

---

In the  
**Appellate Court of Illinois**  
**First Judicial District**

---

BRANDON WATSON, individually and on behalf of all others similarly situated,  
*Plaintiff-Appellant,*

v.

LEGACY HEALTHCARE FINANCIAL SERVICES, LLC d/b/a LEGACY  
HEALTHCARE and LINCOLN PARK SKILLED NURSING FACILITY, LLC d/b/a  
WARREN BARR LINCOLN PARK a/k/a THE GROVE AT LINCOLN PARK,  
*Defendants-Appellees.*

---

On Appeal from the Circuit Court of Cook County, Illinois,  
County Department, Chancery Division, No. 2019 CH 03425.  
The Honorable **Pamela McLean Meyerson**, Judge Presiding.

---

---

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF OF RESTAURANT  
LAW CENTER and RETAIL LITIGATION CENTER, INC. IN SUPPORT OF  
DEFENDANTS-APPELLEES**

---

ANGELO I. AMADOR  
(aamador@restaurant.org)  
RESTAURANT LAW CENTER  
2055 L Street NW, Suite 700  
Washington, DC 20036  
(202) 492-5037

*Counsel for Restaurant Law Center*

DEBORAH R. WHITE  
(deborah.white@rila.org)  
RETAIL LITIGATION CENTER, INC.  
99 M Street SE, Suite 700  
Washington, DC 20003  
(202) 869-0200

*Counsel for Retail Litigation Center, Inc.*

ANNELIESE WERMUTH  
(awermuth@cozen.com)  
JENNY GOLTZ  
(jgoltz@cozen.com)  
COZEN O'CONNOR  
123 North Wacker Drive, Suite 1800  
Chicago, IL 60606  
(312) 382-3100

MEREDITH C. SLAWE  
(mslawe@cozen.com)  
MICHAEL W. MCTIGUE JR.  
(mmctigue@cozen.com)  
COZEN O'CONNOR  
One Liberty Place  
1650 Market Street, Suite 2800  
Philadelphia, PA 19103  
(215) 665-2000

*Counsel for Amici Curiae*



The Restaurant Law Center and the Retail Litigation Center, Inc. (collectively “proposed *amici*”) respectfully move, pursuant to Illinois Supreme Court Rules 345 and 361, for leave to submit an *amicus* brief in support of the position of the Defendants. A copy of the proposed *amicus* brief is attached hereto. In support of this motion, proposed *amici* state the following:

**STANDARD FOR GRANTING LEAVE TO FILE *AMICUS* BRIEFS**

1. Pursuant to Illinois Supreme Court Rule 345, proposed *amici* state their interest and explain how the proposed *amicus* brief will assist this Court. Ill. Sup. Ct. Rule 345. The brief will provide this Court with “ideas, arguments, or insights helpful to resolution of the case that were not addressed by the litigants themselves.” *Kinkel v. Cingular Wireless, L.L.C.*, No. 100925, 2006 WL 8458036, at \*1 (Ill. Jan. 11, 2006) (citing *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (chambers opinion by Posner, J.)).

**THE INTEREST OF THE PROPOSED *AMICI***

1. Proposed *amicus*, the Restaurant Law Center, is a public policy organization affiliated with the National Restaurant Association, the largest foodservice trade association in the world. This labor-intensive industry is comprised of over one million restaurants and other foodservice outlets employing 15 million people—approximately 10 percent of the U.S. workforce—including nearly 600,000 people in Illinois. Restaurants and other foodservice providers are the largest private-sector employers in Illinois, and the second largest in the United States. Through *amicus* participation, the

Restaurant Law Center provides courts with perspectives on legal issues that have the potential to significantly impact its members and their industry. The Restaurant Law Center's *amicus* briefs have been cited favorably by state and federal courts. *See, e.g., Lewis v. Governor of Ala.*, 944 F.3d 1287, 1303 n.15 (11th Cir. 2019) (en banc).

2. Proposed *amicus*, the Retail Litigation Center, Inc. ("RLC"), is the only trade organization solely dedicated to representing the retail industry in the courts. The RLC's members include many of the country's largest and most innovative retailers. Collectively, they employ millions of workers in Illinois and across the United States, provide goods and services to tens of millions of consumers, and account for tens of billions of dollars in annual sales. The RLC seeks to provide courts with retail-industry perspectives on important legal issues impacting its members, and to highlight the potential industry-wide consequences of significant pending cases. Since its founding in 2010, the RLC has participated as an *amicus* in well over 150 cases. Its *amicus* briefs have been favorably cited by multiple courts, including the United States Supreme Court. *See, e.g., South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2097 (2018); *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 542 (2013).

3. This case is a putative class action pursuant to the Illinois Biometric Information Privacy Act ("BIPA") against Defendants in connection with the use of a biometric hand-scanner timekeeping system to track their employees' hours of work. This Court is being asked to decide a question that

is unsettled under Illinois law, namely, when and how does a BIPA claim accrue for statute of limitations purposes. Specifically, the question presented to this Court is:

[W]hether the Circuit Court erred by finding that Plaintiff's BIPA claims accrued solely from the *first* instance that Defendants collected his handprint without his informed consent. . . .

Brief of Plaintiff-Appellant Brandon Watson (June 18, 2021) at 2. Contrary to BIPA's statutory language and the purposes behind its enactment, Plaintiff argues that a hybrid of the "continuing violation" doctrine and the "per scan" theory of liability should apply such that "each scan" is "a series of violations that either held the limitations period in abeyance until the final violation occurred, or are each independently actionable." *See, e.g., id.* at 13–14, 23–26, 41.

4. The proposed *amici* have a substantial interest in this Court's decision on this important issue. Some of *amici*'s members have used employee biometric timekeeping and security systems to, among other things, ensure accurate wage payments to employees, prevent time theft and unlawful "buddy punching," reduce operating costs, increase productivity, and secure confidential company and employee information.

5. Yet, even as employers and employees alike benefit from the use of this highly secure and effective technology, restaurants and retailers are increasingly finding themselves prime targets for abusive lawsuits alleging technical violations of BIPA. This can have a chilling effect on employers'

willingness to implement and use such technology. Thus, sensible and consistent rulings that are aligned with the statute's remedial purpose are crucial and overdue. They will ensure that BIPA is applied as intended, promote compliance, and protect against exploitative litigation that seeks wholly disproportionate aggregate damages from businesses, including restaurants and retailers with employees in Illinois.

#### **THE PROPOSED *AMICUS* BRIEF WILL ASSIST THIS COURT**

6. The proposed *amici* respectfully submit that their brief will assist this Court by providing the perspective of their respective members. The proposed *amicus* brief encourages this Court to rule that a BIPA claim accrues in its entirety when a biometric datapoint is first collected and/or disclosed without the requisite notice and consent, and that subsequent scans of the same information for verification purposes do not constitute separate BIPA violations, nor do they toll the statute of limitations until the final scan.

7. The approach advocated for by *amici* is consistent with the statutory language, common sense, and BIPA's underlying purpose. In enacting BIPA, the Illinois General Assembly recognized the benefits of biometric technology but sought to balance "the risks posed by the growing use of biometrics by businesses and the difficulty in providing meaningful recourse once a person's biometric identifiers or biometric information has been compromised." *Rosenbach v. Six Flags Ent. Corp.*, 2019 IL 123186, ¶ 35, 129 N.E.3d 1197, 1206 (2019). In other words, BIPA's aim "is to try to head off

such problems *before they occur.*” *Id.* at ¶ 36, 129 N.E.3d at 1206 (emphasis added).

8. To be sure, BIPA is a remedial statute designed to foster the development and use of innovative biometric technologies while deterring businesses from improperly handling biometric data and ensuring prompt correction when violations do occur. It was not designed as a mechanism to threaten extraordinary damages exposure on good-faith businesses seeking to *enhance* the security of their employees’ information. The purpose is not to prevent employers from, or punish them for, utilizing biometric equipment in order to operate its business. Nor was BIPA intended to discourage innovation and the development of such technology. Adoption of the rule for which Plaintiff advocates would have just such an impact.

9. The adoption of the commonsense approach offered by Defendants, and advocated for by the proposed *amici*, would maintain the force and effect of BIPA while promoting the prompt adjudication of claims consistent with the statute’s remedial purpose and protecting the interests of employees and good-faith businesses alike. Accordingly, the attached brief will assist this Court in deciding the issue presented in this case.

#### CONCLUSION

For the foregoing reasons the undersigned proposed *amici* have a strong interest in ensuring the proper application of the law of Illinois regarding the

accrual of statute of limitations of BIPA claims, and respectfully request leave to file the attached proposed *amicus* brief.

Respectfully submitted,

Angelo I. Amador  
(aamador@restaurant.org)  
RESTAURANT LAW CENTER  
2055 L Street NW, Suite 700  
Washington, DC 20036  
(202) 492-5037

*Counsel for Restaurant Law Center*

Deborah R. White  
(deborah.white@rila.org)  
RETAIL LITIGATION CENTER, INC.  
99 M Street SE, Suite 700  
Washington, DC 20003  
(202) 869-0200

*Counsel for Retail Litigation Center, Inc.*

/s/ Anneliese Wermuth  
Anneliese Wermuth  
(awermuth@cozen.com)  
Jenny Goltz  
(jgoltz@cozen.com)  
COZEN O'CONNOR  
123 North Wacker Drive, Suite 1800  
Chicago, IL 60606  
(312) 382-3100

Meredith C. Slawe  
(mslawe@cozen.com)  
Michael W. McTigue Jr.  
(mmctigue@cozen.com)  
COZEN O'CONNOR  
One Liberty Place  
1650 Market Street, Suite 2800  
Philadelphia, PA 19103  
(215) 665-2000

*Counsel for Amici Curiae*

IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

BRANDON WATSON, individually	)	On Appeal from the Circuit Court
and on behalf of others similarly	)	of Cook County, Illinois, County
situated,	)	Department, Chancery Division
	)	
Plaintiff-Appellant,	)	Circuit Case No.: 2019-CH-03425
	)	
v.	)	Hon. Pamela McLean Meyerson,
	)	Judge Presiding
LEGACY HEALTHCARE	)	
FINANCIAL SERVICES, LLC, d/b/a	)	
LEGACY HEALTHCARE; and	)	
LINCOLN PARK SKILLED	)	
NURSING FACILITY, LLC d/b/a/	)	
WARREN BARR LINCOLN PARK	)	
a/k/a THE GROVE AT LINCOLN	)	
PARK,	)	
	)	
Defendants-Appellees.	)	

---

PROPOSED ORDER

---

THIS MATTER coming to be heard on Motion for Leave to File *Amici Curiae* Brief of Restaurant Law Center and Retail Litigation Center in Support of Defendants-Appellees, due notice having been given and the Court being fully advised in the premises;

IT IS ORDERED: that the motion is hereby:

Granted:\_\_\_\_\_

Denied:\_\_\_\_\_

Entered:

\_\_\_\_\_  
Justice

**NOTICE OF FILING and PROOF OF SERVICE**

---

In the Appellate Court of Illinois  
First Judicial District

---

BRANDON WATSON,	)	
	)	
<i>Plaintiff-Appellant,</i>	)	
	)	
v.	)	No. 1-21-0279
	)	
LEGACY HEALTHCARE FINANCIAL SERVICES,	)	
LLC, d/b/a LEGACY HEALTHCARE, et al.,	)	
	)	
<i>Defendants-Appellees.</i>	)	

---

The undersigned, being first duly sworn, deposes and states that on August 27, 2021, there was electronically filed and served upon the Clerk of the above court the Motion for Leave to File *Amici Curiae* Brief in Support of Defendants-Appellees. Service of the Motion will be accomplished by email as well as electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

Alejandro Caffarelli  
Alexis D. Martin  
Caffarelli & Associates LTD.  
[acaffarelli@caffarelli.com](mailto:acaffarelli@caffarelli.com)  
[amartin@caffarelli.com](mailto:amartin@caffarelli.com)

Anne E. Larson  
Harry J. Secaras  
Ogletree, Deakins, Nash, Smoak &  
Stewart, P.C.  
[anne.larson@ogletree.com](mailto:anne.larson@ogletree.com)  
[harry.secaras@ogletree.com](mailto:harry.secaras@ogletree.com)

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/ Anneliese Wermuth  
Anneliese Wermuth