No. 128935

IN THE
SUPREME COURT OF ILLINOIS

M.U., a minor, by and through her parents KELLY U. and NICK U.,	Appeal from the Illinois Appellate Court, Second Judicial District, No. 2-21-0568
Plaintiff-Appellee,	
v.	There Heard on Appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, No. 2021-CH-0141
TEAM ILLINOIS HOCKEY CLUB, INC. and AMATEUR HOCKEY ASSOCIATION OF ILLINOIS, INC.,	The Honorable BONNIE M. WHEATON,
Defendants-Appellants.	Judge Presiding.

BRIEF OF *AMICUS CURIAE* ILLINOIS ATTORNEY GENERAL IN SUPPORT OF PLAINTIFF-APPELLEE

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E-FILED
7/3/2023 8:56 AM
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POINTS AND AUTHORITIES

INTEREST OF THE AMICUS CURIAE

Under the Illinois Human Rights Act ("Act"), it is unlawful for any person to deny to another the full and equal enjoyment of the facilities, goods, and services of any place of public accommodation on the basis of discrimination. 775 ILCS 5/5-102(A). In this case, Plaintiff-Appellee M.U. alleged that Defendant-Appellant Team Illinois Hockey Club ("Team Illinois") violated the Act by banning her from participating in Team Illinois practices, workouts, and games held at the Seven Bridges Ice Arena because of her disability. A3 ¶¶ 7-8.[1] She also alleged that Defendant-Appellant Amateur Hockey Association of Illinois ("Association"), which regulates Team Illinois, aided and abetted Team Illinois in its discrimination. A4 ¶ 11. Defendants moved to dismiss, contending that M.U. failed to state a claim because she was not denied access to a "place of public accommodation." A4 ¶ 12. The circuit court agreed with defendants and dismissed M.U.'s complaint, but the appellate court reversed. A1 ¶ 1.

The Illinois Attorney General has an interest in the proper resolution of this appeal, which addresses the scope of the term "place of public accommodation" under the Act. The Attorney General is responsible for enforcing the civil rights laws of the State, including the Act. 15 ILCS 210/1. The Act authorizes the Attorney General to sue in the name of the People of

[1] Defendants-Appellants' brief is cited as "AT Br. __," and its appendix as "A__." Citations to the common law record are cited as "C. __."

the State of Illinois to enforce the Act when he has reasonable cause to believe that any person is engaged in a pattern and practice of unlawful discrimination, 775 ILCS 5/10-104(A)(1), and to intervene in individual cases of public importance, *id.* 5/10-102(D). The Act also requires the Attorney General to file cases on behalf of the Illinois Department of Human Rights in circuit court when a party to a real estate matter elects to proceed in court instead of before the Illinois Human Rights Commission. *Id.* 5/10-103(A).

Furthermore, the Attorney General has subject matter expertise and institutional knowledge in disability discrimination law. The Attorney General enforces the Act as it relates to disability discrimination through a bureau specifically dedicated to disability rights enforcement. The Disability Rights Bureau investigates patterns and practices of disability discrimination, educates the public about rights and obligations under disability rights laws, and litigates disability discrimination cases.

In sum, the Attorney General has a significant interest in the proper interpretation of the Act and can assist this Court by presenting ideas and insights not presented by the parties to this case who do not have the same institutional knowledge and experience.

ARGUMENT

The Attorney General agrees with M.U. that this case involves a straightforward application of the disability discrimination protections under the Act. Specifically, M.U. has stated a claim under the "place of public accommodation" provision by alleging that defendants denied M.U. the full and equal enjoyment of the facilities and services of the Seven Bridges Ice Arena, both as a member of the hockey team and as a spectator. A3 ¶¶ 7-8. And to the extent that there were any ambiguity about the scope of the "place of public accommodation" protections, that provision should be construed liberally in accordance with the intent of the General Assembly for the Act to be a broad, remedial statute designed to ensure that all individuals in Illinois can access public accommodations without discrimination.

Defendants' attempts to read limitations into the Act are not supported by the statute's text or purpose. Their primary argument is that places of public accommodation are limited to physical spaces, and that M.U. was excluded from a team, not a physical space. But nothing in the Act limits a place of public accommodation to a *physical* place, and imposing this non-textual limitation could significantly limit accessibility in Illinois. Defendants also argue that the prohibition against discrimination in places of public accommodation exempts lessees of public facilities, membership organizations, and places with pre-screening requirements. But no such

exemptions appear in the statute's text and imposing them would contravene the General Assembly's intent.

I. M.U. has stated a claim for discrimination in public accommodations under the Act.

In 2021, M.U. filed a complaint in circuit court alleging that Team Illinois engaged in unlawful disability discrimination, and that the Association aided and abetted that discrimination. A4 ¶ 11. According to the complaint, M.U. joined a girls hockey team operated by Team Illinois for the 2019-2020 season. A2 ¶ 4. The team practiced and competed at Seven Bridges Ice Arena, which is open to the public. A2 ¶ 5. When M.U. developed depression and anxiety in late 2019, A2 ¶ 3, she and her parents decided to disclose her disabilities to Team Illinois, A3 ¶ 6. In a conversation with the coach, M.U. and her mother emphasized that M.U.'s healthcare providers agreed it would benefit M.U. to continue playing hockey. *Id.* Shortly after this conversation, however, the coach spoke with an Association board member, and they "agreed to banish [M.U.] from Team Illinois until she was able to participate 100% in Team Illinois Activities." A3 ¶ 7 (cleaned up). Team Illinois then took the additional step of prohibiting M.U. from communicating with her teammates and attending games (including those at Seven Bridges Ice Arena) and other team functions. A3 ¶ 8.

The Attorney General agrees with M.U. that with these allegations she has stated a claim against Team Illinois for disability discrimination in public accommodations and against the Association for aiding and abetting in

that discrimination. As to the former, it is a violation under the Act for any person to deny or refuse 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. Team Illinois does not dispute that it falls within the definition of "person" under the Act. *Id.* 5/1-103(L) (definition includes "organizations" and "corporations"). At issue is thus whether Team Illinois has denied M.U. access to a "place of public accommodation" on the basis of discrimination. And M.U.'s allegations satisfied that standard.

To start, a "place of public accommodation" is defined to include (but not be limited to) a list of 13 categories of public accommodations, with both specific and general examples. *Id.* 5/5-101(A). As the Act makes clear, the list is illustrative, not exhaustive. *Id.* Seven Bridges Ice Arena falls within the final category, as a "gymnasium, health spa, bowling alley, golf course, *or other place of exercise or recreation*." *Id.* 5/5-101(A)(13) (emphasis added).

Furthermore, the complaint sufficiently alleged that Team Illinois denied M.U. the full and equal enjoyment of the facilities and services of Seven Bridges Ice Arena based on her disability. Seven Bridges offers many facilities and services to the public, including ice skating rinks, concessions, and locker rooms. C.13 ¶¶ 15-16. In addition to free skate programs, Seven Bridges also offers the opportunity to try out for and compete on the Team Illinois hockey teams. C.13-14 ¶¶ 15, 18-19. M.U., as a member of the Team

Illinois hockey team, was entitled to participate in practices, workouts, games, and tournaments held at Seven Bridges. C.14-15 ¶¶ 19, 29. After M.U. disclosed her disability to Team Illinois, Team Illinois banned her from all Team Illinois activities and events at Seven Bridges, including attending games, which are open to any member of the public. C.16 ¶¶ 33-36.

For their part, defendants argue that M.U. was still permitted to participate in some of the activities at Seven Bridges, like free skate and dining in the restaurant. AT. Br. 15-16. But the Act requires that M.U. receive the "full and equal enjoyment" of the services offered at Seven Bridges, not partial enjoyment. 775 ILCS 5/5-102(A). Because Team Illinois activities (including practices, games, and workouts) took place at Seven Bridges, A2 ¶ 5, Team Illinois denied M.U. the full and equal enjoyment of the facilities and services of Seven Bridges. M.U. has therefore stated a claim against Team Illinois under the Act for disability discrimination.

M.U. has also stated a claim against the Association for aiding and abetting discrimination. 775 ILCS 5/6-101(B). To state a claim for aiding and abetting under the Act, a plaintiff must allege: (1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be regularly aware of its role as part of the overall activity at the time it provides assistance; and (3) the defendant must knowingly and substantially assist the principal violation. *Grimes v. Saikley*, 388 Ill. App. 3d 802, 819 (4th Dist. 2009). As discussed, M.U. alleged that Team Illinois

discriminated against her and caused an injury. M.U. also alleged that the Association, through its board member, formed an agreement with the Team Illinois coach to exclude M.U. from playing hockey until she could participate in 100% of the team's activities. C.16-17 ¶¶ 33, 42. In other words, the Association knew of its role as part of Team Illinois' discriminatory activity and knowingly and substantially assisted Team Illinois' discrimination. As such, M.U. stated a claim against the Association for aiding or abetting discrimination under the Act.

II. The Act is a comprehensive, remedial statute that provides expansive protections against discrimination in places of public accommodations.

To the extent there is any doubt as to whether defendants denied M.U. access to a "place of public accommodation" (which, again, there is not), the legislative history confirms that as a "remedial" statute, the Act "should be construed liberally to achieve its purpose." *Sangamon County Sheriff's Dep't v. Ill. Human Rights Comm'n*, 233 Ill. 2d 125, 140 (2009). Indeed, as now explained, the General Assembly has made clear—through both its initial enactment in 1979 and in its 2007 amendments to the definition of "place of public accommodation"—that the Act should be interpreted consistent with its purpose to "secure for all individuals within Illinois the freedom from discrimination." 775 ILCS 5/1-102(A).

A. The General Assembly intended the Act to be a comprehensive and expansive statutory scheme.

In 1979, the General Assembly enacted the Act "to afford greater protections" to people in Illinois and "to alleviate [the] gaps in protection which existed under the former" statutory scheme. *Baker v. Miller*, 159 Ill. 2d 249, 266 (1994). Prior to the Act's passage, eleven different statutes provided a confusing and limited patchwork of civil rights protections for individuals in Illinois.[2] For example, one statute prohibited employment discrimination, while a separate law required equal opportunities for people with disabilities.[3] And state agencies were often limited in their ability to enforce these rights: at least one commission was limited to prosecuting employment matters, while others had no enforcement authority at all.[4] As a result, it was not clear to victims of discrimination which state agency (if any) could assist with their claim, or whether they were required to go through the time and expense of hiring a private attorney.[5] In short, under the prior

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[2] Ill. Dep't of Human Rights, *Agency Overview and History*, https://dhr.illinois.gov/about-us/directors-office/agency-overview-and-history.html. This court may take judicial notice of information on government websites. *E.g.*, *Bd. of Educ. of Richland Sch. Dist. No. 88A v. City of Crest Hill*, 2021 IL 126444, ¶ 5.

[3] *Agency Overview and History*, *supra* note 2; *see also* Fair Employment Practices Act, Ill. Rev. Stat. 1979, ch. 48 par. 851 *et seq.* (repealed); Equal Opportunities for the Handicapped Act, Ill. Rev. Stat. 1979, ch. 38 par. 65-21 *et seq.* (repealed).

[4] *Agency Overview and History*, *supra* note 2.

[5] *Id.*

system, it was difficult, if not impossible, for would-be plaintiffs to vindicate their rights.[6]

The Act addressed these problems in several ways. To start, the Act provides a comprehensive and unified statutory scheme that protects against discrimination (as well as retaliation and aiding and abetting discrimination) based on race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service. 775 ILCS 5/1-102(A); *id.* 5/6-101. The Act prohibits discrimination in connection with employment, *id.* 5/2-101 *et seq.*, real estate transactions, *id.* 5/3-101 *et seq.*, access to financial credit, *id.* 5/4-101 *et seq.*, and public accommodations, *id.* 5/5-101 *et seq.*

In creating this comprehensive scheme, the General Assembly also expanded the substantive civil rights protections available to Illinois residents. *E.g.*, *Blount v. Stroud*, 232 Ill. 2d 302, 309 (2009); 81st Ill. Gen. Assem., House Proceedings, June 30, 1979, at 96 (statements of Rep. Kane) (new law was a "major step forward" for "individuals in this State who are discriminated against"). Relevant here, the Act expanded protections for victims of disability discrimination. The prior disability discrimination statute did not define "disability," leading to a narrow, court-imposed definition. *Kenall Mfg. Co. v. Human Rights Comm'n*, 152 Ill. App. 3d 695,

[6] *Id.*

702 (1st Dist. 1987). In contrast, the Act not only defined disability broadly, but also extended protections to people with a history of a disability and people who are perceived as disabled. *Id.* (Act's definition of disability was "much broader than the restrictive definition previously fashioned by the courts").

Another way in which the Act "strengthen[ed]" protections was by creating enforcement mechanisms for all claims of discrimination. 81st Ill. Gen. Assem., House Proceedings, June 30, 1979, at 100 (statements of Rep. Reilly); *see also Baker*, 159 Ill. 2d at 266 (Act "provides a comprehensive and systematic mechanism for the investigation and disposition of discrimination claims."). Unlike the prior regime, there are now only two state agencies responsible for administering and adjudicating claims of discrimination: the Illinois Department of Human Rights receives, investigates, and conciliates charges of discrimination, *see* 775 ILCS 5/7A, 7B, and the Illinois Human Rights Commission hears and adjudicates cases brought before it by the Department, *see id.* 5/8A, 8B. Accordingly, under the current system, every victim of discrimination has the ability to file a charge with the Department and have their complaint heard by the Commission.

In short, the legislative history shows that the General Assembly intentionally crafted the Act to be an expansive and comprehensive statute that provided protections and enforcement mechanisms beyond those that existed under the prior statutory scheme.

B. The 2007 amendments to the Act further broadened the scope of protections against discrimination in places of public accommodations.

Subsequent legislative developments confirm the breadth of the Act and, in particular, the provision at issue here. Notwithstanding the comprehensive nature of the Act, courts narrowly interpreted the scope of the "place of public accommodation" provision in the years that followed. In *Gilbert v. Department of Human Rights*, 343 Ill. App. 3d 904 (1st Dist. 2003), for example, the appellate court held that a scuba diving class was not a place of public accommodation because of the pre-screening requirements that all prospective participants with certain medical conditions were required to obtain physician approval before participating. *Id.* at 909-10. In another case, the appellate court held that a dentist's office was not a place of public accommodation because it was not sufficiently "commercial" in nature. *Baksh v. Human Rights Comm'n*, 304 Ill. App. 3d 995, 1006 (1st Dist. 1999); *see also Bd. of Trs. of S. Ill. Univ. v. Dep't of Human Rights*, 159 Ill. 2d 206, 212 (1994) (academic program at a public institution of higher education was not a place of public accommodation because it was not open to the public); *Cut 'N Dried Salon v. Dep't of Human Rights.*, 306 Ill. App. 3d 142, 147 (1st Dist. 1999) (insurance company was not a place of public accommodation because it did not provide services to all members of the public without pre-screening).

Defendants cite these decisions throughout their brief as support for their position, *e.g.*, AT Br. 13, 25, 30-31, but in 2007, the General Assembly legislatively overruled these decisions by unanimously amending the Act to expand the definition of "place of public accommodation" beyond the narrow construction that courts had afforded it. *See* 95th Ill. Gen. Assem., Senate Proceedings, Oct. 2, 2007, at 19 (statements of Sen. Cullerton) (amendments intended to "expand the scope of [the Act's] coverage" because "[c]ourt decisions have limited the application of [the] provisions over the years resulting in a very weak statute"); 95th Ill. Gen. Assem., Senate Proceedings, May 10, 2007, at 38 (unanimous passage in the Senate); 95th Ill. Gen. Assem., House Proceedings, May 31, 2007, at 286 (unanimous passage in the House). As a result of these amendments, the Act defines "place of public accommodation" through a non-exhaustive list of examples that range from places of lodging and service establishments, to schools, public transportation, and places of exercise and recreation. 775 ILCS 5/5-101(A).

In addition to broadly defining "place of public accommodation," the General Assembly specifically included language overriding each limitation that the courts had imposed. For instance, in response to *Gilbert*, the 2007 amendments expressly included many places with pre-screening requirements, such as postgraduate schools, nurseries, daycares, and insurance offices. 775 ILCS 5/1-101(A)(6), (11). The General Assembly likewise included health care providers in response to *Baksh*, *id.* 5/1-

101(A)(6); insurance offices in response to *Cut 'N Dried Salon*, *id.* 5/1-101(A)(6); and undergraduate and postgraduate schools in response to *Board of Trustees of Southern Illinois University*, *id.* 5/1-101(A)(11).

In addition to legislatively overruling judicial decisions that had given a narrow construction to "place of public accommodation" in the Act, the General Assembly adopted a definition of that term that exceeded the protections provided by the analogous provision in the federal Americans with Disabilities Act ("ADA"). The legislative history of the Act's 2007 amendments shows that that while the General Assembly modeled the 2007 definition of "place of public accommodation" on the definition in the ADA, it also purposefully extended the Act's definition beyond the ADA definition. 95th Ill. Gen. Assem., Senate Proceedings, October 2, 2007, at 19 (statements of Sen. Cullerton) (amendments "bring [the Act] in line with the federal government" and also "expand the scope of coverage of the provisions of the Act").

For instance, the ADA prefaces its list of examples by stating that "the following private entities *are*" places of public accommodation, 42 U.S.C. § 12181(7) (emphasis added), whereas the Act states that a place of public accommodation "includes, *but is not limited to*" the list of examples. 775 ILCS 5/5-101(A) (emphasis added). Thus, the ADA covers only the listed entities, while the Act explicitly does not limit the definition to the list. *See, e.g.*, *People v. Perry*, 224 Ill. 2d 312, 330 (2007) ("The legislature has on many

occasions used the phrases 'including but not limited to' or 'includes but is not limited to' to indicate that the list that follows is intended to be illustrative rather than exhaustive."). Similarly, the ADA only covers private entities, while the Act covers both private and public entities. *See* 42 U.S.C. § 12181(7); 775 ILCS 5/5-101(A).

Finally, the General Assembly rejected an attempt by the then-governor to narrow the 2007 amendments. After the unanimous passage of the amendments, the governor issued an amendatory veto encouraging the General Assembly to narrow the definition by replacing "includes, but is not limited to," with "means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories."[7] The General Assembly unanimously overrode the amendatory veto, citing concerns that it would make the statute "weaker, by limiting it to privately operated facilities affecting commerce." 95th Ill. Gen. Assem., Senate Proceedings, October 2, 2007, at 19 (statements of Senator Cullerton); *see also* 95th Ill. Gen. Assem., Senate Proceedings, October 2, 2007, at 21 (unanimous override by Senate); 95th Ill. Gen. Assem., House Proceedings, October 10, 2007, at 5 (unanimous override by House).

In light of the foregoing, this Court should reject defendants' assertion that the Act—and, in particular, the definition of "place of public

[7] Letter from Rod Blagojevich, Governor, to the Members of the Illinois Senate, 95th General Assembly, (Aug. 28, 2007), https://www.ilga.gov/legislation/95/SB/PDF/09500SB0593gms.pdf.

accommodation"—should be read narrowly. As the Act's initial passage in 1979 and the subsequent 2007 amendments show, the General Assembly intended for the protections to be comprehensive and expansive.

III. Defendants' proposed limitations to the Act find no support in the text or legislative history.

Defendants also propose several limitations to the Act, but none is supported by its text and each is contrary to its broad remedial purpose.

A. The Act's prohibitions on discrimination are not confined to physical spaces.

Defendants first contend that the Act does not apply because Team Illinois is not a physical place. AT Br. 14-16, 18-20. This argument is incorrect for at least two reasons. At the threshold, the relevant place of public accommodation is Seven Bridges Ice Arena, not Team Illinois. *Supra* pp. 5-6. Seven Bridges qualifies as a place of public accommodation because it is a "gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation." 775 ILCS 5/5-101(A)(13). When Team Illinois excluded M.U. from participating in and observing the practices, workouts, and games taking place at Seven Bridges, it denied her the full and equal enjoyment of the facilities, goods, and services of a place of public accommodation. *Id.* 5/5-102(A).

But setting aside the question of the relevant place of public accommodation, the Act does not limit places of public accommodation to physical spaces, as demonstrated by both the text of the Act and federal case

law interpreting a similar provision in the ADA. Beginning with the text, the Act illustrates "place of public accommodation" with a list of 13 categories of public accommodations. 775 ILCS 5/5-101(A). The list itself includes examples of non-physical spaces. For example, the list states that a "travel service," which may include a business conducted over the phone or the internet, is a place of public accommodation. *Id.* 5/5-101(A)(6). Likewise, a "place of education" may include an online education program, and a "clothing store" may include an online retail platform. *Id.* 5/5-101(A)(5), (11).

Furthermore, as explained, the list is illustrative, not exhaustive; therefore the Act encompasses other types of places of public accommodation not listed in the text. *See* 775 ILCS 5/5-101(A) ("'Places of public accommodation' *includes but is not limited to* [13 categories of accommodations]") (emphasis added); *supra* pp. 13-14. For example, the category of "motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment," could also include a video streaming service, even though such services are not expressly identified in the Act. 775 ILCS 5/5-101(A)(3); *see, e.g.*, *Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 200-02 (D. Mass. 2012) (holding that Netflix may qualify as a place of exhibition or entertainment under the ADA).

Interpreting "place of public accommodation" to include non-physical spaces also is consistent with the purpose of the Act and its legislative history. As explained, the Act's list of examples is not intended to be

restrictive—the General Assembly unanimously overrode the then-governor's amendatory veto seeking to limit the definition to the examples in the list. *See supra* Section II.B. And as a remedial statute, it should be "construed liberally to achieve its purpose." *Sangamon County Sheriff's Dep't v. Ill. Human Rights Comm'n*, 233 Ill. 2d 125, 140 (2009). In short, limiting public accommodations to physical spaces has no basis in the text or underlying purpose of the Act.

Finally, federal courts have interpreted the ADA's definition of "place of public accommodation"—which, as explained, is narrower than the Act's definition, *supra* pp. 13-14—to include non-physical spaces, *see Zaderaka v. Ill. Human Rights Comm'n*, 131 Ill. 2d 172, 178 (1989) (Illinois courts may consider federal interpretations of federal antidiscrimination laws). For instance, the First Circuit held that a place of public accommodation under the ADA is "not limited to actual physical structures" in a case involving purported discrimination in a healthcare policy that placed a cap on health benefits for individuals with AIDS. *Carparts Distrib. Ctr. v. Auto. Wholesaler's Ass'n*, 37 F.3d 12, 19 (1st Cir. 1994). In reaching this determination, the First Circuit noted that the ADA's inclusion of "travel service" in its list of places of public accommodation shows that there is no physical space requirement. *Id.* As the court explained: "Many travel services conduct business by telephone or correspondence without requiring their customers to enter an office in order to obtain their services." *Id.* The

court also recognized that there are many other service establishments that conduct business by telephone or mail, and "[i]t would be irrational to conclude that persons who enter an office to purchase services are protected by the ADA, but persons who purchase the same services over the telephone or by mail are not." *Id.*; *see also Pallozzi v. Allstate Life Ins. Co.*, 198 F.3d 28, 32 (2d Cir. 1999) (ADA "was meant to guarantee [people with disabilities] more than mere physical access"); *Access Living of Metro. Chi. v. Uber Techs., Inc.*, 351 F. Supp. 3d 1141, 1156 (N.D. Ill. 2018) (holding that plaintiffs plausibly alleged that Uber operates a place of public accommodation).

The Seventh Circuit favorably cited *Carparts* when it noted that under the ADA, "a store, hotel, restaurant, dentist's office, travel agency, theater, Web site, or other facility *(whether in physical space or in electronic space* . . .) that is open to the public cannot exclude disabled persons." *Doe v. Mut. Ins. Co. of Omaha*, 179 F.3d 557, 559 (7th Cir. 1999) (emphasis added). The Seventh Circuit subsequently reiterated that there is no limitation based on physical space in *Morgan v. Joint Administration Board*, 268 F.3d 456, 459 (7th Cir. 2001). As the court explained, "[a]n insurance company can no more refuse to sell a policy to a disabled person over the Internet than a furniture store can refuse to sell furniture to a disabled person who enters the store." *Id.* That is so because "[t]he site of the sale is irrelevant to Congress's goal of granting [people with disabilities] equal access to sellers of goods and

services. What matters is that the good or service be offered to the public." *Id.*

These principles apply equally to the definition of "place of public accommodation" in the Act, which is broader than the ADA and was amended to "expand the scope" of protections for people with disabilities. 95th Ill. Gen. Assem., Senate Proceedings, Oct. 2, 2007, at 19 (statements of Sen. Cullerton); *see supra* Section II.B. Furthermore, if defendants' interpretation were accepted, it would be detrimental to the everyday lives of people with disabilities. If non-physical spaces are not places of public accommodation, then a retail company could avoid liability under the Act by eliminating physical stores and shifting sales entirely online. And in fact, today many companies operate solely online to decrease costs and respond to customers' preference for online shopping.[8] If the Act does not cover online businesses, companies will be disincentivized to pursue the adaptive technology that allows people with disabilities access to an increasingly online world. In other words, defendants' argument that places of public accommodation under the Act are limited to physical spaces would limit access to services for people with disabilities, conflicting with the fundamental purpose of the Act.

[8] *See, e.g.*, Mayumi Brewster, *Annual Retail Trade Survey Shows Impact of Online Shopping on Retail Sails During COVID-19 Pandemic*, Census.gov (Apr. 27, 2022), https://www.census.gov/library/stories/2022/04/ecommerce-sales-surged-during-pandemic.html.

B. The Act does not exempt lessees from liability.

Defendants next argue that the Act does not apply to those, like Team Illinois, that lease or use (but do not own) the public accommodation. *See* AT Br. 9 n.2, 20-24; *see also* Amicus Br. for Three Fires Council 7-14; Amicus Br. for USA Hockey 8-9. But this is incorrect because the text of the Act does not exempt lessees from compliance, and in fact broadly extends liability to any person who denies access to a place of public accommodation based on a disability.

First, many places listed in the definition of "place of public accommodation" can be owned or leased, such as restaurants, theaters, and sales establishments. 775 ILCS 5/5-101(A). The definition also includes public places that can be leased or rented out by private groups, including libraries, parks, or gymnasiums. *Id.* Next, the liability section of the Act does not exempt lessees from liability. Section 5-102(A) imposes liability on any "person" who denies to another the full and equal enjoyment of the facilities, goods, and services of a public accommodation. *Id.* 5/5-102(A). And a person is broadly defined to include "one or more individuals," without any qualification that the person own or have a sufficient amount of control over the place of public accommodation. *Id.* 5/1-103(L). Under the plain text of these provisions, then, a "person" can be an owner or a lessee—the person's relationship to the public accommodation is irrelevant.

The use of this broad language, moreover, corresponds to the Act's goal of securing freedom from discrimination: if the Act only applied to people who own places of public accommodation, then owners could avoid liability by leasing their spaces. In turn, lessees of places of public accommodation could discriminate without consequence. Such an interpretation would severely limit the scope of the Act, defeating its broad purpose to root out discrimination in all its forms.

Additionally, the surrounding provisions of the Act suggest that the word "person" includes lessees. *See, e.g.*, *Iwan Ries & Co. v. City of Chicago*, 2019 IL 124469, ¶ 19 ("This court reviews the statute as a whole, reviewing words and phrases in the context of the entire statute and not in isolation."). Section 5-102(B) makes it a civil rights violation to discriminate using written communication with respect to a place of public accommodation. 775 ILCS 5/5-102(B). Section 5-102(B) only applies to "operator[s]" of a place of public accommodation, *id.* 5/5-102(B), defined as any "*owner, lessee,* proprietor, manager, superintendent, agent, or occupant of a place of public accommodation or an employee of any such person," *id.* 5/5-101(B) (emphasis added). Although the definition of "operator" is narrower than the definition of "person," *id.* 5/1-103(L), "operator" specifically includes both owners and lessees. Because the narrower definition of "operator" includes owners and lessees, the broader definition of "person" necessarily includes owners and lessees as well.

Defendants assert, however, that because Section 5-102(A) of the Act does not specifically mention "operators" and "lessees," the Act does not apply to those categories of individuals. AT Br. 20-21. As support for this argument, defendants note that the ADA prohibits discrimination "by any person who *owns, leases (or leases to), or operates* a place of public accommodation." 42 U.S.C. § 12182(a) (emphasis added). But as explained, *see supra* Section II.B, the Act is at least as broad as the ADA. And if the Act is at least as broad as the ADA, and the ADA explicitly covers both owners and lessees, then the Act's prohibition against discrimination by any "person" necessarily includes discrimination by both owners and lessees.

All told, it is irrelevant whether Team Illinois owns, operates, or leases space at Seven Bridges Ice Arena because the Act does not require a particular relationship between a person and a place of public accommodation. What matters is the fact that Seven Bridges offers facilities, goods, and services to members of the public, and that defendants denied the full and equal enjoyment of those services to M.U.

C. Membership organizations may be liable for discrimination under the Act.

Defendants further argue that M.U. cannot state a claim because the Act does not cover membership organizations like Team Illinois. AT Br. 17, 23-24; *see also* Amicus Br. for Thomas More Society 5-12. But as noted, *supra* pp. 5-6, M.U. has identified Seven Bridges Ice Arena as a "place of public accommodation"; accordingly, there is no need to determine whether Team

Illinois would also satisfy the definition. In any event, the text of the Act makes it clear that membership organizations may face liability for discrimination. Indeed, the Act explicitly includes "organizations" in the definition of "person." 775 ILCS 5/1-103(L). And, as noted, *see supra* pp. 20-22, any "person" may be held liable for denying full and equal enjoyment of a place of public accommodation. *Id.* 5/5-102(A).

Also relevant is the fact that the General Assembly created an exemption from liability for "private clubs."[9] 775 ILCS 5/5-103(A) ("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."). If membership organizations were not subject to the Act, then there would be no need for an exception for private clubs.

Notwithstanding the foregoing, defendants suggest that membership organizations cannot be covered by the Act because that would subject them to government scrutiny of their process for selecting members and other internal decision making. AT Br. 17, 23-24. Defendants are incorrect. Even though membership organizations may be liable as "persons" under the Act,

[9] Whether Team Illinois is a "private club" is a distinct issue not covered by this amicus brief. To the extent that the Court finds it necessary to consider the issue, the Attorney General agrees with the position taken by Plaintiff-Appellee.

there are other constraints on government action, such as the First Amendment right to expressive association, that apply to membership organizations. For example, "[t]he forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints." *Boy Scouts of America v. Dale*, 530 U.S. 640, 648 (2000). Under this rule, a religious group could not be forced to accept a nonbeliever, and a political party could not be forced to accept a member with opposing views, if such individuals would significantly interfere with the groups' ability to express their views. *Id.* Because the Act cannot be applied in a way that violates the Constitution, defendants' concerns are unfounded. U.S. Const. art. VI, cl. 2.

D. An organization's selectivity does not exempt the organization from the Act.

Finally, places of public accommodation that are selective or use pre-screening processes are not exempt from the Act. At various points throughout their brief, defendants argue that because Team Illinois is a competitive team with try-outs, its activities are not open to the general public and therefore it is not covered by the Act. AT Br. 24-25, 30-31. Defendants' argument is inconsistent with the text of the Act, its legislative history, and the United States Supreme Court's interpretation of the "place of public accommodation" provision in the ADA—which, again, is less protective

than the Act's analogous provision—in *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001).

To begin, the Act's list of places of public accommodation includes many places with pre-screening requirements: a bar may not allow patrons under the age of 21, 775 ILCS 5/5-101(A)(2); a nursery or day care is only open to children under a certain age and their parents or caregivers, *id.* 5/5-101(A)(11); undergraduate, post-graduate, and even some secondary schools have academic and personal qualifications that candidates must meet to be accepted for admission, *id.*; a senior citizen center is open only to people over a certain age, *id.* 5/5-101(A)(12); and a homeless center only offers its services to people who do not have stable housing, *id.* And even though these accommodations have all kinds of qualifications for potential clients and customers, they are still considered places of public accommodation—as long as those clients and customers meet the requisite qualifications.

The 2007 amendments to the Act confirm that accommodations with pre-screening requirements are covered. As discussed, *see supra* Section II.B, the General Assembly amended the definition of place of public accommodation in response to decisions that limited the scope of the prior definition, including to places that pre-screened individuals. *E.g.*, *Gilbert*, 343 Ill. App. 3d at 910 (diving class not place of public accommodation due to medical pre-screening requirements); *Cut 'N Dried Salon*, 306 Ill. App. 3d at

147 (insurance company not place of public accommodation because it did not provide services to every member of the public).

Finally, the Supreme Court's decision in *Martin* further shows that the existence of pre-screening requirements does not preclude coverage under the Act's "place of public accommodation" provision. In *Martin*, the Court considered whether the corresponding ADA provision applied to golfers competing in a tournament at a golf course that, like the Seven Bridges Ice Arena, was a place of public accommodation. 532 U.S. at 681. The Court held that even though the golfers could not participate in the tournament without first qualifying through a competitive process, they nonetheless were entitled to the ADA's protections because, the Court reasoned, any member of the public could attempt to qualify for the tournament. *Id.* at 665-66. Similar to the golf tournament in *Martin*, Team Illinois is a selective athletic organization. Team members must qualify for the team, but any 14-year-old girl could try out. A2 ¶ 4 (M.U. participated in "public tryouts" for Team Illinois). Accordingly, *Martin* confirms there is no merit to defendants' suggestion that pre-screening or selectivity provides an exemption from the Act's protections.

CONCLUSION

For these reasons, the Illinois Attorney General requests that this Court affirm the appellate court's decision.

Respectfully submitted,

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Dated June 21, 2023

SUPREME COURT RULE 341(c)
CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 27 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on June 21, 2023, I electronically filed the foregoing **Brief of *Amicus Curiae* Illinois Attorney General Kwame Raoul in Support of Plaintiff-Appellee** with the Clerk of the Court for the Supreme Court of Illinois, by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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