No. 128935

IN THE SUPREME COURT OF ILLINOIS

MORGAN URSO a minor, through her Parents KELLY URSO and NICK URSO,

Plaintiff-Appellee,

v.

TEAM ILLINOIS, Inc., and the AMATEUR HOCKEY ASSOCIATION OF ILLINOIS,

Defendants-Appellants.

On Petition for Leave to Appeal from the
Illinois Appellate Court, Second District, No. 2-21-0568

On appeal from the 18th Judicial Circuit Court of DuPage County, Illinois
Circuit Court Case No. 2021-CH-0141
The Honorable Bonnie M. Wheaton, Judge Presiding

BRIEF OF PLAINTIFF-APPELLEE

Charles D. Wysong (cwysong@hsplegal.com)
Justin M. Tresnowski (jtresnowski@hsplegal.com)
HUGHES, SOCOL, PIERS, RESNICK & DYM, LTD.
70 West Madison Street, Suite 4000
Chicago, Illinois 60602
312.580.0100 (phone)
312.580.1994 (facsimile)
Firm No. 45667

Counsel for Plaintiff-Appellee
MORGAN URSO a minor, through
her Parents KELLY URSO and NICK URSO

ORAL ARGUMENT REQUESTED

E-FILED
6/21/2023 3:56 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

POINTS AND AUTHORITIES

NATURE OF THE ACTION... 1

775 ILCS 5/1-101 *et seq.* (West 2022) 1

QUESTIONS PRESENTED 2

BACKGROUND 3

775 ILCS 5/1-102(F) (West 2022).. 3

775 ILCS 5/5-101(A) (West 2022) 3

42 U.S.C. § 12181(7) (1990) 3

Pub. Act 95-0668 (eff. Oct. 10, 2007)) 3

95th Ill. Gen. Assem., Senate Proceedings, May 10, 2007............. 3

PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001) 5

ARGUMENT... 6

775 ILCS 5/5-102(A) (West 2022) 6

775 ILCS 5/1-103(L) (West 2022) 6

PGA Tour Inc. v. Martin, 532 U.S. 661 (2001)……………………5

Arlington Park Race Track Corp. v. Human Rights Comm'n,
199 Ill. App. 3d 698 (1st Dist. 1990) 7

I. The Act Applies to Discriminatory Actions that Impact the Full and Equal Enjoyment of a Public Accommodation. 7

Cothron v. White Castle Systems Inc., 2023 IL 128004. .... 7, 8

A. The text of the Act covers public accommodation discrimination by any person. 8

Cothron v. White Castle Systems Inc., 2023 IL 128004……………8

775 ILCS 5/1-102(A) (West 2022) 8

775 ILCS 5/1-103(L) (West 2022) 8, 9

775 ILCS 5/1-103(Q) (West 2022) 8

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

775 ILCS 5/5-101(A) (West 2022) 8

775 ILCS 5/5-102 (West 2022).. 8, 9

775 ILCS 5/5-101(A)(13) (West 2022) 9

Doe v. Mutual of Omaha Insurance Co.,
179 F.3d 557 (7th Cir. 1999) 10

775 ILCS 5/5-101(A)(1) (West 2000) 10

775 ILCS 5/5-101(A) (West 2008) 10

Sangamon County Sheriff's Department, 233 Ill. 2d 125 (2009).. 10

775 ILCS 5/2-102(D) 11

B. The 2007 Amendments confirm that the legislature intends the Act to apply broadly to places of public accommodations 11

Cothron v. White Castle Systems Inc., 2023 IL 128004…………..12

Pub. Act 95-0668 (eff. Oct. 10, 2007) 12

775 ILCS 5/5-101 (West 2022)... 12, 13

Krohe v. City of Bloomington, 204 Ill. 2d 39 (2003) 12

95th Ill. Gen. Assem., House Proceedings, May 31, 2007 12

95th Ill. Gen. Assem., Senate Proceedings, October 2, 2007 12

Gilbert v. Department of Human Rights,
343 Ill. App. 3d 904 (1st Dist. 2003) 12

Board of Trustees of Southern Illinois University v. Department of Human Rights, 159 Ill. 2d 206 (1994) 12

Baksh v. The Human Rights Comm'n,
304 Ill. App. 3d 995 (1st Dist. 1999) 12

Cut 'N Dried Salon v. Department of Human Rights,
306 Ill. App. 3d 142 (1st Dist.1999) 12

775 ILCS 5/5-101(A) (West 2008) 13

775 ILCS 5/5-102 (West 2008).. 13

42 U.S.C. § 12181(7) (2006) 12, 13

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

42 U.S.C. § 12182(a) (2006).. 13

95th Ill. Gen. Assem., Senate Proceedings, May 10, 2007........... 13

775 ILCS 5/1-103(Q) (West 2022)... 8

C. <u>The Act is even broader than anologous federal public accommodation protections that apply to all aspects of public accommodations</u>......... 14

In re Appointment of Special Prosecutor, 2019 IL 122949.... 14

1. *Martin* holds public accommodations protections apply according to their plain language to broadly prohibit discrimination in public places. 14

PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001) .... *passim*

Lau v. Abbott Laboratories, 2019 IL App (2d) 180456.......... 16

775 ILCS 5/5-102 (West 2008).. 16

42 U.S.C. § 12182(a) (2006).. 16

775 ILCS 5/5-102 (West 2022).. 17

775 ILCS 5/5-102(A) (West 2022).. 17

2. Subsequent courts apply *Martin* consistently to bar discrimination that impacts the facilities and services of public accommodations, including sports teams. 19

Matthews v. NCAA,
179 F. Supp. 2d 1209 (E.D. Wash. 2001)......................... 19

Illinois ex rel. Madigan v. Illinois High School Ass'n,
No. 12 C 3758, 2012 WL 3581174 (N.D. Ill. Aug. 17, 2012) 19

Akiyama v. United States Judo Inc.,
181 F. Supp. 2d 1179 (W.D. Wash. 2002)........................ 19

Hardie v. NCAA, No. 13-CV-0346 W (RBB),
2013 WL 12072529, (S.D. Cal. May 30, 2013)................ 20

Nathanson v. Spring Lake Park Panther Youth Football Association,129 F. Supp. 3d 743 (D. Minn. 2015) 20

Shultz By & Through Shultz v. Hemet Youth Pony League, Inc.,
943 F. Supp. 1222 (C.D. Cal. 1996) 20

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Louie v. National Football League,
185 F. Supp. 2d 1306 (S.D. Fla. 2002) 20

Shepherd v. United States Olympic Committee,
464 F. Supp. 2d 1072 (D. Colo. 2006)........................ 20, 21

Hobby Lobby Stores, Inc. v. Sommerville,
2021 IL. App (2d) 190362 21

D. The purpose of the Act requires broad protection against discrimination.
.... 21

Sangamon County Sheriff's Department.,
233 Ill. 2d 125 (2009) 21, 23, 25

Board of Trustees of Community College Dist. No. 508 v. Human Rights Comm'n, 88 Ill. 2d 22 (1981) 21

Ill. Const. 1970, art. I, § 19 22

775 ILCS 5/1-102(F) (West 2022).. 22

775 ILCS 5/1-102 (West 2022).. 22

775 ILCS 5/5-102 (West 2022).. 22

775 ILCS 5/5-103 (West 2022).. 22

42 U.S.C. §12101(a)(2) (2008) 22

Anderson v. Little League Baseball, Inc.,
794 F. Supp. 342 (D. Ariz. 1992) 22

In re Appointment of Special Prosecutor, 2019 IL 122949 22

II. None of the Loopholes in which Team Illinois Seeks to Hide Exist in the Act. 23

Sangamon County Sheriff's Department, 233 Ill. 2d 125 (2009).. 23

Zahn v. North American Power & Gas, LLC, 2016 IL 120526... 24

A. The Act is not limited to complete "exclusion" from a place; it guarantees the "full and equal enjoyment" of all aspects of public accommodations. 24

775 ILCS 5/5-102(a) (West 2022) 24, 25

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Sangamon County Sheriff's Department, 233 Ill. 2d 125 (2009).. 25

B. The Act does not limit liability to the owners of a publc accommodation or contain any exception to "person" that allows "non-profit organizations" to discriminate in public. 27

775 ILCS 5/5-102 (West 2022).. 27, 29

775 ILCS 5/1-103(L) (West 2022) 27, 29

In re Hernandez, 2020 IL 124661... 28

42 U.S.C. § 12182(a) (2006).. 28

C. The Act is not liminted to places "open to the general public" without pre-screening. 29

755 ILCS 5/1-103(A) (West 2022).. 29

775 ILCS 5/5-101(A)(11) (West 2022) 30

775 ILCS 5/5-101(A)(13) (West 2022) 30

775 ILCS 5/5-101(A)(12) (West 2022) 30

775 ILCS 5/5–101(A) (West 2000) 31, 32

775 ILCS 5/5-101(A) (West 2008).. 32, 33

Gilbert v. Department of Human Rights,
343 Ill. App. 3d 904 (1st Dist. 2003).................... 30, 31, 32, 33

State of Illinois v. Mikusch, 138 Ill. 2d 242 (1990)....................... 32

Board of Trustees of Southern Illinois University v. Department of Human Rights, 159 Ill. 2d 206 (1994)............ 32

Baksh v. The Human Rights Comm'n,
304 Ill. App. 3d 995 (1st Dist.1999)...................................... 32

Cut 'N Dried Salon v. Department of Human Rights,
306 Ill. App. 3d 142 (1st Dist.1999)...................................... 33

Board of Trustees of Community College District No. 508 v. Human Rights Comm'n, 88 Ill. 2d 22 (1981) 33

95th Ill. Gen. Assem., Senate Proceedings, October 2, 2007 33

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Matthews v. NCAA, 179 F. Supp. 2d 1209 (E.D. Wash. 2001) 34

III. The Act Covers Discrimination that Denies the Equal Enjoyment of a Public Accommodation, Not Discrimination By Persons with Some Specific Link to the Public Accommodation. 34

775 ILCS 5/5-102(A) (West 2022) 35

A. The Act does not sweep up the entire operation of an organization; it only applies to conduct that impacts the employment of a public accommodation. 35

775 ILCS 5/5-101(A)(10) (West 2022) 36

PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001) 36

Matthews v. NCAA, 179 F. Supp. 2d 1209 (E.D. Wash. 2001) 36

Nathanson v. Spring Lake Park Panther Youth Football Association, 129 F. Supp. 3d 743 (D. Minn. 2015).................................... 37

Illinois ex rel. Madigan v. Illinois High School Ass'n, No. 12 C 3758, 2012 WL 3581174 (N.D. Ill. Aug. 17, 2012) 37

Shultz By & Through Shultz v. Hemet Youth Pony League, Inc., 943 F. Supp. 1222 (C.D. Cal. 1996) 37

International Union of Operating Engineers, Local 148, AFL-CIO v. Illinois Department of Employment Security, 215 Ill. 2d 37 (2005) 39

Cothron v. White Castle Systems Inc., 2023 IL 128004. 39

B. The Act does not require every event at a public accommodation to be open to every person; it only applies to discrimination "because of" a protected trait. 40

775 ILCS 5/5-102 (West 2022).. 40

C. The Act does not need to be rewritten to protect First Amendedment rights. 41

U.S. Constitution, Article VI, Para. 2 41

Boy Scouts of America v. Dale, 530 U.S. 640 (2000)............. 41, 42

California Democratic Party v. Jones, 530 U.S. 567 (2000) 41

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Welsh v. Boy Scouts of America,
993 F.2d 1267 (7th Cir. 1993) 41, 42

42 U.S.C. § 2000a(b) 42

42 U.S.C. § 12182(a) 42

775 ILCS 5/5-102 (West 2022)... 42

PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001) 42

Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC,
565 U.S. 171 (2012)... 42

775 ILCS 5/5-101(A)(11) (West 2022) 42

Roberts v. United States Jaycees, 468 U.S. 609 (1984)................ 42

Cothron v. White Castle Systems Inc., 2023 IL 128004. 43

IV. The Private Club Exception only Clarifies that Certain Places are Not Public Accommodations; It Does Not Limit the "Persons" Subject to the Act or Apply to Team Illinois. 43

Bell v. State of Maryland, 378 U.S. 226 (1964)........................... 44

Cornelius v. Benevolent Protective Order of the Elks,
382 F. Supp. 1182 (D. Conn. 1974)....................................... 44

Daniel v. Paul, 395 U.S. 298 (1969).. 44

Lobel v. Woodland Golf Club of Auburndale,
260 F. Supp. 3d 127 (D. Mass. 2017) 44

United States v. Lansdowne Swim Club,
713 F. Supp. 785 (E.D. Pa. 1989) 45, 46, 47

Jack Bradley, Inc. v. Department of Employment Security,
146 Ill. 2d 61 (1991) 45

Martin v. PGA Tour, Inc.,
984 F. Supp. 1320 (D. Or. 1998)……………………45, 47, 48

R & B Kapital Development, LLC v. North Shore Community Bank & Trust Co., 358 Ill. App. 3d 912 (1st Dist. 2005)........ 45

Tawam v. APCI Federal Credit Union, No. 5:18-CV-00122,

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

2018 WL 3723367 (E.D. Pa. Aug. 6, 2018) 45

775 ILCS 5/5-103(a) (West 2022) 46

Knoob Enterprises, Inc. v. Village of Colp,
358 Ill. App. 3d 832 (5th Dist. 2005)................................ 46, 47

Welsh v. Boy Scouts of America,
993 F.2d 1267 (7th Cir. 1993) 46

Ring v. Boca Ciega Yacht Club Inc.,
4 F. 4th 1149 (11th Cir. 2021) 47

Gilbert v. Department of Human Rights,
343 Ill. App. 3d 904 (1st Dist. 2003) 47

Cut 'N Dried Salon v. Department of Human Rights,
306 Ill. App. 3d 142 (1st Dist.1999) 47

CONCLUSION 49

CERTIFICATION 50

TABLE OF CONTENTS FOR SUPPLEMENTAL APPENDIX Supp.A.01

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

NATURE OF THE ACTION

This case presents the legal question of whether a sports team, open to the public through public tryouts, which sells to youth the chance to practice and play hockey at a public ice arena, is exempt from the public accommodations provision of the Illinois Human Rights Act ("Act"), 775 ILCS 5/1-101 *et seq.* (West 2022), and thus free to openly discriminate against its own players on the basis of disability, race, religion, or any other protected status. Pursuant to Section 2-615, the trial court dismissed the complaint on the mistaken conclusion that Team Illinois was exempt from the Act as a "private organization." A31-32.[1] To the contrary, the Act applies broadly to "any person," especially after the 2007 amendments to the Act overturned prior cases that had limited the reach of the public accommodations provision. The Appellate Court reversed and correctly held that Morgan Urso states a claim for discrimination where Team Illinois is a "person" under the Act, who because of Morgan's disability (depression and anxiety), denied her the full and equal enjoyment of the Seven Bridges Ice Arena, which everyone here agrees is a public accommodation. A.20-23, ¶¶ 39, 41, 43.

[1] The one-volume record on appeal is cited as "C.__"; the appendix to Team Illinois' opening brief ("Br.") is cited as "A.__"; the supplemental appendix to this brief is cited as "Supp.A.___."

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

QUESTIONS PRESENTED

1. Whether the Act reaches discriminatory actions by any person—including a private organization—that deny the full and equal enjoyment of a public accommodation.

2. Whether the Act only applies to some persons, or to all persons, to the extent the discrimination impacts a public accommodation.

3. Whether a narrow statutory exception provides anything more than an affirmative defense that the "place" at issue is actually a private club "not otherwise open to the public," even if that place would otherwise fall within the definition of public accommodation.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

BACKGROUND

The Illinois Human Rights Act was first adopted in 1980 to secure "the rights established by" the Illinois Constitutional guarantee against discrimination. 775 ILCS 5/1-102(F) (West 2022). Article 5 of the Act prohibits discrimination in public places, "'[t]o secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her *** disability *** in connection with *** public accommodations.'" 775 ILCS 5/1-102(A) (West 2022). After multiple appellate court decisions interpreted the scope of the public accommodation provision narrowly, in 2007 the legislature overturned those decisions by replacing the definition of public accommodation with the broader definition of public accommodation from the Americans with Disabilities Act ("ADA"). Compare 42 U.S.C. § 12181(7) (1990), with Pub. Act 95-0668 (amending 775 ILCS 5/5-101). See also 95th Ill. Gen. Assem., Senate Proceedings, May 10, 2007, at 37–38 (statement of Senator Cullerton) (the amendment updates "the current definition of 'public accommodations' to conform to the definition used in the ADA.").

Plaintiff Morgan Urso is a high school student and long-time ice hockey player. Supp.A.07, C.11 ¶ 1. Morgan is also a person with a disability, including anxiety and depression. *Id.* ¶ 2. For many years, the physical activity, structure, and social connections that come with playing organized hockey supported Morgan and her mental health. *Id.* For the 2019-2020 hockey season, Morgan participated in the public tryouts for and then joined the Girls 14U team run by Team Illinois. Supp.A.09, C.13 ¶ 13.

Team Illinois offers and sells to youth the opportunity to play in hockey games and tournaments before their family, friends, hockey scouts, and the public at the Seven Bridges

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Ice Arena in Woodridge, Illinois and other hockey arenas. Supp.A.10, C.14, ¶¶ 18-19. To prepare for those games, Team Illinois offers hockey coaching, practices, workouts, and related activities. Supp.A.10, C.14 ¶ 19. For these activities, Team Illinois leases and operates out of the Seven Bridges Ice Arena, where it maintains the Team Illinois offices and locker rooms, and hosts games, tryouts, practices, and training sessions. Supp.A.09-10, C.13-14 ¶¶ 14-15, 18. Seven Bridges Ice Arena includes ice rinks, spectator sections, locker rooms, offices, gyms, concessions, and other facilities. *Id.* ¶ 15. The facility is open to the public. *Id.* ¶ 16. Team Illinois is organized as an Illinois nonprofit corporation under the statewide youth hockey association Amateur Hockey Association of Illinois ("AHAI"), which is the Illinois component of USA Hockey. Supp.A.09-10, C.13-14 ¶¶ 13, 19, 22.

During the fall of 2019, Morgan was struggling with her anxiety and depression. In November, Morgan and her mother disclosed to Coach Pedrie information about Morgan's mental health conditions, including suicidal thoughts. Supp.A.11, C.15 ¶ 31. They also shared how supported Morgan was by her mental health providers and how important hockey was for Morgan's wellbeing. *Id.* The very next day, without any additional information from or conversation with Morgan, her parents, or her medical providers, Coach Pedrie and an AHAI board member together decided to ban Morgan from Team Illinois hockey games, tournaments, practices, and events at Seven Bridges Ice Arena. Supp.A.12, C.16 ¶ 35. Team Illinois directed the other hockey players and their parents to have no contact with Morgan in person or by "'phone, text, snapchat or any social media platform.'" *Id.* ¶ 38. Coach Pedrie told each hockey family that Morgan had been removed "'from any involvement and or communication with our team and her teammates,'" until she was back to "'the positive, happy, smiling kid that we all know she is.'" *Id.*

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Defendants then set an impossible and illegal standard for Morgan's return to participation with the team. She could not come back until she had a doctor's note attesting that she was "'able to return to our team in 100% capacity,'" which meant "'take part 100% in all team activities. This would include the following: 1) attend all team strength training sessions, 2) attend all team practices. 3) attend all games, 4) attend all other team functions including dinners, lunches, meetings, and video sessions.'" Supp.A.13, C.17 ¶¶ 40-41 (quoting emails from Team Illinois). It did not matter that Team Illinois otherwise has no attendance or participation requirement. Supp.A.14, C.18 ¶¶ 48-49. It did not matter that Team Illinois allows other players to miss events for a myriad of reasons including family activities, school conflicts, religious events, and even injuries. *Id.* ¶ 47. It did not matter that Morgan's doctors stated it was safe—indeed good—for Morgan to continue playing hockey. Supp.A.13, C.17 ¶ 43. Only with the assistance of legal counsel did Morgan persuade Team Illinois to retract the impossible standard and end her removal after a month. Supp.A.15, C.19 ¶ 54.

Morgan's complaint pleads claims against Team Illinois for disability discrimination and against AHAI for aiding and abetting that discrimination. Supp.A.15-17, C.19-21. The trial court dismissed the complaint under Section 2-615. A.02-03, R.28-29. On appeal, the Second District Appellate Court reversed and upheld the complaint. A.22, 25-26, ¶¶ 41, 48. The Appellate Court followed the reasoning of *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001), to conclude that Seven Bridges Ice Arena is a public accommodation under the Act, and thus Team Illinois could be liable for denying Morgan "on the basis of her disability *** participation at athletic events" at Seven Bridges. A.19-

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

22, ¶¶ 37-41. The Appellate Court also concluded that Morgan sufficiently pleads aiding and abetting liability as to AHAI, which Defendants have not appealed. *Id.* ¶ 41.

ARGUMENT

This case is not about what is a "public accommodation." Everyone agrees that Seven Bridges Ice Arena is a public accommodation. The question Team Illinois tries to pose is: *who* must abide by the Act? But the legislature already answered that question. The Act states that no "person" may violate the public accommodations provision. 775 ILCS 5/5-102(A) (West 2022)**.** "Person" is defined expansively to include any natural or corporate person, without any exception for allegedly private or membership organizations. 775 ILCS 5/1-103(L) (West 2022).

Rather than limit *who* is subject to the Act, the scope is set to cover any discriminatory *action,* by "any person," that denies the "full and equal" enjoyment of a public accommodation. 775 ILCS 5/5-102(A) (West 2022). The test is simple: did the action at issue deny full or equal enjoyment of a public place on a discriminatory basis? If so, the Act was violated. In public places, customers must be treated like other customers; lessees like other lessees; spectators like other spectators; players on a hockey team like other players. This test set by the language of the Act is consistent with the broad holding of *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001), and cases about athletics at public places, consistent with the legislature amending the Act in 2007 to overturn prior limits, and consistent with the Act's purpose of prohibiting discrimination in public places.

Contrary to the statute's sweeping language, Team Illinois argues that the Act is somehow limited to claims against physical "(1) places; (2) that are generally open to the public," and not "organizations, clubs, corporate entities, gatherings or leagues." Br. at 19-

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

20. There is no basis in the text, history, or authority of the Act to limit liability *only* to the entity that owns the public accommodation itself, or to limit coverage to places "generally open to the public" without pre-screening. Team Illinois' position would write expansive loopholes into the Act. "If the legislature wanted to exclude *** [certain persons] from the Human Rights Act, it could have easily." *Arlington Park Race Track Corp. v. Human Rights Comm'n*, 199 Ill. App. 3d 698, 705 (1st Dist. 1990) (refusing to read into the Act exceptions to "housing accommodations" that the legislature did not include). It did not.

Since the Act applies to *actions* that impact the enjoyment of public accommodations, what ties the discriminatory "person" has to the public place is the wrong question. Owners, operators, users, and every other "person" must follow the Act, related to public places. The right question is whether a *discriminatory action* impacts the enjoyment of a public place. And since this case involves an admitted public place (Seven Bridges), it does not implicate the private club exception—for "places" that are not public—nor is Team Illinois remotely a private club based on personal invitations and relationships under any formulation of that fact-specific multifactor analysis. Morgan's complaint of discrimination should be sustained and the case remanded for litigation.

I. The Act Applies to Discriminatory Actions that Impact the Full and Equal Enjoyment of a Public Accommodation.

The scope of the Act is a question of statutory construction. Always, "[t]he cardinal principle and primary objective in construing a statute is to ascertain and give effect to the intention of the legislature." *Cothron v. White Castle Systems Inc.*, 2023 IL 128004, ¶ 20. From the text to every interpretive aid, the clear intent of the legislature here is for the Act to sweep broadly to prohibit discrimination related to public places throughout Illinois—not to permit discrimination on the flimsy excuse that the discriminators are separately

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

incorporated or merely lease public space rather than owning it outright. The legislature chose broad language, even broader than federal civil rights protections, and expanded the scope of the Act to be even broader, again, with the 2007 amendments. The Court "cannot rewrite a statute to create new elements or limitations not included by the legislature." *Cothron*, 2023 IL 128004, ¶ 39 (citing *Zahn v. North American Power & Gas, LLC*, 2016 IL 120526, ¶ 15). The language of the Act covers discrimination against Morgan by Team Illinois because of her disability.

A. The text of the Act covers public accommodation discrimination by any person.

This appeal could begin and end with the language of the Act itself. "The best indicator of legislative intent is the statutory language itself, given its plain and ordinary meaning." *Cothron*, 2023 IL 128004, ¶ 20 (citing *In re Hernandez*, 2020 IL 124661, ¶ 18). "Where the language is clear and unambiguous, [the Court] must apply the statute without resort to further aids of statutory construction." *Id.* (citing *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 395 (2003)).

The Act seeks "[t]o secure for all individuals within Illinois the freedom from discrimination ***l because of his or her race, color, religion, *** [or] physical or mental disability." 775 ILCS 5/1-102(A) (West 2022). To that end, the Act sets four elements for a public accommodation claim:

(i) any "person," including a non-profit organization, 775 ILCS 5/1-103(L),

(ii) "den[ies] or refuse[s] to another the full and equal enjoyment of the facilities, goods, and services of," 775 ILCS 5/5-102(A),

(iii) a "public accommodation" as defined by the Act, 775 ILCS 5/5-101(A),

(iv) "because of his or her actual or perceived: race, color, religion, *** [or] physical or mental disability," 775 ILCS 5/1-103(Q).

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

As a "person" that denied Morgan "equal enjoyment" of Seven Bridges (the public accommodation) because of her disability, Team Illinois satisfies each element.

First, Team Illinois is a "person." 775 ILCS 5/5-102. The Act defines "person" to include "one or more individuals, partnerships, associations or organizations, [or] * * * corporations." 775 ILCS 5/1-103(L). Team Illinois is an incorporated non-profit organization that operates from Seven Bridges. Supp.A.09, C.13, ¶¶ 13-14.

Second, Team Illinois denied Morgan "the full and equal enjoyment of the facilities, goods, and services." Team Illinois denied Morgan use of Seven Bridges facilities: locker rooms, offices, weight rooms, and ice rinks. It even barred her from the Seven Bridges stands to watch Team Illinois. *E.g.* Supp.A.16, C.20 ¶ 65. It denied her the services of skating on the ice, playing hockey, and related services. Other Team Illinois players could skate on the Seven Bridges ice rink for hockey practice; their teammate Morgan was not allowed to skate on the Seven Bridges ice rink for hockey practice because of her disability.

Team Illinois argues that "the Seven Bridges location is irrelevant." Br. at 14. Not so. It is the impact on Morgan's enjoyment of the Seven Bridges that brings the discrimination within the scope of the Act.

Third, this discrimination involves a place of public accommodation. The Act covers any place of public accommodation including "but not *** limited to:" a "gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation." 775 ILCS 5/5-101(A)(13) (West 2022). Seven Bridges Ice Arena is a public accommodation because it is equivalent to a golf course, gym or other accommodation listed in the Act.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Team Illinois argues that a public accommodation must be "a physical location." Br. at 19. Nothing limits the Act to "physical" places to exclude digital places like online "sales or retail establishments," online places "serving food or drink," an online "school," or other non-physical accommodation, for example. See *Doe v. Mutual of Omaha Insurance Co.*, 179 F.3d 557, 559 (7th Cir. 1999) (Posner, J.) (the public accommodations provision of the ADA reaches "a store, hotel, restaurant, dentist's office, travel agency, theater, Web site, or other facility (whether in physical space or in electronic space")) (emphases added). In fact, in 2007, the legislature amended the Act and removed the limitation to a "facility" from the definition of "public accommodation." Compare 775 ILCS 5/5-101(A)(1) (West 2000) with 775 ILCS 5/5-101(A) (West 2008).

Regardless, this case does not present—and the Court need not reach—the question of whether a "place" in the Act is limited to a *physical* place. The discrimination here impacts the enjoyment of Seven Bridges Ice Arena, which is a physical place and admitted to be a place of public accommodation. A.20, ¶ 39.

Fourth, Morgan was discriminated against "because of" her disability and Team Illinois does not argue otherwise. Though Morgan remained a Team Illinois player (she was never kicked off the team), Team Illinois banned her the day after she and her mother revealed information about her depression and anxiety and explicitly *because* of her mental health. Supp.A.08, 11-12, C.12, 15-16 ¶¶ 4-5, 31-35.

Nothing in the language of the Act exempts Team Illinois from discrimination that denies the full and equal enjoyment of a public accommodation.

The Court has long applied the language of the Act as written and broadly in furtherance of its remedial purpose. In *Sangamon County Sheriff's Department v. Illinois*

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Human Rights Commission, for example, the Court relied on the language of the Act alone to hold that an employer is strictly liable for all harassment by supervisors, even if the supervisor did not harass a subordinate. 233 Ill. 2d 125, 137–38 (2009) (interpreting 775 ILCS 5/2-102(D)). The Court refused to follow analogous Title VII cases to the contrary because "[t]here is no language in the Act that limits the employer's liability based on the harasser's relationship to the victim." *Id.* at 137-38. The Court refused to rewrite the language of the statute to avoid alleged "bizarre and unjust results unintended by the legislature." *Id.* at 139. The Court held, too, that "the Act should be construed liberally to achieve its purpose—the prevention of sexual harassment in employment for all individuals." *Id.* at 140. Likewise here, the Court should apply the Act as written to combat discrimination in public places. As the Appellate Court correctly concluded, "because plaintiff earned a coveted place on Team Illinois's roster, it could not then deny her on the basis of her disability the privilege of participation at athletic events held at places of public accommodation such as Seven Bridges." A.22, ¶ 41. Team Illinois cannot run a youth hockey team from Seven Bridges and then say – but no children who are Baptist, or gay, or African American, or have anxiety.

On the text alone, a discriminatory action by "any person," including Team Illinois, that denies the equal enjoyment of a public accommodation violates the Act. The complaint should be sustained.

B. <u>The 2007 Amendments confirm that the legislature intends the Act to apply broadly to places of public accommodations.</u>

There is no need to look beyond the text of the Act because the plain language covers discrimination by "any person" that impacts the "full and equal enjoyment" of a public accommodation, including the Team Illinois discrimination against Morgan.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Cothron, 2023 IL 128004, ¶ 20. If there were any doubt, in 2007 the General Assembly amended the Act to ensure the broad scope of its coverage. Pub. Act 95-0668 (eff. Oct. 10, 2007) (amending 775 ILCS 5/5-101). The task of statutory interpretation here is to "give effect to the legislature's intent" to prohibit discrimination broadly, not to undermine it. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 394 (2003).

In 2007, the General Assembly revised the public accommodations Article of the Act in response to "an initiative of countless groups that do work on behalf of individuals with disabilities." 95th Ill. Gen. Assem., House Proceedings, May 31, 2007, at 286 (statement of Sponsor Representative Fritchey). The purpose was "to expand the scope of coverage of the provisions of the Act concerning discrimination in places of public accommodation." 95th Ill. Gen. Assem., Senate Proceedings, October 2, 2007, at 22 (statement of sponsor Senator Cullerton). The amendment was needed because Illinois "Court decisions ha[d] limited the application of those provisions over the years." *Id.* Courts had narrowly construed the definition of public accommodation to exclude scuba diving classes (*Gilbert v. Department of Human Rights,* 343 Ill. App. 3d 904 (1st Dist. 2003)); universities (*Board of Trustees of Southern Illinois University v. Department of Human Rights* ("*Board of Trustees*"), 159 Ill. 2d 206, 213 (1994)); dentists (*Baksh v. The Human Rights Comm'n*, 304 Ill. App. 3d 995 (1st Dist. 1999)); and insurance sales (*Cut 'N Dried Salon v. Department of Human Rights*, 306 Ill. App. 3d 142 (1st Dist. 1999)).

In response, the General Assembly replaced the definition of public accommodation that courts had interpreted narrowly with language from the public accommodation provisions of Title III of the ADA. Compare 42 U.S.C. § 12181(7) (2006), with Pub. Act 95-0668 (amending 775 ILCS 5/5-101). See also Statutory Comparison

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Chart, Supp.A5; 95th Ill. Gen. Assem., Senate Proceedings, May 10, 2007, at 37–38 (statement of Senator Cullerton) (the amendment updates "the current definition of 'public accommodations' to conform to the definition used in the ADA."). The Act now tracks the ADA, except where the General Assembly provides even *more expansive* protection against discrimination. While the ADA applies only to "the following private entities" listed, the Act covers private and public entities "including, but not limited to" the list of examples. Compare 42 U.S.C. § 12181(7) (2006) with 775 ILCS 5/5-101(A) (West 2008). While the ADA covers only accommodations that "affect commerce," the Act covers all accommodations regardless of nexus to commerce. *Id.* While the ADA applies only to a person who "owns, leases *** or operates" a public accommodation, the Act covers discrimination by "any person." Compare 42 U.S.C. § 12182(a) (2006), with 775 ILCS 5/5-102 (West 2008).

The 2007 amendment also specifically overturned the prior cases that had interpreted the Act narrowly. The language those cases interpreted is gone, and the Act now expressly covers the "insurance office," "health care provider", and "undergraduate, or postgraduate school." 775 ILCS 5/5-101(A) (West 2008). The legislature was insistent that this Act be broad, even unanimously overriding an amendatory veto that sought to narrow the law. 95th Ill. Gen. Assem., Senate Proceedings, October 2, 2007, at 21; 95th Ill. Gen. Assem., House Proceedings, October 10, 2007, at 5. By the 2007 amendments, the General Assembly firmly conveyed the legislative intent to expand the Act to sweep broadly to cover all of discrimination covered by the ADA, and more.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

C. The Act is even broader than analogous federal public accommodation protections that apply to all aspects of public accommodations.

To the extent the text of the Act leaves any ambiguity, case law that interprets this statutory language—as it appears in the ADA—likewise prohibits discrimination by covered persons related to the public accommodations, even if that person is not itself a public accommodation. Federal authority from the ADA is particularly persuasive here because the General Assembly copied from the ADA. *Supra* section I.B. See *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 54 (relying on federal FOIA case law because "[t]he General Assembly patterned FOIA after the federal FOIA"). The broader language of the Act should not have a narrower meaning than the corresponding language of the ADA, and neither is limited to claims against "places" "generally open to the public." Br. at 19-20.

1. *Martin* holds public accommodations protections apply according to their plain language to broadly prohibit discrimination in public places.

In *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001), the United States Supreme Court considered whether the public accommodation provision of the ADA applied as written to protect the players in the Professional Golf Association ("PGA") tournaments from discrimination. The Court concluded that it does. The PGA was subject to the ADA and thus could not deny a person the equal enjoyment of playing in its tournaments.

From the text of the ADA, the Court recognized that the tournaments were "events" that "occur on 'golf courses,'" and a golf course is "a type of place specifically identified" as a public accommodation. *Id.* at 677. Since the tournaments occur at a golf course, they are covered by the ADA. *Id.* Thus, in running those tournaments, the PGA "must not discriminate against any 'individual' in the 'full and equal enjoyment of'" the golf courses. *Id.* This includes both the spectators who came to watch the tournament and players in the

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

tournament like plaintiff Casey Martin. The public accommodations provision of the ADA, "by its plain terms, prohibits" discrimination against Martin "on the basis of his disability." *Id.* "[D]uring its tours and qualifying rounds, petitioner [PGA] may not discriminate against either spectators or competitors on the basis of disability." *Id.* at 681.

None of the features or arguments of the PGA excused it from complying with the ADA. It did not matter that the PGA is a non-profit organization. *Id.* at 665. It did not matter that the PGA leased, rather than owned, the golf courses it used. *Id.* at 677. It did not matter that the PGA used a golf course only temporarily for "4-day" tournaments, rather than have a permanent presence at a golf course. *Id.* at 665. It did not matter that a *player* rather than a *spectator* brought the ADA claim. Both were protected. *Id.* at 676-77. It did not matter that only a few people are allowed to play in the tournament, or that the qualification process was selective, "difficult," and "expensive to obtain." *Id.* at 680.

As the Court recognized, in adopting the ADA, Congress sought to provide "a 'clear and comprehensive national mandate' to eliminate discrimination against disabled individuals, and to integrate them 'into the economic and social mainstream of American life.'" *Id.* at 675 (quoting S. Rep. No. 101–116, p. 20 (1989); H. R. Rep. No. 101–485, pt. 2, p. 50 (1990)). The ADA is a "broad mandate" that bans discrimination in public. *Id.* Like the Act, the provisions of the ADA are "'construed liberally' to afford people with disabilities 'equal access' to the wide variety of establishments available to the nondisabled." *Id.* at 676-77. By discriminating against a disabled player, the PGA violated the ADA. *Id.* at 680. "It would be inconsistent with the literal text of the statute as well as its expansive purpose to read Title III's coverage *** any less broadly." *Id.*

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Team Illinois attempts to evade the persuasive analysis of *Martin*, but ignores both the language of the Act and the language of that decision. First, the Court cannot ignore *Martin* as "a federal case interpreting a different statute." Br. at 7, 20. Federal authority is often used to interpret the Act, particularly where the language and purpose of the laws are materially the same. See, *e.g. Lau v. Abbott Laboratories*, 2019 IL App (2d) 180456, ¶ 38. Authority under the ADA is the most relevant here where the legislature openly copied the definition of public accommodation from that statute. *Supra* section I.B. Even the language defining a violation is materially the same. Compare 775 ILCS 5/5-102 (West 2008) (unlawful "for any person on the basis of unlawful discrimination *** [to] [d]eny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation"), with 42 U.S.C. § 12182(a) (2006) ("No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to) or operates a place of public accommodation.")

Second, Team Illinois tries to cabin the *Martin* holding to a "'leasing and operation' analysis." Br. 9, n.2. It is true that the PGA "leased and operated" the tournament golf courses, which was noted because the ADA applies only to a "person who owns, leases *** or operates" a public accommodation. 532 U.S. at 677. But *Martin* is not a case about the owner/operator language. That fact was not disputed. *Id*. *Martin* holds that a person subject to the ADA may not discriminate during the use of the public accommodation. *Id.* at 680. So too here, a person subject to the Act ("any person"), may not discriminate in the "facilities, goods, or services" of the public accommodation.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Team Illinois is correct that "the terms 'lease' and 'operate' do not appear" in the provision of the Act at issue. Br. 21 and 9, n.2. Certainly. This observation, however, only highlights that the language and scope of the Act are even *broader* than the ADA. The Act applies to every owner, lessor, and operator of a public accommodation, *and* everyone else. 775 ILCS 5/5-102 (West 2022) ("any person"). This is what the legislature intended, and not some drafting error. The Act does limit liability for discrimination in "written communications" to the "operator of a place of public accommodation," and it still provides more generally that "any person" may be liable for denial of "full and equal enjoyment" of "facilities, goods, or services." Compare 775 ILCS 5/5-102(A) (West 2022) with *id.* § 5-102(B). There is no way to read the *broader* language of the Act that applies to "any person" as providing *narrower* protection against discrimination than the ADA.

<u>Third</u>, Team Illinois' attempts to factually distinguish *Martin* is both erroneous and impermissible factual argument on this Section 2-615 motion to dismiss. The facts of the cases are materially parallel. Like the PGA that "admits that its tournaments are conducted at places of public accommodation," Team Illinois acknowledges that Seven Bridges Ice Arena is a public accommodation. 532 U.S. at 677. Like the PGA, Team Illinois is a non-profit athletic organization. *Id.* at 665; Supp.A.09, C.13 ¶ 13. Like the PGA, Team Illinois has a competitive selection process. *Id.*; Suppl.A.10, C.14 ¶ 18. Like the PGA, those who make the team are allowed to participate in Team Illinois events. *Id.* Like the PGA, players for Team Illinois pay thousands of dollars to participate. 532 U.S. at 665 (noting the "$3,000 entry fee" to apply to the PGA).

Further, the holding of *Martin* is based on the text and purpose of the ADA, not the commercial nature of the PGA. 532 U.S. at 680. Nowhere in the reasoning of the opinion

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

does the Court say that the PGA is bound by the ADA because it charges "admission" to tournaments, or has media deals, or engaged marketing. Br. at 21-22. None of that has anything to do with the Court's analysis of the text of the ADA. 532 U.S. at 675-80. Nor does the Court rely on any PGA involvement with "the management, maintenance, or financial affairs of any facility," or that it "assumes control over the venue," or "controlled admission" to the golf course. Br. at 21. These are not "the things that caused the Supreme Court to reject the PGA's claims in *Martin*." Br. at 22. What "caused" the holding in *Martin* was the language of the ADA.

Moreover, this purported factual difference between the PGA and Team Illinois, is one of degree, not of kind. Team Illinois is also a non-profit athletic enterprise that provides and sells a variety of hockey-related opportunities to the public as part of the AHAI and USA Hockey, which regulates youth hockey across the country all the way up to the Olympic teams. Both the PGA and Team Illinois put on athletic competitions at public accommodations with opportunities for players. Both are substantial commercial operations, organized as non-profits. If anything, Team Illinois falls within the public accommodation provisions more easily than the PGA. The PGA tried to escape the public accommodation requirements by claiming that golfers were employees, *Martin*, 532 U.S. at 678; youth hockey players are not even arguably employees, but rather the primary customers of Team Illinois.

<u>Last</u>, Team Illinois states that *Martin* does not consider the "private club" exception of the ADA. Br. at 22. As discussed more fully below in section IV, like the PGA, Team Illinois cannot fall within such an exception. Seven Bridges Ice Arena is not a private facility. Team Illinois is not a club with membership control. Neither are private in any

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

relevant sense on the various factors courts consider; both are open to the public. Regardless, on the issue of whether the discrimination by the PGA falls within the Act in the first instance, separate from any carve-out, *Martin* is on point and confirms that Team Illinois discrimination, too, falls within the Act. The analysis of *Martin* translates directly to the Act and to this case.

2. Subsequent courts apply *Martin* consistently to bar discrimination that impacts the facilities and services of public accommodations, including sports teams.

Since *Martin,* courts recognize that anti-discrimination laws apply to discrimination that impacts the "full and equal enjoyment" of public accommodations, including players on sports teams. In *Matthews v. NCAA,* for instance, the court held that discrimination by the NCAA was subject to the ADA because the discrimination impacted the enjoyment of a sports facility—the ability of a student to play in an athletic competition. 179 F. Supp. 2d 1209, 1223 (E.D. Wash. 2001). *Martin* "made clear that [public accommodation law] applies not only to entities governing spectators' access to a sports facility but also to those entities governing athletes' access to the competition itself." *Id.* It was no defense that the universities, not the NCAA, controlled the "athletic facilities, including the admission prices, concession sales, and public access" to sporting events. *Id.* at 1222. Likewise, the actions of the Illinois High School Sports Association are subject to the ADA because they impact the full and equal enjoyment of athletic events at public accommodations, even though the IHSA is merely regulating (and not running) those athletic events. *Illinois ex rel. Madigan v. Illinois High School Ass'n*, No. 12 C 3758, 2012 WL 3581174, at *6 (N.D. Ill. Aug. 17, 2012). See also *Akiyama v. United States Judo Inc.,* 181 F. Supp. 2d 1179, 1183 (W.D. Wash. 2002) (holding the United States Judo association also cannot engage in religious discrimination under the logic of *Martin*). "[T]he idea that an organization

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

which is not itself a 'public accommodation' may still be liable for discriminatory rules restricting access to another 'place of public accommodation' is not a new one." *Hardie v. NCAA*, No. 13-CV-0346 W (RBB), 2013 WL 12072529, at *4 (S.D. Cal. May 30, 2013) (citing *Martin*). Even a sport association that only temporarily uses fields are covered. *E.g. Nathanson v. Spring Lake Park Panther Youth Football Association*, 129 F. Supp. 3d 743, 749 (D. Minn. 2015) (youth football association subject to the ADA and Minnesota state law equivalent); *Shultz By & Through Shultz v. Hemet Youth Pony League, Inc.*, 943 F. Supp. 1222, 1225-26 (C.D. Cal. 1996) (granting summary judgment for plaintiff for a little league team's failure to accommodate a player with a disability). Time and again, especially following *Martin*, courts recognize that the key issue is where the impact of the discrimination manifests: whether the discriminatory action impacts the enjoyment of a public accommodation.

Team Illinois tries to undermine this overwhelming conclusion by citing two post-*Martin* cases, but neither case contradicts or limits the holding of *Martin*. Br. at 22-23. Nor do they establish that "organizations that utilize *** places" of public accommodation are not bound by antidiscrimination laws. Br. at 22. In *Louie v. National Football League*, 185 F. Supp. 2d 1306 (S.D. Fla. 2002), the court rejected a challenge to the NFL's random lottery for Super Bowl tickets where the plaintiff failed to plead it was discriminatory, and the court's public accommodation analysis did not even discuss *Martin* or whether the NFL was an operator of the stadium or otherwise covered by the ADA. *Id.* at 1308. In *Shepherd v. United States Olympic Committee*, 464 F. Supp. 2d 1072 (D. Colo. 2006), the court declined to police the differences in spending for Olympic and Paralympic athletes as a matter of disability discrimination. Plaintiff did not lose because the defendant was an

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

"entity" rather than a "place." As a factual matter at summary judgment, the gym at issue in *Shepherd* was not actually open to the public, *id.* at 1083, as distinguished expressly from the golf course in *Martin*, *id.*, and Seven Bridges Ice Arena here, both of which are undisputed public accommodations open to the public.

Like the overwhelming "tide of federal and state law" recognizing the scope of sex discrimination laws to protect transgender individuals that the Appellate Court recently considered when interpreting the Act, the sweep of authority from *Martin* onward broadly interpreting public accommodations provisions confirms that the Act too applies broadly to discrimination that impacts equal enjoyment of public accommodations. *Hobby Lobby Stores, Inc. v. Sommerville,* 2021 IL App (2d) 190362, ¶ 39.

D. The purpose of the Act requires broad protection against discrimination.

The purpose of the Act is furthered by prohibiting—not permitting—discriminatory actions that deny the equal enjoyment of public accommodation because of race, religion, disability, or any other protected basis. The Court has long recognized that "as remedial legislation, the Act should be construed liberally to achieve its purpose." *Sangamon County Sheriff's Department.*, 233 Ill. 2d at 140. The "Act reflects the public policy of this State." *Hobby Lobby Stores, Inc.*, 2021 IL App (2d) 190362, ¶ 22. "One of the declared goals of that public policy is '[t]o secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her *** [disability in] connection with employment *** and the availability of public accommodations.'" *Id.* ¶ 22 (quoting 775 ILCS 5/1-102(A) (West 2022)). The language of the Act shall not be "narrowly construe[d]" to undermine "the sweep of this public policy." *Board of Trustees of Community College Dist. No. 508 v. Human Rights Comm'n*, 88 Ill. 2d 22, 26 (1981)

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

(reading the employment discrimination protections to cover involuntary retirement).

The protection of individuals from discrimination because of a disability is so fundamental that it appears in the Bill of Rights of the Illinois Constitution of 1970. Ill. Const. 1970, art. I, § 19 (prohibiting disability discrimination in employment and housing). The Act secures "the rights established by" that Constitutional guarantee against discrimination. 775 ILCS 5/1-102(F) (West 2022). As the ADA likewise recognizes, "discrimination against individuals with disabilities continue[s] to be a serious and pervasive social problem." 42 U.S.C. §12101(a)(2) (2008). In adopting the ADA, Congress recognized the alarming "non-participation of individuals with disabilities in social and recreational activities." *Anderson v. Little League Baseball, Inc.*, 794 F. Supp. 342, 344 (D. Ariz. 1992). Congress concluded that it was imperative to "bring Americans with disabilities into the mainstream of society in other words, full participation in and access to all aspects of society." *Id.* (internal quotations omitted). The General Assembly, too, is pursuing that goal. Especially after the 2007 amendments, the intent and purpose of the Act can only be carried out by prohibiting discrimination broadly.

Further, the interpretation of the Act should account for "the consequences of construing the statute one way or another." *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 23. At stake is not just the ability for youth with a disability to participate in athletics without discrimination, but also discrimination on the basis of race, religion, ethnicity, sexual orientation, or other factors. The same public accommodation provisions apply to all of these protections. See 775 ILCS 5/5-102, 1-103(Q) ("'Unlawful discrimination' means *** because of *** race, color, religion, national origin, ancestry,

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service[.]").

Neither Team Illinois nor *amici* ever explain how the intent of the legislature or public policy of the State would be furthered by *permitting* discriminatory actions by athletic organizations like Team Illinois or anyone else. Team Illinois cannot explain why it should be permitted to run a whites-only hockey team; why they should be allowed to expel a player for being born in Egypt; why Illinois would permit them to openly advertise "Catholic players need not try out" or maintain a written policy that kids with depression need not apply. Yet those are the implications of Team Illinois' argument. If Team Illinois is indeed exempt from the Act, then Team Illinois and other organizations would have the right under State law to discriminate on any basis simply because they do not happen to own the facility they use to discriminate.

II. None of the Loopholes in which Team Illinois Seeks to Hide Exist in the Act.

With no defense in the language or history or purpose of the Act, Team Illinois tries to write into the Act exceptions and limits to excuse its discrimination. It proposes that the Act only applies to claims of "exclusion from physical" "(1) places; (2) that are generally open to the public," and not "organizations, clubs, corporate entities, gatherings or leagues." Br. at 19-20. This purported test would limit the Act to some claims for some discrimination against some owners of certain physical places. It has no basis in the text and would undermine the Act. Where the language used by the legislature is unambiguous, the Court applies the Act as written and will "not read into it limitations that the legislature did not express." *Sangamon County Sheriff's Department*, 233 Ill. 2d at 137–38 (refusing to consider whether the victim of the harassment was the harasser's subordinate because

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

that was simply "irrelevant under the plain language of" the Act). The Court cannot "interpret the statute in a way that is directly contrary to its express terms" or "declare that the legislature did not mean what the plain language of the statute imports, nor may [it] rewrite a statute to add provisions or limitations the legislature did not include." *Zahn v. North American Power & Gas, LLC*, 2016 IL 120526, ¶ 15. Neither Team Illinois nor this Court can or should rewrite the Act to excuse or protect discrimination.

A. The Act is not limited to complete "exclusion" from a place; it guarantees the "full and equal enjoyment" of all aspects of public accommodations.

In the face of the Act's straightforward language, Team Illinois strains to escape liability with the theory that somehow "this case is not about discriminatory *exclusion* from a *place*. Rather, this case is about something completely different: alleged exclusion from the *activities of an organization*." Br. at 14. No amount of mental gymnastics can take Team Illinois out of Seven Bridges or sever the discrimination from Seven Bridges without creating a loophole to exempt the "activities" of every entity at a public accommodation except the owner of the accommodation itself. The Act also does not contain an exception for partial discrimination or for too much discrimination.

First, a violation of the Act does not require the victim be "denied access to a public facility" or "exclusion from the *place* of Seven Bridges." Br. at 8, 28. The Act does not require exclusion from any "place" at all. The words "access" and "exclusion" are not in the Act. It prohibits discrimination not only in "facilities," but also in the provision of "goods" and "services." 775 ILCS 5/5-102(a) (West 2022). It prohibits unequal treatment—like different hours or prices by religion, or segregating the facility by race, or offering different services based on sexual orientation—at a public accommodation. Regardless, Morgan was excluded from a "place." Team Illinois seems to forget that those

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

"activities" include enjoying the facilities and services of Seven Bridges, where Team Illinois is housed and maintains its permanent offices and operations. Morgan was barred from the Seven Bridges lockers rooms, offices, and the ice rink.

Second, the Act is not limited to complete "exclusion." Br. at 14. Team Illinois is not innocent because they discriminated *too little*—excluding Morgan only from *part* of Seven Bridges. The Act guarantees the "full and equal enjoyment" of services, goods, and facilities. 775 ILCS 5/5-102(a) (West 2022). Nothing in the language or purpose of the Act hints that the legislature intends to allow discrimination, so long as it is limited to one portion of the facility, or certain times or services, or a subset of the goods. A baseball stadium could not defend reserving a section of the grandstands for Latino fans only with the argument that Asian fans can simply sit in a different section (or even all the other sections). It would be even more absurd for the stadium to respond that the Asian fans could buy a hot dog at the concession stand as justification for denying them tickets to watch the baseball game. Yet here Team Illinois defends the allegations of discrimination with the argument that Morgan "could enter Seven Bridges, watch games, take skating lessons, eat at the restaurant, and skate during free skate." Br. at 15-16. The assertions are a complete red herring (and not true as to Team Illinois games, from which she was banned even as a spectator). Team Illinois cannot deny Morgan the opportunity to skate on the ice due to her disability with the excuse that she could watch instead; denying her access to ice rink 1 is not permissible because she could skate on rink 2. The Act does not exempt *partial* discrimination and the Court will "not read into [the Act] limitations that the legislature did not express." *Sangamon County Sheriff's Department*, 233 Ill. 2d at 137–38.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

<u>Third</u>, Team Illinois cannot hide behind claims that it discriminated *too much*. Team Illinois highlights that it also barred Morgan from activities they claim "have nothing to do with Seven Bridges." Br. at 14-15. The argument is peculiar. A public accommodation cannot turn away a patron at the door, due to their race or sex, and then defend a lawsuit under the Act by saying it also removed the patron from its email marketing list. The allegation about removing Morgan from team communications, for example, is not a defense; it shows the gratuitousness of the discrimination and intent of Team Illinois to exclude Morgan for an extended period of time (not just until she brought any doctor's note). Exclusion from an email list does not erase the violations of the Act.

<u>Fourth</u>, Team Illinois tries to confuse the scope of the Act by framing the question as whether Morgan "had the same access to Seven Bridges as any other member of the public." Br. at 16. The inquiry is a non sequitur. Many services and activities of public accommodations are only open to those enrolled. A child cannot show up at a little league game and ask to play, no matter where it occurs or who runs it; games are only open to those who sign up for the team. Registration, screening, or eligibility criteria do not create an exception to the Act. The Act is not limited to facilities and services offered to the "general public" on an unlimited basis.

The question in a discrimination case is whether Morgan was treated differently than other *similarly situated individuals* because of her disability—that is, whether she was treated differently than other youth who also sought to play for Team Illinois, at open tryouts, made the team, and then paid thousands of dollars in fees to do so. Morgan was one of Team Illinois' paying customers. Then she was denied the enjoyment of Seven Bridges equal to other Team Illinois players: enjoyment of the locker rooms, the weight

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

room, the ice rinks, skating on the ice, playing hockey, and using the weights. She was not denied because she had not made the team or had not paid her fees; she was denied because of her mental health disability. That denial violates the Act.

Indeed, Team Illinois' suggestion that the Act is limited to the right to *watch* a Team Illinois game at Seven Bridges like the "general public" was made and rejected in *Martin*, 532 U.S. 661. The PGA claimed that the public accommodation provision of the ADA was limited to spectators as the 'customers' of the PGA and did not extend to players because they had to tryout to provide the talent for fans to watch. The Court rejected any such limitation; the ADA covers *both* spectators *and* players of athletic events. *Id.* The scope of the Act is nothing less.

B. The Act does not limit liability to the owners of a public accommodation or contain any exception to "person" that allows "non-profit organizations" to discriminate in public.

The Act is also not limited to claims against the "owners" or claims "against the public accommodation" itself. Br. at 15. The Act prohibits "any person" from discriminating in the equal enjoyment of a public accommodation. 775 ILCS 5/5-102 (West 2022). The legislature specifically defines "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.

775 ILCS 5/1-103(L) (West 2022). "Corporate entities" are not exempt, Br. at 19, they are listed in the Act. *Id.* ("corporations"). "Membership organizations" are not exempt, Br. at 9, 19, 24, they are listed in the Act. *Id.* ("associations or organizations"). "[W]hen the General Assembly intended to create an exception *** [it knows] how to express that intention in language so clear and explicit that it could not be misunderstood." *In re*

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Hernandez, 2020 IL 124661, ¶ 20. "The absence of such language is strong evidence that the legislature did not intend to *** [include] the exception." *Id*. Nor would adding a "membership organization" carve out assist Team Illinois; it is an incorporated youth hockey organization run by Larry Pedrie, not by "members"; it sells to youth practicing and playing hockey at Seven Bridges. Supp.A.09-10, C.13-14 ¶¶ 13-19.

There is also no exception for "private organizations." Br. at 17 and 19. "Organizations" are named without qualification in the definition of "person." 775 ILCS 5/1-103(L) (West 2022). Nor would adding a "private organization" carve-out assist Team Illinois. Team Illinois events like games, tournaments, and practices occur at a public ice arena and are open to the public. Supp.A.10, C.14 ¶¶ 18, 20. Team Illinois offers and sells the opportunity to play hockey to the public through open tryouts. *Id.*

Team Illinois repeatedly harps on the fact that Morgan "did not bring suit against the owner(s) of Seven Bridges" or name "the owner of Seven Bridges" as a defendant. Br. at 15 and 24. Of course. The owners of Seven Bridges were not the persons that discriminated against Morgan; Team Illinois was. The Act is not limited to claims against *the* public accommodation, or the owner of the accommodation, or even like the ADA to a person "who, owns, leases (or leases to), or operates." 42 U.S.C. § 12182(a) (2006). Team Illinois is not exempt simply because it does not own or exclusively run Seven Bridges itself.[2] The legislature could have—but did not—include such a limitation. The Act prohibits "any person," without qualification, from discriminating.

A contrary interpretation of the Act—making its application depend on "who" was doing the discriminating—would contravene the unambiguous text of the Act and produce

[2] Although, Team Illinois does "lease" and "operate" Seven Bridges. Supp.A.09, C.13 ¶14.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

absurd results. The Act's protection from discrimination cannot turn on whether "skating lessons" at Seven Bridges, Br. at 15, for example, are offered by an employee of Seven Bridges, or a youth coaching company physically based at Seven Bridges, but separately incorporated, or even an independent individual who offers public skating lessons on Tuesdays and Thursdays. In each scenario the skating lessons involve the enjoyment of the services and facilities of Seven Bridges. Anyone offering skating lessons at a *public accommodation*, must do so without discrimination. Team Illinois chose to sell hockey practices and games at a public ice rink, which it happens to rent, rather than own. That happenstance of corporate form and ownership cannot make the difference. If it did, the Act could be easily evaded through the establishment of separate legal entities. There is no reason to think that the legislature intended the Act's coverage to turn on the employer of the coach, or corporate sponsor of the hockey team. The Act's protections are not so flimsy.

C. The Act is not limited to places "open to the general public" without pre-screening.

Team Illinois also tries to exempt itself from the Act on the theory that it has a "pre-screening process and is not truly open to the public at large." Br. at 13, 25. The Act does not mention the "public at large," general public, or "pre-screening," Br. at 13, in defining the elements of a claim, in defining the persons subject to the Act, or even in defining the places that are public accommodations. 775 ILCS 5/5-102 (West 2022) (any denial of "facilities, goods, and services" violates the Act, regardless how or to who they are available); 775 ILCS 5/1-103(L) (West 2022); 775 ILCS 5/1-103(A) (West 2022) ("public accommodation" including many places like schools that "screen" participants).

Many facilities that are classified by the legislature as public accommodations are open only to specific invitees. Students frequently must be accepted to private schools with

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

extensive (and often competitive) application processes, yet those schools fall within the Act. 775 ILCS 5/5-101(A)(11) (West 2022). People often must seek to join a gym, reserve a tee time on a golf course, or secure a ticket to a theater performance, yet those places are covered by the Act. *Id.* § 5-101(A)(13). Applicants must seek and qualify for services of a "homeless shelter" or an "adoption agency," yet those places are covered by the Act. *Id.* § 5-101(A)(12). No adult or child is permitted to simply walk in to a "day care center" to play with blocks or partake in snack, yet centers are covered. *Id.* § 5-101(A)(11). The same was true even in *Martin,* where golfers had to secure a spot in tryouts with recommendation letters and a hefty fee, yet the ADA applied to both "competing in the Q-School [the tryouts] and playing in the tours [the competition]." 532 U.S. at 677. The language of the Act covers all accommodations like those listed. There is no exception for people or places with registration, screening, or eligibility criteria.

Thus, the fact that Team Illinois serves only some customers through a two-step process of application followed by participation is irrelevant. Tryouts do not turn Team Illinois practices into a "private event" in any relevant sense. Br. at 25. Rather, Team Illinois practices (and other events) are open to the public, indirectly, through an open sign up and public tryout. Supp.A.10; C.14 ¶ 18.

With no textual support, Team Illinois tries to invent this prescreening limitation on the Act from decades-old cases. Remarkably, while Team Illinois touts that the Act was amended "34 times," Br. at 10, it fails to address—or even disclose—the 2007 amendments that overturn all of the cases on which Team Illinois relies. Reliance on this dated and inapplicable precedent further undercuts the position of Team Illinois; it cannot salvage a bad argument with bad law. Team Illinois' primary authority is a 2003 case: *Gilbert v.*

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Department of Human Rights, 343 Ill. App. 3d 904 (1st Dist. 2003) (finding a class to teach scuba diving was not a public accommodation like those "in the Act"). Br. at 13, 25, 30, 31. The decision in *Gilbert* has no discussion of a link between the discrimination and a public accommodation, and, more to the point, *Gilbert* and Team Illinois' entire line of cases interpret language that is no longer in the Act. Br. at 13. That statutory language was removed completely and replaced by the General Assembly in 2007. Those cases are bad law, and the Court should expressly recognize so now.

At the time, the pertinent language defined a public accommodation as follows:

> (1) 'Place of public accommodation' 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.
>
> (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.

775 ILCS 5/5–101(A) (West 2000). The court in *Gilbert* grappled with the fact that the language "business *** [or] recreation *** facility of any kind" would be so broad as to render the remaining language of the section superfluous. 343 Ill. App. 3d at 908. To fill the gap, the court considered "whether the activity is similar to the activities listed in the statute" and whether it "provide[d] services to all members of the general public without prescreening or qualification." *Id.* at 909 (citations omitted). Whatever the logic of *Gilbert* given that language of the Act at the time, the 2007 amendments broadened the scope of the Act and overturned *Gilbert*. The amendments removed the language considered

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

problematic in *Gilbert*—"business *** [or] recreation *** facility of any kind"—entirely. Compare 775 ILCS 5/5-101(A)(1) (West 2000) with 775 ILCS 5/5-101(A) (West 2008). The legislature removed the limitation to a "facility" from the definition of "public accommodation." *Id.* The legislature removed the limitation to services "available to the public" from the definition of "public accommodation." *Id.*

Further, as detailed above, with the 2007 amendments the legislature chose to follow the ADA, even in light of the broad interpretation that had been set forth by *Martin* in 2001. Where the legislature has made a material change in a statute, the presumption is that "the amendment was intended to change the law." *State of Illinois v. Mikusch* 138 Ill. 2d 242, 252 (1990).

The 2007 amendments overturned all of the authority on which Team Illinois relies. *Gilbert* and Team Illinois, Br. at 13, rely on *Board of Trustees*, which had held that an academic program of a university was not covered. 159 Ill. 2d at 213. The 2007 amendments overturned *Board of Trustees* by adding to the Act "a non-sectarian *** undergraduate, or postgraduate school, or other place of education" among the examples of public accommodations. 775 ILCS 5/5-101(A)(11) (West 2008).

Gilbert and Team Illinois, Br. at 13, rely on *Baksh v. The Human Rights Comm'n*, 304 Ill. App. 3d 995 (1st Dist. 1999), which held that a dentist office was not covered by the Act by peculiarly relying on cases about the words "trade" and "commerce" under the Illinois Consumer Fraud and Deceptive Business Practices Act. *Id.* at 1004-05. *Baksh* was overturned; the 2007 amendments add "professional office of a health care provider" to the definition of public accommodation. 775 ILCS 5/5-101(A)(6) (West 2008).

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Gilbert and Team Illinois, Br. 13, 25, 30, also rely on *Cut 'N Dried Salon v. The Department of Human Rights*, 306 Ill. App. 3d 142 (1st Dist.1999), which rejected a claim based on an insurer's price discrimination against or declining to provide insurance to hairdressers. *Cut 'N Dried* relied in part on legislative history that the General Assembly considered and refused *four times* bills to cover "discrimination in insurance coverage." *Id.* at 147. Again, this holding was overturned by the 2007 amendments adding "insurance office" to the Act. 775 ILCS 5/5-101(A)(6) (West 2008).

Team Illinois cannot use this line of cases to argue that the Act still only covers entities that provide services to all members of the general public without any pre-screening or qualification. *E.g.* Br. 13. The statutory language underpinning that prior analysis is gone. "Comparing the former statute with the present one leads to the conclusion that the legislature in adopting the present act meant" to broaden the scope of public accommodation and the Act to sweep without regard to selection. *Board of Trustees of Community College District No. 508 v. Human Rights Comm'n*, 88 Ill. 2d 22, 28 (1981) (interpreting age exemption of the Act in light of the language it replaced). Indeed, the legislative history confirms that the 2007 amendments were passed because "Court decisions ha[d] limited the application of those provisions [of the Act] over the years." 95th Ill. Gen. Assem., Senate Proceedings, October 2, 2007, at 19 (statements of Senator Cullerton). None of the old cases or analyses or holdings survive the 2007 amendments.

There is no exception for selective places or entities, or requirement that public accommodations be "open to all members (or, perhaps more accurately, all *paying* members) of the public," and "not conditioned on a selection process or competitive tryouts." Br. at 12. A university may be highly selective with a daunting application

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

process, but it cannot expel a student for being Latino. A doctor may only treat a very select few certain patients, but she cannot refuse treatment because a patient is Hindu. An adoption agency *should* scrutinize potential parents carefully, but it cannot refuse to work with a potential single parent because the parent is a man and not a woman. Likewise, Team Illinois cannot operate public hockey games and teams, and then refuse one player because she has a disability, even if it uses tryouts to identify talented players.

Nor does it matter that "Team Illinois is an elite Tier I hockey" team, Br. at 2. The level of selectivity does not exempt Team Illinois. It does not matter how many people try out, how many people make the team, or the level of skill of the players. PGA golfers are talented and the tour highly competitive, yet covered by public accommodation laws. 532 U.S. 661. Universities are covered regardless of selectivity or elaborate admissions and application procedures. *Id.* at 672-73. Athletes playing in the NCAA or for United States Olympic teams are participating in highly competitive and selective athletic competitions yet fall within public accommodation laws. *Matthews*, 179 F. Supp. 2d at 1223; *Akiyama*, 181 F. Supp. 2d at 1183-84. As the Appellate Court concluded, "[t]he fact that Team Illinois is selective in choosing its members is unimportant ***." A.22, ¶ 41.

III. The Act Covers Discrimination that Denies the Equal Enjoyment of a Public Accommodation, Not Discrimination By Persons with Some Specific Link to the Public Accommodation.

The second question formulated by Team Illinois about the "level" of connection between the person and the place is a red herring. The legislature already answered that question: no specific connection is required because the Act applies to "any person." Yet Team Illinois and *amici* spin a tale of the Act leading to endless meddling in private affairs with a range of hypothetical worries. They do not point to one such absurd actual case. Nor

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

do they explain how it would unduly burden Team Illinois to be prohibited from discrimination on the basis of race, sex orientation, religion, or disability.[3]

The fearmongering also ignores the limit apparent on the face of the Act. The text of the Act requires a link between *the discrimination* and the public accommodation, not between *the person* and the public accommodation. 775 ILCS 5/5-102 (A) (West 2022) (applying to discrimination by "any person" that denies "enjoyment" of a public accommodation). That link precludes Team Illinois hyperbole that somehow "an organization that conducts *any* activities in one of the places listed in Section 5/5-101 could find that *all* of its activities are subject to Section 5 of the IHRA." Br. at 23-24.

There is no justification—let alone need—to invent new limitations to add to the text of the Act or draw speculative lines about where the Act's coverage stops and starts. See Br. at 27 (suggesting the Act should turn on how frequently the accommodation is used, how much of the facility is used, or whether there is a written agreement between the person and accommodation). As Team Illinois ironically highlights, the Court should "defer to the policy of the legislature as expressed in the language," Br. at 8 (quoting *Price v. Phillip Morris, Inc.* 219 Ill. 2d 182, 274 (2005)), and apply the Act as written.

A. <u>The Act does not sweep up the entire operation of an organization; it only applies to conduct that impacts the enjoyment of a public accommodation.</u>

The Act does not apply to every action of every entity that ever uses a public accommodation for an hour. Br. at 23-24 (feigning that a person using an accommodation for "any activities" subjects "all of its activities" to the Act). The Act only applies to

[3] USA Hockey, for example, worries about ominous "material, adverse, and unintended consequences to the administration of sports in the State of Illinois and beyond," but does not explain why hockey teams need to be allowed to discriminate, or what "consequences" might be, or how the Act reaches "beyond" the public accommodations of Illinois. USA Hockey Br. at 9.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

conduct that results in a denial of the equal enjoyment of the "facilities, services, or goods" of a public accommodation.

This scope of the Act is apparent for a natural person. A chef who is the sole owner and active manager of a restaurant cannot refuse to seat and serve Italian customers at her restaurant. At the same time, when the chef goes home, the choices she makes about who to invite to her house for a social dinner on Monday night are not subject to the Act. The Act does not reach the chef's entire life, even if she is as akin to a public accommodation (a restaurant) as any natural person could be. Only her actions that impact the enjoyment of the restaurant, the public accommodation, fall within the Act.

The same is true for a corporate "person." The Act lists no requirement about the frequency, intensity, or formality of any relationship between the person and a public accommodation; nor, at the same time, is there coverage beyond actions that impact public accommodations. A book club that meets in a private home is generally not subject to the Act. But if the book club has a bake sale at the zoo to raise money, it cannot put up a sign to say "no sales to black customers." A zoo is a public accommodation. 775 ILCS 5/5-101(A)(10) (West 2022). Yet, even with the bake sale, the Act does not apply to whatever is said about a book in a living room of a home during the monthly book club meetings.

Team Illinois tries to confuse the issue in this case by characterizing "Team Illinois" an organization contrasted with a "physical location." *E.g.* Br. at 14. When an entity is subject to the public accommodation law, it is true that some cases include language that the entity "is" an accommodation. *E.g. Martin*, 532 U.S. at 681 (2001) ("as a public accommodation *** petitioner [PGA] may not discriminate"); *Matthews*, 179 F. Supp. 2d at 1221 (discussing authority that the "NCAA therefore did constitute a public

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

accommodation" and holding that the NCAA is subject to the ADA); *Nathanson*, 129 F. Supp. 3d at 748 ("An entity that is not directly connected with a physical place, such as a sports association, can meet the definition of a 'place of public accommodation[.]'"). As case law recognizes, however, it is more precise to say that the entity is the "person" (or operator) of the public accommodation, and thus subject to the antidiscrimination law. *E.g. Nathanson,* 129 F. Supp. 3d at 748 (association subject to the ADA because it "operate[s] a public accommodation"). See also *Illinois ex rel. Madigan v. Illinois High School Ass'n*, No. 12 C 3758, 2012 WL 3581174, at *5 (N.D. Ill. Aug. 17, 2012) (articulating the distinction).

The outcome is the same whatever words are used: the organization cannot discriminate. And, indeed, the language that the organization effectively "is" a public accommodation reflects the reality that—as a practical matter—the Act may cover most actions of entities connected to public accommodations. Most actions of a little league team that operates from a park district ball diamond, for example, may impact the enjoyment of the public accommodation and fall within the Act. *E.g. Shultz,* 943 F. Supp. at 1225-26. The actions of a public accommodation itself—the bowling alley, or store, or amusement park—may largely fall within the Act. For some entities, it may be difficult (or rare) to think of an action that does *not* implicate enjoyment of a public accommodation. Team Illinois may be just such an entity. But that reality does not change the test or outcome. In each instance the question remains: does the *discriminatory action* impact the enjoyment of a public accommodation. For Morgan, the answer is yes. Team Illinois discriminatorily denied her the equal enjoyment of the ice rink.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Related, Team Illinois worries that the Act could impact some "membership decisions," Br. at 24, even though this case has nothing to do with "membership" (Morgan was and remained at all times a player of Team Illinois). Regardless, the same general test works for alleged disputes over "membership," or who can play on a team, or sign up for a class at an art studio. Where making the team or joining the organization leads to the enjoyment of a public accommodation, then the decision about who can participate or join the organization is covered by the Act. Even Team Illinois agrees with this application of the rule: when "joining" an organization is a "ticket" to a public accommodation, like the YMCA, the decision about who is allowed to join impacts the enjoyment of the public accommodation, and falls within the Act. Br. at 29.

Remarkably, Team Illinois itself states the standard (almost) correctly: "By its terms, Section 5 requires a nexus between a defendant's discriminatory act and a plaintiff's access to, or enjoyment of, a physical place." Br. at 28 (emphasis added). Team Illinois goes off the rails when it attempts to invent *further* requirements that do not appear in the Act or advance its purpose. No language in the Act limits it to actions that "directly relate to access to a place of public accommodation." *Id.* Under the language of the Act, it is irrelevant whether "Team Illinois ever controlled admission into Seven Bridges," was "synonymous with the facility," or was "involved in the management, maintenance, or financial affairs of any facility." Br. at 21, 22, 28. "Any person," not just the person that "controls admission" or maintains "financial affairs," can violate the Act. Nor does the scope of the Act turn on whether the defendant "primarily intended to *** exclude a person." Br. at 28. The Act is violated by actions "because of" unlawful discrimination. Nothing in the language of the Act imposes an additional element of animus or that

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

exclusion was the "primary" intent, as opposed to secondary or "ancillary" or some other intent. The inquiry remains simple and fact-specific: does the *discriminatory action* impact the *enjoyment* of a public accommodation?

Even if the person's connection to the public accommodation somehow mattered, Team Illinois has more than sufficient connection to Seven Bridges to meet any test. They are not "just one of many organizations that rents a space during a specified time and then vacates that space to make room for the next renter," Br. at 28, or an entity that merely "occupies a portion of Seven Bridges for a few hours at a time." Br. of Amicus USA Hockey at 12. Team Illinois leases and operates parts of Seven Bridges. Seven Bridges is the Team Illinois permanent facility, and only facility, with offices and locker room. Team Illinois operates primarily out of Seven Bridges and sells to youth specifically the chance to play hockey at that ice rink. At this stage of the case, the "court must accept as true all [these] well-pleaded facts in the plaintiff's complaint and [make] all inferences that can reasonably be drawn in the plaintiff's favor." *International Union of Operating Engineers, Local 148, AFL-CIO v. Illinois Department of Employment Security*, 215 Ill. 2d 37, 45 (2005).

Team Illinois laments that the Act may apply to "the affairs of the organizations that happen to utilize 'places of public accommodations.'" Br. at 17. But there is nothing absurd, or inequitable, or unjust about barring actions that discriminate in public accommodations, or requiring persons or entities that choose to use public accommodations do so without discrimination. The purpose of the Act is to remove discrimination from public life and "where statutory language is clear, it must be given effect." *Cothron*, 2023 IL 128004, ¶ 40.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

B. The Act does not require every event at a public accommodation to be open to every person; it only applies to discrimination "because of" a protected trait.

Team Illinois and amici also irrationally fear that the Act will require them to let any member of the public join a practice. *E.g.* Br. at 25 (noting correctly, but irrelevantly, that "members of the public" cannot use the locker rooms while Team Illinois does). Again, they misread the Act. The Act only prohibits denial of the enjoyment of a public accommodation "on the basis of unlawful discrimination." 775 ILCS 5/5-102 (West 2022). The Act does not prohibit a person from being treated differently for some other reason. It does not require that an event limited to individuals who *sign up* be opened to people who did not *sign up* (or make the team). Just as pre-screening does not exempt a person or accommodation from the Act, *supra* section II.C, nothing in the Act prohibits non-discriminatory pre-screening for activities at public accommodations.

The Thomas More Society worries that if Morgan prevails, then the Act would be violated by "Girl Scouts selling cookies from an assigned space on grocery store property who refuse to allow unrelated adult men to join their sales efforts." TMS Amicus Brief at 5. Nothing in the Act requires such a result; nor is any exception required to avoid such an absurd scenario. The reason that "unrelated adult men" are not allowed to sell the cookies is because they are not part of the Girl Scout troop. That is not exclusion "on the basis of unlawful discrimination."

The way to identify a violation of the Act is to use the right comparator. If the Girl Scout troop chooses to sell cookies at a grocery store (a public accommodation), then it must treat customers like other customers. They cannot sell only to Jewish customers, or women, or heterosexual customers. If the Girl Scout troop chooses to sell cookies at a grocery store, then it must treat scouts like other scouts. It cannot say to scouts who are

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

part of the troop: only the Latino scouts can sell at this grocery store event. That would deny the non-Latino scout "equal enjoyment" of the grocery store (a public accommodation) to sell cookies. That is the bargain for using the grocery store to sell cookies, and neither rule requires that *any* non-scouts be allowed to sell the cookies.

Here, Morgan was a Team Illinois player. The question under the Act is whether she had equal enjoyment as the non-disabled Team Illinois players, not enjoyment equal to random members of the public. As the Appellate Court concluded, "because plaintiff earned a coveted place on Team Illinois's roster, it could not then deny her on the basis of her disability the privilege of participation at athletic events held at places of public accommodation such as Seven Bridges." A.22, 2022 IL App. (2d) 210568 ¶ 41.

C. The Act does not need to be rewritten to protect First Amendment rights.

The Court also need not invent limits that do not appear in the text of the Act to accommodate hypothetical scenarios that purport to raise First Amendment concerns. To the extent a potential claim under the Act would deny the person's First Amendment rights, those rights are already protected. U.S. Constitution, Article VI, Para. 2.

The "rights to expressive association," Amicus TMS at 1, and for "political organizations," Br. at 23, for example, are already protected. *E.g. Boy Scouts of America v. Dale*, 530 U.S. 640, 643 (2000) (recognizing the scouts' free association rights in opposing homosexuality); *California Democratic Party v. Jones*, 530 U.S. 567, 586 (2000) (First Amendment prohibits "forcing political parties to associate with those who do not share their beliefs"). Team Illinois appeals to *Welsh v. Boy Scouts of America*, 993 F.2d 1267 (7th Cir. 1993), for example. Br. at 29. Yet the summary judgment holding in *Welsh* that the Boy Scouts did not fall within the Civil Rights Act of 1964, Title II definition of "public accommodation," turned on the fact that the scouts there met in "private homes."

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

993 F.2d at 1272, 1274.[4] And the United States Supreme Court recognized, not long after, that scout membership criteria are actually an issue of free expression protected by the First Amendment. *Dale*, 530 U.S. at 643.[5]

The freedom of "private religious organizations," Br. at 23, is already protected. *E.g. Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, 565 U.S. 171, 181 (2012) (holding the First Amendment protects religious organizations from certain discrimination claims). The Act, consistent with that principle, does not cover churches, or houses of worship, or even "sectarian" schools. 775 ILCS 5/5-101(A)(11) (West 2022).

The freedom of association in familial and friend relationships is already protected. *Roberts v. United States Jaycees*, 468 U.S. 609, 617 (1984) (freedom of association protects "choices to enter into and maintain certain intimate human relationships") There is no risk that the Act could be applied to personal invitations, relationships, and interactions, to the issue of which friend is invited to meet up at a bar, or whom is invited to a child's birthday party. TMS Amicus at 5.

This case does not present the need, nor the record, to explore the details of the potential fact-bound balancing of the First Amendment and the Act. See *Roberts,* 468 U.S. at 622, 623 (recognizing that the Constitution protects "right to associate with others in

[4] Title II of the Civil Rights Act of 1964 defines three categories of "establishments" that "serve the public" as public accommodations. 42 U.S.C. § 2000a(b) (identifying lodging, restaurants, and places of entertainment) and states generally that "all persons shall be entitled to the full and equal enjoyment" of public accommodations, without saying *who* is bound by the law. The ADA and Act list expansive categories of public accommodations and specify who is bound by the law. ADA, 42 U.S.C. § 12182(a) ("any person who owns, leases (or leases to), or operates a place"); Act, 775 ILCA 5/5-102 ("any person").

[5] If the Court looks to federal law, then *Martin*, not *Welsh*, controls the outcome because Team Illinois operates from the public accommodation Seven Bridges, not at a house.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends," but that association "may be justified by regulations adopted to serve compelling state interests"). Team Illinois here makes no claim to an expressive purpose to discriminate against players with disabilities (or anyone) or any other constitutional rights. Nor is Team Illinois remotely an intimate relationship, inviting family or friends to skate at the rink for an hour. To the contrary, Team Illinois sells to the public, through open and public tryouts, the chance to practice hockey on an ice rink open to the public, Seven Bridges, and play in public hockey games.

Rather than change language of the Act that the legislature wrote, circumscribing its general application to just "physical places" or just certain people or just "exclusion" and denial of "access" to a place to avoid any hint that the scope might touch upon a person with an expressive interest, any tension with First Amendment principles and the language of the Act—if they arise—must be dealt with case by case.

Indeed, the broad language shows that the legislature intended the Act to—and has—prohibited discrimination broadly up to the Constitutional limit on its ability to do so. To the extent this was not the legislative intent—despite the simple and straightforward language of the Act—"policy-based concerns about potentially excessive [coverage] under the Act are best addressed by the legislature." *Cothron*, 2023 IL 128004, ¶ 43.

IV. The Private Club Exception only Clarifies that Certain Places are Not Public Accommodations; It Does Not Limit the "Persons" Subject to the Act or Ppply to Team Illinois.

Last, Team Illinois ignores the posture of the case and misrepresents the case law to solicit an advisory ruling. The Court does not need to decide how to interpret the "private club" exception of the Act to resolve this appeal. Neither the trial court nor the Appellate Court below reached the issue, and the exception—if it were even applicable—merely

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

provides a possible affirmative defense and is thus not properly considered on a motion to dismiss. If, however, the Court addresses the issue, it should confirm that the exception is limited to *places* that would otherwise fall within the definition of "public accommodation," but are exempt as truly private and member-run. The exception could never apply to Team Illinois, which is an organization, which regularly opens its activities to the public, and has no "members" in the relevant sense.

The private club exception reflects the constitutional norm that some associations are so intimate and private that the government cannot regulate them, even to prevent discrimination. *Cf. Bell v. State of Maryland*, 378 U.S. 226, 313 (1964) (Goldberg, J., concurring) ("[I]t is the constitutional right of every person to close his home or club to any person or to choose his social intimates *** solely on the basis of personal prejudices[.]"). See also *Cornelius v. Benevolent Protective Order of the Elks*, 382 F. Supp. 1182, 1201 (D. Conn. 1974) (recognizing constitutional concerns underlying a private club exception).

Given the broad intended reach of antidiscrimination statutes, courts interpret the private club exception narrowly, as applying only to those truly private associations with "attributes of self-government and member-ownership traditionally associated with private clubs." *Daniel v. Paul*, 395 U.S. 298, 301 (1969). Private country clubs and fraternal organizations like the Moose or Elks are the quintessential private clubs. See, *e.g.*, *Lobel v. Woodland Golf Club of Auburndale*, 260 F. Supp. 3d 127, 132 (D. Mass. 2017) (country club); *Cornelius*, 382 F. Supp. at 1204 (Elks). Those truly private clubs, however, are few and far between. Indeed, much of the litigation regarding the private club exception has involved "shams"—public accommodations that characterize themselves as "private

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

clubs” to evade antidiscrimination laws. *United States v. Lansdowne Swim Club*, 713 F. Supp. 785, 796 (E.D. Pa. 1989) (collecting cases).

Courts cannot decide whether the private club exception applies on a Section 2-615 motion, because the exception is an affirmative defense on which defendants bear the burden. The party claiming the benefit of the exception to an otherwise generally applicable statute bears the burden of proving that it applies. See *Jack Bradley, Inc. v. Department of Employment Security*, 146 Ill. 2d 61, 75 (1991). Courts uniformly treat the private club exception as an affirmative defense to the anti-discrimination laws, and given “the importance of th[o]se laws,” the exception is “narrowly construed,” with a strict burden placed on the party claiming to be exempt. *E.g., Martin v. PGA Tour, Inc.*, 984 F. Supp. 1320, 1323 (D. Or. 1998). Further, an affirmative defense can be considered on a Section 2-615 motion “only if the defense is apparent from the face of the complaint.” *R & B Kapital Development, LLC v. North Shore Community Bank & Trust Co.*, 358 Ill. App. 3d 912, 921 (1st Dist. 2005). And, as discussed below, the private club analysis is so fact-bound—requiring consideration of, for example, the entity’s history, governance, and membership practices—that the issue cannot possibly be resolved on a Section 2-615 motion. *Cf. Tawam v. APCI Federal Credit Union*, No. 5:18-CV-00122, 2018 WL 3723367, at *6 n.5 (E.D. Pa. Aug. 6, 2018) (noting the prevailing multifactor test and declining to address private club analysis at motion-to-dismiss stage).

If the Court were to reach the issue, it should reject Team Illinois’ suggestion that the private club exception somehow allows discrimination at public accommodations so long as the “person” doing the discriminating considers itself “private” or maintains selective admissions standards. Br. at 28. As an initial matter, the exception is not about

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

"persons" at all. Just as the definition of "public accommodation" is—as Team Illinois emphasizes—about establishments that are *places* of public accommodation, the exception Section 5-103 is likewise about *places*: "establishment[s]" or "private clubs" that are "not in fact open to the public." 775 ILCS 5/5-103(a) (West 2022). The exception does not allow private organizations to discriminate in their *use* of public accommodations. Rather, the provision merely recognizes a narrow exception for a *place* that would otherwise fall under the list of public accommodations—like a golf course—which is in fact a private membership association not actually open to the public—like a private country club.

Further, the multi-factor test for whether a place is genuinely within the private club exception is not materially disputed. Team Illinois strains to manufacture an open question where there is actually consensus. Courts generally agree that the private-club test is a deeply "factual" one that generally uses the seminal eight-factor test developed by the court in *Lansdown*e. 713 F. Supp. at 796-97, aff'd 894 F.2d. 83 (3d Cir. 1990). The eight *Lansdowne* factors used to evaluate whether country club or other "establishment" is actually a statutory "private club" are:

(1) "[t]he genuine selectivity of the group in the admission of its members";
(2) "[t]he membership's control over the operations of the establishment";
(3) "[t]he history of the organization";
(4) "[t]he use of the facilities by nonmembers";
(5) "[t]he purpose of the club's existence";
(6) "[w]hether the club advertises for members";
(7) "[w]hether the club is profit or nonprofit"; and
(8) "[t]he formalities observed by the club, e.g., bylaws, meetings, membership cards."

Id. Though Team Illinois suggests a dispute over the applicable test, the "multi-factor test used by some federal courts" it referenced is the same *Lansdowne* test Plaintiff cited below, and the same factors the Appellate Court consulted—admittedly, in a different context—in *Knoob Enterprises, Inc. v. Village of Colp*. See Br. at 30 discussing *Welsh*, 993 F.2d at

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

1276-77 (applying seven-factor version of *Lansdowne* test); *Knoob*, 358 Ill. App. 3d 832, 839 (5th Dist. 2005) (combining *Lansdowne* test with another multi-factor test). Even the Eleventh Circuit, which expressly declines to use the multi-factor test of *Lansdowne*, settled on a similar, fact-intensive standard. *Ring v. Boca Ciega Yacht Club Inc.*, 4 F.4th 1149, 1158 (11th Cir. 2021) (defining a "private club" to require (1) "Self-government and member-ownership," (2) "a plan or purpose of exclusiveness," and (3) "seclusion from others in critical aspects of the relationships between members at its facilities") (internal citations and quotation marks omitted). Thus, if this court addresses the substance of which places are statutorily exempt private clubs, it should confirm that the analysis requires consideration of multiple factors—even if they are not the same in each case—to determine whether the place at issue is genuinely a private, member-controlled place. Especially where no other Illinois court has addressed the issue, there is no reason to depart from this consensus approach.

In contrast to the consensus fact-based multi-factor approach, Team Illinois suggests that the Court invent a new test based on *Gilbert* and *Cut 'N Dried Salon*. That analysis is "a non-starter." Br. at 31. As Team Illinois must reluctantly admit, neither *Gilbert* nor *Cut 'N Dried Salon* even addressed the Act's private club exception, and as discussed above, neither case is good law at all after the 2007 amendments to the Act. Mere selectivity in admissions or membership cannot exempt an entity from the Act. *Supra* section II.C. And hockey tryouts are not the kind of exclusivity with which the private club exception is concerned. See *Martin*, 984 F. Supp. at 1325 ("Defendant's eligibility requirements, however, measure skills. They are not designed to screen out members based

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

upon social, moral, spiritual, or philosophical beliefs, or any other criteria used to protect freedom of association values which are at the core of the private club exemption.”).

Because this case is not about a private facility or place, Team Illinois could never qualify for the private club exception, under any plausible formulation of that test, nor could any private club argument warrant dismissal on a Section 2-615 motion. Team Illinois is a person that discriminated against Morgan; the location of the discrimination, Seven Bridge, is a public place of accommodation. The private club analysis simply does not apply. And in any event, Team Illinois is not private. It is a business open to the public. The players on the team are not “members” that own or control the organization after being invited to join; rather, they are paying customers who join the team through tryouts that were open to the public. Of course the best hockey players make the team, but “[s]uch natural ‘weeding-out’ selectivity is inherent to athletics, and does nothing to confer ‘privacy’ to the organizations” conducting the tryouts. *Martin,* 984 F. Supp. at 1325.

/

/

/

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

CONCLUSION

For the foregoing reasons, the holding of the Appellate Court should be affirmed, complaint sustained, and case remanded for litigation on the merits.

Dated: June 21, 2023

Respectfully submitted,

HUGHES SOCOL PIERS RESNICK & DYM, LTD.

____

Attorney for the Plaintiff-Appellant

Charles D. Wysong (cwysong@hsplegal.com)
Justin M. Tresnowski (jtresnowski@hsplegal.com)
HUGHES, SOCOL, PIERS, RESNICK & DYM, LTD.
70 West Madison Street, Suite 4000
Chicago, Illinois 60602
312.580.0100 (phone)
312.580.1994 (facsimile)
Firm No. 45667

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

CERTIFICATION

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of services, and those matters to be appended to the brief under Rule 342(a), is 49 pages.

____

Charles D. Wysong

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

TABLE OF CONTENTS FOR SUPPLEMENTAL APPENDIX

Statutory Language of the Act.. Supp.A.02

Act and ADA Public Accommodation Provision Comparison............................ Supp.A.05

Complaint, filed April 20, 2021.. Supp.A.07

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

STATUTE INVOLVED

The Illinois Human Rights Act ("Act") (775 ILCS 5/1-101 *et. seq.* (West 2018)) provides in relevant part:

Article 5, Public Accommodations
Section 5-101, "Definitions" (775 ILCS 5/5-101)

The following definitions are applicable strictly in the context of this Article:

(A) Place of Public Accommodation. "Place of public accommodation" includes, but is not limited to:

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

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

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

(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.

Article 5, Public Accommodations
Section 5-102, "Civil Rights Violations" (775 ILCS 5/5-102)

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.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Article 5, Public Accommodations
Section 5-103, "Exemption" (775 ILCS 5/5-103)

Nothing in this Article shall apply to:

(A) Private Club. A private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the establishment are made available to the customers or patrons of another establishment that is a place of public accommodation.

(B) Facilities Distinctly Private. Any facility, as to discrimination based on sex, which is distinctly private in nature such as restrooms, shower rooms, bath houses, health clubs and other similar facilities for which the Department, in its rules and regulations, may grant exemptions based on bona fide considerations of public policy.

(C) Inn, Hotel, Rooming House. Any facility, as to discrimination based on sex, which restricts the rental of rooms to individuals of one sex.

Article 1, General Provisions
Section 1-103, "General Definitions" (775 ILCS 5/1-103)

When used in this Act, unless the context requires otherwise, the term: * * *

(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.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

ACT AND ADA PUBLIC ACCOMMODATION PROVISION COMPARISON

ADA (1990) 42 U.S.C. § 12181(7)	**Act (2007)** 775 ILCS 5/5-101(A)
The following private entities are considered public accommodations * * *, if the operations of such entities **affect commerce**—	"Place of public accommodation" **includes, but is not limited to**:
(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five **rooms** for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;	(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;
(B) a restaurant, bar, or other establishment serving food or drink;	(2) a restaurant, bar, or other establishment serving food or drink;
(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;	(3) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
(D) an auditorium, convention center, lecture hall, or other place of public gathering;	(4) an auditorium, convention center, lecture hall, or other place of public gathering;
(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;	(5) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
(F) 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;	(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;
(G) a terminal, depot, or other station used for specified public transportation;	(8) a terminal, depot, or other station used for specified public transportation;
(H) a museum, library, gallery, or other place of public display or collection;	(9) a museum, library, gallery, or other place of public display or collection;
(I) a park, zoo, amusement park, or other place of recreation;	(10) a park, zoo, amusement park, or other place of recreation;

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

ADA (1990) 42 U.S.C. § 12181(7)	**Act (2007)** 775 ILCS 5/5-101(A)
(J) a nursery, elementary, secondary, undergraduate, or postgraduate **private** school, or other place of education;	(11) a **non-sectarian** nursery, **day care center**, elementary, secondary, undergraduate, or postgraduate school, or other place of education;
(K) **a day care center**, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and	(12) a senior citizen center, homeless shelter, food bank, **non-sectarian** adoption agency, or other social service center establishment; and
(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.	(13) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

ADA

> No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a) (2006) (emphasis added).

Act

> It is a civil rights violation for any person on the basis of unlawful discrimination [including disability] 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;

775 ILCS 5/5-102 (emphasis added).

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

TABLE OF CONTENTS FOR SUPPLEMENTAL APPENDIX

Statutory Language of the Act.. Supp.A.02

Act and ADA Public Accommodation Provision Comparison............................ Supp.A.05

Complaint, filed April 20, 2021.. Supp.A.07

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

STATUTE INVOLVED

The Illinois Human Rights Act ("Act") (775 ILCS 5/1-101 *et. seq.* (West 2018)) provides in relevant part:

Article 5, Public Accommodations
Section 5-101, "Definitions" (775 ILCS 5/5-101)

The following definitions are applicable strictly in the context of this Article:

(A) Place of Public Accommodation. "Place of public accommodation" includes, but is not limited to:

(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;

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

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

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

(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.

Article 5, Public Accommodations
Section 5-102, "Civil Rights Violations" (775 ILCS 5/5-102)

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.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Article 5, Public Accommodations
Section 5-103, "Exemption" (775 ILCS 5/5-103)

Nothing in this Article shall apply to:

(A) Private Club. A private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the establishment are made available to the customers or patrons of another establishment that is a place of public accommodation.

(B) Facilities Distinctly Private. Any facility, as to discrimination based on sex, which is distinctly private in nature such as restrooms, shower rooms, bath houses, health clubs and other similar facilities for which the Department, in its rules and regulations, may grant exemptions based on bona fide considerations of public policy.

(C) Inn, Hotel, Rooming House. Any facility, as to discrimination based on sex, which restricts the rental of rooms to individuals of one sex.

Article 1, General Provisions
Section 1-103, "General Definitions" (775 ILCS 5/1-103)

When used in this Act, unless the context requires otherwise, the term: * * *

(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.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

ACT AND ADA PUBLIC ACCOMMODATION PROVISION COMPARISON

ADA (1990) 42 U.S.C. § 12181(7)	**Act (2007)** 775 ILCS 5/5-101(A)
The following private entities are considered public accommodations * * *, if the operations of such entities **affect commerce**—	"Place of public accommodation" **includes, but is not limited to**:
(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five **rooms** for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;	(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;
(B) a restaurant, bar, or other establishment serving food or drink;	(2) a restaurant, bar, or other establishment serving food or drink;
(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;	(3) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
(D) an auditorium, convention center, lecture hall, or other place of public gathering;	(4) an auditorium, convention center, lecture hall, or other place of public gathering;
(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;	(5) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
(F) 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;	(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;
(G) a terminal, depot, or other station used for specified public transportation;	(8) a terminal, depot, or other station used for specified public transportation;
(H) a museum, library, gallery, or other place of public display or collection;	(9) a museum, library, gallery, or other place of public display or collection;
(I) a park, zoo, amusement park, or other place of recreation;	(10) a park, zoo, amusement park, or other place of recreation;

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

ADA (1990) 42 U.S.C. § 12181(7)	**Act (2007)** 775 ILCS 5/5-101(A)
(J) a nursery, elementary, secondary, undergraduate, or postgraduate **private** school, or other place of education;	(11) a **non-sectarian** nursery, **day care center**, elementary, secondary, undergraduate, or postgraduate school, or other place of education;
(K) **a day care center**, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and	(12) a senior citizen center, homeless shelter, food bank, **non-sectarian** adoption agency, or other social service center establishment; and
(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.	(13) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

ADA

> No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a) (2006) (emphasis added).

Act

> It is a civil rights violation for any person on the basis of unlawful discrimination [including disability] 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;

775 ILCS 5/5-102 (emphasis added).

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, WHEATON, ILLINOIS

2021CH000141

Candice Adams
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 13018956
2021CH000141
FILEDATE: 4/20/2021 11:43 AM
Date Submitted: 4/20/2021 11:43 AM
Date Accepted: 4/20/2021 3:48 PM
LG

MORGAN URSO a minor, by and through her parents KELLY URSO and NICK URSO,

Plaintiff,

v.

TEAM ILLINOIS HOCKEY CLUB, Inc., and the AMATEUR HOCKEY ASSOCIATION OF ILLINOIS, Inc.,

Defendants.

CASE NO.

JURY DEMANDED

VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiff Morgan Urso complains, by and through her parents Kelly and Nick Urso, against Defendants Team Illinois Hockey Club, Inc. ("Team Illinois") and the Amateur Hockey Association of Illinois, Inc. ("AHAI") for discrimination against her on the basis of disability in violation of the Illinois Human Right Act ("IHRA" or Act) for injunctive relief and damages.

PRELIMINARY STATEMENT

1. Morgan Urso is a high school sophomore and long-time hockey player. She has played hockey through organized hockey leagues and teams since 5th grade. Hockey was her passion. It was her life.

2. Morgan is also a person with a disability, including anxiety and depression. Hockey supported Morgan and her mental health for many years. The physical activity and structure are good for her wellbeing. The hockey teams provide her with a strong social network and friends. The game was an outlet for Morgan from the ups and downs of life.

3. But then, in the fall of 2019, Morgan was banished from her club hockey team when she disclosed her mental health condition and related suicidal thoughts to Coach Larry Pedrie. The very next day, without talking to Morgan's parents (or doctors), the hockey club

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Team Illinois, with AHAI, barred Morgan from practicing or playing hockey. They prohibited Morgan from attending any Team Illinois events. They exiled Morgan from her teammates. The coach not only disclosed information about Morgan's mental health to the family of every other player on the team, but also directed the other players to have no contact with Morgan. Team Illinois even cut off Morgan's parents from all team communications.

4. Morgan was banished until she could produce a doctor's letter clearing her to participate "100%" in all team activities and functions. The requirement that Morgan be 100% better was unprecedented and indefensible. No other player has been held to this standard. This was naked discrimination against Morgan because of her disability.

5. This is the rare case of discrimination that is documented with little factual dispute. There is no dispute Team Illinois barred Morgan from hockey on November 14, 2019 directly and expressly *because* of the mental health information she disclosed on November 13, 2019. There is no dispute that Team Illinois with AHAI imposed an unlawful 100% participation requirement for her return—they put the demand in email repeatedly. There is no dispute that Morgan is a person with a disability protected by the IHRA. There should be no dispute that Defendants discriminated against Morgan in violation of the IHRA and that it should never again happen to Morgan or any other player.

6. With the assistance of legal counsel, Morgan was finally able to rejoin her team after a month of exile and complete the 2019-2020 hockey season. She has since become an advocate for mental health in hockey and beyond.

7. Morgan has exhausted the Illinois Department of Human Rights ("IDHR") process, and now sues Team Illinois for disability discrimination in violation of the IHRA, and AHAI for aiding and abetting that discrimination.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

8. Morgan sues to ensure that no other youth hockey player with a mental health condition must hide in the dark out of fear of discrimination or face discrimination like Morgan.

THE PARTIES

9. Morgan Urso is a high school sophomore and a resident of Cook County, Illinois.

10. Morgan is a person with a disability under the IHRA. 775 ILCS 5/1-103(I). She has mental health conditions including anxiety and depression, for which she has long received appropriate professional medical and mental health supports. These conditions are both a "mental characteristic" and a "mental, psychological, or developmental disability" within the definition of disability under the Act. *Id.*

11. At all relevant times, Morgan's medical providers have approved—and in fact encouraged—Morgan to participate in hockey.

12. Kelly Urso and Nick Urso are the parents of Morgan Urso. They are residents of Cook County, Illinois and sue on behalf of Morgan.

13. Defendant Team Illinois is an Illinois non-profit corporation that operates youth hockey teams as part of the AHAI and USA Hockey system. One of the teams operated by the Team Illinois organization is the Girls 14U team, coached by Larry Pedrie. Coach Pedrie is also the hockey director and primary executive in charge of all Team Illinois operations.

14. For its activities and services, Team Illinois leases and operates the Seven Bridges Ice Arena at 6690 IL-53, Woodridge, DuPage County, Illinois 60517, among other public facilities in Illinois.

15. Seven Bridges Ice Arena includes an ice rink with space for spectators, locker rooms, training facilities, concessions, offices for Team Illinois, and other related facilities.

16. Seven Bridges Ice Arena is open to the public.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

17. Seven Bridges Ice Arena is a place of public accommodation under the IHRA. 775 ILCS 5/5-101(A).

18. Team Illinois activities, such as hockey tryouts and hockey games at the Seven Bridges Ice Arena (and other facilities), are open to the public.

19. The activities and services offered by Team Illinois include club hockey teams, hockey practices, clinics, work outs, sessions to review tape, team lunches, team dinners, travel opportunities, coaching, and the opportunity to play in hockey games and tournaments. Team Illinois also offers events for players and their families, information about hockey, and access to AHAI and USA Hockey resources and opportunities.

20. Team Illinois activities and services are open to the public.

21. Team Illinois is a "person" as defined by the IHRA. 775 ILCS 5/1-103(L) ("'Person' includes one or more individuals, partnerships, associations or organizations, … corporations…").

22. Defendant Amateur Hockey Association of Illinois, Inc. ("AHAI") is an Illinois non-profit corporation that regulates and controls youth hockey leagues, teams, and activities throughout Illinois, including Team Illinois. AHIA is the Illinois affiliate of USA Hockey.

23. AHAI is governed by and operates through a Board of Directors.

24. Mr. Mike Mullaly is a member of the AHAI Board of Directors.

25. Mr. Mullaly is also the Central District director for USA Hockey.

26. AHAI is a "person" as defined by the IHRA. 775 ILCS 5/1-103(L) ("'Person' includes one or more individuals, partnerships, associations or organizations, … corporations…").

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

JURISDICTION AND VENUE

27. Morgan satisfied all requirements of the IHRA and timely files suit under 775 ILCS 5/7A-102(C)(4). Morgan timely filed charges of discrimination with IDHR against each Defendant on April 9, 2020. Morgan received notice that she had exhausted the IDHR investigation process on February 3, 2021 (as to AHAI) and February 18, 2021 (as to Team Illinois). Morgan files this lawsuit within the time provided by the Act.

28. Venue in DuPage County is proper because Defendants reside and/or operate in DuPage County and the discrimination occurred at least in part in DuPage County as many Team Illinois activities occur at the Seven Bridges Ice Arena in Woodridge, DuPage County, Illinois.

FACTS

29. For the 2019-2020 hockey season, Morgan signed up to play hockey with the Girls 14U team run by Team Illinois. The 2019-2020 hockey season began in August 2019.

30. In the fall of 2019 Morgan started high school. She struggled with her mental health and in September and October 2019 received increasing support from medical and mental health providers for anxiety and depression.

31. On November 13, 2019, Morgan and her mother Kelly Urso told Coach Pedrie about her mental health conditions and suicidal thoughts. Mrs. Urso shared that Morgan had the support of mental health professionals and expressed that hockey was an important and supportive aspect of Morgan’s life. After that conversation, Morgan participated in the evening hockey practice with her teammates like normal.

32. At the latest, by the conversation of November 13, 2019, Coach Pedrie and Team Illinois were informed that Morgan has a disability.

33. On November 14, 2019, Coach Pedrie spoke to AHAI Board Member Mike Mullaly by phone about Morgan's mental health and suicidal thoughts. Coach Pedrie and Mr. Mullaly agreed on that phone call to banish Morgan from Team Illinois until she was able to participate 100% in Team Illinois activities.

34. On November 14, 2019, unprompted and without receiving any additional information from Morgan, her parents, or her medical providers, Coach Pedrie called Mr. and Mrs. Urso. He informed them that Morgan was banned from all Team Illinois activities and events until Morgan was cleared by a doctor to return to 100% of Team Illinois activities.

35. Coach Pedrie stated that Morgan was banned from Team Illinois due to her suicidal thoughts from depression and anxiety, and that she could not return until Morgan recovered and was able to participate 100% in every Team Illinois activity.

36. Starting November 14, 2019, Morgan was banished from all Team Illinois events, practices, games, tournaments, communications, and activities.

37. Team Illinois also tried to impose social exile and isolation on Morgan. She was prohibited from any contact with Team Illinois players.

38. On November 14, 2019, Team Illinois by email directed the other players and their parents to have no contact with Morgan in person or by "phone, text, snapchat or any social media platform." Coach Pedrie told every family on the Team Illinois 14U team that Morgan had been removed "from any involvement and or communication with our team and her teammates," until she was back to "the positive, happy, smiling kid that we all know she is."

39. Starting November 14, 2019, Mr. and Mrs. Urso were cut off from all Team Illinois activities and removed from Team Illinois email and communications. This exclusion was utterly gratuitous and inexplicable. Team emails go only to parents, and not to Morgan or other players.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Team Illinois and AHAI cannot explain why they immediately stopped sending any communications about Team Illinois to the Urso family.

40. On November 16, 2019, Coach Pedrie confirmed by email that Morgan was banned from Team Illinois until she could "take part 100% in all team activities. This would include the following: 1) attend all team strength training sessions, 2) attend all team practices. 3) attend all games, 4) attend all other team functions including dinners, lunches, meetings, and video sessions."

41. On November 17, 2019, Coach Pedrie again confirmed by email that Morgan was banned from Team Illinois due to her disability and until "Morgan is able to return to our team in 100% capacity."

42. On November 18, 2019, Mr. and Mrs. Urso spoke with Mike Mullaly of AHAI by phone. Mr. Mullaly confirmed that he and Coach Larry had spoken on November 14 and decided to exclude Morgan from hockey. He again reaffirmed the 100% participation requirement as AHAI's position for when Morgan could return to hockey.

43. There was no medical basis for Team Illinois (or AHAI) to exile Morgan. At no point did Morgan's medical or mental health providers determine that it would be unsafe for her to participate in hockey or recommend that Morgan withdraw from hockey.

44. There was no basis in Team Illinois or AHAI rules, procedures, requirements or policies to ban Morgan. She was not disciplined. She was not suspended. She was not medically prohibited from playing hockey.

45. Team Illinois banned Morgan due to her disability or, in the alternative, because Defendants perceived her to have a disability.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

46. Morgan was at all relevant times capable, eligible, and medically cleared to play hockey.

47. Similarly situated individuals without a disability were not excluded by Team Illinois or AHAI. Other players without a disability frequently miss Team Illinois practices, games, video sessions, dinners, and other activities for a wide range of reasons. Team Illinois players miss activities for family and personal reasons, for travel, for church activities, for injuries, for school conflicts and other reasons.

48. There is no Team Illinois attendance requirement or policy.

49. There is no Team Illinois 100% participation requirement.

50. Only Morgan, because of her disability, was banished and held to the impossible 100% participation standard.

51. Team Illinois's actions segregated, isolated, and excluded Morgan from participating in Team Illinois programs, events, and activities at Seven Bridges Ice Arena and other places of public accommodation. Team Illinois denied her the full and equal enjoyment of the facilities and services of places of public accommodations offered through Team Illinois.

52. Team Illinois discriminated against and banished Morgan at a critical time in her life and hockey career. Morgan was in her first year with Team Illinois, with a new team and teammates. At the same time, she was in her first year of high school, at a new school, and then in an intensive mental health treatment program (while attending school online). In the fall of 2019, she was working to manage her anxiety and depression.

53. At that moment it was devastating to banish Morgan from hockey, from her passion, from the physical activity that had promoted her well-being, and from her teammates who provided her primary social connections.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

54. Morgan was banned for a month starting November 14, 2019. Morgan's parents could only secure her return to Team Illinois on December 11, 2019 with the assistance of legal counsel and threat of litigation.

55. To date, Team Illinois and AHAI continue claim that they have the right to discriminate against players based on disability.

56. To date, Team Illinois and AHAI deny that banishing Morgan was discrimination or violated the IHRA.

57. To date, Team Illinois and AHAI stand by the exile of Morgan.

58. Morgan continues to play youth hockey for another youth hockey team under the regulation and control of AHAI. Morgan looks forward to more seasons of youth hockey ahead of her, including seasons in which she may seek to play for Team Illinois.

STATEMENT OF CLAIMS

COUNT I: Violation of the IHRA against Team Illinois

Disability Discrimination

59. Plaintiff incorporates the preceding paragraphs 1 through 58.

60. The IHRA prohibits "any person" from "deny[ing] or refus[ing] to another the full and equal enjoyment of the facilities, goods, and services of any place of public accommodation" "on the basis of unlawful discrimination." 775 ILCS 5/5-102(A).

61. One basis of "unlawful discrimination" is a person's "disability." 775 ILCS 5/1-103(Q).

62. Morgan is a person with a disability protected by the IHRA.

63. Team Illinois is a person as defined by the IHRA.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

64. Team Illinois, Seven Bridges Ice Arena, and other facilities used and controlled by Team Illinois are places of public accommodation.

65. In November 2019, Team Illinois violated the IHRA when it denied Morgan the full and equal enjoyment of the Team Illinois facilities and services because of her disability when it banned her from participating (and indeed even from being present at) any Team Illinois facility, activity or service.

COUNT II: Violation of the IHRA against Team Illinois
Perceived Disability Discrimination

66. Plaintiff incorporates the preceding paragraphs 1 to 58.

67. The IHRA prohibits "any person" from "deny[ing] or refus[ing] to another the full and equal enjoyment of the facilities, goods, and services of any place of public accommodation" "on the basis of unlawful discrimination." 775 ILCS 5/5-102(A).

68. One basis of "unlawful discrimination" is a person's "disability." 775 ILCS 5/1-103(Q). The IHRA defines "disability" to include "the perception of [a disability] by the person complained against." 775 ILCS 5/1-103(I).

69. To the extent Morgan is found not to be a person with a disability, in the alternative, Morgan is a person perceived by Team Illinois to have a disability and accordingly protected by the IHRA.

70. Team Illinois is a person as defined by the IHRA.

71. Team Illinois, Seven Bridges Ice Arena, and other facilities used and controlled by Team Illinois are places of public accommodation.

72. In November 2019, Team Illinois violated the IHRA when it denied Morgan the full and equal enjoyment of the Team Illinois facilities and services because of her disability

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

when it banned her from participating (and indeed even from being present at) any Team Illinois facility, activity or service.

COUNT III: Violation of the IHRA against AHAI
Aiding and Abetting Discrimination

73. Plaintiff incorporates the preceding paragraphs.

74. Any "person" violates the IHRA when they "aid, abet, compel, or coerce a person to commit any violation of this Act." 775 ILCS 5/6-101(B). The IHRA also prohibits "for two or more persons to conspire to" "aid, abet, compel, or coerce a person to commit any violation of this Act." *Id.*

75. As described above, Team Illinois violated the Act when it discriminated against Morgan on the basis of disability (or perceived disability).

76. AHAI through its board member and agent Mike Mullaly aided, abetted and/or conspired with Team Illinois in November 2019 to violate the Act by discriminating against Morgan.

77. On November 14, 2019, AHAI through Mr. Mullaly aided and abetted discrimination, or conspired to aid and abet discrimination, by Team Illinois by developing, encouraging, endorsing, discussing and agreeing to banish Morgan from Team Illinois until she could return 100% to all Team Illinois activities.

78. Throughout the rest of November 2019, AHAI through Mr. Mullaly continued to aid, abet, and/or conspire with Team Illinois to violate the Act by endorsing and reaffirming the discriminatory ban and unlawful 100% participation requirement imposed by Team Illinois. AHAI defended and endorsed the ban and return requirement, supported Team Illinois in continuing the discrimination, and, even when confronted, did not stop the discrimination.

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

WHEREFORE Plaintiff Morgan Urso seeks this Court to enter Orders:

1) declaring that Defendants violated the Illinois Human Rights Act,

2) enjoining Defendants from discriminating on the basis of disability,

3) enjoining any policy, practice or requirement that a person must be able to participate in 100% of activities as a condition of participation,

4) awarding all available compensatory damages,

5) awarding Plaintiff fees and costs under the Act, and

6) granting such other and further relief as this Court may deem just and proper or which Plaintiff may be entitled to as a matter of law.

JURY DEMAND

Plaintiff Morgan Urso demands trial by jury on all issues as to which a jury trial is available.

Respectfully submitted,

/s/ Charles D. Wysong
Attorney for the Plaintiff

Charles D. Wysong
cwysong@hsplegal.com
HUGHES SOCOL PIERS RESNICK & DYM, LTD.
Three First National Plaza
70 West Madison Street
Suite 4000
Chicago, Illinois 60602
312-580-0100
Firm I.D 96

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

VERIFICATION

Kelly Urso and Nick Urso, under penalty of perjury as provided for by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, certifies that the statements of fact set forth in this Complaint are true and correct except as to those matters stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that she verily believes the same to be true.

Kelly Urso

Nick Urso

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

CERTIFICATE OF SERVICE

You are hereby notified that on June 21, 2023, I, Charles D. Wysong, an attorney, caused to electronically filed with the Clerk of the Illinois Supreme Court through File & Serve system, the **BRIEF OF PLAINTIFF-APPELLEE.** On June 21, 2023, a copy of the foregoing will also be electronically mailed to the following counsel:

Timothy D. Elliott
Heather L. Kramer
RATHJE WOODWARD LLC
300 E Roosevelt Road, Suite 300
Wheaton, IL 60187
(630) 668-8500
telliott@rathjewoodward.com
hkramer@rathjewoodward.com
Firm ID: 69400
Attorneys for Defendants/Appellees

James M. McGing
MILLER & MCGING LAW FIRM
6732 N. NW Highway
Chicago, Illinois 60631
(773) 467-8000
McGingLaw@gmail.com
Attorneys for Defendants/Appellees

Barry C. Taylor (ARDC # 6199045)
Rachel M. Weisberg (ARDC # 6297116)
Paul W. Mollica (ARDC No. 6194415)
EQUIP FOR EQUALITY
20 N. Michigan Ave., Ste. 300
Chicago, Illinois 60602
(312) 341-0022
BarryT@equipforequality.org
RachelW@equipforequality.org
paulm@equipforequality.org
Attorney for Amicus Curiae Equip for Equality

Thomas Brejcha
Joan M. Mannix
THOMAS MORE SOCIETY
309 West Washington Street, Suite 1250
Chicago, IL 60606
(312) 782-1680
tbrejcha@thomasmoresociety.org
jmannix@thomasmoresociety.org
Attorneys for Amicus Curiae, Thomas More Society

Ryan W. Blackney (ARDC #6281642)
Matthew T. Connelly (ARDC #6320465)
FREEBORN & PETERS LLP
311 S. Wacker Drive, Suite 3000
Chicago, Illinois 60606
(312) 360-6000
rblackney@freeborn.com
mconnelly@freeborn.com
Attorneys for Amicus Curiae Three Fires Council, Inc., Boy Scouts of America

Charles G. Wentworth (ARDC #6284238)
THE LAW OFFICE OF LOFGREN & WENTWORTH, P.C.
536 Crescent Blvd, Suite 2000
Glen Ellyn, Illinois 60137
(630)469-7100
cwentworth@elrlaw.com
Attorneys for Amicus Curiae Three Fires Council, Inc., Boy Scouts of America

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM

Lindsey M. Hogan, ARDC No. 6297971
FAEGRE DRINKER BIDDLE
&REATH LLP
320 S. Canal Street, Suite 3300
Chicago, Illinois 60606
(312) 212-6589
Lindsey.Hogan@FaegreDrinker.com
Attorneys for Amicus Curiae USA Hockey, Inc.

James D. Leonard (Not Admitted in Illinois)
FAEGRE DRINKER BIDDLE
&REATH LLP
1144 15th Street, Suite 3400
Denver, Colorado 80202
(303) 607-3644
James.Leonard@FaegreDrinker.com
Attorneys for Amicus Curiae USA Hockey, Inc.

Jeffrey S. Beck (Not Admitted in Illinois)
FAEGRE DRINKER BIDDLE
&REATH LLP
300 N. Meridian Street, Suite 2500
Indianapolis, Indiana 46204
(317) 237-8329
jeffrey.Beck@FaegreDrinker.com
Attorneys for Amicus Curiae USA Hockey, Inc.

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 set forth in this instrument are true and correct.

Dated: June 21, 2023

/s/ Charles Wysong
Charles Wysong

SUBMITTED - 23237646 - Raul Ortiz - 6/21/2023 3:56 PM