This document lists the primary and secondary sources included in the 2021 Write On Competition. Following the principal case (on which you should focus your case comment) are the remaining sources listed by type.

**PRINCIPAL CASE (10 PAGES)**

Silguero v. CSL Plasma, Inc., 907 F.3d 323 (5th Cir. 2018) (10 pages)

**U.S. SUPREME COURT CASES (45 PAGES)**


**U.S. CIRCUIT COURT CASES (105 PAGES)**

Kiwanis Intern. v. Ridgewood Kiwanis Club, 806 F.2d 468 (3d Cir. 1986) (11 pages)


Johnson v. Gambrinus Company/Spoetzl Brewery, 116 F.3d 1052 (5th Cir. 1997) (15 pages)

Jankey v. Twentieth Century Fox Film Corp., 212 F.3d 1159 (9th Cir. 2000) (3 pages)

Rendon v. Valleycrest Productions, Ltd., 294 F.3d 1279 (11th Cir. 2002) (7 pages)


Levorsen v. Octapharma Plasma, Inc., 828 F.3d 1227 (10th Cir. 2016) (16 pages)

Magee v. Coca–Cola Refreshments USA, Inc., 833 F.3d 530 (5th Cir. 2016) (7 pages)

Collins v. PRG Real Estate, 2018 WL 2166214 (6th Cir. 2018) (4 pages)

Robles v. Domino’s Pizza, LLC, 913 F.3d 898 (9th Cir. 2019) (13 pages)

Matheis v. CSL Plasma, Inc., 936 F.3d 171 (3d Cir. 2019) (11 pages)

**DISTRICT COURT (15 PAGES)**


Pappion v. R-Ranch Property Owners Association, 110 F.Supp.3d 1017 (E.D. Cal. 2015) (9 pages)

**STATUTORY & REGULATORY PROVISIONS (7 PAGE)**

§ 12181. Definitions, 42 USCA § 12181 (3 pages)

§ 12182. Prohibition of discrimination by public accommodations, 42 USCA § 12182 (4 pages)

The Importance of Running Up the Score:

Why the Fifth Circuit’s Determination that CSL Plasma is Not an ADA Title III Place of Public Accommodation was Correct, but Weaker than Necessary.

Packet Number:
I. Introduction

A. Background

CSL Plasma (CSL) operates facilities that collect approved individuals’ plasma. CSL Plasma (CSL) operates facilities that collect approved individuals’ plasma. Individuals wishing to donate plasma can only do so after being approved by meeting Food and Drug Administration (FDA) regulations and CSL donation policies, as determined by a screening evaluation. Approved individuals undergo a procedure during which a machine removes a portion of their blood. A machine then separates the plasma from the removed blood. CSL keeps the plasma to sell to medical entities and returns the remaining blood. CSL’s business model incentivizes plasma donations by offering monetary payments to approved individuals in exchange for successful plasma donations. Those individuals who fail the initial screening evaluation are not permitted to donate plasma and thus, do not receive payment.

Appellants Silguero and Wolfe attempted to participate in CSL’s plasma collection in December 2013 and October 2016, respectively. Silguero walked with a cane due to knee pain. He failed CSL’s screening based on the company’s policy to not accept donations from individuals with an unsteady gait. Wolfe failed the screening based on the CSL’s policy to not accept contributions from individuals who used animals to treat anxiety, which she does. As both failed the screening, neither could donate plasma nor receive subsequent payment.

Both Silguero and Wolfe filed suit, alleging that in refusing to allow them participation in the plasma donation process, CSL unlawfully discriminated against them under Title III of the Americans with Disabilities Act of 1990 (ADA). They argued that CSL is a service establishment and thus a place of public accommodation under the ADA. Accordingly, they argued that CSL’s screening policies based on disability alone are unlawfully discriminatory, and the company is statutorily bound to accommodate Appellants. CSL argued that the ADA does
not apply, as its plasma collection facilities are not service establishments, so they are not places of public accommodation. Judge Hilda G. Tagle of the US District Court for the Southern District of Texas agreed, granting summary judgment for CSL. Silguero and Wolfe subsequently appealed to the US Fifth Circuit Court of Appeals.

B. Holding

The US Fifth Circuit Court of Appeals affirmed the lower court’s ruling. Judge Haynes wrote for the court that it held that CSL was not a place of public accommodation under Title III of the ADA because it was not a service establishment. The court reasoned that the wording of the ADA implies that monetary payments are not benefits under Title III and that as patrons do not receive benefits from CSL other than monetary payments, the plasma collection center is, therefore, not a service establishment. The court thus held that plasma donation centers like CSL are not subject to the ADA’s disability accommodation requirements, meaning CSL’s screening policies did not unlawfully discriminate against Appellants.

C. Roadmap

The Fifth Circuit was correct when it affirmed the District Court’s granting of summary judgment in favor of CSL because the company did not qualify as a place of public accommodation subject to the ADA. This comment will argue first that because US Supreme Court and previous Fifth Circuit holdings are easily distinguishable, the court correctly treated Silguero as a case of first impression for the Fifth Circuit. Second, this comment will argue that absent binding precedent, the Silguero court relied on legally legitimate tools of statutory interpretation to produce a conclusion that most closely honors Title III’s intent. Finally, this comment will argue that the court’s determination would have been more robust by including an analysis of CSL’s public accessibility.
II. Analysis

A. Because US Supreme Court and previous Fifth Circuit cases are easily distinguishable, the court correctly treated Silguero as a case of first impression for the Fifth Circuit.

Silguero is a case of first impression for the Fifth Circuit. While previous US Supreme Court and Fifth Circuit decisions provide insight into other Title III issues, neither court has addressed the service establishments catch-all disputed in Silguero. In PGA Tour, Inc. v. Martin, the US Supreme Court held that a golf tournament’s use of a golf course consisted of a place of public accommodation because the tournament was easily accessible by anyone willing to meet the minimal entry requirements. But the holding’s scope does not include service establishments, as Title III lists golf courses explicitly. PGA Tour is, thus, distinguishable, as is Bragdon v. Abbott, for the same reasons.

The Fifth Circuit has also not previously ruled on whether plasma collection centers are service establishments. In Magee v. Coca-Cola Refreshments USA, Inc., a vending machine was not a Title III place of public accommodation because it was not a sales establishment, an entirely separate catch-all term not at issue in Silguero. Moreover, rather than touching on service establishments, Johnson v. Gambrinus Company turned on Title III’s accommodations requirements, with all parties agreeing that a brewery that offered public tours was a place of public accommodation. Hence, no case offers precedential decisions into the Title III service establishments issue that preclude the Silguero court from performing its analysis on the case as one of first impression.

B. Absent binding precedent, the Silguero court relied on the tools of statutory interpretation that produced a conclusion that most closely honors Title III’s intent.
The court’s conclusion is correct because it honors Title III’s intended application. Courts interpret the law; they should not make it. Congress worded the ADA to reflect how courts should apply it. Rather than leaving any business subject to Title I, Congress deliberately articulated it to include a threshold number of employees that a Title I company must have. It follows that Congress worded Title III just as deliberately, so the correct application of Title III will closely reflect this deliberate intent.

Absent binding precedent, rather than relying on the disjointed and non-binding holdings of the Tenth Circuit in *Levorsen v. Octapharma Plasma, Inc.*, and the Third Circuit in *Matheis v. CSL Plasma, Inc.*, that plasma centers are service establishments, the *Silguero* court exercised its jurisdictional right to analyze the statute itself. In doing so, it relied on a framework of textual analysis to honor Title III’s intent by ensuring its application was not “untethered from its text.” Importantly, it also applied a canon of interpretation indispensable to textualism, which jurists often use with statutory lists involving catch-all terms in an attempt to ensure they only apply said catch-all to those entities Congress intended to cover.

The court’s analysis is sound. Title I’s text concerns relationships in which patrons receive money, while Title III’s text concerns patrons receiving non-monetary benefits. Accordingly, Congress’ intent was for Title III places of public accommodation, so entities that qualify as service establishments under the catch-all typically offer patrons a benefit other than money. This is not the case for CSL. Further, applying the oft-used textualist canon of interpretation, *ejusdem generis*, is to say that to qualify under the service establishment catch-all, CSL must generally share the same qualities as the terms listed antecedent to the catch-all in the statute. Unlike the named entities preceding the service establishments catch-all, such as dry-
cleaners and gas stations, CSL again, only offers patrons money. Thus, per the statute, Congress did not intend for it to be a Title III service establishment.

Other judicial methodologies may lead to different conclusions. Some jurists may favor one or more analytic tools over others. But textualism and the canon of statutory interpretation come closest to interpreting and honoring the ADA’s legislative intent by staying faithful to Congress’ deliberately chosen wording. As the Silguero court used these analytic tools in their reasoning, their conclusion also closely reflects Congress’ intent, meaning the court’s holding is correct.

C – The court’s determination would have been more robust by including an analysis of CSL’s public accessibility.

While the court’s holding was correct, as a case of first impression, its conclusion is not invulnerable to criticism stemming from those who may dispute the statute’s intent using other legitimate modes of analysis. For example, such critics might argue that Congress did intend to include plasma collection centers under Title III because CSL patrons receive beneficial emotional utils from giving their plasma to aid others. They might also try to extend Matheis’ argument, in that receiving money one inevitably exchanges for non-monetary benefits, and receiving the non-monetary benefits outright equate to the same thing. Like Levorsen, they might even argue that a different textualist analysis would produce an alternative definition of service establishments, one that includes CSL. However, these arguments all rest on the Silguero court’s service establishment analysis, and the court could have preempted them by including an analysis of CSL’s public accessibility.

While silent on service establishments, US Supreme Court and Fifth Circuit decisions unmistakably define one essential characteristic of Title III places of public accommodation
above all others: qualifying entities must be publicly accessible. An entity is publicly accessible under Title III of the ADA when access to it and the facility that hosts it is generally unrestricted or non-selective. Other jurisdictions have accordingly followed this rule.

Regarding binding authority, in PGA Tour, the commercial tournament in question was a place of public accommodation because access to it was generally unrestricted and non-selective. Any member of the public who desired could have met the simple requirements for entry by paying the entrance fee and submitting letters of recommendation. In Magee, vending machines were not Title III places of public accommodation because they were not facilities, meaning they could not generally allow unrestricted or non-selective access to a facility. In Johnson, a brewery was a place of public accommodation because management encouraged generally unrestricted or non-selective access by openly soliciting and inviting any public members into many of its spaces for tours. As for other jurisdictions following this same rule, the Third Circuit held in Kiwanis Intern. v. Ridgewood Kiwanis Club that a social club was not a place of public accommodation, precisely because although significant, the club’s membership policy was restricted and selective. Moreover, the Ninth Circuit in Jankey v. Twentieth Century Fox Film Corp held that a movie studio lot was not a Title III place of public accommodation because it was not open to the public, meaning access to the facility was restricted and selective.

Each of these decisions supports Silguero’s holding. Unlike the golf tournament in PGA Tour, CSL has strict requirements to qualify for plasma collection, meaning CSL can turn away any participants no matter how desiring. In this regard, CSL is much more like the club in Kiwanis Intern. Further, one might argue that any public member can walk into CSL’s, but such access is not sufficiently unrestricted or non-selective. As the vending machine in Magee, CSL is
not a facility that generally allows unrestricted or non-selective access. It may be a building and
not a singular device, but short of entering the front door and stopping for an initial screening,
those who fail the screening likely cannot access the machines, labs, or majority of CSL’s
facility. Moreover, unlike the brewery in Johnson, CSL does not openly solicit public members
to tour its facility. While as a business it may advertise, CSL’s screening policies are
longstanding and communicated to any interested persons, ensuring that access to most of the
facility and the plasm collection process is highly restricted and selective from the start. In this
regard, CSL is more like the movie studio lot in Jankey.

In sum, due to CSL’s policies of highly restricted and selective access to its plasma
collection process and facility, it is not publicly accessible, so it is not a Title III place of public
accommodation, regardless of any critic’s disputes regarding its service establishment status.
Hence, the court would have strengthened its holding and preempted such arguments if it had
included a public accessibility analysis of CSL in its reasoning.

III. Conclusion

The Silguero Court held correctly that CSL Plasma is not a place of public
accommodation under Title III of the ADA. Absent any binding precedent precluding it from
deciding whether CSL is a service establishment under the statute, the court correctly treated the
case as one of first impression for the Fifth Circuit. In making its determination, the court used
well-reasoned textualism and a widely-used canon of statutory interpretation to produce a
conclusion that most closely reflects Title III’s intended application. Title III’s intended
application is the correct conclusion. Hence, the court’s holding that CSL is not a service
establishment, and accordingly, not a place of public accommodation was correct. Further, due to
established precedent regarding Title III’s emphasis on public accessibility, the court could have strengthened its position by additionally analyzing CSL in this regard.


2 Id.

3 Id.

4 Id.

5 Id. at 326.

6 Id. at 325.

7 Id.

8 Id. at 326.

9 Id.

10 Id.

11 Id.

12 Id.

13 Id. at 326-27.

14 Id. at 327.

15 Id. at 326-27.

16 Id. at 327.

17 Id.

18 Id.

19 Id. at 332.

20 Id.

21 Id. at 331-32.
22 Id. at 332.


24 See id. at 667; 42 U.S.C. § 12182(7)(L).


26 Magee v. Coca–Cola Refreshments USA, Inc., 833 F.3d 530, 535 (5th Cir. 2016).


28 Silguero, 907 F.3d at 331.


30 Matheis v. CSL Plasma, Inc., 936 F.3d 171, 178 (3rd Cir. 2019).

31 Silguero, 907 F.3d at 329.

32 Id. at 329.

33 Id. at 331

34 See id.

35 See id. at 333.

36 See Id. at 329.

37 See Id. at 333.

38 See Id. at 331.

39 See Matheis, 936 F.3d at 178.

40 See Levorsen, 828 F.3d at 1232.

41 See e.g., PGA Tour, Inc., 532 U.S. at 680; Bragdon, 524 U.S. at 624; Magee, 833 F.3d at 535; Johnson, 116 F.3d at 1055-56.
42 See id.

43 See e.g., Kiwanis Intern. v. Ridgewood Kiwanis Club, 806 F.2d 468, 477-78 (3rd Cir. 1986); Jankey v. Twentieth Century Fox Film Corp., 212 F.3d 1159, 1160 (9th Cir. 2000).

44 PGA Tour, Inc., 532 U.S. at 680.

45 Id.

46 Magee, 833 F.3d at 535.

47 Johnson, 116 F.3d at 1055-56.

48 Kiwanis Intern., 806 F.2d at 477-78.

49 Jankey, 212 F.3d at 1160.

50 Silguero, 907 F.3d at 325.

51 See id. at 325-26.

52 Id. at 325