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Husch Blackwell Prevails in Key Social Media First Amendment Case

In a closely watched First Amendment case, Husch Blackwell secured a federal appeals court victory for Missouri state representative Cheri Toalson Reisch when the U.S. Court of Appeals for the Eighth Circuit reversed a lower court's decision that Rep. Toalson Reisch violated the plaintiff's rights by blocking him and others from her Twitter account.

The case arose from a tweet by Rep. Toalson Reisch, criticizing her opponent during the campaign for the Missouri House seat. After users posted dozens of Twitter comments, Rep. Toalson Reisch blocked a number of users, including the plaintiff. He sued, alleging that Rep. Toalson Reisch violated his First Amendment rights. The case turned on whether the Twitter blocking was done "under color of state law," which is required to trigger the First Amendment. Following a bench trial, the district court ruled it was and that Rep. Toalson Reisch's blocking violated the First Amendment.

In mounting an appeal to the Eighth Circuit, the Husch Blackwell team argued that Rep. Toalson Reisch's activity on Twitter was her own personal campaign speech, not state action. In a 2-1 decision, the Eighth Circuit agreed, finding that Reisch's Twitter account was not used for "official governmental activity," but rather was a type of private discourse "akin to a campaign newsletter...and so it's Reisch's prerogative to select her audience and present her page as she sees fit." As the Court explained, Rep. Toalson Reisch's "own First Amendment right to craft her campaign materials necessarily trumps Campbell's desire to convey a message on her Twitter page that she does not wish to convey...."

"We believe the Court correctly focused on the state action element of the First Amendment analysis" said Husch Blackwell partner Lowell Pearson.

"Importantly, the Court recognized that elected officials have free-speech rights to conduct campaign activity, as Rep. Toalson Reisch did here."

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The Husch Blackwell team was led by Pearson and Michael Raupp.