

NO WOMEN (AND DOGS) ALLOWED: A COMPARATIVE ANALYSIS OF DISCRIMINATING PRIVATE GOLF CLUBS IN THE UNITED STATES, IRELAND, AND ENGLAND

INTRODUCTION

In June 2005, Ireland's High Court overruled a February 2004 landmark decision by district court Judge Mary Collins concerning sexual discrimination of women by private golf clubs in Ireland.¹ Initially, Judge Collins ruled that the Portmarnock Golf Club,² one of Ireland's top golf courses, discriminated against females by not allowing them to join the prestigious club.³ This ruling stemmed from the Equal Status Act of 2000,⁴ which allows exclusion of certain members only if the club promotes activity tailored for a specific group.⁵ Because both men and women play the sport, Judge Collins held that private golf clubs were not allowed to bar women.⁶ Yet in a decision overruling the district court, the High Court based its subsequent ruling on a narrow provision of the Act that essentially exempts those clubs formed for the needs of a particular gender; in this case, the Court viewed the Portmarnock as catering to the needs of men.⁷

1. *Equal Authority v. Portmarnock Golf Club & Ors*, [2005] I.E.H.C. 235, [2000] (H. Ct., June 10, 2005) (Ir.), available at <http://www.bailii.org/ie/cases/IEHC/2005/235.html> (last visited Apr. 13, 2006). See also Breaking News.ie, Equality Authority Disappointed at Portmarnock Decision (June 10, 2005), <http://archives.tcm.ie/breakingnews/2005/06/10/story206591.asp> [hereinafter Equality Authority Disappointed]; Angus Howarth, *Men-Only Golf Course Breaking the Law, Rules Judge*, THE SCOTSMAN, Feb. 21, 2004, <http://news.scotsman.com/topics.cfm?tid=156&id=206642004>.

2. Founded in 1894, the Portmarnock Golf Club (the "Portmarnock") is considered one of Ireland's most challenging golf courses. By the close of 2003, it had hosted the Irish Open, a PGA European tour event, thirteen times. *Judge Rules Irish Golf Club Discriminating Against Women*, THE TIMES OF INDIA, Feb. 20, 2004, <http://timesofindia.indiatimes.com/articleshow/509069.cms> [hereinafter *Landmark Decision*].

3. Howarth, *supra* note 1.

4. Equal Status Act, 2000 (Act No. 8/2000) (Ir.), available at <http://www.irishstatutebook.ie/ZZA8Y2000.html> (last visited Mar. 20, 2006). The aim of the Act is "to promote equality and . . . prohibit . . . discrimination . . . in connection with the provision of services." *Id.*

5. Howarth, *supra* note 1.

6. *Landmark Decision*, *supra* note 2.

7. Equality Authority Disappointed, *supra* note 1. "Mr. Justice O'Higgins found under the Equal Status Act 2000 men had the right to form a male only sports club. Section nine of the Act exempts clubs whose principal purpose is to cater only for the needs of men." *Id.* Section 9 of the Equal Status Act, 2000 states in part, "a club shall not be considered a discriminating club by reason only that (a) its principal purpose is to cater only for the needs of (i) persons of a particular gender, marital status, family status, sexual orientation, religious belief, age, disability, nationality or ethnic or

Unfortunately, this recent judicial decision allowing for discrimination against women seems to be the rule rather than the exception.⁸ Beneath the historical and beloved game of golf rests an ugly side: its prevalent discriminatory practices.⁹ Despite the notable increase in popularity of the game among women,¹⁰ female golfers, whether they are recreational, amateur, or professional, still face blatant discrimination by private golf clubs around the world—namely in Ireland, Great Britain, and the United States.¹¹ Exclusive golf clubs reject successful female executives willing to pay the substantial membership fees for no other reason than the fact that certain clubs seek to maintain their all-male status.¹² The best opportunity women may have to play on the same world-class courses as men is to be associated with them through marriage or familial ties.¹³

national origin.” Equal Status Act, 2000 § 9. Based on this provision, Justice Kevin O’Higgins reasoned that an “all male club could be run on the same basis as a Catholics only chess club or a Bulgarian only bridge club.” Equality Authority Disappointed, *supra* note 1.

8. The reaction of equality advocates calling Judge Collins’ decision a “landmark” ruling reflects the lack of progress made thus far in addressing discrimination by private Irish golf clubs. Howarth, *supra* note 1.

9. The reference to “private clubs” throughout this Note includes only a handful of minority, ultra-exclusive clubs. The implication is not that *all* private clubs practice the same level of discrimination against women. In fact, “far more courses nowadays are public than are private, and many resort and upscale golf courses offer women a respite from the degree of discrimination they often encounter at the private club.” MARCIA CHAMBERS, *THE UNPLAYABLE LIE: THE UNTOLD STORY OF WOMEN AND DISCRIMINATION IN AMERICAN GOLF* 5 (1995).

10. Peter A. Shotton, Kathleen M. Armour & Paul Potrac, *An Ethnographic Study of Gender Influences on Social Behavior of Members at a Private Golf Club*, SOCIOLOGY OF SPORT ONLINE, <http://physed.otago.ac.nz/sosol/v1i2/v1i2s1.htm> (last visited Feb. 25, 2006). “Since 1979 there has been a fifty percent increase in the number of female golfers affiliated to clubs in the UK, to approximately 220,000.” *Id.*

11. *See generally* CHAMBERS, *supra* note 9. “Women, playing for both recreational and business reasons, comprise the fastest-growing segment of the golf population. They now make up roughly five million of the 24.8 million golfers. . . . Overall, women account for about 37 percent of all new players since 1993.” *Id.* at 3.

12. *Id.* at 42–52. Even female golf officials have been barred from membership at the Royal & Ancient Golf Club (R&A), for example. “When Judy Bell became the first and only woman president of the United States Golf Association (USGA) in 1996, she also became the first and only USGA president not invited to join the R&A.” Marcia Chambers, *Ladies Need Not Apply*, GOLF FOR WOMEN, May–June 2002, <http://www.golfdigest.com/gfw/gfwfeatures/index.ssf?/gfwfeatures/gfw200206August>.

13. CHAMBERS, *supra* note 9, at 4.

Currently, these private clubs¹⁴ only allow women to play because their husbands or fathers are members.¹⁵

Proponents of all-male member clubs point to several reasons to justify their practices against women.¹⁶ First, men have a First Amendment freedom to associate with whom they choose.¹⁷ Second, because golf is a leisure activity, barring membership does not cause financial damage like discrimination in the workplace.¹⁸ Third, men argue they should be allowed to relax in an all-male environment without having to deal with demands from wives and girlfriends.¹⁹ However, all three reasons are euphemistic excuses for their real motivations: “these traditions serve their interests and they like it this way.”²⁰ This very “tradition” undermines the progress made in equality in sports for women, such as Title IX,²¹ and cannot be dismissed as a peripheral issue that does not have lasting impact.²²

14. Clubs are either private or public. *Id.* at 8–9. Why the desire to play at exclusive private clubs? Those who are willing and able to pay into private clubs find that the differences between private and public clubs are stark. *Id.* at 9. While the gap between public and private courses has lessened, public courses still have significant drawbacks. Public courses used to be overcrowded and poorly maintained, “often using rubber mats for teeing grounds and incorporating other cost-saving devices.” *Id.* Although public courses today are more amenable, women golfers sometimes have to wake up at 3:30 a.m. to get tee times because the slow play of men can cause rounds to last six hours. *Id.*

15. *Id.* at 4.

But for most of these women, most of the time, their role at the club was virtually always as guest or “associate,” not as a full partner in the enterprise. . . . Membership was unavailable to them unless they were married, and then it transferred to their husbands. Divorce spelled expulsion for either a mother or a daughter.

Id.

16. *Id.* at 7.

17. This argument was specifically raised in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984). While proponents of all-male clubs in Ireland and Scotland are not able to raise First Amendment constitutional rights, their arguments rest on similar notions. Because these clubs are private entities, they have the “right to select their memberships without interference from outsiders.” CHAMBERS, *supra* note 9, at 2.

18. CHAMBERS, *supra* note 9, at 28.

19. *Id.*

20. *Id.* at 7.

21. When the federal government passed Title IX in 1972, it basically equalized the amount of funding women’s collegiate sports received compared to men’s sports teams. TODD W. CROSSET, OUTSIDERS IN THE CLUBHOUSE: WORLD OF WOMEN’S PROFESSIONAL GOLF 209 (1995).

22. *Id.*

What goes on in the small world of the private clubs wouldn’t matter very much to anyone except its members if it weren’t for the fact that the world of golf engages so many influential people, people who are the leaders in their nation, their cities, their towns, their companies. The discriminatory aspects of the club world, the belief that some are entitled to withhold rights and privileges from others, even when the “others” are wives, daughters, mothers, and female colleagues—inevitably have some impact on all of us.

Id.

However, even though there are thousands of private clubs in the United States, only a few are discriminatory all-male clubs that forbid full membership for females.²³ Thus arguably, “[f]rom a purely numerical perspective, the all-male club in the United States is utterly insignificant.”²⁴ Yet, “[a]lthough they represent less than half a percent of all private clubs, they are enormously influential, and they are quintessentially private.”²⁵

The recent Irish High Court ruling is a significant obstacle for gender equality in Ireland and the rest of the female golfing world.²⁶ Indeed, this decision only evinces the typical loopholes private golf clubs rely on to continue in their discriminatory practices.

Consequently, the Irish Parliament, the British Parliament, and the U.S. Congress must take steps to pass stricter legislation and to eliminate exceptions that permit discriminatory practices against women. Additionally, courts need to issue consistent decisions banning discrimination by private clubs. The current state of ambivalent U.S. court decisions and watered down Irish and British laws allows this blatant

23. CHAMBERS, *supra* note 9, at 27. The following is a list of some, but not all, of the all-male golf clubs that permit “limited play by women family members and women guests, generally if accompanied by a member.” *Id.* at 28–29. Bear Creek Golf Club (CO); Connecticut Golf Club; Adios Golf Club and Gator Creek Golf Club (FL); Augusta National Golf Club (GA); Wolf Creek Golf Club (KS). *Id.* at 29.

Of all of these, perhaps the most notable and well publicized club has been Augusta National Golf Club (Augusta) in Georgia. It is the host of the Masters Tournament, one of golf’s premier tournaments, typically garnering television’s highest ratings of the year. *Id.* at 31. Founded in 1931, Augusta became the host of the Masters in 1938. *Id.* “It is the only major golf championship played each year at the same place and same time, the first full week of April.” *Id.* Despite its prominent presence in the golfing world, Augusta’s social policies have largely been ignored. Although its bylaws do not specifically exclude women, the club has failed to, in more than six decades, extend membership to a female. *Id.* at 32. Augusta’s exclusive membership roster boasts the most elite of society, including many Fortune 500 CEOs. *Id.* at 31. There is no application process; three hundred members choose whom to invite. Ctr. Individual Freedom Online, *Martha Burk is Out of Bounds in Attack on Augusta*, Oct. 3, 2002, http://www.cfif.org/htdocs/freedomline/current/in_our_opinion/martha_burk_augusta.htm.

In 1990, Augusta received press when it admitted its first black member, Lee Elder, after many years of being one of the nation’s last “bastions of all-white golf.” CHAMBERS, *supra* note 9, at 32. More than ten years later, in 2002, Augusta came under fire when Martha Burk, Chairwoman of the National Council of Women’s Organizations, criticized Augusta’s exclusionary policies. Burk called for corporate sponsors to withdraw their support of the Masters tournament. She sent letters to the CEO members stating that the public demands accountability, and corporate associations with Augusta sends a message to the public. Frank J. Ferraro, *Prerogative or Prejudice?: The Exclusion of Women from Augusta National*, 1 DEPAUL J. SPORTS L. CONTEMP. PROBS. 39, 41–42 (2003).

24. CHAMBERS, *supra* note 9, at 27. There are about twenty such clubs in the country.

25. *Id.*

26. According to Niall Crowley of the Equality Authority, there still remains the possibility of an appeal or seeking legislative change. Nonetheless, the ruling will take time to study to decide on the best course of action. Equality Authority Disappointed, *supra* note 1.

prejudice against women to persist. Other challenges to addressing sexual discrimination in these private settings include the extreme secrecy of clubs and their lack of disclosure when it comes to membership policies and practices.²⁷ As a result, these discrete tactics make it even more difficult to assess the severity of existing discrimination.²⁸

Part I of this Note will focus on the historical background and the evolution of the discriminatory treatment of women by private golf clubs in the United States in order to understand the lack of progress over the decades. This discussion will compare the severity of discrimination that previously existed to the status of women today. Part II will examine and compare the current status of judicial rulings and legislation addressing the discriminatory practices against women at private golf clubs in the United States, Ireland, and Great Britain. This section will also explore problems associated with existing legislation within the three countries. Finally, Part III will offer some alternative suggestions toward improving women's status and treatment in exclusive golf clubs with an emphasis on pressuring corporate sponsors of tournaments to influence private clubs' discriminatory policies.

I. BACKGROUND & HISTORY

While the game of golf originated in Europe, it reached the upper class of American society by the late 1800s.²⁹ St. Andrews Golf Club in Yonkers, New York is widely considered to be the first golf club in

27. Jill Lieber, *Golf's Host Clubs Have Open-and-Shut Policies on Discrimination*, USA TODAY, Apr. 9, 2003, available at http://www.usatoday.com/sports/golf/2003-04-09-club-policies_x.htm. For example, in a 2003 survey conducted by *USA Today* of 129 private, semi-private, and resort courses hosting PGA and LPGA tournaments, of the 86% of clubs that provided their total number of members, only a quarter of those clubs provided any sort of gender breakdown. *Id.* While all clubs that host PGA and LPGA tournaments "must legally attest in tournament contracts or other documents that they do not discriminate in membership practices and policies on the basis of race, sex, religion or national origin," in reality, it is a mere technicality that has plenty of loopholes. *Id.* First, Augusta National, the U.S. Open, and the British Open are exempt from these contractual requirements because the PGA Tour classifies these particular tournaments as "non-PGA Tour co-sponsored events." *Id.* Alfred P. Carlton, Jr., an expert in country club law, noted a fundamental flaw in non-discrimination standards set by the PGA and LPGA: "the definition of discrimination is left open to interpretation." *Id.* Despite having written policies, when it comes down to determining whether a private club is discriminating, it becomes "a 'club-by-club' basis determination." *Id.*

28. Chambers, *Ladies Need Not Apply*, *supra* note 12.

29. CROSSET, *supra* note 21, at 12.

America.³⁰ Very quickly, golf and private social clubs became a centerpiece for social affairs in high society.³¹ While it cannot be overlooked that women have made significant strides in equality since then, the private golf club reflects none of this progress. Notably, “there is a world of difference between the modern corporation, which must respond to the issues of the day, and the insular, gated, and protected private country club that allows an escape from those issues.”³² Thus, many of the original bylaws treating women like second-class citizens still exist at the all-male exclusionary clubs.³³

Originally, these exclusive clubs were created only for white Anglo-Saxon Protestants.³⁴ Virtually every other group then faced discrimination.³⁵ “The question of a black member was never even considered; it would have been unthinkable. The bylaws of many private country clubs specified ‘Caucasians only.’”³⁶ Yet, times have changed for minority men as many formerly all-white clubs admit Jews, Catholics, Italians, and Blacks³⁷ because their bylaws now specify “men only.”³⁸ “But the old clubs still share one brand of exclusion in common: the exclusion of women, married or single, from being full voting members and shareholders. This form of exclusion of women seems to know no

30. Golf Online, The First 100 Clubs in America, <http://www.golfonline.com/golfonline/print/0,18068,467843,00.html> (last visited Nov. 3, 2004). “For purposes of determining the birth of the game in this country, the book *Golf In America: The First One Hundred Years*, points to the St. Andrew’s Golf Club in Yonkers, New York. Founded in 1888, it is considered the oldest continuously operating golf club in America.” *Id.*

31. CHAMBERS, *supra* note 9, at 4–5. “At the country club, golf joined such other elite sports as hunting, riding, shooting, and sometimes cricket, as part of the leisure life of the affluent. But of all these activities, only golf really caught on widely and spread throughout society, carrying some country club attitudes with it.” *Id.* To understand how quickly golf was spreading at the time, consider that about twenty-five years after golf was introduced to America, there were “seventeen public courses within forty miles of Times Square.” *Id.* at 5. Chicago had ten courses and several were also in Los Angeles and San Francisco by the 1930s as well. *Id.*

32. CHAMBERS, *supra* note 9, at 5.

33. *Id.* “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.” *Id.*

34. CHAMBERS, *supra* note 9, at 6.

35. *Id.* As a result, many of these excluded groups formed their own clubs. Interestingly, each of these clubs also discriminated. For example, certain Jewish clubs may have accepted German Jews but not Eastern European Jews. *Id.*

36. CHAMBERS, *supra* note 9, at 6.

37. *Id.* One of the pivotal moments came in 1990 when black executives criticized the Alabama Shoal Creek Club, host of the 1990 PGA Championship, for discrimination. Soon after, the barriers slowly began to erode for black men. *Id.*

38. *Id.*

religious or ethnic boundary.”³⁹ Historically, at certain clubs, women were not even permitted to use the main entrance.⁴⁰

Today, although the situation is not as strictly exclusionary, given that women are usually allowed to at least socialize at these clubs, they still face “discrimination and prejudice unparalleled in almost any other part of their lives.”⁴¹ This discrimination manifests itself mainly through the barring of women from full membership status, denying women voting rights in club affairs, and forcing women to golf at designated, and often undesirable, tee times.⁴² Thus, the few female members allowed in private clubs still face blatant discrimination, despite having paid the same amount as male members.⁴³

A woman’s marital status is vital to determining her membership status in these private clubs.⁴⁴ Women are typically only allowed to play on the courses because of a male association, usually with a father or husband.⁴⁵ “[F]or most of these women, most of the time, their role at the club [is] virtually always as guest or ‘associate,’ not as a full partner in the enterprise.”⁴⁶ Once a woman becomes divorced, she is essentially forced out while the divorced husband is free to remain.⁴⁷ This double standard is

39. *Id.*

40. *Id.* at 13. At St. Andrew’s Golf Club in Yonkers, New York, which opened in 1888, “[s]ome of the older members can remember when the ladies were not permitted to enter the club through the main entrance, and the quarters assigned to them were somewhat less than palatial . . .” *Id.*

41. *Id.* at 3. Today at St. Andrew’s Golf Club, “women are permitted liberal use of the clubhouse and course. On Saturdays and Sundays they are allowed to play (accompanied by a member) in the afternoon.” *Id.* at 13.

42. *Id.* at 3.

43. *Id.* at 81. Molly O’Dea was an executive at Xerox and a full-paying member at the Cheval Country Club in Lutz, Florida. When she realized she was not receiving equal treatment, the club offered her a “compromise”—it allowed her to tee off the back nine on Saturday mornings. “The back nine was for fivesomes, the ragtag foursomes, leftovers, and women. Going off the back nine just reinforces that you’re a second class citizen.’ She didn’t have to add that a client might think so, too.” *Id.* at 81.

44. *Id.* at 55–71. “As a full member, the male’s status at the club doesn’t change when his marital status does. Single, divorced, widowed, it doesn’t matter. But for a woman a change in marital status may transform her relationship to the club in dramatic ways, usually to her detriment.” *Id.* at 55.

45. *Id.* at 11.

If a woman had a son, he was embraced, taken in with great enthusiasm as a teenager. Daughters were not. Membership was unavailable to them unless they married, and then it was transferred to their husbands. Divorce spelled expulsion for either a mother or a daughter. . . . Unmarried women need not apply.

Id. at 4. Back in 1895, the rules at Pennsylvania’s Merion Cricket Club stated: “Eligible women of the household means and includes only women who reside permanently in the home of a member or subscriber and who have one of the following relationships to the member or subscriber: wife, unmarried daughter, mother, unmarried sister, unmarried woman relative, mother-in-law, or unmarried sister-in-law.” *Id.* at 11.

46. CHAMBERS, *supra* note 9, at 4.

47. *Id.* at 64.

based on strict club policies that can override even divorce settlements providing the club membership for the wife.⁴⁸

Women are limited, not only in achieving membership status, but also in volunteering in certain capacities.⁴⁹ Whenever women are allowed to participate in a club's operations, they are relegated to serving on inconsequential and "female-friendly" committees, such as the entertainment and women's tournament committees.⁵⁰ Yet comparatively, these limited volunteer duties seem to be an improvement from the roles women historically assumed. "'The early golfers liked to find pretty women lounging on the verandas of their clubhouses, but they were not in favor of women playing the game.' Men saw them as pretty baubles, elegant accoutrements to a man in a man's world."⁵¹

Perhaps the most constricting effect of the discriminatory practices by private golf clubs involves designated playing times that can affect, not only recreational play, but also a woman's career.⁵² Weekend tee times, which are typically considered the premier period for golfing, are usually reserved for men only.⁵³ This leaves women only weekday mornings and afternoons to have the opportunity to practice and play. This poses a time

48. *Id.* "Be it New York, Indiana, or California, or any number of states in between, divorce generally benefits the man, even if he agrees in a divorce settlement to give his wife the club membership." *Id.*

49. *Id.* at 56.

50. *Id.*

If there were 350 members, there were 350 shares. The share was in the man's name. From that share came a male's voting privileges, governance rights, and, as clubs have grown, service on the main golf committees. Women held none of those rights. Of course there might be women on the entertainment committee or the women's tournament committee, but they were less likely to be on the greens committee, the budget committee

Id.

51. *Id.* at 12.

52. *Id.* at 5, 220. When one considers the significant role golf plays in the professional business setting, the inability for women to play at any time puts them at a disadvantage with their male counterparts if they want to treat clients to a game of golf at these elite clubs. While designated tee times might merely inconvenience non-working women, for career women it could mean the difference between closing a deal or losing business. Granted, business deals may not be "actually signed and delivered at Augusta or any other male club. . . . But contracts are made, networks and relationships are established, a common culture is being created [S]ome of the brightest, most deserving persons in the world are being kept out, solely because of their sex." *Id.* at 220. "To an important degree, the world of golf has become a stable feature of corporate culture in the United States," where "golf is a social and recreational activity, but is also a way of entertaining clients, returning favors, and rewarding successful employees." *Id.* at 5.

53. *Id.* at 72. Weekend tee times have traditionally been reserved for men due to social customs and tradition. *Id.*

conflict for the millions of working women who, like their male counterparts, may only have recreational time to play golf on the weekends.⁵⁴

II. COMPARISON OF LEGISLATIVE AND JUDICIAL ACTIVITY IN THE UNITED STATES, IRELAND, AND GREAT BRITAIN

There have been varying degrees of legislative and judicial activity among the three countries in the passage of equal opportunity or non-discriminatory laws and court decisions addressing discrimination by private clubs. But one thing is consistent: all three countries have dealt with similarly archaic discriminatory practices by all-male private clubs. For instance, much like the social atmosphere prevailing in U.S. clubs, members of the Royal St. George's Golf Club in Sandwich, England, erected a sign banning "dogs and women."⁵⁵ Likewise in Ireland, the Bray Golf Club has been accused of denying female members full-membership status despite legislation directing them to admit women as full members.⁵⁶ Specifically, the Bray Golf Club is accused of "deliberately put[ting] in place 'an elaborate set of rules and procedures devised to

54. *Id.* at 73. As previously discussed, women's recreational constrictions are not the only consequence. For many career women, their upward mobility in the corporate world might be compromised. But even if a woman were to obtain special permission to play on the weekends with men, she might become a victim of violence as Lee Lowell frighteningly experienced. In 1988, while golfing at Cedar Brook Golf Club in New York on the eighteenth tee, she came across Ronald Forman, the chairman of the men's golf committee. He was apparently unaware she had been given permission to play. "Suddenly, Forman erupted like Mt. Vesuvius. He began yelling obscenities at her." *Id.* at 74. She decided to go to the sixteenth tee, which was empty. But Forman and others got in their golf carts and aggressively came after Lowell. After continuous taunting and chasing, one of the men unzipped his pants and urinated right in front her. *Id.* at 75. Forman threw a ball at her and while shaking his finger in her face, stated, "You will never hit another golf ball again." *Id.* Lowell took off in her golf cart, but then men continued to follow, even encircling her at one point. Luckily, she was able to escape without much more physical harm, but the humiliation and emotional damage was done. Lowell sued Forman for harassment in criminal court, but the judge acquitted him stating that his actions did not rise to level of a crime and suggested that Lowell not associate with such an organization. Lowell's membership was not renewed by the club. *Id.* at 73-77.

55. *Id.* at 24.

But while Royal St. George's would not countenance a female member, paradoxically it is a place where women can play. How did this come to pass? . . . Royal St. George's does not specifically ban women. It simply does not recognize that they exist. "It is self-evident that what does not exist cannot be asked to pay a greens fee. So women play happily at Royal St. George's (on certain days) and by long convention, they go along with the fiction that they do not exist."

Id. at 24-25.

56. *Bray Golf Club Has Fortnight to End Bias Against Women*, THE IRISH TIMES, Oct. 22, 2002, available at <http://www.ireland.com/newspaper/front202/1022/2280033419HM1BRAYGOLF.html>.

thwart the operation of the Act (Equal Status Act of 2000).”⁵⁷ Similarly, the Royal and Ancient Golf Club of St. Andrews, Scotland (“R&A”), where sexist attitudes pervade, “is for men only.”⁵⁸ Although there have been more judicial decisions and legislation passed in the United States than in Great Britain and Ireland, the positive impact of all three countries’ efforts have been insignificant overall. However, it is still worthwhile to compare each nation’s efforts to gain insight into what legislative tactics or judicial lessons might prove fruitful in the future.

A. Legislative and Judicial Activity: United States

The United States has seen a steady flow of discrimination lawsuits against private clubs,⁵⁹ yet the rulings have not been consistent.⁶⁰ For

57. *Id.* In addition, the 275 member club allegedly excludes women from the snooker room, denies women members voting rights, and offers women substantially less playing time than men. According to the Equality Authority, women have been “systematically” excluded from playing. *Id.*

58. CHAMBERS, *supra* note 9, at 25. “The R&A sets rules for golfing standards, both in course play and equipment standards, presumably for both sexes.” *Id.* The social atmosphere surrounding the R&A is best captured by the following incident during one of the Ladies’ British Open Amateur Championships. During a sudden rain shower, the officials of the Ladies’ Golf Union huddled together on the side of the clubhouse under umbrellas because they were barred from entering. *Id.* When they saw a club lackey approaching, they all thought the men inside were going to allow them to come inside out of pity or chivalry, but in actuality, the lackey stated, “Ladies, . . . I have a request from some of the members. Would you mind putting down your umbrellas? They are obscuring the view of the course from the smoking room windows.” *Id.* at 25–26. Additionally, officials from the R&A have openly stated that traditions of gender distinct clubs should remain intact. *Men-Only Golf Clubs Deny Discrimination Charges*, ETHICS NEWSLINE (Inst. for Global Ethics, Camden, ME), July 22, 2002, <http://www.globaethics.org/newsline/members/issue.tmpl?articleid=07220215521386> [hereinafter *Men-Only Golf Clubs Deny Discrimination Charges*]. Peter Dawson, secretary of the Royal and Ancient Golf Club, stated, “You get men-only clubs and women-only clubs, and it has been that way for a long, long time, I see no need to change.” *Id.*

59. *See* Albright v. S. Trace Country Club of Shreveport, 879 So. 2d 121 (La. 2004). In this case, four female plaintiffs and one non-member guest sued the country club when they were not allowed to enter the men’s only dining area. The Louisiana Supreme Court held the Southern Trace Country Club was a public facility and thus was not allowed to facially discriminate against women in such a manner. *Id.* at 133. Yet, the opinion implies that, if the country club were determined to be a private club, the plaintiffs would not have prevailed. *Id.* at 128. The factors used to determine that the Club was a public facility included: (1) the routine use of club facilities by non-members, (2) the lack of real selectiveness in the admittance of new members other than due fees, (3) the lack of real voting rights for members, and (4) the organization’s structure, which clearly indicated a sole intent for profit. *Id.*

See also Roberts v. United States Jaycees, 468 U.S. 609 (1984). This case considered whether the U.S. Jaycees, a nonprofit national charitable organization promoting young men’s educational and civic development, had a right to bar female members. Based on the characteristics of the organization, the Supreme Court held that it fell outside the category of organizations or clubs entitled to constitutional protections, given that its criteria for membership was not highly selective. *Id.* at 620–21. The Court also found Minnesota’s compelling interest to eliminate discrimination against female citizens to be greater than justifying discrimination by the organization. *Id.* at 625–26. While this outcome was in favor of female plaintiffs, the holding was beneficial only to an extent. It suggests that, if a club sufficiently establishes that its all-male membership is highly selective, it can exercise its

instance, a 1995 class action discrimination suit against Wildwood Country Club in Pennsylvania alleged violations of the constitutional rights to be free from discrimination, to travel freely, to contract, and to conduct business.⁶¹ The plaintiff claimed the private club's rules were discriminatory because the club only allowed males to continue as Class A members after a death or divorce from a spouse.⁶² Unfortunately, the court held that the plaintiff failed to establish a material cause of action and ruled in favor of the club.⁶³

Dealing with a similar fact pattern, in *Warfield v. Peninsula Golf & Country Club*,⁶⁴ the plaintiff alleged that after a divorce settlement awarded her the golf club membership, the Peninsula Golf Club still denied her membership.⁶⁵ Here, in the same year as the *Welch* decision, the California Supreme Court ruled in favor of the plaintiff by construing the club as a business.⁶⁶ Business establishments fell under the Unruh Civil Rights Act,⁶⁷ which prohibits discrimination based on gender. Thus, when applying the Unruh Act, the plaintiff's rights were violated by this business establishment.⁶⁸

freedom of association. Thus the state would not be allowed to interfere and force the club to allow female members. *Id.* at 617–20.

60. Compare *Welch v. Bd. of Dirs.*, 877 F. Supp. 955 (Pa. D. 1995) (ruling in favor of country club), and *Yolles v. Golf Club of Avon, Inc.*, No. CV000802636, 2004 WL 203325 (Conn. Super. Ct. Jan. 6, 2004) (ruling in favor of golf club), with *Warfield v. Peninsula Golf & Country Club*, 10 Cal. 4th 594 (Cal. 1995) (ruling in favor of divorced plaintiff female).

61. *Welch*, 877 F. Supp. 955.

62. *Id.* Here, the plaintiff was the ex-wife of a former member of the Wildwood Club, who sought to transfer his membership to her after their divorce. *Id.* at 956. Even though this was what both ex-spouses desired, Wildwood refused to comply. *Id.*

63. *Id.* at 961. The court reasoned that because *Welch* could not establish that the private club took any action to interfere with any right protected by the Constitution against infringement by private persons, judgment for the Wildwood was appropriate. *Id.* at 958–60.

64. *Warfield*, 10 Cal. 4th 594.

65. *Id.* at 605. The defendant denied the plaintiff her membership based on a bylaw allowing the Club to terminate a female spouse's membership in such a circumstance. The bylaws stated that following a divorce or annulment:

[T]he Husband shall continue to be the Regular Family Member, and all rights, privileges and obligations shall be his. In the event of an award of the Certificate of Regular Family Membership in final judicial action to the female spouse, and the male spouse does not purchase the female spouse's interest in the Regular Family Membership, such Membership may be terminated.

Id. at 604.

66. *Id.* at 630.

67. CAL. CIV. CODE § 51 (Deering 2005). The statute, which is California's version of a public accommodation statute, in part states, "This law provides protection from discrimination by all business establishments in California, including housing and public accommodations, because of: Age; Ancestry; Color; Disability; National Origin; Race; Religion; Sex; and Sexual Orientation." *Id.*

68. *Warfield*, 10 Cal. 4th at 614.

Later in a Connecticut decision, *Yolles v. Golf Club of Avon*,⁶⁹ the plaintiff alleged discrimination, including restricted tee times for women, who were not allowed to become primary members, as well as gender-specific tournaments requiring women to play on weekdays, thereby excluding working women, who could not play on these days.⁷⁰ The Superior Court ruled in favor of the defendant club because the plaintiff had failed to demonstrate the club had discouraged her from seeking equal access to membership.⁷¹ Also, there was no genuine issue of material fact that the challenged tee time rule denied the plaintiff full membership benefits.⁷²

While the United States has enacted more legislation to address discrimination against women in private clubs than Great Britain or Ireland, it has not been sufficiently consistent to have a significant effect. Given that most are state laws, much of the positive impact has been incremental.⁷³ The question that arises is whether it is more important “to eradicate discrimination in private clubs” than to respect “a club’s privacy rights.”⁷⁴ Generally, state laws can take two forms in discouraging discriminatory practices by private clubs, an indirect approach or a direct approach.⁷⁵ Indirectly, “the state’s power to tax or to license may be used.”⁷⁶ For example, Michigan passed perhaps “the most sweeping piece of social legislation ever to hit private clubs.”⁷⁷ The issue of discrimination against women by private clubs was brought to the forefront in Michigan when a female attorney received a bill from the Travis Pointe Country Club in Ann Arbor to contribute to constructing a men’s grill from which she was barred.⁷⁸ Two years later, in 1992, “an amendment that placed

69. *Yolles v. Golf Club of Avon, Inc.*, No. CV000802636, 2004 WL 203325 (Conn. Super. Ct. Jan. 6, 2004).

70. *Id.*

71. *Id.*

72. *Id.* The plaintiff’s discrimination allegations were based on Connecticut General Statutes section 52-571d codifying “An Act Concerning Discrimination by Country Clubs.” *Id.* at *1. This provision states that no golf country club “shall deny membership in such club to any person on account of race, religion, color, national origin, ancestry, sex, marital status or sexual orientation.” *Id.* Further, when a golf country club allows two or more adults per membership to use its facilities and services, both adults must have equal access to such facilities. *Id.*

73. CHAMBERS, *supra* note 9, at 225–28.

74. *Id.* at 199.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

private clubs under Michigan's Elliot-Larsen civil-rights law"⁷⁹ was signed. "The thrust of the law was to give women equal access to all facilities—the golf course, in the grill."⁸⁰

In 1965, Maryland was the first state to enact an open-spaces law, which encouraged private clubs to preserve their land rather than sell it for development and commercialization.⁸¹ Because open-spaces laws essentially provide lucrative tax benefits to these private clubs, lawmakers have attempted to quash discriminating practices by threatening the clubs' tax breaks.⁸² Although, Maryland legislators amended the statute in 1974 to state that private clubs discriminating on the basis of "race, color, creed, sex, or national origin," would lose their preferential tax treatment, many clubs continued their discriminatory practices against women.⁸³ Real change was not seen until 1990 when Kaye Bushel, a counsel to the Maryland Department of Assessments and Taxation, discovered that nearly all of the thirty two clubs that were receiving tax breaks "denied

79. *Id.* at 205. In 1992, Michigan adopted P.A. 70 to amend the Elliot-Larsen Act to include private clubs. The amendment states, "Place of public accommodation also includes the facilities of the following private clubs: A country club or golf club." *Id.* at 206 (quoting Elliot-Larsen Act). Yet, critics of the amendment argue that, even though the law on its face seems to be a step in the right direction, in practice, it is not very effective. Stephen J. Safranek, *Elliot-Larsen and P.A. 70*, MACKINAC CTR. PUB. POLICY, Apr. 1, 1994, <http://www.mackinac.org/print.asp?ID=5499>. The critics argue that truly selective private clubs will escape enforcement because of constitutional protections and that clubs will continue to find loopholes to circumvent legislation, setting up different classes of membership, for example. Safranek, *Elliot-Larsen and P.A. 70*.

80. CHAMBERS, *supra* note 9, at 205. Also, "the new amendment was aimed at ending discriminatory rules against women who were entitled to use the club by virtue of their spousal relationship." *Id.* The language of the amendment read, "If a private club allows use of its facilities by one or more adults per membership, the use must be equally available to all adults entitled to use the facilities under the membership." *Id.* at 206. Sanctions imposed for any violations would result in the club losing its liquor license. This law is considered "remarkable for its scope and breadth" by pressing privacy issues to the limit. *Id.* Challenges have come from a group of single male members from the Detroit Golf Club and the Elks Club, a fraternal organization that bars women. *Id.* A federal judge has ruled in the case regarding the Elks Club that the new amendment only applies to those facilities that already have women in the club; thus, if a woman is in the club, she must get equal access. *Id.*

81. *Id.* at 201. Yet, this legislation was silent on the issue of discrimination. *Id.* "In exchange for keeping its property open space and not selling it to developers for high-density projects, the state gave its private clubs a lucrative tax break. It assessed the property as undeveloped land rather than at its 'best use' on the marketplace." *Id.* Private clubs also received non-profit organization exemption and were exempt from paying federal and state income tax. *Id.* at 203.

82. *Id.* at 200.

83. *Id.* at 202.

women equal access to the course as a result of segregated weekend tee times.”⁸⁴

B. Legislative and Judicial Activity: Ireland

As discussed earlier, Judge Collins’ decision in February finding discrimination by the Portmarnock Club has been considered a landmark case for equality of rights for women.⁸⁵ Yet this step forward was quickly erased by the High Court’s decision in *Equal Authority v. Portmarnock Golf Club & Ors*. Unlike in the United States, there were few rulings prior to this significant case in Ireland. Equality activists viewed Judge Collins’ ruling as having the potential to single-handedly overhaul discrimination against women at Irish private golf clubs.⁸⁶ “This is a landmark decision. It sends out a message to wider society about the importance of including women,” said Niall Crowley, Chief Executive of the Equality Authority.⁸⁷ But now with the High Court’s subsequent ruling, “the judgment maintains an unsatisfactory status quo [that] a significant institution in our society can continue to exclude women from membership.”⁸⁸

The significance of this decision is even greater when one considers the legacy of the Portmarnock Club. Tradition is deeply rooted in the Portmarnock, and it remains one of only two golf clubs in Ireland that still bans women members.⁸⁹ As stated earlier, Judge Collins based his

84. *Id.* In less than a year, virtually all of the clubs, except Burning Tree Club, had changed their policies towards women. *Id.* “Burning Tree—founded in 1922—has never had a woman member or a woman guest. They are completely barred except at Christmas time, when they are permitted to lay down their money at the pro shop for gifts for their men.” *Id.* at 34–35. In fact, the only woman who ever stepped onto the Burning Tree course was an injured female passenger of an airplane that had crashed on the eighteenth fairway. Needless to say, once her presence was discovered, she was quickly removed. *Id.* at 34.

85. *Discriminating Against Women*, *supra* note 2, at 1.

86. *Id.*

87. *Id.* The Equality Authority is an independent body created out of the Employment Authority Act 1998. Its duties and functions include “promoting and defending the rights established in the equality legislation and providing leadership in building a commitment to addressing equality issues in practice, creating a wider awareness of equality issues, celebrating diversity in Irish society, and mainstreaming equality consideration across all sectors.” The Equality Authority, <http://www.equality.ie/index.asp?locID=50&docID=-1> (last visited Feb. 20, 2006).

88. Equality Authority Disappointed, *supra* note 1.

89. Golf Today, Women’s Group Calls for Irish Open Boycott, <http://www.golftoday.co.uk/news/yeartodate/news02/irish2.html> (last visited Oct. 31, 2004) [hereinafter Irish Open Boycott]. The Club allows women to play the course but not join the club. *Id.* The only permitted female member of the Club is Ireland’s President, Mary McAleese. *Id.* at 1–2. The Club’s manager, Bruce Mitchell argued “that the club doesn’t discriminate because it does permit women and other nonmember visitors to play at specific times during the week [M]embers [have] overwhelmingly opposed giving women membership rights during three debates on the matter since 2000.” *Discriminating Against Women*, *supra* note 2.

decision on the notion that golf is an equal access sport “played equally by men and women, so, no golf club in Ireland should be allowed to bar women.”⁹⁰ The decision looked to the Equal Status Act of 2000, which permits “private clubs to restrict membership only if the club promotes an activity specific to a particular group.”⁹¹ Given the unambiguous language of the Act, Judge Collins’ decision seems justified. In addition to refusing to let women join the club as full members,⁹² the Portmarnock Club has come under fire for restricting women’s tee times and not granting voting rights to women.⁹³

Unlike specific U.S. legislation, such as the open-spaces laws, direct state laws, and amendments prohibiting discrimination against women by private clubs, Ireland’s most significant anti-discrimination law, the Equal Status Act of 2000,⁹⁴ favors a general approach to addressing discrimination. Although the Act is quite general, it has some force given its explicit inclusion of private clubs. “The Act also contains a sanction against a private registered club that is found to be discriminating in relation to its members or an applicant for membership.”⁹⁵ But given the High Court’s interpretation of section 9 of the Act, it is evident that changes must be made in order to effectively address discrimination against women.

90. *Id.*

91. *Id.* Under the Equal Status Act of 2000, section 8(2), entitled “Discriminating clubs,” states: For the purpose of this section (a) a club shall be a discriminating club if—(i) it has any rule, policy or practice which discriminates against a member or an applicant for membership or, (ii) a person involved in its management discriminates against a member or an applicant for membership in relation to the affairs of the club

Equal Status Act, *supra* note 4, § 8(2).

92. *Discriminating Against Women, supra* note 2.

93. *Id.*

94. The Equal Status Act of 2000 has since been amended by the Equality Bill of 2004. Equality Bill, 2004 (Ir.) available at http://www.stop-discrimination.info/fileadmin/pdfs/Nationale_Inhalte/Ireland/Legislation/Equality_Bill_Ireland.pdf (last visited Nov. 19, 2004). The Equality Bill states that it is an act “to amend the Employment Equality Act of 1998 and the Equal Status Act of 2000.” *Id.* at 5. Despite these amendments, the crux of the Equal Status Act’s treatment of private clubs has not been altered.

95. Equality Legislation—A Summary, Dublin Employment Pact 4, <http://www.dublinpact.ie/word/Equality-Legislation-IRL.doc> (last visited Nov. 19, 2004). Generally, the Act’s purpose is principled on the idea that “everyone has an equal right to participate in society.” *Id.* To further support the Act’s inclusion of private clubs, it states, “The Act provides comprehensive legal protection against discrimination in the delivery of goods and services, whether provided by the State or private sector—this will be of particular benefit to people from marginalized groups and those vulnerable to discrimination.” *Id.*

C. Legislative and Judicial Activity: Great Britain

There have been only a few cases in Great Britain dealing with discrimination by private clubs in recent years; however, none have specifically dealt with golf clubs. In *Bateson v. Young Men's Christian Ass'n*,⁹⁶ a woman was refused entry into a snooker room⁹⁷ where only men were allowed. Initially, the lower county court held that because this was a private association, Bateson's claims of discrimination should be dismissed.⁹⁸ Yet, after Bateson appealed to the High Court, she prevailed when the High Court disregarded the private club's status and ruled the club "did provide facilities for a section of the public in the snooker room, and discrimination against women in relation to the provision of those facilities was unlawful"⁹⁹

While the outcome of this case favored the plaintiff, the decision's persuasiveness in addressing discrimination by private clubs seems weak. Based on the High Court's reasoning, the technicality of whether the snooker room was private or public eventually swung the decision in favor of the female plaintiff. Thus, one could infer that if the Court had not been able to find any area in the snooker room that was open to the public, the club would have prevailed.

While facially *Bateson* seems progressive, such decisions do little to advance women's arguments against discriminatory private golf clubs. Even if clubs are private, *paying* women should be allowed as members and have the same rights and privileges as male members.

Similar to Ireland, Great Britain's anti-discrimination legislation¹⁰⁰ is much broader and general compared to U.S. laws. The Sexual Discrimination Act of 1975 is Great Britain's most notable legislative

96. *Bateson v. Young Men's Christian Ass'n*, (1980) 1980 Q.B.D. 135 (N.I.).

97. Snooker is essentially a type of billiards game. See generally Snooker-Wikipedia, <http://en.wikipedia.org/wiki/Snooker> (last visited May 11, 2006).

98. *Bateson*, 1980 Q.B.D. at 135.

99. *Id.* See also Equal Opportunities Commission, 30 Key Legal Cases, Ms. Priestley v. Stork Margarine Recreational Club, <http://www.eoc.org.uk/default.aspx?page=18060> (last visited Feb. 26, 2006). "Ms. Priestley won a claim that she had been discriminated against by not being allowed to use the club's snooker room, which was reserved for men." *Id.*

100. The Equal Opportunities Commission is the primary British organization responsible for creating the country's anti-discrimination policies and investigating related claims. Equal Opportunities Commission, About the EOC, <http://www.eoc.org.uk/default.aspx?page=15482&lang=en> (last visited Feb. 23, 2006). Established under the Sexual Discrimination Act of 1975, the Equal Opportunities Commission has the power to enforce the codes of section 58(A)(1) of the Act. Equal Opportunities Commission, Code of Practice-Sex Discrimination, <http://www.eoc.srg.utl/Default.aspx?page=15577&lang=en> (last visited Feb. 23, 2006) [hereinafter Code of Practice Sex Discrimination].

attempt to address discrimination against women.¹⁰¹ Yet, it proves to be less forceful than Ireland's Equal Status Act of 2000 because the language does not include private clubs.¹⁰² Furthermore, the Act's focus is to create a more equal work environment rather than equal access to facilities and services.¹⁰³

In 2002, Labor Party parliamentarian, Parmjit Dhanda, introduced the first bill that would have prohibited sexual discrimination in private clubs with more than twenty-five members.¹⁰⁴ It not only addressed providing equal benefits of the facilities and services, but also membership rights.¹⁰⁵ Despite the potential significance of this bill, it failed to pass after two opposition Conservative Party legislators blocked it.¹⁰⁶

When comparing the progress and strength of each country's legislation in dealing with gender discrimination, no single country has made significantly greater strides than the other. While there have been more U.S. judicial decisions than in Ireland and Great Britain, the rulings have not been uniformly against private golf clubs. Following the *Portmarnock* decision, Ireland will have to make the largest strides to compensate for its lack of anti-discriminatory case law. Unfortunately, the

101. Equal Opportunities Commission, What does the Sexual Discrimination Act Say, <http://www.eoc.org.uk/Default.aspx?page=15497&lang=en> (last visited Feb. 23, 2006).

102. *Id.* The Sex Discrimination Act of 1975 (SDA) prohibits discrimination not only in the areas of employment and education, but also the provision of goods and services. *Id.* The SDA applies in England, Wales, and Scotland. *Id.* Interestingly, it does not make it unlawful to discriminate against someone for not being married. *Id.* Thus, in some cases of discrimination by private golf clubs where single women are denied membership and can only become associate members based on their husbands' full membership status, the SDA may actually permit continued discrimination against women. Furthermore, the SDA distinguishes between direct and indirect discrimination. *Id.* Direct discrimination occurs "where a woman (or man) is treated less favorably than a person of the opposite sex in comparable circumstances is, or would be, because of her (or his) sex." *Id.* Types of direct sex discrimination include sexual harassment and treating a woman adversely because she is pregnant." *Id.* On the other hand, indirect discrimination occurs when "a criterion or practice is applied (or would be applied) to both sexes but which puts one sex (or married persons) at a particular disadvantage and cannot be shown to be a proportionate means of meeting a legitimate aim." *Id.* With respect to discrimination in the provision of goods, services, facilities or premises, although private golf clubs could be construed as a facility or premises, the SDA lacks any specificity to encompass private clubs within its scope. *Id.*

103. Although the Act's language does contain the phrase, "prohibits sexual discrimination against individuals . . . in the areas of goods, facilities and services," the remaining portions and codes of the Act shift the focus towards employment situations. See generally Code of Practice—Sex Discrimination, *supra* note 100; *What does the Sexual Discrimination Act Say*, *supra* note 101.

104. Law Direct-Bill Tracker, Sex Discrimination in Private Clubs Bill, http://nxtpresa.butterworths.co.uk/freelaw/billtracker/bills_results1.asp?bid=523&txtBillSrchStr=bill&srchType=&srchHow= (last visited Feb. 23, 2006).

105. *Id.*

106. Golf Today, R&A Defends All Male Policy, <http://www.golftoday.co.uk/news/yeartodate/news03/randa2.html> (last visited May 11, 2006) [hereinafter R&A Defends All Male Policy].

High Court's decision joins the list of inconsistent U.S. cases and scant British lawsuits that collectively demonstrate the need for more attention to this particular arena of discrimination against women. Given the number of inconsistent rulings and dissimilar fact patterns found in U.S. case law, the *Portmarnock* decision carries even more weight. The *Portmarnock* ruling's value is also significant when compared to near non-existent British case law. While there have been numerous complaints filed against private golf clubs in England over the years, they simply have not given rise to significant judicial decisions.¹⁰⁷

An initial comparison of each country's legislative efforts indicates that Ireland's primary anti-discrimination law, the Equal Status Act, seems most progressive as a national statute given its explicit language including private clubs. But this observation is tempered by the High Court's interpretation of the Equal Status Act's exception in the *Portmarnock* case. Nonetheless, a primary challenge facing all three countries in either creating or enforcing existing anti-discrimination legislation is to explicitly include "private clubs" in the statutory language. Equally important is the elimination of loopholes and exceptions. There are simply too many loopholes for private golf clubs to take advantage of as evidenced by Ireland's High Court decision. As another example, despite enforcing sanctions on discriminating clubs through the suspension of liquor licenses, these clubs can still circumvent such punishments by providing free drinks to their members.¹⁰⁸ Ultimately, a united approach through effective legislation and consistent case law is essential.

III. CHANGES & SUGGESTIONS

Stemming from the relative ineffectiveness of the courts and legislatures to impose effective change in discriminatory practices, women

107. *Golf Clubs Face Equal Rights Battle*, BBC NEWS, Oct. 30, 1998, available at <http://news.bbc.co.uk/1/hi/uk/204471.stm>. "The EOC, which has received hundreds of complaints about golf clubs, wants to bring all strands of sex discrimination, including the Sex Discrimination Act, Equal Pay Act, European directives and case law together." *Id.* That being said, it seems Britain has strayed behind Ireland and the United States, not because of better treatment of women in British golf clubs, but because of a lack of coordination in taking filed complaints to the next level with proper legislation and precedent case law.

108. *Discriminating Against Women*, *supra* note 2. Some believe that if Ireland's High Court had ruled the Equal Status Act to be constitutional and Judge Collins had imposed a punishment against the *Portmarnock* by suspending its drinking license, the club's operations would not have been affected very much. *Id.* "If *Portmarnock* is eventually punished for its membership policy, the major sanction . . . would prevent the club from selling alcoholic beverages in its clubhouse, initially for a 30-day period. But the club could react by offering its members drinks for free or allowing them to bring in their own beverages." *Id.*

have continued to voice their frustrations by calling for boycotts¹⁰⁹ while exclusive private clubs universally deny any wrongdoing. Although the efforts of women's equality groups to encourage boycotting of major golf tournaments hosted by these private clubs may seem drastic,¹¹⁰ they may actually be the best strategy toward enforcing change.

These premier private clubs host the world's top golf tournaments yearly. And along with the prestige of hosting comes extensive financial rewards, not only for the clubs, but also for corporate sponsors associated with the top tournaments.¹¹¹ Yet the public and corporate sponsors must participate in order for boycotts to be effective.

Initially, public boycotting would strategically increase public awareness of the discriminatory practices by these select, high-profile clubs.¹¹² As the public's awareness increased, it would put pressure on corporate sponsors of major tournaments hosted by exclusionary clubs, forcing corporate executives to think twice about their commercial

109. See generally Ferraro, *supra* note 23. In addition to this latest boycott movement led by Martha Burk, who denounced Augusta National for its all-male membership status, women's groups in Ireland have called for an Irish Open boycott, which is scheduled to be held at the Portmarnock Golf Club. "This championship is to be hosted in Portmarnock Golf Club, one of only two golf clubs in the state which still operates a ban on women members," said National Women's Council of Ireland's director Joanna McMinn. *Irish Open Boycott*, *supra* note 89. "It is an insult and an outrage that women continue to be banned from Portmarnock." *Id.*

110. On further consideration, it is not so drastic when you consider how far women still have to go to convince men that discrimination even exists. Many ranking officials at these exclusive clubs are either oblivious to the disparate treatment of women or steadfast in their insistence that they have done nothing wrong. "We discriminate against nobody," said John Prideaux, club secretary at Muirfield. *Men-Only Golf Clubs Deny Discrimination Charges*, *supra* note 58. "It's just that no woman, to my knowledge, has ever been proposed (for membership) here." *Id.* If anything, it is the men who are speaking as if they are being victimized: "If a group of like-minded men wish to collect together and enjoy the privacy of their own club it is rather sad that others should want to cajole them in to giving up that right." Auslan Cramb, *Men-Only Honourable Company of Edinburgh Golfers*, KINGSBARN VILL. INFO. CTR., NOV. 13, 2000, <http://www.kingsbarnlinks.com/localnews/golf/muirfield.htm>.

111. For example, the final Sunday of the Masters is the highest-rated golf sports event of the year." Chambers, *Ladies Need Not Apply*, *supra* note 12. Three of the major corporate sponsors, IBM, Coca-Cola, and Citigroup, reap "incalculable prestige and value" in return. *Id.* Likewise, the British Open, which is played at Muirfield, is sponsored by powerhouse companies such as MasterCard, Hewlett-Packard, and Nikon. *Id.* Despite the high profile and prestige of these tournaments and private clubs, both are "exclusionary, all-male clubs." *Id.*

112. Historically, when black men were excluded, corporate boycotts proved effective. In 1990, Hall Thompson, founder of the Shoal Creek Golf Club, and site of the 1990 PGA Championship, stated in an interview: "This country club is our home and we pick and choose whom we want . . . I think we've said we don't discriminate in any other area except for blacks." *Id.* Within days of making that statement, sponsors such as IBM, Toyota, Honda, and Sharp Electronics, cancelled their advertising on ABC and ESPN. *Id.*

associations.¹¹³ But it is important to note that limited pressure will not get the job done. While we have seen exclusionary practices against blacks effectively addressed by pressuring corporate sponsors in the 1990 PGA Championship, the same reaction does not seem to apply when it comes to women. “When faced with racism at Shoal Creek, corporate officials swung into action and pulled back their commercials. So why doesn’t it work the same way with women?”¹¹⁴ The answer is unclear; apparently for many advertisers, it is more damaging to be viewed as supporting racist practices than sexist ones.¹¹⁵

In addition to applying pervasive pressure on corporate executives, more should be done to educate the public on the clubs’ exclusionary practices, given that ignorance seems to be a significant obstacle in carrying out effective public boycotts.¹¹⁶ It does not help that clubs such as Augusta National and the Royal & Ancient Golf Club in Scotland have taken extensive measures to protect their privacy and what goes on within their walls.¹¹⁷ But with continual press coverage and publicity emphasizing the unequal treatment of women, the public’s ignorance can be easily remedied.

The more challenging aspect involving boycotts is garnering sufficient corporate support. Without companies boycotting advertisements for major tournaments, private clubs will face no pressure to change their

113. Donna Shalala, former Secretary of Health and Human Services, believes corporate executives “should use their clout to put pressure on opening admissions. They have been leaders in affirmative action. They have been leaders in promoting women So it is not unusual that they would extend it to the golf course.” *Id.* Shalala also voiced opinions that the advertisers hold the key to pressuring clubs to end their discriminatory practices. “At the end of the day it is up to advertisers, as to whether they will sponsor events at men-only clubs. They have to step up.” *Id.*

114. *Id.* Officials at these hosting clubs acknowledge that, like blacks, women are making strides in the workforce and getting more involved with golf, but the bottom line attitude is, “We love our women; we just don’t want any fussin’ with ‘em.” *Id.*

115. With some prodding, corporate sponsors were able to easily recognize that “more black people were playing golf, more were climbing the business ladder.” *Id.* But when asked to acknowledge equal strides made by women, companies have not reacted similarly. *Id.*

116. *Id.* “‘If you took a poll, most of the people who watch the Masters are probably not aware that it is run by an all-male club,’ says Jim Andrews, senior Vice President of IEG, a company specializing in independent research for sports sponsorships.” *Id.* “People just don’t know.” *Id.*

117. Both Augusta and R&A “construct an imaginary wall between the public world of the tournament and the private world of the members. . . . The club will happily provide information about the tournament, but questions about membership policies are off-limits.” *Id.* “It’s easy to sit down with the roster and write out the gender and racial breakdown in three hours. They’re not providing the numbers because they’re plain-out bad.” Lieber, *supra* note 27.

exclusionary practices.¹¹⁸ But gathering corporate support is difficult, especially because many of the CEOs at top corporations also hold coveted memberships to these clubs.¹¹⁹ Therefore, “companies don’t want to rock the boat because it is good for business to be able to entertain at the Masters, and the individual executives don’t want to appear as rabble-rousers because they fear their memberships will be taken away.”¹²⁰

And even those companies that appear to be taking stances against discrimination compromise their efforts when they simultaneously attempt to appease women’s call for action while maintaining good ties with the tournaments and the host clubs.¹²¹ For example, Cadillac decided not to air commercials during the Masters, but nevertheless provided courtesy cars for players and officials.¹²²

Given the close relationships many corporations have with tournaments such as the Masters and the British Open, the executives’ hesitance to take a stand against the clubs’ practices is expected. Yet arguably, this close relationship could prove advantageous for improving women’s unequal treatment. United, strong pressure from executive CEO members at Augusta National, for instance, could be the missing impetus for change. Raising attention to this issue by individuals with corporate clout would undoubtedly raise awareness and place Augusta National in a position where it can no longer hide behind its veil of secrecy.¹²³

118. The bottom line for these tournaments is incredible profits for all parties involved. Big television ratings translate to big revenue. In 2001, 40.1 million people watched the final Sunday of the Masters Tournament. *Id.* Additionally, during the four days of the tournament that same year, IBM’s Masters web site registered almost 50 million hits. *Id.* “Masters Week usually generates an estimated \$110 million to \$150 million for the city of Augusta, mostly as a result of corporate spending. The impact on the local economy is so great that Masters week is known in Augusta as the 13th month.” Jennifer Friedlin & Karen Shugart, *Augusta National Golf Club Story: 2004*, NCWO NEWS (Nat’l Council of Women’s Orgs., Washington, D.C.), <http://www.womensorganizations.org/pages.cfm?ID=93> (last visited Feb. 23, 2006). There is also some indication that this sort of pressure has been effective. For example, Scotland has refused to include Muirfield Golf Club, which was once described as the “rudest in the world” in its bid for the 2009 Ryder Cup. Cramb, *supra* note 110.

119. Notable members of Augusta National include: Warren Buffett, CEO of Berkshire Hathaway, Jack Welch, former Chairman of GE, Douglas Warner III, former CEO of JP Morgan, Robert Allen, former CEO of AT&T, Sanford Weill, CEO of Citigroup, and Lou Gerstner, CEO of IBM. Chambers, *Ladies Need Not Apply*, *supra* note 12. It has even been reported that Bill Gates has been trying to become a member for years. Ferraro, *supra* note 23.

120. CHAMBERS, *supra* note 9, at 6.

121. *Id.*

122. *Id.*

123. *See generally* Friedlin & Shugart, *supra* note 118. While Martha Burk’s comments and efforts to raise awareness of Augusta National’s practices are commendable, it is easy for the club to dismiss female advocacy groups’ cries for equality. If, on the other hand, powerful male CEO members begin to speak up on behalf of women, the reaction would most likely not be as dismissive. At this past year’s Masters tournament, many corporate executives’ kept a low profile at Augusta, however they were still hesitant to take a positive stand for women. Although they are “leery,” some

The conflict created by this strategic approach of pinning advertisers against clubs raises a private club's constitutional right of association.¹²⁴ But women's groups and the female legal community have presented strong rebuttal arguments. "Once you start to attract outside sponsors and you want to run an international tournament, that changes the rules regarding rights of association."¹²⁵

Additionally, the Supreme Court has ruled that the constitutional right of association is not absolute.¹²⁶ The right must be weighed against the state's compelling interest to eliminate discrimination.¹²⁷ Arguably, for Augusta National and others like it, these last male bastions can no longer justify their practices when weighed against the State's interests to end discrimination. Applying the standards presented in *Roberts v. United States Jaycees* to private clubs today, there is no evidence that allowing female members will impede male members' ability to "engage in [their] constitutionally protected . . . activities."¹²⁸ Even if there is some obstruction of the male members' enjoyment of the facilities, the effects cannot be said to outweigh the State's legitimate purposes.¹²⁹

CONCLUSION

Although the current status of the *Portmarnock* case is not favorable for women, the ramifications of Judge Collins' initial ruling are notable. It has sparked interest and awareness in an overlooked area of discrimination. Although the subset of women who are directly affected by exclusionary practices at exclusive golf clubs may be small, the effects of such practices are extensive. True equality cannot be achieved for women if it is not across the board. Progress in climbing the corporate ladder and the opening of educational and athletic doors through Title IX have been

executives are openly entertaining guests publicly as usual while many are maintaining that "memberships are personal, not corporate." *Id.* at 3.

124. CHAMBERS, *supra* note 9.

125. *Id.* at 4. "Both Shalala and Martha Barnett of the American Bar Association say they respect First Amendment rights of association for private clubs—but only to a point." *Id.*

126. *See Roberts*, 468 U.S. at 609. Here, although the Jaycees organization was not as selective as many of the most exclusive golf clubs discussed, the Court stated the right of association was not absolute and inquired whether the state's interest of eradicating discrimination against women outweighed the infringement on the organization's right to associate with only men. *Id.* at 623. It should be noted, however, that the decision also stated that private clubs with highly selective criteria within an intimate organization would still remain constitutionally protected. *Id.* at 620.

127. *Id.* at 623.

128. *Id.* at 609.

129. *Id.*

encouraging,¹³⁰ but until discriminatory practices by private clubs are also addressed, any future progress will be minimal.

*Eunice Song**

130. “Women in the workplace are getting greater opportunities—why shouldn’t this extend to their leisure time?” asked England’s Equal Opportunities Commission spokesperson Kim Scanlon. *Golf Clubs Face Equal Rights Battle*, *supra* note 107.

* J.D. (2006), Washington University School of Law. I would like to dedicate this Note to my mom for her never-ending support and encouragement.