No. 1-23-1221

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KAYLA R. HOGAN., Petitioner-Appellant, v. ILLINOIS HUMAN RIGHTS COMMISSION, ILLINOIS DEPARTMENT OF HUMAN RIGHTS and AIRBNB, INC., Defendants-Appellees.	Appeal from the Illinois Human Rights Commission ALS No. 23-0076 Charge No. 2022 CP 0441

MOTION OF *AMICI CURIAE*
CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS, ACCESS LIVING, HOPE FAIR HOUSING CENTER, AND OPEN COMMUNITIES
FOR LEAVE TO FILE A BRIEF ON THE ISSUE OF JURISDICTION
AND IN SUPPORT OF PETITIONER-APPELLANT KAYLA HOGAN

Pursuant to Illinois Supreme Court Rule 345, the below listed non-profit civil rights advocates move for leave to file the attached brief as *amici curiae* in support of reversing the ruling of the Illinois Human Rights Commission (Commission) on the issue of jurisdiction, and support of Petitioner-Appellee Kayla Hogan.

1. **Chicago Lawyers' Committee for Civil Rights (CLC)** is a public interest law organization founded in 1969 that works to secure racial equity and economic opportunity for all. Through its priority practice areas, which include fair housing, educational rights, hate crimes, and voting rights, CLC utilizes national, state, and local civil rights laws—including the Illinois Human Rights Act—to challenge discriminatory practices and policies and secure the rights of protected classes.

2. **Access Living** was founded in 1980, based in Chicago, and is one of the nation's largest, most experienced, and most prominent disability rights organizations governed and staffed by 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 work to protect the rights of people with disabilities under the Illinois Human Rights Act.

3. **HOPE Fair Housing Center (HOPE)** is a nonprofit organization dedicated to eliminating housing discrimination across Illinois since 1968. HOPE works to create greater housing opportunities and choice for all. Its mission is to ensure everyone has the chance to live in the community, home, or apartment of their choice, free from discrimination. HOPE accomplishes this through education, outreach, enforcement, training, and advocacy. HOPE is dedicated to vigorous enforcement of fair housing and other civil rights laws—including the Illinois Human Rights Act—impacting housing choice whether temporary or permanent.

4. **Open Communities** grew out of the 1960's Civil Rights Movement campaign for "open housing." Open Communities is currently the only HUD-designated fair housing center in Chicagoland's northern suburbs. Its mission is to eradicate housing discrimination and unjust practices that perpetuate segregation and inequity. Open Communities fosters thriving, inclusive communities through fair housing enforcement, housing counseling, education, outreach, and advocacy. Open Communities believes public accommodations should clearly be protected under the Illinois Human Rights Act, including those vacation dwellings rented online.

5. This appeal presents two important questions. The first is how "place of public accommodation" under the Act applies to online places of public accommodation like Airbnb. The second is whether a claim of discrimination can be filed against "any person" as the Act expressly states, 775 ILCS 5/5-102 (West 2022), or only against the public accommodation itself, as the Commission implicitly found. The second question is also currently pending before the Illinois Supreme Court in the case of *M.U. v. Team Illinois,* Case No. 128935 (fully briefed and argued on September 20, 2023).

6. Both issues present questions of critical importance, on a record from a claimant who navigated the Illinois Department of Human Rights investigation and Commission process *pro se*. This amicus brief seeks to provide the Court with the relevant legal authority to evaluate these legal issues and recognize the full scope of the Act.

7. In the proposed brief, *amici* urge the Court not to affirm the Commission's conclusion that it lacked jurisdiction over the complaint. Like the Americans with Disabilities Act and other public accommodation laws, the Act applies equally to virtual accommodations as it does to physical accommodations. The Act expressly states that charges may be filed against "any person" that discriminates in the enjoyment of a public accommodations. 775 ILCS 5/5-102 (West 2022). There is no basis in the text or history of this remedial civil rights law to artificially limit its reach to physical places or to excuse discrimination in Illinois that takes place online. Especially today as stores, schools, entertainment, banking, government services, and businesses and accommodations of all kinds shift to online and virtual operations, it is more imperative than ever to protect the right to access to those accommodations without discrimination.

8. Accordingly, *amici* respectfully request that this Court grant its motion to file the attached *amicus* brief instanter.

Dated: November 3, 2023

Respectfully submitted,

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KAYLA R. HOGAN,

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v.

ILLINOIS HUMAN RIGHTS COMMISSION, ILLINOIS DEPARTMENT OF HUMAN RIGHTS and AIRBNB, INC.,

Defendants-Appellees.

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BRIEF OF *AMICI CURIAE* CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS, ACCESS LIVING, HOPE FAIR HOUSING CENTER, AND OPEN COMMUNITIES ON THE ISSUE OF JURISDICTION AND IN SUPPORT OF PETITIONER-APPELLANT KAYLA HOGAN

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INDEX AND POINTS AND AUTHORITIES

STATEMENT OF INTEREST

Chicago Lawyers' Committee for Civil Rights (CLC) is a public interest law organization founded in 1969 that works to secure racial equity and economic opportunity for all. CLC 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, CLC 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 Illinois Human Rights Act and its critical public accommodation provision.

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 Illinois Human Rights Act.

HOPE Fair Housing Center (HOPE) is a nonprofit organization dedicated to eliminating housing discrimination across Illinois since 1968. HOPE works to create

greater housing opportunities and choice for all. Its mission is to ensure everyone has the chance to live in the community, home, or apartment of their choice, free from discrimination. HOPE accomplishes this through education, outreach, enforcement, training, and advocacy. HOPE is dedicated to vigorous enforcement of fair housing and other civil rights laws that impact housing choice whether temporary or permanent. HOPE's interests will be adversely affected by a decision that limits the full and equal enjoyment of any public accommodation in Illinois, including a vacation property, based on their membership in a group protected by the Illinois Human Rights Act**.**

Open Communities is an over 50-year-old organization, which grew out of the 1960's Civil Rights Movement campaign for "open housing." Open Communities is currently the only HUD-designated fair housing center in Chicagoland's northern suburbs. Its mission is to eradicate housing discrimination and unjust practices that perpetuate segregation and inequity. Open Communities fosters thriving, inclusive communities through fair housing enforcement, housing counseling, education, outreach, and advocacy. Open Communities believes public accommodations are protected under the Illinois Human Rights Act, including those vacation dwellings rented online. A decision to the contrary is counter to Open Community's mission as it would rob protected classes from their right to access the full use of housing without discrimination.

SUMMARY OF ARGUMENT

The Illinois Human Rights Commission (Commission) erred when it found Airbnb to be exempt from the public accommodation provisions of the Illinois Human Rights Act, 775 ILCS 5/5-101 *et seq.*, and thus beyond the Commission's jurisdiction. Affirming the Commission's categorical statement would create a loophole whereby

Illinois law would allow a major American business offering substantial travel, lodging, and rental opportunities to the public to discriminate at will. That outcome would be directly at odds with the expansive remedial purpose of the Act to root out discrimination in public life. The legislature cannot have intended to allow Airbnb to refuse to book reservations for patrons because they are Black, or to refuse to offer lodging at properties owned by same-sex couples, or to provide listings that are inaccessible to people who are blind or have low vision, or to enable hosts to impose extra cleaning charges on women, but not men, all simply because Airbnb operates online and does not directly *own* the properties it offers to and rents out to the public. The Court should not repeat or affirm this error.

The Commission's ruling on jurisdiction should not be affirmed for multiple reasons. First, Airbnb is a "place of public accommodation" like the examples identified in the Act. For instance, Airbnb is a "travel service *** or other service establishment." 775 ILCS 5/5-101(A)(6) (West 2022). Notwithstanding that Airbnb does not own the rental units directly, for all practical purposes Airbnb is also "an inn, hotel, motel, or other place of lodging" because, like those establishments, it offers and rents lodging to the public. *Id.* at 5-101(A)(1). More broadly, Airbnb is also a "sales or rental establishment." *Id.* at 5-101 (A)(5). The Act lists mere examples of public accommodations, and the fact that Airbnb satisfies so many of those examples indicates that it is no different than any other business selling services to the public that must do so without discrimination.

Second, it does not matter that Airbnb operates "online." The Act applies to all accommodations, whether virtual or physical, as courts around the country have

recognized and as the Attorney General recently explained to the Supreme Court as *amicus curiae* in the pending case of *M.U. v. Team Illinois*, Case No. 128935 (Ill. S. Ct.) (fully briefed and argued September 20, 2023). See Ex. 1 at 15-19 (Attorney General Amicus Brief).

Third, Airbnb is also subject to the Act and the jurisdiction of the Commission as a "person," 775 ILCS 5/5-102 (West 2022), for any actions that deny "the full and equal enjoyment" of a public accommodation, including the enjoyment of vacation properties for rent through its website. The Commission's legally erroneous conclusion that Airbnb is exempt from the Act because it is not a public accommodation misinterprets the statute. The text of the Act does not limit the Commission to claims against the "owner" of the accommodations or to claims against the accommodation itself. Rather, the Act applies simply and broadly to "any person." *Id.* Again, the Supreme Court is interpreting this specific language, on this issue, in *M.U. v. Team Illinois*, Case No. 128935 (Ill. S. Ct.)

Amici take no position on the Commission's determination regarding substantial evidence of discrimination in the underlying charge of discrimination. The Illinois Department of Human Rights (IDHR) and the Commission both found on the merits a lack of substantial evidence of discrimination. However, the Commission's underlying conclusion that Airbnb is exempt from the Act and free to discriminate under Illinois law has far reaching consequences. That conclusion cannot stand and should be reversed.

ARGUMENT

I. Complaint, Proceedings, and Standard of Review

Hogan was a rental customer of Airbnb. C090. In March 2021, she booked lodging with Airbnb for a trip to southern Illinois. *Id.* She alleged that she experienced discrimination in connection with that trip from the host and from Airbnb. *Id.* The

complaint includes an allegation of Airbnb seeking from Hogan an allegedly discriminatory financial charge, allegation that discriminatory information in a review that Airbnb permitted to be online and that Airbnb publishes will impact her access to lodging and reservations in the future, and other conduct. C091.

Following her trip, Hogan timely filed a complaint with IDHR against Airbnb under the public accommodation provision of the Act. C090. IDHR concluded that the complaint both lacked substantial evidence of discrimination on the merits and fell outside its jurisdiction. C078. On review, the Commission likewise concluded:

> Respondent properly dismissed Counts A-E of Petitioner's charge for lack of jurisdiction. The Commission only has subject matter jurisdiction over claims brought under Section 5-102(A) of the Act **when the defendant qualifies as a place of public accommodation** as defined by the Act. *Cut'N Dried Salon v. Ill. Dep't of Human Rights*, 306 Ill. App. 3d 142, 145 (1st Dist. 1999); 775 ILCS 5/5-102(A). Airbnb does not qualify as a place of public accommodation under the Act because **it is not itself a place of lodging or a tangible public space.** Therefore, the Commission does not have subject matter jurisdiction.
>
> The Act does not specifically define "place of public accommodation," instead listing a variety of examples. The Illinois Supreme Court has held that in order to determine whether a particular defendant qualifies as a place of public accommodation, one must analyze whether it is "such like" the listed examples. *Board of Trustees of Southern Illinois University v. Dep't of Human Rights*, 159 Ill. 2d 206, 211 (1994). The Act does specify that "an inn, hotel, motel, or other place of lodging" constitutes a place of public accommodation, 775 ILCS 5/5-101(A)(1), however **Airbnb itself does not own any individual place of lodging. Airbnb operates an online platform through which lodging owners can advertise their properties.**

C091-92 (emphases added). In the alternative, the Commission concluded that even if it had jurisdiction, the complaint "would still be dismissed for lack of substantial evidence." C092.

"Whether an administrative body, such as the Commission, acted with jurisdiction is a question of law that is generally reviewed *de novo." Dimayuga v. Illinois Human*

Rights Comm'n, 2023 IL App (1st) 221145-U, ¶ 12 (citing *Thompson v. Department of Employment Security*, 399 Ill. App. 3d 393, 394-95 (2010)). The interpretation of the Act, likewise, is a question of law reviewed *de novo*. *Sylvester v. Indus. Comm'n*, 197 Ill. 2d 225, 232 (2001).

Amici urge the Court not to affirm the Commission's conclusion that it lacks jurisdiction over Airbnb. *Amici*, however, take no position on the Commission's alternative conclusion that the underlying charge lacks substantial evidence of discrimination. C092. The Court may affirm the decision of the Commission on any basis that appears in the record. *Boaden v. Department of Law Enforcement*, 267 Ill. App. 3d 645, 652 (4th Dist. 1994), *aff'd* 171 Ill. 2d 230 (1996) ("Because we review the order entered, not the reasoning underlying it, we may affirm the decision of an administrative agency when justified in law for any reason.").

II. Airbnb is subject to the Act as a place of public accommodation.

Airbnb is a public accommodation like the examples listed by the legislature in the Act. In finding that it lacked jurisdiction, the Commission reasoned that Airbnb is "not itself a place of lodging or a tangible public space" and "does not own any individual place of lodging." C091-92. But Airbnb is no different from other travel services that arrange lodging, tours, trips or other travel that the service itself does not own or operate; it is little different, practically, from other businesses offering hotel or other lodging for rent; it is also a sales or rental establishment generally. The Act's definition of a public accommodation "include[s], **but is not limited to**:

> (1) **an inn, hotel, motel, or other place of lodging**, except for an establishment located within a building that contains not more than 5 units for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(2) a restaurant, bar, or other establishment serving food or drink;

(3) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) an auditorium, convention center, lecture hall, or other place of public gathering;

(5) a bakery, grocery store, clothing store, hardware store, shopping center, or **other sales or rental establishment**;

(6) a laundromat, dry-cleaner, bank, barber shop, beauty shop, **travel service**, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, **insurance office**, professional office of a health care provider, hospital, **or other service establishment**;

(7) public conveyances on air, water, or land;

(8) a terminal, depot, or other station used for specified public transportation;

(9) a museum, library, gallery, or other place of public display or collection;

(10) a park, zoo, amusement park, or other place of recreation;

(11) a non-sectarian nursery, day care center, elementary, secondary, undergraduate, or postgraduate school, or other place of education;

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

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

775 ILCS 5/5-101(A) (West 2022) (emphases added). This list is merely exemplary. Public accommodations covered by the Act are not "limited to" the businesses itemized in the statute. Thus, to assess whether a particular accommodation qualifies as a place of public accommodation under the Act, one must analyze whether it is "such like" the listed examples. *Board of Trustees of Southern Illinois University v. Department of Human Rights,* 159 Ill. 2d 206, 211 (1994). Airbnb certainly is.

First, Airbnb is a "travel service *** or other service establishment." 775 ILCS 5/5-101(A)(6) (West 2022). A travel agency, for example, sells hotel rooms, flights, and other services to customers. Travel agencies do not generally own or operate the hotel, flights, tours, or other services directly. Rather, they facilitate the advertisement, booking, contracting for, and payment of the travel services. Even by its own description, Airbnb provides the same service. Airbnb is "in the business of facilitating unique lodging opportunities." C074. Airbnb advertises the properties that owners "list" for rent through Airbnb. C074. Airbnb markets lodging on "Google, social media, and more." Ex. 2 at 3, *How Much Does Airbnb Charge*, Airbnb.com, https://www.airbnb.com/resources/hosting-homes/a/how-much-does-airbnb-charge-hosts-288 (last visited October 31, 2023). Airbnb helps renters "discover" properties to rent through recommendations, advertisements, a database of options, and booking assistance, precisely as a travel agency or service would. C074.

Airbnb also decides which renters are allowed to make reservations. Airbnb verifies all guests. Ex. 3 at 1, *Aircover for Hosts*, Airbnb.com, https://www.airbnb.com/aircover-for-hosts, (last visited October 31, 2023). And Airbnb screens each reservation request and approves or blocks it. *Id.* (Airbnb "analyzes hundreds of factors in each reservation and blocks certain bookings that show a high risk for disruptive parties and property damage.")

If a reservation is allowed, then Airbnb books accommodations for the renters. C074. The renter pays Airbnb (not the host) for the rental stay. C074 (Airbnb "facilitates the guest's payment to the hosts"). Airbnb also collects penalties and reservation charges from renters on behalf of owners. C076. Airbnb collects and pays taxes on the rental. Ex.

2 at 3. So Airbnb charges "fees from the host and guest." C074. These fees include a host charge of 3% and renter fees of 14%. Ex 2. Airbnb insures every rental for the property owner, providing $3 million in coverage. Ex. 3 at 1. Airbnb insures the *renter* on every booking, too. *Id.* at 5.

Airbnb even provides customer service for the rental to both the property owner and the renter, just as a travel agent might provide customer service support for a trip. *E.g.* C074, C076. Airbnb provides the communication between the renters and the properties. C074. Airbnb also manages and moderates the "reviews" of properties and guests. C074-C075. Airbnb also polices the content of reviews by hosts and guests and determines whether a review is permitted to appear on Airbnb. C076. These reviews permitted and published by Airbnb impact whether a renter or guest can secure future lodging rentals. Indeed, every rental through Airbnb also includes contracting pursuant to Airbnb's contractual terms applicable to both renters and properties. *Cf. Peterson* v. *Devita*, 2023 IL App (1st) 230356 (discussing Airbnb terms of service applicable to reservations through Airbnb, including the arbitration provision).

As another court has recognized, Airbnb "is a 'service offering to the public *** [certain] services,' namely, the service of searching for, finding, and booking an accommodation using its online platform." *Harrington v. Airbnb, Inc.*, 348 F. Supp. 3d 1085, 1092–93 (D. Or. 2018) (holding Airbnb subject to Oregon's public accommodation law).

Second, practically, Airbnb also offers and rents to the public lodging just like "an inn, hotel, motel, or other place of lodging." 775 ILCS 5/5-101(A)(1) (West 2022). That Airbnb does not directly own the lodging itself is of no moment. In the dynamic and

evolving structure of our modern economy, courts see through the fiction of companies selling "someone else's" goods and services to the public, controlling key aspects of the sale, charging the customers directly, and then seeking to disclaim liability. See *Access Living of Metropolitan Chicago v. Uber Technologies, Inc.,* 351 F. Supp. 3d 1141, 1156 (N.D. Ill. 2018), *aff'd on other grounds,* 958 F.3d 604 (7th Cir. 2020) (holding Uber operated a place of public accommodation as pled). A customer who goes online to directly reserve a hotel room, or a time share, or a vacation condo rental is renting lodging, just the same as the customer of Airbnb.

Last, Airbnb is also generally a "sales or rental establishment." 775 ILCS 5/5-101(A)(5) (West 2022). Airbnb provides the public with lodging rentals, and sells to property owners the service of listing, advertising, and renting property units for a fee. Airbnb even provides the financial transaction services, like the payment facilitation of a bank, and provides the contract, and provides the insurance. Ex. 3 at 1-3; *Harrington v. Airbnb, Inc.,* 348 F. Supp. 3d 1085, 1092–93 (D. Or. 2018) (renters use Airbnb to "pay for" the rental); 775 ILCS 5/5-101(A)(6) (West 2022) (bank, lawyer, and insurance are all public accommodations).

Always, "[t]he cardinal principle and primary objective in construing a statute is to ascertain and give effect to the intention of the legislature." *Cothron v. White Castle Systems Inc.*, 2023 IL 128004, ¶ 20. The breadth of the examples listed in the Act shows the legislature's intent for the Act to apply broadly to public life and entities that sell, rent, or provide services to the public. Nothing about the business of Airbnb is so uniquely different than other businesses subject to the Act, nor is Airbnb so exceptional, that the legislature would have *intended* to permit Airbnb to discriminate in Illinois. The

court should "give effect to the legislature's intent" to prohibit discrimination broadly, not undermine it. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 394 (2003).

To the extent there is any ambiguity about the Act, it should be construed broadly to cover Airbnb consistent with its remedial purpose. The Supreme Court has long recognized that "as remedial legislation, the Act should be construed liberally to achieve its purpose." *Sangamon County Sheriff's Department v. Illinois Human Rights Comm'n* 233 Ill. 2d 125, 140 (2009). The "Act reflects the public policy of this State." *Hobby Lobby Stores, Inc*. v. *Sommerville*, 2021 IL App (2d) 190362, ¶ 22. "One of the declared goals of that public policy is '[t]o secure for all individuals within Illinois the freedom from discrimination against any individual *** [in] connection with employment *** and the availability of public accommodations.'" *Id.* ¶ 22 (quoting 775 ILCS 5/1-102(A) (West 2010)). The language of the Act shall not be "narrowly construe[d]" to undermine "the sweep of this public policy." *Board of Trustees of Community College Dist. No. 508 v. Human Rights Comm'n*, 88 Ill. 2d 22, 26 (1981).

Further, the Act's legislative history confirms that the General Assembly intends the scope of the Act to be broad. The current definition of public accommodation was added to the Act in 2007, when the Illinois General Assembly deleted the prior narrower definition and replaced it with the definition of public accommodation from the Americans with Disabilities Act (ADA). Pub. Act 95-0668 (eff. Oct. 10, 2007) (amending 775 ILCS 5/5-101); compare 775 ILCS 5/5-101 (West 2008), with 42 U.S.C. § 12181(7) (2006). The purpose was "to expand the scope of coverage of the provisions of the Act concerning discrimination in places of public accommodation." 95th Ill. Gen. Assem., Senate Proceedings, October 2, 2007, at 22 (statement of sponsor Senator

Cullerton). The amendment was needed because Illinois "Court decisions ha[d] limited the application of those provisions over the years." *Id.* To achieve the legislature's broad purpose, the Act should be construed to cover Airbnb just like it covers other travel, lodging, and rental services.

III. The Act is not limited to physical places and applies to online accommodations.

Airbnb is also not exempt simply because it operates "online" rather than from a storefront office to provide short-term rentals and lodging. The language of the Act covers virtual accommodations, as persuasive federal authority and the Attorney General have recognized.

There are a variety of businesses that may operate online that are specifically listed in the Act as public accommodations without any qualification. For instance, an online school is a "place of education," and the Act does not limit this example to physical places of education. 775 ILCS 5/5-101(A)(11) (West 2022). Similarly, a "travel service" is an accommodation even if it operates by website, phone, or other means of communication. 775 ILCS 5/5-101(A)(6) (West 2022); *Carparts Distribution Center, Inc. v. Auto. Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12, 18 (1st Cir. 1994) (regarding the meaning of public accommodation under the ADA, "[m]any travel services conduct business by telephone or correspondence without requiring their customers to enter an office in order to obtain their services."). A store selling clothing via a website is still a "clothing store," even if it operates in cyberspace rather than physical space. 775 ILCS 5/5-101(A)(5) (West 2022). Even some "banks," 775 ILCS 5/5-101(A)(6) (West 2022), now operate entirely online. See, *e.g.,* Ally.com, www.ally.com (last visited October 31, 2023). The metaverse for virtual meetings and

public gatherings, too, is the definition of a virtual "place of public gathering." 775 ILCS 5/5-101(A)(6) (West 2022).[1] Likewise, both movie theaters and online movie providers like Netflix are places "of exhibition or entertainment." See *National Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 200-02 (D. Mass. 2012) (holding that Netflix can qualify as a public accommodation under the ADA). Especially now, when so much of life has shifted to virtual spaces, it is illogical to conclude that the General Assembly wanted to prohibit discrimination for stores and services only if they operate from physical locations.

Further, the Act prohibits the enjoyment of the "facilities, goods, and services **of** any public place of accommodation." 775 ILCS 5/5-102(A) (West 2022) (emphasis added). The legislature did not merely prohibit discrimination "at" or "in" such a place. The Court cannot "interpret the statute in a way that is directly contrary to its express terms" or "declare that the legislature did not mean what the plain language of the statute imports, nor may [it] rewrite a statute to add provisions or limitations the legislature did not include." *Zahn v. North American Power & Gas, LLC*, 2016 IL 120526, ¶ 15. See also *Pallozzi v. Allstate Life Insurance Co.,* 198 F.3d 28, 33 (2d Cir. 1999) (interpreting the ADA application to services "of" a public accommodation, not "at" a public accommodation).

Airbnb may point to the word "place" in the statute, but the Act does not define a place of public accommodation as a "physical" place or even "facility."[2] More to the

[1] See, *Metaverse*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/metaverse (last visited October 31, 2023); *About*, Meta.com, https://about.meta.com/metaverse/ (last visited October 31, 2023)

[2] In fact, in 2007, the legislature amended the Act and removed the limitation to a "facility" from the definition of "public accommodation." Compare 775 ILCS 5/5-101(A)(1) (West 2000) with 775 ILCS 5/5-101(A) (West 2008).

point, the word "place" cannot be examined in isolation. It must be considered as the General Assembly defined it in full as "place of public accommodation." See *Jane Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 87 ("The definitions in the Act are 'the law' and must be applied like any other section of the Act."). And many courts, the United States Department of Justice, and the Illinois Attorney General agree that this definition of "place of public accommodation" applies to both virtual and physical places of public accommodation. As early as 1999, Judge Richard Posner explained for the Seventh Circuit:

> The core meaning of this [ADA public accommodation] 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.

Doe v. Mutual of Omaha Insurance Co., 179 F.3d 557, 558–59 (7th Cir. 1999) (emphasis added). See also *Morgan v. Joint Administrative Board, Retirement Plan of Pillsbury Co. & American Federation of Grain Millers, AFL-CIO-CLC*, 268 F.3d 456, 459 (7th Cir. 2001) ("The defendant asks us to interpret 'public accommodation' literally, as denoting a physical site, such as a store or a hotel, but we have already rejected that interpretation. An insurance company can no more refuse to sell a policy to a disabled person over the Internet than a furniture store can refuse to sell furniture to a disabled person who enters the store. *** The site of the sale is irrelevant to Congress's goal of granting the disabled equal access to sellers of goods and services.") (internal citations omitted).

The Seventh Circuit followed the seminal analysis of the First Circuit, where the court rejected the argument that "place of public accommodation" was "limited to actual

physical structures." *Carparts Distribution Center, Inc. v. Auto. Wholesale"s Ass'n of New England, Inc.*, 37 F.3d 12, 19 (1st Cir. 1994). "The plain meaning of the terms do not require 'public accommodations' to have physical structures for persons to enter." *Id.* For example, "[b]y including 'travel service' among the list *** Congress clearly contemplated that 'service establishments' include providers of services which do not require a person to physically enter an actual physical structure." *Id.* The Act does not "make any mention of physical boundaries or physical entry. Many goods and services are sold over the telephone or by mail with customers never physically entering the premises of a commercial entity to purchase the goods or services. To exclude this broad category of businesses from the reach of Title III and limit the application of Title III to physical structures which persons must enter to obtain goods and services would run afoul of the purposes of the ADA." *Id.* at 20.

Even dating back to 1994, when businesses that operate strictly online were far less prolific than they are today, the court recognized that "[i]t would be irrational to conclude that persons who enter an office to purchase services are protected by the ADA, but persons who purchase the same services over the telephone or by mail are not. Congress could not have intended such an absurd result." *Id.* at 19. See also *Pallozzi v. Allstate Life Insurance Co.,* 198 F.3d 28, 33 (2d Cir. 1999) (accord). This reasoning is only more powerful now, when so much of public life, commerce, business, entertainment, and gathering has shifted to virtual online forums.

Against this backdrop, in 2007, the General Assembly replaced the old narrower definition of public accommodation in the Act with the broad definition of public accommodation from the ADA that had already been interpreted by the Seventh Circuit,

First Circuit, and Second Circuit to apply to online accommodations. Compare 775 ILCS 5/5-101 (West 2008), with 42 U.S.C. § 12181(7) (2006) (showing the same definition, except for a few details where the Act is broader than the ADA).

Although not every federal court has followed the Seventh Circuit, courts in Illinois continue to recognize that online businesses, even those like Airbnb, Lyft, or Uber, are prohibited from discriminating by public accommodation laws. *E.g. Access Living of Metropolitan Chicago v. Uber Technologies, Inc.* 351 F. Supp. 3d at 1156 (holding that plaintiffs adequately plead Uber operates a place of public accommodation like a "travel service"). See also *National Federation of the Blind of California v. Uber Technologies, Inc.*, 103 F. Supp. 3d 1073, 1083 (N.D. Cal. 2015) (accord). And the United States Department of Justice also agrees that this definition of place of public accommodation covers non-physical spaces. United States Department of Justice, *Guidance on Web Accessibility and the ADA* (Mar. 18, 2022), https://www.ada.gov/resources/web-guidance/. See also *Harrington v. Airbnb, Inc.*, 348 F. Supp. 3d 1085 (D. Or. 2018) (holding Airbnb subject to the Oregon public accommodation law); *National Federation of the Blind v. Scribd Inc.*, 97 F. Supp. 3d 565, 575–76 (D. Vt. 2015) (holding the online-only library Scribd a public accommodation under the ADA); *National Association of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 201 (D. Mass. 2012) (holding Netflix is a public accommodation under the ADA).

Though language in a decision by a different district of the Appellate Court recently suggested that the Act may be limited to physical places, that case involves a club hockey team and did not actually present the question of how the Act applies to online businesses like Airbnb. *M.U. by & Through Kelly U. v. Team Illinois Hockey*

Club, Inc., 2022 IL App (2d) 210568**,** *appeal allowed sub nom. M.U. v. Team Illinois Hockey Club, Inc.,* 199 N.E.3d 1178 (Ill. 2022). Even more to the point, the Attorney General has endorsed the analysis presented by *amici* here and explained to the Illinois Supreme Court why the Act extends to non-physical places. See Ex. 1 at 15-19.

This Court should not affirm or endorse the language of the Commission decision below that erroneously suggests that the Act does not apply to online or virtual places of public accommodation.

IV. Separately Airbnb is also subject to the Act as a "person," if it denies the equal enjoyment of the rental properties that it sells.

Last, the Commission decision on jurisdiction includes an even more fundamental legal error that should not be affirmed. The Commission states that it only has jurisdiction "when the defendant qualifies as a public accommodation." C091. That holding is directly contrary to the text of the Act. The plain language of the Act prohibits discrimination by "any person," not discrimination by a public accommodation itself (or the owner). The Commission decision writes the phrase "any person" out of the Act and cannot be sustained. Under the Act:

> It is a civil rights violation for <u>any person</u> on the basis of unlawful discrimination to:
>
> (A) Enjoyment of Facilities, Goods, and Services. Deny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation;

775 ILCS 5/5-101 (West 2022) (emphasis added). The Act further specifically defines "person":

> "Person" includes one or more individuals, partnerships, associations or organizations, labor organizations, labor unions, joint apprenticeship committees, or union labor associations, corporations, the State of Illinois and its

> instrumentalities, political subdivisions, units of local government, legal representatives, trustees in bankruptcy or receivers.

775 ILCS 5/1-103(L) (West 2022). Certainly, Airbnb is a "person" under this language.

The Act is thus not limited to claims against a "defendant [that] qualifies as a public accommodation." C091. The Act is not limited to claims against *the* public accommodation, or the owner of the accommodation, or even like the ADA to a person "who owns, leases (or leases to), or operates." 42 U.S.C. § 12182(a) (2006). There is no sensible way to read the Act's authorization to complain against "any person" who discriminates as limited to claims against *the* public accommodation itself. "[W]hen the General Assembly intend[s] to create an exception *** [it knows] how to express that intention in language so clear and explicit that it could not be misunderstood." *In re Hernandez,* 2020 IL 124661, ¶ 20. "The absence of such language is strong evidence that the legislature did not intend to * * * [include] the exception." *Id*. A contrary interpretation of the Act—making its application depend on "who" was doing the discriminating—would contravene the unambiguous text of the Act.

Yet again, the Attorney General agrees that a claim under the Act may proceed against "any person" without qualification, not just claims against the owner of the accommodation. Ex. 1 at 20-21. This argument, too, is currently pending with the Supreme Court. *M.U. v. Team Illinois,* Case No. 128935 (fully briefed and argued September 20, 2023).[3]

Here, at a minimum, the Commission agrees that the lodging rented through Airbnb is a public accommodation subject to the Act. *In the Matter of the Request For*

[3] Additionally, Airbnb could fall within the jurisdiction of the Act and Commission for aiding and abetting discrimination under 775 ILCS 5/6-101 (West 2022). The complaint does not allege, and the Commission did not consider, rule on, or preclude such liability.

Review By: Kayla R. Hogan, Petitioner, Charge No. 2022SP0443, ALS No. 23-0065, 2023 WL 5031812, (Human Rights Commission, Aug. 1, 2023) (affirming dismissal of the claim against the property owner for lack of substantial evidence, without even questioning the Commission's jurisdiction).

Thus, to the extent Airbnb engages in discriminatory actions that impact the "full and equal enjoyment" of the properties that it advertises and rents to the public, Airbnb is a "person" subject to the Act, within the jurisdiction of the Commission, and prohibited from discrimination. In fact, Airbnb exemplifies why the Act must permit claims against "any person" and not just the accommodation. If Airbnb had a rule that prohibited women from booking lodging through Airbnb, for example (which it does not), Airbnb would *directly* deny women any enjoyment of those accommodations (the lodging) for a discriminatory reason. That conduct would fall squarely within the reach of the Act, regardless of whether Airbnb itself is viewed as the accommodation or as the person. The legislature cannot have intended to exempt such naked discrimination from the Act.

CONCLUSION

Whether the Court views Airbnb as an accommodation like a travel service or other accommodation, or as a person renting out public accommodations, or both, Airbnb is not categorically exempt from the Act. The Court should not affirm the conclusion that the Commission lacks jurisdiction over Airbnb. The Act contains no exception for virtual, digital, or online entities or accommodations. If the statements below from the Commission were permitted to stand, it would artificially and irrationally undermine the scope of the Act, contrary to the intent of the legislature and purpose of ridding Illinois of discrimination in public life.

Dated: November 3, 2023

Respectfully submitted,

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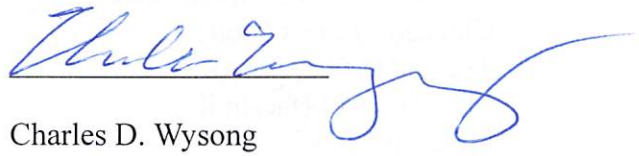
CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of services, and those matters to be appended to the brief under Rule 342(a), is 20 pages.



Charles D. Wysong

EXHIBIT
1

No. 128935

IN THE
SUPREME COURT OF ILLINOIS

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

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

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POINTS AND AUTHORITIES

INTEREST OF THE AMICUS CURIAE

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

that discrimination. As to the former, it is a violation under the Act for any person to deny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any place of public accommodation on the basis of unlawful discrimination. 775 ILCS 5/5-102. Team Illinois does not dispute that it falls within the definition of "person" under the Act. *Id.* 5/1-103(L) (definition includes "organizations" and "corporations"). At issue is thus whether Team Illinois has denied M.U. access to a "place of public accommodation" on the basis of discrimination. And M.U.'s allegations satisfied that standard.

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

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

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

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

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

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

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

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

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

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

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

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

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

[5] *Id.*

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

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

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

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[6] *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Act does not exempt lessees from liability.

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

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

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

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

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

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

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

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

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

Also relevant is the fact that the General Assembly created an exemption from liability for "private clubs."[9] 775 ILCS 5/5-103(A) ("A private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the establishment are made available to the customers or patrons of another establishment that is a place of public accommodation."). If membership organizations were not subject to the Act, then there would be no need for an exception for private clubs.

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Respectfully submitted,

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Dated June 21, 2023

SUPREME COURT RULE 341(c)
CERTIFICATE OF COMPLIANCE

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

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EXHIBIT
2

How much does Airbnb charge Hosts?

Get the details about service fees for Hosts and guests.

By Airbnb on Nov 16, 2020 · 5 min read

Updated Mar 14, 2023

Highlights

- Most Hosts pay a service fee of 3% of the booking subtotal

- Guests typically pay a service fee of around 14% of the booking subtotal
- These fees help Airbnb support Hosts and run its operations

For many people, hosting is a way to earn money while connecting with travelers from around the world. But how much does Airbnb charge, and how does this impact Hosts and guests?

With a clear understanding of what Airbnb service fees are and why we have them, you can set a pricing strategy that makes sense for you and your space.

How much does Airbnb charge?

Most Hosts pay a flat **service fee** of 3% of the booking subtotal. The subtotal is your nightly price plus any optional fees you charge guests, like a cleaning fee, and doesn't include Airbnb fees and taxes. Guests typically pay a service fee of around 14% of the booking subtotal.

So, if you're charging $100 USD a night for a 3-night stay, plus $60 USD for a cleaning fee, your booking subtotal is $360 USD. The Host service fee, which is generally 3% of your booking subtotal ($10.80 USD), is deducted from your earnings, and a service fee of 14% ($50.40 USD) is charged to guests and included in the total price they pay. In this example:

- You'd earn $349.20 USD
- Your guest would pay $410.40 USD

Airbnb's service fees are competitive, and we don't charge for payment processing. This allows Hosts to keep a larger portion of their earnings.

> Most Hosts pay a flat service fee of 3% of their booking subtotal.

Why does Airbnb charge service fees?

We rely on fees to help Airbnb run smoothly and cover the costs of products and services that help you share your space, including:

- 24/7 customer support
- Marketing to guests via Google, social media, and more
- Protection for you and your place
- Educational resources for Hosts

Check out our video above to learn more about fees.

Are guests aware of these fees?

Yes. Services fees, **cleaning fees**, and fees for **extra guests** and **pets** are shown to guests, along with local taxes, if applicable, and the total price they'll pay.

> Knowing the full breakdown of my price helps me keep my total price competitive. This results in happier guests and better reviews.
>
> — Oliver, Brooklyn, New York

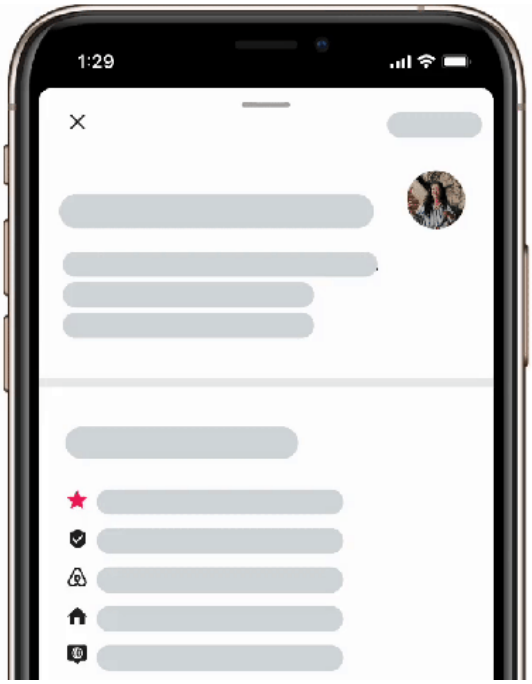
Where can I find what guests will pay?

Once a reservation is confirmed, a price breakdown in your Host reservation details and your booking confirmation email will include all applicable fees so you can clearly find:

- Fees and taxes collected by Airbnb
- Any optional fees you charge (like a cleaning fee)
- The total price your guests will pay
- The payout you'll receive

This means you'll never have to search for your total price when answering questions from guests or making changes. When you know what your guests are paying, it

becomes easier to manage your pricing strategy, refunds, cancellations, and reservation requests.



Scrolling from the top of the Reservation details screen, find the guest payment and your payout.

Update your pricing

Information contained in this article may have changed since publication.

Airbnb
Nov 16, 2020

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EXHIBIT
3

aircover for Hosts

Top-to-bottom protection.
Always included, always free.
Only on Airbnb.

Guest identity verification

Our comprehensive verification system checks details such as name, address, government ID, and more to confirm the identity of guests who book on Airbnb.

Reservation screening

Our proprietary technology analyzes hundreds of factors in each reservation and blocks certain bookings that show a high risk for disruptive parties and property damage.

$3M damage protection

If guests do not pay for the damage caused to your home and belongings, Host damage protection is in place to help reimburse costs up to $3M USD, including these specialized protections:

Art & valuables

Get reimbursed for damaged art or valuables.

Auto & boat

Get reimbursed for damage to cars, boats, and other watercraft that you park or store at your home.

Pet damage

Get reimbursed for damage caused by a guest's pet.

Income loss

If you have to cancel Airbnb bookings due to guest damage, you'll be compensated for the lost income.

Deep cleaning

Get reimbursed for extra cleaning services needed after a guest's stay – for example, professional carpet cleaning.

$1M liability insurance

Protection in the rare event that a guest gets hurt or their belongings are damaged or stolen.

24-hour safety line

If you ever feel unsafe, our app provides one-tap access to specially-trained safety agents, day or night.

Find complete details on **how AirCover for Hosts protects you** and any exclusions that apply.

Only Airbnb gives you AirCover

	Airbnb	Competitors
Guest identity verification	✓	✓
Reservation screening	✓	✗
$3M damage protection	✓	✗
Art & valuables	✓	✗
Auto & boat	✓	✗
Pet damage	✓	✗
Income loss	✓	✗
Deep cleaning	✓	✗

	Airbnb	Competitors
$1M liability insurance	✓	✓
24-hour safety line	✓	✗

Comparison is based on public information and free offerings by top competitors as of 10/22.

Paintings and other artwork are protected

Your questions, answered

Can’t find what you’re looking for?
Visit our **Help Center**.

What is AirCover for Hosts?

AirCover for Hosts is top-to-bottom protection for Hosts. It includes guest identity verification, reservation screening, $3M Host damage protection, $1M Host liability insurance, $1M Experiences liability insurance, and a 24-hour safety line.

Is AirCover for Hosts free?

Yes, AirCover for Hosts is included for free every time you host.

Where is AirCover for Hosts available?

AirCover for Hosts' damage protection and liability insurance are available in every country with Airbnbs, except **Japan**, which has its own protection program.

Guest identity verification and reservation screening are now available worldwide.

What's the difference between damage protection and liability insurance?

AirCover for Hosts includes both damage protection and liability insurance. Host damage protection will reimburse you if your place or belongings ever get damaged by a guest during an Airbnb stay. Host damage protection isn't an insurance policy. Host liability insurance is provided by third party insurance carriers and applies in the rare event that a guest gets hurt during an Airbnb stay or Experience.

How does AirCover for Hosts work with my personal insurance?

While AirCover for Hosts protects you while you're hosting an Airbnb stay or Experience, it is not a substitute for personal insurance. You may also be required by law to maintain certain auto insurance, which would not be satisfied by AirCover for Hosts. Since everyone's situation is different you should talk to your insurer to see how, or if, your policy overlaps with AirCover for Hosts.

Are there damages that aren't covered?

Host Damage Protection does not cover loss of currency. Normal wear and tear or losses incurred due to acts of nature (like earthquakes and hurricanes) are also not covered. Auto and boat protection applies to parked vehicles and vessels. Review the **complete list of what's covered**.

How do I get reimbursed for damage? How long does it take?

If a guest has damaged your place or belongings, visit our **Resolution Center** to submit a reimbursement request. Your request will first be sent to the guest, and if the guest does not respond or pay within 24 hours, you'll be able to involve Airbnb to request reimbursement.

Reimbursement requests are resolved as quickly as possible. It typically takes two weeks from the time you file a request with Airbnb for your payment to be issued. If you're a Superhost, with listings outside of Washington state, you get access to a dedicated support line and priority routing for reimbursement requests.

If a guest has been injured, complete the **liability insurance intake form**.

Do guests get AirCover too?

Yes. It comes with every booking. If there is a serious issue with the Airbnb that can't be resolved by the Host, we'll help guests find a similar place or give them a refund.

Learn more about AirCover.

The super easy way to Airbnb your place

Airbnb Setup makes it easier to put your place on Airbnb, with hands-on help from a Superhost from your first question to your first guest.

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NOTICE OF FILING

TO: All Counsel of Record

PLEASE TAKE NOTICE THAT on the 3rd day of November 2023, we electronically filed with the Clerk of the Illinois Appellate Court, First District,

MOTION OF *AMICI CURIAE* CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS, ACCESS LIVING, HOPE FAIR HOUSING CENTER, AND OPEN COMMUNITIES FOR LEAVE TO FILE A BRIEF ON THE ISSUE OF JURISDICTION AND IN SUPPORT OF PETITIONER-APPELLANT KAYLA HOGAN.

Dated: November 3, 2023

Respectfully submitted,

/s/ *Charles D. Wysong*
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No. 1-23-1221

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KAYLA R. HOGAN., Petitioner-Appellant, v. ILLINOIS HUMAN RIGHTS COMMISSION, ILLINOIS DEPARTMENT OF HUMAN RIGHTS and AIRBNB, INC., Defendants-Appellees.	Appeal from the Illinois Human Rights Commission ALS No. 23-0076 Charts No. 2022 CP 0441

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on November 3, 2023, the above **MOTION OF *AMICI CURIAE* CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS, ACCESS LIVING, HOPE FAIR HOUSING CENTER, AND OPEN COMMUNITIES FOR LEAVE TO FILE A BRIEF ON THE ISSUE OF JURISDICTION AND IN SUPPORT OF PETITIONER-APPELLANT KAYLA HOGAN** was filed and served electronically on the Clerk of the Appellate Court, First District, and that true and correct copies of the same were served by electronic mail on the following:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ *Charles D. Wysong*
Charles D. Wysong

No. 1-23-1221

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KAYLA R. HOGAN., Petitioner-Appellant, v. ILLINOIS HUMAN RIGHTS COMMISSION, ILLINOIS DEPARTMENT OF HUMAN RIGHTS and AIRBNB, INC., Defendants-Appellees.	Appeal from the Illinois Human Rights Commission ALS No. 23-0076 Charts No. 2022 CP 0441

PROPOSED ORDER

On motion of the Chicago Lawyers' Committee for Civil Rights, Access Living, Hope Fair Housing Center, and Open Communities for leave to file a brief *amicus curiae* on the issue of jurisdiction and in support of petitioner-appellant, due notice having been given, and the court being fully advised.

IT IS HEREBY ORDERED that the motion is _____ allowed. / _____ denied.

_____

JUSTICE