No. 128935

IN THE

SUPREME COURT OF ILLINOIS

M.U., a minor, by and through her parents, KELLY U. AND NICK U., *Plaintiff-Respondent*, v. TEAM ILLINOIS HOCKEY CLUB, INC., an Illinois not-for-profit corporation, and the AMATEUR HOCKEY ASSOCIATION OF ILLINOIS, INC., an Illinois not-for-profit corporation, *Defendants-Petitioners.*	Petition for Leave to Appeal From the Appellate Court of Illinois, Second Judicial District, No. 2-21-0568 There Heard on Appeal From the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois Nos. 2021-CH-0141 The Honorable Bonnie M. Wheaton, Judge Presiding

BRIEF OF *AMICUS CURIAE* THREE FIRES COUNCIL, INC., BOY SCOUTS OF AMERICA

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STATEMENT OF INTEREST—WHO WE ARE AND WHY WE ARE *AMICUS*

The Boy Scouts of America ("National BSA") is a national, not-for-profit corporation that oversees various youth-oriented programs that it owns and develops. These National BSA programs include Cub Scouts, Scouts BSA, Venturing, and Explorers (collectively, "BSA Groups"), as well as the patches, merit badges, and rank advancements that come with them. BSA Groups organize by region into local councils. National BSA then charters these local councils and licenses to them the right to use the materials it has developed for the BSA Groups. The amicus here, Three Fires Council, Inc., Boy Scouts of America,[1] is one such local Illinois council (hereinafter the "*Amicus*" or "Three Fires Council"). Each BSA Group within the Three Fires Council area is itself sponsored by what is called a "chartered organization." This could be a private group (such as a business, church, or civic organization like the Rotary Club), or it could be a public group (such as a public school or park district).

I. BSA Groups Occasionally Use Places of Public Accommodation to Host Private BSA Group Events.

Historically, many BSA Groups, such as Cub Scout dens and Scouts BSA patrols, have met in private homes for their regular meetings. But over the last few decades, BSA Groups have increasingly moved their meetings to other facilities for certain regularly conducted activities. In situations where the BSA

[1] The Three Fires Council includes three districts across Cook, DuPage, Will, Kane, Kendall, and Dekalb Counties. The districts are then composed of multiple Cub Scouts dens and packs, Scouts BSA patrols and troops, Venturing crews, and Explorer posts.

Group's chartered organization is a ***private*** organization—with a space large enough to accommodate its packs, patrols, etc.—the BSA Group may continue to meet in the private building (like a church or a business location). But BSA Groups also commonly meet in ***public*** buildings, like community centers owned by a local park district, a public space in a town hall, or a gymnasium in a public school. It is common that these locations are rented by the BSA Group or the Three Fires Council itself on the same terms that any other member of the public with a need for a gathering space would receive.

It is also common for a BSA Group to use a public facility for a short period of time for an isolated event rather than a regularly scheduled meeting. For instance, a pack whose dens meet in private homes might nonetheless rent the gym of a community center for its annual Pinewood Derby competition or its Blue-and-Gold Banquet. Or a troop that meets weekly at a church building owned by its chartered organization might visit a local park district facility and rent canoes for use on the lake to work on the requirements for a water-craft merit badge. And on occasion, the Three Fires Council has leased an entire large facility—such as York High School in Elmhurst, Illinois—for the Council's annual one-day Merit Badge University. At that event, hundreds of young women and men descend on the high school for an entire Saturday in an effort to obtain multiple merit badges in a short period of time.

In each of these examples, the BSA Groups—including those that regularly meet at a private facility—use public facilities for events that they

could not host at their regular, private locations. And it is not uncommon for BSA Groups to be faced with the same difficult decisions that Team Illinois Hockey Club, Inc. ("Team Illinois") faced here; *i.e.*, determining the best course of action when making decisions related to youth facing mental health crises.

Thus, the *Amicus*, through the operation of its respective BSA Groups, is very much at risk of being named, as was Team Illinois, in claims against it under the disability status sections of the Illinois Human Rights Act ("IHRA"). It is for this reason that *Amicus* is filing this brief in support of Team Illinois and its request (as described below) that this Court clarify the pleading standard for claims brought under the IHRA.

II. *Amicus* Supports a Reversal of the Appellate Court's Decision and Clarification from this Court Regarding: (1) How to Determine Whether a Plaintiff has Sufficiently Pled that a Private Organization is Liable under the IHRA for Private Use of a Place of a Public Accommodation; and (2) the Definition of a "Private Club" under the IHRA.

Amicus files this brief for two reasons.

First, the Appellate Court's ruling in *M.U. by & Through Kelly U. v. Team Illinois Hockey Club, Inc.*, 2022 IL App (2d) 210568 ("*Team Illinois Hockey Club*") creates an untenable new standard that suggests that merely alleging that a private group "leases and operates" a place of public accommodation for a private event, without more, sufficiently states a claim for liability under the IHRA. This ruling should not stand, as it would subject all private organizations operating in the State of Illinois to a daunting future of expensive discovery and prolonged IHRA litigation. The standard

pronounced by the Appellate Court does not consider the frequency of how often the private group uses the place of public accommodation at issue, the degree of control the private group has over the facility (if any), or the relationship between the private group and the facility (if any). *Amicus* requests that this Court reverse the Appellate Court's opinion and hold that the mere allegation that a private organization "leases and operates" a place of public accommodation for private use does not subject the organization to liability under the IHRA. Further, the Court should require a plaintiff, seeking to hold a private organization liable under the IHRA for discrimination (due to an alleged connection with a public place), to allege facts sufficient to show that the private organization exercises actual control over the facility's operations.

Second, the Appellate Court did not address what constitutes a "Private Club" under the exemption to the IHRA found in 775 ILCS 5/5-103(A), despite the parties raising the issue. To date, neither the Illinois Supreme Court nor any Illinois Appellate Court has ever addressed how to determine whether an entity constitutes a "Private Club" under 775 ILCS 5/5-103(A). The Illinois Supreme Court should take this opportunity to define how future courts and parties can determine whether an entity constitutes a "Private Club" that is exempt from the IHRA altogether. Because there is currently no Illinois law providing guidance for how to construe this statutory exemption, the Illinois Supreme Court should adopt the seven-factor test used by the Seventh Circuit in *Welsh v. Boy Scouts of America*, 993 F.2d 1267 (7th Cir. 1993).

INTRODUCTION

As the Appellate Court acknowledged, *Team Illinois Hockey Club* presents a matter of first impression under Illinois law: whether a plaintiff can state a claim against a private organization under the IHRA where it is not the "place of public accommodation whose facilities, goods, or services were allegedly denied to the plaintiff," but instead the plaintiff merely alleges that the private organization "leased and operated" space from the place of public accommodation for its private use. *See Team Illinois Hockey Club, Inc.*, 2022 IL App (2d) 210568, ¶ 36. The circuit court held such a claim is insufficient, because the "leasing of a [place of public accommodation] … for a specific amount of time … does not convert a private organization into a place of public accommodation." *Id.* at ¶ 14. The Appellate Court reversed and held that a private organization can nonetheless state a claim for liability under the IHRA where the private organization conducted its activities "at a place of public accommodation that it ***leased and operated***." *Id.* at ¶ 39 (emphasis added). This appeal followed.

The Appellate Court's holding suggests that the mere allegation that a private organization "leased and operated" a place of public accommodation for private use is sufficient to state a claim for liability under the IHRA. The Appellate Court did not provide any standard, nor any guidance, as to the extent a plaintiff must allege that a private group "leased and operated" a place of public accommodation in order to be subjected to liability under the IHRA. For instance, the Appellate Court's opinion sheds no light on whether the

allegation of a single instance of using a facility by "leasing and operating" the facility would be sufficient to state a claim under the IHRA, or whether a plaintiff must plead repeated or consistent use. Nor does the Appellate Court's opinion explain whether a plaintiff has to plead that a defendant "leased and operated" a facility for one hour at a time, a few hours at a time, or for one or more days. Is a single instance of "leasing and operating" a facility for a limited duration of time a sufficient allegation, or does there need to be more longevity to the relationship? The Appellate Court's opinion leaves all of these questions unanswered.

Nor did the Appellate Court provide guidance as to whether—or to what extent—plaintiffs must allege that the private organization had the ability to control any of the operations of the place of public accommodation at issue in order to show that the private organization "operated" the facility. The Appellate Court's lack of analysis on these points presents the dire risk of prolonged litigation for any private organization in the State of Illinois—such as the *Amicus*—that ever opts to use a place of public accommodation for a private activity.

This Court should not allow the Appellate Court's overly broad ruling to become law. To do so would result in a chilling effect on all private organizations' willingness to rent publicly available space for private use. Should the Appellate Court's holding remain law, then private organizations

would be loath to ever use a place of public accommodation for their events less they risk subjecting their organization to liability under the IHRA.

Finally, this case provides a critical opportunity for the Illinois Supreme Court to provide guidance on the application of the "Private Club" exemption to the IHRA—something the Appellate Court failed to address despite the parties raising it. This Court should provide a clear standard for how lower courts, litigants, and private organizations operating in the State of Illinois can determine what constitutes a Private Club. In addition, because there is no Illinois law on point, this Court should adopt the Seventh Circuit's factor test for determining what is a "Private Club" under Title II of the Civil Rights Act as pronounced in *Welsh v. Boy Scouts of America*, 993 F.2d 1267 (7th Cir. 1993).

ARGUMENT

I. This Court Should Reverse the Appellate Court's Holding that Suggests that a Private Organization Becomes Subject to Liability Under the IHRA on the Mere Allegations that it "Leased and Operated" a Place of Public Accommodation for a Private Event.

The Appellate Court held that Team Illinois could be subject to liability under the IHRA based on the fact that Team Illinois allegedly "leased and operated" the Seven Bridges Ice Arena ("Seven Bridges") for private use. *See Team Illinois Hockey Club, Inc.*, 2022 IL App (2d) 210568, ¶ 39. The Appellate Court held that "although Team Illinois itself is not a place of public accommodation, it nevertheless is subject to the Act because, as alleged in the complaint, it barred plaintiff on the basis of her disability from participating

in Team Illinois events, like hockey games and tournaments, that were held at a place of public accommodation ***that it leased and operated***." *Id.* (emphasis added).

The key language from the Appellate Court's holding—"leased and operated"—comes from the U.S. Supreme Court opinion *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001). However, in *Martin*, the U.S. Supreme Court was analyzing a discrimination case under the Americans with Disabilities Act ("ADA"), which bars discrimination on the basis of disability "by any person who owns, ***leases . . .*** or ***operates*** a place of public accommodation." 42 U.S.C. § 12182(a) (emphasis added). In contrast, no such "leases" or "operates" language is found anywhere in the IHRA. *See* 775 ILCS 5/5-102.

Nonetheless, the Appellate Court in *Team Illinois Hockey Club* cited *Martin* to find that private organizations "may nevertheless be subject to civil rights laws ***if they exercise sufficient control over a place of public accommodation by, for example, leasing or operating the venue*** where its public sporting events are held." *Team Illinois Hockey Club, Inc.*, 2022 IL App (2d) 210568, ¶ 37 (emphasis added) (citing *Martin*, 532 U.S. at 669). The Appellate Court then ultimately held that a private organization is subject to liability under the IHRA where it holds private events "at a place of public accommodation that it ***leased and operated***." *Id.* at ¶ 39 (emphasis added).

Therefore, under the Appellate Court's new standard, a plaintiff must establish two factors—that a private organization "leased and operated" a

place of public accommodation—in order to state a claim against a private organization under the IHRA for alleged discrimination from the private organization's use of a place of public accommodation. The problem, though, is that the Appellate Court never expounded upon the sufficiency of allegations that a plaintiff must plead to show that a private organization "leases and operates" a place of public accommodation. That guidance is especially important under Illinois's fact-pleading standards, which require more than "mere conclusions of law or fact unsupported by specific factual allegations" to survive a motion to dismiss. *Pooh-Bah Enterprises, Inc. v. Cnty. of Cook*, 232 Ill. 2d 463, 473 (2009) (citations omitted).

For instance, to establish that a private organization "leases" a place of public accommodation such that the private organization is liable under the IHRA, does a plaintiff need to allege that the private organization entered into a formal written lease? Or does "lease" simply mean a plaintiff only has to allege that the private organization paid for the right to use a place of public accommodation for any set period of time? The Appellate Court's holding suggests that any allegation with the scant reference to "leasing" a place of public accommodation for private use (regardless of the frequency or duration of the event), states a sufficient claim for private–organization liability under the IHRA.

Moreover, when does a plaintiff sufficiently allege that a private organization "operates" a place of public accommodation? Plaintiff's complaint

includes the conclusory allegation that Team Illinois "operates" Seven Bridges for its activities; which the Appellate Court accepted at face value as sufficient to state a claim under the IHRA. *See Team Illinois Hockey Club, Inc.*, 2022 IL App (2d) 210568, ¶¶ 5, 39. But Plaintiff never alleged any facts showing how Team Illinois operated the facility or the extent to which Team Illinois had any control over it.

For example, Plaintiff did not allege that Team Illinois can force Seven Bridges to stay open later than its normal business hours or cancel open skate time periods to allow Team Illinois more time to use the facilities. (*See generally* Compl.) Indeed, Plaintiffs did not allege that Team Illinois has any ability to make any decisions as to how Seven Bridges operates its facility. (*See id.*) And surely there is no dispute that Seven Bridges has its own staff, managers, and owners who control and implement the operations of the facility completely independent of Team Illinois. At least, there is nothing alleged in the complaint to suggest otherwise. (*See id.*) Thus, without more detailed facts, the Appellate Court should not have required Team Illinois to defend itself in litigation (including engaging in costly discovery) on the bald allegation that it "operates" Seven Bridges. Nor should any other private organization have to endure substantial litigation costs in discovery just to disprove a standalone allegation that it "operates" a separate and distinct place of public accommodation that the private organization used for its activities.

While the Appellate Court provided no guidance on how a plaintiff establishes that a private organization "operates" a place of public accommodation under the IHRA, there is federal case law interpreting the phrase "operates" as it is used in the ADA. These federal courts have found that "[t]o 'operate,' in the context of a business operation, means 'to put or keep in operation,' . . . '[t]o control or direct the functioning of,' . . . '[t]o conduct the affairs of; manage.'" *Neff v. Am. Dairy Queen Corp.*, 58 F.3d 1063, 1066 (5th Cir. 1995) (citations omitted); *see also Magee v. McDonald's USA, LLC*, No. 16-CV-05652, 2021 WL 4552411, at *3 (N.D. Ill. Oct. 5, 2021) ("Other judges in this District have explained that the word 'operates' means an entity that performs effectively the 'whole function' of operating a business."). Thus, were this Court to affirm the Appellate Court's "lease and operate" standard, then it should also adopt the federal courts' definition of "operate" under the ADA.

Also, another issue further complicating the Appellate Court's holding in *Team Illinois Hockey Club* is the manner in which it distinguished a Seventh Circuit case involving the Civil Rights Act, *Welsh v. Boy Scouts of America*, 993 F.2d 1267 (7th Cir. 1993). The Appellate Court noted that a private organization is not liable under the IHRA if that organization is not "closely connected to a particular facility." *Team Illinois Hockey Club, Inc.*, 2022 IL App (2d) 210568, ¶ 43. In so holding, the Appellate Court made no effort to elucidate how a plaintiff sufficiently pleads a "close connection" to a place of public accommodation. The Appellate Court stressed that in *Welsh*, the Seventh

Circuit correctly found that the Boy Scouts were not liable under the IHRA because their meetings are generally held in private homes, which are not facilities subject to Title II of the Civil Rights Act. *See id.* But the Appellate Court's ruling below leaves a void of guidance for any BSA Group that ventures out of private homes and hold events in places that might otherwise constitute a place of public accommodation.[2]

For example, is the *Amicus* subject to liability upon allegations that it "leased and operated" a park district facility or school gymnasium to host a Pinewood Derby tournament? Does such an annual event constitute a "close connection" with the event space used? Is an allegation that a Cub Scout pack—in a single instance—"leased and operated" a public park by reserving a bowery for use during its Rain Gutter Regatta sufficient to state a claim? Or a claim that a Scouts BSA troop "leases and operates" a park-district swimming pool by renting it for an evening to complete a swim test in preparation for Scout camp? Both the park and the pool would generally have their own staff that would "operate" the facility notwithstanding the "leased" nature of it during the time period in question.

Amicus does not believe that there would, or should, be any potential liability under the IHRA in any of the above hypothetical scenarios. However,

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[2] To be clear, *Amicus* agrees with the holding in *Welsh*. However, it is not uncommon for certain BSA Groups to meet in locations other than private homes. It is those meetings that are now in jeopardy under the IHRA, given the ruling in *Team Illinois Hockey Club*.

even though the Appellate Court in *Team Illinois Hockey Club* explicitly used the Boy Scouts as an example of a private organization that is not liable under the IHRA, its ultimate holding and analysis does not provide guidance as to whether private organizations like the *Amicus* would potentially face future litigation simply by leasing a place of public accommodation for a private event. Because of this, this Court should reverse and establish the specificity of facts that a plaintiff must allege to state a claim under the IHRA on the basis that a private organization "leased and operated" a place of public accommodation assuming this Court were to adopt the leased and operated standard, (which it should not).

The Appellate Court's ruling also begs the question of how many times and to what extent does a private organization need to use a place of public accommodation to be subject to liability under the IHRA? What if in addition to the Pinewood Derby, BSA Groups also rented space later in the year at a local public library to host a pancake breakfast fundraiser? Does hosting two events per year at different places of public accommodation render the *Amicus* liable under the IHRA? What about three events per year? Four? Five? Again, there should not be any risk of liability under IHRA for any of these scenarios. But the Appellate Court's analysis in *Team Illinois Hockey Club* provides no guidance on the allegations that would establish a sufficiently close connection that would withstand a motion to dismiss, and its vague analysis risks opening

the floodgates of IHRA litigation (and ensuing discovery) to every BSA Group in the state.

Amicus respectfully requests that the Illinois Supreme Court overturn the Appellate Court's holding and find that a private organization using a place of public accommodation for private use, by itself, does not subject the private group to liability under the IHRA. At the very least, this Court should provide clarification as to the sufficiency of facts a plaintiff must allege to state a claim that a private entity "leases and operates" a place of public accommodation in order to face liability under the IHRA. Absent this Court's intervention, the Appellate Court's holding will inevitably lead to private groups abandoning large-scale events to protect themselves from unnecessary and burdensome litigation. This is surely not what the IHRA was designed to accomplish.

II. The Supreme Court Should Adopt the Seventh Circuit's Standard from *Welsh* for Determining Whether an Entity Constitutes a "Private Club" under the IHRA.

In discussing public accommodations, the IHRA states that: "Nothing in this Article shall apply to" a "Private Club." 775 ILCS 5/5-103(A). Neither the Illinois Supreme Court nor any Illinois Appellate Courts have had the opportunity yet to analyze this exclusion and explain how courts or private parties can determine whether an organization constitutes a "Private Club" exempt from the IHRA. The Illinois Supreme Court should seize this opportunity to clarify this issue of law.

Because there is no Illinois authority on point, this Court may examine how federal courts have interpreted similar statutes to determine the proper

test for whether an entity is a Private Club under the IHRA. As the Appellate Court in *Team Illinois Hockey Club* correctly found, "[i]n the absence of any Illinois case involving a similar backdrop, and due to the similarity in the statutes, we may look to federal cases for guidance in construing the [IHRA]." *Team Illinois Hockey Club, Inc.*, 2022 IL App (2d) 210568, ¶ 36 (citing *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 54 (relying on federal law in construing Illinois's Freedom of Information Act (FOIA) because "[t]he General Assembly patterned FOIA after the federal FOIA"); *Owens v. VHS Acquisition Subsidiary Number 3, Inc.*, 2017 IL App (1st) 161709, ¶ 27, (looking to federal precedent in interpreting a provision in the Illinois Code of Civil Procedure, because it was patterned after a Federal Rule of Civil Procedure)).

Title II of the federal Civil Rights Act is a similar statute to the IHRA. For instance, like its Illinois counterpart, Title II of the Civil Rights Act contains an exemption for "Private establishments" that is essentially identical to the definition of a "Private Club" under the IHRA. Specifically, Title II of the Civil Right Act states:

> **(e) Private establishments**
>
> The provisions of this subchapter shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

42 U.S.C. § 2000a.

Similarly, the definition of "Private Club" under the IHRA states as follows:

> 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.

775 ILCS 5/5-103.

Because of the similarities between the definitions of "Private establishments" under 42 U.S.C. § 2000a and "Private Club" under 775 ILCS 5/5-103(A), it is appropriate for this Court to analyze federal case law interpreting the phrase "Private establishments" under the Civil Rights Act to establish how Illinois courts should determine whether an entity constitutes a "Private Club" under the IHRA. *See Lau v. Abbott Lab'ys*, 2019 IL App (2d) 180456, ¶ 38 (finding that although the IHRA "is an Illinois statute, in assessing such claims, we are guided not only by Illinois case law but also by federal case law relating to federal anti-discrimination statutes," such as the "Civil Rights Act of 1964").

In *Welsh v. Boy Scouts of Am.*, 993 F.2d 1267 (7th Cir. 1993)—a case cited by the parties and the Appellate Court in *Team Illinois Hockey Club*—the Seventh Circuit established a seven-factor test to determine whether an entity qualified under the "private club exception" to Title II of the Civil Rights Act. *Id.* at 1276. The seven factors from *Welsh* were adopted from the federal

district court case *United States v. Lansdowne Swim Club*, 713 F. Supp. 785 (E.D. Pa. 1989). *See id.* In *Lansdowne Swim Club*, the federal district court analyzed the legislative history of the private club exception to Title II of the Civil Rights Act, the limited U.S. Supreme Court jurisprudence regarding this private club exception, and myriad case law from across the country interpreting and applying the private club exception in order to develop a comprehensive set of factors for determining whether an organization constitutes a "private club." *See Lansdowne Swim Club*, 713 F. Supp. 785 at 795–97.

The seven factors identified by the district court in *Lansdowne Swim Club* and further adopted by the Seventh Circuit in *Welsh* are as follows:

1) the genuine selectivity of the group;
2) the membership's control over the operations of the establishment;
3) the history of the organization;
4) the use of facilities by nonmembers;
5) the club's purpose;
6) whether the club advertises for members; and
7) whether the club is nonprofit or for profit.

Welsh, 993 F.2d at 1276 (citing *Lansdowne Swim Club*, 713 F. Supp. 785 at 796–97).

In addition, *Welsh* further emphasized that the United States Supreme Court has put "great weight on the first factor, that of selectivity" to reiterate that the private club exception is for genuine and authentic private clubs, and not as a means for private establishments to engage in "subterfuge designed to avoid coverage of [Title II of the Civil Rights Act]." *Id.* (citing *Daniel v. Paul*, 395 U.S. 298, 302 (1969)).

Amicus asks the Illinois Supreme Court to adopt the seven-factor test from *Welsh* for determining whether a private entity constitutes a "private club" under the exemption to the IHRA. Both the IHRA and Title II of the Civil Rights Act are anti-discrimination statutes and both have nearly identical private club exceptions. Therefore, it is prudent for this Court to rely on federal law interpreting the private club exception to Title II of the Civil Rights Act when interpreting the same private club exception in the IHRA. Moreover, as discussed above, the seven-factor test from *Welsh* provides a comprehensive list of factors that courts across the country have used to gauge whether an entity is in fact a genuine private club exempt from Title II.

The seven factors from *Welsh* provide a ready-made test that the Illinois Supreme Court should adopt to ensure the goals of the IHRA are met while preventing the imposition of any undue burdens on private clubs operating in the state. Doing so would create certainty and predictability for both courts and private parties across the state in assessing and determining whether private organizations qualify as "private clubs" exempt from the IHRA.

CONCLUSION

For the reasons set forth above, *Amicus* respectfully requests that the Illinois Supreme Court reverse the Appellate Court's decision and hold that the mere allegation that a private organization "leases and operates" a place of public accommodation for private use is insufficient, without more, to state a claim under the IHRA. This Court should also provide guidance on the extent to which a plaintiff must allege facts showing that a private organization "leases and operates" a place of public accommodation for private use in order to establish a "close connection" that states a claim under the IHRA.

The Illinois Supreme Court should also use this opportunity to provide guidance on the appropriate standard to be employed to determine whether an organization constitutes a "Private Club" exempt from the IHRA under 775 ILCS 5/5-103(A). Specifically, this Court should adopt the seven-factor test from *Welsh v. Boy Scouts of Am.*, 993 F.2d 1267 (7th Cir. 1993). The Court should also grant any other such relief that it deems is equitable and just.

Dated: March 8, 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.

DATED: March 8, 2023

/s/ *Ryan Blackney*

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies pursuant to penalties of perjury as set forth in Section 1-109 of the Illinois Code of Civil Procedure that on March 8, 2023, he caused the foregoing *Brief of Amicus Curiae* to be electronically filed with the Clerk of this Court using the Odyssey eFileIL system, which sent a notification of such filing to counsel of record via electronic mail.

The undersigned further certifies that on March 8, 2023, he served the individuals identified below by transmitting via email a copy of the foregoing *Brief of Amicus Curiae*:

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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.

DATED: March 8, 2023

/s/ *Ryan Blackney*