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Illinois Supreme Court Strikes Down as Unconstitutional the Illinois Eavesdropping Statute

CHICAGO – In a ruling that protects citizen's ability to gather and disseminate information about governmental activity, the Illinois Supreme Court held today that the state's Eavesdropping Statute is unconstitutional. In two unanimous decisions, *People v. Melongo* and *People v. Clark*, the Supreme Court held that the controversial statute violated the free speech and due process protections of the U.S. and Illinois Constitutions.

The Illinois Eavesdropping Statute was enacted to protect private conversations from being recorded without consent. But the Supreme Court held that the statute, as written, was far too broad, making criminals out of people who recorded conversations that were undeniably public, or that nobody intended to be private. For example, the statute made it a felony for someone to record on his iPhone a shouting match between two passionate fans in the stands at a baseball game, or to record police officers interacting with protesters in a public plaza in front of City Hall and posting the exchange on YouTube.

The Supreme Court also held that the statute infringed on the free speech rights of citizens by making it a crime to audio record conversations with public officials, who have no privacy interest in the statements they make while interacting with the public, including recording police officers making public arrests. In fact, as it turns out, the only prosecutions ever brought under the statute charged citizens with felonies for recording and reporting on conversations with police officers or public officials performing their official duties, in violation of their First Amendment rights.

The case against Annabel Melongo was one such example. Ms. Melongo was charged in Cook County in 2009 with six counts of felony eavesdropping. Her crime was recording telephone conversations she had with a representative of the Circuit Court of Cook County, who was explaining to her the official procedure for correcting an inaccurate court transcript, and then posting those conversations on a blog aimed at exposing public corruption. Ms. Melongo served almost two years in jail before a Circuit Court judge concluded that it was unconstitutional to charge her with eavesdropping.

The State's Attorney appealed the trial court's decision directly to the Illinois Supreme Court, arguing that the broad statute was properly applied to her conduct. The Supreme Court disagreed, writing that the Eavesdropping Statute "burdens substantially more speech than is necessary to serve a legitimate interest in protecting conversational privacy" and is thus "unconstitutional on its face."

The Court went on: "The statute criminalizes the recording of conversations that cannot be deemed private: a loud argument on the street, a political debate on a college quad, yelling fans at an athletic event, or any conversation

loud enough that the speakers should expect to be heard by others. None of these examples implicate privacy interests, yet the statute makes it a felony to record each one. Judged in terms of the legislative purpose of protecting conversational privacy, the statute's scope is simply too broad."

"In this day and age, it is important to protect people's rights to privacy," said Gabe Plotkin, one of the attorneys who represented Ms. Melongo before the Illinois Supreme Court, and a partner at Miller Shakman & Beem LLP. "But the Illinois Eavesdropping Statute did not do that. Instead of serving as a shield to protect individual privacy, the statute was written so broadly that it allowed the State to use it as a sword to prosecute citizens for monitoring and reporting on the conduct of public officials. The Supreme Court recognized this flaw in the statute and struck it down. The burden is now on the legislature to craft a statute that actually serves the goal of protecting privacy – and that does so without infringing on the rights of citizens to keep public officials honest."

As for Ms. Melongo, this case has been a hard fought battle to protect her rights. An immigrant from Cameroon for whom English is a third language, she wrote the first draft of the motion that led the Circuit Court to find the statute unconstitutional on her own, by hand, while sitting in her jail cell. After the State's Attorney's Office asked the Supreme Court to hear her case on appeal, the American Civil Liberties Union reached out to Mr. Plotkin, Daniel Feeney and Alexandra Block at Miller Shakman & Beem, who agreed to represent her pro bono.

"My gratitude goes to the ACLU of Illinois for its tireless work in standing for and defending the civil liberties that the now-defunct Illinois Eavesdropping Statute had undermined for years. Last but not least, my gratitude goes to my lawyers at Miller Shakman & Beem for the respect they have shown me, their unparalleled professionalism in handling my case, and for defending me pro bono" Ms. Melongo said.

"Annabel should be commended for her bravery, determination, and her commitment to the rights guaranteed her under the constitution" said Mr. Feeney. "She fought hard for those rights, and for her freedom, and overcame significant obstacles. I am proud to have stood with her and represented her interests before the Supreme Court, and I am grateful that she has been vindicated."

The Court's ruling today relied, in part, on the ACLU's earlier litigation, *ACLU of Illinois v. Alvarez*, in which a federal appeals court found that the Illinois eavesdropping law is unconstitutional when used to prosecute people for audio recording on duty police officers.

"In an era of citizen-journalists and citizen-activists, it was wrong to criminalize gathering information from government officials in conversations that cannot be seen as private," added Harvey Grossman, legal director for the American Civil Liberties Union of Illinois. "We are pleased that the Court has protected this most important right under the First Amendment."

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