No. 128935

IN THE
SUPREME COURT OF ILLINOIS

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

Plaintiff-Appellee,

v.

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

Defendants-Appellants.

BRIEF OF *AMICI CURIAE* EQUIP FOR EQUALITY, ACCESS LIVING OF METROPOLITAN CHICAGO, CENTER FOR DISABILITY & ELDER LAW, CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS, EPILEPSY FOUNDATION OF GREATER CHICAGO, LEGAL COUNCIL FOR HEALTH JUSTICE (IL), EQUALITY ILLINOIS, SHRIVER CENTER ON POVERTY LAW, & LEGAL AID CHICAGO SUPPORTING PLAINTIFF-APPELLEE M.U.

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POINTS AND AUTHORITIES

STATEMENT OF INTEREST

Equip for Equality (EFE) is a private, non-profit organization designated by the Governor of Illinois to implement the federally mandated Protection and Advocacy System. Our mission is to advance the human and civil rights of people with disabilities in Illinois. In pursuit of our goal of tackling common problems affecting people with disabilities, EFE undertakes a combination of strategies that include public policy and legislative reform, class action and individual litigation, informal advocacy and legal counseling, and watchdog reports on public institutions. We also file amicus briefs in support of disability rights.

EFE has a strong and enduring interest in the scope of coverage of the Illinois Human Rights Act (IHRA) as applied to organizations like Defendants. EFE witnessed first-hand how the narrow interpretation of "place of public accommodation" under the old IHRA could deny coverage to people with disabilities. Under the old law, protected-class individuals had only patchwork protection under state law and could be excluded from various commercial and civic activities. (And while EFE's mission is advocating for disability rights, we note that narrow coverage of "place of public accommodation" hurt people from *all* protected classes under the IHRA.) Illinois courts had already held that people with disabilities had no IHRA protection against discrimination in diving classes, schools, and dentist offices. Absent the 2007 amendment, businesses would have continued challenging whether they had any obligation to not discriminate or to accommodate disabilities, leading to hairsplitting litigation (such as the present case) about coverage under the IHRA. It left people with disabilities unequal to others in many public settings. EFE pursued the issue both in litigation and before the General Assembly.

Access Living of Metropolitan Chicago (Access Living) was founded in 1980 and is one of the nation's largest, most experienced, and most prominent disability rights organizations governed and staffed by people with disabilities. As a Center for Independent Living (CIL) established under the federal Rehabilitation Act, Access Living's statutorily-mandated mission includes advocacy to ensure the independence, integration, and full citizenship of people with disabilities. Access Living envisions a world free from barriers and discrimination where disability is respected as a natural part of the human experience, and people with disabilities are included and valued. The arguments in this brief support that mission, and protect the rights of people with disabilities under the IHRA.

The Center for Disability & Elder Law (CDEL) for nearly 40 years has provided free legal services to low-income residents of Cook County, Illinois who are Older Adults and/or persons with permanent disabilities. Since its foundation, CDEL has been a strong advocate for persons with disabilities, a mission that was re-adopted and re-emphasized in its most recent strategic plan adopted in 2022. CDEL represents people with disabilities in civil legal proceedings to ensure that their rights are protected and it has great interest in ensuring those rights are construed broadly and fairly.

Chicago Lawyers' Committee for Civil Rights is a public interest law organization founded in 1969 that works to secure racial equity and economic opportunity for all. Chicago Lawyers' Committee provides legal representation through partnerships with the private bar and collaborates with grassroots organizations and other advocacy groups to implement community-based solutions that advance civil rights. Through its priority practice areas, which include fair housing, educational rights, hate crimes and voting rights, Chicago Lawyers' Committee utilizes national, state and local civil rights laws to challenge

discriminatory practices and policies and secure the rights of protected classes and the intended beneficiaries of those protections. This includes complaints on behalf of individuals invoking the rights and protections provided by the IHRA.

The Epilepsy Foundation of Greater Chicago (EFGC) provides free non-medical support services including counseling, case management, and education to families living with epilepsy. Because the underlying case involves disability discrimination, it should be known that people with epilepsy often live in fear and have anxiety due to the unpredictability of seizures by time, location and sometimes severity. It is important to ensure there are policies in place to protect our constituents because discrimination should be recognized and addressed even if it takes place in a non-physical or intangible context.

Legal Council for Health Justice (IL) is a 30-year-old nonprofit public interest law organization that engages in individual and class action litigation to advance access to quality healthcare and protect the legal rights of people facing barriers due to illness or disability.

Equality Illinois is the state's oldest, largest, and most effective LGBTQ+ civil rights organization. With a membership of over 40,000 people and a full-time professional staff of policy experts, organizers and lobbyists and a statewide reach, Equality Illinois builds a better Illinois by advancing equal treatment and full acceptance of the LGBTQ+ community. For over 30 years, Equality Illinois has brought the voices of LGBTQ+ people and allies to institutions of power across Illinois, striving to create a world that is healthy, just, and fully equal for all LGBTQ+ people. It advances civil rights and social justice by inspiring, advocating, and mobilizing through an inclusive movement that works tirelessly on behalf of the LGBTQ+ community. Equality Illinois envisions a fair and unified Illinois

where everyone is treated with dignity and respect and where all people live freely regardless of sexual orientation or gender identity or gender expression.

Shriver Center on Poverty Law (Shriver Center) provides national and state leadership to promote justice and improve the lives and opportunities for people living in poverty. The Shriver Center advances laws and policies, through litigation, legislative and policy advocacy, and administrative reform, to achieve economic, racial, and social justice for our clients. The Shriver Center works across a range of specific issues, including health care, childcare, housing, employment and training, asset building, criminal justice, re-entry, civil rights, early childhood development, and public benefits. We represent communities that include people living with mental and physical disabilities who need access to public accommodations to ensure their safety, seek healthcare, engage in gainful employment, and live their lives as vital participants in our society and their communities.

Legal Aid Chicago is a non-profit organization providing free legal representation and counsel to disadvantaged people and communities throughout Cook County, Illinois. Legal Aid Chicago's practice areas include consumer, employment, family, housing, public benefits, and K-12 education law. Each year advocates at Legal Aid Chicago represent thousands of clients who live in poverty, or are otherwise vulnerable, in a wide range of civil legal matters. A significant portion of these clients are people with disabilities – many with legal issues directly tied to their disability (such as eligibility for social security benefits or special education services), and others with unrelated legal issues but who require accommodations (such as breaks during a deposition or public agency notices that are accessible for the visually impaired). In the context of representing students with

disabilities and other marginalized youth, Legal Aid Chicago advocates have brought claims in federal and state court under the ADA and the IHRA.

SUMMARY OF ARGUMENT

A principal topic of this case is the scope of "place of public accommodation" under the Illinois Human Rights Act (IHRA), 775 ILCS 5/5-101(A). Twenty years ago, the Illinois Appellate Court in *Gilbert v. Dep't of Hum. Rts.*, 343 Ill. App. 3d 904, 907 (1st Dist. 2003), gave that term a narrower interpretation than federal courts had for the parallel phrase in the Americans with Disabilities Act (ADA)), 42 U.S.C. § 12181(7). In 2007, the General Assembly redefined "place of public accommodation," in response to cases like *Gilbert* to line up with the ADA. The amendment abrogated the Appellate Court cases interpreting the IHRA to give "place of public accommodation" narrower coverage.

Equip for Equality (EFE), Access Living, EFGC, and other organizations joined in the legislative activity leading up to the 2007 amendment. We submit this brief to show that Illinois case law applying the pre-2007 IHRA definition of "place of public accommodation" ought to be recognized as abrogated by the 2007 law and no longer followed. The Second District, Defendants-Appellants, and their amici improperly treat such authority as controlling. EFE submits that the IHRA's definition of "place of public accommodation" if anything is *broader* than the ADA. We ask the Court formally to overrule the pre-2007 case law that applied the old definition of public accommodation.

We also urge that the Court disaffirm the Second District's conclusion in the opinion below that "place of public accommodation" in § 5-101(A) relates only to "physical, tangible places." *M.U. by and Through Kelly U. v. Team Illinois Hockey Club, Inc.,* 2022 IL App (2d) 210568, ¶ 29. Federal courts, including the U.S. Court of Appeals

for the Seventh Circuit (which covers Illinois), and the U.S. Department of Justice interpret the nearly identical language in the ADA to include non-physical spaces. *See, e.g., Doe v. Mut. of Omaha Ins. Co.*, 179 F.3d 557, 559 (7th Cir. 1999) and DOJ, *Guidance on Web Accessibility and the ADA* (Mar. 18, 2022), https://www.ada.gov/resources/web-guidance/.

Confining the IHRA to physical locations would open a huge loophole in Illinois for web-based enterprises like Apple, Netflix, eBay, and Amazon that predominately operate and interface with customers on-line. Paradoxically, it would leave the nation's largest retailers exempt from the IHRA while Main Street shops would remain covered. To avoid this distortion of our State's leading civil-rights law, the Court should interpret the IHRA term "place of public accommodation" consistent with *Doe* in the Seventh Circuit.

ARGUMENT

I. The General Assembly Abrogated the Pre-2007 Case Law by Amending the IHRA

A. The State of the Law Governing "Place of Public Accommodations" at the Time of *Gilbert*

Beginning in the 1990s, EFE took a stand in *Gilbert*; *Baksh v. Christie Clinic Ass'n*, 304 Ill. App. 3d 995 (1st Dist. 1999); and *Cut 'N Dried Salon v. Dep't of Hum. Rts.*, 306 Ill. App. 3d 142 (1st Dist. 1999), in support of a broad interpretation of "place of public accommodation" under 775 ILCS 5/5-101. (EFE was counsel in *Gilbert* and *amicus* in *Cut 'N Dried*.) The IHRA at the time defined "place of public accommodation" as follows:

> (A) ***Place of Public Accommodation***. (1) "Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.
> (2) By way of example, but not of limitation, "place of public accommodation" includes facilities of the following types: inns, restaurants, eating houses, hotels, soda fountains, soft drink parlors, taverns, roadhouses, barber shops, department stores, clothing stores, hat stores,

> shoe stores, bathrooms, restrooms, theatres, skating rinks, public golf courses, public golf driving ranges, concerts, cafes, bicycle rinks, elevators, ice cream parlors or rooms, railroads, omnibuses, busses, stages, airplanes, street cars, boats, funeral hearses, crematories, cemeteries, and public conveyances on land, water, or air, public swimming pools and other places of public accommodation and amusement.

This definition was different from the ADA, which since 1990 has provided as follows:

> The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce
> (A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
> (B) a restaurant, bar, or other establishment serving food or drink;
> (C) a motion picture house, theater, concert hall, stadium, or other place of exhibition entertainment;
> (D) an auditorium, convention center, lecture hall, or other place of public gathering;
> (E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
> (F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
> (G) a terminal, depot, or other station used for specified public transportation;
> (H) a museum, library, gallery, or other place of public display or collection;
> (I) a park, zoo, amusement park, or other place of recreation;
> (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
> (K) a day care center, senior citizen center, homeless shelter, food bank, adoption
> agency, or other social service center establishment; and
> (L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation. [42 U.S.C. § 12181(7)]

Gilbert treated subsection (2) of the IHRA as a limitation on the term "business … facility of any kind." The court "noted that . . . a broad interpretation of the phrase 'business *** facility of any kind' would render the Act's definition of 'place of public accommodation' and the accompanying examples found in section 5–101(A)(2)

surplusage." *Gilbert*, 343 Ill. App. 3d at 908. *See also Bd. of Trustees of S. Ill. Univ. v. Dep't of Hum. Rts.*, 159 Ill. 2d 206, 211 (1994) (§ 5–101(A)(2) lists "examples of facilities for overnight accommodations, entertainment, recreation or transportation").

Applying the canon of *ejusdem generis*, the *Gilbert* Court held that in addition to meeting the terms of subsection (1), the activity must also be "similar to the activities listed in the statute" in subsection (2) to constitute a public accommodation under the IHRA. *Id.* at 909. In *Gilbert*, a scuba diving class was held not to be like enterprises listed in subsection (2) because it screened participants for safety. Respondent was deemed "not like the businesses enumerated in section 5–101(A)(2) which provide services to all members of the general public without prescreening or qualification." *Id.* at 910.

By contrast, in *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 680 (2001), decided after *Gilbert,* the U.S. Supreme Court held that a golf tournament was an ADA "public accommodation" despite that the participants had to "succeed[] in the open qualifying rounds" to "play in the event." In direct opposition to *Gilbert*, the fact that members of the public were not equally invited to participate was not a relevant, let alone determining, factor for "public accommodation." This point resonates in this case about a sports league.

In *Cut 'N Dried Salon*, the Illinois Appellate Court noted the relevance of the post-enactment legislative history to support giving "public accommodation" a narrow construction under the IHRA. The case involved whether the Act applied to insurance underwriting. The Court held that it did not, weighing (in part) the failure of the General Assembly to amend the statute to so provide in response to a case development.

> [T]he legislative history surrounding the Human Rights Act is illustrative in determining whether the legislature intended insurance companies to be places of public accommodation. In *Klein v. John Alden Life Insurance Co*., Ill. Hum. Rts. Comm'n Rep. 1983CP0171 (March 5, 1984), the [Human

> Rights] Commission held that it did not have jurisdiction over discrimination claims based on insurance underwriting. To date, this decision has been supported by the legislature's failure to enact legislation to the contrary. The 86th, 87th and 88th General Assembly sessions had bills introduced that would have added an article 3A to the Human Rights Act which specifically addressed discrimination in insurance coverage . . . . In all four sessions the bill died at the close of the term. The deliberate attempts to enact legislation to include insurance companies in the Human Rights Act serves to underscore their current absence from the existing framework.

Id., 306 Ill. App. 3d at 147. The key to changing the definition of public accommodation was to amend the IHRA. This is precisely why EFE and other organizations successfully persuaded the General Assembly to amend the law in 2007 to address these inequities.

B. The General Assembly Amended "Place of Public Accommodation" in 2007 to Track the ADA Definition and Widen the Scope of the IHRA's Coverage

EFE, Access Living, EFGC, and other advocates pushed publicly to amend the definition of "place of public accommodation" in the IHRA to match the breadth of the ADA. On February 9, 2004, HB6949 was introduced to replace the above IHRA definition of "public accommodation" with the definition from the federal ADA. General Assembly website, https://www.ilga.gov/legislation/93/HB/PDF/09300HB6949lv.pdf. After it was referred to the Rules Committee, no further action was taken that session. *Id.*, https://www.ilga.gov/legislation/BillStatus.asp?DocNum=6949&GAID=3&DocTypeID=HB&LegId=12218&SessionID=3&GA=93. In 2005, it was reintroduced as HB0685, https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=50&GA=94&DocTypeId=HB&DocNum=685&GAID=8&LegID=15116&SpecSess=&Session, then tabled. https://www.ilga.gov/legislation/BillStatus.asp?DocNum=0685&GAID=8&DocTypeID=HB&LegID=15116&SessionID=50&SpecSess=&Session=&GA=94. Also in 2005, during the same session, the amendment was introduced in another bill, HR1000.

https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=50&GA=94&DocTypeId=HB&DocNum=1000&GAID=8&LegID=15672&SpecSess=&Session= Once again, though, no action was taken by the General Assembly that session on HR 1000. https://www.ilga.gov/legislation/BillStatus.asp?DocNum=1000&GAID=8&DocTypeID=HB&LegId=15672&SessionID=50&GA=94.

In 2007, the General Assembly reintroduced a bill (SB593) to broaden the definition of "public accommodation." As noted by Senator Cullerton, "[t]his bill updates the current definition of 'public accommodations' to confirm to the definition used in the ADA . . . It's supported by Equip for Equality, Epilepsy Foundation of Greater Chicago, Access Living, the AIDS Foundation, Coalition of Citizens with Disabilities and a number of other organizations." Ill. Sen. Trans., 2007 Reg. Sess. No. 99, p.37-38 (May 10, 2007). General Assembly website, https://ilga.gov/Senate/transcripts/Strans95/09500038.pdf.

SB593 passed unanimously during that session over an amendatory veto. *Id.*, https://www.ilga.gov/legislation/BillStatus.asp?DocNum=593&GAID=9&DocTypeID=SB&LegId=28432&SessionID=51&GA=95. It adopted the ADA definition with a new preface and modest alterations (such as excluding sectarian institutions from coverage) https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=51&GA=95&DocTypeId=SB&DocNum=593&GAID=9&LegID=28432&SpecSess=&Session=.

On the Senate floor in the veto override session, sponsor Senator Cullerton explained the purpose of the amendment:

> Senate Bill 593 updates the Illinois Human Rights Act to bring it in line with the federal government and thirty-nine other states to -- in an effort to expand the scope of coverage of the provisions of the Act concerning discrimination in places of public accommodation. Court decisions have limited the application of those provisions over the years resulting in a very

> weak statute. So, we passed this bill in response to that. And, it passed unanimously in both houses.

Illinois Senate Trans., 2007 Reg. Sess. No. 99, p.19 (Oct. 2, 2007). Illinois General Assembly website, https://www.ilga.gov/senate/transcripts/strans95/09500099.pdf. Such pronouncements from the floor are considered authoritative in interpreting Illinois statutes. *See People v. Marin*, 342 Ill. App. 3d 716, 723 (1st Dist. 2003) (citing Senate Transcript in support of legislature's purpose in enacting the statute); *In re S.G.*, 277 Ill. App. 3d 803, 808 (1st Dist. 1996) (same). The amendment became effective October 10, 2007.

Through this amendment, therefore, the General Assembly intended to abrogate prior Illinois case law that limited application of the IHRA's "place of public accommodation" provision and such case law should therefore no longer be followed. Illinois courts have recognized this in the context of other statutes that were amended after judicial interpretation. *See*, *e.g.*, *Nationstar Mortgage LLC v. Missirlian*, 2017 IL App (1st) 152730, ¶15 ("legislative intent of the plain language of this amendment seems to be to abrogate *Dina*'s holding that a mortgage made by an unlicensed lender is void as against public policy," holding that prior case authority was "no longer good law"); *Best v. Best*, 358 Ill. App. 3d 1046, 1052 (2d Dist. 2005) ("even if the reasoning in *Hagaman* were unassailable, the [statutory] amendment would abrogate the result").

If anything, the amended IDHR should be treated more expansively than the ADA. The amended preface provides that "'[p]lace of public accommodation' includes, *but is not limited to*" the categories in the statute (emphasis added), language that does not appear in the ADA. (The ADA definition is prefaced differently: the "following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce." 42 U.S.C. § 12181(7).) The "not limited to" language

should be given full effect in construing the IHRA's scope. *Cook Cnty. Sheriff's Office v. Cook Cnty. Comm'n on Human Rights*, 2016 IL App (1st) 150718, ¶ 52 ("[w]hen the legislature employs a phrase such as 'including but not limited to' preceding a list of things, the phrase is interpreted to mean that the ensuing list is merely illustrative rather than exhaustive"). Federal case law under the ADA is a floor, not a ceiling, for the present case.

Whatever authority cases like *Gilbert*, *Baksh*, and *Cut 'N Dried Salon* once might have had, their restrictive interpretations of "place of public accommodation" under the IHRA have been superseded by the 2007 amendment bringing the definition in line with the ADA, and these earlier Illinois Appellate Court cases should no longer be followed.

II. "Place of Public Accommodation" Under IHRA Includes Non-Physical Sites

Contrary to the Second District's interpretation, the IHRA does not confine the Act's coverage to "physical, tangible places." The statutory analysis is straightforward. The Act protects "full and equal enjoyment of the facilities, goods, and services ***of*** any public place of accommodation, 775 ILCS 5/5-102(A) (emphasis added), not "at" or "in" such a place. If the General Assembly meant to limit Article 5 to goods or services provided at a physical location, then it could have used "at" or "in" rather than "of." *See Pallozzi v. Allstate Life Ins. Co.,* 198 F.3d 28, 33 (2d Cir. 1999) (interpreting the ADA). The Second District errs by porting-in language ("physical, tangible") that the General Assembly did not put there on its own. *See People v. Parvin*, 125 Ill. 2d 519 (1988) (court does not "read a term" into a statute "that is not there").

The Second District also errs in declaring that "[t]he term 'place' is not defined in the Act." *M.U. by and Through Kelly U.,* 2022 IL App (2d) 210568, ¶ 29. (Team Illinois

makes the same argument at pp.18-20 of its brief.) That rips the term "place" out of its context in the IHRA. The operative statutory term—"place *of public accommodation*"—is expressly defined by the Act, 775 ILCS 5/5-101(A) (in a section that is even captioned as "Definitions"), as including but not limited to the thirteen categories of enterprises enumerated in that section. *See Jane Doe-3 v. McLean County Unit Dist. No. 5 Bd. of Directors*, 2012 IL 112479, ¶ 87 ("[t]he definitions in the Act are 'the law' and must be applied like any other section of the Act"). We have no need to resort to dictionary or other external definitions of a term that the General Assembly defined for us in the statute.

While is it is true that the categories therein describe physical places such as theaters and motels, they equally describe businesses that exist widely on the internet: places of entertainment (Netflix), grocery stores (Peapod), public conveyances (Uber), places of recreation (TikTok). Even major brick-and-mortar retailers like Walmart and Target maintain vast web-based retail operations in addition to stores. The term thus embraces non-physical spaces and physical ones alike, treating them without distinction.

This interpretation tracks the Seventh Circuit's construction of the parallel language in the ADA. In *Doe v. Mutual of Omaha Ins. Co.*, 179 F.3d 557, 558–59 (7th Cir. 1999) (Posner, J.), the court held that non-physical spaces are within the ADA's contemplation, citing the First Circuit's authority in the landmark 1994 *Carparts* case:

> Title III of the Act, in section 302(a), provides that "no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation" by the owner, lessee, or operator of such a place. 42 U.S.C. § 12182(a). The core meaning of this provision, plainly enough, is that the owner or operator of a store, hotel, restaurant, dentist's office, travel agency, theater, Web site, or other facility (whether in physical space or in electronic space, *Carparts Distribution Center, Inc. v. Automotive Wholesaler's Ass'n of New England, Inc.,* 37 F.3d 12, 19 (1st Cir.1994)) that is open to the public

> cannot exclude disabled persons from entering the facility and, once in, from using the facility in the same way that the nondisabled do. (emphasis added)

Accord Morgan v. Joint Admin. Bd., Ret. Plan of the Pillsbury Co. and Am. Fed'n of Grain Millers, AFL-CIO-CLC, 268 F.3d 456, 459 (7th Cir. 2001) (Posner, J.) ("defendant asks us to interpret 'public accommodation' literally, as denoting a physical site, such as a store or hotel but we have already rejected that interpretation.") (*citing Doe* and *Carparts*). *See also Pallozzi.*, 198 F.3d at 32 (the ADA "Title III's mandate that the disabled be accorded 'full and equal enjoyment of the goods, [and] services... of any place of public accommodation,' . . . suggests to us that the statute was meant to guarantee them more than mere physical access"). It seems doubtful that the General Assembly, when it amended the Act in 2007 to incorporate the ADA definition, meant for the term to have a *narrower* meaning than the federal courts in Illinois were already asssigning to the ADA at that time.

This interpretation has also been cited with approval by the U.S. Department of Justice (the federal agency statutorily charged with enforcing and interpreting Title III of the ADA, 42 U.S.C. § 12188(b)). In its 2022 guidance, the DOJ stated that "the Department has consistently taken the position that the ADA's requirements apply to all the goods, services, privileges, or activities offered by public accommodations, including those offered on the web." DOJ, *Guidance on Web Accessibility and the ADA* (Mar. 18, 2022), https://www.ada.gov/resources/web-guidance/

The federal government staked this interpretation position out at the dawn of E-commerce. In a 1996 letter from Assistant Attorney General Deval Patrick responding to an inquiry by Senator Tom Harkin about the accessibility of websites to people with visual disabilities, it stated that "[c]overed entities that use the Internet for

communications regarding their programs, goods, or services must be prepared to offer those communications through accessible means as well." Letter from Deval L. Patrick, Ass't Attorney General, Civil Rights Division, DOJ, (Sept. 9, 1996), http://www.justice.gov/crt/foia/readingroom/frequent_requests/ada_tal/tal712.txt.

The DOJ's view has remained consistent over time. In 2000, it filed an amicus brief in *Hooks v. OKbridge, Inc.,* 232 F.3d 208 (5th Cir. 2000), a case that involved a web-only business that staged on-line bridge tournaments. It explained that a business providing services solely over the Internet is subject to Title III's prohibitions on disability discrimination no less than physical places. *See also* Brief of the United States as Amicus Curiae in Support of Appellant in *Hooks v. OKbridge, Inc.*, 1999 WL 33806215, http://www.justice.gov/crt/about/app/briefs/hooks.pdf. *See also* Statement of Interest of the United States of America in *National Ass'n for the Deaf v. Netflix, Inc.*, Case No. 3:11-cv-30168-MAP, Dkt. 45, 2012 WL 1834803 (D. Mass. May 15, 2012) ("Netflix, which operates its website and Watch Instantly service through computer servers and the Internet, is a public accommodation subject to title III of the ADA, even if it has no physical structure where customers come to access its services").

Not only does including non-physical spaces among "the facilities, goods, and services of any public place of accommodation" better meet the actual terms of the law, but it also avoids the outrageous consequences of exempting large retailers in the USA that operate primarily or exclusively over the internet. *See People v. Kastman*, 2022 IL 127681, ¶ 29 (a "court may also consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another . . . . [and] presumes that the General Assembly, in enacting legislation, did not

intend absurdity, inconvenience, or injustice"). Under the Second District and Team Illinois view of the world, the internet never happened and public accommodations are only located inside buildings. Amazon, eBay, and myriad other national businesses that are primarily reached through phones, tablets and computers could, under this view, discriminate with impunity under our state's civil-rights laws. Major retailers like Walmart and Target could freely discriminate against all the protected classes identified by the IHRA including disability if the transaction took place on their websites. Meanwhile, our Main Street stores that only exist physically would be fully bound by the terms of the law.

We urge that the Court disaffirm the Second District's finding that discrimination is only covered under the IHRA if at occurs in connection with a physical, tangible place.

CONCLUSION

The undersigned amici request that the Court construe the IHRA to the full breadth that the General Assembly intended when it amended the law in 2007, including application of its protections to non-physical spaces as is done under the ADA.

Dated: June 21, 2023

Respectfully submitted,
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RULE 341(c) CERTIFICATE OF COMPLIANCE

I, Paul W. Mollica, certify that this brief conforms to the requirements of the Supreme Court Rules 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, and the Rule 341(c) certificate of compliance is 17 pages.

/s/ Paul W. Mollica
One of the attorneys for amicus curiae
Equip for Equality