No. 123594

IN THE
SUPREME COURT OF ILLINOIS

KENRICK ROBERTS

Plaintiff – Appellee

v.

BOARD OF TRUSTEES COMMUNITY COLLEGE
DISTRICT NO. 508 d/b/a CITY COLLEGES OF CHICAGO

Defendant – Appellant

On Appeal from the Appellate Court of Illinois
First District No. 1-17-0067
There heard on Appeal from the Circuit Court of Cook County, Illinois
County Department, Law Division
Case No. 15 L 9430
The Honorable Judge James Snyder, Presiding

BRIEF OF DEFENDANT – APPELLANT

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Plaintiff filed three complaints against the Board of Trustees of Community College District No. 508 (the "City Colleges"), each purporting to allege causes of action for common law retaliatory discharge, violation of the Illinois Whistleblower Act, and wrongful termination based on the City Colleges' policies and procedures. Judge Snyder of the Circuit Court of Cook County dismissed the retaliatory discharge and Whistleblower Act counts three times pursuant to Section 2-615 of the Code of Civil Procedure. The wrongful termination count remains to be litigated and might offer relief if Plaintiff proves his case.

Plaintiff appealed the dismissal of the retaliatory discharge and Whistleblower Act counts pursuant to Rule 304. The appellate court on April 16, 2018 reversed the dismissal of the retaliatory discharge count but affirmed the dismissal of the Whistleblower Act count. This Court subsequently granted the petitions for leave to appeal filed by both the City Colleges and Plaintiff.

The City Colleges obviously agrees with the dismissal of the Whistleblower Act count but strenuously opposes the reversal of the retaliatory discharge count. The reversal of the dismissal of the retaliatory discharge count purports to establish a previously unrecognized type of retaliatory discharge action. The dismissal of the retaliatory discharge count by the circuit court ought to have been affirmed based on this Court's highly analogous decision in *Turner v. Memorial Medical Center*, 233 Ill. 2d 494 (2008). The creation of a new type of retaliatory discharge action is not only unwarranted by the facts of this case but also contrary to this Court's repeated strictures against expanding the narrow scope of the tort and its repeated acknowledgment that the interest of employers must be consid-

ered before establishing new kinds of retaliatory discharge actions. The new type of retaliatory discharge cause of action foreseen by the appellate court does away with the necessity that a clearly mandated public policy derive from a specific and specifically enunciated requirement of the putative public policy and that the employer must or should have been aware that the employer decision in question might well violate that public policy. For these reasons, the dismissal by the circuit court ought to be reinstated.

All issues in this appeal are raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

The issue presented for review in the City Colleges' appeal is: Did the appellate court err by finding that a plaintiff asserts a valid public policy in support of a retaliatory discharge claim by making complaints about instructor qualifications because such qualifications could bear on the provision of publicly funded higher education?

JURISDICTIONAL STATEMENT

The Circuit Court of Cook County dismissed two of the counts of plaintiff's second amended complaint with prejudice on October 25, 2016. The Circuit Court certified pursuant to Rule 304(a) on December 15, 2016 that there was no just reason for delaying appeal of those claims. The Illinois Appellate Court, First District, entered judgment on April 16, 2018. The City Colleges filed a timely petition for leave to appeal pursuant to Rule 315, which this Court granted on September 26, 2018.

STATEMENT OF FACTS

The City Colleges limits this statement of facts to Plaintiff's retaliatory discharge count. The core events and chronology pleaded by Plaintiff stayed virtually the same throughout his three complaints:

The Board of Trustees of Community College District No. 508 oversees a community college system in Chicago commonly known as the City Colleges of Chicago. Second Am. Compl. Par. 2 (A 54, C518). The City Colleges operates seven community colleges located in Chicago, one of which is Malcolm X College. *Id.* at Par. 3 (A54, C518). The City Colleges employed Plaintiff as the Director of Medical Programs at Malcolm X College. *Id.* Par. 6 (A54, C518). Plaintiff alleges that his job duties included "vetting potential instructors" to ensure compliance with appropriate accreditation standards and qualifications but states that he "was intentionally excluded from the process of assigning an instructor to teach HeaPro 101 for the 2015 school year." *Id.* Pars. 13-14 (A56, C520). Plaintiff claims that on January 15, 2015 he emailed his direct supervisors, the Dean and Associate Dean of Health Sciences & Career Programs at Malcolm X, to complain that an allegedly unqualified professor was teaching the HeaPro 101 course. *Id.* Pars. 18-19 (A56-57, C520-521). Plaintiff further alleges that on February 25, 2015 he emailed the President, Vice President, and Associate Provost of Malcolm X repeating his complaint about an allegedly unqualified professor teaching HeaPro 101 and adding that this unqualified professor had abandoned her class and that a second allegedly unqualified professor had replaced her to complete the remainder of the academic term. *Id.* Par. 22 (A57-58, C521-522).

Plaintiff alleges that upon receipt of his February 25, 2015 email the Vice President of Malcolm X, Dr. Christopher Robinson-Easley, asked Plaintiff to meet with her to discuss his complaints. *Id.* Par. 23 (A58, C522). In a seemingly illogical twist, Plaintiff next alleges that he felt "very uncomfortable" that Dr. Robinson-Easley -- to whom Plaintiff had submitted his complaint -- asked to speak to him about it. *Id.* Par. 24 (A58, C522).

Plaintiff alleges that he met with Dr. Robinson-Easley the same day he sent his

second complaint about two allegedly unqualified professors and that Dr. Robinson-Easley was upset with Plaintiff about his complaints. *Id.* Par. 25 (A58, C522). Plaintiff asserts that he was excluded from subsequent meetings and discussions related to his job duties. *Id.* Par. 27 (A58, C522). According to Plaintiff, the President of Malcolm X instructed Plaintiff to file a complaint pursuant to the City Colleges' Equal Employment Opportunity policy against Dr. Robinson-Easley in late June 2015 for alleged retaliation in connection with Plaintiff's complaints about allegedly unqualified professors. *Id.* Par. 29 (A59, C523).

The City Colleges terminated Plaintiff on August 7, 2015, and Plaintiff contends that the City Colleges did so unlawfully. *Id.* Par. 31 (A59, C523).

The instant appeal focuses on what this Court has defined for the law of retaliatory discharge as "the issue of whether a public policy exists and the related issue of whether the employee's discharge undermines the state's public policy." *Turner*, 233 Ill. 2d at 501. Here, in contrast to the core events and chronology, Plaintiff's allegations fluctuated.

This Court has announced over and over the "narrow definition of public policy" and the "narrow scope of a retaliatory discharge action," has repeatedly stated that an alleged public policy must be "specific" and "clear" in order to undergird a retaliatory discharge claim, and has ruled consistently that a "broad, general statement is inadequate to justify finding an exception to the general rule of at-will employment." *Id.* at 502-3, 507. Public policy "is to be found in the State's constitution and statutes and, when they are silent, in its judicial decisions." *Id.* at 500.

Plaintiff filed his original complaint on September 15, 2015. With respect to the core issues quoted two paragraphs above, Plaintiff alleged at Compl. Par. 28 (A24, C9):

> The Defendant's termination of the Plaintiff's employment violated a clear mandate of public policy in that the Plaintiff's complaints dealt with

> the improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

Although Plaintiff listed a number of potentially adverse consequences of the allegedly improper appointment, Plaintiff adduced no statute, no administrative rule or regulation, and no judicial decision as a basis for his alleged clear mandate of public policy. *Id.* Par. 29 (A24, C9).

Judge Snyder dismissed the retaliatory discharge count on January 27, 2016 pursuant to Section 2-615 of the Code of Civil Procedure. (C 458-68). Judge Snyder reasoned as follows in open court (A31, C492):

> The complaint is [sic] written regarding the common law retaliation does not identify with specific particularity the public policy which the plaintiff claims.

Judge Snyder also observed that "the plaintiff's claim does not identify what law or regulation [or] the reason it would have been violated." (A31, C492).

Plaintiff filed his first amended complaint on February 24, 2016. With respect to the core issues quoted above, Plaintiff realleged that his termination "violated a clear mandate of public policy in that Plaintiff's complaints dealt with the improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in HeaPro 101" and added that the "ability to obtain the benefits of a post-secondary education by Illinois students through the financial help of Federal and State funded programs is an Illinois public policy which was violated by the Defendant's improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101." First Am. Compl. Pars. 47-48 (A40, C272).

As the source of the alleged public policy, Plaintiff pleaded in nineteen paragraphs a labyrinth of hundreds of pages of federal statutes and regulations arising out of the Higher Education Act of 1965, 20 U.S.C. § 1001 *et seq*. *Id.* Pars. 25-43, 49, 54 (A37-42, C269-274). Plaintiff, however, did not point to any provision setting forth either any required qualifications or source of required qualifications for the faculty position involved. Plaintiff likewise failed to point to any provision indicating that financial aid to college students is a public policy on which a claim of retaliatory discharge can be based. *Id.* (A37-42, C269-274).

The City Colleges will not set out all nineteen referenced paragraphs. Instead, as it did for Judge Snyder, the City Colleges provides a brief statement of its understanding of these pleadings:

Plaintiff claims that Illinois has a public policy that people should be able to obtain the benefits of a postsecondary education through the help of publicly funded aid; the federal government sponsors a number of aid programs but imposes certain conditions on institutions to participate in these aid programs; one of the federal government's requirements for providing aid is that institutions comply with accreditation standards; the City Colleges' accreditors -- note that this is not the federal or state government -- allegedly require some unspecified credentials for people teaching HeaPro 101; the federal government's funding standards therefore give the force of federal law to the accreditation requirements for the City Colleges; ergo Plaintiff's complaint about an "unqualified" professor teaching HeaPro 101 was the only thing standing between "thousands of Illinois students" and the loss of their right to postsecondary education.

Plaintiff did not specify which set of accreditation standards the City Colleges

allegedly violated nor point to a specific requirement in any set of standards nor explain how Plaintiff allegedly blew the whistle about a violation of any requirement.

On June 6, 2016, Judge Snyder, for the second time, dismissed Plaintiff's count for common law retaliatory discharge pursuant to Section 2-615 of the Code of Civil Procedure. Judge Snyder described the deficiency of the count in open court as follows (A48-49, C571-572 emphasis added):

> The plaintiff states in a conclusionary way that they were engaged in, I guess, opposition to a violation of the law of public policy but only identifies that in the **most conclusionary and broad way**.
>
> The -- an example may be that would be -- that probably isn't true, but is a clear one -- would be that the plaintiff -- that the -- in order to teach at this program, one has to have a CPA license in the State of Illinois.
>
> **The law requires that, and this person does not have that**. They are unqualified.
>
> I'm opposing that, their -- their qualifications -- it's a matter of public policy and **law** that one teaching in this program has to have that license.
>
> This only says I'm -- the person is unqualified in a conclusionary way, which could be, for example, I have a license to practice law in Illinois. If I didn't, I wouldn't be qualified to be a judge, and that's -- that's – on the other hand, one could say I was unqualified in terms of my demeanor, my personality, my legal ability. That's just kind of this general conclusion.

Plaintiff filed his second amended complaint on June 27, 2016. Plaintiff retained the core allegations of the first amended complaint including the labyrinth of statutes and regulations with only two substantive additions:

First, Plaintiff alleged that the National Accrediting Agency for Clinical Laboratory Sciences (as well as "best practices") requires persons teaching phlebotomy to be certified, demonstrate relevant knowledge and proficiency, and be able to teach effectively, yet did not plead that this agency has or had any legal, professional, or quasi-professional

control over any programs or personnel at the City Colleges and did not point to any specific standard in any specific document published by the agency that requires what Plaintiff claims. Second Am. Compl. Pars. 33, 36 (A59-60, C523-524).

Second, Plaintiff alleged that a professor "can be certified in phlebotomy by the National Phlebotomy Association or the American Society of Clinical Pathologists," two private voluntary associations of professionals, yet as with the National Accrediting Agency for Clinical Laboratory Sciences did not plead that either group has or had any control whatsoever of any kind over any personnel or programs at the City Colleges and did not point to any specific standard in any document published by either group that requires what Plaintiff claims. *Id.* Par. 34 (A60, C524).

Judge Snyder dismissed the retaliatory discharge claim with prejudice on October 25, 2016, stating in open court as follows (A73-75 emphasis added):

> So I think the concern in the complaint and in its amendments is the way in which the word "unqualified" is used.
>
> One could believe that this professor was unqualified -- subjectively not competent -- yes. In a kind of subjective way unqualified.
>
> **Then there is the matter of whether or not plaintiff is claiming that some particular public policy and some particular law requires some particular qualification, not a good person to teach this, or one who has standing in the community or anything.**
>
> **But that somehow some particular law and public policy requires some particular qualification that she lacks.**
>
> For example there would be certain things in life where one had to have a license to practice law. You either have it or you don't.
>
> Whether or not the lawyer is qualified, meaning well thought of in the legal community, such as yourselves, competent, experienced, et cetera, is a whole thing about whether or not this public policy requires this person to hold some licensing.
>
> **In each case here I don't see how the plaintiff is claiming that the**

> **unqualified -- by appointment and obtaining an unqualified professor, for example, are violations of the accreditation standards.**
>
> **The manner in which the word "unqualified" is used in this Complaint is not some specific thing.**
>
> **It is this general idea that this person is not in this sense qualified.**
>
> The motion to dismiss is granted.

As part of the briefing on the second amended complaint but unnecessary for Judge Snyder's decision, the City Colleges submitted an affidavit averring that the National Accrediting Agency for Clinical Laboratory Sciences, the National Phlebotomy Association, and the American Society of Clinical Pathologists have not been used in any way for HeaPro or phlebotomy courses at Malcolm X College at any relevant time and that certification by professional associations such as the National Phlebotomy Association and the American Society of Clinical Pathologists is not required for a person to perform the duties of a phlebotomist in Illinois. (A51-52, C584-585). Plaintiff did not challenge the use or substance of this affidavit.

Pursuant to Supreme Court Rule 304(a), Judge Snyder entered an order finding that there was no just reason for delaying an appeal of his dismissal of either the common law retaliatory discharge count or the count alleging a violation of the Whistleblower Act.

The appellate court on April 16, 2018 reversed Judge Snyder and held that, in "a case of first impression," Plaintiff had stated a cause of action for common law retaliatory discharge. The City Colleges lets the appellate court speak for itself. After citing the federal statutes relied on by Plaintiff, the appellate court continued (*Roberts v. Bd. of Trustees of Comm. College Dist. No. 508*, 2018 IL App (1st) 170067, ¶¶ 29-32, emphasis in original, some material omitted):

> While not cited to by the plaintiff, we take judicial notice of the [Illinois]

Higher Education Loan Act. . . . Section 2 . . . states:

> It is declared that for the benefit of the people of Illinois, the conduct and increase of their commerce, the protection and enhancement of their welfare, and development of continued prosperity and the improvement of their health and living conditions, *it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual capacities and skills;* that to achieve these ends it is of the utmost importance that students attending institutions of higher education located in Illinois have reasonable alternatives to enhance their financial access to such institutions; *that reasonable financial access to institutions of higher education will assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities;* that it is the purpose of this Act to provide a measure of assistance and an alternative method to enable students and the families located in Illinois to appropriately and prudently finance the cost of such higher education; and that it is the intent of this Act to supplement federal guaranteed higher education loan programs, other student loan programs, and grant or scholarship programs to provide the needed additional options for the financing of a student's higher education in execution of the public policy set forth above.

Our General Assembly has concluded that the purpose of providing public funds for higher education is to provide the fullest opportunity for recipients to learn and develop their "intellectual and mental capacities and skills." *Id.* Based on the above, it is obvious to this court the purpose of establishing both state and federal programs is to ensure individuals without the private means of paying for a college education are given access to funds to better develop themselves intellectually so as to provide a greater contribution to our state and country.

. . . We conclude the public policy behind the Higher Education Act of 1965 and Illinois's Higher Education Loan Act would be seriously undermined if defendant is allowed to act in the manner alleged in plaintiff's complaint. . . .

> . . . If defendant accepts loan money but uses it to hire incompetent and unqualified individuals who cannot properly instruct students who are enrolled in classes like HeaPro 101, defendant has essentially defrauded both the student and the taxpayer. The intent behind both the state and federal loan programs would be thwarted because those receiving incompetent instruction would be unable to "develop their intellectual and mental capacities and skills."
>
> . . . Simply put, if our government did not think providing all citizens with access to funds for higher education was a good idea, it would not have enacted the statute in the first place.

The Illinois Higher Education Loan Act, 110 ILCS 945/0.01 *et seq.*, says nothing about academic qualifications and credentials, nothing about employees and employing educational institutions.

STANDARD OF REVIEW

Reviewing courts review de novo whether complaints should be dismissed under Section 2-615 of the Code of Civil Procedure. *Canel v. Topinka*, 212 Ill. 2d 311, 318 (2004); *Chatham Surgicare, Ltd. v. Health Care Service Corp.*, 356 Ill. App. 3d 795, 799 (1st Dist. 2004).

ARGUMENT

This case, claimed to be one of "first impression" by the appellate court, brings judicial activism to the area where it least belongs according to the consistent statements by this Court over four decades: the law of retaliatory discharge. Ignoring three soundly-reasoned dismissals by the circuit court, shunting to the side the morass of irrelevant federal statutes and regulations relied on by Plaintiff, and substituting a state statute that does no more than establish a student loan funding mechanism, the appellate court has created a new variety of retaliatory discharge, one which runs roughshod over this Court's relatively

recent authoritative decision in *Turner*, one in no way linked to the credentialing and qualification allegations of the complaint, one based on a statute that gives employers no clue that the type of conduct challenged here might be tortious, and one which threatens to swallow in substantial part the long-established doctrine of employment at will. Even if this Court has determined that the time to expand the tort of retaliatory discharge has come, this is not the case in which to do it.

This argument is tripartite. The first part discusses the requirements which have kept the retaliatory discharge tort narrow and limited and is followed by demonstrations that this jurisprudence requires reversal of the appellate court both on the bases of Plaintiff's allegations alone and on the statute adduced for the first time by the appellate court. The second part describes in great detail the Supreme Court's decades long opposition to expanding the retaliatory discharge tort. The third part explains why the instant case is a particularly unsuitable matter from which to expand the tort.

I. THIS COURT'S RETALIATORY DISCHARGE JURISPRUDENCE REQUIRES REVERSAL OF THE APPELLATE COURT'S DECISION

The symmetrical rights of an employer to discharge an employee and of an employee to quit his or her job -- each for any reason or no reason -- are and long have been the pillars of the employment relationship under American law. When in 1981 this Court in *Kelsay* chose to recognize the retaliatory discharge exception to the employment at will rule, it intended the exception to be extremely narrow and limited to shield both employers and the judiciary itself from waves of meritless litigation. To accomplish this -- as illustrated in the next section of this brief -- this Court time and again over the decades announced this intention in its decisions. It also used other means.

At the core of every retaliatory discharge action is the concept of a "clearly mandated public policy." See for example *Palmateer v. International Harvester Co.*, 85 Ill. 2d 124, 134 (1981). This multifaceted concept helps to achieve the goal of a narrow and limited cause of action in a number of ways:

First, a clearly mandated public policy must be found in constitutions, statutes, or judicial decisions and nowhere else; general concepts of fairness and sound policy will not suffice. *Palmateer*, 85 Ill. 2d at 130 (public policy "is to be found in the State's constitution and statutes and, where they are silent, in its judicial decisions"); *Wheeler v. Caterpillar Tractor Co.*, 108 Ill. 2d 502, 510 (1985) ("The legislation and the regulations declared the public policy"); *Gould v. Campbell's Ambulance Service, Inc.*, 111 Ill. 2d 54, 57-68 (1986) (rejecting cause of action based on a statute and an ordinance that were not in effect at the time of the discharge); *Turner*, 233 Ill. 2d at 502 (recognizing that any "effort to evaluate the public policy exception with generalized concepts of fairness and justice will result in an elimination of the at-will doctrine itself").

Second, a clearly mandated public policy must be specific and contained in a provision of its alleged source; once again, fairness and sound policy are not enough. *Barr v. Kelso-Burnett Co.*, 106 Ill. 2d 520, 527 (1985) (finding no public policy expressed in the constitutional "provisions cited in plaintiff's complaint"); *Turner*, 233 Ill. 2d at 503 (stating that, "unless an employee at will identifies a 'specific' expression of public policy, the employee may be discharged with or without cause").

Third, a clearly mandated public policy must affect the citizenry collectively; retaliatory discharge law has no room for merely parochial concerns. *Palmateer*, 85 Ill. 2d at 128 ("Public policy concerns what is right and just and what affects the citizens of the

State collectively"); *Price v. Carmack Datsun, Inc.*, 109 Ill. 2d 65, 69 (1985) (rejecting retaliatory discharge cause of action based on a termination for filing a health insurance claim because *inter alia* the "matter here is one of private and individual grievance rather than one affecting our society").

Fourth, a clearly mandated public policy must give employers notice of what constitutes impermissible conduct; a retaliatory discharge action must be fair to the employer and mindful of due process. *Turner*, 233 Ill. 2d at 503 (stating that "generalized expressions of public policy fail to provide essential notice to employers," agreeing that "an employer should not be exposed to liability where a public policy standard is too general to provide any specific guidance or is so vague that it is subject to different interpretations," and observing that the clearly mandated public policy standard "helps ensure that employers have notice that their dismissal decisions will give rise to liability").

Fifth, a clearly mandated public policy usually must have something to do with the relationships of individuals including the relationship between employer and employee; this is another aspect of the notice that must be afforded to employer defendants. *Barr*, 106 Ill. 2d at 528 ("The cited provisions mandate nothing concerning the relationship of private individuals including private individuals in the employer-employee relationship"); *Fisher v. Lexington Health Care*, 188 Ill. 2d 455, 462 (1999) ("The provisions of the Act reveal that it was not designed to protect nursing home employees such as the plaintiffs. Rather, the Act was clearly enacted for the purpose of protecting and benefiting nursing home residents"); *Metzger v. DaRosa*, 209 Ill. 2d 30, 38-39 (2004) ("When viewed as a whole, it is clear that the Personnel Code was primarily designed to benefit the state and the people of Illinois by ensuring competent employees for government bodies. . . . Just

as state employees are not the class for which the statute was primarily enacted to benefit, it is clear that the Personnel Code was not primarily designed to prevent retaliation against state employees").

Sixth, a clearly mandated public policy usually must be designed to protect the person filing a retaliatory discharge suit and be directed against the misconduct alleged; this is also a part of the required notice to the defendant. *Kelsay v. Motorola*, 74 Ill. 2d 172, 181 (1978) (pointing out that the employer had sought "to prevent the employee from asserting his statutory rights"); *Wheeler*, 108 Ill. 2d 502, 511 (1985) (upholding retaliatory discharge cause of action by employee "for refusing to work under conditions which contravened the clearly mandated public policy"); *Price*, 109 Ill. 2d at 69 (rejecting cause of action based on Insurance Code and noting that "the Code was designed to govern operations of insurance companies, not insureds, such as defendant); *Fisher*, 188 Ill. 2d at 460 ("Plaintiffs are not members of the class which the Act was enacted to protect and their injuries are not the type the statute was designed to prevent").

These requirements go a long way toward preventing the disaster foreseen by a federal district court quoted in *Abrams v. Echlin Corp*., 174 Ill. App. 3d 434, 441 (1st Dist. 1988) (quoting *Kavanagh v. KLM Royal Dutch Airlines*, 566 F. Supp. 242, 244 (N.D. Ill. 1983)):

> Even if the court limited plaintiff's theory to the employment context, it would metamorphose the supposedly narrow exception recognized in *Kelsay* and *Palmateer* into the monster that swallowed the employment-at-will rule. Whenever a dispute between an employer and an at-will employee threatens to culminate in the employee's discharge, the employee, simply by retaining an attorney and threatening to sue, could procure that which is unavailable to him through contract -- employment security.
>
> * * *

Although the appellate court insists that the instant case is one of "first impression," that is true, if at all, only in the most mundane sense that it involves parties, facts, and circumstances not present in previously litigated retaliatory discharge cases. The City Colleges asserts, however, that this Court's decision in *Turner* disposes of the instant case and requires reversal of the appellate court. This is true regardless of whether this Court limits itself to considering the sources of alleged public policy cited in Plaintiff's complaints or the statute injected into the case by the appellate court, the Illinois Higher Education Loan Act, 110 ILCS 945/0.01 *et seq*. But see *Turner*, 233 Ill. 2d at 503-4, 506 (ruling that, "as the circuit court's decision was limited to the well-pled allegations in the complaint, so our review of the circuit court's decision is likewise limited to these same allegations" and that "plaintiff did not include this statute as a source of the alleged clearly mandated public policy in the complaint or in his response to Memorial's motion to dismiss. Accordingly, plaintiff has forfeited any argument concerning this statute").

The City Colleges first discusses the allegations in the complaints, then the Higher Education Loan Act introduced by the appellate court.

* * *

In *Turner*, this Court's most recent review of the bounds of retaliatory discharge, the Court comprehensively summed up three decades of retaliatory discharge jurisprudence. *Turner*, 233 Ill. 2d 494 (2008). *Turner* requires dismissal of Plaintiff's retaliatory discharge count.

To state a valid claim for retaliatory discharge, a discharged employee must allege: "(1) the employer discharged the employee, (2) in retaliation for the employee's activities, and (3) that the discharge violates a clear mandate of public policy." *Id.* at 500.

This matter, which was decided on the pleadings, deals only with the third prong: Plaintiff has not alleged and cannot allege that his discharge violated a clear mandate of public policy in Illinois.

Turner instructs that retaliatory discharge is a "limited and narrow cause of action" and that over the years "numerous decisions of this Court have maintained the narrow scope of the retaliatory discharge action." *Id.* at 500-501. *Turner* reminds us that "a broad general statement of policy is inadequate to justify finding an exception to the general rule of at-will employment" and that, "unless an employee at will identifies a 'specific' expression of public policy, the employee may be discharged with or without cause." *Id.* at 502-3. Public policy "is to be found in the State's constitution and statutes and, when they are silent, in its judicial decisions." *Id.* at 500.

Plaintiff and the appellate court for all practical purposes ignore the directly on-point holding in *Turner*. The dispute in *Turner* arose under facts almost identical to the instant dispute. The plaintiff in *Turner* alleged that his employer, a hospital, terminated him unlawfully in retaliation for complaints that he had made to the hospital's accreditor about the hospital's alleged failure to follow the accreditor's requirements for electronic charting of patient care. One of the consequences of the hospital's failure to comply with the accreditor's requirements was that the hospital would lose federal Medicare and Medicaid funding. The *Turner* plaintiff alleged that Illinois law recognizes a public policy for each patient to receive care consistent with sound practices and that the hospital's alleged failure to chart patient care immediately was not consistent with such practices and jeopardized patient care. Accordingly, the plaintiff asked this Court to find that Illinois has a

public policy in favor of patient safety and that terminating an employee who speaks out about issues of patient care violates that policy. This Court declined to do so.

This Court, as the City Colleges already has noted, made clear in *Turner* that, "unless an employee identifies a 'specific' expression of public policy, the employee may be discharged with or without cause." *Turner*, 233 Ill. 2d at 503. This Court found that the plaintiff had not cited any provision of Illinois law that required immediate electronic charting of patient care. *Id.* at 504. This Court closed its decision with the admonition that simply because something is in the public interest does not mean that it modifies the doctrine of at-will employment (*Id.* at 507):

> We agree with the appellate court special concurrence that the provision of good medical care is in the public interest. It does not follow, however, that all health care employees should be immune from the general at-will employment rules simply because they claim to be reporting on issues that they feel are detrimental to health care.

If the plaintiff in *Turner* failed to establish a clearly mandated public policy, then so too has Plaintiff herein. Both *Turner* and the instant case involve accreditation standards and possible loss of public funds for failing to meet them. Unlike the plaintiff in *Turner*, however, who could allege that a specific accrediting agency was actively involved with the defendant medical center, Plaintiff does not and cannot allege any connection between the three groups he cites in his complaints and the City Colleges. In addition, although the plaintiff in *Turner* discussed an alleged requirement of immediate electronic charting of patient records, this Court emphasized that the "plaintiff's complaint fails to recite or even refer to a specific Joint Commission standard in support of his allegation." *Turner*, 233 Ill. 2d at 504. Plaintiff herein does not even discuss a specific standard much less cite or refer to one promulgated by any of the three groups he names, none of which in any case has or

had any connection with the City Colleges. Moreover, this Court in *Turner* stated: "No Illinois law or administrative regulation directly requires immediate bedside charting of patient care." *Id.* Thus, this Court recognized in *Turner* that accreditation and qualification standards do not establish public policy unless they are law or required by law, neither of which is the case here.

To repeat, *Turner* holds that a retaliatory discharge claim must be based on a "specific" rather than an amorphous or generalized policy. *Id.* at 500. In other words, "generalized expressions of public policy fail to provide essential notice to employers. The phrase 'clearly mandated public policy' will be recognizable simply because it is clear." *Id.* at 502-3.

Instead of pointing to a public policy that is "clear," which ought to be a simple task if such a policy exists, Plaintiff as summarized above constructs a maze of federal statutes and regulations, superimposes that maze over alleged private rather than public requirements established by private accrediting agencies and professional societies -- none of which is alleged to have and none of which in fact has any control over the City Colleges -- and makes the surprising and unsupported inference that the "ability to obtain the benefits of a post-secondary education by Illinois students through the help of federal and state funded programs is an Illinois public policy." Second Am. Compl. Par. 54 (A63, C527). Plaintiff's virtually incomprehensible maze has eleven paragraphs citing federal statutes and regulations. Neither individually nor collectively, however, do these statutes and regulations express clearly or even unclearly a right to obtain public financial aid for postsecondary education. Nor does the maze yield any specific requirements to which faculty must adhere. Again, although public financial aid for higher education might be a good

thing, it is far from a clearly mandated public policy as required by the law of retaliatory discharge in Illinois. The City Colleges certainly agrees that that the provision of higher education through public financial aid is in the public interest. That is, after all, the core mission of the City Colleges. But, to borrow this Court's closing statement in *Turner*, it does not follow that all higher education employees should be immune from the general at-will employment rules simply because they claim to be reporting on issues that they feel are detrimental to higher education.

This Court has stated that the third element of the traditional formulation of the retaliatory discharge requirements -- "that the discharge violates a clear mandate of public policy" -- actually requires two separate inquiries, the first about "whether a public policy exists," the second about "whether the employee's discharge undermines the state's public policy." *Turner*, 233 Ill. 2d at 501. With respect to the second inquiry, Plaintiff has not alleged that either the City Colleges or any of its past, present, and prospective students has lost any financial aid on account of Plaintiff's discharge or indeed on account of any matter alleged by Plaintiff. Plaintiff has not alleged that any of the City Colleges' students and graduates has lost a job opportunity on account of Plaintiff's discharge or any other matter alleged by Plaintiff. Plaintiff has not alleged that any member of the public has been harmed on account of Plaintiff's discharge or any other matter alleged by Plaintiff. In point of fact, unless one postulates a general chilling effect -- which could be alleged in conclusory fashion in any contemplated retaliatory discharge action and which therefore would render the second inquiry mandated by this Court meaningless and unnecessary -- one must conclude that Plaintiff has not alleged satisfactorily the third element of the traditional requirements to state a cause of action for retaliatory discharge.

Judge Snyder dismissed Plaintiff's count for retaliatory discharge three times by reasoning respectively that Plaintiff "does not identify with specific particularity the public policy which the plaintiff claims," that Plaintiff made his allegations in the "most conclusionary and broad way" and failed to allege any qualifications existing "as a matter of public policy and law," and, finally, that Plaintiff failed to allege a "particular" qualification that "law and public policy requires." This reasoning clearly derives from *Turner* and produced the correct result, dismissal with prejudice of the count for retaliatory discharge. By suffocating the impact of *Turner*, the appellate court committed reversible error.

The same result obtains if this Court deems it appropriate to consider legislation not mentioned by Plaintiff but relied on and cited for the first time in this litigation by the appellate court: the Illinois Higher Education Loan Act, 110 ILCS 945/0.01 *et seq*. The best way to show that this statute does not change the result is a systematic review of the statute's provisions as they existed at the time of Plaintiff's discharge:

- Sec. 0.01 gives the short title for the Act. **Sec. 14 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 2 is a highly rhetorical statement of legislative purpose. **Sec. 14 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**
-
- Sec. 3 and its subparts set forth controlling definitions. **Sec. 14 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 5 provides for transfers from the Illinois Educational Facilities Authority to the Illinois Finance Authority. **Sec. 14 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 6 and its subparts set forth the powers of the Authority. **Sec. 14 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 7 discusses expenses of the Authority. **Sec. 7 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 8 gives the Authority the power to establish guidelines for deposits by institutions of higher learning. **Sec. 8 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 9 discusses conveyances. **Sec. 9 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 10 discusses bonds. **Sec. 10 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 11 allows the Authority to establish trust agreements for bonds. **Sec. 11 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 12 states that Authority bonds are the obligation of the Authority alone and not of the State of Illinois. **Sec. 12 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 13 gives the Authority the power to fix, revise, charge, and collect fees. **Sec. 13 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 14 discusses funds from the sale of bonds. **Sec. 14 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 15 describes the rights of bond holders. **Sec. 15 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 18 discusses legal investments. **Sec. 18 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 20 provides for the waiver of competitive bidding. **Sec. 20 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 22 discusses interest rates. **Sec. 22 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 23 discusses the relationship of the Authority to other entities. **Sec. 23 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

- Sec. 24 provides for a liberal construction of the Act. **Sec. 24 says nothing about academic qualifications and credentials, nothing about educational employers and their employees.**

Are there any statutes farther from meeting the requirements for establishing a clearly mandated public policy described at the beginning of this part of the argument? Not many, opines the City Colleges.

* * *

In sum, neither Plaintiff nor the appellate court was able to come up with a clearly mandated public policy implicated by this case. Nothing cited by either regulates the relationship between educational employer and employee. Nothing cited by either deals with the type of conduct alleged by Plaintiff. And nothing cited by either put the City Colleges on notice that it might be acting improperly by terminating Plaintiff. Finally, although one

cannot easily deny that higher education is a good thing, it is doubtful that the persons intended to be benefited by the state and federal measures relied on by Plaintiff and the appellate court -- "individuals without the private means of pay for a college education" according to the appellate court -- equate as required to the "citizens of the state collectively." *Palmateer*, 85 Ill. 2d at 128 (1981). Therefore, the decision of the appellate court reversing the circuit court's dismissal of the retaliatory discharge count was incorrect as a matter of law and must be reversed.

II. HITHERTO ILLINOIS OPPOSED EXPANDING THE TORT OF RETALIATORY DISCHARGE

From the inception of the tort forward, this Court has recognized that employment at will is the dominant rule in this state to which retaliatory discharge is but a minor exception. In the case that established the tort, the Court acknowledged "an employer's otherwise absolute power to terminate an employee at will." *Kelsay*, 74 Ill. 2d at 181. In its next decision in the area, the Court similarly instructed that "the general rule" is "that an 'at-will' employment is terminable at any time for any or no cause." *Palmateer*, 85 Ill. 2d at 128. If there were any doubt, the Court removed it four years later: "Contrary to plaintiffs' assertion, however, this Court has not, by its *Palmateer* and *Kelsay* decisions, 'rejected a narrow interpretation of the retaliatory discharge tort' and does not 'strongly support' the expansion of the tort. The common law doctrine that an employer may discharge an employee-at-will for any reason is still the law in Illinois." *Barr*, 106 Ill. 2d at 625.

Such admonitions are ubiquitous in this Court's subsequent decisions. See for example *Price*, 109 Ill. 2d at 67 ("The accepted general rule is that in an employment at will there is no limitation on the right of an employer to discharge an employee"); *Fellhauer v. Geneva*, 142 Ill. 2d 495, 505 (1991) (describing retaliatory discharge as "a

limited and narrow cause of action"); *Balla v. Gambro, Inc*., 145 Ill. 2d 492, 498 (1991) (referring to "the limited and narrow tort of retaliatory discharge"); *Hartlein v. Illinois Power Co*., 151 Ill. 2d 142, 159 (1992) (repeating that "the common law doctrine that an employer may discharge an employee-at-will for any reason or for no reason remains the law in Illinois"); *Zimmerman v. Buchheit of Sparta*, 164 Ill. 2d 29, 37 (1994) (stating that in a number of cases the Supreme Court "expressed its disinclination to expand the tort of retaliatory discharge"); *Buckner v. Atlantic Plant Maintenance*, 182 Ill. 2d 12, 20 (1998) (reiterating that retaliatory discharge is a "limited and narrow cause of action"); *Clemons v. Mechanical Devices Co*., 184 Ill. 2d 328, 338 (1998) (reminding that "the common law doctrine that an employer may discharge an employee-at-will for any reason or for no reason at all" and refusing "to expand the tort of retaliatory discharge"); *Fisher*, 188 Ill. 2d at 467 (1999) (noting that "this court has consistently sought to restrict the common law tort of retaliatory discharge"); *Turner*, 233 Ill. 2d at 500 (stating that "numerous decisions of this court have maintained the narrow scope of the retaliatory discharge action"); and *Michael v. Precision Alliance Group, LLC*, 2014 IL 117376, ¶ 39 ("Illinois law is clear. Retaliatory discharge claims are a narrow exception to the general rule that employees are at-will").

Until the case now under review, this Court's conservative approach to retaliatory discharge has permeated the courts of appeals and saturated their opinions. See for example *Paz v. Commonwealth Edison, Co.*, 314 Ill. App. 3d 591, 594 (2nd Dist. 1999) ("The supreme court has deflected many attempts to expand this tort and has maintained retaliatory discharge as a limited and narrow exception to the rule of at-will discharges"); *Scheller v. Health Care Service Corp*., 138 Ill. App. 3d 219, 224 (4th Dist. 1985); *Slover v. Brown*,

140 Ill. App. 3d 618, 621 (5th Dist. 1986); *Morton v. Hartigan*, 145 Ill. App. 3d 417, 422 (1st Dist. 1986); *Herbster v. North American Co.*, 150 Ill. App. 3d 21, 24-25 (2nd Dist. 1986); *Abrams v. Echlin Corp*., 174 Ill. App. 3d 434, 441 (1st Dist. 1988); *Lambert v. Lake Forest*, 186 Ill. App. 3d 937, 941 (2nd Dist. 1989); *Melton v. Central Illinois Public Service Co*., 220 Ill. App. 3d 1052, 1055 (4th Dist. 1991); *Eisenbach v. Esformes*, 221 Ill. App. 3d 440, 441 (2nd Dist. 1991); *Hess v. Clarcor, Inc.*, 237 Ill. App. 3d 434, 449 (2nd Dist. 1992); *Hindo v. Chicago Medical School*, 237 Ill. App. 3d 453, 468 (2nd Dist. 1992); *Wieseman v. Kienstra, Inc*., 237 Ill. App. 3d 721, 723 (5th Dist. 1992); *Selof v. Island Foods*, 251 Ill. App. 3d 675, 677 (2nd Dist. 1993); *Howard v. Zack Co*., 264 Ill. App. 3d 1012, 1021 (1st Dist. 1994); *Corluka v. Bridgford Foods*, 284 Ill. App. 3d 190, 192-93 (1st Dist. 1996); *Buckner v. O'Brien*, 287 Ill. App. 3d 173, 178 (1st Dist. 1997); *Graham v. Commonwealth Edison Co*., 318 Ill. App. 3d 736, 744 (1st Dist. 2000); *Geary v. Telular Corp*., 341 Ill. App. 3d 694, 700-701 (1st Dist. 2003) ("The tort of retaliatory discharge is a limited and narrow exception to the general rule that an at-will employee is terminable at any time for any or no cause"); *Chicago Commons v. Hancock*, 346 Ill. App. 3d 326, 328 (1st Dist. 2004); *Ausman v. Anderson*, 348 Ill. App. 3d 781, 784 (1st Dist. 2004); *Engstrom v. Provena Hospitals*, 353 Ill. App. 3d 646, 649 (4th Dist. 2004); *Krum v. Chicago National League Ball Club, Inc*., 365 Ill. App. 3d 785, 789 (1st Dist. 2006); *Bajalo v. Northwestern University*, 369 Ill. App. 3d 576, 582 (1st Dist. 2006); *Blount v. Stroud*, 376 Ill. App. 3d 935, 942 (1st Dist. 2007); *Irizarry v. Illinois Central Railroad Co*., 377 Ill. App. 3d 486, 489-92 (1st Dist. 2007); *Jandeska v. Prairie International Trucks, Inc*., 383 Ill. App. 3d 396, 398-99 (4th Dist. 2008); *Taylor v. Board of Education*, 2014 IL App (1st) 123744, ¶ 34; and *Sutherland v. Norfolk Southern Railway Co*., 356 Ill. App. 3d 620, 625 (1st Dist.

2005) (surveying cases and stating that "the supreme court expressed disinclinations to further expand the tort of retaliatory discharge," noting the "guarded development" and "narrow" construction of the tort, and concluding that the Supreme Court "has consistently sought to restrict the common law tort of retaliatory discharge").

III. THIS COURT SHOULD REJECT THE APPELLATE COURT'S EXPANSION OF RETALIATORY DISCHARGE

This Court should reject the appellate court's expansion of the tort of retaliatory discharge not only on the basis of current law as demonstrated in the first part of the argument but also as a matter of sound judicial policy.

The decision of the appellate court -- if not reversed -- will have consequences far beyond the issues involving the parties to this case.

The Supreme Court's role is not just to decide the cases before it but also to issue opinions to guide courts and litigants in the future. *Turner* is the case that provides a framework to evaluate procedures, qualifications, and standards alleged to constitute public policy for the purposes of the tort of retaliatory discharge. By denying the applicability of *Turner*, the appellate court has thwarted the Supreme Court's proactive role of providing guidance for future disputes. This is a direct blow to the efficiency of the judicial system.

By not following *Turner* and detaching qualifications and presumably standards as well as procedures from their hitherto required direct or indirect link to law and by removing the specificity hitherto required, the appellate court's opinion will create confusion among employers and their legal advisers about the scope of retaliatory discharge.

By the simple expedient of calling the instant matter a "case of first impression" and relying on a statute not even cited by Plaintiff, a practice this Court refused to counte-

nance in *Turner*, the appellate court has evinced a willingness to expand the tort of retaliatory discharge in defiance of the consistent jurisprudence of this and other courts. *Turner*, 233 Ill. 2d at 505. Retaliatory discharge has ceased to be narrow and become broad and general. Coupled with the relaxed requirements described in the preceding paragraph, such an expansion -- previously disfavored universally -- can only clog to a greater degree the state's already overburdened court system.

By ripping qualifications, procedures, and standards from their previously required tie to specific laws and by not indicating who may take advantage of the new cause of action, the appellate court's decision will lead to extreme confusion in the classroom. Is a faculty member who is excessively shy or unusually aggressive and for those reasons disliked by students unqualified? May teachers as well as administrators like Plaintiff seek refuge under the new cause of action? One can be sure, however, the employees who suspect impending discharge will try to fend it off with meritless complaints about allegedly incompetent or unqualified instructors. This too will increase the burden on our courts as well as on employers.

By stating that this case is about "incompetent and unqualified individuals who cannot properly instruct students" rather than about specific attributes required directly or indirectly by law, the appellate court has opened the door to subjectivism of the worst type. See *Roberts*, 2018 IL App (1st) 170067, ¶ 32. What makes a teacher "incompetent"? Low enrollments? Low grades? Negative popularity questionnaires? Similar questions can be asked about "unqualified" if it is not anchored in specific legal requirements. Likewise,

who and what determines that "instructors have the requisite knowledge to pass on to students"? See *id.* at ¶ 36. Indeed, what does the appellate court mean by "requisite knowledge"?

By relying on the introductory statement of purpose in the Illinois Higher Education Loan Act, 110 ILCS 945/0.01 *et seq.*, rather than a concrete legal requirement therein as is normally the case, the appellate court opens the door to innumerable statutes becoming bases for retaliatory discharge claims. After all, legislators generally believe and say so in hortatory language upfront that the laws they enact are for the public good or, in the words of the appellate court, are "a good idea." *Roberts*, 2018 IL App (1st) 170067, ¶ 33. Employees in a wide spectrum of industries would be removed from the at-will doctrine merely by claiming that they made complaints about issues that might have some tangential effect on the public good found in some statute. To repeat this Court's sound observation in *Turner*, 233 Ill. 2d at 507:

> We agree with the appellate court special concurrence that the provision of good medical care is in the public interest. It does not follow, however, that all health care employees should be immune from the general at-will employment rules simply because they claim to be reporting on issues that they feel are detrimental to health care.

By concluding and relying on the conclusion that the City Colleges "has essentially defrauded both the student and the taxpayer," the appellate court has not just maligned the City Colleges. Using the appellate court's reasoning, any public institution employing an incompetent employee -- however that vague and subjective term is interpreted -- is defrauding the taxpayer. Does that mean that all public employees who report fellow employees as incompetent are protected from discharge? That seems to be the implication of the appellate court's decision.

By not considering seriously the interest of the employer, the appellate court's decision threatens schools with disruption. That is, how is an employer supposed to handle complaints that a faulty member is unqualified? Should the targeted faculty member be pulled from his or her classes immediately regardless of the consequences of such actions on students? Or should an investigation be launched immediately and include not only background checks but also interviews of other faculty and students? Or should the status quo continue through the end of the term or the academic year? And how does all of this play out in unionized environments? There are no good alternatives but these are the choices and issues suggested by the appellate court's otherwise unnecessary expansion of retaliatory discharge. See generally *Turner*, 233 Ill. 2d at 502-3; *Palmateer*, 85 Ill. 2d at 129.

By divining a public policy not from a specific legal requirement but from the effect that a complaint might have on the public good, the reach of the appellate court's decision does not end at the qualifications of instructors but instead has the potential to protect any employee who complains about any aspect of higher education. The issue of instructor qualifications -- the only alleged complaint made by Plaintiff -- is at best ancillary to the public policy recognized by the court below. The appellate court found that the provision of publicly funded higher education was a clearly established public policy and that Plaintiff's alleged complaints were protected because they had the potential to affect that publicly funded higher education. As discussed at length above, the appellate court could find no basis in the law for protecting the nebulous concept of instructor qualification because none exists. Rather, the appellate court found that complaints about the qualifications of instructors must be protected because "it is axiomatic that in order to accomplish

the mission of educating young men and women, defendant must staff its classes with competent individuals who actually possess the knowledge listed in the course syllabus." *Roberts*, 2018 IL App (1st) 170067, ¶ 32. But instructors are just one slice of the education pie. By the appellate court's logic, an employee's complaint about any part of higher education becomes a shield against termination merely because it might bear upon the ultimate education of young men and women. What about an employee who complains about an educational institution's choice of curriculum? Or the choice of a book? Or the sequence in which classes are taught? Or the physical facilities in which classes are held? Essentially any complaint about a subject that might be detrimental to the ultimate educational product becomes protected under the appellate court's holding. And this logic could be expanded to any subject that might be detrimental to any claimed public good -- exactly as this Court cautioned against in *Turner*.

Finally, by bringing the "taxpayer" into the equation, is the appellate court opening the door for retaliatory discharge actions whenever an employee feels that public funds have been spent unwisely? Must public employers, for example, purchase the least expensive automobiles, the ones with the best gas mileage, the ones with the best reliability record? In short, must the public employer ignore the adage that one gets what one pays for? This concern might seem alarmist but it is not unforeseeable based on the appellate court's rhetoric.

The best way, of course, to avoid all of these unacceptable consequences is simply to reverse the appellate court's decision. The retaliatory discharge cause of action posited by the appellate court is contrary to law and sensible policy.

CONCLUSION

For the reasons set forth herein and in its forthcoming reply brief, the Board of Trustees of Community College District No. 508 respectfully requests this Court to reverse the appellate court's decision that Plaintiff stated a cause of action for retaliatory discharge and to reinstate the circuit court's dismissal of the retaliatory discharge count with prejudice.

Dated: October 31, 2018

Respectfully submitted,

BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT NO. 508

By: /s/ James P. Daley
One of Its Attorneys

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CERTIFICATE OF COMPLIANCE

I certify that this brief confirms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 341(a) is 32 pages.

/s/ James P. Daley

No. 123594

IN THE
SUPREME COURT OF ILLINOIS

KENRICK ROBERTS

Plaintiff – Appellee

v.

BOARD OF TRUSTEES COMMUNITY COLLEGE
DISTRICT NO. 508 d/b/a CITY COLLEGES OF CHICAGO

Defendant – Appellant

On Appeal from the Appellate Court of Illinois
First District No. 1-17-0067
There heard on Appeal from the Circuit Court of Cook County, Illinois
County Department, Law Division
Case No. 15 L 9430
The Honorable Judge James Snyder, Presiding

APPENDIX TO BRIEF AND ARGUMENT OF DEFENDANT – APPELLANT

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APPENDIX TABLE OF CONTENTS

2018 IL App (1st) 170067

FIRST DIVISION
April 16, 2018

No. 1-17-0067

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

KENRICK ROBERTS, Plaintiff-Appellant, v. BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT NO. 508 d/b/a City Colleges of Chicago, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 15 L 9430 Honorable James Snyder, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court, with opinion.
Presiding Justice Pierce and Justice Mikva concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff-appellant, Kenrick Roberts, filed this action against defendant-appellee, Board of Trustees Community College District No. 508 d/b/a City Colleges of Chicago, alleging causes of action for common law retaliatory discharge, violations of the Whistleblower Act (740 ILCS 174/20 (West 2016)), and wrongful termination. After engaging in motion practice, the circuit court dismissed the retaliatory discharge claim and whistleblower claim with prejudice.

¶ 2 On appeal, plaintiff contends the circuit court erred in dismissing those two counts. He contends his claim for retaliatory discharge successfully alleges a violation of Illinois public

policy. He also claims the second amended complaint properly alleges he refused to participate in defendant's unlawful conduct so as to fall within the protection of the Whistleblower Act.

¶ 3 For the reasons stated more fully below, we reverse the dismissal of plaintiff's retaliatory discharge claim but affirm the dismissal of his claim brought under the Whistleblower Act.

¶ 4 JURISDICTION

¶ 5 On October 25, 2016, the circuit court dismissed with prejudice count I (retaliatory discharge) and count II (Whistleblower Act) of plaintiff's second amended complaint. According to the record, plaintiff made an oral motion for Illinois Supreme Court Rule 304(a) language, which the circuit court denied. Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). On November 22, 2016, the plaintiff filed a motion to reconsider the denial of Rule 304(a) language. On December 15, 2016, the circuit court granted the motion to reconsider. In granting the motion, the circuit court made an express finding under Rule 304(a) that there was no just reason to delay the appeal of the October 25 dismissal of counts I and II. Plaintiff filed his notice of appeal on January 5, 2017. Accordingly, this court has jurisdiction over this matter pursuant to article VI, section 6 of the Illinois Constitution and Illinois Supreme Court Rules 301 and 304(a). Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 304(a) (eff. Mar. 8, 2016).

¶ 6 BACKGROUND

¶ 7 In March 2013, plaintiff began working for the defendant as the clinical coordinator of the physician assistant program at Malcolm X College (Malcolm X). In June 2014, plaintiff was promoted to the position of program director of the physician assistant program.[1] In November 2014, plaintiff was promoted to the position of director of medical programs.

[1]Malcolm X College is a community college located in the City of Chicago and is operated by defendant.

¶ 8 As the director of medical programs, plaintiff reported directly to and worked closely with Dr. Micah Young, the dean of health sciences and career programs at Malcolm X and Dr. Mario De La Haye, the associate dean of health sciences and career programs at Malcolm X. As part of his job duties and responsibilities as the director of medical programs, plaintiff was responsible for vetting potential instructors for teaching various courses and curriculum. This responsibility included ensuring instructors assigned to teach various courses, including but not limited to HeaPro 101, met the appropriate accreditation standards and had the correct qualifications to teach the assigned course and curriculum.

¶ 9 HeaPro 101 includes the instruction of phlebotomy[2] and electrocardiograms (EKG). The National Accrediting Agency for Clinical Laboratory Sciences (NAACLS) states that in order for a course or curriculum to be accredited and approved for phlebotomy, the class must have qualified faculty. Under NAACLS, in order to be qualified to teach phlebotomy within the phlebotomy or health care basic certificate program, the faculty needs to be a certified professional in that field, must demonstrate knowledge and proficiency in that field, and must demonstrate the ability to teach effectively at the appropriate level. A professor can be certified in phlebotomy by the National Phlebotomy Association or through the American Society of Clinical Pathologists.

¶ 10 On or about January 15, 2015, plaintiff alleges that he became aware of complaints that the instructor assigned to teach HeaPro 101 was unqualified to teach the course and curriculum. As a result of the complaints, plaintiff met with the HeaPro 101 instructor and questioned her qualifications to teach HeaPro 101. The instructor informed plaintiff that she had never taught phlebotomy before, she was unfamiliar with the requirements and certifications necessary to become a phlebotomist, phlebotomy was not her area of expertise, and she did not have any

[2]Phlebotomy is the practice of drawing blood from a patient for clinical testing.

certifications in phlebotomy. After meeting with the instructor, plaintiff found her unqualified to teach HeaPro 101.

¶ 11 On or about January 15, 2015, plaintiff sent an e-mail to Dr. Young and Dr. De La Haye complaining about the unqualified instructor. The e-mail stated:

> "In compliance with the City Colleges of Chicago policy and the College of Health Science credentialing standards and requirements it is my responsibility as Program Director of HeaPro 101 to review, evaluate and approve the recommendation of each faculty member that is approved to teach in the program which I am director. Taking into consideration I had no input into the department decision to appoint a nurse to teach HeaPro 101 without my review of the credentials and necessary certifications and licenses. put our programs and students at risk. Please note this is a breach of the standards that were developed to ensure that the students obtain the best outcomes moving forward with their education in the medical field. Please note I am very concerned about the direction in which we are traveling and wish to address this matter."

After receiving the e-mail from plaintiff, Dr. Young sent an e-mail to the president and provost of Malcolm X College stating his concerns about the unqualified instructor and asked how it should be addressed.

¶ 12 Following his January 15, 2015 e-mail, plaintiff made verbal complaints to Dr. Anthony Munroe, president of Malcolm X College, regarding the appointment of an unqualified professor to teach HeaPro 101. He informed Dr. Munroe that he had been intentionally excluded from the hiring process of the unqualified instructor and he refused to support the assignment. On February 4, 2015, without prior notice, Dr. Young was unexpectedly terminated from his

position with defendant. On February 5, 2015, Dr. De La Haye was unexpectedly placed on paid administrative leave. Dr. De La Haye remained on leave until his termination on April 20, 2015.

¶ 13 On February 25, 2015, plaintiff sent an e-mail to the president, vice president, and associate provost again complaining about the unqualified instructor assigned to teach HeaPro 101. In addition to what plaintiff had previously learned from his interview with the instructor, plaintiff had learned that the instructor had abandoned the class. Plaintiff found out another individual was assigned to complete instruction in the course, but this individual was not properly certified to teach EKG.

¶ 14 Upon receipt of plaintiff's February 25, 2015, e-mail, Dr. Christopher Robinson-Easley, vice president of Malcolm X College, requested that plaintiff meet with her regarding the complaints in the e-mail. After receiving the request from Dr. Robinson-Easley, plaintiff sent an e-mail to Aaron Allen, executive director of labor and employee relations. Plaintiff told Allen that he felt uncomfortable about Dr. Robinson-Easley's request considering his complaints regarding the instructor. Dr. Robinson-Easley was the individual who selected and assigned the unqualified instructor to HeaPro 101. At the meeting, plaintiff found Dr. Robinson-Easley upset about his complaints and unwilling to address his concerns.

¶ 15 Plaintiff continued to complain and question the appointment of the unqualified instructor and the college's failure to address the situation to Dr. Munroe. Following the meeting with Dr. Robinson-Easley, plaintiff was excluded from important meetings, decisions, and discussions regarding programs that were under his responsibilities as director of medical programs.

¶ 16 On June 15, 2015, Roy Walker, the associate dean of health sciences and career programs at Malcolm X College, informed plaintiff that Dr. Robinson-Easley "has an axe to grind with you" because of the HeaPro 101 complaints. On June 28, 2015, Dr. Munroe instructed plaintiff to file an equal employment opportunity complaint against Dr. Robinson-Easley for retaliation in

connection with plaintiff's complaints. On August 7, 2015, plaintiff was advised that he was terminated from his position as director of medical programs at Malcolm X College.

¶ 17 Plaintiff filed his original complaint on September 15, 2015. Plaintiff brought three causes of action: retaliatory discharge, violation of the Whistleblower Act, and wrongful termination. Defendant brought a motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code). 735 ILCS 5/2-619.1 (West 2016). The circuit court granted the motion with respect to the retaliatory discharge claim and whistleblower claim but granted plaintiff an opportunity to replead. On February 24, 2016, plaintiff filed his amended complaint containing the same three counts. Defendant filed another section 2-619.1 motion to dismiss, and the circuit court dismissed the same two counts, again with leave to replead.

¶ 18 A second amended complaint alleging the same causes of action as the prior complaints was filed on June 27, 2016. This time defendant moved to dismiss the retaliatory discharge claim and whistleblower claim pursuant to section 2-615(a) of the Code. *Id.* § 2-615(a). On October 25, 2016, the circuit court granted the motion with prejudice. At the time, plaintiff made an oral motion for the inclusion of Rule 304(a) language, but this request was denied. Plaintiff moved to reconsider the denial of Rule 304(a) language, and on December 15, 2016, the circuit court granted plaintiff's motion to reconsider. The circuit court then entered an order finding no just reason to delay the appeal. Plaintiff timely filed a notice of appeal. The wrongful termination claim remains pending before the circuit court and is not before us.

¶ 19 ANALYSIS

¶ 20 On appeal, plaintiff argues that the circuit court erred in dismissing his common law retaliatory discharge claim and his whistleblower claim. Both counts are before us after being dismissed pursuant to section 2-615(a) of the Code. *Id.*

¶ 21 A motion brought pursuant to section 2-615 tests the legal sufficiency of the complaint based on defects apparent on its face. *Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 15. A section 2-615 motion presents the question of whether the facts alleged in the complaint, viewed in a light most favorable to the plaintiff and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to state a cause of action upon which relief can be granted. *Id.* ¶ 16. "[A] cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). In ruling on a section 2-615 motion, the court considers only (1) those facts apparent on the face of the pleadings, (2) matters subject to judicial notice, and (3) judicial admissions in the record. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005). We review the grant of a section 2-615 motion *de novo*. *Doe-3*, 2012 IL 112479, ¶ 15. Under this standard of review, we are not bound by the circuit court's reasoning or decision. See *State Automobile Mutual Insurance Co. v. Habitat Construction Co.*, 377 Ill. App. 3d 281, 291 (2007).

¶ 22 Illinois follows the at-will employment rule, which means "a noncontracted employee is one who serves at the employer's will, and the employer may discharge such an employee for any reason or no reason." *Zimmerman v. Buchheit of Sparta, Inc.*, 164 Ill. 2d 29, 32 (1994). Illinois recognizes an exception to the general at-will employment rule when the discharge violates a clear mandate of public policy. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 501 (2009). This exception to the general rule acknowledges that under the common law "parties to a contract may not incorporate in it rights and obligations which are clearly injurious to the public." *Palmateer v. International Harvester Co.*, 85 Ill. 2d 124, 129 (1981). This exception

represents the common law cause of action known as retaliatory discharge. *Fellhauer v. City of Geneva*, 142 Ill. 2d 495, 505 (1991).

¶ 23 In order to state a cause of action for retaliatory discharge, an employee must allege (1) the employer discharged the employee, (2) in retaliation for the employee's activities, and (3) the discharge violates a clear mandate of public policy. *Id.* The Illinois Supreme Court has continuously cautioned the tort of retaliatory discharge is narrow in scope and the at-will employment rule remains the law of Illinois. *Turner*, 233 Ill. 2d at 501. This tort seeks to achieve "a proper balance *** among the employer's interest in operating a business efficiently and profitably, the employee's interest in earning a livelihood, and society's interest in seeing its public policies carried out." *Palmateer*, 85 Ill. 2d at 129.

¶ 24 Before this court, the only issue concerning plaintiff's retaliatory discharge claim is whether it states a violation of a clear mandate of Illinois public policy. The existence and ascertainment of public policy is a question for the court to decide. *Turner*, 233 Ill. 2d at 501-02. In *Palmateer*, the Illinois Supreme Court discussed the meaning of "clearly mandated public policy":

> "There is no precise definition of the term. In general, it can be said that public policy concerns what is right and just and what affects the citizens of the State collectively. It is to be found in the State's constitution and statutes and, when they are silent, in its judicial decisions. [Citation.] Although there is no precise line of demarcation dividing matters that are the subject of public policies from matters purely personal, a survey of cases in other States involving retaliatory discharges shows that a matter must strike at the heart of a citizen's social rights, duties, and responsibilities before the tort will be allowed." *Palmateer*, 85 Ill. 2d at 130.

Our court recognizes the tort is meant to prevent employers from "effectively frustrat[ing] a significant public policy by using its power of dismissal in a coercive manner." *Fellhauer*, 142 Ill. 2d at 508. The purpose of the tort is "to deter employer conduct inconsistent with [the public] policy." *Id.* Because the tort is concerned with the protection and enforcement of public policy, a complaining party "must only show that the conduct complained of contravenes a clearly mandated public policy, not necessarily a law." *Stebbings v. University of Chicago*, 312 Ill. App. 3d 360, 369 (2000).

¶ 25 In the case before us, plaintiff's position at Malcolm X required him to ensure instructors in classes like HeaPro 101 were qualified to teach the course and curriculum. Plaintiff alleges that despite his position and responsibilities, Dr. Robinson-Easley appointed unqualified individuals to teach HeaPro 101 without consulting with plaintiff. After a meeting with the phlebotomy instructor of HeaPro 101, plaintiff learned she had never taught phlebotomy, was unfamiliar with the requirements and certifications necessary to become a phlebotomist, phlebotomy was not her area of expertise, and she did not have any certifications in phlebotomy. Plaintiff concluded the instructor was unqualified to teach HeaPro 101.

¶ 26 In an e-mail to several higher ranking school officials, including Dr. Robinson-Easley, plaintiff expressed concern the appointments jeopardized the enrolled students' ability to obtain the educational benefits HeaPro 101 was designed to provide. When this instructor abandoned HeaPro 101, another unqualified instructor was put in place. This new instructor was also unqualified and not properly certified in EKG.

¶ 27 When plaintiff complained about the assignment of the unqualified instructors, he was terminated. Plaintiff then brought this suit containing a claim for retaliatory discharge. Plaintiff alleges his discharge for complaining about the unqualified instructors violated a specific public

policy: "the right to obtain the benefits of a post-secondary education through federal and state funded programs."

¶ 28 In support of his argument, plaintiff cites to Title IV of the Higher Education Act of 1965 (20 U.S.C §§ 1070-1099d (2012)), which establishes various loan and grant programs to assist students in obtaining a postsecondary education at places like Malcolm X. The funds must be used at eligible institutions. In order to be an eligible institution, defendant must sign and comply with a program participation agreement (PPA). The PPA requires defendant to "meet the requirements established by *** accrediting agencies or associations" (*id.* § 1094(a)(21)) and provide accurate information to these accrediting agencies. Plaintiff's complaint alleges defendant breached the PPA when it asserted to the accrediting agencies that HeaPro 101 instructors were properly qualified. Plaintiff also cites to section 1094(c)(3)(A), which subjects any eligible institution to suspension or termination if it has engaged "in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates." *Id.* § 1094(c)(3)(A).

¶ 29 While not cited to by the plaintiff, we take judicial notice of the Higher Education Loan Act (Act) (110 ILCS 945/0.01 *et seq.* (West 2016)). See *Cruz v. Puerto Rican Society*, 154 Ill. App. 3d 72, 75 (1987) (reviewing courts may take judicial notice of statutes of this state). Section 2 ("Declaration of Purpose") of the Act states:

> "It is declared that for the benefit of the people of the State of Illinois, the conduct and increase of their commerce, the protection and enhancement of their welfare, the development of continued prosperity and the improvement of their health and living conditions, *it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities and skills*; that to achieve these ends it is of the utmost importance that

> students attending institutions of higher education located in Illinois have reasonable alternatives to enhance their financial access to such institutions; *that reasonable financial access to institutions of higher education will assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills*; that it is the purpose of this Act to provide a measure of assistance and an alternative method to enable students and the families of students attending institutions of higher education located in Illinois to appropriately and prudently finance the cost or a portion of the cost of such higher education; and that it is the intent of this Act to supplement federal guaranteed higher education loan programs, other student loan programs, and grant or scholarship programs to provide the needed additional options for the financing of a student's higher education in execution of the public policy set forth above." (Emphases added.) 110 ILCS 945/2 (West 2016).

Our General Assembly has concluded the purpose of providing public funds for higher education is to provide the fullest opportunity for recipients to learn and develop their "intellectual and mental capacities and skills." *Id.* Based on the above, it is obvious to this court the purpose of establishing both state and federal loan programs is to ensure individuals without the private means of paying for a college education are given access to funds to better develop themselves intellectually so as to provide a greater contribution to our state and country.

¶ 30 This is a case of first impression in this State. While the tort of retaliatory discharge is well established in our jurisprudence, none of the cases cited by the parties or uncovered in the court's own research shows this claim has been brought in the circumstances presented in this matter. Courts in this state have limited the tort's application. For most of its history, the tort was limited to (1) when the discharge stems from asserting a worker's compensation claim (*Kelsay v.*

Motorola, Inc., 74 Ill. 2d 172 (1978)) or (2) where the discharge is for certain activities referred to as "whistle-blowing" (*Palmateer*, 85 Ill. 2d 124 (1981)). Where a matter involves only a private and individual grievance, our courts have consistently refused to expand the tort of retaliatory discharge. See *Geary v. Telular Corp.*, 341 Ill. App. 3d 694, 701 (2003) (collecting cases where Illinois courts have refused to expand the tort of retaliatory discharge).

¶ 31 On review, the question we are asked to answer "is whether the provisions 'enunciate a public policy that plainly covers the situation to which the plaintiff objects.' " *Carty v. The Suter Co.*, 371 Ill. App. 3d 784, 789 (2007) (quoting *Stebbings*, 312 Ill. App. 3d at 367). We conclude the public policy behind the federal Higher Education Act of 1965 and Illinois's Higher Education Loan Act would be seriously undermined if defendant is allowed to act in the manner alleged in plaintiff's complaint. The above-cited statutes demonstrate that in accepting public money, an institution of higher education should be able to assist those attending in "achieving the required levels of learning and development of their intellectual and mental capacities and skills." 110 ILCS 945/2 (West 2016).

¶ 32 Malcolm X is a public institution of higher learning whose mission and role in society is not to turn a profit but to educate and pass along knowledge to those students enrolled on its campus. In order to receive the benefits from attending classes at Malcolm X, many of its students take out loans under the above state and federal programs in order to subsidize, if not entirely fund, their tuition payments. It is axiomatic that in order to accomplish the mission of educating young men and women, defendant must staff its classes with competent individuals who actually possess the knowledge listed in the course syllabus. If defendant accepts loan money but uses it to hire incompetent and unqualified individuals who cannot properly instruct students who are enrolled in classes like HeaPro 101, defendant has essentially defrauded both the student and the taxpayer. The intent behind both the state and federal loan programs would

be thwarted because those receiving incompetent instruction would be unable to "develop their intellectual and mental capacities and skills." *Id.* The benefit to the State would be nil. This is more than a personal matter but concerns "what is right and just and what affects the citizens of the State collectively." *Palmateer*, 85 Ill. 2d at 130.

¶ 33 Defendant argues that Illinois lacks a clearly mandated public policy regarding the right to obtain public financial aid for a postsecondary education. This argument is disingenuous. There would be no point to enacting either a federal or state statute providing for public financing (through student loans) of higher education if the government did not want its citizens to utilize it. Simply put, if our government did not think providing all citizens with access to funds for higher education was a good idea, it would not have enacted the statutes in the first place.

¶ 34 In making its argument, defendant cites solely to *Turner*, 233 Ill. 2d 494, a recent Illinois Supreme Court case. The plaintiff in *Turner* alleged that he was fired from his position as a licensed respiratory therapist after he informed a surveyor from the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission) that his hospital's respiratory department did not conduct "immediate charting" after a patient had been seen in violation of the Joint Commission standard. *Id.* at 497-98. He alleged his discharge for making this report to the Joint Commission " 'violated public policy that encourages employees to report actions that jeopardize patient health and safety.' " *Id.* at 498.

¶ 35 In rejecting the plaintiff's claim, the court concluded plaintiff's actions of informing the surveyor of the hospital's charting practice fell short of the " 'supreme court's public-policy threshold articulated in *Palmateer*.' " *Id.* at 506. The court found that neither Joint Commission standards nor section 3 of the Medical Patient Rights Act (410 ILCS 50/3 (West 2006)) established a clear public policy that plaintiff's discharge violated. *Turner*, 233 Ill. 2d at 505-06.

¶ 36 We find *Turner* to be distinguishable from the current case before us. Unlike the statutes in *Turner*, this case does present a clear statutory scheme which defendant's alleged actions sought to frustrate by terminating plaintiff. Both Illinois and the federal government have set up programs to help citizens attend schools of higher education so that those individuals may gain knowledge and better contribute to society. 20 U.S.C § 1070 *et seq.* (2002); 110 ILCS 945/2 (West 2016). This policy is effectively frustrated when institutions of higher learning terminate those individuals charged with ensuring its instructors have the requisite knowledge to pass onto students. We find plaintiff's complaint demonstrates a clear mandate of public policy and reverse the dismissal of plaintiff's retaliatory discharge count.

¶ 37 In his second issue, plaintiff argues the circuit court erred in dismissing his Whistleblower Act claim. The Whistleblower Act provides: "An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation ***." 740 ILCS 174/20 (West 2016). In order to sustain a cause of action under the Whistleblower Act, a plaintiff must establish (1) a refusal to participate in an activity that would result in a violation of a state or federal law, rule, or regulation and (2) the employer retaliated against the employee because of said refusal. *Id.*; *Sardiga v. Northern Trust Co.*, 409 Ill. App. 3d 56, 61 (2011). Our courts have recognized the Whistleblower Act extends protection to "employees who call attention in one of two specific ways to illegal activities carried out by their employer. It protects employees who either contact a government agency to report the activity or refuse to participate in that activity." *Sardiga*, 409 Ill. App. 3d at 62.

¶ 38 Before us, plaintiff argues that the second amended complaint sufficiently alleges a "refusal to participate."[3] This court has previously analyzed the language of the Act regarding "refusal to participate" and concluded:

> " 'Refusing to participate' means exactly what it says: a plaintiff who participates in an activity that would result in a violation of a state or federal law, rule, or regulation cannot claim recourse under the Act. 740 ILCS 174/20 (West 2004). Instead, the plaintiff must actually refuse to participate. Black's Law Dictionary defines *'refusal' as '[t]he denial or rejection of something offered or demanded.'* Black's Law Dictionary 1394 (9th ed. 2009). Indeed, the very title of section 20, 'Retaliation for certain refusals prohibited,' suggests that not every refusal qualifies for protection under the Act. 740 ILCS 174/20 (West 2004). Furthermore, the Act protects employees who complain to a government agency about an activity that the employee reasonably believes constitutes a violation of a state or federal law, rule, or regulation. 740 ILCS 174/15 (West 2004). Thus, 'refusing' means refusing; it does not mean 'complaining' or 'questioning ***.' " (Emphasis added.) *Id.*

Even accepting the allegations in the second amended complaint as true and taking them in a light most favorable to plaintiff, there is no allegation in the second amended complaint that defendant offered or demanded plaintiff's participation in the allegedly wrongful activity. Plaintiff pleads that he was "intentionally excluded" and allowed "no input" into the decision to hire or retain the unqualified instructors. While plaintiff alleges he refused "to cover things up," "be quiet," and "look the other way," there is no allegation the defendant asked, requested, or demanded such action.

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[3]There is no allegation in the second amended complaint that plaintiff contacted a governmental agency.

¶ 39 Plaintiff's brief does not mention *Sardiga* and instead argues that under the Act, "a plaintiff does not need to plead that the defendant specifically asked the plaintiff to perform an unlawful act." In support of this argument, plaintiff only cites to *Robinson v. Morgan Stanley*, No. 06 C 5158, 2011 WL 3876903 (N.D. Ill. Aug. 31, 2011). Federal cases interpreting Illinois law have no precedential value in this state (*Kelsay*, 74 Ill. 2d at 182), and we decline to depart from this court's prior holding in *Sardiga*.

¶ 40 Other Illinois courts have reached similar conclusions regarding what is required to state a claim under the Whistleblower Act. In *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, this court determined an employee adequately alleged a violation of the Whistleblower Act, where the employer *asked* its employee to falsify patient records in violation of the Nurse Practice Act (225 ILCS 65/70-5 (West 2010)). *Young*, 2015 IL App (1st) 131887, ¶¶ 51-56 (employee alleged she was constructively discharged for her refusal to follow her supervisor's request to falsify medical records). In *Corah v. The Bruss Co.*, 2017 IL App (1st) 161030, we found plaintiff's whistleblower claim deficient, in part, because "plaintiff acknowledged that defendant *never asked* plaintiff to misstate where [the individual]'s injury occurred" in violation of the Workers' Compensation Act (820 ILCS 305/4(h) (West 2012)). (Emphasis added.) *Corah*, 2017 IL App (1st) 161030, ¶ 19.

¶ 41. We adhere to the line of cases cited above that in order to state a claim under the Whistleblower Act, there must be a request or demand by the employer that the employee engage in the illegal or unlawful conduct. In this case, plaintiff fails to allege the defendant ever made a request or demand he approve or sanction the hiring of the allegedly unqualified instructor. Accordingly, he does not state a claim under the Whistleblower Act.[4]

[4]Because plaintiff failed to establish the first element of a whistleblower claim, we decline to address whether the allege activity of the defendant constitutes "unlawful activity" as required to meet the

¶ 42 CONCLUSION

¶ 43 For the reasons stated above, we reverse the dismissal of plaintiff's retaliatory discharge claim but affirm the dismissal of plaintiff's whistleblower claim.

¶ 44 Affirmed in part and reversed in part.

¶ 45 Cause remanded.

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second element.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

KENRICK ROBERTS, Plaintiff, v. BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508, d/b/a CITY COLLEGES OF CHICAGO. Defendant.	)	No. 2018L009430 CALENDAR/ROOM Y TIME 00:00 Retaliatory Discharge JURY DEMANDED

COMPLAINT

The Plaintiff, KENRICK ROBERTS, by and through his attorneys, HOLMAN & STEFANOWICZ, LLC, complains of the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508, d/b/a CITY COLLEGES OF CHICAGO, as follows:

Nature of Action

This is an action seeking monetary relief by KENRICK ROBERTS ("ROBERTS") against his former employer, the BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 ("BOARD") d/b/a CITY COLLEGES OF CHICAGO ("CITY COLLEGES"), for: (1) common law retaliatory discharge; (2) violation of the Illinois Whistleblower Act, 740 ILCS 174/20; and (3) wrongful termination.

Parties

1. The Plaintiff, ROBERTS, is a resident of the City of Chicago, in the County of Cook, in the State of Illinois. On August 7, 2015, ROBERTS was wrongfully terminated by the Defendant from his position as the Director of Medical Programs at Malcolm X College.

2. The Defendant, the BOARD, is a body politic and corporate established pursuant to the provisions of the Illinois Public Community College Act, 110 ILCS 805/1-1, *et seq*. The BOARD has jurisdiction over Community College District No. 508 whose territory is conterminous with the corporate boundaries of the City of Chicago, in the County of Cook, in the State of Illinois. The BOARD operates a community college system known as the CITY COLLEGES OF CHICAGO.

3. The CITY COLLEGES operates seven (7) colleges located within the City of Chicago, in the County of Cook, in the State of Illinois, one of which is Malcolm X College located at 1900 West Van Buren Street, Chicago, Illinois 60612.

Background Facts

4. In or about March, 2013, ROBERTS began working for the CITY COLLEGES as the Clinical Coordinator of the Physician's Assistance Program at Malcolm X College.

5. In or about June, 2014, ROBERTS was promoted to the position of Program Director of the Physician's Assistance Program at Malcolm X College.

6. In or about November, 2014, ROBERTS was promoted to the position of Director of Medical Programs at Malcolm X College.

7. As the Director of Medical Programs at Malcolm X College, ROBERTS reported directly to and worked closely with Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College and Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College.

8. On February 4, 2015, without prior notice ROBERTS' direct supervisor, Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College, was unexpectedly terminated.

9. On February 5, 2015, without prior notice, ROBERTS' direct supervisor, Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, was placed on paid administrative leave and remained on said leave until his termination on April 20, 2015.

10. During the entire time that ROBERTS held the position of Director of Medical Programs at Malcolm X College his performance was considered outstanding. Despite never receiving a formal written performance evaluation, which was allegedly required per policy, ROBERTS never received any negative comments regarding his performance.

11. Prior to his termination, ROBERTS was never advised and/or received any indication that there were any issues or concerns regarding his performance or conduct. ROBERTS never received a single reprimand or notice of there being a need for performance improvement and/or that he engaged in any type of improper conduct.

12. On August 7, 2015, ROBERTS was advised that he was terminated from his Director of Medical Programs position at Malcolm X College. ROBERTS was not provided a reason for his termination.

ROBERTS' Complaints that Lead to his Termination

13. On or about January 15, 2015, ROBERTS sent an email to his direct supervisors Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College and Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, complaining about the faculty assignment of an unqualified professor.

14. ROBERTS' January 15, 2015 email states:

> In compliance with the City Colleges of Chicago policy and the College of Health Science credentialing standards and requirements it is my responsibility as Program Director of HeaPro 101 to review, evaluate and approve the recommendation of each faculty member that is approved to teach in a program which I am the director. Taking into consideration I had no input into the department decision to appoint a nurse to teach HeaPro 101 without my review of the credentials and necessary certifications and licenses put our programs and students at risk. Please note this is a breach of the standards that were developed to ensure that the students obtain the best outcomes moving forward with their education in the medical field. Please note I am very concerned about the direction in which we are traveling and wish to address this matter.

15. Upon receipt of ROBERTS' January 15, 2015 email, Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College, sent an email to the President and Provost of Malcolm X College stating his concerns about the unqualified professor assigned to teach HeaPro 101, and questioned them how to address the issue.

16. On February 25, 2015, ROBERTS sent an email to the President, Vice President, and Associate Provost complaining about the unqualified professor assigned to teach HeaPro 101. In addition to stating that the professor admitted never teaching phlebotomy before and not being familiar with the certification requirements for phlebotomists, ROBERTS stated that he learned from a student that the unqualified professor had abandoned her class (HeaPro 101) and another unqualified professor was required to complete the remainder of the course.

17. Upon receipt of ROBERTS' February 25, 2015 email, Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, requested that ROBERTS meet with her that day regarding his complaints contained in his email.

18. Upon receipt of Dr. Christopher Robinson-Easley's meeting request, ROBERTS sent an email to Aaron Allen, Executive Director of Labor & Employee Relations, stating that he wanted to document that he felt very uncomfortable about the meeting request considering his complaints regarding the unqualified professor assignment.

19. On February 25, 2015, ROBERTS met with Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, who was the individual who selected and assigned the unqualified professor to teach HeaPro 101. At the meeting, Dr. Christopher Robinson-Easley was very upset with ROBERTS in connection with his complaints about the assignment of the professor teaching HeaPro 101. Dr. Christopher Robinson-Easley expressed no interest in addressing the problem.

20. Following his February 25, 2015 complaints and meeting with Dr. Christopher Robinson-Easley, ROBERTS was kept out of important meetings, discussions and decisions regarding programs that were under his responsibilities as Director of Medical Programs at Malcolm X College.

21. On or about June 15, 2015, Roy Walker, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, told ROBERTS that Dr. Christopher Robinson-Easley "has an axe to grind against you" because of ROBERTS' complaints about the assignment of an unqualified professor to teach HeaPro 101.

22. On or about June 28, 2015, Dr. Munroe, President of Malcolm X College, instructed ROBERTS to file an EEO Complaint against Dr. Christopher Robinson-Easley for retaliation in connection with ROBERTS' complaints about the assignment of an unqualified professor to teach HeaPro 101.

23. On June 28, 2015, ROBERTS completed and filed an Equal Opportunity Complaint Form with the CITY COLLEGES EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Christopher Robinson-Easley, Vice President of Malcolm X College.

24. On August 7, 2015, ROBERTS was advised that he was terminated from his Director of Medical Programs position at Malcolm X College.

COUNT I
COMMON LAW RETALIATORY DISCHARGE

25. The Plaintiff realleges and incorporates paragraphs 1 through 24 as if fully set forth herein.

26. On August 7, 2015, the Plaintiff's employer, the BOARD d/b/a CITY COLLEGES, terminated his employment as the Director of Medical Programs at Malcolm X College.

27. The Plaintiff's termination was a direct and proximate result of his complaints regarding the improper appointment of an unqualified professor to teach students at Malcolm X College, his complaint to Aaron Allen, the CITY COLLEGES Executive Director of Labor Relations, and his Equal Opportunity Complaint filed with the CITY COLLEGES' EEO office.

28. The Defendant's termination of the Plaintiff's employment violated a clear mandate of public policy in that the Plaintiff's complaints dealt with the improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

29. As a result of the improper appointment and maintenance of an unqualified professor:

a. The students did not receive the education that they had paid for;

b. The CITY COLLEGES were in violation of their accrediting standards and requirements;

c. The CITY COLLEGES were in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement;

d. The students enrolled in class HeaPro 101 did not meet the certification requirements for phlebotomists;

e. The students enrolled in class HeaPro 101 were defrauded by the CITY COLLEGES.

30. Due to the Defendant's improper termination of the Plaintiff's employment, the Plaintiff suffered mental anguish, emotional distress, humiliation, emotional pain and suffering, inconvenience, lost wages and benefits, damage to his reputation, and other consequential damages.

31. The actions of the Defendant were intentional, willful, malicious and showed deliberate indifference to the Plaintiff's rights.

WHEREFORE, the Plaintiff, KENRICK ROBERTS, demands judgment against the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 d/b/a CITY COLLEGES OF CHICAGO for damages in an amount necessary to fully and fairly

compensate the Plaintiff for all of his losses that greatly exceeds the jurisdictional amounts of this Court, and such other relief as the Court deems just and proper.

COUNT II
VIOLATION OF THE ILLINOIS WHISTLEBLOWER ACT
740 ILCS 174/20

32. The Plaintiff realleges and incorporates paragraphs 1 through 24 as if fully set forth herein.

33. The Plaintiff, through his position as the Director of Medical Programs at Malcolm X College, became aware that the BOARD d/b/a CITY COLLEGES was committing numerous questionable activities, which the Plaintiff believed would result in a violation of a State or Federal law, rule, or regulation, by and through the improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

34. The Plaintiff made numerous complaints to his direct supervisors, Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College and Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, Dr. Anthony E. Munroe, the President of Malcolm X College, Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, Martin Kaplan, Associate Provost of Malcolm X College Aaron Allen, the CITY COLLEGES Executive Director of Labor Relations, in which he expressed that the professor assigned to teach the students at Malcolm X College who were enrolled in class HeaPro 101 was not properly qualified, and as a result:

a. The students did not receive the education that they had paid for;

b. The CITY COLLEGES were in violation of their accrediting standards and requirements;

c. The CITY COLLEGES were in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement;

d. The students enrolled in class HeaPro 101 did not meet the certification requirements for phlebotomists;

e. The students enrolled in class HeaPro 101 were defrauded by the CITY COLLEGES.

35. In his complaints, the Plaintiff explained that he was not properly involved in the selection of the professor for HeaPro 101, a class that was one of his responsibilities as the Director of Medical Programs at Malcolm X College, and that he could not and would not participate in the questionable and improper activities that the CITY COLLEGES were involved in and that this issue needed to be addressed immediately, and that he was concerned with the education that the students were receiving from the unqualified professor.

36. As a direct and proximate result of the Plaintiff's complaints and refusal to participate in activities that would result in a violation of a State or Federal law, rule, or regulation, as described herein above, the Defendant retaliated against the Plaintiff in violation of the Illinois Whistleblower Act, 740 ILCS 174/20. The Defendant's retaliation against the Plaintiff resulted in the termination of the Plaintiff's employment as the Director of Medical Programs at Malcolm X College.

37. As a direct and proximate result of the Defendant's improper termination of the Plaintiff's employment, the Plaintiff suffered mental anguish, emotional distress, humiliation, emotional pain and suffering, inconvenience, lost wages and benefits, damage to his reputation, and other consequential damages.

WHEREFORE, the Plaintiff, KENRICK ROBERTS, demands judgment against the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 d/b/a CITY COLLEGES OF CHICAGO, for all relief necessary to make the Plaintiff whole, including but not limited to the following:

(a) reinstatement with the same seniority status that the employee would have had, but for the violation, pursuant to 740 ILCS 174/30(1);

(b) back pay, with interest, pursuant to 740 ILCS 174/30(2); and

(c) compensation for any damages sustained as a result of the violation, including litigation costs, expert witness fees, and reasonable attorneys' fees, pursuant to 740 ILCS 174/30(3).

Plaintiff's damages substantially exceed the minimum jurisdictional amount of this Court.

COUNT III
WRONGFUL TERMINATION

38. The Plaintiff realleges and incorporates paragraphs 1 through 24 as if fully set forth herein.

39. Throughout Plaintiff's employment with the CITY COLLEGES, the CITY COLLEGES of Chicago Equal Opportunity Policy and Complaint Procedures states:

> **Prohibition Against Retaliation and Intimidation**
>
> Retaliation against and/or intimidation of employees, students, program participants, witnesses or any other person who make complaints or who cooperate in EEO investigations is strictly prohibited.
>
> Anyone who believes he or she is the victim of retaliation or intimidation for reporting discrimination or harassment or cooperating in an investigation should immediately contact the EEO Office.
>
> Any person who retaliates against a person in response to a report or cooperation in an investigation will be in violation of this Policy and will be subject to disciplinary action.

40. On or about June 28, 2015, Dr. Munroe, President of Malcolm X College, instructed ROBERTS to file an EEO Complaint against Dr. Christopher Robinson-Easley for retaliation in connection with ROBERTS' complaints about the assignment of an unqualified professor to teach HeaPro 101. On June 28, 2015, ROBERTS completed and filed an Equal Opportunity Complaint Form with the CITY COLLEGES EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Christopher Robinson-Easley, Vice President of Malcolm X College.

41. On August 7, 2015, as a direct and proximate result of the Plaintiff's EEO Complaint filed with the CITY COLLEGES EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, the Plaintiff's employer, the BOARD d/b/a CITY COLLEGES, terminated his employment as the Director of Medical Programs at Malcolm X College.

42. The Plaintiff's termination was in violation of the CITY COLLEGES of Chicago Equal Opportunity Policy and Complaint Procedures

43. Due to the Defendant's wrongful termination of the Plaintiff's employment, the Plaintiff suffered mental anguish, emotional distress, humiliation, emotional pain and suffering, inconvenience, lost wages and benefits, damage to his reputation, and other consequential damages.

44. The actions of the Defendant were intentional, willful, malicious and showed deliberate indifference to the Plaintiff's rights.

WHEREFORE, the Plaintiff, KENRICK ROBERTS, demands judgment against the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 d/b/a CITY COLLEGES OF CHICAGO for damages in an amount necessary to fully and fairly compensate the Plaintiff for all of his losses that greatly exceeds the jurisdictional amounts of this Court, and such other relief as the Court deems just and proper.

Respectfully submitted,
Plaintiff

By one of his attorneys

Brian R. Holman
Dennis Stefanowicz
Tara Beth Wenz
HOLMAN & STEFANOWICZ, LLC
Attorneys for Plaintiff
233 South Wacker Drive, Suite 5620
Chicago, Illinois 60606
(312) 258-9700
Attorney Code: 39600

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

KENDRICK ROBERTS,
Plaintiff,
vs.
BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT NO. 508, et al.,
Defendants.
No. 2015 L 009430

REPORT OF PROCEEDINGS had at the motion in the above-entitled cause before the HONORABLE JUDGE JAMES E. SNYDER, Judge of said Court, commencing at 9:24 a.m. and concluding at 10:05 a.m. on the 27th day of January, A.D., 2016.

doesn't have anything to argue at this point. We stand on our written submission.

MS. WENZ: We will do the same.

THE COURT: Okay. The complaint is written regarding the common law retaliation does not identify with specific particularity or public policy which the plaintiff claims.

They were speaking toward as regards the whistleblower, the plaintiff's claim does not identify what law or regulation the reason it would have been violated.

And as regards Count Three, the wrongful termination, the motion to dismiss is denied. The plaintiff's claim sounds to me like a dull delay of the claim that the internal EEO process documents constituted a contractual provision.

The plaintiff is relieved to amend Counts One and two.

What do you want to do now?

MR. THOMAS: There is just one thing I wanted to get to the claim or motion to dismiss on Count Three was not a 615. We understand the basis of the complaint was that there were disclaimers executed by the plaintiff that negate contract

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

KENRICK ROBERTS, Plaintiff,	)	
v.	)	No. 2015 L 009430
BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508, d/b/a CITY COLLEGES OF CHICAGO, Defendant.	)	JURY DEMANDED

FIRST AMENDED COMPLAINT

The Plaintiff, KENRICK ROBERTS, by and through his attorneys, HOLMAN & STEFANOWICZ, LLC, complains of the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508, d/b/a CITY COLLEGES OF CHICAGO, as follows:

Nature of Action

This is an action seeking monetary relief by KENRICK ROBERTS ("ROBERTS") against his former employer, the BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 ("BOARD") d/b/a CITY COLLEGES OF CHICAGO ("CITY COLLEGES"), for: (1) common law retaliatory discharge; (2) violation of the Illinois Whistleblower Act, 740 ILCS 174/20; and (3) wrongful termination.

C00264

Parties

1. The Plaintiff, ROBERTS, is a resident of the City of Chicago, in the County of Cook, in the State of Illinois. On August 7, 2015, ROBERTS was wrongfully terminated by the Defendant from his position as the Director of Medical Programs at Malcolm X College.

2. The Defendant, the BOARD, is a body politic and corporate established pursuant to the provisions of the Illinois Public Community College Act, 110 ILCS 805/1-1, *et seq.* The BOARD has jurisdiction over Community College District No. 508 whose territory is conterminous with the corporate boundaries of the City of Chicago, in the County of Cook, in the State of Illinois. The BOARD operates a community college system known as the CITY COLLEGES OF CHICAGO.

3. The CITY COLLEGES operates seven (7) colleges located within the City of Chicago, in the County of Cook, in the State of Illinois, one of which is Malcolm X College located at 1900 West Van Buren Street, Chicago, Illinois 60612.

Background Facts

4. In or about March, 2013, ROBERTS began working for the CITY COLLEGES as the Clinical Coordinator of the Physician's Assistance Program at Malcolm X College.

5. In or about June, 2014, ROBERTS was promoted to the position of Program Director of the Physician's Assistance Program at Malcolm X College.

6. In or about November, 2014, ROBERTS was promoted to the position of Director of Medical Programs at Malcolm X College.

7. As the Director of Medical Programs at Malcolm X College, ROBERTS reported directly to and worked closely with Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College and Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College.

8. On February 4, 2015, without prior notice ROBERTS' direct supervisor, Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College, was unexpectedly terminated.

9. On February 5, 2015, without prior notice, ROBERTS' direct supervisor, Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, was placed on paid administrative leave and remained on said leave until his termination on April 20, 2015.

10. During the entire time that ROBERTS held the position of Director of Medical Programs at Malcolm X College his performance was considered outstanding. Despite never receiving a formal written performance evaluation, which was allegedly required per policy, ROBERTS never received any negative comments regarding his performance.

11. Prior to his termination, ROBERTS was never advised and/or received any indication that there were any issues or concerns regarding his performance or conduct. ROBERTS never received a single reprimand or notice of there being a need for performance improvement and/or that he engaged in any type of improper conduct.

12. On August 7, 2015, ROBERTS was advised that he was terminated from his Director of Medical Programs position at Malcolm X College. ROBERTS was not provided a reason for his termination.

C00266

ROBERTS' Complaints that Lead to his Termination

13. On or about January 15, 2015, ROBERTS sent an email to his direct supervisors Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College and Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, complaining about the faculty assignment of an unqualified professor.

14. ROBERTS' January 15, 2015 email states:

> In compliance with the City Colleges of Chicago policy and the College of Health Science credentialing standards and requirements it is my responsibility as Program Director of HeaPro 101 to review, evaluate and approve the recommendation of each faculty member that is approved to teach in a program which I am the director. Taking into consideration I had no input into the department decision to appoint a nurse to teach HeaPro 101without my review of the credentials and necessary certifications and licenses put our programs and students at risk. Please note this is a breach of the standards that were developed to ensure that the students obtain the best outcomes moving forward with their education in the medical field. Please note I am very concerned about the direction in which we are traveling and wish to address this matter.

15. Upon receipt of ROBERTS' January 15, 2015 email, Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College, sent an email to the President and Provost of Malcolm X College stating his concerns about the unqualified professor assigned to teach HeaPro 101, and questioned them how to address the issue.

16. On February 25, 2015, ROBERTS sent an email to the President, Vice President, and Associate Provost complaining about the unqualified professor assigned to teach HeaPro 101. In addition to stating that the professor admitted never teaching phlebotomy before and not being familiar with the certification requirements for phlebotomists, ROBERTS stated that he learned from a student that the unqualified professor had abandoned her class (HeaPro 101) and another unqualified professor was required to complete the remainder of the course.

17. Upon receipt of ROBERTS' February 25, 2015 email, Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, requested that ROBERTS meet with her that day regarding his complaints contained in his email.

18. Upon receipt of Dr. Christopher Robinson-Easley's meeting request, ROBERTS sent an email to Aaron Allen, Executive Director of Labor & Employee Relations, stating that he wanted to document that he felt very uncomfortable about the meeting request considering his complaints regarding the unqualified professor assignment.

19. On February 25, 2015, ROBERTS met with Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, who was the individual who selected and assigned the unqualified professor to teach HeaPro 101. At the meeting, Dr. Christopher Robinson-Easley was very upset with ROBERTS in connection with his complaints about the assignment of the professor teaching HeaPro 101. Dr. Christopher Robinson-Easley expressed no interest in addressing the problem.

20. Following his February 25, 2015 complaints and meeting with Dr. Christopher Robinson-Easley, ROBERTS was kept out of important meetings, discussions and decisions regarding programs that were under his responsibilities as Director of Medical Programs at Malcolm X College.

21. On or about June 15, 2015, Roy Walker, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, told ROBERTS that Dr. Christopher Robinson-Easley "has an axe to grind against you" because of ROBERTS' complaints about the assignment of an unqualified professor to teach HeaPro 101.

C00268

22. On or about June 28, 2015, Dr. Munroe, President of Malcolm X College, instructed ROBERTS to file an EEO Complaint against Dr. Christopher Robinson-Easley for retaliation in connection with ROBERTS' complaints about the assignment of an unqualified professor to teach HealPro 101.

23. On June 28, 2015, ROBERTS completed and filed an Equal Opportunity Complaint Form with the CITY COLLEGES EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Christopher Robinson-Easley, Vice President of Malcolm X College.

24. On August 7, 2015, ROBERTS was advised that he was terminated from his Director of Medical Programs position at Malcolm X College.

Defendant's appointment and maintenance of an unqualified professor violated Federal Statutes and Regulations and was a violation of clear mandate of public policy in Illinois

25. Under Title IV of the Higher Education Act of 1965 ("Title IV/HEA"), Congress established various student loan and grant programs, including the Federal Pell Grant Program ("Pell"), Federal Supplemental Educational Opportunity Grand ("FSEOG"), Federal Direct Stafford Loan Program ("Stafford"), Federal Direct Plus Loan Program ("PLUS"), and Federal Work Study ("FWS") to assist in making available the benefits of postsecondary education to eligible students in institutions of higher education, such as the City Colleges of Chicago. 20 U.S.C. §§ 1070-1099.

26. The majority of Defendant's students apply for and receive federal Title IV/HEA program assistance to pay for tuition and school related expenses.

C00269

27. In order for Defendant's students to apply for and obtain Title IV/HEA program assistance, Malcolm X must be an eligible institution and be permitted to participate in the programs by the United States Department of Education ("DOE"). 34 C.F.R. § 668.14(a)(1).

28. As a condition to allowing the students at Malcolm X to receive federal funding under Title IV/HEA, the Defendant was required to sign a Program Participation Agreement ("PPA"), whereby the Defendant agreed to comply with certain statutory, regulatory and contractual requirements detailed in 20 U.S.C. § 1094 and supporting regulations, including 34 C.F.R. § 668.14.

29. By appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement (and in violation of 20 U.S.C. § 1094(a)(21), 20 U.S.C. § 1094(c)(3)(A), and 34 C.F.R. § 668.14).

30. The PPA requires that Defendant "will meet the requirements established by . . . accrediting agencies or associations. . . ." 20 U.S.C. § 1094(a)(21).

31. The Defendant's improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HealPro 101 was in violation of the requirements established by the accrediting agencies.

32. By appointing and maintaining an unqualified professor, the Defendant was in violation of their accrediting standards and requirements (and in violation of 20 U.S.C. § 1094(a)(21) and 20 U.S.C. § 1094(c)(3)(A)).

33. The Defendant, by entering into the PPA, not only agreed to meet the requirements established by the nationally recognized accrediting agencies that accredit Malcolm X, but it agreed to provide accurate information to these agencies. 20 U.S.C. § 1094(c)(3)(A).

C00270

34. The Defendant provided inaccurate information to the accrediting agencies when it proclaimed that the professor was properly qualified to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

35. Title IV/HEA also prohibits Malcolm X from engaging in "substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates." 20 U.S.C. § 1094(c)(3)(A).

36. . By appointing and maintaining an unqualified professor, the students did not receive the education that they paid for (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the nature of its educational program").

37. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 did not meet the certification requirements for phlebotomists (in violation of 20 U.S.C. § 1094(c)(3)(A) --"misrepresentation of the employability of its graduates.")

38. The DOE has the authority to enforce the PPA and possesses the ability to terminate Malcolm X from the Title IV/HEA program. 34 C.F.R. §§ 600.41(a)(1); 668.86.

39. The ability to obtain the benefits of a postsecondary education by Illinois students through the financial help of Federal and State funded programs is an Illinois public policy.

40. The improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101 violates a mandate of public policy in Illinois.

41. By appointing and maintaining an unqualified professor, the Defendant jeopardized the students that attend the City Colleges from obtaining federal funding under Title IV/HEA, and other State grant and financial aid programs.

42. The vast majority of the students that attend the City Colleges are only able to do so through the financial help of federal funding under Title IV/HEA.

43. If the DOE used its authority to enforce the Defendant's PPA and terminated the City Colleges from the Title IV/HEA program (34 C.F.R. §§ 600.41(a)(1); 668.86), thousands of Illinois students would lose the benefit of obtaining a postsecondary education.

COUNT I
COMMON LAW RETALIATORY DISCHARGE

44. The Plaintiff realleges and incorporates paragraphs 1 through 43 as if fully set forth herein.

45. On August 7, 2015, the Plaintiff's employer, the BOARD d/b/a CITY COLLEGES, terminated his employment as the Director of Medical Programs at Malcolm X College.

46. The Plaintiff's termination was a direct and proximate result of his complaints regarding the improper appointment of an unqualified professor to teach students at Malcolm X College, his complaint to Aaron Allen, the CITY COLLEGES Executive Director of Labor Relations, and his Equal Opportunity Complaint filed with the CITY COLLEGES' EEO office.

47. The Defendant's termination of the Plaintiff's employment violated a clear mandate of public policy in that the Plaintiff's complaints dealt with the improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HealPro 101.

48. The ability to obtain the benefits of a postsecondary education by Illinois students through the financial help of Federal and State funded programs is an Illinois public policy.

which was violated by the Defendant's improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

49. The Plaintiff complained about the improper appointment and maintenance of an unqualified professor fearing that the following violations were occurring:

a. By appointing and maintaining an unqualified professor, the Defendant was in violation of their accrediting standards and requirements (and in violation of 20 U.S.C. § 1094(a)(21) and 20 U.S.C. § 1094(c)(3)(A)).

b. By appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement (and in violation of 20 U.S.C. § 1094(a)(21), 20 U.S.C. § 1094(c)(3)(A), and 34 C.F.R. § 668.14).

c. By appointing and maintaining an unqualified professor, the students did not receive the education that they paid for (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the nature of its educational program").

d. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 did not meet the certification requirements for phlebotomists (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the employability of its graduates.")

e. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 were defrauded by the City Colleges.

50. Due to the Defendant's improper termination of the Plaintiff's employment, the Plaintiff suffered mental anguish, emotional distress, humiliation, emotional pain and suffering, inconvenience, lost wages and benefits, damage to his reputation, and other consequential damages.

51. The actions of the Defendant were intentional, willful, malicious and showed deliberate indifference to the Plaintiff's rights.

WHEREFORE, the Plaintiff, KENRICK ROBERTS, demands judgment against the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 d/b/a CITY COLLEGES OF CHICAGO for damages in an amount necessary to fully and fairly compensate the Plaintiff for all of his losses that greatly exceeds the jurisdictional amounts of this Court, and such other relief as the Court deems just and proper.

COUNT II
VIOLATION OF THE ILLINOIS WHISTLEBLOWER ACT
740 ILCS 174/20

52. The Plaintiff realleges and incorporates paragraphs 1 through 43 as if fully set forth herein.

53. The Plaintiff, through his position as the Director of Medical Programs at Malcolm X College, became aware that the BOARD d/b/a CITY COLLEGES was committing numerous questionable activities, which the Plaintiff believed would result in a violation of a State or Federal law, rule, or regulation, by and through the improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

54. The Plaintiff made numerous complaints to his direct supervisors, Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College and Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, Dr. Anthony E. Munroe, the President of Malcolm X College, Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, Martin Kaplan, Associate Provost of Malcolm X College Aaron Allen, the CITY COLLEGES Executive Director of Labor Relations, in which he

expressed that the professor assigned to teach the students at Malcolm X College who were enrolled in class HealPro 101 was not properly qualified, and as a result:

a. By appointing and maintaining an unqualified professor, the Defendant was in violation of their accrediting standards and requirements (and in violation of 20 U.S.C. § 1094(a)(21) and 20 U.S.C. § 1094(c)(3)(A)).

b. By appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement (and in violation of 20 U.S.C. § 1094(a)(21), 20 U.S.C. § 1094(c)(3)(A), and 34 C.F.R. § 668.14).

c. By appointing and maintaining an unqualified professor, the students did not receive the education that they paid for (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the nature of its educational program").

d. By appointing and maintaining an unqualified professor, the students enrolled in class HealPro 101 did not meet the certification requirements for phlebotomists (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the employability of its graduates.")

e. By appointing and maintaining an unqualified professor, the students enrolled in class HealPro 101 were defrauded by the City Colleges.

55. In his complaints, the Plaintiff explained that he was not properly involved in the selection of the professor for HealPro 101, a class that was one of his responsibilities as the Director of Medical Programs at Malcolm X College, and that he could not and would not participate in the questionable and improper activities that the CITY COLLEGES were involved in and that this issue needed to be addressed immediately, and that he was concerned with the education that the students were receiving from the unqualified professor.

56. As a direct and proximate result of the Plaintiff's complaints and refusal to participate in activities that would result in a violation of a State or Federal law, rule, or regulation, as described herein above, the Defendant retaliated against the Plaintiff in violation of the Illinois Whistleblower Act, 740 ILCS 174/20. The Defendant's retaliation against the

Plaintiff resulted in the termination of the Plaintiff's employment as the Director of Medical Programs at Malcolm X College.

57. As a direct and proximate result of the Defendant's improper termination of the Plaintiff's employment, the Plaintiff suffered mental anguish, emotional distress, humiliation, emotional pain and suffering, inconvenience, lost wages and benefits, damage to his reputation, and other consequential damages.

WHEREFORE, the Plaintiff, KENRICK ROBERTS, demands judgment against the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 d/b/a CITY COLLEGES OF CHICAGO, for all relief necessary to make the Plaintiff whole, including but not limited to the following:

(a) reinstatement with the same seniority status that the employee would have had, but for the violation, pursuant to 740 ILCS 174/30(1);

(b) back pay, with interest, pursuant to 740 ILCS 174/30(2); and

(c) compensation for any damages sustained as a result of the violation, including litigation costs, expert witness fees, and reasonable attorneys' fees, pursuant to 740 ILCS 174/30(3).

Plaintiff's damages substantially exceed the minimum jurisdictional amount of this Court.

COUNT III
WRONGFUL TERMINATION

58. The Plaintiff realleges and incorporates paragraphs 1 through 43 as if fully set forth herein.

59. Throughout Plaintiff's employment with the CITY COLLEGES, the CITY COLLEGES of Chicago Equal Opportunity Policy and Complaint Procedures states:

Prohibition Against Retaliation and Intimidation

Retaliation against and/or intimidation of employees, students, program participants, witnesses or any other person who make complaints or who cooperate in EEO investigations is strictly prohibited.

Anyone who believes he or she is the victim of retaliation or intimidation for reporting discrimination or harassment or cooperating in an investigation should immediately contact the EEO Office.

Any person who retaliates against a person in response to a report or cooperation in an investigation will be in violation of this Policy and will be subject to disciplinary action.

60. On or about June 28, 2015, Dr. Munroe, President of Malcolm X College, instructed ROBERTS to file an EEO Complaint against Dr. Christopher Robinson-Easley for retaliation in connection with ROBERTS' complaints about the assignment of an unqualified professor to teach HealPro 101. On June 28, 2015, ROBERTS completed and filed an Equal Opportunity Complaint Form with the CITY COLLEGES EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Christopher Robinson-Easley, Vice President of Malcolm X College.

61. On August 7, 2015, as a direct and proximate result of the Plaintiff's EEO Complaint filed with the CITY COLLEGES EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, the Plaintiff's employer, the BOARD d/b/a CITY COLLEGES, terminated his employment as the Director of Medical Programs at Malcolm X College.

62. The Plaintiff's termination was in violation of the CITY COLLEGES of Chicago Equal Opportunity Policy and Complaint Procedures

63. Due to the Defendant's wrongful termination of the Plaintiff's employment, the Plaintiff suffered mental anguish, emotional distress, humiliation, emotional pain and suffering,

inconvenience, lost wages and benefits, damage to his reputation, and other consequential damages.

64. The actions of the Defendant were intentional, willful, malicious and showed deliberate indifference to the Plaintiff's rights.

WHEREFORE, the Plaintiff, KENRICK ROBERTS, demands judgment against the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 d/b/a CITY COLLEGES OF CHICAGO for damages in an amount necessary to fully and fairly compensate the Plaintiff for all of his losses that greatly exceeds the jurisdictional amounts of this Court, and such other relief as the Court deems just and proper.

Respectfully submitted,
Plaintiff

By one of his attorneys

Brian R. Holman
Dennis Stefanowicz
Tara Beth Wenz
HOLMAN & STEFANOWICZ, LLC
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Attorney Code: 39600

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

KENRICK ROBERTS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 2015 L 009430
	)	
BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT NO. 508, et al.,	)	
	)	
Defendants.	)	

REPORT OF PROCEEDINGS at the hearing of the above-entitled cause before the Honorable JAMES E. SNYDER, Judge of the said court, on June 6, 2016, at 9:00 a.m.

APPEARANCES:

HOLMAN & STEFANOWICZ, L.L.C.
MS. TARA BETH WENZ
233 South Wacker Drive, Suite 5620
Chicago, Illinois 60606
appeared on behalf of the Plaintiffs;

JACKSON LEWIS
MR. JAMES D. THOMAS
MR. DAVID NOVAK
150 North Michigan Avenue, Suite 2500
Chicago, Illinois 60601
Appeared on behalf of the Defendants.

MS. WENZ: Good morning, Tara Wenz on behalf of the plaintiff.

MR. THOMAS: Good morning. Jim Thomas on behalf of the defendant, Board of Trustees.

MR. NOVAK: David Novak on behalf of the colleges.

THE COURT: Good morning.

MR. THOMAS: I think we are here today for a ruling on Defendant's Motion to Dismiss the First Amended Complaint.

THE COURT: Okay. Anything in addition to these pleadings?

MR. THOMAS: Your Honor, if you have any questions, we are happy to answer. Otherwise we feel like we have adequately briefed the issues to the Court.

MS. WENZ: We would agree.

THE COURT: The motion is granted with leave to amend. The -- the concern that I -- the concerns that I have are just -- I think they are something that perhaps are fixable. That's up to you.

The plaintiff states in a conclusionary way that they were engaged in, I guess, opposition

to a violation of the law of public policy but only identifies that in the most conclusionary and broad way.

The -- an example may be that would be -- that probably isn't true, but is a more clear one -- would be that the plaintiff -- that the -- in order to teach at this program, one has to have a CPA license in the state of Illinois.

The law requires that, and this person does not have that. They are unqualified.

I'm opposing that, their -- their qualifications -- it's a matter of public policy and law that one teaching in this program has to have that license.

This only says I'm -- the person is unqualified in a conclusionary way, which could be, for example, I have a license to practice law in Illinois. If I didn't, I wouldn't be qualified to be a judge, and that's -- that's -- on the other hand, one could say I was unqualified in terms of my demeanor, my personality, my legal ability. That's just kind of this general conclusion.

MS. WENZ: Okay.

THE COURT: You have to plead it. You have to plead the law on public policy in specific, and there are these citations, the 20 USC 1094, et cetera. That's the one concern.

The -- the -- yeah. It says, violated a clear mandated public policy in that persons who go here have federal, state, and -- funded programs and Illinois public policy, but you're not saying, thus the program must be certified by the American board of this or that and it's not if it doesn't meet these characteristics.

MS. WENZ: Okay.

THE COURT: It's -- again, you're saying in kind of a general way this person is not qualified, which sounds like a subjective -- an entirely subjective point of view.

MS. WENZ: Okay.

THE COURT: And if it was entirely subjective, it isn't a cause of action.

And on the Count II, the plaintiff is saying that their -- that their opposition was that they refused to -- they refused to participate in this.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

KENRICK ROBERTS Plaintiff v. BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT NO. 508 d/b/a CITY COLLEGES OF CHICAGO Defendant	)	No. 2015 L 009430

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF IAN SHARPING

Ian Sharping, being first duly sworn on oath, deposes and states as follows:

1. I have been the District Manager, Accreditation and Compliance for the City Colleges of Chicago since December 2014. In that position, I am responsible for assisting the colleges within the City Colleges of Chicago's system with accreditation issues. I am familiar with the accreditation standards for the programs within the colleges, and I have access to records about those accreditation standards as part of my job duties. I have personal knowledge of the matters sworn to herein.

2. In 2014 and 2015, the HeaPro program at Malcolm X College was used as a gateway set of courses to help prepare students for more rigorous training in other health science programs. HeaPro 101 was part of this set of courses. Although students interested in phlebotomy take the HeaPro courses, students interested in other health sciences programs also take the HeaPro courses.

3. I am familiar with the National Accrediting Agency for Clinical Laboratory Sciences ("NAACLS"), which is an accrediting body for certain health science programs.

4. During 2014 and 2015, the HeaPro program offered at Malcolm X College was not accredited by NAACLS.

5. Indeed, I am not aware of and have no record of NAACLS ever accrediting HeaPro or phlebotomy courses at Malcolm X College.

C00584

6. Although Malcolm X College is a certified phlebotomy certification test site by the National Phlebotomy Association ("NPA"), the NPA does not accredit the HeaPro program at Malcolm X College and did not do so in 2014 and 2015. The American Society of Clinical Pathologists ("ASCP") also does not accredit the HeaPro program at Malcolm X College and did not do so in 2014 and 2015.

7. Indeed, certification by the NPA, ASCP, or other phlebotomy association is voluntary because a phlebotomy certification is not mandatory for a person to perform the duties of a phlebotomist in Illinois.

Further sayeth affiant not.

Ian Sharping

Subscribe and sworn to me
this 28th day of July 2016

Notary Public

"OFFICIAL SEAL"
LATONYA M ORANGE
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 11/17/2018

4831-1819-5253, v. 1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

KENRICK ROBERTS, Plaintiff, v. BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508, d/b/a CITY COLLEGES OF CHICAGO, Defendant.	)	No. 2015 L 009430 JURY DEMANDED

SECOND AMENDED COMPLAINT

The Plaintiff, KENRICK ROBERTS, by and through his attorneys, HOLMAN & STEFANOWICZ, LLC, complains of the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508, d/b/a CITY COLLEGES OF CHICAGO, as follows:

Nature of Action

This is an action seeking monetary relief by KENRICK ROBERTS ("ROBERTS") against his former employer, the BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 ("BOARD") d/b/a CITY COLLEGES OF CHICAGO ("CITY COLLEGES"), for: (1) common law retaliatory discharge; (2) violation of the Illinois Whistleblower Act, 740 ILCS 174/20; and (3) wrongful termination.

Parties

1. The Plaintiff, ROBERTS, is a resident of the City of Chicago, in the County of Cook, in the State of Illinois. On August 7, 2015, ROBERTS was wrongfully terminated by the Defendant from his position as the Director of Medical Programs at Malcolm X College.

2. The Defendant, the BOARD, is a body politic and corporate established pursuant to the provisions of the Illinois Public Community College Act, 110 ILCS 805/1-1, *et seq*. The BOARD has jurisdiction over Community College District No. 508 whose territory is conterminous with the corporate boundaries of the City of Chicago, in the County of Cook, in the State of Illinois. The BOARD operates a community college system known as the CITY COLLEGES OF CHICAGO.

3. The CITY COLLEGES operates seven (7) colleges located within the City of Chicago, in the County of Cook, in the State of Illinois, one of which is Malcolm X College located at 1900 West Van Buren Street, Chicago, Illinois 60612.

Background Facts

4. In or about March, 2013, ROBERTS began working for the CITY COLLEGES as the Clinical Coordinator of the Physician's Assistance Program at Malcolm X College.

5. In or about June, 2014, ROBERTS was promoted to the position of Program Director of the Physician's Assistance Program at Malcolm X College.

6. In or about November, 2014, ROBERTS was promoted to the position of Director of Medical Programs at Malcolm X College.

7. As the Director of Medical Programs at Malcolm X College, ROBERTS reported directly to and worked closely with Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College and Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College.

8. On February 4, 2015, without prior notice ROBERTS' direct supervisor, Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College, was unexpectedly terminated.

9. On February 5, 2015, without prior notice, ROBERTS' direct supervisor, Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, was placed on paid administrative leave and remained on said leave until his termination on April 20, 2015.

10. During the entire time that ROBERTS held the position of Director of Medical Programs at Malcolm X College his performance was considered outstanding. Despite never receiving a formal written performance evaluation, which was allegedly required per policy, ROBERTS never received any negative comments regarding his performance.

11. Prior to his termination, ROBERTS was never advised and/or received any indication that there were any issues or concerns regarding his performance or conduct. ROBERTS never received a single reprimand or notice of there being a need for performance improvement and/or that he engaged in any type of improper conduct.

12. On August 7, 2015, ROBERTS was advised that he was terminated from his Director of Medical Programs position at Malcolm X College. ROBERTS was not provided a reason for his termination.

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ROBERTS' Complaints that Lead to his Termination

13. As part of his job duties and responsibilities as the Director of Medical Programs at Malcolm X College, ROBERTS was responsible in vetting potential instructors for teaching various courses and curriculum and for ensuring that instructors assigned to teach various courses, including but not limited to, HeaPro 101, met the appropriate accreditation standards and had the correct qualifications to teach their assigned courses and curriculum.

14. Despite the fact that vetting instructors was part of ROBERTS' job duties and responsibilities, ROBERTS was intentionally excluded from the process of assigning an instructor to teach HeaPro 101 for the 2015 school year.

15. On or about January 15, 2015, ROBERTS became aware of complaints that the instructor assigned to teach HeaPro 101 was unqualified to teach said course and curriculum.

16. On or about January 15, 2015, ROBERTS investigated these complaints further and met with the HeaPro 101 instructor and questioned her qualifications to teach said course and curriculum.

17. The instructor for HeaPro 101 informed ROBERTS that she had never taught phlebotomy before; she was unfamiliar with the requirements and certifications necessary to become a phlebotomist, phlebotomy was not her area of expertise, and she did not have any certifications in phlebotomy. Following this meeting it became clear to ROBERTS that said instructor was unqualified to teach said course.

18. On or about January 15, 2015, ROBERTS sent an email to his direct supervisors Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College and Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, complaining about the faculty assignment of an unqualified professor.

19. ROBERTS' January 15, 2015 email states:

> In compliance with the City Colleges of Chicago policy and the College of Health Science credentialing standards and requirements it is my responsibility as Program Director of HeaPro 101 to review, evaluate and approve the recommendation of each faculty member that is approved to teach in a program which I am the director. Taking into consideration I had no input into the department decision to appoint a nurse to teach HeaPro 101without my review of the credentials and necessary certifications and licenses put our programs and students at risk. Please note this is a breach of the standards that were developed to ensure that the students obtain the best outcomes moving forward with their education in the medical field. Please note I am very concerned about the direction in which we are traveling and wish to address this matter.

20. Upon receipt of ROBERTS' January 15, 2015 email, Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College, sent an email to the President and Provost of Malcolm X College stating his concerns about the unqualified professor assigned to teach HeaPro 101, and questioned them how to address the issue.

21. Following his January 15, 2015 email, ROBERTS made verbal complaints to Dr. Anthony Munroe regarding the appointment of an unqualified professor to teach HeaPro 101. He informed Dr. Anthony Munroe that he was intentionally excluded from the selection process of this unqualified professor and that he refused to support the assignment of this unqualified professor.

22. On February 25, 2015, ROBERTS sent an email to the President, Vice President, and Associate Provost again complaining about the unqualified professor assigned to teach HeaPro 101. In addition to stating that the professor admitted never teaching phlebotomy before and not being familiar with the certification requirements for phlebotomists, ROBERTS stated that he learned from a student that the unqualified professor had abandoned her class (HeaPro 101) and another unqualified professor, who was not properly certified to teach the EKG portion of the course, was required to complete the remainder of the course. ROBERTS also complained

that he was excluded from the decisions in selecting these unqualified professors, despite this being one of his job duties and responsibilities as Director of Medical Programs at Malcom X College.

23. Upon receipt of ROBERTS' February 25, 2015 email, Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, requested that ROBERTS meet with her that day regarding his complaints contained in his email.

24. Upon receipt of Dr. Christopher Robinson-Easley's meeting request, ROBERTS sent an email to Aaron Allen, Executive Director of Labor & Employee Relations, stating that he wanted to document that he felt very uncomfortable about the meeting request considering his complaints regarding the unqualified professor assignment.

25. On February 25, 2015, ROBERTS met with Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, who was the individual who selected and assigned the unqualified professor to teach HeaPro 101. At the meeting, Dr. Christopher Robinson-Easley was very upset with ROBERTS in connection with his complaints about the assignment of the professor teaching HeaPro 101. Dr. Christopher Robinson-Easley expressed no interest in addressing the problem.

26. Following his February 25, 2015 complaints and meeting with Dr. Christopher Robinson-Easley, ROBERTS continued to complain and question the appointment of the unqualified professor assigned to teach HeaPro 101 and Malcom X College's failure to address and rectify the situation to Dr. Anthony Munroe.

27. Following his complaints and meeting with Dr. Christopher Robinson-Easley, ROBERTS was kept out of important meetings, discussions and decisions regarding programs that were under his responsibilities as Director of Medical Programs at Malcolm X College.

28. On or about June.15, 2015, Roy Walker, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, told ROBERTS that Dr. Christopher Robinson-Easley "has an axe to grind against you" because of ROBERTS' complaints about the assignment of an unqualified professor to teach HeaPro 101.

29. On or about June 28, 2015, Dr. Munroe, President of Malcolm X College, instructed ROBERTS to file an EEO Complaint against Dr. Christopher Robinson-Easley for retaliation in connection with ROBERTS' complaints about the assignment of an unqualified professor to teach HeaPro 101.

30. On June 28, 2015, ROBERTS completed and filed an Equal Opportunity Complaint Form with the CITY COLLEGES EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Christopher Robinson-Easley, Vice President of Malcolm X College.

31. On August 7, 2015, ROBERTS was advised that he was terminated from his Director of Medical Programs position at Malcolm X College.

Defendant's appointment and maintenance of an unqualified professor violated Federal Statutes and Regulations and was a violation of clear mandate of public policy in Illinois

32. HeaPro 101 includes instruction of phlebotomy and EKG (electrocardiogram.)

33. The National Accrediting Agency for Clinical Laboratory Sciences ("NAACLS") states that in order for a course/curriculum to be accredited and approved for phlebotomy, it must have qualified faculty. Under the NAACLS, in order to be qualified to teach phlebotomy within the phlebotomy or health care basic certificate program, the faculty needs to be a certified

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professional in that field; must demonstrate knowledge and proficiency in that field; and must demonstrate the ability to teach effectively at the appropriate level.

34. A professor can be certified in phlebotomy by the National Phlebotomy Association ("NPA") or through the American Society of Clinical Pathologists ("ASCP"). The NPA requires recertification on an annual basis and continuing education courses.

35. In order to instruct students regarding EKGs, a professor also needs to be certified, have a knowledge and proficiency in the field and can teach effectively at the appropriate level.

36. Best practice standards in program accreditation require the hiring of faculty who have the knowledge and training, including appropriate certifications, to instruct their students so that the students receive the appropriate instructional content to be able to obtain their appropriate certifications and/or to be able to practice in their related field. Students who successfully complete HeaPro 101 and pass their licensure and/or certification exam can seek employment at any licensed healthcare facility as a Certified Nursing Assistant (CNA), a Certified Patient Care Technician (PCA), a Certified Phlebotomy Technician and/or an EKG Technician.

37. The professor appointed to teach phlebotomy – without ROBERTS' input – was not qualified under the NAACLS, as she was not a certified professional in that field; she did not demonstrate the knowledge and proficiency of that field; and she did not demonstrate the ability to teach effectively at the appropriate level.

38. When the first professor who was unqualified to teach the phlebotomy section of HeaPro 101 abandoned her class, the Defendant replaced her with a professor who was unqualified to teach the EKG portion of the course, as he was not a certified professional in that

field; he did not demonstrate the knowledge and proficiency of that field; and he did not demonstrate the ability to teach effectively at the appropriate level.

39. The failure to appoint a qualified professor for HeaPro 101 endangered the students in their ability to receive the proper knowledge and instruction to become a CNA, PCA, Phlebotomist Technician and/or EKG Technician. Additionally, by appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements.

40. Under Title IV of the Higher Education Act of 1965 ("Title IV/HEA"), Congress established various student loan and grant programs, including the Federal Pell Grant Program ("Pell"), Federal Supplemental Educational Opportunity Grand ("FSEOG"), Federal Direct Stafford Loan Program ("Stafford"), Federal Direct Plus Loan Program ("PLUS"), and Federal Work Study ("FWS") to assist in making available the benefits of postsecondary education to eligible students in institutions of higher education, such as the City Colleges of Chicago. 20 U.S.C. §§ 1070-1099.

41. The majority of Defendant's students apply for and receive federal Title IV/HEA program assistance to pay for tuition and school related expenses.

42. In order for Defendant's students to apply for and obtain Title IV/HEA program assistance, Malcolm X must be an eligible institution and be permitted to participate in the programs by the United States Department of Education ("DOE"). 34 C.F.R. § 668.14(a)(1).

43. As a condition to allowing the students at Malcolm X to receive federal funding under Title IV/HEA, the Defendant was required to sign a Program Participation Agreement ("PPA"), whereby the Defendant agreed to comply with certain statutory, regulatory and

contractual requirements detailed in 20 U.S.C. § 1094 and supporting regulations, including 34 C.F.R. § 668.14.

44. By appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement (and in violation of 20 U.S.C. § 1094(a)(21), 20 U.S.C. § 1094(c)(3)(A), and 34 C.F.R. § 668.14).

45. The PPA requires that Defendant "will meet the requirements established by . . . accrediting agencies or associations. . . ." 20 U.S.C. § 1094(a)(21).

46. The Defendant's improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101 was in violation of the requirements established by the accrediting agencies.

47. By appointing and maintaining an unqualified professor, the Defendant was in violation of their accrediting standards and requirements (and in violation of 20 U.S.C. § 1094(a)(21) and 20 U.S.C. § 1094(c)(3)(A)).

48. The Defendant, by entering into the PPA, not only agreed to meet the requirements established by the nationally recognized accrediting agencies that accredit Malcolm X, but it agreed to provide accurate information to these agencies. 20 U.S.C. § 1094(c)(3)(A).

49. The Defendant provided inaccurate information to the accrediting agencies when it proclaimed that the professor was properly qualified to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

50. Title IV/HEA also prohibits Malcolm X from engaging in "substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates." 20 U.S.C. § 1094(c)(3)(A).

51. By appointing and maintaining an unqualified professor, the students did not receive the education that they paid for (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the nature of its educational program").

52. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 did not meet the certification requirements for phlebotomists (in violation of 20 U.S.C. § 1094(c)(3)(A) --"misrepresentation of the employability of its graduates.")

53. The DOE has the authority to enforce the PPA and possesses the ability to terminate Malcolm X from the Title IV/HEA program. 34 C.F.R. §§ 600.41(a)(1); 668.86.

54. The ability to obtain the benefits of a postsecondary education by Illinois students through the financial help of Federal and State funded programs is an Illinois public policy.

55. The improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101 violates a mandate of public policy in Illinois.

56. By appointing and maintaining an unqualified professor, the Defendant jeopardized the students that attend the City Colleges from obtaining federal funding under Title IV/HEA, and other State grant and financial aid programs.

57. The vast majority of the students that attend the City Colleges are only able to do so through the financial help of federal funding under Title IV/HEA.

58. If the DOE used its authority to enforce the Defendant's PPA and terminated the City Colleges from the Title IV/HEA program (34 C.F.R. §§ 600.41(a)(1); 668.86), thousands of Illinois students would lose the benefit of obtaining a postsecondary education.

COUNT I
COMMON LAW RETALIATORY DISCHARGE

59. The Plaintiff realleges and incorporates paragraphs 1 through 58 as if fully set forth herein.

60. On August 7, 2015, the Plaintiff's employer, the BOARD d/b/a CITY COLLEGES, terminated his employment as the Director of Medical Programs at Malcolm X College.

61. The Plaintiff's termination was a direct and proximate result of his complaints regarding the improper appointment of an unqualified professor to teach students at Malcolm X College, his complaint to Aaron Allen, the CITY COLLEGES Executive Director of Labor Relations, and his Equal Opportunity Complaint filed with the CITY COLLEGES' EEO office.

62. The Defendant's termination of the Plaintiff's employment violated a clear mandate of public policy in that the Plaintiff's complaints dealt with the improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

63. The professor appointed to teach phlebotomy – without ROBERTS' input – was not qualified under the NAACLS, as she was not a certified professional in that field; she did not demonstrate the knowledge and proficiency of that field; and she did not demonstrate the ability to teach effectively at the appropriate level.

64. When the first professor who was unqualified to teach the phlebotomy section of HeaPro 101 abandoned her class, the Defendant replaced her with a professor who was unqualified to teach the EKG portion of the course, as he was not a certified professional in that field; he did not demonstrate the knowledge and proficiency of that field; and he did not demonstrate the ability to teach effectively at the appropriate level.

65. By appointing and maintaining unqualified professors, the Defendant was in violation of Federal and State grant and financial aid programs requirements.

66. The ability to obtain the benefits of a postsecondary education by Illinois students through the financial help of Federal and State funded programs is an Illinois public policy, which was violated by the Defendant's improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

67. The Plaintiff complained about the improper appointment and maintenance of an unqualified professor fearing that the following violations were occurring:

a. By appointing and maintaining an unqualified professor, the Defendant was in violation of their accrediting standards and requirements (and in violation of 20 U.S.C. § 1094(a)(21) and 20 U.S.C. § 1094(c)(3)(A)).

b. By appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement (and in violation of 20 U.S.C. § 1094(a)(21), 20 U.S.C. § 1094(c)(3)(A), and 34 C.F.R. § 668.14).

c. By appointing and maintaining an unqualified professor, the students did not receive the education that they paid for (in violation of 20 U.S.C. § 1094(c)(3)(A) – "misrepresentation of the nature of its educational program").

d. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 did not meet the certification requirements for phlebotomists (in violation of 20 U.S.C. § 1094(c)(3)(A) – "misrepresentation of the employability of its graduates.")

e. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 were defrauded by the City Colleges.

68. Due to the Defendant's improper termination of the Plaintiff's employment, the Plaintiff suffered mental anguish, emotional distress, humiliation; emotional pain and suffering,

inconvenience, lost wages and benefits, damage to his reputation, and other consequential damages.

69. The actions of the Defendant were intentional, willful, malicious and showed deliberate indifference to the Plaintiff's rights.

WHEREFORE, the Plaintiff, KENRICK ROBERTS, demands judgment against the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 d/b/a CITY COLLEGES OF CHICAGO for damages in an amount necessary to fully and fairly compensate the Plaintiff for all of his losses that greatly exceeds the jurisdictional amounts of this Court, and such other relief as the Court deems just and proper.

COUNT II
VIOLATION OF THE ILLINOIS WHISTLEBLOWER ACT
740 ILCS 174/20

70. The Plaintiff realleges and incorporates paragraphs 1 through 58 as if fully set forth herein.

71. The Plaintiff, through his position as the Director of Medical Programs at Malcolm X College, became aware that the BOARD d/b/a CITY COLLEGES was committing numerous questionable activities, which the Plaintiff believed would result in a violation of a State or Federal law, rule, or regulation, by and through the improper appointment and maintenance of an unqualified professor to teach the students at Malcolm X College who were enrolled in class HeaPro 101.

72. Despite the fact that as the Director of Medical Programs at Malcolm X College, the Plaintiff was responsible for vetting potential instructors for teaching various courses and curriculum and for ensuring that instructors assigned to teach various courses, including but not

limited to, HeaPro 101, met the appropriate accreditation standards and had the correct qualifications to teach their assigned courses and curriculum, the Plaintiff was intentionally excluded from the process of assigning an instructor to teach HeaPro 101 for the 2015 school year and his continued complaints regarding the unqualified professors were not addressed and the unqualified professors were permitted to continue to teach HeaPro 101.

73. When the Plaintiff became aware that an unqualified professor was teaching HeaPro 101, he made numerous complaints to his direct supervisors, Dr. Micah Young, the Dean of Health Sciences & Career Programs at Malcolm X College and Dr. Mario De La Haye, the Associate Dean of Health Sciences & Career Programs at Malcolm X College, Dr. Anthony E. Munroe, the President of Malcolm X College, Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, Martin Kaplan, Associate Provost of Malcolm X College Aaron Allen, the CITY COLLEGES Executive Director of Labor Relations, in which he refused to support the decision to appoint the unqualified professor assigned to teach the students at Malcolm X College who were enrolled in class HeaPro 101, and as a result:

a. By appointing and maintaining an unqualified professor, the Defendant was in violation of their accrediting standards and requirements (and in violation of 20 U.S.C. § 1094(a)(21) and 20 U.S.C. § 1094(c)(3)(A)).

b. By appointing and maintaining an unqualified professor, the Defendant was in violation of Federal and State grant and financial aid programs requirements, including the Program Participation Agreement (and in violation of 20 U.S.C. § 1094(a)(21), 20 U.S.C. § 1094(c)(3)(A), and 34 C.F.R. § 668.14).

c. By appointing and maintaining an unqualified professor, the students did not receive the education that they paid for (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the nature of its educational program").

d. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 did not meet the certification requirements

for phlebotomists (in violation of 20 U.S.C. § 1094(c)(3)(A) -- "misrepresentation of the employability of its graduates.")

e. By appointing and maintaining an unqualified professor, the students enrolled in class HeaPro 101 were defrauded by the City Colleges.

74. In his complaints and refusals to participate and support Defendant's decision to appoint said professor without his knowledge, the Plaintiff explained that he was not involved in the selection of the professor for HeaPro 101, a class that was one of his responsibilities as the Director of Medical Programs at Malcolm X College, and that he could not and would not participate in the questionable and improper activities that the CITY COLLEGES were involved in and that this issue needed to be addressed immediately, and that he was concerned with the education that the students were receiving from the unqualified professor.

75. Despite the Plaintiff's continued protests and complaints regarding the unqualified professor and how said assignment violated and continued to violate Federal and/or State law, rules and regulations, the Defendant refused and allowed said improper conduct to continue.

76. As a direct and proximate result of the Plaintiff's complaints and refusal to participate in activities that would result in a violation of a State or Federal law, rule, or regulation, as described herein above, the Defendant retaliated against the Plaintiff in violation of the Illinois Whistleblower Act, 740 ILCS 174/20. The Defendant's retaliation against the Plaintiff resulted in the termination of the Plaintiff's employment as the Director of Medical Programs at Malcolm X College.

77. As a direct and proximate result of the Defendant's improper termination of the Plaintiff's employment, the Plaintiff suffered mental anguish, emotional distress, humiliation,

emotional pain and suffering, inconvenience, lost wages and benefits, damage to his reputation, and other consequential damages.

WHEREFORE, the Plaintiff, KENRICK ROBERTS, demands judgment against the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 d/b/a CITY COLLEGES OF CHICAGO, for all relief necessary to make the Plaintiff whole, including but not limited to the following:

(a) reinstatement with the same seniority status that the employee would have had, but for the violation, pursuant to 740 ILCS 174/30(1);

(b) back pay, with interest, pursuant to 740 ILCS 174/30(2); and

(c) compensation for any damages sustained as a result of the violation, including litigation costs, expert witness fees, and reasonable attorneys' fees, pursuant to 740 ILCS 174/30(3).

Plaintiff's damages substantially exceed the minimum jurisdictional amount of this Court.

COUNT III
WRONGFUL TERMINATION

78. The Plaintiff realleges and incorporates paragraphs 1 through 58 as if fully set forth herein.

79. Throughout Plaintiff's employment with the CITY COLLEGES, the CITY COLLEGES of Chicago Equal Opportunity Policy and Complaint Procedures states:

> **Prohibition Against Retaliation and Intimidation**
>
> Retaliation against and/or intimidation of employees, students, program participants, witnesses or any other person who make complaints or who cooperate in EEO investigations is strictly prohibited.
>
> Anyone who believes he or she is the victim of retaliation or intimidation for reporting discrimination or harassment or cooperating in an investigation should immediately contact the EEO Office.

> Any person who retaliates against a person in response to a report or cooperation in an investigation will be in violation of this Policy and will be subject to disciplinary action.

80. On or about June 28, 2015, Dr. Munroe, President of Malcolm X College, instructed ROBERTS to file an EEO Complaint against Dr. Christopher Robinson-Easley for retaliation in connection with ROBERTS' complaints about the assignment of an unqualified professor to teach HeaPro 101. On June 28, 2015, ROBERTS completed and filed an Equal Opportunity Complaint Form with the CITY COLLEGES EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Christopher Robinson-Easley, Vice President of Malcolm X College.

81. On August 7, 2015, as a direct and proximate result of the Plaintiff's EEO Complaint filed with the CITY COLLEGES EEO Office claiming retaliation and hostile and intimidating work environment against Dr. Christopher Robinson-Easley, Vice President of Malcolm X College, the Plaintiff's employer, the BOARD d/b/a CITY COLLEGES, terminated his employment as the Director of Medical Programs at Malcolm X College.

82. The Plaintiff's termination was in violation of the CITY COLLEGES of Chicago Equal Opportunity Policy and Complaint Procedures

83. Due to the Defendant's wrongful termination of the Plaintiff's employment, the Plaintiff suffered mental anguish, emotional distress, humiliation, emotional pain and suffering, inconvenience, lost wages and benefits, damage to his reputation, and other consequential damages.

84. The actions of the Defendant were intentional, willful, malicious and showed deliberate indifference to the Plaintiff's rights.

WHEREFORE, the Plaintiff, KENRICK ROBERTS, demands judgment against the Defendant, BOARD OF TRUSTEES COMMUNITY COLLEGE DISTRICT No. 508 d/b/a CITY COLLEGES OF CHICAGO for damages in an amount necessary to fully and fairly compensate the Plaintiff for all of his losses that greatly exceeds the jurisdictional amounts of this Court, and such other relief as the Court deems just and proper.

Respectfully submitted,
Plaintiff

By one of his attorneys

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

KENDRICK ROBERTS,)
Plaintiff,)
-vs-) No. 15 L 9430
BOARD OF TRUSTEES OF)
COMMUNITY COLLEGES,)
District No. 508)
Defendant.)

TRANSCRIPT OF PROCEEDINGS had in the above-entitled cause on the 25th day of October, A.D. 2016, at 9:20 a.m.

BEFORE: HONORABLE JAMES E. SNYDER.

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there was some additional discussion regarding adding amendments in terms of why we believe that the professors were unqualified and how it would violate Federal and State laws, regulations as we have alleged in our Complaint.

We believe our Second Amended Complaint fixed that issue, and we would like to proceed on Count I of our retaliatory discharge.

Same as Count II, we do believe the allegations cited in our Second Amended Complaint properly suggest that Mr. Roberts not only refused to participate, but once he came to the realization that there were issues regarding unqualified professors, he refused to remain quiet about it.

Therefore, we believe those counts should stand.

THE COURT: So I think the concern in the Complaint and in its amendments is the way in which the word "unqualified" is used.

One could believe that this professor was unqualified -- subjectively not competent -- yes. In a kind of subjective sense unqualified.

Then there is a matter of whether or not the plaintiff is claiming that some particular

public policy and some particular law requires some particular qualification, not a good person to teach this, or one who is generally thought of, or who has standing in the community or anything.

But that somehow some particular law and public policy requires some particular qualification that she lacks.

For example, there would be certain things in life where one had to have a license to practice law. You either have it or you don't.

Whether or not the lawyer is qualified, meaning well-thought of in the legal community, such as yourselves, competent, experienced, etcetera, is a whole other thing about whether or not this public policy requires this person to hold some licensing.

In each case here I don't see how the plaintiff is claiming that the unqualified -- by appointing and obtaining an unqualified professor, for example, are violations of the accreditation standards.

The manner in which the word "unqualified" is used in this Complaint is not some specific thing.

It is this general idea that this person is not in the sense qualified.

The motion to dismiss is granted.

MR. NOVAK: With prejudice?

THE COURT: I don't believe the plaintiff is is claiming any serious affects -- do you see the distinction I'm making?

MS. WENZ: I do understand what you are claiming.

I think we did lay out some issues regarding certain ways that the professor should be qualified, and why the plaintiff felt he was not.

But I do understand.

THE COURT: The plaintiff is not seeking to amend the Complaint.

Those two Counts are dismissed.

MS. WENZ: Counts I and II with prejudice?

THE COURT: Yes.

MS. WENZ: We request Rule 304(a) language for Counts I and II.

I know Count III is still surviving.

THE COURT: What is Count III?

MS. WENZ: A breach of contract count relating to the plaintiff being a contracted employer under

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RECORD ON APPEAL

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies on oath that on the 31st day of October, 2018, at Chicago, Illinois, he caused the foregoing **Brief of Defendant-Appellant, Appendix to Brief and Argument of Defendant-Appellant and Certificate of Compliance** to be electronically submitted for filing to the Supreme Court of Illinois consistent with the requirements set forth in the Court's Electronic Filing User Manual and served on the following via email:

Brian R. Holman
Dennis H. Stefanowicz, Jr.
Holman & Stefanowicz, LLC
233 South Wacker Drive, Suite 9305
Chicago, IL 60606
BRH@HS-Attorneys.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/ James P. Daley