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REBECCA FURDEK
MILWAUKEE:
414.978.5348
REBECCA.FURDEK@
HUSCHBLACKWELL.COM

JOSEPH S. DIEDRICH
MILWAUKEE:
414.978.5425
WASHINGTON:
202.378.2300
MADISON:
608.255.4440
JOSEPH.DIEDRICH@
HUSCHBLACKWELL.COM

Husch Blackwell Authors U.S. Supreme Court Amicus Brief in First Amendment Litigation

Husch Blackwell prepared and filed an *amicus curiae* brief on behalf of professors Morris Kleiner and Edward Timmons, urging the U.S. Supreme Court to grant certiorari in *Joshua Gray v. Maine Department of Public Safety*. The case asks whether regulatory authorities may, consistent with the First Amendment, deny an occupational license based on an applicant's speech. Professors Kleiner (University of Minnesota) and Timmons (West Virginia University) are two leading, widely cited scholars in the field of labor economics, with a special focus on occupational licensing.

Joshua Gray, a Massachusetts professional investigator, wanted to expand his business into Maine. To do so, he needed a professional investigator license from the Maine Department of Public Safety, which required he demonstrate "good moral character." Yet Gray's moral character fell short, the Department concluded, because of a handful of "uninvestigated" and "erroneous" statements he posted on Facebook that criticized the 2017 conduct of employees of the Maine Department of Public Safety. The Department denied him a license.

Gray appealed the decision, eventually all the way to the Maine Supreme Court, which ruled in favor of the Department, upholding the denial.

Husch Blackwell's brief, written by attorneys Rebecca Furdek and Joseph Diedrich on a pro bono basis, presents extensive empirical evidence to explain why Gray's case is important, likely to recur, and deserving of review. That evidence shows how occupational-licensing laws—many with "good moral character" requirements like Maine's—affect millions of workers in over a thousand vocations. Yet contrary to assumptions routinely made by licensing authorities and reviewing courts, evidence also shows that licensing laws

provide minimal public benefit and impose significant costs on individuals and society.

“Whether on social media or elsewhere, constitutionally protected speech generally should not serve as grounds for government to prevent someone from earning a living in their vocation of choice,” Diedrich said. “We were pleased to prepare this brief on behalf of Professors Kleiner and Timmons, and we hope the Court takes the case.”

The petition for writ of certiorari was filed in September by the Institute for Justice, a non-profit public-interest law firm. The justices are scheduled to consider the petition at their October 8 conference.