressive messages. Additionally, unlike the Boy Scouts, country clubs would not be forced to include the aggrieved party. To the contrary, private country clubs, under the anti-liquor licensing approach, still have the option to forego a liquor license and retain male-only policies. For these reasons, courts have not viewed state actions conditioning the grant of government benefits to social clubs on nondiscrimination requirements as violating any asserted freedom to associate.[404]

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398. Equal. Auth. v. Portmarnock Golf Club, [2009] I.E.S.C. 73.

399. Equal Status Act of 2000 § 10–(1)(a) (Act No. 8/2000).

400. *See* Licensing Act 2003, c. 17, § 63 (Eng.) (laying out factors for determining whether a club is "established and conducted in good faith").

401. Roberts v. United States Jaycees, 468 U.S. 609, 623 (1984).

402. Boy Scouts of America v. Dale, 530 U.S. 640, 748 (2000).

403. *Id.* at 654, 666.

404. *See* cases cited *supra* note 394.

While the Supreme Court of Ireland did not rule on the constitutionality of the Equal Status Act's liquor license sanction, the Court did acknowledge that the sections were written to avoid infringing the freedom of association.[405] In terms of the degree of infringement on the freedom of association, the suspension or revocation of a liquor license is rather minimal. The sanction does not prohibit members of the club from associating, or even drinking alcohol when doing so.[406] The sanction simply prohibits the club from *selling* alcohol.[407] In any of the three nations, a discriminatory country club generally offers a hallow justification for its practices.[408] Country clubs are not political associations that discriminate because of bigoted political ideologies. The clubs are devoted to leisure and the policies frequently exist simply because of a desire for male camaraderie and tradition.[409]

When faced with the prospect of losing liquor licensing, a country club still has a choice. Like the loss of state tax breaks, a club can always forego the government benefit and continue to discriminate.[410] Wealthy clubs have previously chosen to pay substantial taxes in order to continue to exclude women.[411] However, those who argue that clubs will flippantly abandon the privilege of selling alcohol[412] ignore the substantial tie between alcohol and the game of golf. Alcohol is inextricably woven into the fabric of golf tradition.[413] Few sports, if any, institutionalize drinking more than golf.[414] The connection is so well established that clubhouse bars are universally known as "the nineteenth hole."[415] The Irish Parliament's use of license revocation as a sanction speaks to its perceived power.[416] A club that has its license suspended can always allow members to bring their own alcohol. However, aristocratic patrons of these elite clubs, who pay handsome fees and have grown to expect the best of

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405. Equal. Auth. v. Portmarnock Golf Club, [2009] I.E.S.C. 73.

406. *See id.* (stating that the only consequence of being found to be a discriminating club is the revocation of a liquor license).

407. *Id.*

408. *See supra* Part I.E (discussing justifications country clubs offer for their discriminatory practices).

409. *See* CHAMBERS, *supra* note 1, at 23 (explaining the role of tradition in the formation of certain gender-biased club rules).

410. *See id.* at 34–35 (describing Burning Tree County Club's decision to continue to discriminate in lieu of receiving a Maryland state tax abatement).

411. *Id.*

412. Song, *supra* note 10, at 198.

413. Dave Kindred, *The Game's Unholy Alliance: How Golf and Alcohol Melded into a Single, Blurry Image*, GOLF DIG., Dec. 2000, at 153, 153.

414. *Id.*

415. *Id.*

416. *See* Equal Status Act of 2000 §§ 8–10 (Act No. 8/2000) (setting forth definitions of a discriminating club and outlining sanctions for such clubs).

the best, are not likely to appreciate the inability to imbibe at the nineteenth hole.

Suits for liquor license revocation also have the advantage of not requiring the plaintiff to present proof of the public activities of the club. In Britain, the precedent for enforcing antidiscrimination laws against private clubs relies substantially on the public's access to the club and guarantees only that the club will not deny women entrance to areas accessible to male members of the public.[417] This provides little help to women seeking access to the hallowed halls of the Old Course Clubhouse at St. Andrews, which is open only to members.[418] The Licensing Act of 2003 may provide recourse. The Act conditions the grant of a liquor license to a private club on a showing that the club is "established and conducted in good faith."[419] Proceeding against a club on this ground would make the public or private nature of the club largely irrelevant.

Ireland's Equal Status Act is the most notable piece of legislation to impose a liquor license sanction on discriminating clubs. While the Supreme Court's decision in *Equality Authority v. Portmarnock Golf Club* was a setback for opponents of discrimination, doors remain open.[420] First, the Court appeared willing to hold that clubs engaged in disparate treatment between male and female members would not be exempt from the sanctions.[421] More significantly, the Court's decision was a strongly contested ruling and some of the majority's assumptions are open to scrutiny by arguments that the Equality Authority failed to raise.

The Supreme Court and the High Court seized on the Equality Authority's inability to name a club that restricted membership to a particular group and catered to "needs" logically connected to that group.[422] They concluded that the absence of such a club meant that the legislature did not intend for the "needs" to be specifically tied to the particular group.[423] In fact, many clubs exist whose needs are logically connected to a single gender. Examples could include support groups for single fathers, men dealing with male pattern baldness, and clubs for former members of an all-male professional soccer team. Two existing clubs that satisfy the logical connection requirement are Friends Upfront, a support group for women with

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417. Bateson v. Young Men's Christian Ass'n, [1980] N.I. 135 (Q.B.).

418. *R&A Defends All Male Policy*, *supra* note 2.

419. Licensing Act, 2003, c.17, § 63.

420. *See supra* Part II.C (discussing questions the Supreme Court of Ireland left unanswered).

421. *See* Equal. Auth. v. Portmarnock Golf Club, [2009] I.E.S.C. 73 ("It was a remarkable feature of the argument in this case that the Authority was unable to give an example of even one existing club which could benefit from [the Authority's construction]. . . .").

422. *Id.*

423. *Id.* (noting that such a result would be absurd).

breast cancer, and Men Against Cancer, a group for men suffering from prostate or testicular cancer.[424]

The majority also reasoned that the Equality Authority's "logical connection" interpretation would mandate that a "need" of a particular group be a need of every member of that group.[425] Nothing in the statute requires such a reading.[426] The "need" may be unique to a specific gender, but still not be a need of all its members. Men suffering from testicular cancer have concerns that women and many men do not experience. The "logical connection" interpretation would also exempt a female-only group devoted to the equal employment of women since the "need" of remedying discrimination against women in the workplace would be logically connected to the female gender. Such groups could still engage in sport and leisure activities without losing their exemption, so long as their principal purpose was catering to the needs unique to the gender, religious affiliation, etc., of its members. The majority's interpretation essentially reads "needs" out of the statute and allows the exemption to swallow the prohibition of discrimination.[427] It seemingly allows any club devoted principally to a single race, gender, religion, nationality, etc., to discriminate, even if the "need" has no nexus to the particular group.

Lastly, the majority's distinction between "dual structure" and single-sex clubs is open to attack. The statute makes no express distinction between the two types of clubs.[428] Furthermore, the Court provides no explanation as to why the legality of the disparate treatment turns on the club's classification of women "members" or "guests."[429] Women have unfettered access to Portmarnock, but have no say in governing the club.[430] If another club provided female patrons the same degree of access, but classified the women as "members," the club would violate the statute. Therefore, under the Court's reading of the Equal Status Act, dual structure clubs can avoid liability by reclassifying women to a lower status, i.e., from

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424. *See Cancer Support Groups*, WOMEN'S CANCER INFO. PROJECT, http://www.eurohealth.ie/cancom/iragcy.htm (last visited Mar. 22, 2011) (listing national cancer support groups).

425. *Equal. Auth.*, [2009] I.E.S.C. 73.

426. *See* Equal Status Act 2000 § 9–(1)(a)(1) (Act. No. 8/2000) (declaring that a club that caters only for the needs of persons of a particular gender to not be a discriminating club for purposes of the Act).

427. *Compare Equal. Auth.*, [2009] I.E.S.C. 73 ("[T]he word 'needs' was not to be interpreted as meaning absolute necessities. Its ordinary natural and literal meaning was broad enough to embrace social, cultural and sporting needs, as well as more basic needs."), *with* Equal Status Act 2000 § 9–(1)(a) ("[A] club shall not be considered to be a discriminating club by reason only that—(a) if its principal purpose is to cater only for the needs of—(i) persons of a particular gender . . . it refuses membership to other persons . . . .").

428. Equal Status Act of 2000 §§ 8–10.

429. *See Equal. Auth.*, [2009] I.E.S.C. 73.

430. *See id.* (noting that the club permits women to play on the course).

members to guests. The Irish Parliament could not have intended the Equal Status Act to promote the demotion of women within private clubs. A statutory interpretation that provides greater protection to a club that arbitrarily refuses to even consider women as members is incongruent with the purpose of antidiscrimination laws.[431]

IV. CONCLUSION

The number of private country clubs in Ireland, the United Kingdom, and the United States that engage in discrimination against women is dwindling. However, numerous clubs remain significantly behind the times when it comes to abandoning their discriminatory practices. Notably, the most egregious perpetrators of gender discrimination are also some of the most famous and revered clubs in the game of golf. The policies and actions of these clubs permeate country club society. In the past forty years, women have made great strides in breaking down barriers to inequality. Women have challenged the disparate treatment of private country clubs through internal and external protests and legal efforts in the legislative and judicial branches. During the same time, public pressure has forced country clubs to abandon racially discriminatory membership rules. Despite these trends and a proliferation of antidiscrimination laws, clubs continue to deny women equal membership.

The clubs that perpetuate policies of gender discrimination are so staunchly committed to these rules that internal remedial efforts are futile. Litigation against the notable discriminatory clubs is the most promising course of action. Targeting these clubs will maximize media attention and galvanize support. It will also encourage lesser-known clubs—who have fewer resources to defend against suit—to abandon discriminatory policies to avoid litigation. Identifying women who are adversely affected by club policies allows litigants to humanize the issue before the courts and frame the case as an attack on archaic chauvinism. Lastly, advocating for the rescission of the clubs' liquor licenses is a method to put substantial pressure on them without potential infringement on the freedom of association.

The potential success of these lawsuits is speculative and dependent on the jurisdiction in which the claims are brought and the nature of the clubs' practices. Several U.S. states and Ireland have enacted statutes expressly prohibiting grants of liquor licenses to discriminatory clubs. American plaintiffs can also assert that state licensing of discriminatory clubs violates public policy and provisions

431. *See id.* (discussing the purpose of the Equal Status Act).

of state constitutions. In the United Kingdom, the Licensing Act may provide an avenue of recourse. Because the law and precedent—or lack thereof—varies across the three countries and within the United States, a single strategy will not be effective for all plaintiffs. However, the three-prong approach suggested above provides general guidelines that advocates can adopt to maximize public support, improve their chances for prevailing in court, and ultimately eliminate the disparate treatment of women at these country clubs.

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