THOUGHT LEADERSHIP

NEWS RELEASES   PUBLISHED: NOVEMBER 11, 2024

Husch Blackwell Petitions Supreme Court in Key Federal Jurisdiction Dispute

A TEAM OF HUSCH BLACKWELL APPELLATE LAWYERS LEADS THE FIRM'S PRO BONO ADVOCACY IN A MAJOR CASE ABOUT ACCESS TO FEDERAL COURTS.

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Husch Blackwell has filed a petition for writ of certiorari with the United States Supreme Court on behalf of a Wisconsin mother after a county child welfare agency took away one of her children and, as the mother maintains, violated her constitutional rights in the process.

After regaining custody of her child, the mother, Michelle Gilbank, filed a lawsuit in the Western District of Wisconsin against the agencies and officials involved in the taking, arguing they violated her federal constitutional rights to due process and against unlawful search and seizure. The district court held that it lacked subject-matter jurisdiction over the case under the *Rooker-Feldman* doctrine, which stops lower federal courts from reviewing certain state judgments. The court's theory was that Gilbank was appealing the original state-court custody decision—a challenge that should have been brought in the Wisconsin state appellate court, not a federal court. Of course, that made little sense: Gilbank had no interest in changing the custody arrangement, because by the time she filed her federal lawsuit, she already had her child back. Instead, she was seeking damages for unconstitutional acts committed by the local child welfare officials.

Gilbank then filed an appeal with the Seventh Circuit, at which point Husch Blackwell was recruited by the court to represent her pro bono. The Seventh Circuit decided *sua sponte* to rehear the case *en banc*, and the 11-judge panel

ultimately split 6-5 against our client and affirmed the lower court's dismissal. The Seventh Circuit's fracture tracks an existing and entrenched circuit split about the scope of the *Rooker-Feldman* doctrine. All members of the *en banc* Seventh Circuit expressly agreed there is a need for the U.S. Supreme Court to clarify application of the doctrine.

The Husch Blackwell cert petition, filed in October 2024, uses the existing circuit split to press forward Ms. Gilbank's case, but the central question for the Supreme Court to decide—what is the scope of the *Rooker-Feldman* doctrine?—is one with wide-ranging interest throughout the legal community. As noted in the petition, the doctrine is deployed in "tens of thousands of circuit and district court decisions." And defining its proper scope is thus of tremendous significance for the thousands of civil-rights plaintiffs who file lawsuits against government officials each year. Applied too broadly, the *Rooker-Feldman* doctrine unlawfully denies those plaintiffs their right to a federal forum to adjudicate their federal claims.

"We're petitioning the court because we believe the Seventh Circuit wrongly ended Ms. Gilbank's case, and because her case has the potential to dispel the substantial confusion about the *Rooker-Feldman* doctrine's proper scope," said Joseph Diedrich, the Husch Blackwell attorney leading the firm's representation and serving as the counsel of record. "We believe this case provides the Justices with an excellent vehicle to resolve an important question of federal jurisdiction and to provide thousands of plaintiffs with a measure of certainty that their claims will be heard by a federal court."

The Supreme Court is expected to decide whether to grant certiorari in late 2024 or early 2025.

In addition to Diedrich, the Husch Blackwell team includes Michael Raupp, Michael Klebanov, Kirsten Atanasoff, Clayton Buckner, Tanner Cook, AJ Fabianczyk, and Alyssa LeRoy.