



September 15, 2025

**VIA ECF**

**Michael B. de Leeuw**

Direct Phone 212-908-1331

Direct Fax 646-461-2090

mdeleeuw@cozen.com

Catherine O'Hagan Wolfe  
Clerk of Court  
United States Court of Appeals for the Second  
Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

**Re: Council for Responsible Nutrition v. James, No. 24-1343**

Dear Ms. Wolfe:

We represent Appellant, Council for Responsible Nutrition (“CRN”), in this fully-briefed and argued appeal. CRN respectfully submits *Upsolve, Inc. v. James*, No. 22-1345, 2025 WL 2598725 (2d Cir. Sept. 9, 2025) as supplemental authority pursuant to FRAP 28(j). This Court’s decision in *Upsolve* supports reversal of the District Court’s denial of CRN’s request for a preliminary injunction enjoining the NYAG’s enforcement of N.Y. Gen. Bus. Law §391-oo (the “Act”).

*Upsolve* involved appellate review of the district court’s grant of a preliminary injunction in an as-applied First Amendment challenge to a New York law prohibiting non-attorneys from engaging in the “unlawful practice of law.” In *Upsolve*, this Court first considered whether the statute regulated speech or conduct—the inquiry before this Court in this case. Quoting *Holder v. Humanitarian L. Project*, 561 U.S. 1 (2010), a case CRN cited in its briefing, the *Upsolve* court considered whether “the conduct triggering coverage under the statute consists of communicating a message.” *Upsolve*, 2025 WL 2598725, at \*5. The *Upsolve* court found that the statute regulated communication of legal advice, *i.e.*, “the creation and dissemination of information [qualifying as] speech within the meaning of the First Amendment.” *Id.* The court rejected the NYAG’s argument that the statute prohibited only “the *conduct* of applying legal knowledge ... to *generate* legal counsel,” finding dispositive that the prohibition applied not when the non-lawyer “formulated legal advice in their own minds,” but only when they sought to *communicate* the legal advice to a client. *Id.* On that point, this Court quoted the Fifth Circuit’s recent decision in *Hines v. Pardue*, 117 F.4<sup>th</sup> 769 (5<sup>th</sup> Cir. 2024)—a case CRN brought to this Court’s attention (Dkt. #62). As in *Hines*, the *Upsolve* court held that where a “regulation *only* kicked in” when the plaintiff was communicating a message, the statute “regulate[s] speech.” *Upsolve*, 2025 WL 2598725, at \*5 (quoting *Hines*, 117 F.4<sup>th</sup> at 778). This supports CRN’s position that the Act regulates speech, as its prohibitions only “kick in” when certain speech, namely a specific marketing message, is being conveyed to consumers. See Appellant’s Br. at 23-32.

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Respectfully submitted,

COZEN O'CONNOR

*/s/ Michael de Leeuw*

By: Michael B. de Leeuw

cc: All Counsel (via ECF)