

## III. Supreme Court Affirms Dismissal of Illinois Whistleblower Act and Retaliatory Discharge Claims

**Proskauer Whistleblower Defense** on June 17, 2019

On May 23, 2019, the Illinois Supreme Court issued a ruling in [Kenrick Roberts v. Board of Trustees of Community College District No. 508](#), reaffirming the pleading standards for both common law retaliatory discharge and “refusal-to-participate” claims the Illinois Whistleblower Act (“IWA”) (740 ILCS § 174/1).

**Background.** In 2015, Plaintiff was employed as Director of Medical Programs at Malcolm X Community College in Chicago (College). He was responsible for ensuring professors were qualified and certain classes met accreditation standards. Shortly after Plaintiff voiced his opinion that an instructor at the College was under-qualified to several of his superiors, the College terminated his employment. Plaintiff filed suit against the College in the Circuit Court of Cook County alleging (in relevant part) that his termination was retaliatory in violation of Illinois public policy and the IWA. In support of both claims, Plaintiff alleged that the College engaged in fraud, and identified statutes that he claimed to be implicated by his discharge, including statutes regarding funding requirements, describing accrediting agency standards and prohibiting misrepresentations regarding the employability of college graduates. The Circuit Court dismissed both claims. On appeal, the First District reversed the dismissal of the retaliatory discharge claim, but upheld the dismissal of the IWA claim. Both of the parties appealed to the Illinois Supreme Court.

**Retaliatory Discharge Claim.** The Court dismissed Plaintiff’s retaliatory discharge claim because Plaintiff did not sufficiently allege that the College’s conduct violated a “clearly mandated public policy.” The Court considered each of the statutes Plaintiff identified in his complaint, all of which Plaintiff claimed to support the public policy that “students must have the ability to obtain federal funding for postsecondary education.” The Court determined that Plaintiff had not sufficiently pled that any of the statutes or regulations he cited contained a clear statement of this public policy, and that Plaintiff had not sufficiently pled that the College had violated any of the statutes or regulations. For example, putting aside Plaintiff’s opinions about the professor’s qualifications, the Court concluded that Plaintiff had not sufficiently pled that the professor’s continued employment resulted in any misrepresentation to students because the complaint “lack[ed] sufficient facts to infer that students who passed [a class taught by an allegedly under-qualified professor] would have failed to meet a ... requirement of a certification [toward employment].”

The Court further concluded Plaintiff had insufficiently pled that the College had committed fraud upon its students, and that “[a]lthough fraudulent conduct is actionable, it is a separate cause of action from a retaliatory discharge claim and is only relevant here to the extent that it undermines [plaintiff’s] ... asserted public policy that students must have the ability to obtain federal funding for postsecondary education.”

**IWA Claim.** The Court dismissed Plaintiff’s IWA claim on the basis that Plaintiff had not sufficiently alleged the conduct in which he “refused to participate” *actually violated* any of the statutes or regulations identified in his complaint. The Court reaffirmed the IWA pleading standard, requiring that “a plaintiff must ... sufficiently allege not only that he or she refused to participate in the activity but also that the activity violated a statute, rule, or regulation.” The Court also relied on its analysis of the public policy claim, noting Plaintiff failed to sufficiently plead that the College violated any mandatory accreditation standards or statutes or committed fraud.

**Implications.** This decision reaffirms the pleading standards for public policy retaliatory discharge and IWA retaliation claims, underscoring the substantial burdens plaintiffs must satisfy.

[View Original](#)

- **Steven J. Pearlman**

Partner