No. 129081

IN THE ILLINOIS SUPREME COURT

LUCILLE MOSBY, individually and on behalf of others similarly situated, *Plaintiff-Appellee*, v. THE INGALLS MEMORIAL HOSPITAL, UCM COMMUNITY HEALTH & HOSPITAL DIVISION, INC., and BECTON, DICKINSON AND COMPANY, *Defendants-Appellants.*	On Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division Case No. 2018 CH 05031 The Honorable Pamela McLean Meyerson, Judge Presiding
YANA MAZYA, individually and on behalf of all others similarly situated, *Plaintiff-Appellee,* v. NORTHWESTERN LAKE FOREST HOSPITAL and NORTHWESTERN MEMORIAL HEALTHCARE, *Defendants-Appellants.*	On Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division Case No. 2018 CH 07161 The Honorable Alison C. Conlon, Judge Presiding

Appeal from the Illinois Appellate Court, First District
2022 IL App (1st) 200822
The Honorable Justices Sharon Oden Johnson, Mary L. Mikva, and Raymond W. Mitchell

APPELLANTS' REPLY BRIEF

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POINTS AND AUTHORITIES

I. INTRODUCTION

As this Court has explained, "'or' means 'or.'" It is telling that in this narrow Rule 308 appeal about statutory construction, Plaintiffs' brief skirts the well-established rules of statutory construction and offers scant support for their proposed interpretation of the Health Care Exclusion[1]. Plaintiffs instead ask this Court to ignore the word "or" that separates the Patient Data Exclusion from the Health Care Exclusion and judicially amend the Privacy Act to exclude from coverage only "information captured from a patient."

Plaintiffs' brief offers no basis for disturbing the intent of the Illinois General Assembly, as evidenced by the plain language of the Privacy Act. The Privacy Act excludes "information collected, used, or stored for health care treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act of 1996 [HIPAA]." Plaintiffs' finger-scan information used to access medication dispensing systems is excluded from coverage under the Privacy Act because there is no dispute that it was "information collected, used, or stored for health care treatment, payment, or operations under [HIPAA]."

Defendants, therefore, respectfully request that this Court reverse the First District and answer the certified questions in the affirmative.

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[1] Capitalized terms not otherwise defined in this brief have the meaning given them in Defendants' Opening Brief ("Br.").

II. ARGUMENT

A. The Plain Language Of The Privacy Act And Established Rules Of Statutory Construction Uniformly Support Defendants' Interpretation Of The Health Care Exclusion.

As Plaintiffs concede, "[t]he most reliable indicator of the drafters' intent is the language they chose to use in the statute itself," and "courts presume that the General Assembly, in passing legislation, did not intend absurdity, inconvenience or injustice..." (Pls.' Br. at 12-13.) Yet Plaintiffs urge this Court to find that the use of the word "information" *twice*, on either side of the disjunctive "or," does not create a separate and distinct exclusion—the Health Care Exclusion—from the first category of information—the Patient Data Exclusion.

In doing so, Plaintiffs ignore statutory interpretation principles and Supreme Court precedent raised in Defendants' brief. They fail to cite a single decision from this Court in support of their untenable attempt to twist the plain text of the Health Care Exclusion. (*See* Pls.' Br. at 13-19.) Instead, they repeatedly ask the Court to *ignore* well-established canons of statutory construction, assume that the Legislature did *not* mean what it wrote when it drafted the Health Care Exclusion, and adopt Plaintiffs' policy-based, results-oriented construction of the Exclusion. (*See, e.g.*, Pls.' Br. at 13-15 (asking Court to ignore precedent that "or" is disjunctive); *id.* at 15 (asking Court to ignore canon to avoid redundancy).) The interpretation adopted by the Appellate Court majority and advocated by Plaintiffs is inconsistent with the

plain language of the Privacy Act and this Court's precedent and must be rejected.

1. By Its Plain Terms And Reference To HIPAA, The Health Care Exclusion Has Its Own Meaning.

Plaintiffs ask this Court to ignore its own precedent holding that "[t]he word 'or' is disjunctive. As used in its ordinary sense, the word 'or' marks an alternative indicating the various parts of the sentence which it connects are to be taken separately. In other words, 'or' means 'or.'" *Elementary Sch. Dist. 159 v. Schiller*, 221 Ill. 2d 130, 145 (2006) (internal citations omitted); *see also Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1141 (2018) ("'[O]r' is 'almost always disjunctive.'" (quoting *United States v. Woods*, 571 U.S. 31, 45 (2013)).

Plaintiffs notably do not cite a *single case* supporting their position that "or" should *not* be read as disjunctive, in accordance with Supreme Court precedent. Instead, Plaintiffs point to entirely separate provisions in the Privacy Act to argue that the word "or" which separates the Patient Data Exclusion from the Health Care Exclusion is not disjunctive. (Pls.' Br. at 14-15.) Specifically, Plaintiffs identify a separate sentence in the Privacy Act that references "an X-ray, roentgen process, computed tomography, MRI, PET scan, mammography, or other image or film of the human anatomy used to further validate scientific testing or screening." (Pls.' Br.14 (citing 740 ILCS 14/10).) This separate sentence, by its plain terms, concerns information "used to further validate scientific testing or screening." It has no bearing on the proper

interpretation of the Health Care Exclusion, which relates to "information collected, used or stored for health care treatment, payment or operations under [HIPAA]."

Plaintiffs also point to 740 ILCS 14/15(b), which states, ""[n]o private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's ***or*** a customer's biometric identifier or biometric information, unless . . ."" (Pls.' Br. at 14-15.) Plaintiffs contend that "[u]nder Defendants' interpretation, the terms 'person' and 'customer' must refer to different things" and "[t]his is impossible because 'customers' are also 'persons.'" (Pls.' Br. at 15.) But the use of "or" that Plaintiffs identify is entirely unlike the use at issue in this appeal, because the use in Plaintiffs' example does not "mark[] an alternative indicating the various parts of the sentence which it connects are to be taken separately." *Elementary Sch. Dist. 159*, 221 Ill. 2d at 145. Under this Court's precedent, where *parts of a sentence* are separated by an "or" and it can be "used in its ordinary sense," "or" should be considered disjunctive. *Id.* That is precisely the structure of the Privacy Act's sentence containing the Patient Data Exclusion and the Health Care Exclusion. In contrast, in Section 15(b) the "or" is located within the phrase "a person's or a customer's," is not separating distinct parts of a sentence, and the sentence cannot be naturally separated there without rendering the sentence unintelligible.

Plaintiffs likewise have no response to Defendants' argument that the Privacy Act further reinforces the distinction between the Patient Data

Exclusion and the Health Care Exclusion by repeating the word "information" at the beginning of each separate clause. By using "information" twice, the Legislature emphasized that each of the two clauses separated by the "or" exempts a different category of "information." This is the only reading of the provision that squares with Supreme Court precedent, English grammar, and common sense.

2. Plaintiffs' And The Appellate Court's Reading Renders The Health Care Exclusion Redundant And Superfluous.

Plaintiffs also ask this Court to ignore its own precedent that statutes should be interpreted in a manner that avoids rendering any provision redundant or superfluous. (Pls.' Br. at 15-16.) *See, e.g.*, *People v. Salem*, 2016 IL 118693, ¶ 16, 47 N.E.3d 997, 1003 ("This court is obliged 'to avoid a construction which renders a part of the statute superfluous or redundant, and instead presume that each part of the statute has meaning.'"); *People v. Baskerville*, 2012 IL 111056, ¶ 25, 963 N.E.2d 898, 905 (recognizing the "obligation to avoid a construction which renders a part of the statute superfluous or redundant, and instead presume that each part of the statute has meaning"). They also ask the Court to ignore the redundancy problem with their proposed interpretation of the Health Care Exclusion because they assert the Privacy Act overall "does have some superfluous and overlapping language." (Pls.' Br. at 17.)

However, the other examples Plaintiffs cite are words that are merely similar, and may have some level of overlap, but are not redundant. For

example, Plaintiffs' example of "person or customer" in Section 15(b) is not a redundancy because not all persons are customers. Similarly, a "court of Illinois" is not a "state or local government agency"; the courts are a separate branch of government, not an agency. (Pls.' Br. at 14-15, 17.) And in any event, adopting an interpretation that would result in redundancy when a much more straightforward reading of the statute avoids redundancy is directly contrary to this Court's precedent concerning statutory interpretation.

Plaintiffs alternatively attempt to argue that their interpretation does not result in redundancy, parroting the Appellate Court majority's strained reasoning that the Legislature meant to distinguish patient information that is "captured" from patient information that is "collected." (Pls.' Br. at 16.) In making this argument, Plaintiffs entirely fail to address this Court's holding in *Cothron v. White Castle* that "capturing" and "collecting" *both* refer to the act of "collecting or capturing the [biometric identifier] every time the employee needs to access" the technology at issue. (*See* Br. at 18, citing *Cothron*, 2023 IL 128004, ¶ 23.) It is absurd to think that the Legislature needed to delineate the fact that once information was "captured" it could also be "collected" because, as the Court's ruling in *Cothron* shows, collection and capture happen simultaneously and are synonymous. Rather, as Justice Mikva's dissent points out, the more natural reading of the two exclusions is that the Patient Data Exclusion "excludes from the Act's coverage information from a particular *source*—patients in a health care setting," while the Health Care Exclusion

"excludes information used for particular *purposes*—healthcare treatment, payment, or operations under HIPAA—regardless of the source of that information." (A242, Mikva, J., dissenting, ¶ 75 (emphasis added).)

Simply put, the two categories of information *are different* because under the Patient Data Exclusion, the excluded information can only come from the patient, whereas under the Health Care Exclusion, the excluded information can come from any source. Further supporting this, information "collected . . . for health care treatment" as that term is defined under HIPAA, most certainly covers information that is not covered under "information captured from a patient." *See* 45 C.F.R. § 160.103 ("Health care" includes "care, services, or supplies related to the health of an individual," including the "[s]ale or dispensing of a drug, device, equipment, or other item in accordance with a prescription"); 45 C.F.R. 164.501 ("Treatment" includes "the provision, coordination, or management of health care and related services by one or more health care providers"). Therefore, information collected, used, or stored for "health care treatment" includes things beyond "information captured from a patient." And, as Plaintiffs explicitly concede (Pls.' Br. at 21), the use of finger scans to permit access to medication dispensing stations is an obvious and indisputable example of information used for health care treatment, payment, and operations.

3. Plaintiffs And The Appellate Court Misconstrue The Last-Antecedent Rule.

Plaintiffs argue that use of the word "under" should mean "below or beneath so as to be *** covered [or] protected *** by" (Pls.' Br. at 18 (citing Merriam-Webster Dictionary, https://www.meriam-webster.com/dictionary/under).) Plaintiffs, like the Appellate Court majority, conveniently omit the full definition provided in the dictionary that they are citing: "below or beneath so as to be overhung, surmounted, covered, protected, or concealed by." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/under (last visited July 27, 2023). Merriam-Webster provides the following examples with the definition adopted by the majority: "under sunny skies"; "under a stern exterior"; and "under cover of darkness." (*Id.*) In other words, both the full definition and the examples given in the dictionary make clear that this usage of the term "under," which is urged by Plaintiffs and was adopted by the Appellate Court majority, is referring to a *physical location* or attribute.

That definition makes no sense in the context of the Health Care Exclusion's reference to "under [HIPAA]." HIPAA is not a physical location or attribute. Rather, the only appropriate definition of "under" in the context of the Health Care Exclusion is "subject to the authority, control, guidance, or instruction of." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/under (last visited July 27, 2023). In other words,

HIPAA provides the guidance needed to determine the meaning of "health care treatment, payment, or operations."

The words "health care treatment, payment, and operations" are defined under HIPAA and are used repeatedly throughout HIPAA as terms of art. Therefore, the Legislature's decision to use the phrase "health care treatment, payment, and operations," and to immediately follow it by the prepositional phrase "under [HIPAA]," makes clear that the Legislature was directing readers to HIPAA to discern the meaning of those terms. The application of the last antecedent rule ensures that *all three terms*—"treatment," "payment," and "operations"—are cabined by their definitions under HIPAA. And all of HIPAA's definitions of these terms relate to activities performed *by the health care provider*—not by the patient. (Br. at 16 (citing HIPAA definitions).) Plaintiffs admit as much in their opposition. (Pls.' Br. at 22 (explaining that HIPAA's definition of these terms concern "situations related to the covered entity's own treatment, payment, and operations"). Therefore, Plaintiffs' insistence that "collecting biometric data from a nurse is never for treatment 'under HIPAA,' payment 'under HIPAA,' or operations 'under HIPAA'" simply disregards HIPAA's definitions of these terms of art. It also ignores that HIPAA itself regulates the activities of health care providers when those providers are engaged in health care treatment, payment, or operations, and ignores that the Legislature has borrowed "treatment, payment, and

operations" from HIPAA on other occasions. *See* A244, ¶ 81 (Mikva, J., dissenting).

Plaintiffs next ask the Court to reject Defendants' proposed interpretation because a wholly separate exclusion refers to certain items "as defined in the Illinois Anatomical Gift Act." (Pls.' Br. at 18 (quoting 740 ILCS 14/10.) Plaintiffs do not explain why the phrasing of an entirely different exemption is relevant to interpreting the Health Care Exclusion. In any event, to the extent the phrasing of other exemptions is relevant, the Privacy Act includes the following exclusions from the term "biometric identifier" which reference other statutes:

> Biometric identifiers do not include donated organs, tissues, or parts **as defined in the Illinois Anatomical Gift Act** or blood or serum stored on behalf of recipients or potential recipients of living or cadaveric transplants and obtained or stored by a federally designated organ procurement agency. Biometric identifiers do not include biological materials **regulated under the Genetic Information Privacy Act**. Biometric identifiers do not include information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations **under the federal Health Insurance Portability and Accountability Act of 1996**.

740 ILCS 14/10 (emphasis added). Although the Legislature used different phrasing to refer to the different statutes in each of these sentences, nothing in this sequence suggests that the use of "under [HIPAA]" in the Health Care Exclusion is anything other than "subject to the authority, control, guidance, or instruction of" HIPAA. And proper application of the last antecedent rule

in the Health Care Exclusion makes clear that the "under [HIPAA]" qualifier applies to the three terms in the immediately preceding series.

Finally, Plaintiffs' brief includes an extensive discussion of the scope of, as Plaintiffs term it, "patient information" protected by HIPAA. (Pls.' Br. at 21-23.) But Plaintiff never addresses the fact that HIPAA uses a term of art, "protected health information," to define individually identifiable patient information. As Defendants pointed out in their Opening Brief, if the Legislature wanted the Health Care Exclusion to cover only protected health information, it could have used that phrase. It didn't. Instead, it chose a different term of art under HIPAA – health care treatment, payment, or operations.

4. Interpreting The Health Care Exclusion As Defendants Propose Is Consistent With The Privacy Act's Overall Structure.

Plaintiffs attempt to equate the Privacy Act's limited Health Care Exclusion to the "categorical exemptions for certain entities" included in Section 25 of the Privacy Act and argue that "if the legislature intended to exempt HIPAA-covered entities…it would have expressly done so in Section 25…" (Pls.' Br. at 20.) This argument is problematic for two reasons. ***First***, it relies on the fiction that Defendants' proposed interpretation of the Health Care Exclusion would broadly exempt the entire health care industry. Not so. The issue presented in this appeal is whether the Privacy Act excludes from its coverage information collected, used, or stored for health care "treatment," "payment," or "operations," ***as those terms are defined in the HIPAA***

statute and regulations. Plaintiffs' fanciful assertions that Defendants are seeking a broad exemption for the entire healthcare industry which would cover, for example, "a landscaper who is mowing the lawn" (Pls.' Br. at 23), simply ignore that HIPAA includes carefully crafted definitions for each of these terms that place limits on the scope of the Health Care Exclusion. It also ignores the context of this appeal, which concerns automated dispensing cabinets used by health care providers—an application that Plaintiffs concede falls within HIPAA's definitions of health care treatment, payment, and operations. (Pls.' Br. at 21.)

Second, the Legislature's placement of the Health Care Exclusion as a carveout within the definition of "biometric identifier," rather than including it within Section 25 of the Privacy Act, makes sense specifically ***because*** the Health Care Exclusion is ***not*** a broad exemption for the entire health care industry. Structurally, Section 25 is where the Legislature included broader exemptions, such as the one that Plaintiffs reference concerning financial institutions subject to Title V of the federal Gramm-Leach-Bliley Act of 1999. (Pls.' Br. at 19-20, citing 740 ILCS 14/25(c).) In contrast, the Legislature included more narrow exemptions, such as the Patient Data Exclusion and the Health Care Exclusion, as carveouts within the definition of "biometric identifier."

***

In summary, in this appeal about statutory construction, Plaintiffs notably have chosen to rely not on the text of the Privacy Act or this Court's relevant precedent concerning statutory construction, but instead on inflammatory rhetoric that Defendants' interpretation is "absurd" and would make a "mockery" of the Privacy Act—because Plaintiffs' proposed interpretation has no basis in the Privacy Act's text or in this Court's relevant precedent. At bottom, Plaintiffs' logic is that the Privacy Act is so poorly drafted, this Court should acquiesce to Plaintiffs' unfounded opinion that the Legislature meant the Privacy Act to cover every single instance of collection of arguably biometric information. But that is belied by the plain text of the Privacy Act, including not only the Health Care Exclusion, but also much broader exclusions for entire industries in Section 25 of the Privacy Act.

The Privacy Act's exemption for "information collected, used, or stored for health care treatment, payment, or operations under [HIPAA]" unambiguously exempts information, regardless of its source, when it is collected, used, or stored for health care "treatment," "payment," or "operations," as those terms are defined under HIPAA. Because the Health Care Exclusion is unambiguous, the Court's analysis should begin and end with the words the Legislature used.

B. Legislative History And Policy Considerations Further Support Defendants' Interpretation.

Because the language of the Privacy Act and established rules of statutory construction do not support their position, Plaintiffs focus on their

generalized policy argument that the Privacy Act should be broadly construed. But this approach turns the entire body of statutory interpretation on its head. As this Court has made clear time and again, the language of a statute is *always* the starting point for discerning legislative intent, and purported policy arguments cannot be used to avoid the plain meaning of a statute. *See, e.g.*, *Petersen v. Wallach*, 198 Ill. 2d 439, 446 (2002) (courts "are not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express," and where, as here, "the language of an enactment is clear, it will be given effect without resort to other interpretative aids"); *Michigan Ave. Nat. Bank v. Cnty. of Cook*, 191 Ill. 2d 493, 522 (2000) (explaining that the court is "constrained to apply the law as enacted by the General Assembly" and that "[b]ecause the concerns voiced by plaintiff compete with the legislative purposes of the immunity provisions as revealed by the statute's plain language, we believe that these are questions appropriately left to the legislature") (cleaned up). In any event, even if the Court does consider the policy and purpose behind the Privacy Act, they overwhelmingly support Defendants' interpretation of the Health Care Exclusion.

Plaintiffs argue that "there is no reason to believe the General Assembly intended to exempt healthcare providers whenever they collect biometrics for 'operations' or otherwise." (Pls.' Br. at 20.) Yet, both the plain language of the Act and the reference in its legislative history to necessary exemptions for

hospitals, H.R. 95-276, Gen. Assemb., at 249 (Ill. daily ed. May 30, 2008) (statement of Rep. Ryg), lead to only one conclusion: the Illinois General Assembly intended to alleviate hospitals, and the vendors with whom they contract to supply important services, from any burden of being regulated by the Privacy Act with regard to information that they collect, use, or store for health care treatment, payment, or operations under HIPAA. Moreover, Defendants and their amici all have extensively discussed the reasons that the Legislature wisely chose to create the Health Care Exclusion (*see* Br. for Illinois Health and Hosp. Ass'n as Amici Supporting Appellants at 8; Br. for Advanced Med. Tech. Ass'n as Amici Supporting Appellants at 12), and Plaintiffs have no meaningful response.

Plaintiffs' argument that HIPAA does not *require* health care providers to use biometric technology entirely misses the mark. (Pls.' Br. at 27-29.) In light of the already heavily regulated nature of the health care industry, and the industry standards and strong guidance uniformly favoring biometrics as the preferred method for regulating access to controlled substances, it makes sense that the Legislature chose to exempt certain uses of biometric technology in health care settings from the Privacy Act's requirements through the exclusion in Section 10. Plaintiffs do not and cannot contradict this. The Legislature included the Health Care Exclusion to allow entities otherwise covered by the Privacy Act to freely use biometric technology in accordance

with federal and health care industry recommendations to provide patient care safely and efficiently.

Similarly, Plaintiffs' glib assertions that health care providers can "quickly, easily," and "at virtually no cost" comply with the Privacy Act's requirements, thereby avoiding litigation over or liability for their use of biometric technology (Pls.' Br. at 29), notably has nothing to do with proper interpretation of the Health Care Exclusion. Moreover, Plaintiffs' assertions are belied by the realities of Privacy Act litigation. Numerous plaintiffs' firms, including the one involved in this appeal, have been filing Privacy Act lawsuits against companies who *already have* written notice and consent forms and policies in place—but alleging that their clients do not recall signing the policies (despite evidence that they did so) or arguing that some aspect of the written notice and consent fails to adequately address the Privacy Act's nuanced requirements.[2] These lawsuits demonstrate that even where entities try to comply with the Privacy Act's requirements, they will not be insulated from legal challenges, draining time, money, and resources from defendants who are forced to either settle wholly unmeritorious claims, or otherwise litigate through summary judgment to be able to prove that their consent process is valid. As Defendants' amici have explained, the risk of facing current

[2] *See, e.g.*, *Mendenhall v. Toms King*, No. 2019-CH-10636 (Cook Cnty.) (Conlon, J.); *Siegel v. Accurate Biometrics, Inc., et al.*, No. 2023 CH 1814 (Cook Cnty.) (Cohen, J.); *Peoples v. Wheaton Village Nursing and Rehab. Center*, No. 2021-L-001234 (DuPage Cnty.) (Cerne, J.); *Marquez v. Riverside Golf Club*, No. 2020-CH-5895 (Cook Cnty.) (Cohen, J.).

and future lawsuits will impact health care providers' ability to continue using technology like the automated dispensing cabinets at issue in this appeal—technology that the federal government and industry leaders have uniformly urged the health care industry to utilize. The Legislature's decision to exempt health care providers from the Privacy Act when they use potentially biometric technology for purposes related to health care treatment, payment, or operations, was prescient and makes eminently good policy sense.

Incredibly, Plaintiffs appear to suggest that this Court should interpret the Privacy Act in the manner for which they are advocating based on Northwestern's purported financial situation (Pls.' Br. at 30), the fact that another hospital settled a Privacy Act claim involving automated dispensing cabinets (Pls.' Br. at 34), and Plaintiffs' assertion that insurance may cover some Privacy Act cases (Pls.' Br. at 33). These arguments are wildly inappropriate, seek to introduce material beyond the record on appeal in this case, and have no place in this appeal about statutory construction.[3] Moreover, as Defendants' amici have pointed out, this appeal affects not only Northwestern, but hundreds of hospitals throughout Illinois, many of whom provide critical safety net services to underserved populations and may not have insurance or other resources to pay a judgment or settlement.

[3] Plaintiffs' brief also inaccurately attributes amicus briefing in several of this Court's previous Privacy Act cases to Defendants. (Pls.' Br. at 33.) Defendants did not participate in any of the appeals that Plaintiffs mention as parties, amici, or otherwise.

Finally, Plaintiffs' self-serving argument that the Illinois General Assembly would never exclude from the Privacy Act certain information provided by certain health care workers for certain purposes is hard to understand given that the Illinois General Assembly provided far broader exclusions from the Privacy Act. For example, it is undisputed that the Privacy Act broadly excepts financial institutions from its reach by referring to a federal statute, the Gramm-Leach-Bliley Act. It also exempts any "contractor, subcontractor, or agent of a State agency or local unit of government when working for that State agency or local unit of government." 740 ILCS 14/25(e). Plaintiffs do not even attempt to identify any other statute that protects these persons' biometric identifiers, yet raise no qualms with the fact that these persons' data are not protected. In light of the critically important work health care providers perform, and the fact that health care providers are already highly regulated, the Health Care Exclusion makes perfect sense.

CONCLUSION

Both the Privacy Act's plain language and underlying policy considerations demonstrate that information that is collected, used, or stored for "health care treatment, payment or operations," as those terms are defined by the federal HIPAA statute and regulations, is exempt from the Privacy Act, regardless from whom the information is collected. Plaintiffs' proposed interpretation, which attempts to limit the Health Care Exclusion to information collected from patients, is contrary to the Privacy Act's plain language and must be rejected. Defendants, therefore, respectfully request

that this Court reverse the Appellate Court and answer the certified questions in the affirmative.

Dated: July 28, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 19 pages or 4,345 words.

Dated: July 28, 2023 /s/*Bonnie Keane DelGobbo*

NOTICE OF FILING AND CERTIFICATE OF SERVICE

I, Bonnie Keane DelGobbo, an attorney, hereby certify that on **July 28, 2023,** I caused a true and complete copy of the foregoing **APPELLANTS' REPLY BRIEF** to be filed electronically with the Clerk's Office of the Illinois Supreme Court, using e-filing provider **Odyssey eFileIL**, which sends notification and a copy of this filing by electronic mail to all counsel of record. I further certify I caused an additional courtesy copy of this filing to be served by electronic mail upon the following:

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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 above statements set forth in this instrument are true and correct.

/s/Bonnie Keane DelGobbo