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PREROGATIVE OR PREJUDICE?: THE EXCLUSION OF WOMEN FROM AUGUSTA NATIONAL

Frank J. Ferraro

INTRODUCTION

Augusta National Golf Club in Georgia, one of the most prestigious golf courses in the world, is shrouded in an aura of grandeur and mystique. This magic begins on Magnolia Lane, the famous street leading to the golf club, which is decorated with sixty-one trees planted in the 19th century, and continues on to the course itself. [EN 1] Designed by legendary golfer Bobby Jones almost seventy years ago and adorned with dogwood trees and azaleas, its grounds have been described as “sacrosanct.” [EN 2] This majestic aura is bolstered by Augusta National’s policy of secrecy, which demands that subjects ranging from the amount of fertilizer used on the azaleas to the manufacturing specifications of their signature green jacket be concealed. [EN 3] Augusta holds its members to a high standard of confidentiality as well, as they are not allowed to discuss club affairs or policies in public. [EN 4] These efforts to maintain a secluded allure have allowed Augusta to become a private bastion of golfing excellence for a select few. It has also attracted the Masters Tournament, one of golf’s most elite competitions. Who have been denied membership since Augusta’s inception—women. Women have opened the debate regarding the propriety of golf clubs’ exclusionary practices and the history of exclusion in golf. The outcome of this debate and the battle at Augusta may ultimately determine how society, and perhaps even the law, deals with exclusionary practices on the golf course.

This article will examine the current debate at Augusta National and will address the social and legal issues surrounding exclusionary practices on the part of golf clubs. Part II will outline the history of discrimination on the golf course. Part III will explore the current battle for the inclusion of women at Augusta National. Part IV will discuss the legal bases for policies of exclusion and will conclude by arguing that golf clubs should abandon their discriminatory policies.

II. THE HISTORY OF GOLF & DISCRIMINATION

Historically, golf clubs in America have been one of the country’s least diverse institutions by design. [EN 5] Wealthy, white, Anglo-Saxon Protestants developed country clubs in America beginning in 1880, a time of pervasive racial, cultural, and gender divisions. [EN 6] These divisions have followed the proliferation of golf clubs in this country. According to Thomas H. Sawyer, a professor of sports law and sports management, “the concept of inherent racial, religious or gender inequality survives in the bylaws and admission policies of private clubs which can reject a black, Jew, or female applicant with no more justification than ‘no _____ allowed’.” [EN 7] Only recently has racial and gender discrimination at golf clubs been addressed, and only in a limited capacity, as private clubs continue to be “one of the last legal sanctuaries for racial discrimination in the United States.” [EN 8]

It was not until 1990 that the PGA addressed racial discrimination at a golf club scheduled to hold a sponsored tournament. The PGA Championship that year was scheduled to be held at Shoal Creek Country Club in Birmingham, Alabama. In discussing the event, a Birmingham city councilman challenged the appropriateness of spending city funds to advertise

at the tournament when the hosting club did not admit African-Americans. [EN 9] When Shoal Creek's president and founder Hall Thompson (an Augusta National member [EN 10]) was asked about whether African-Americans were allowed at the club, he proclaimed, "That's just not done in Birmingham," [EN 11] and "We don't discriminate in any other area except for blacks." [EN 12] The Southern Christian Leadership Conference and other civil rights organizations responded by calling for a boycott, and television sponsors threatened that they would walk away from the tournament. [EN 13] In the middle of the firestorm, Shoal Creek attempted to resolve the issue by making African-American businessman Louis Willie an honorary member. [EN 14] The PGA Tour, the United States Golf Association, and the Ladies PGA Tour also responded by changing their policies to require that tournament sites allow minorities to become members. [EN 15] However, others expressed their disapproval of these policy changes, and eleven country clubs that had served as tournament venues refused to change their discriminatory policies. [EN 16] Kenneth Shropshire, an associate professor of legal studies at the University of Pennsylvania's Wharton School, stated "The implicit public message from these dissenting clubs was that the privacy desires of some of their members outweighed the societal value of nondiscrimination based on race." [EN 17]

Discrimination based on gender has also been a major issue throughout the history of the country club. Sawyer declared, "Women golfers suffer from discrimination, similar to Jews and blacks, when it comes to joining private golf clubs." [EN 18] There are clubs, such as Augusta National, that refuse to admit female members. Other clubs that have allowed female membership nonetheless discriminate by providing fewer benefits and less access for women by refusing to grant voting privileges, denying them a place on the club's board of directors, or prohibiting them from passing on their survivorship rights to their daughters. [EN 19] Another common example of the limitations placed on female club members is the policy many clubs have of reserving Saturday tee times for men under the conventional assumption that men, "maintain work schedules that do not permit them to play during the week, unlike their wives." [EN 20] Despite the fact that this stereotype does not hold true in today's world where husbands and wives work equally as hard in the workplace to maintain dual incomes, "division and exclusion are still the norm at many country clubs throughout the nation." [EN 21]

The history of Augusta National Golf Club mirrors the practices outlined above. From its inception until 1975, the only African-Americans allowed into Augusta National were those who worked as kitchen staff. [EN 22] In 1975, minority involvement expanded when the club broke its "greens color line" [EN 23] and allowed African-Americans to work on the course. It was not until 1990 that Augusta National, reacting to the controversy at Shoal Creek in Alabama, admitted its first African-American member, [EN 24] Ron Townsend. [EN 25] Currently it is believed that Augusta has between two to four African-Americans among its approximately 300 members. [EN 26] This paltry number is substantial when compared with female membership at Augusta, which is barred by the policies of the club. Although not permitted to become a member, a woman may play the golf course and stay overnight at the club if accompanied by a member. [EN 27] As such, it is estimated that women played 1,000 rounds of golf in 2001, with a number of these rounds being played by members of the University of South Carolina women's golf team as invitees of the club. [EN 28] Augusta National's treatment of minorities and women, while on par with that of other golf clubs across the country, is significant because, "Augusta National isn't a quiet little gathering of 300 men; it's the home of the Masters." [EN 29] Therefore, Augusta's discriminatory policies have been the subject of a national debate.

III. THE BATTLE AT AUGUSTA NATIONAL

There are two lead characters in the story of Augusta National and the fight over its policy of excluding female members. The first protagonist is William "Hootie" Johnson, the chairman of Augusta National Golf Club. [EN 30] The second is Martha Burk, the sixty year-old chairwoman of the National Council of Women's Organizations. [EN 31] Amongst these two leading figures is a supporting cast that includes members of Augusta National, professional golfers, the PGA, multinational corporations, women's rights activists, and male golf club members throughout the country who have a vested interest in the outcome of this battle. The controversy began in April of 2002, when Augusta National played host to the Masters golf tournament.

Every April Augusta National welcomes approximately eighty Professional Golf Association (PGA) players in a prestigious competition for the coveted green jacket. [EN 32] The PGA considers the tournament as a "non-PGA Tour cosponsored" event; however, the winner is granted a five-year exemption to compete on the PGA Tour and the winnings earned count towards the official PGA Tour money list. [EN 33] As such, the best players on the PGA Tour come to Augusta to compete for a chance to become a Masters champion. As one of the world's elite tournaments, superb play is commonplace. However, the Masters of 2002 distinguished itself not by what transpired on the course, but by what transpired in the clubhouse.

Augusta member Lloyd Ward, CEO of the U.S. Olympic Committee, and one of only a few African-American members of Augusta, was asked by a USA Today columnist about the club's discriminatory policies. Ward replied, "You've got to have a broader membership, and that includes women." [EN 34] This comment alerted many to the exclusionary policies of Augusta National, including Burk. As chairwoman of an organization representing some seven million women, [EN 35] Burk read the comment as a call to action. On June 12, 2002, she sent a private letter to Johnson, which stated in part:

We know that Augusta National and the sponsors of the Masters do not want to be viewed as entities that tolerate discrimination against any group, including women. We urge you to review your policies and practices in this regard and open your membership to women now, so that this is not an issue when the tournament is staged next year. [EN 36]

Some four weeks later, Johnson issued a written public response to Burk's letter. In it he stated, "we do not wish to become a trophy in their display case," and "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." [EN 37] This reply, said one commentator, showed that Johnson "wants to welcome women to his club the old-fashioned way: he'll court them when he's ready, not the other way around." [EN 38] Johnson's response thus set in motion a public and bitter battle between he and Burk.

High-ranking golf officials and a number of the corporate sponsors [EN 39] of the Masters tournament were dismayed by Johnson's response. [EN 40] The PGA, Coca-Cola, and IBM released their own statements, which attempted to distinguish between the Masters tournament and Augusta National. [EN 41] Burk seized upon the precarious position in which these corporations were placed, in light of Johnson's comments, by asking these companies and

CBS, which broadcasts the Masters, to cease their sponsorship of the tournament. [EN 42] As a counter-offensive, Johnson declared that Augusta would subsidize the TV broadcast itself, thereby dropping the corporate sponsors before they could withdraw. [EN 43] Johnson and Augusta were thus content to rely upon the revenue from ticket sales and licensing agreements, which brings in an estimated five million dollars. [EN 44] Johnson's position was indirectly bolstered by CBS, which declined Burk's request not to televise the Masters. [EN 45]

Burk's next step was to challenge directly the members of Augusta National. Burk issued letters to those in the corporate and political world who would be most affected by accusations of gender discrimination. [EN 46] The letters, tailored to the individual recipients, asserted that, "the public is demanding corporate accountability that goes beyond mere financial performance," and that membership at Augusta "sends a message to the public." [EN 47] Although the membership list is confidential, a copy of it was leaked to Burk. [EN 48] The membership roles revealed not only the members' names, but it also provided some interesting information.

The members of Augusta National represent the old guard of American wealth and power. The average age of the club's some 300 members is seventy-two. [EN 49] The youngest Augusta member is thirty-nine and the oldest is ninety-seven, and more than one third of its members are retired. [EN 50] The industries through which these men accumulated their wealth are the "old-line industries: banking and finance, oil and gas, manufacturing and distributing." [EN 51] Augusta National's membership fee ranges from \$25,000 to \$50,000, and the club holds a waiting list of approximately 300 people, who are nominated by current members. [EN 52] Some of those who currently enjoy the privilege of membership are: Warren Buffet, Arnold Palmer, former Secretary of State George Shultz, Kenneth Chenault, chairman and CEO of American Express, Lou Holtz, and most recently Bill Gates, who reportedly had been trying to become a member for years. [EN 53] With this membership information public, and with letters sitting on the desks of vulnerable corporate executives, the battle between Johnson and Burk continued.

Burk won a small victory when Citigroup CEO Sanford Weill, an Augusta member, faxed her a letter stating that they shared the same objective. [EN 54] Likewise, other members, such as Lloyd Ward, expressed interest in changing Augusta's policy from the inside. [EN 55] However, some whose power would have contributed greatly to Burk's cause declined to stand behind the effort. Judy Bell, the only woman to serve as president of the United States Golf Association, said that while she would like to see Augusta accept women as members, "it has to be at the right time, in the right setting and in the right spirit." [EN 56] Tiger Woods, golf's preeminent player, responded to questions regarding Augusta's gender discrimination by stating, "They're entitled to set up their own rules the way they want them. It would be nice to see everyone have an equal chance to participate if they wanted to, but there is nothing you can do about it." [EN 57] At that time Woods also stated, "I've done my part, trying to get more kids access to the game...It's not that easy." [EN 58] Burk and many in sports were dismayed by Woods reluctance to speak out and criticized his position on the issue.

Much of the public discourse surrounding Augusta's exclusionary policy centered on Woods after his response was released. Critics argued that, "Woods has the power to do plenty. With one whisper of a boycott, biased bylaws would vanish." [EN 59] As a three-time Masters winner and the first African-American golfer to win the Masters, [EN 60] critics asserted that a boycott by Woods, "would put a dreaded asterisk by the name of next year's winner...and send a powerful message that discrimination isn't good for the golfing business." [EN 61] Those who wished to see Woods take up the cause also pointed out that his multiethnic background placed

him in an elevated moral position in a sport that has greatly lacked diversity. [EN 62] Burk herself responded by saying, "If more people in the past had taken a position of not speaking out, Tiger Woods might be a caddie at Augusta and not a player."

Feeling pressure from these critics, Woods clarified his position while again refusing to boycott the tournament. He stated,

Hootie [Johnson] is right and Martha [Burk] is right. That's the problem. They are both right, but they are going about it the wrong way. If they both sat down and talked about it, it would be resolved a lot better than what is going on right now. [EN 63]

Woods went on to explain that it was his understanding that women were going to be allowed to become members prior to Burk's involvement, but that the process was stalled when Johnson felt he was being forced to do so by Burk. [EN 64] While helping to ease the pressure on Woods, his statements did not alleviate the tensions for those on either side of the issue.

Burk has received support from Jesse Jackson, who has recently asserted that Augusta's practices constitute "gender apartheid" and that he and the Rainbow/PUSH Coalition will organize a picket during the Masters. [EN 65] Another figure who has come to the aid of Burk is Ty Votaw, the Ladies Professional Golf Association tour commissioner. He has urged Augusta National to admit a female member because not doing so perpetuates "golf's exclusionary past and the perception that golf is elitist and exclusionary." [EN 66] Most recently, a member of Augusta National has joined in protest of its discriminatory policies by quitting the club. Former CBS chief executive Thomas H. Wyman, a twenty-five-year member, resigned from Augusta on November 27, 2002 and publicly called the club's stand on female members "pigheaded." [EN 67]

Alternatively, others have joined in Johnson's battle against Burk. Notable Johnson allies include a majority of female businesswomen of Augusta, Georgia, who face an economic disaster if the tournament were to be cancelled due to the controversy. [EN 68] The loss of an estimated \$110 million in total earnings to local businesses "would be a travesty for women, not help women," asserted a local female business owner. [EN 69] Another local businesswoman declared, "I don't think Martha Burk realizes that getting one woman member could throw thousands of women out of work that week." [EN 70] Also bolstering Johnson's stance is the American public's division over the issue. A recent poll of 1,004 people found that 46% believed that Augusta should be allowed to have an all-male membership, with the same percentage believing that the club should have female members. [EN 71] This lack of clear public support favors Johnson's plea to maintain the status quo. Also in Johnson's favor is the poll's results showing that 75% of those surveyed felt that Tiger Woods should play in the Masters. [EN 72] This also helps Woods, who has recently expressed his frustration with being called upon to boycott the tournament. [EN 73]

The issue of admitting female members at Augusta National thus stands deadlocked. Johnson, when asked if there was a chance of admitting a female member before the Masters, has responded assertively, "No." [EN 74] His adversary, Burk, has vowed to picket outside of the Masters if the club does not change its policy. [EN 75] With the major players in this drama at a standstill, it is important to understand the legal context of this conflict and the actions of the judiciary and the legislature that have made this type of exclusion legal.

IV. THE LEGAL BASES FOR DISCRIMINATION AT AUGUSTA NATIONAL

The judiciary has grappled with the inherent conflict between legislation that seeks to address discrimination and the First Amendment's "freedom of association" as each relates to private organizations. [EN 76] Shropshire states that it has been consistently maintained that the freedom of association "by implication includes a correlative right not to associate." [EN 77] She also points out that this right "must be in furtherance of a First Amendment expressive or intimate right of association." [EN 78] The United States Supreme Court delineated these rights in *Roberts v. United States Jaycees*, defining intimate association as those "deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life." [EN 79] Intimate association thus operates as a "fundamental element of personal liberty." [EN 80] Expressive association differs, in that it entails, "the right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." [EN 81] Expressive association thus serves as "an indispensable means of preserving other individual liberties." [EN 82] Freedom of association, however, is not an absolute right, for it is balanced against compelling state interests in eliminating discrimination. [EN 83] States may therefore use anti-discrimination legislation and other tools, such as the relinquishing of tax breaks, against organizations with discriminatory policies. In the case of Augusta National and other golf clubs that practice racial or gender discrimination, any tool available to the states should be used to eliminate these practices.

[EN 1] Steve Rushin & Hootie Johnson, *A Round with Hootie*, SPORTS ILLUSTRATED, Nov. 18, 2002, at 27.

[EN 2] Filip Bondy, *A Dispute Within a Dispute*, N.Y. TIMES, Nov. 21, 1992, at 1/29.

[EN 3] Bill Pennington & Dave Anderson, *Some at Augusta National Quietly Seek a Compromise*, N.Y. TIMES, Sep. 29, 2002, at 8/1.

[EN 4] *Id.*

[EN 5] Jennifer Jolly-Ryan, *Chipping Away at Discrimination at the Country Club*, 25 PEPP. L. REV. 495, 495 (1997).

[EN 6] *Id.*

[EN 7] Thomas H. Sawyer, *Private Golf Clubs: Freedom of Expression and the Right to Privacy*, 3 MARQ. SPORTS L. J. 187, 202-03 (1993).

[EN 8] Kenneth L. Shropshire, *Private Race Consciousness*, 1996 DET. C.L. REV. 629, 632 (1996).

[EN 9] *Id.* at 633.

[EN 10] Michael Bamberger, *She Means Business; A Letter Asking Augusta National to Admit Women Set Off the Boss of the Masters, and a Firestorm That Continues to Burn*, SPORTS ILLUSTRATED, July 29, 2002, at G34.

[EN 11] Shropshire, *supra* note 8, at 634.

[EN 12] Bamberger, *supra* note 10.

- [EN 13] J.A. Adande, *Woods Should Step Up to the Tee for Equality*, L.A. TIMES, July 18, 2002, at 4/1.
- [EN 14] Shropshire, *supra* note 8, at 634. *See also*, Bamberger, *supra* note 10 (explaining that Willie's \$35,000 initiation fee was waived).
- [EN 15] *Id.* at 635. *See also*, Adande, *supra* note 13. PGA stars, such as Arnold Palmer, responded in favor of desegregating tournament courses, saying, "If you are doing a public golf tournament, you bring the issue to yourself. If you have a golf tournament, you have to let the general public in. Such a course must make membership available, no matter race or gender."
- [EN 16] Shropshire, *supra* note 8, at 635.
- [EN 17] *Id.*
- [EN 18] Sawyer, *supra* note 7, at 189.
- [EN 19] Tim Stephens, *Women Golfers Slowly But Surely Chip at Barriers*, ROCKY MT. NEWS, Feb. 18, 1996, at 10B.
- [EN 20] Jolly-Ryan, *supra* note 5, at 496.
- [EN 21] *Id.*
- [EN 22] Linda S. Greene, *At Augusta, It's Symbols That Mean Most*, N.Y. TIMES, Aug. 4, 2002, at 8/11.
- [EN 23] *Id.*
- [EN 24] Pennington & Anderson, *supra* note 3.
- [EN 25] Bondy, *supra* note 2.
- [EN 26] Greene, *supra* note 22 (citing two African-American members) *See also*, Christine Brennan, *Augusta Equality Fight: Pass It On*, USA TODAY, April 11, 2002. (citing four African-American members).
- [EN 27] Pennington & Anderson, *supra* note 3.
- [EN 28] *Id.*
- [EN 29] Robert Lipsyte, *Memo to Hootie Johnson: Augusta's Time Is Up*, N.Y. TIMES, Oct. 6, 2002, at 8/11.
- [EN 30] Selena Roberts, *It's Time for Augusta to Change*, N.Y. TIMES, July 24, 2002, at D1.
- [EN 31] Lipsyte, *supra* note 29.
- [EN 32] Bamberger, *supra* note 10.
- [EN 33] *Id.*
- [EN 34] Brennan, *supra* note 26.
- [EN 35] Bamberger, *supra* note 10 .
- [EN 36] *Id.*
- [EN 37] *Id.*
- [EN 38] Roberts, *supra* note 5.

[EN 39] The corporate sponsors of the 2003 Masters Tournament are: The PGA, Coca-Cola, I.B.M., Citigroup, General Motors, CBS, and the USA Network. *See*, Greene, *supra* note 22.

[EN 40] Bamberger, *supra* note 7.

[EN 41] *Id.*

[EN 42] Richard Sandomir, *Women's Group Lobbies Seven of Augusta's Members*, N.Y. TIMES, Sep. 28, 2002, at D3.

[EN 43] Lipsyte, *supra* note 6.

[EN 44] *Id.*

[EN 45] Sandomir, *supra* note 17.

[EN 46] Michael McCarthy & Erik Brady, *Privacy Becomes Public*, USA TODAY, Sep. 27, 2002, at 1C. Those issued letters were: Rep. Amo Houghton (Rep.-N.Y.); Lloyd Ward, CEO of the U.S. Olympic Committee; Sam Nunn, Coca-Cola board member; Sanford Weill, CEO of Citigroup; Christopher Galvin, CEO of Motorola; and William Harrison, JP Morgan Chase CEO.

[EN 47] Sandomir, *supra* note 17.

[EN 48] *Id.*

[EN 49] McCarthy & Brady, *supra* note 17.

[EN 50] *Id.*

[EN 51] *Id.*

[EN 52] *Id.*

[EN 53] *Id.*

[EN 54] Michael McCarthy, *Augusta Issue May Touch D.C.*, USA TODAY, Oct. 7, 2002, at 12C.

[EN 55] Philip Hersh, *USOC Exec Fails to Win Hearts*, CHI. TRIB., Nov. 4, 2002, at Sports/2.

[EN 56] Bamberger, *supra* note 7.

[EN 57] Roberts, *supra* note 5. *See also*, Greene, *supra* note 14 (questioning Wood's position on the grounds that, "according to published reports, the Augusta National Golf Club donated \$500,000 to the Tiger Woods Foundation.").

[EN 58] Clifton Brown, *Woods Suggests Sides Bend a Little on Augusta*, N.Y. TIMES, Oct. 17, 2002, at D1.

[EN 59] Roberts, *supra* note 5.

[EN 60] Brown, *supra* note 32.

[EN 61] *America's All-Male Golfing Society*, N.Y. TIMES, Nov. 18, 2002, at A18.

[EN 62] Brown, *supra* note 32.

[EN 63] *Id.*

[EN 64] *Id.*

[EN 65] Carol Slezak, *Bad Knight for Augusta*, CHI. SUN TIMES March 2, 2003, at SPORTS 119.

[EN 66] *LPGA Putting Heat on Augusta*, TORONTO STAR Nov. 22, 2002, at C3.

[EN 67] Bill Pennington, *Golf; Former Top Executive at CBS Resigns from Augusta*, N.Y. TIMES Dec. 3, 2002, at D1.

[EN 68] Michael McCarthy & Jill Lieber, *Augusta Women Say Golf Flap Could Cost Them*, USA TODAY, Oct. 30, 2002, at 2B.

[EN 69] *Id.* Augusta residents make between \$1,500 to \$2,000 a day per bedroom renting their homes to pro golfers and corporations for the week.

[EN 70] *Id.*

[EN 71] Associated Press, *Golf*, ST. PETERSBURG TIMES (Florida) Dec. 1, 2002, at 5C.

[EN 72] *Id.*

[EN 73] *Pressure Getting to Woods*, TORONTO STAR Nov. 21, 2002, at D10. Woods stated, "It's frustrating because I'm the only player they are asking," and "They're asking me to give up an opportunity no one has ever had-winning the Masters three years in a row."

[EN 74] Associated Press, *supra* note 711.

[EN 75] *Id.*

[EN 76] Jolly-Ryan, *supra* note 5, at 500.

[EN 77] Shropshire, *supra* note 8, at 639.

[EN 78] *Id.*

[EN 79] *Id.* at 617-18.

[EN 80] 7 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, Ch. 10 § 280 (9th ed. 1990).

[EN 81] *Roberts*, 468 U.S. at 622.

[EN 82] Witkin, *supra* note 81.

[EN 83] Jolly-Ryan, *supra* note 5, at 502.