NO. 128935

In the

Supreme Court of Illinois

M.U., a minor, by and through her parents, KELLY U. AND NICK U.,

Plaintiff-Appellee,

v.

TEAM ILLINOIS HOCKEY CLUB, INC., an Illinois not-for-profit corporation, and the AMATEUR HOCKEY ASSOCIATION OF ILLINOIS, INC., an Illinois not-for-profit corporation.

Defendants-Appellants.

On Leave to Appeal from the Appellate Court,
Second District, No. 2-21-0568.
There Heard on Appeal from the Circuit Court of the Eighteenth Judicial Circuit,
DuPage County, Illinois, No. 2021-CH-0141.
The Honorable Bonnie M. Wheaton, Judge Presiding.

REPLY BRIEF AND SUPPLEMENTARY APPENDIX OF DEFENDANTS-APPELLANTS

Dated: August 16, 2023

James M. McGing (No. 6197932)
MILLER & MCGING LAW FIRM
6723 N. NW Highway
Chicago, Illinois 60631
Phone: (773) 467-8000
McGingLaw@gmail.com

Timothy D. Elliott (No. 6237023)
Heather L. Kramer (No. 6272559)
Daniel J. Szczesny (No. 6338393)
RATHJE WOODWARD LLC
300 E. Roosevelt Road, Suite 300
Wheaton, Illinois 60187
Phone: (630)-668-8500
TElliott@rathjewoodward.com
HKramer@rathjewoodward.com
DSzczesny@rathjewoodward.com

Counsel for Defendants/ Appellants

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CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF POINTS AND AUTHORITIES

INTRODUCTION

In the final analysis, this case involves a plaintiff (M.U.) who wishes Section 5 of the IHRA says something different than it does. As drafted, Section 5, 775 ILCS 5/5-101 *et seq.*, addresses precisely one thing: discriminatory exclusion from "places of public accommodation." Section 5's statutory language has always focused exclusively on physical locations, and Illinois courts have uniformly limited Section 5 to cases involving exclusion from a place or location.

The appellate court below deviated from that well-settled law. It judicially expanded Section 5 in a way never contemplated by the General Assembly. Under the appellate court's ruling, a private organization's internal membership decisions (*e.g.*, accepting or denying membership applications) might (or might not) give rise to a Section 5 violation based solely on the arbitrary factor of whether that organization happens to meet in a "place of public accommodation." And under the appellate court's ruling, Section 5 might apply even if the particular membership action at issue is unrelated to a "place of public accommodation." The appellate court's ruling should be reversed. If the IHRA is to be expanded in this way, that expansion must come from the General Assembly rather than the courts.

Three points about M.U.'s brief merit mention. ***First***, M.U. repeatedly seeks to justify her arguments by pointing out that the IHRA, an anti-discrimination statute, must be interpreted broadly. While that may be true, any interpretation – be it broad or narrow – must be rooted in statutory language. Here, the language in Section 5 does not support M.U.'s argument. The simple truth is that the General Assembly has never done what M.U. desires, *i.e.*, amend Section 5 to reach beyond

physical locations. Public policy decisions are the province of the legislature, and this Court should not tread where the General Assembly has declined to go.

Second, M.U. tries very hard to divert the Court away from the core issue in this case. This case raises a question about the degree of nexus that is required between a discriminatory act and a place of public accommodation. Defendants have never argued that Team Illinois is not a "person" under the IHRA. Instead, Defendants' contention is that the action in this case (briefly suspending a player pending receipt of a doctor's note) cannot give rise to a Section 5 claim because there is no nexus between that action and a place of public accommodation. Thus, M.U.'s arguments about the definition of "person" are a red herring.

Third, in her brief, M.U. does her level best to demonize Team Illinois. She contends that Team Illinois "banned" her, "discriminated" against her, and disregarded the wishes of her doctors. MU Br. at 4-5, 9-10.[1] Those claims are not supported by the factual allegations in M.U.'s complaint. Boiled down to its essentials, M.U.'s complaint alleges that Team Illinois asked M.U.'s parents for a doctor's note and then reinstated M.U. the very same day she presented that note. Period. Hard stop. Contrary to what she says in her brief, *see* MU Br. at 5, M.U.'s complaint does not allege that her doctors told Team Illinois "it was safe – indeed good – for M.U. to continue playing hockey" or that Team Illinois ignored that advice. In fact, it alleges just the opposite: that Team Illinois did not communicate

[1] Herein, citations to M.U.'s brief are "MU Br. at __." Citations to the Attorney General's brief are "AG Br. at __." Citations to Defendants' opening brief are "Op. Br. at __." Citations to Defendants' Rule 342 Appendix (filed with their opening brief) are "A.__." Citations to the Supplementary Appendix attached hereto as "R.Supp.A.__."

with her doctors prior to delivery of the note that led to her reinstatement. *See* C. 17 at ¶ 43.

ARGUMENT

I. Section 5 Is Intended To Regulate Discriminatory Conduct That Relates To Places – Not Conduct Within Organizations That Might Meet At Those Places.

In statutory interpretation, the objective is to ascertain and give effect to the legislature's intent. *Cothron v. White Castle Sys. Inc.*, 2023 IL 128004, ¶ 20. Here, the General Assembly's intent is obvious. Section 5 is intended to address discriminatory conduct that directly impedes access to, or use of, physical places. There is no evidence that the General Assembly wants Section 5 to go any further.

The IHRA was enacted in 1980. For the past 43 years, Section 5 has defined the term "place of public accommodation" by reference to a list of physical places. *See* 775 ILCS 5/5-101. While the General Assembly has periodically revised that list of places (including in 2007, *see infra*), the General Assembly has never amended Section 5-101 to include anything other than physical places.[2] In addition, Section 5-102 makes it clear that Section 5 is violated only when one party deprives another of the use or enjoyment of, or access to a physical place. 775 ILCS 5/5-102. Such language is capable of only one interpretation, *i.e.*, the

[2] The Attorney General points out that Section 5-101 lists some types of businesses that might operate in bricks and mortar locations and online. *See* AG Br. at 16. Nothing in Section 5 suggests it applies to online conduct, however. And resort to federal law is not helpful on this issue; neither Congress nor the Supreme Court have addressed this, and the federal appeals courts are split. *See infra*. Thus, if M.U. or *amici* want Section 5 to reach online activities, they must petition the General Assembly rather than this Court.

General Assembly wants Section 5 to address actions that involve exclusion from "places." For 43 years, Illinois courts have interpreted Section 5 to mean just that.

M.U. now wants this Court to embrace a radically different approach. M.U. contends that Section 5 governs both: (1) conduct that *directly* deprives someone of access to a public place (*e.g.*, a museum that refuses admission to certain ethnic groups); and (2) conduct that *indirectly* deprives someone of access to a public place even in the absence of a nexus between the alleged discriminatory act and the place of public accommodation (*e.g.*, a Brownie troop that suspends a girl for disciplinary reasons, and then excludes her from a subsequent meeting in a school gym). *See* MU Br. at 5, 6. M.U. is wrong on the latter point.

If accepted, M.U.'s interpretation would make Section 5's statutory language little more than a subterfuge. Section 5 would become a "gotcha" statute, under which an organization's innocuous decision to meet in a library, restaurant, or theater would become little more than a pretext for subjecting *all* of the organization's conduct (regardless of where it occurs) to Section 5 scrutiny. Nothing suggests the General Assembly intended that result.

Moreover, if the General Assembly really intended the result M.U. claims, it could have easily drafted Section 5 to accomplish that result by adding language to the effect that all organizations in Illinois are barred from making internal membership decisions based on race, gender, sexual orientation, and the like (although Section 5, which addresses "places of public accommodation," would be an odd place to put those safeguards). Similarly, if the General Assembly wanted Section 5 to apply to the internal actions of organizations that conduct events at

public venues, it would have stated as much, and not shrouded its intent. Legislative bodies do not "hide elephants in mouseholes." *See Whitman v. Am. Trucking Assoc.*, 531 U.S. 457, 468 (2001).

Both M.U. and the Attorney General argue that Section 5 of the IHRA must be construed broadly. To be sure, combatting discrimination (including discrimination within membership organizations) is a vitally important policy goal. But policy decisions are the province of the legislature; not the judicial or executive branches. In the past 43 years, the General Assembly has never endorsed the route advocated by M.U. It has not taken any steps to expand Section 5 beyond physical places. Courts cannot rewrite statutory provisions under the guise of interpreting them. *Cothron*, 2023 IL 128004, ¶ 39. Rather, courts must "apply the law as it exists, not [ ] decide how the law might be improved. We must defer to the policy of the legislature as expressed in the language of the [Act]." *Price v. Phillip Morris, Inc.*, 219 Ill.2d 182, 274 (2005).

II. There Must Be A Nexus Between A Discriminatory Action And A Place Of Public Accommodation.

Having established that Section 5 is limited to discriminatory conduct that impedes one's access to a place of public accommodation, the question then becomes "how closely connected must the discriminatory act be to the place of public accommodation before a claim arises under Section 5?" Or, phrased differently "what nexus must exist between a discriminatory act and a resulting loss of access to, or use of, a place of public accommodation?" The appellate court's decision is flawed because it provides no guidance on this issue other than to suggest that defendants which "own" or "lease" a "place of public

accommodation" may be subject to Section 5. That is a vague standard, at best, and there is no textual basis in Section 5 for that test. *See* Op. Br. at 26-29. The appellate court's ruling on this issue cannot stand.

For her part, M.U. wants this Court to go even further and dispense altogether with any "nexus" requirement. In her brief, she argues that any action that has the effect – however remote or attenuated – of excluding a person from attending an event in a place of public accommodation violates Section 5. *See* MU Br. at 5-7. In short, M.U. contends that Section 5 is violated even if a discriminatory act is utterly unmoored to a place of public accommodation.[3]

That is an extreme position. And it finds no support in the statutory language. Section 5 only makes sense if there is a close nexus between a discriminatory act and a "place of public accommodation." If it were otherwise, myriad actions undertaken by private organizations (*e.g.*, accepting or denying membership applications, suspensions, promotions) that have nothing to do with a "place of public accommodation" could eventually morph into Section 5 claims for the simple reason that every organization must meet somewhere. And sooner or later, virtually every organization meets in a location that might plausibly be a "place of public accommodation." That would stretch Section 5's statutory language well beyond the breaking point.

On this point, Defendants have the better position. As set forth in Defendants' Opening Brief, a claim under Section 5 must involve a discriminatory

[3] M.U.'s *amici* do not go as far as M.U. on this point. The Attorney General only goes so far as to state "the Act does not require a *particular* relationship between a person and a place of public accommodation." *See* AG Br. at 22 (emphasis added).

act that directly relates to someone's access to a place of public accommodation. Op. Br. at 26-29. Put another way, Section 5 cannot be extended to encompass conduct that is unrelated to a "place of public accommodation" but may have the ancillary effect of excluding someone from participating in an event in such a place. *Id.* Defendants' position is supported by Section 5's statutory language. It is also consistent with existing Section 5 jurisprudence and with federal law. *See Welsh v. Boy Scouts of Am.*, 993 F.2d 1267 (7th Cir. 1993).

In an attempt to undercut Defendants' argument on this point, M.U. suggests that any "nexus" requirement is tantamount to giving a free pass to discriminatory conduct. But M.U.'s arguments on this point underscore why her interpretation of Section 5 does not make sense. If the General Assembly wanted to comprehensively regulate private membership organizations, why would it create that obligation in a provision entitled "place of public accommodation?" And why would the General Assembly choose to regulate some organizations, but not others, based solely on an arbitrary factor such as the physical location where the groups meet? M.U. offers no answers for those questions.

III. This Case Involves Exclusion From An Organization; Not Exclusion From A Place.

Having established the proper parameters of Section 5, the question then shifts to whether M.U.'s complaint fits within those parameters. It does not. Try as she might, M.U. cannot change the fact that her complaint arises from loss of association within an organization rather than exclusion from a place. M.U. alleges a litany of supposedly wrongful conduct; all of which involves "exclusion" from association with her teammates and only a few of which even tangentially relate to

Seven Bridges. *See* C. 11-17 at ¶¶ 3, 19, 33-37, 39, 40. Furthermore, M.U. complains about exclusion from ***all*** team activities – wherever they occurred.

That, by itself, makes this case different from *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001). In *Martin*, the plaintiff's claims involved conduct that occurred entirely in "places of public accommodation," *i.e.*, golf courses. Martin did not ask to be allowed to participate in all PGA activities regardless of location. Rather, he sought a specific accommodation for playing in PGA tournaments, which, by their nature, occur entirely in physical places, *i.e.*, golf courses leased and controlled by the PGA. By contrast, M.U. is not seeking any type of on-ice accommodation at Seven Bridges; her complaint directly invokes her membership in an organization.

IV. M.U.'s Reliance On The 2007 Amendments To The IHRA Is Misplaced.

M.U. makes much of the 2007 amendments to the IHRA. She contends those amendments were intended to radically overhaul Section 5, "overturn" all prior court decisions, and make Section 5 coterminous with the federal Americans with Disability Act ("ADA"), 42 U.S.C. § 12101 *et seq*. *See* MU Br. at 12-13. M.U.'s argument is a false narrative and easily debunked. Indeed, the 2007 amendments occurred 16 years ago. If those amendments were truly the watershed event M.U. now claims, one would expect at least *some* mention of it in the legal jurisprudence of the last 16 years. But the silence is deafening. Moreover, courts and the Illinois Human Rights Commission have continued to rely on pre-2007 authorities in cases involving Section 5.[4]

[4] See *Reynolds v. Barnes Jewish Healthcare Corp.*, 3:21-CV-1754-DWD, 2021 WL 6197001 (S.D. Ill. Dec. 31, 2021); *Jackson v. Walgreens Co.*, 2021 IL App (1st) 201261-U; *Mallett v. Hum. Rts. Comm'n*, 2021 IL App (1st) 192397-U, appeal denied, 127480,

A. The Plain Text Of The 2007 Amendments Does Not Reveal Any Intent To Overhaul Or Expand Section 5.

Nothing in the statutory text of the 2007 amendments to the IHRA suggests the General Assembly wanted to "overhaul" or "overturn" anything. *See Hobby Lobby Stores, Inc. v. Sommerville*, 2021 IL App (2d) 190362 ¶¶ 20, 36 ("[W]here a statute's language is clear and unambiguous, we must give effect to that language without resorting to aids of statutory construction such as legislative history."). In her brief, M.U. focuses on one portion of the 2007 amendments, *i.e.*, the revised definition of "place of public accommodation" in Section 5-101. MU Br. at 11-13. But that change cannot be viewed in isolation. In Section 5, the General Assembly changed the language in two sections (Sections 5-101 and 102), added an entirely new section (Section 5-102.1) and left untouched another section (Section 5-103). *See* R.Supp.A. 12-16. All must be considered.

Section 5-101. As M.U. notes, the General Assembly revised the definition of "place of public accommodation" in 2007. But there is little difference between the pre-2007 and post-2007 iterations of Section 5-101. Both versions define "place of public accommodation" by reference to non-exclusive lists of examples of places. *See* R.Supp.A. 12-14. The two lists are similar, and in many instances, identical. *Id.* The General Assembly's decision to swap one list of examples for another similar list hardly denotes a sea change. Moreover, both versions of

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2022 WL 803024 (Ill. Jan. 26, 2022); *Eric D. Tyson*, Ill. Hum. Rts. Comm'n Rep. 2021CP1660, at 2022 WL 815669 (March 8, 2022) (relying on *Cut 'N Dried Salon*); *Karla Carwile*, Ill. Hum. Rts. Comm'n Rep. 2008SF470 at 2016 WL 11521861 (September 26, 2016) (relying on *Bd. of Tr. of S. Ill. U. v. Dept. of Hum. Rts.*, 159 Ill.2d 206 (1994)); *Andrew Straw*, Ill. Hum. Rts. Rep. 2016CP2378 at 2019 WL 3564103 (July 3, 2019) (relying on *Gilbert* and *Cut'N Dried Salon*).

Section 5-101 share the same hallmarks: (1) the listed examples are all places (not events or organizations); and (2) they are all places that are typically open on equal terms to all members of the public. While the specific examples changed, the overall provision did not. And while the new list of places is quite similar to the list of "places of public accommodation" in the ADA, 42 U.S.C § 12181(7), it is not identical, and it is still just that: a list of places.

Section 5-102. Section 5-102 delineates the types of conduct that do (and do not) constitute a violation of Section 5. 775 ILCS 5/5-102. If the General Assembly wanted to expand Section 5, it would have started with Section 5-102. But the 2007 changes to Section 5-102 were largely formulaic. Contrary to M.U.'s assertions, *see* MU Br. at 12-13, the 2007 amendments did not add the term "services" to its text. *See* R.Supp.A. 14-15. The term "service" was already included in Section 102's text. In 2007, the General Assembly simply added the term "services" to the title, and then added the term "goods" (which does not help M.U. because this case does not involve a sale of goods) to the text. *Id.* Section 5-102 remains much narrower than its federal ADA counterpart, 42 U.S.C. § 12182(a), which covers "privileges, advantages or accommodations." *Id.*

Section 5-102.1. Perhaps the most sweeping change made by the 2007 amendments was the addition of Section 5-102.1, which reads as follow:

> Sec. 5-102.1. No Civil Rights Violation: Public Accommodations. It is not a civil rights violation for a medical, dental, or other health care professional or a private professional service provider such as a lawyer, accountant, or insurance agent to refer or refuse to treat or provide services to an individual in a protected class for any non-discriminatory reason if, in the normal course of his or her operations or business, the professional would for the same reason refer or refuse to treat or provide services to

> an individual who is not in the protected class of the individual who seeks or requires the same or similar treatment or services.

See R.Supp. A.15-16. Section 5-102.1 limits Section 5's scope and seeks to avoid expansive interpretations that might unfairly impede professional service providers. The General Assembly's addition of Section 5-102.1 refutes M.U.'s argument that the 2007 amendments dramatically expanded the statute.

Section 5-103. Section 5-103 lists the exemptions to Section 5. 775 ILCS 5/5-103. The General Assembly did not touch this provision in 2007. *See* R.Supp.A. 16. In fact, Section 5-103 has not been amended since 1988. That is strong evidence that the General Assembly sees no reason to narrow the exemptions (including the private club exemption) set forth therein.

B. The Legislative History Of The 2007 Amendment Does Not Support M.U.'s Argument.

The legislative history of the 2007 amendments to the IHRA flatly refutes the notion that anyone in Springfield thought they were dramatically changing Section 5. Indeed, the bill's sponsors repeatedly reassured their colleagues that the 2007 amendments would not alter the IHRA's scope or purpose. The 2007 amendments to the IHRA were introduced on February 8, 2007 as Senate Bill 593. *See* R.Supp.A. 17. The legislative synopsis emphasized that a primary purpose of the bill was to change the term "handicapped" in the IHRA to "disabled." *Id.* When the bill was introduced for third reading on the Senate floor on May 10, 2007, its chief sponsor, Senator Cullerton, stated:

> This bill updates the current definition of "public accommodations" to conform to the definition used in the ADA that already applies to Illinois public accommodations. It goes no further than existing law.

R.Supp.A. 20-21. That bears repeating: the amendments went no "further than existing law" and the revised definition of "place of public accommodation" did not alter the existing standard in Illinois. *Id.* That certainly does not sound like a dramatic overhaul. And the Illinois Senate did not think so, either. It passed the bill unanimously (56-0) after a debate that was brief in the extreme. *Id.* at 19-21.

The same thing happened in the House. Representative Fritchey introduced SB 593 on May 31, 2007 and stated:

> Thank you, Speaker. This Bill is an initiative of countless groups that do work on behalf of individuals with disabilities. We're making some modifications to the Human Rights Acts, semantically placing the term "handicap" with "disability" and expanding and clarifying some other provisions of the Act. The only opposition that we know of was from the department on a cost basis. But we believe that the benefits far out … outweigh any costs. I request an "aye" vote. Thank you.

R.Supp.A. 23. That was the entire floor debate in the House. No one else spoke and it passed unanimously (114-0). There is no evidence that anyone in the House wanted to overhaul the IHRA, overrule court rulings, or expand Section 5.

The bill then went to Governor Blagojevich, who returned Senate Bill 593 with an amendatory veto that sought to add an "in commerce" requirement and also exclude public entities from its coverage. R.Supp.A. 24. Such provisions were not in the pre-2007 version of Section 5 and neither chamber wanted to adopt them. Both chambers overrode the Governor's amendatory veto with unanimous votes. *Id.* at 28-33. Senator Cullerton made the following remarks:

> Thank you, Mr. President, Members of the Senate. Senate Bill 593 updates the Illinois Human Rights Act to bring it in line with the federal government and thirty-nine other states to -- in an effort to expand the scope of coverage of the provisions of the Act concerning discrimination in places of public accommodation. Court decisions

> have limited the application of those provisions over the years resulting in a very weak statute. So, we passed this bill in response to that. And, it passed unanimously in both houses. The Act -- the amendatory veto actually would make the statute -- the current statute weaker, by limiting it to privately operated facilities affecting commerce. So that a modern day Rosa Parks would not have a cause of action under the Illinois Human Rights Act for being denied access to a CTA bus. The term "affecting commerce", which is also found in the amendatory veto, is ambiguous and will require expensive litigation, at taxpayers' expense, to define. Further, complaints would have to plead and prove that the alleged discriminating party affects commerce which would be a burden they should not have to bear. I would hope that we would vote the way we did the first time, unanimously, for the disability community, which universally supports this override effort. I'd be happy to answer any questions.

Id. at 28-29. When viewed in a vacuum, a portion of Senator Cullerton's October 2 statement may provide a kernel of support for M.U.'s argument. But that comment must be viewed in context. For starters, that single snippet is the *only* support M.U. can muster in the entire legislative history for the 2007 amendments. That, by itself, speaks volumes. It is also noteworthy that most of Senator Cullerton's October 2, 2007 statement was devoted to a different subject: the unsoundness of the Governor's veto. Finally, Senator Cullerton's October 2 statement directly contradicts his (and Representative Fritchey's) prior statements.

Relying on such statements is a risky exercise because one legislator's statements are seldom (if ever) fully reflective of the intent of 177 representatives and senators (much less the governor). In this case, the 2007 amendments passed unanimously in both chambers after assurances by the chief sponsors (Fritchey and Cullerton) that the bill did not break new ground. That overall process speaks more loudly than the veto session snippet quoted by M.U.

The 2007 legislative history is also devoid of support for M.U.'s claim that the 2007 amendments were motivated by a desire to overrule *Gilbert v. Department of Human Rights*, 343 Ill. App. 3d 904 (1st Dist. 2003), and/or instill *Martin*, 532 U.S. 661, as controlling precedent. Neither decision was even mentioned in the legislative record. Moreover, *Gilbert's* most salient feature was the appellate court's finding that entities with selective pre-screening processes are not "places of public accommodation." *See* 343 Ill. App.3d at 910. If the General Assembly wanted to "overturn" *Gilbert*, it would have added some language to the statute to address pre-screening or selective membership. But neither Senator Cullerton's remarks nor the 2007 amendments address that topic.

V. Resort To Federal Decisional Law Is Unnecessary.

The IHRA is an Illinois statute enacted in Springfield in 1980. The federal ADA was enacted in Washington, D.C. in 1989 – nine years later. This Court must determine the intent of the General Assembly with respect to the IHRA – not the intent of Congress with respect to the ADA. And yet, at every turn, M.U. and *amici* urge this Court to disregard Illinois law and look instead to certain federal decisions applying the ADA. This Court should not follow M.U. down this path.

First, contrary to M.U.'s contention, the Illinois General Assembly has never invited courts to disregard the IHRA's statutory language and look to federal law for guidance. There is no support for M.U.'s argument that the 2007 amendments were intended to accomplish that result. *See supra.* Nothing in Section 5 (either before or after 2007) suggests the General Assembly wants to surrender its autonomy to the future whims of Congress and the federal courts.

Second, M.U. notes that Illinois courts sometimes look to federal law for guidance in IHRA cases. That is true, but Illinois courts typically look to decisions under the Civil Rights Act of 1964, 42 U.S.C. § 4000(e) – not the ADA.[5] In addition, while federal decisions may provide guidance on unsettled issues, they cannot displace established Illinois law. *See Hobby Lobby Stores*, 2021 IL App (2d) 190362, at ¶ 39. That is important because the Illinois courts (notably *Gilbert*) have already addressed the specific questions raised by M.U. Thus, resort to federal law is neither necessary nor proper.

Third, even if resort to federal law were appropriate (and it is not), it would not be helpful. The simple truth is that the federal courts are badly divided on most of the issues raised in M.U.'s brief (a point *not* acknowledged by M.U. or *amici*). For example, M.U. and *amici* cite *Doe v. Mutual of Omaha*, 179 F.3d 557, 559 (7th Cir. 1999), for the proposition that websites are "places of public accommodation" under federal law. *See* MU Br. at 10; AG Br. at 17-18. But *Doe* is just one decision. Neither Congress nor the U.S. Supreme Court have weighed in on this issue, and the federal courts of appeal are divided. If anything, *Doe* represents a minority viewpoint. The Third, Sixth, Ninth and Eleventh Circuits have found that "places of public accommodation" under the ADA are limited to physical places.[6] The

[5] Indeed, the case cited by M.U. on this point, *Lau v. Abbott Laboratories*, 2019 IL App (2d) 180456, ¶ 38, relied decisions under the federal Civil Rights Act, 42 U.S.C. § 2000a, and the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*

[6] *See Ford v. Schering-Plough Corp.*, 145 F.3d 601, 612 (3d Cir. 1998); *Stoutenborough v. Nat'l Football League, Inc.*, 59 F.3d 580, 583 (6th Cir. 1995); *Parker v. Metro. Life Ins. Co.*, 121 F.3d 1006, 1010 (6th Cir. 1997); *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1114 (9th Cir. 2000); *Gil v. Winn-Dixie*, 993 F.3d 1266, 1277 (11th Cir. 2021). *Gil* was subsequently vacated because the underlying dispute was mooted during

First, Second and Seventh have concluded otherwise.[7] To complicate matters, there are layers of nuance. For example, the Eleventh Circuit has not decided whether "place of public accommodation" has the same meaning in the ADA and Civil Rights Act, and the Ninth Circuit treats websites differently under the Civil Rights Act (where websites are not "places of public accommodation") and the ADA (where the result may depend on whether a website is a standalone site or an extension of a brick-and-mortar retail store).[8] Put simply, the federal courts do not agree on what Congress meant by "place of public accommodation" in two federal statutes. There is no reason for this Court to wade into that unsettled morass.

In addition, *Doe* is inapposite. *Doe* was a dispute over whether insurance providers were required to provide plans tailored to people with HIV/AIDS. *Doe*, 179 F.3d at 558. *Doe* did not involve a membership organization. Nor did it discuss the core issue in this case, *i.e.*, whether a "places of public accommodation" statute may reach the internal actions of membership organizations that use those places.

The Seventh Circuit's decision in *Welsh*, 993 F.2d 1267 (7th Cir. 1993), is a much better fit. In *Welsh*, a boy and his father argued that the boy's exclusion from the Boy Scouts violated the "place of public accommodation" provisions of the Civil Rights Act., 42 U.S.C. § 2000a(a). The Seventh Circuit rejected that

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the pendency of the appeal. *See* 21 F.4th 775 (11th Cir. 2021). However, there is no reason to believe the Eleventh Circuit would adopt any different reasoning.

[7] *See Carparts Distrib. Ctr., Inc. v. Auto. Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12, 19 (1st Cir. 1994); *Pallozzi v. Allstate Life Ins. Co.*, 198 F.3d 28, 32 (2d Cir. 1999); *Doe*, 179 F.3d at 559.

[8] *See Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.*, 6 F.4th 1247, n.12 (11th Cir. 2021); *Lewis v. Google, LLC*, 851 Fed.Appx. 723 (9th Cir. 2021); *Cullen v. Netflix, Inc.*, 600 Fed.Appx. 508 (9th Cir. 2015); *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 905-06 (9th Cir. 2019).

argument and noted that Congress' intent was to "regulate facilities as opposed to gatherings of people." *Id.* at 1269. The Seventh Circuit found that organizations are "places of public accommodation" only if they have such "a close connection to a specific facility" that the organization functions as a "ticket" to admission to the facility. *Id.* at 1270-72.[9]

VI. This Court Should Adopt Defendants' Proposed Standard For The Private Club Exception

"Private clubs" are exempt from Section 5 of the IHRA. *See* 775 ILCS 5/5-103. To date, neither this Court nor the appellate court have provided guidance on the standards for what constitutes a "private club." The time has come for this Court to provide that guidance.

In a remarkable turnabout, M.U. (who contends that the *other* provisions in Section 5 of the IHRA extend beyond physical places) argues that the private club exemption must be strictly limited to *only* physical places. However, that limitation would make the "private club" exemption illusory, particularly if this Court were to accept M.U.'s expansive interpretation of the remaining provisions in Section 5. *See Green v. Chicago Police Dept.*, 2022 IL 127229, ¶ 51 ("We construe the statute to avoid rendering any part of it meaningless or superfluous."). M.U. is not suing a place of public accommodation (*e.g.*, Seven Bridges). She is suing

[9] Other federal courts have enforced the distinction between a "place of public accommodation" and organizations. *See, e.g.*, *Stoutenborough*, 59 F.3d at 583; *Brown v. 1995 Tenet ParaAmerica Bicycle Challenge*, 959 F. Supp. 496, 499 (N.D. Ill. 1997) ("the service the defendants offered, *i.e.* the chance to participate in the ParaAmerica, has no connection to a place of public accommodation"); *Elitt v. U.S.A. Hockey*, 922 F. Supp. 217, 223 (E.D. Mo. 1996) ("[M]embership organizations such as Creve Coeur Hockey and U.S.A. Hockey do not constitute places of public accommodation.").

organizations (Team Illinois and AHAI). If the appellate court's ruling is affirmed and Section 5 is interpreted to reach such organizations, then Section 5's private club exemption must be similarly interpreted to include such organizations. Put simply, the scope of the exemption must conform to the contours of liability under Section 5.

M.U. contends that the "private club" standard proposed by Defendants is improper for two main reasons. First, M.U. points out that the decisions cited by Defendants, *Gilbert*, 343 Ill. App. 3d 904, and *Cut 'N Dried Salon v. Department of Human Rights*, 306 Ill. App. 3d 142 (1st Dist. 1999), did not invoke Section 5/5-103's "private club" exemption. That is a distinction without a difference. *Gilbert* and *Cut 'N Dried* were decided under Section 5 and the reasoning in those cases was rooted in the statute's intent and purpose. That reasoning resonates fully with respect to Section 5-103. 775 ILCS 5/5-103. The reasoning in *Gilbert* and *Cut 'N Dried Salon* comes much closer to the mark than the reasoning in the decisions cited by M.U., which involved federal statutes or, in the case of *Knoob Enterprises, Inc. v. Village of Colp*, 358 Ill. App. 3d 832 (5th Dist. 2005), an entirely unrelated Illinois statute. *See* MU Br. at 45-47.

Second, M.U. contends that Defendants' standard does not work because "[m]ere selectivity in admissions or membership cannot exempt an entity from" the IHRA. *See* MU Br. at 47. M.U. is just plain wrong on that point. Selectivity in admissions and membership is the *sine qua non* of a private club.[10] Such selectivity

[10] *See Lobel v. Woodland Golf Club of Auburndale,* 260 F. Supp. 3d 127 (D. Mass. 2017) (Selectivity is the most important factor in assessing a private club); *U.S. v. Lansdowne Swim Club*, 713 F. Supp. 785, 797 (E.D. Pa. 1989) (same).

(provided it is genuine and not a pretext for discrimination) is what transforms an organization into a "private club." M.U. does not provide any analysis or explanation for why selectivity should not be a significant factor in assessing whether an entity is a "private club."[11]

M.U. also contends that the Court need not reach this issue because the question of whether Team Illinois is a "private club" must be raised via affirmative defense and is not properly before this Court. However, M.U. is wrong in contending that exemptions must always be raised as affirmative defenses. In many instances, plaintiffs are required to plead around such exemptions. *See People v. Bruemmer*, 2021 IL (4th) 190877, ¶¶ 28-36. Here, the General Assembly determined that "private clubs" would not be subject to Section 5. The statute does not clarify which party bears the burden of establishing the existence (or non-existence) of a private club. Under these circumstances, this Court should take the same approach it took in *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill.2d 145 (1989). In that case, this Court addressed the question of which party (plaintiff or defendant) bears the burden of pleading whether a defendant's conduct is justified in a tortious interference claim. *Id.* This Court found that the

[11] The lone decision cited by M.U. is *Martin v. PGA Tour, Inc.*, 984 F. Supp. 1320 (D. Or. 1998), which stands for the much narrower proposition that talent-based selectively is insufficient to establish a private club. *Id.* at 1325. That portion of the district court's decision was ***not*** reviewed by the Ninth Circuit or Supreme Court. Other federal district courts have reached the opposite conclusion. *See Shepherd v. U.S. Olympic Comm.*, 464 F. Supp. 2d 1072, 1083 (D. Colo. 2006)("Unlike the public and private golf courses operated or "leased" by the PGA in *Martin*—to which all paying customers have access regardless of ability—the training facilities operated by the USOC are accessible only to those *already* selected by the national governing bodies to the Olympic, Pan–American or Paralympic teams in their individual sports and identified as elite, world-class athletes.").

answer depends on the facts alleged. If the plaintiff alleges facts that establish a privilege, the plaintiff also has the burden of pleading a lack of justification. If no such facts are alleged, the burden of pleading justification falls to the defendant.

That approach makes sense with respect to Section 5/5-103. Where – as here – a plaintiff alleges that a defendant has a highly selective membership process, *see* C. 14 at ¶¶ 18-19, the plaintiff must also bear the burden of alleging facts to establish the lack of a *bona fide* "private club." In short, M.U. cannot have it both ways; she cannot allege that Team Illinois had a selective membership process, and deny that Team Illinois has the right to seek dismissal based on the private club exemption.

CONCLUSION

For the reasons set forth herein, and in their Opening Brief, Defendants respectfully ask this Court to reverse the appellate court's decision and affirm the trial court.

Dated: August 16, 2023

Respectfully submitted,

By: */s/ Timothy D. Elliott*
One of Their Attorneys
Timothy D. Elliott (ARDC No.6237023)
Heather L. Kramer (ARDC No.6272559)
Daniel J. Szczesny (ARDC No.6338393)
Rathje Woodward LLC
300 E. Roosevelt Road, Suite 300
Wheaton, IL 60187
Phone: (630) 668-8500
telliott@rathjewoodward.com
hkramer@rathjewoodward.com
dszczesny@rathjewoodward.com

James M. McGing (ARDC No. 6197932)
MILLER & MCGING LAW FIRM
6723 N. NW Highway
Chicago, IL. 60631
Phone: (773) 467-8000
McGingLaw@gmail.com

Attorneys for Defendants/Appellants

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) Table of Contents and Statement of Points and Authorities, the Rule 341(c) Certificate of Compliance, the Certificate of Service, and those matters to be appended to the brief under Rule 342(a), is 20 pages.

Dated: August 16, 2023

/s/ Timothy D. Elliott
Timothy D. Elliott

CERTIFICATE OF SERVICE

You are hereby notified that on August 16, 2023, I, Timothy D. Elliott, an attorney, caused to electronically filed with the Clerk of the Illinois Supreme Court through the Odyssey/eFileIL system, the *Reply Brief and Supplementary Appendix of Defendants-Appellants*. On August 16, 2023 a copy of the foregoing will also be electronically mailed to the following counsel:

Charlie Wysong
Hughes Socol Piers Resnick & Dym, Ltd.
70 W. Madison Street, Suite 4000
Chicago, Illinois 60602
cwysong@hsplegal.com

James Michael McGing
Miller & McGing Law Firm
6723 North Northwest Highway
Chicago, Illinois 60631
McGingLaw@gmail.com

Barry C. Taylor
Rachel M. Weisberg
Paul W. Mollica
EQUIP FOR EQUALITY
20 N. Michigan Ave., Ste. 300
Chicago, Illinois 60602
(312) 341-0022
BarryT@equipforequality.org
RachelW@equipforequality.org
Paulm@equipforequality.org

Lindsey M. Hogan
James D. Leonard (Not Admitted in Illinois)
Jeffrey S. Beck (Not Admitted in Illinois)
FAEGRE DRINKER BIDDLE
&REATH LLP
320 S. Canal Street, Suite 3300
Chicago, Illinois 60606
Lindsey.Hogan@FaegreDrinker.com
James.Leonard@FaegreDrinker.com
Jeffrey.Beck@FaegreDrinker.com

Ryan W. Blackney
Matthew T. Connelly
FREEBORN & PETERS LLP
311 S. Wacker Drive, Suite 3000
Chicago, Illinois 60606
(312) 360-6000
RBlackney@freeborn.com
MConnelly@freeborn.com

Daniel P. Lindsey
Josephine (Jamie) Schulte
Legal Aid Chicago
120 South LaSalle Street, Suite 900
Chicago, IL 60603
DLindsey@legalaidchicago.org
JSchulte@legalaidchicago.org

Charles Glenn Wentworth
The Law Office of Lofgren
& Wentworth, P.C.
536 Crescent Blvd. Suite 200
Glen Ellyn, Illinois 60137
CWentworth@elrlaw.com

Aneel L. Chablani
Chicago Lawyers' Committee
for Civil Rights
100 North LaSalle Street, Suite 600
Chicago, Illinois 60602
AChablani@clccrul.org

Kenneth Mitchell Walden
Access Living of Metro Chicago
115 West Chicago Avenue
Chicago, Illinois 60654
KWalden@accessliving.org

Stephanie Ferst Altman
Shriver Center on Poverty Law
67 East Madison Street, Suite 2000
Chicago, Illinois 60603
Stephaniealtman@povertylaw.org

Thomas Leonard Brejcha Jr.
Thomas More Society
309 West Washington Street, Suite 1250
Chicago, Illinois 60606
TBrejcha@thomasmoresociety.org

Sarah Ann Hunger
Deputy Solicitor General
Office of the Illinois Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
Sarah.Hunger@ilag.gov

Caroline Goodwin Chapman
Legal Council for Health Justice
17 North State Street, Suite 900
Chicago, Illinois 60602
(312) 605-1981
CChapman@legalcouncil.org

Caroline Therese Manley
Center for Disability & Elder Law
205 West Randolph Street, Suite 1610
Chicago, Illinois 60606
(312) 376-1880
CManley@cdelaw.org

Within five days of acceptance, by the Court, the undersigned certifies that 13 paper copies of the foregoing will be sent to the above court.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct.

Dated: August 16, 2023

/s/ Timothy D. Elliott
Timothy D. Elliott

NO. 128935

In the

Supreme Court of Illinois

M.U., a minor, by and through her parents, KELLY U. AND NICK U.,

Plaintiff-Appellee,

v.

TEAM ILLINOIS HOCKEY CLUB, INC., an Illinois not-for-profit corporation, and the AMATEUR HOCKEY ASSOCIATION OF ILLINOIS, INC., an Illinois not-for-profit corporation.

Defendants-Appellants.

On Leave to Appeal from the Appellate Court,
Second District, No. 2-21-0568.
There Heard on Appeal from the Circuit Court of the Eighteenth Judicial Circuit,
DuPage County, Illinois, No. 2021-CH-0141.
The Honorable Bonnie M. Wheaton, Judge Presiding.

SUPPLEMENTARY APPENDIX TO REPLY BRIEF

Dated: August 16, 2023

James M. McGing (No. 6197932)
MILLER & MCGING LAW FIRM
6723 N. NW Highway
Chicago, Illinois 60631
Phone: (773) 467-8000
McGingLaw@gmail.com

Timothy D. Elliott (No. 6237023)
Heather L. Kramer (No. 6272559)
Daniel J. Szczesny (No. 6338393)
RATHJE WOODWARD LLC
300 E. Roosevelt Road, Suite 300
Wheaton, Illinois 60187
Phone: (630)-668-8500
TElliott@rathjewoodward.com
HKramer@rathjewoodward.com
DSzczesny@rathjewoodward.com

Counsel for Defendants/ Appellants

ORAL ARGUMENT REQUESTED

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***All materials were obtained from https://www.ilga.gov/previousga.asp?GA=95, lasted visited on August 15, 2023**

Public Act 095 0668

SB0593 Enrolled LRB095 08838 AJO 29024 b

AN ACT concerning civil law.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Human Rights Act is amended by changing Sections 1 102, 1 103, 3 102.1, 3 104.1, 5 101, and 5 102 and by adding Section 5 102.1 as follows:

(775 ILCS 5/1 102) (from Ch. 68, par. 1 102)

Sec. 1 102. Declaration of Policy. It is the public policy of this State:

(A) Freedom from Unlawful Discrimination. To secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental <u>disability</u> ~~handicap~~, military status, sexual orientation, or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations.

(B) Freedom from Sexual Harassment Employment and Higher Education. To prevent sexual harassment in employment and sexual harassment in higher education.

(C) Freedom from Discrimination Based on Citizenship Status Employment. To prevent discrimination based on

citizenship status in employment.

(D) Freedom from Discrimination Based on Familial Status Real Estate Transactions. To prevent discrimination based on familial status in real estate transactions.

(E) Public Health, Welfare and Safety. To promote the public health, welfare and safety by protecting the interest of all people in Illinois in maintaining personal dignity, in realizing their full productive capacities, and in furthering their interests, rights and privileges as citizens of this State.

(F) Implementation of Constitutional Guarantees. To secure and guarantee the rights established by Sections 17, 18 and 19 of Article I of the Illinois Constitution of 1970.

(G) Equal Opportunity, Affirmative Action. To establish Equal Opportunity and Affirmative Action as the policies of this State in all of its decisions, programs and activities, and to assure that all State departments, boards, commissions and instrumentalities rigorously take affirmative action to provide equality of opportunity and eliminate the effects of past discrimination in the internal affairs of State government and in their relations with the public.

(H) Unfounded Charges. To protect citizens of this State against unfounded charges of unlawful discrimination, sexual harassment in employment and sexual harassment in higher education, and discrimination based on citizenship status in employment.

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(Source: P.A. 93 1078, eff. 1 1 06.)

(775 ILCS 5/1 103) (from Ch. 68, par. 1 103)

Sec. 1 103. General Definitions. When used in this Act, unless the context requires otherwise, the term:

(A) Age. "Age" means the chronological age of a person who is at least 40 years old, except with regard to any practice described in Section 2 102, insofar as that practice concerns training or apprenticeship programs. In the case of training or apprenticeship programs, for the purposes of Section 2 102, "age" means the chronological age of a person who is 18 but not yet 40 years old.

(B) Aggrieved Party. "Aggrieved party" means a person who is alleged or proved to have been injured by a civil rights violation or believes he or she will be injured by a civil rights violation under Article 3 that is about to occur.

(C) Charge. "Charge" means an allegation filed with the Department by an aggrieved party or initiated by the Department under its authority.

(D) Civil Rights Violation. "Civil rights violation" includes and shall be limited to only those specific acts set forth in Sections 2 102, 2 103, 2 105, 3 102, 3 103, 3 104, 3 104.1, 3 105, 4 102, 4 103, 5 102, 5A 102 and 6 101 of this Act.

(E) Commission. "Commission" means the Human Rights Commission created by this Act.

(F) Complaint. "Complaint" means the formal pleading filed by the Department with the Commission following an investigation and finding of substantial evidence of a civil rights violation.

(G) Complainant. "Complainant" means a person including the Department who files a charge of civil rights violation with the Department or the Commission.

(H) Department. "Department" means the Department of Human Rights created by this Act.

(I) Disability ~~Handicap~~. "Disability" ~~"Handicap"~~ means a determinable physical or mental characteristic of a person, including, but not limited to, a determinable physical characteristic which necessitates the person's use of a guide, hearing or support dog, the history of such characteristic, or the perception of such characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic:

(1) For purposes of Article 2 is unrelated to the person's ability to perform the duties of a particular job or position and, pursuant to Section 2 104 of this Act, a person's illegal use of drugs or alcohol is not a disability ~~handicap~~;

(2) For purposes of Article 3, is unrelated to the person's ability to acquire, rent or maintain a housing accommodation;

(3) For purposes of Article 4, is unrelated to a person's ability to repay;

(4) For purposes of Article 5, is unrelated to a person's ability to utilize and benefit from a place of public accommodation.

(J) Marital Status. "Marital status" means the legal status of being married, single, separated, divorced or widowed.

(J 1) Military Status. "Military status" means a person's status on active duty in or status as a veteran of the armed forces of the United States, status as a current member or veteran of any reserve component of the armed forces of the United States, including the United States Army Reserve, United States Marine Corps Reserve, United States Navy Reserve, United States Air Force Reserve, and United States Coast Guard Reserve, or status as a current member or veteran of the Illinois Army National Guard or Illinois Air National Guard.

(K) National Origin. "National origin" means the place in which a person or one of his or her ancestors was born.

(L) Person. "Person" includes one or more individuals, partnerships, associations or organizations, labor organizations, labor unions, joint apprenticeship committees, or union labor associations, corporations, the State of Illinois and its instrumentalities, political subdivisions, units of local government, legal representatives, trustees in bankruptcy or receivers.

(M) Public Contract. "Public contract" includes every

contract to which the State, any of its political subdivisions or any municipal corporation is a party.

(N) Religion. "Religion" includes all aspects of religious observance and practice, as well as belief, except that with respect to employers, for the purposes of Article 2, "religion" has the meaning ascribed to it in paragraph (F) of Section 2 101.

(O) Sex. "Sex" means the status of being male or female.

(O 1) Sexual orientation. "Sexual orientation" means actual or perceived heterosexuality, homosexuality, bisexuality, or gender related identity, whether or not traditionally associated with the person's designated sex at birth. "Sexual orientation" does not include a physical or sexual attraction to a minor by an adult.

(P) Unfavorable Military Discharge. "Unfavorable military discharge" includes discharges from the Armed Forces of the United States, their Reserve components or any National Guard or Naval Militia which are classified as RE 3 or the equivalent thereof, but does not include those characterized as RE 4 or "Dishonorable".

(Q) Unlawful Discrimination. "Unlawful discrimination" means discrimination against a person because of his or her race, color, religion, national origin, ancestry, age, sex, marital status, <u>disability</u> ~~handicap~~, military status, sexual orientation, or unfavorable discharge from military service as those terms are defined in this Section.

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(Source: P.A. 93 941, eff. 8 16 04; 93 1078, eff. 1 1 06; 94 803, eff. 5 26 06.)

(775 ILCS 5/3 102.1) (from Ch. 68, par. 3 102.1)

Sec. 3 102.1. Disability ~~Handicap~~. (A) It is a civil rights violation to refuse to sell or rent or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability ~~handicap~~ of that buyer or renter, a disability ~~handicap~~ of a person residing or intending to reside in that dwelling after it is sold, rented or made available or a disability ~~handicap~~ of any person associated with the buyer or renter.

(B) It is a civil rights violation to alter the terms, conditions or privileges of sale or rental of a dwelling or the provision of services or facilities in connection with such dwelling because of a disability of a person with a disability ~~person's handicap~~ or a disability ~~handicap~~ of any person residing or intending to reside in that dwelling after it is sold, rented or made available, or a disability ~~handicap~~ of any person associated with that person.

(C) It is a civil rights violation:

(1) to refuse to permit, at the expense of the ~~handicapped~~ person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a

rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before modifications, reasonable wear and tear excepted. The landlord may not increase for ~~handicapped~~ persons with a disability any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained;

(2) to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(3) in connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, to fail to design and construct those dwellings in

such a manner that:

(a) the public use and common use portions of such dwellings are readily accessible to and usable by ~~handicapped~~ persons with a disability;

(b) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by ~~handicapped~~ persons with a disability in wheelchairs; and

(c) all premises within such dwellings contain the following features of adaptive design:

(i) an accessible route into and through the dwelling;

(ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) reinforcements in bathroom walls to allow later installation of grab bars; and

(iv) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(D) Compliance with the appropriate standards of the Illinois Accessibility Code for adaptable dwelling units (71 Illinois Administrative Code Section 400.350 (e) 1 6) suffices to satisfy the requirements of subsection (C)(3)(c).

(E) If a unit of local government has incorporated into its law the requirements set forth in subsection (C) (3), compliance with its law shall be deemed to satisfy the requirements of that subsection.

(F) A unit of local government may review and approve newly

constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of subsection (C)(3) are met.

(G) The Department shall encourage, but may not require, units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with subsection (C)(3), and shall provide technical assistance to units of local government and other persons to implement the requirements of subsection (C)(3).

(H) Nothing in this Act shall be construed to require the Department to review or approve the plans, designs or construction of all covered multifamily dwellings to determine whether the design and construction of such dwellings are consistent with the requirements of subsection (C)(3).

(I) Nothing in subsections (E), (F), (G) or (H) shall be construed to affect the authority and responsibility of the Department to receive and process complaints or otherwise engage in enforcement activities under State and local law.

(J) Determinations by a unit of local government under subsections (E) and (F) shall not be conclusive in enforcement proceedings under this Act if those determinations are not in accord with the terms of this Act.

(K) Nothing in this Section requires that a dwelling be made available to an individual whose tenancy would constitute

a direct threat to the health or safety of others or would result in substantial physical damage to the property of others.

(Source: P.A. 86 910.)

(775 ILCS 5/3 104.1) (from Ch. 68, par. 3 104.1)

Sec. 3 104.1. Refusal to sell or rent because a person has a guide, hearing or support dog. It is a civil rights violation for the owner or agent of any housing accommodation to:

(A) refuse to sell or rent after the making of a bonafide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny property to any blind, hearing impaired or physically disabled ~~handicapped~~ person because he has a guide, hearing or support dog; or

(B) discriminate against any blind, hearing impaired or physically disabled ~~handicapped~~ person in the terms, conditions, or privileges of sale or rental property, or in the provision of services or facilities in connection therewith, because he has a guide, hearing or support dog; or

(C) require, because a blind, hearing impaired or physically disabled ~~handicapped~~ person has a guide, hearing or support dog, an extra charge in a lease, rental agreement, or contract of purchase or sale, other than for actual damage done to the premises by the dog.

(Source: P.A. 83 93.)

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(775 ILCS 5/5 101) (from Ch. 68, par. 5 101)

Sec. 5 101. Definitions) The following definitions are applicable strictly in the context of this Article:

(A) Place of Public Accommodation. ~~(1)~~ "Place of public accommodation" includes, but is not limited to ~~means~~: ~~a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.~~

(1) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than 5 units for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(2) a restaurant, bar, or other establishment serving food or drink;

(3) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) an auditorium, convention center, lecture hall, or other place of public gathering;

(5) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(6) a laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral

parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) public conveyances on air, water, or land;

(8) a terminal, depot, or other station used for specified public transportation;

(9) a museum, library, gallery, or other place of public display or collection;

(10) a park, zoo, amusement park, or other place of recreation;

(11) a non sectarian nursery, day care center, elementary, secondary, undergraduate, or postgraduate school, or other place of education in regard to the failure to enroll an individual or the denial of access to its facilities, goods, or services, except that the Department shall not have jurisdiction over charges involving curriculum content, course content, or course offerings, conduct of the class by the teacher or instructor, or any activity within the classroom or connected with a class activity such as physical education;

(12) a senior citizen center, homeless shelter, food bank, non sectarian adoption agency, or other social service center establishment; and

(13) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

~~(2) By way of example, but not of limitation, "place of public accommodation" includes facilities of the following types: inns, restaurants, eating houses, hotels, soda fountains, soft drink parlors, taverns, roadhouses, barber shops, department stores, clothing stores, hat stores, shoe stores, bathrooms, restrooms, theatres, skating rinks, public golf courses, public golf driving ranges, concerts, cafes, bicycle rinks, elevators, ice cream parlors or rooms, railroads, omnibuses, busses, stages, airplanes, street cars, boats, funeral hearses, crematories, cemeteries, and public conveyances on land, water, or air, public swimming pools and other places of public accommodation and amusement.~~

(B) Operator. "Operator" means any owner, lessee, proprietor, manager, superintendent, agent, or occupant of a place of public accommodation or an employee of any such person or persons.

(C) Public Official. "Public official" means any officer or employee of the state or any agency thereof, including state political subdivisions, municipal corporations, park districts, forest preserve districts, educational institutions and schools.

(Source: P.A. 81 1267.)

(775 ILCS 5/5 102) (from Ch. 68, par. 5 102)

Sec. 5 102. Civil Rights Violations: Public Accommodations. It is a civil rights violation for any person

on the basis of unlawful discrimination to:

(A) Enjoyment of Facilities, Goods, and Services. Deny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation;

(B) Written Communications. Directly or indirectly, as the operator of a place of public accommodation, publish, circulate, display or mail any written communication, except a private communication sent in response to a specific inquiry, which the operator knows is to the effect that any of the facilities of the place of public accommodation will be denied to any person or that any person is unwelcome, objectionable or unacceptable because of unlawful discrimination;

(C) Public Officials. Deny or refuse to another, as a public official, the full and equal enjoyment of the accommodations, advantage, facilities or privileges of the official's office or services or of any property under the official's care because of unlawful discrimination.

(Source: P.A. 81 1216.)

(775 ILCS 5/5 102.1 new)

Sec. 5 102.1. No Civil Rights Violation: Public Accommodations. It is not a civil rights violation for a medical, dental, or other health care professional or a private professional service provider such as a lawyer, accountant, or insurance agent to refer or refuse to treat or provide services

to an individual in a protected class for any non discriminatory reason if, in the normal course of his or her operations or business, the professional would for the same reason refer or refuse to treat or provide services to an individual who is not in the protected class of the individual who seeks or requires the same or similar treatment or services.

Section 99. Effective date. This Act takes effect upon becoming law.

SB0593

LRB095 08838 AJO 29024 b

95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0593

Introduced 2/8/2007, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

775 ILCS 5/1-102	from Ch. 68, par. 1-102
775 ILCS 5/1-103	from Ch. 68, par. 1-103
775 ILCS 5/3-102.1	from Ch. 68, par. 3-102.1
775 ILCS 5/3-104.1	from Ch. 68, par. 3-104.1
775 ILCS 5/5-101	from Ch. 68, par. 5-101
775 ILCS 5/5-102	from Ch. 68, par. 5-102
775 ILCS 5/5-102.1 new	

Amends the Illinois Human Rights Act. Provides that references throughout the Act to people with a disability will be by use of the term "person with a disability" or the term "disabled" (at present, "handicapped"). In the definition of "place of public accommodation", deletes the existing examples and inserts language listing facilities that are considered public accommodations for purposes of the Article. Provides that it is a civil rights violation to deny or refuse full and equal enjoyment of goods of any place of public accommodation. Provides that it is not a civil rights violation for a health care professional to respond to a person protected under the Act by referring the person to another professional or to refuse to treat or provide services to that person, if in the normal exercise of his or her profession the health care professional would for the same reason respond in the same way to an individual who is not protected under the Act who seeks or requires the same or similar treatment or services. Effective immediately.

A BILL FOR

STATE OF ILLINOIS
95th GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

38th Legislative Day 5/10/2007

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The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 56 voting Aye, none voting Nay, none voting Present. Senate Bill 234, having received the required constitutional majority, is declared passed. Senator Bomke, for what purpose do you seek recognition, sir? Senate Bill 268. Senator Collins. Senate Bill 311. Senator Cullerton. 311. Senate Bill 322. Senator Harmon. Senate Bill 328. Senator Hendon. Out of the record. Senate Bill 346. Senator Sieben. Out of the record. Senate Bill 378. Senator Harmon. Senate Bill 399. Senator Demuzio. Senate Bill -- out of the record. Senate Bill 399. Senator Demuzio. Out of the record. Senate Bill 445. Senator Martinez. Out of the record. Senate Bill 482. Senator Harmon. Senate Bill 487. Senator Harmon. Senate Bill 494. Senator Jacobs. Senate Bill 536. Senator Raoul. Senate Bill 537. Senator Cullerton. Senate Bill 539. Senator Sullivan. Senate Bill 549. Senator Delgado. Senate Bill 551. Senator Cullerton. Senate Bill 570. Senator Sullivan. Senate Bill 593. Senator Cullerton. 593, sir. Madam Secretary, recall? Senator Cullerton seeks leave of the Body to return Senate Bill 593 to the Order of 2nd Reading for the purposes of an amendment. Hearing no objection, leave is granted. Now on the Order of 2nd Reading is Senate Bill 593. Madam Secretary, are there any amendments approved for consideration?

SECRETARY SHIPLEY:

Yes, Mr. President. Floor Amendment No. 4, offered by Senator Cullerton.

PRESIDING OFFICER: (SENATOR HENDON)

Senator Cullerton.

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SENATOR CULLERTON:

Yes, thank you, Mr. President, Members of the Senate. This retains the underlying bill and exempts as places of public accommodation, proprietor-occupied buildings with five or fewer units for rent or hire and sectarian adoption agencies. This is a request of the -- some of the committee members, and move for its adoption.

PRESIDING OFFICER: (SENATOR HENDON)

Is there any discussion? Seeing none, Senator Cullerton moves adoption of Amendment No. 4 to Senate Bill 593. All those in favor, say Aye. Opposed, say Nay. The Ayes have it, and the amendment is adopted. Are there any further Floor amendments approved for consideration?

SECRETARY SHIPLEY:

No further amendments reported.

PRESIDING OFFICER: (SENATOR HENDON)

3rd Reading. Now on the Order of 3rd Reading is Senate Bill 593. Madam Secretary, read the bill.

SECRETARY SHIPLEY:

Senate Bill 593.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR HENDON)

Senator Cullerton.

SENATOR CULLERTON:

Yes. Thank you, Mr. President, Members of the Senate. This bill updates the current definition of "public accommodations" to conform to the definition used in the ADA that already applies to Illinois public accommodations. It goes no further than existing

law. It's supported by Equip for Equality, Epilepsy Foundation of Greater Chicago, Access Living, the AIDS Foundation, Coalition of Citizens with Disabilities and a number of other organizations. I ask for an Aye vote.

PRESIDING OFFICER: (SENATOR HENDON)

Is there any discussion? Senator Righter.

SENATOR RIGHTER:

Thank you, Mr. President. To the bill. Thank you. I just simply want to rise and thank Senator Cullerton. He was extraordinarily responsive to a number of concerns that were raised by members on the committee and others, and has taken a large and complicated topic and -- and put together a bill that I think everyone can support. And I would urge the Members on our side of the aisle to do just that. Thank you, Mr. President.

PRESIDING OFFICER: (SENATOR HENDON)

The question is, shall Senate Bill 593 pass. All those in favor, vote Aye. Opposed, vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 56 voting Aye, none voting Nay, none voting Present. Senate Bill 593, having received the required constitutional majority, is declared passed. Senate Bill 607. Senator Cullerton. Madam Secretary, read the bill. Senator Cullerton seeks leave of the Body to return Senate Bill 607 to the Order of 2nd Reading for the purpose of amendment. Hearing no objection, leave is granted. Now on the Order of 2nd Reading is Senate Bill 607. Madam Secretary, are there any amendments approved for consideration?

SECRETARY SHIPLEY:

Floor Amendment No. 2, offered by Senator Cullerton.

STATE OF ILLINOIS
95th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

65th Legislative Day 5/31/2007

Speaker Lyons: "The hour of 12:30 a.m. having arrived, the House will come to order. Members should be in their seats. Members are asked to please keep their laptops off until we have our Pledge of Allegiance and our prayer. We'll be led in prayer today by Reverend… Lee Crawford. Lee Crawford with the prayer."

Pastor Crawford: "May we… may we pray. Most gracious and most kind God, author and finisher of our faith, the giver and sustainer of our lives, we pray that You would bestow Your most precious blessings upon this august Body. May You bless its Leader, may You bless all of its Members and may You strengthen them. May You give them wisdom, may You give them grace. This we ask in Your Son's name, amen."

Speaker Lyons: "We'll be led in the Pledge by Representative David Leitch."

Leitch – et al: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

Speaker Lyons: "Roll Call for Attendance. Leader Barbara Flynn Currie."

Currie: "Thank you, Speaker. Please let the record show that Representatives Graham and Patterson are excused today."

Speaker Lyons: "Thank you, Representative. Representative… Representative Bost. Representative Brady. All the Republicans are there, Mr. Clerk. Take the record. There's 116 Members present, we have a quorum. We are ready to do the business of the State of Illinois. The Chair recognizes

question, there are 115 voting 'yes' and 0 voting 'no'. And this Bill, having received a Constitutional Majority is hereby declared passed. Mr. Clerk, read Senate Bill 593."

Clerk Mahoney: "Senate Bill 593, a Bill for an Act concerning civil law. Third Reading of this Senate Bill."

Speaker Hannig: "Representative Fritchey."

Fritchey: "Thank you, Speaker. This Bill is an initiative of countless groups that do work on behalf of individuals with disabilities. We're making some modifications to the Human Rights Acts, semantically replacing the term 'handicap' with 'disability' and expanding and clarifying some other provisions of the Act. The only opposition that we know of was from the department on a cost basis. But we believe that the benefits far out… outweigh any costs. I request an 'aye' vote. Thank you."

Speaker Hannig: "This is on Short Debate. Does anyone stand in response? Then the question is, 'Shall this Bill pass?' All in favor vote 'aye'; opposed 'nay'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Represen… Mr. Clerk, take the record. On this question, there are 114 voting 'yes' and 0 voting 'no'. And this Bill, having received a Constitutional Majority, is hereby declared passed. Representative Biggins, you have Senate Bill 735. Mr. Clerk, read the Bill."

Clerk Mahoney: "Senate Bill 735, a Bill for an Act concerning local government. Third Reading of this Senate Bill."

Speaker Hannig: "Representative Biggins."

Biggins: "Yeah, thank… thank you, Mr. Speaker and Ladies and Gentlemen of the House. Senate Bill 735 is a Bill that

August 28, 2007

To the Honorable Members of the
Illinois Senate
95th General Assembly

Pursuant to Article IV, Section 9(e) of the Illinois Constitution of 1970, I hereby return Senate Bill 593, entitled "AN ACT concerning civil law.", with the following specific recommendation for change:

on page 12, line 5, by replacing "includes, but is not limited to" with "means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories".

With this change, Senate Bill 593 will have my approval. I respectfully request your concurrence.

Sincerely,

ROD R. BLAGOJEVICH
Governor

STATE OF ILLINOIS
95th GENERAL ASSEMBLY
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Senate Bill 38, 46, 215, 229, 314, 544, 593, 641, 764, 774, 1201, 1317, 1366, 1553 and 1664.

Respectfully, Jesse White, Secretary of State.

PRESIDING OFFICER: (SENATOR DeLEO)

Madam Secretary, do you have any motions on file to override the Governor's veto of legislation, ma'am?

SECRETARY SHIPLEY:

Yes, Mr. President. The following motions have been filed with -- with -- with respect to the Governor's action on the following Senate Bills to override total vetoes:

Senate Bill 186, offered -- I'm sorry. Senate Bill 186, by Senator Viverito; Senate Bill 247, by Senator Watson; Senate Bill 262, by Senator Jacobs; Senate Bill 599, by Senator Viverito; Senate Bill 627, by Senator Jacobs; Senate Bill 735, by Senator Cronin; and Senate Bill 835, by Senator Jacobs.

PRESIDING OFFICER: (SENATOR DeLEO)

Thank you. Madam Secretary, let those motions be printed on the Calendar. Madam Secretary, do you have any motions on file to override the Governor's specific recommendations on change of legislation?

SECRETARY SHIPLEY:

Yes. The following motions have been -- have been filed with respect to the Governor's action on the following Senate Bills to override specific recommendations for change:

Senate Bill 215, by Senator Jacobs; Senate Bill 593, by Senator Cullerton; Senate Bill 1317, by Senator Clayborne; Senate Bill 1366, by Senator Clayborne; and Senate Bill 1664, by Senator Hunter.

PRESIDING OFFICER: (SENATOR DeLEO)

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Thank you, Madam Secretary. Let those be printed on the Calendar, please. Thank you. Madam Secretary, Introduction of Bills, please.

SECRETARY SHIPLEY:

Senate Bill 1866, offered by Senator Crotty.

(Secretary reads title of bill)

1st Reading of the bill.

PRESIDING OFFICER: (SENATOR DeLEO)

Madam Secretary, House Bills 1st Reading, please.

SECRETARY SHIPLEY:

House Bill 122, offered by Senator Ronen.

(Secretary reads title of bill)

And House Bill 128, offered by Senator Ronen.

(Secretary reads title of bill)

1st Reading of the bills.

PRESIDING OFFICER: (SENATOR DeLEO)

Ladies and Gentlemen, Supplemental Calendar No. 1 has been printed and distributed and its placed on the Members' desks. Supplemental -- Supplemental Calendar No. 1. Okay. Ladies and Gentlemen, can I have your attention, please? Ladies and Gentlemen, the Supplemental Calendar has been printed and distributed. We're going to page -- Senator Burzynski, for what purpose do you rise, sir?

SENATOR BURZYNSKI:

Thank you, Mr. President. Inquiry of the Chair.

PRESIDING OFFICER: (SENATOR DeLEO)

Please state your inquiry, sir.

SENATOR BURZYNSKI:

I don't believe we've seen a Supplemental Calendar on our

declared passed, notwithstanding the veto of the Governor. On page 3 of the Calendar on Orders of Motion in Writing to Override Specific Recommendations of the Governor, Senator John Cullerton, on Senate Bill 593. Sir, do you wish to proceed? He indicates -- Senator Cullerton, do you wish to proceed? He indicates he wishes to proceed. Madam Secretary, please read the gentleman's motion.

SECRETARY SHIPLEY:

I move that Senate Bill 593 do pass, notwithstanding the specific recommendations of the Governor.

Filed by Senator John Cullerton.

PRESIDING OFFICER: (SENATOR DeLEO)

Thank you. Senator Cullerton, to explain your motion, sir.

SENATOR CULLERTON:

Thank you, Mr. President, Members of the Senate. Senate Bill 593 updates the Illinois Human Rights Act to bring it in line with the federal government and thirty-nine other states to -- in an effort to expand the scope of coverage of the provisions of the Act concerning discrimination in places of public accommodation. Court decisions have limited the application of those provisions over the years resulting in a very weak statute. So, we passed this bill in response to that. And, it passed unanimously in both houses. The Act -- the amendatory veto actually would make the statute -- the current statute weaker, by limiting it to privately operated facilities affecting commerce. So that a modern day Rosa Parks would not have a cause of action under the Illinois Human Rights Act for being denied access to a CTA bus. The term "affecting commerce", which is also found in the amendatory veto, is ambiguous and will require expensive

litigation, at taxpayers' expense, to define. Further, complaints would have to plead and prove that the alleged discriminating party affects commerce which would be a burden they should not have to bear. I would hope that we would vote the way we did the first time, unanimously, for the disability community, which universally supports this override effort. I'd be happy to answer any questions.

PRESIDING OFFICER: (SENATOR DeLEO)

Thank you. Is there any discussion? Is there any discussion? Senator Righter, for what purpose you seek recognition?

SENATOR RIGHTER:

Thank you, Mr. President. Simply to the motion.

PRESIDING OFFICER: (SENATOR DeLEO)

To the motion, sir.

SENATOR RIGHTER:

Thank you, Mr. President. I rise in support of the gentleman's motion. We dealt with Senator Cullerton and his staff at length on this bill in Executive Committee. I think the bill as it was -- originally passed this Chamber was both a balanced and progressive approach to this issue. And I think with all due respect to the Governor's actions here, I would urge an Aye vote on the motion.

PRESIDING OFFICER: (SENATOR DeLEO)

Thank you. Seeing no further discussion, Senator Cullerton moves that Senate Bill 593 do pass, notwithstanding specific recommendations of the Governor. Senator Cullerton, to close, sir.

SENATOR CULLERTON:

I -- I would simply ask for an Aye vote.

PRESIDING OFFICER: (SENATOR DeLEO)

Ladies and Gentlemen, the question is, shall the Senate pass Senate Bill 593, notwithstanding specific recommendations of the Governor. All those in favor will say Aye -- all -- all those in favor will vote Aye. All those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Madam Secretary, please take the record. On that question, there are 54 Ayes, 0 voting Nay, 0 voting Present. Senate Bill 593, having received the required three-fifths majority, is declared passed, notwithstanding the veto of the Governor. Continuing on page 3, at the bottom of page 3 in your Calendar, Motions in Writing to Override Specific Recommendations is Senate Bill 1317. Senator Clayborne. Senator James Clayborne, do you wish to proceed, sir? He indicates he wishes to proceed. Madam Secretary, please read the gentleman's motion.

SECRETARY SHIPLEY:

I move that Senate Bill 1317 do pass, notwithstanding the specific recommendations of the Governor.

Filed by Senator James Clayborne.

PRESIDING OFFICER: (SENATOR DeLEO)

Thank you, Madam Secretary. Senator Clayborne, to the motion, sir.

SENATOR CLAYBORNE:

Thank you. Basically, this is a motion to override the Governor's amendatory veto. This bill was negotiated between all parties. We accommodated Members on both sides of the aisle, to make sure that the Illinois Finance Authority remained

STATE OF ILLINOIS
95th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

158th Legislative Day 10/10/2007

Speaker Hannig: "The hour of 1:00 having arrived, the House will be in order. Members will be in their seats. Members and guests are asked to refrain from starting their laptops, turn off all cell phones, and pagers. And rise for the invocation and for the Pledge of Allegiance. We shall be led in prayer today by Wayne Padget, the assistant doorkeeper."

Wayne Padget: "Let us pray. Dear Lord, we come before You today in sound body and mind, praying that on this day, You grant us wisdom and guidance. We pray that during this Veto Session everyone can come together on one common ground and resolve the issues for the people of Illinois. We pray for the men and women in our armed services, both here and abroad. Provide them with Your protection and give them the strength to make it through these tough times. Let us also pray for the men, women, and their families, who have made the ultimate sacrifice to defend our country. These things we ask in Your Son's name, amen."

Speaker Hannig: "Representative Bellock, will you lead us in the Pledge?"

Bellock - et al: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

Speaker Hannig: "Roll Call for Attendance. Representative Currie."

in support with this agreement and override the Governor's Amendatory Veto."

Speaker Hannig: "You've heard the Gentleman's Motion. Is there any discussion? Then Representative Lyons moves that Senate Bill 314 do pass, notwithstanding the specific recommendation for change of the Governor. All those in favor vote 'aye'; opposed 'nay'. The voting is open. Have all voted who wish? This requires 71 votes. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, take the record. On this question, there are 109 voting 'yes' and 3 voting 'no'. The Motion, having received a Supermajority, Senate Bill 314 is hereby declared passed, notwithstanding the specific recommendation for change of the Governor. Representative Fritchey, you have Senate Bill 593. You're recognized on a Motion to Override."

Fritchey: "Thank you, Speaker. I simply request an 'aye' vote."

Speaker Hannig: "You heard the Gentleman's Motion. Is there any discussion? Then Representative Fritchey moves that Senate Bill 593 do pass, notwithstanding the specific recommendation for change of the Governor. All those in favor vote 'aye'; opposed 'nay'. The voting is open. This requires 71 votes. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, take the record. On this question, there are 112 voting 'yes' and 0 voting 'no'. The Motion, having received a Supermajority, Senate Bill 593 is hereby declared passed, notwithstanding the specific recommendation for change of

the Governor. Representative Tracy, you're recognized on Senate Bill 641, a Motion to Override. Representative Tracy."

Tracy: "Thank you, Mr. Speaker. I would like to make a do pass Motion to… move to override the Governor's Amendatory Veto of this Bill."

Speaker Hannig: "You've heard the Lady's Motion. Is there any discussion? Then Representative Tracy moves that Senate Bill 641 do pass, notwithstanding the specific recommendation for change of the Governor. All those in favor vote… excuse me, Representative Black."

Black: "I'm sorry, Mr. Speaker. I was filling in for you at Rules Committee."

Speaker Hannig: "Thank you, Representative Black."

Black: "Thank you, it was my pleasure. Will the Speaker… will the Sponsor yield?"

Speaker Hannig: "Indicates she'll yield."

Black: "Representative, did the Governor give a particular reason for his Veto? Was it based on cost or… I mean, what was his reason for his Amendatory Veto?"

Tracy: "I did not read or hear of any reason given, but it did substantially change the Bill."

Black: "Okay. Refresh my memory, in the original Bill, do schools regard this as a mandate, an unfunded mandate?"

Tracy: "No, they do not."

Black: "How will the screening exams be paid for?"

Tracy: "Well, they'll be paid for initially when they're required upon a child entering kindergarten by the parents by the health insurance coverage that a child would have or