No. 25-948

In the Supreme Court of the United States

UPSOLVE, INC., ET AL.,
Petitioners,

v.

LETITIA JAMES,
Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND QUEST FOR JUSTICE, LLC, IN SUPPORT OF PETITIONERS

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IDENTITY AND INTEREST OF AMICI CURIAE[1]

Pacific Legal Foundation (PLF), a nonprofit law firm, has defended individual liberty since 1973—including many appearances before this Court, both at the petition and merits stages. PLF has a special interest in protecting the right to speak in professional and volunteer settings, whether that be mural painters seeking to promote their artwork,[2] musicians trying to earn extra income doing what they love,[3] or doctors sharing life-saving information with patients via telehealth services. Indeed, the fate of several PLF clients—both patients and telehealth providers—may turn on the outcome in this case. *See* Opinion, *MacDonald v. Sabando*, No. 23-cv-23044, 2025 WL 1367443, Dkt. No. 34 (D.N.J. May 12, 2025) (relying on similar reasoning as the Second Circuit below to uphold New Jersey's ban on out-of-state practitioners meeting with in-state patients via telehealth) (appeal pending).

Quest for Justice, LLC, is a legal technology company that develops software tools to help pro se litigants navigate civil proceedings. The company builds

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[1] Pursuant to Rule 37.2, counsel for all parties received notice of intent to file this brief at least ten days prior to the due date. Pursuant to Rule 37.6, Amici Curiae affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] *Tilt Vision Studios, LLC v. City of Waller*, No. 4:23-cv-03864 (S.D. Tex. July 26, 2024).

[3] *Barilla v. City of Houston*, No. 4:20-CV-00145 (S.D. Tex. Jan. 15, 2020).

tools to help users evaluate whether they may have a viable claim or defense, understand how to enforce their rights, generate demand letters and court documents, and complete related tasks such as filing, service, and evidence organization. These tools are designed for individuals handling common civil matters, including small claims disputes and consumer-related issues, who cannot afford traditional legal services but nevertheless need reliable guidance to assert and protect their rights.

Quest for Justice has a substantial interest in this case. Millions of Americans appear in civil courts each year without counsel, especially in lower-value disputes. Yet unauthorized-practice-of-law rules often restrict the ability of technology providers to offer tools that help users understand how legal rules and court procedures apply to their circumstances, even when the tools are intended only to assist individuals in navigating standard processes and completing routine forms. Consequently, Quest for Justice has had to limit the scope of assistance its software can provide to pro se litigants, even in routine matters where guided tools could improve their ability to understand and participate in the legal system.

Quest for Justice's experience illustrates the practical consequences of rules that restrict the provision of legal guidance to pro se individuals. Those involved in legal disputes often do not seek abstract descriptions of legal doctrine; they seek assistance in understanding how legal rules apply to their own circumstances and what steps they may take to protect their rights. Quest for Justice's technology facilitates that individualized communication by translating legal rules and procedures into accessible questions and ex-

planations tailored to a user's situation. When unauthorized-practice-of-law rules prohibit even limited forms of individualized legal guidance, they restrict the flow of information that pro se litigants seek. Quest for Justice can offer valuable insight on the impact of such laws that will assist the Court's review of this petition.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is about more than the right of Upsolve to share simple legal advice. It is also about the rights of pro se defendants to seek and receive that advice. For decades, this Court has recognized that the First Amendment protects the right to receive information. Yet this essential companion to the right to speak often gets forgotten, resulting in a lopsided jurisprudence that discounts the rights and interests of listeners. This case is but one example.[4]

[4] This Court should not hesitate to consider the right to receive information even though no pro se defendants appear as plaintiffs in this action. This Court has often addressed the right to receive information where only speakers were the parties before the Court. *See, e.g.*, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339 (2010) (in a case brought by a speaker, this Court weighed "[t]he right of the citizens to inquire, to hear, to speak, and to use the information"); *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 503 (1996) (in a case brought by liquor retailers, this Court struck down restrictions on liquor price information because they "deprive consumers of accurate information"). A healthy marketplace of ideas is a key concern in First Amendment analysis, *see Virginia v. Hicks*, 539 U.S. 113, 119 (2003) (reasoning that censorship violates the First Amendment in part because it harms "society as a whole, which is deprived of an uninhibited marketplace of ideas"), so the rights of both speakers and listeners are ever intertwined.

Here, the legal system drops debt defendants into a twisting legal landscape alone, but New York criminalizes those who would offer them a map. The Second Circuit declined to apply strict scrutiny to New York's broad unauthorized-practice-of-law (UPL) statute in part because it only looked at one side of the First Amendment coin when it held that the UPL statute is content-neutral. Considering the UPL statute through the lens of the pro se defendants seeking legal advice underscores the content-based nature of the law.

PLF has encountered this same error in its own First Amendment work. In *MacDonald v. Sabando*, PLF represents physician Shannon MacDonald and her patient in a First Amendment challenge to New Jersey's law banning out-of-state practitioners from offering medical advice to in-state patients via telehealth. Dr. MacDonald, a specialist in a unique form of cancer therapy and based in Massachusetts, cannot consult with her pediatric cancer patient Jun Abell in New Jersey using telehealth means (such as a Zoom call), which is a serious impediment to Jun's ongoing care.

Nevertheless, a federal district court in the Third Circuit upheld this burden on her right to speak and her patient's right to listen on the same grounds as the Second Circuit here—that the telehealth ban is content-neutral. 2025 WL 1367443, at *13, Dkt. No. 34 (slip op. at 26) (D.N.J. May 12, 2025). As with the Second Circuit, the federal district court did not consider the patient's right to receive information vital to his well-being and survival, an omission that contributed to the erroneous holding. That holding is now on appeal, *see MacDonald v. Shah*, No. 25-2090 (3d Cir.),

and this Court's decision on this petition may have serious consequences for Jun's health.

This Court should grant review to correct this error and address how listeners' rights can help resolve the often confounding distinction between content-based and content-neutral laws.

ARGUMENT

I. Listeners' Rights

"[T]he right to hear and the right to speak are flip sides of the same coin." *Conant v. Walters*, 309 F.3d 629, 643 (9th Cir. 2002) (Kozinksi, J., concurring). This right to hear is independent of the speaker's right to speak. For example, in *Lamont v. Postmaster General*, 381 U.S. 301 (1965), this Court addressed a statute requiring the postal service to seize incoming foreign mail deemed "communist political propaganda," to be released only upon the addressee's request. *Id.* at 302. The postal service had seized a pamphlet called the "Peking Review #12," addressed to Mr. Lamont, who sued claiming a First Amendment injury. *Id.* at 304. Even though the foreign correspondent lacked a constitutionally protected free speech right, this Court held that Lamont had an independent First Amendment right as a listener. *See id.* at 305 ("We conclude that the Act as construed and applied is unconstitutional because it requires an official act . . . as a limitation on the unfettered exercise of the addressee's First Amendment rights.").

The concurrence elaborated: "The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only

sellers and no buyers." *Id.* at 308 (Brennan, J., concurring). *Lamont* and similar cases indicate that a listener's right to receive information is not a conditional right that exists only when there is a corollary and actionable right to speak. *See, e.g.*, *Kleindienst v. Mandel*, 408 U.S. 753, 765 (1972) (recognizing that plaintiffs' First Amendment right to listen was implicated when the government denied a noncitizen journalist's visa application to visit for a speaking tour). Thus, a holding that a speaker's rights may be subject to regulation does not resolve the separate question whether the regulation impairs the listener's right to receive.

Indeed, in certain contexts, the rights and interests of listeners may exceed those of the speaker. In *Conant*, for instance, the Ninth Circuit addressed a case involving a federal prohibition on doctor recommendations that patients use medical marijuana. While the majority only mentioned in passing the patients' right to receive such recommendations, Judge Kozinski's concurrence argued that patients suffered the greater First Amendment injury:

> [I]t is perfectly clear that the harm to patients from being denied the right to receive candid medical advice is far greater than the harm to doctors from being unable to deliver such advice. While denial of the right to speak is never trivial, the simple fact is that if the injunction were denied, the doctors would be able to continue practicing medicine and go on with their lives more or less as before. It is far different for patients . . . .

309 F.3d at 643-44 (Kozinski, J., concurring). This insight applies well to PLF's own telehealth clients like

Jun Abell, whose life-saving cancer care depends on medical advice from an out-of-state physician who cannot meet with Jun or his parents via telehealth. *See* Brief of the Appellants, *MacDonald v. Shah*, No. 25-2090, Dkt. No. 13 (3d Cir. Aug. 11, 2025). From the perspective of the right to listen, a patient receiving personalized medical advice has a far more poignant interest in regulated speech compared to someone who hears a knock from a door-to-door solicitor or passersby who see a picket line on their route home.[5] *See* Ethan Blevins, *Listening to the Listeners: A Patient's Right To Receive Information via Telehealth*, 32 Geo. Mason L. Rev. 557, 571 (2025).

Like the patients in *Conant* and Jun Abell in *MacDonald*, the pro se defendants that Upsolve seeks to serve here have a heightened First Amendment interest. For example, Plaintiff Reverend Udo-Okon receives requests for legal assistance from his community, including for debt-collection actions. *Upsolve, Inc. v. James*, 604 F.Supp.3d 97, 105 (S.D.N.Y. 2022). He entered into the record a petition of over 100 signatures of community members who would like to receive free legal advice from him on such topics. *Upsolve*, 155 F.4th 133, 138 (2d Cir. 2025). While Upsolve volunteers' speech rights are implicated by New York's UPL statute, the pro se defendants' rights to receive that information suffer the most, especially given the nonfinancial motives of the speakers.

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[5] It is noteworthy, however, that even in such contexts where the listeners' interests seem remote, this Court has insisted that those interests retain First Amendment protection. *See Martin v. City of Struthers*, 319 U.S. 141, 143 (1943) (recognizing the right to receive information from uninvited door-to-door solicitors).

Yet those rights receive no mention from the Second Circuit. The Second Circuit is not alone. Courts addressing similar laws governing what may be said between professionals and clients routinely fail to consider the rights of listeners.[6] This Court should grant the petition to address this blind spot. In particular, this Court should consider how the interests of listeners affect the First Amendment analysis in one-on-one personalized communication solicited by the listener.

II. Knowledge and Paternalism

The right to receive information has special salience given regulators' appetite for controlling access to information to influence behavior and protect the populace from themselves. This worrying trend warrants this Court's attention: "One of the most dangerous powers of any government, democratic or despotic, is the power to foreclose knowledge from affecting decisions." Thomas Sowell, *Basic Economics: A Citizen's Guide to the Economy* 94 (2004 ed.). The First Amendment's protection of the right to receive information plays a key role in reining in that power.

Planners and regulators have often thought to keep the public in the dark for their own good or for the good of others. This babyproofing of the mind takes many forms. In the professional-client context, patients may face serious barriers to what information they can seek, such as telehealth laws that prohibit

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[6] *See, e.g.*, *Chiles v. Salazar*, 116 F.4th 1178 (10th Cir. 2024); *Tingley v. Ferguson*, 47 F.4th 1055 (9th Cir. 2022). Even courts holding that such laws tread on First Amendment freedoms often focus exclusively on the rights of the speaker alone. *See, e.g.*, *Hines v. Pardue*, 117 F.4th 769 (5th Cir. 2024); *Otto v. City of Boca Raton*, 41 F.4th 1271 (11th Cir. 2022).

patients with life-threatening or rare conditions seeking advice from out-of-state specialists. *See* Blevins, *supra*, at 559-61. Other laws control what truthful information consumers can hear about products and services, such as laws restricting truthful advertising about sports gambling, Ohio Admin. Code 3775-16-08(B)(5), legal abortion services, NRS 202.200, or the benefits of hemp, 410 ILCS 705/55-20(a)(3).

Laws do not only restrict a speaker from spreading certain information, but some also restrict a listener from even requesting information. For instance, the City of Seattle adopted a 2018 ordinance that prohibited landlords from asking for rental applicants' criminal history, which the Ninth Circuit invalidated under the First Amendment. *See Yim v. City of Seattle*, 63 F.4th 783 (9th Cir. 2023). Similar examples abound, such as laws that bar employers from asking about salary history, Cal. Lab. Code § 432.3(b), or insurers from asking about family medical history, 410 ILCS 513/20(a).

"The First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good." *44 Liquormart*, 517 U.S. at 503. Such laws reflect a lack of faith in both an informed populace and "our law and tradition that more speech, not less, is the governing rule." *Citizens United*, 558 U.S. at 361. Yet regulators, rather than fighting error by spoiling the populace with more information, restrict knowledge and thus rob citizens of the opportunity and responsibility to discern truth from error and use true information in a wise manner. *See Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) ("the best test of truth is the power of the

thought to get itself accepted in the competition of the market").

The UPL statute here follows this pattern. It assumes that regulators, rather than those in need of legal advice, know best how to go about learning what they need to know.

> There is, of course, an alternative to this highly paternalistic approach. That alternative is to assume that this information is not in itself harmful, that people will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them.

Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, 425 U.S. 748, 770 (1976).

Of course, information—like any powerful tool—can be dangerous if misused. People might follow bad advice or use their knowledge to harm others or themselves. Pro se defendants who seek legal advice from nonlawyers or an AI chatbot might act on bad advice.[7] But limiting who they may speak with on these topics to a select few whom they cannot afford to pay is like blocking a drowning man from seizing a life ring because it wasn't thrown by a licensed lifeguard. Even so, if the choice between no information or misused information seems fraught, courts can still rest easy, because the choice is out of their hands: "It is precisely

[7] New York looks poised to close off AI as an alternative avenue for pro se defendants in need of help as well. *See* Keely Quinlan, *New York considers bill that would ban chatbots from giving legal, medical advice*, Statescoop (Mar. 3, 2026), https://tinyurl.com/54a9mfd9.

this kind of choice, between the dangers of suppressing information, and the dangers of its misuse if it is freely available, that the First Amendment makes for us." *Ibid.* Pro se defendants have a right to receive legal advice. The UPL statute's relationship to that right is an important issue with implications for similar paternalistic laws that seek to curate the mind.

III. Content Neutrality Through the Listeners' Lens

The Second Circuit erred when it held that the UPL statute is a content-neutral speech regulation. The petition ably points this out under core First Amendment precedent, but examining the holding through the lens of listeners' rights underscores the error.

Here, as the Second Circuit noted, nonlawyers remain free under the UPL statute to give generalized legal advice, such as by publishing books or guides. Only one-on-one communication of such advice is prohibited. Yet it is this one-on-one context in which the listener's interests and rights are most poignant. *See* Blevins, *supra*, at 570-72. A listener has a stronger interest in direct, personalized communication, for which the specific speaker was sought out, than in generalized speech directed at a general audience. *See ibid.*

Ironically, it is this very distinction between generalized information and personalized information that the Second Circuit relied on to *reduce* First Amendment protections. According to the Second Circuit, the UPL statute's focus on one-on-one communication still left speakers free to speak on any legal topic they wished, such as by writing a book or giving a presentation, so long as it was not personalized advice to a specific client. *See Upsolve*, 155 F.4th at 143. This is

an incorrect application of law regarding content-based speech restrictions, but it also inverts the rights and interests of listeners, protecting them least where their interests are greatest.

A focus on the listener demonstrates why the UPL statute is content-based. When members of Reverend Udo-Okon's congregation approach him to ask for his help with a legal problem, they are not approaching him to shoot the breeze on any topic that comes to mind—they are seeking specific content: legal advice. General legal advice in the form of a book or guide, which the law allows, differs from specific legal advice in a one-on-one context, but people seeking advice can only access the former, not the latter.

This is a classic content-based distinction because personalized, face-to-face communication has fundamentally different content than a book, presentation, or guide. Consider, for example, *Kleindienst*, 408 U.S. 753, another listeners' rights case, in which professors sued the State Department for rejecting the visa application of a foreign journalist named Ernest Mandel, who'd been invited to the United States to speak at several academic conferences. Although the plaintiffs' challenge failed thanks to the unique foreign-policy context, the Supreme Court rejected the government's argument that listeners' rights were not implicated because the plaintiffs could still access Mandel's ideas through his books, audio recordings, or telephone. *Id.* at 765. The Court explained that "[t]his argument overlooks what may be particular qualities inherent in sustained, face-to-face debate, discussion and questioning." *Ibid.*

While *Kleindienst* did not directly involve a dispute over content neutrality,[8] this Court has since incorporated similar reasoning into its content-neutrality caselaw. For instance, in *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), the Court addressed an ordinance prohibiting certain residential signs. The Court rejected the city's contention that the ordinance was just a time, place, and manner restriction because "[d]isplaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means." *Id.* at 56. The context in which the speech takes place can affect content.

This insight is even more poignant when comparing a generalized book or presentation on a topic to a face-to-face, personalized conversation. Indeed, the entire purpose of Upsolve's strategy is to fill a gap in the information ecosystem that a book or guide cannot fill. No book will tell pro se defendants how they specifically should complete the relevant form that accompanies these actions. People are not asking Reverend Udo-Okon to write a guide about debt-collection actions for their reading pleasure—they are asking him for advice about their unique circumstances.

Pro se defendants seek content that the UPL statute forbids, content that they have a First Amendment right to receive. Therefore, the UPL statute must survive the full burden of strict scrutiny as a content-based speech restriction. This Court should grant the petition to address how listeners' rights can

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[8] When *Kleindienst* was decided, the now familiar distinction between content-neutral and content-based laws was only three-days old. *See Police Dep't of City of Chicago v. Mosley*, 408 U.S 92 (1972).

inform the often confounding distinction between content-neutral and content-based expression.

CONCLUSION

Pro se defendants have a right to ask for help in dealing with their legal troubles, and the people able and eager to help them have a right to give the answer. This Court should grant the petition.

Respectfully submitted,

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