

ILLINOIS SUPREME COURT FINDS EAVESDROPPING LAW UNCONSTITUTIONAL, BUT DON'T TELL ROSE MARY WOODS JUST YET

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The Illinois Supreme Court has concluded in two recent cases that Illinois's long-standing prohibition against recording conversations unless all parties consent to the conversation is unconstitutionally overbroad. The Court determined that the statute prohibited recording conversations that could not possibly be deemed private and potentially applied to numerous situations, like recording public interactions with law enforcement or government officials, which arguably impinged on the public's First Amendment rights. For a more detailed account of the Court's rulings and its potential impact in the employment arena, see the [recent client alert published by the Firm's Labor & Employment law group](#). Whether these decisions have any lasting impact, though, remains to be seen. The Court did not conclude that the notion of a two-party consent statute was inherently unconstitutional. It simply found that, as written, it could be interpreted to cover situations well beyond that, thus burdening more speech and more activity than necessary. The Illinois legislature is already considering a new statute which may clarify the issues that troubled the Court. If passed, it would likely protect private citizens who have a reasonable expectation of privacy from being recorded without their consent, but it would allow for the recording of clearly "public" speech, such as recording government officials and others acting in their official capacities. In the interim, it would be prudent not to assume that in Illinois one can freely record conversations without the other party's consent. It would be wiser to proceed as before the Court's decision and refrain from recording two-party communications without consent. Regardless of the Illinois Court's decision, the federal wiretap statute continues to apply; and while it does not always require two-party consent, it imposes many other restrictions that can be traps for the unwary. In this highly regulated and complex area, individuals and companies should proceed with extreme caution. Those having questions about the changing landscape in this area are welcome to contact members of the Firm's [FCGMA](#) or [White Collar Crime](#) practice group.

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