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Justia Opinion Summary

Plaintiff filed suit alleging that the Psychologists' Licensing Act, Tex. Occ. Code Ann. 501.001 - 501.505, violates the First and Fourteenth Amendments. The district court denied plaintiff's claim. The court agreed that Section 501.003(b) (1), under which "[a] person is engaged in the practice of psychology" if she represents herself "to the public by a title or description of services that includes the word 'psychological,' 'psychologist,' or 'psychology,'" is unconstitutional as applied to speech on her political campaign website. In this case, plaintiff's

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campaign statements are entitled to full First Amendment protection where her speech on her campaign website was far removed from the context of professional speech and she was not providing advice to any particular client but communicating with the voters at large, so the professional speech doctrine is inapplicable. The court also concluded that the inclusion of “psychologist” on the website was not commercial speech, and therefore the decisions involving a state’s legitimate power to restrict the use of titles in the commercial context are inapplicable. Therefore, because the state’s interest in proscribing misleading speech is limited in the political context, and because the Board’s goal of preventing deception can be served by other means, Section 501.003(b)(1) is unconstitutional as applied to plaintiff. The court declined to address plaintiff's overbreadth argument in regard to (b)(1), because that subsection is invalid as applied to her, but the court agreed with her that Section 501.003(b)(2) is overbroad. Accordingly, the court affirmed in part, reversed in part, and remanded.

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