

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Upsolve, Inc. v. James

Upsolve · No. 22-1345 · Decided September 9, 2025

SUMMARY

This Second Circuit opinion addresses a pre-enforcement challenge by a nonprofit and a pastor against New York’s unauthorized practice of law statutes, which prohibit nonlawyers from providing individualized legal advice. The district court granted a preliminary injunction, ruling that the statutes constituted a content-based regulation of speech subject to strict scrutiny under the First Amendment. The appellate court agreed that the statutes regulate speech but held they are content-neutral, thus applying intermediate scrutiny instead. Consequently, the court vacated the preliminary injunction and remanded the case for further proceedings consistent with this holding.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Richard J. Sullivan; Jon O. Newman? No; José A. Cabranes? No; Peter W. Hall? No; Guido Calabresi? No; Reena Raggi? No; Gerard E. Lynch? No; Raymond J. Lohier, Jr.? No; Dennis Jacobs? No; Debra Ann Livingston? No; Richard C. Wesley? No; Robert D. Sack? No; Christopher F. Droney? No; Michael H. Park? No; Alison J. Nathan? No; Joseph F. Bianco? No; Steven J. Menashi? No; Eunice C. Lee? No; Gary R. Brown? No; Sarah A. L. Merriam; Jesse M. Furman? No; Leval; Sullivan; Merriam
JURISDICTION	United States Court of Appeals for the Second Circuit
DECIDED	September 9, 2025
DOCKET	22-1345
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Attorney General appealed from an order of the United States District Court for the Southern District of New York granting plaintiffs a preliminary injunction in their pre-enforcement First Amendment challenge to New York’s unauthorized-practice-of-law statutes.
STANDARD OF REVIEW	Standing is reviewed de novo. A grant or denial of a preliminary injunction is reviewed for abuse of discretion, including errors of law and clearly erroneous factual findings.

PRECEDENTIAL VALUE	published and precedential
PARTIES	Letitia James, in her official capacity as Attorney General of New York v. Upsolve, Inc., Reverend John Udo-Okon

TOPICS

free speech first amendment standing injunctions civil procedure

PRACTICE AREAS

constitutional law civil rights civil procedure professional licensing consumer protection

QUESTIONS PRESENTED

1. Whether plaintiffs had standing to bring a pre-enforcement First Amendment challenge to New York's unauthorized-practice-of-law statutes.
2. Whether the statutes, as applied to plaintiffs' planned communication of individualized legal advice, regulate speech.
3. Whether that speech regulation is content based and therefore subject to strict scrutiny, or content neutral and therefore subject to intermediate scrutiny.
4. Whether the district court abused its discretion by applying strict scrutiny in granting a preliminary injunction.

HOLDINGS

1. Plaintiffs had standing because they intended to engage in conduct arguably protected by the First Amendment, their intended conduct was arguably proscribed by the UPL statutes, and they faced a sufficiently imminent and credible threat of prosecution.
2. As applied to plaintiffs' planned communication of individualized legal advice, New York's UPL statutes regulate speech rather than merely conduct that incidentally burdens speech.
3. The UPL statutes are content neutral as applied to plaintiffs because they regulate speech based on its purpose, focus, and circumstance—not the topic, viewpoint, or message expressed.
4. The district court abused its discretion by applying strict scrutiny instead of intermediate scrutiny; the preliminary injunction therefore had to be vacated and the matter remanded.

KEY QUOTATIONS

“We agree with the district court that New York’s UPL statutes, as applied to Plaintiffs, constitute a regulation of speech. Nevertheless, we hold that such regulation is content neutral and thus subject only to intermediate scrutiny.” (at 4)

“Because the district court concluded that the UPL statutes are content based and applied strict scrutiny, we conclude that the district court committed an error of law and thus abused its discretion in granting a preliminary injunction.” (at 22)

FACTUAL BACKGROUND

Upsolve, a nonprofit, planned to train nonlawyer Justice Advocates, including Reverend John Udo-Onkon, to provide free individualized legal advice to New Yorkers defending debt-collection actions and completing a state check-the-box answer form. New York law prohibits nonlawyers from providing individualized legal advice and authorizes civil and criminal penalties for unauthorized practice of law. Plaintiffs intended to advise clients whether to answer, how to complete the form, and how to file and serve it. Udo-Onkon submitted evidence that community members sought such advice and that 114 people expressed interest in receiving free legal advice from him.

PROCEDURAL HISTORY

Upsolve and Reverend John Udo-Onkon sued to prevent enforcement of New York's unauthorized-practice-of-law statutes against a planned program in which trained nonlawyers would provide individualized advice about responding to debt-collection lawsuits. The district court held that plaintiffs were likely to succeed because the statutes, as applied, imposed a content-based speech restriction that failed strict scrutiny, and it entered a preliminary injunction. The Second Circuit held that the statutes regulate speech but are content neutral, vacated the injunction, and remanded for application of intermediate scrutiny and reconsideration of the remaining preliminary-injunction factors.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the preliminary injunction and remand for the district court to apply intermediate scrutiny in evaluating likelihood of success and to reconsider whether irreparable harm, the public interest, and the balance of the equities support a preliminary injunction.

CASES CITED

- *Cacchillo v. Insmmed, Inc.*, 638 F.3d 401, 404 (2d Cir. 2011)
- *We the Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 279-80 (2d Cir. 2021)
- *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021)
- *Green Haven Prison Preparative Meeting of Religious Soc'y of Friends v. N.Y. State Department of Corrections & Community Supervision*, 16 F.4th 67, 78 (2d Cir. 2021)
- *Clapper v. Amnesty International USA*, 568 U.S. 398, 409, 414 n.5 (2013)
- *National Organization for Marriage, Inc. v. Walsh*, 714 F.3d 682, 689 (2d Cir. 2013)
- *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159, 162 (2014)
- *Cerame v. Slack*, 123 F.4th 72, 81 (2d Cir. 2024)
- *Cayuga Nation v. Tanner*, 824 F.3d 321, 331 (2d Cir. 2016)
- *Upsolve, Inc. v. James*, 604 F. Supp. 3d 97, 106 (S.D.N.Y. 2022)
- *Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010)

- *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008)
- *Agudath Israel of America v. Cuomo*, 983 F.3d 620, 637 (2d Cir. 2020)
- *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)
- *Slattery v. Hochul*, 61 F.4th 278, 287 n.1 (2d Cir. 2023)
- *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010)
- *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011)
- *Bartnicki v. Vopper*, 532 U.S. 514, 527 (2001)
- *Billups v. City of Charleston*, 961 F.3d 673, 683 (4th Cir. 2020)
- *Hines v. Pardue*, 117 F.4th 769, 777-78 (5th Cir. 2024)
- *National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755, 768, 773 (2018)
- *Thomas v. Collins*, 323 U.S. 516, 536 (1945)
- *City of Austin v. Reagan National Advertising of Austin, LLC*, 596 U.S. 61, 72-74 (2022)
- *Brokamp v. James*, 66 F.4th 374, 392-93 (2d Cir. 2023)
- *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 520 U.S. 180, 189 (1997)
- *Richwine v. Matuszak*, 2025 WL 2476656, at *6-7 (7th Cir. Aug. 28, 2025)
- *In re Rowe*, 80 N.Y.2d 336, 341-42 (1992)
- *El Gemayel v. Seaman*, 72 N.Y.2d 701, 706 (1988)
- *Sussman v. Grado*, 746 N.Y.S.2d 548, 552-53 (Dist. Ct. Nassau Cnty. 2002)