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

Husch Blackwell prepared and filed an amicus curiae brief on behalf of Professor Morris Kleiner, urging the U.S. Supreme Court to grant certiorari in *Heather Kokesch Del Castillo v. Joseph A. Ladapo, Secretary, Florida Department of Health*. The case asks whether state regulatory authorities may, consistent with the First Amendment, impose occupational-licensing requirements that regulate professional speech.

Heather Kokesch Del Castillo, a health coach, was fined by the State of Florida because she communicated individualized diet advice without a license. Florida makes it illegal for anyone other than a licensed dietician to provide commonsense diet advice such as “eat more leafy greens.” Florida fined Del Castillo in 2017 for engaging in the unlicensed practice of dietetics and ordered her to shut down her health-coaching business, through which she had dispensed advice about exercise (which was legal) and diet (which was a crime). Before moving to Florida, Del Castillo was a privately certified health coach who started her business, Constitution Nutrition, which sold one product: her advice about exercise and diet.

Del Castillo argues that Florida’s Dietetics and Nutrition Practice Act violates her speech rights. The Eleventh Circuit rejected her claim, reasoning that the First Amendment does not meaningfully limit occupational-licensing regulation of on-the-job speech. This departs from the reasoning of other circuit courts, which have held in similar cases that the First Amendment requires strict scrutiny of speech regulation—including in the occupational-licensing context.

Husch Blackwell’s brief, written by attorneys Rebecca Furdek and Joseph Diedrich on a pro bono basis, presents extensive empirical evidence to explain

why Del Castillo’s case is important and deserving of review. That evidence contextualizes the magnitude of occupational licensing as a labor market force impacting nearly 1100 occupations, the variation in licensing laws from state to state and occupation to occupation, and the effect of leaving the current circuit split intact on millions of professionals.

“Speech is an essential function of Ms. Del Castillo’s career, and her words should be protected. Unlike a clinician who may diagnose a medical condition and write prescriptions, Ms. Del Castillo is merely advising her clients on healthy eating,” Furdek said. “We were pleased to prepare this brief on behalf of Professor Kleiner, and we hope the Court takes the case.”

The petition for writ of certiorari was filed in August by the Institute for Justice, a non-profit public-interest law firm. The justices will consider the petition once the October 2022 Supreme Court term begins.