



“Advice and counsel that is concise, timely,
on-point and cost-effective.”

Illinois Anti-Eavesdropping Law Held Unconstitutional -- Why It Matters to Your Business

The Illinois Supreme Court unanimously ruled yesterday that Illinois’ anti-eavesdropping law, which prohibited recording conversations without consent of all involved, was unconstitutional. In [The People of the State of Illinois v. Melongo](#), Docket No. 114852 (March 20, 2014), Annabel Melongo was prosecuted under the Illinois Eavesdropping Act for recording her conversations with a Cook County court reporter and posting the recordings on her personal website. The Supreme Court found that the law criminalized a wide range of innocent conduct and burdened “substantially more speech than was necessary to serve a legitimate state interest in protecting conversational privacy.” The court also held unconstitutional a provision of the Act criminalizing publication of recorded conversations where all parties to the conversation had not consented to the records.

Illinois’ anti-eavesdropping law was one of the strictest in the country. Most other state laws permit recording conversations so long as one party – even the party making the recording – consents and/or is aware that a recording is being made. The implications of this ruling are wide-ranging. Employees now will be free to record their employers and potentially use the recordings in disputes over discrimination, harassment, overtime and the like. Domestic disputes can now be recorded and used in family law matters. There likely are applications to any number of commercial claims, and certainly to criminal matters.

Some will see the ruling as a further erosion of spheres of privacy in our technological age. However, the very fact that recording devices are so prevalent in our society made Illinois’ law seem antiquated and out of date. Indeed, at oral argument, the State conceded that the Illinois Eavesdropping Act “could need an update in light of technology” that makes it easier to record people, but argued “that is a policy question for the Legislature. Requiring consent is the surest way to protect privacy.” It remains to be seen whether the legislature will try to recraft the law to pass Constitutional muster. In the meantime, Illinois companies should take this opportunity to alert their employees to this important change in the law.

For further information please contact Sarah Marmor at smarmor@scharfbanks.com