

NEWS RELEASES

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

JOSEPH S. DIEDRICH
MADISON:
608.258.7380
WASHINGTON:
202.378.2300
JOSEPH.DIEDRICH@
HUSCHBLACKWELL.COM

JULIA BONESTROO
BANEGAS
WASHINGTON:
202.378.2317
JULIA.BANEGAS@
HUSCHBLACKWELL.COM

MADELINE TOWNSLEY
ST. LOUIS:
314.480.1994
MADELINE.TOWNSLEY@

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

Husch Blackwell wrote and filed an amicus curiae brief on behalf of Professor Morris Kleiner, one of the preeminent scholars studying occupational licensing for over two decades, urging the U.S. Supreme Court to grant certiorari in *Elizabeth Brokamp v. Letitia James, Attorney General of New York, et al.* The case asks whether states may, consistent with the First Amendment, impose occupational-licensing requirements on talk therapists.

Dr. Elizabeth Brokamp is a Virginia-licensed professional counselor with more than 20 years of experience. She talks with her clients about their feelings, relationships, and other aspects of their lives, but does not diagnose conditions, prescribe medication, or provide other medical services beyond talk therapy. During the COVID-19 pandemic, teletherapy led by counselors like Dr. Brokamp became a commonplace way to deliver in-demand therapy—including across state lines. Even as the pandemic receded, teletherapy's popularity remained. But many states require an onerous license for a therapist in one state to talk to a client in another state. New York is one such state, although it temporarily waived its requirement during the pandemic.

During the pandemic, teletherapy allowed Dr. Brokamp and her clients to continue speaking virtually. This was the case even when one of her clients moved to New York, given the state's waiver of its licensing requirement. However, her ability to continue conversing with that patient was at the sole mercy of the pandemic's duration. Once that waiver was lifted, by speaking to New Yorkers without a New York license, counselors like Dr. Brokamp engaging in talk therapy could again face felony prosecution. This reality left Dr. Brokamp to question why such licensing requirements are necessary in the first place. In her lawsuit, Dr. Brokamp argues that professional counselors

and their clients should not need the gravity of a global pandemic to enjoy the many benefits of teletherapy.

Husch Blackwell's brief, written by attorneys Rebecca Furdek, Joseph Diedrich, Julia Banegas, and Madeline Townsley on a pro bono basis, presents extensive empirical evidence to explain why Dr. Brokamp's case is important and deserving of the Court's review. That evidence contextualizes the magnitude of occupational licensing as a major labor force impacting millions of Americans, the labyrinth of varying licensing laws across states and occupations, and the practical impact of inconsistent laws on the lives of so many professionals and the clients they serve.

"Speech is an essential function of Ms. Brokamp's career, and her words should be protected regardless of her or her client's zip code," Furdek said. "The First Amendment should apply equally in Virginia, New York, and every other state. 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 October by the Institute for Justice, a non-profit public-interest law firm. The U.S. Supreme Court will consider the petition in January 2024.