

BYBEE, Circuit Judge, concurring in the judgment.

I concur in the court's order insofar as it vacates the preliminary injunction. I write separately to make clear that, in my view, the plaintiffs have not set forth a colorable ADA claim.

Title II of the ADA requires only "reasonable modifications that would not fundamentally alter the nature of the service provided." *Tennessee v. Lane*, 541 U.S. 509, 532 (2004) (internal quotation marks omitted); *see also* 28 C.F.R. § 35.130(b)(7). The machines at issue here permit the play of a complete "bingo" game in a matter of seconds and employ a betting scheme and physical structure materially indistinguishable from garden-variety slot machines (and quite unlike traditional bingo). They thus appear not to be a remotely reasonable accommodation for any inability on the part of the disabled to participate in live call bingo, as plainly required by § 326.5(o) of the California Penal Code. I would have denied the application for a preliminary injunction.