IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

SOUTH CAROLINA STATE CONFERENCE OF THE NAACP; MARVIN NEAL; ROBYNNE CAMPBELL; DE'ONTAY WINCHESTER,

Plaintiffs,

v.

ALAN WILSON, in his official capacity as Attorney General of South Carolina,

Defendant.

Case No. 2:23-cv-01121-DCN

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

South Carolina has one of the highest eviction rates in the country. It also has one of the worst access-to-justice gaps in the country, with most residents unable to secure the legal assistance they need in civil proceedings. Plaintiffs—the South Carolina State Conference of the NAACP and several of its members—are eager to address these dual crises by training and serving as nonlawyer volunteers who can connect with South Carolinians facing eviction proceedings and provide three specific pieces of guidance about the law: 1) to request a hearing on their eviction actions, 2) how and when to request that hearing, and 3) whether to raise certain straightforward defenses to the eviction proceeding. This guidance will help them access the courts and, ultimately, avoid the life-altering consequences of eviction. As underscored by the recent South Carolina Legal Needs Assessment, there is an acute need for this assistance. Plaintiffs stand ready and are eager to help meet this need.

There is just one thing standing in the way: South Carolina's broad prohibition on the unauthorized practice of law (UPL). "No person may . . . practice law" in South Carolina without being a lawyer, S.C. Code Ann. § 40-5-310 (2009), and the South Carolina Supreme Court has interpreted that restriction to prohibit nonlawyers from providing even basic guidance about the law, such as explaining the instructions on a legal form or pointing to language in a contract. These unusually broad restrictions are enforced with an unusually severe penalty: South Carolina makes UPL a felony punishable by up to five years' imprisonment. As a result, Plaintiffs cannot provide even free, accurate, and

carefully circumscribed advice to tenants facing eviction without risking felony prosecution.

As applied to Plaintiffs, South Carolina's UPL restrictions violate the First Amendment by criminalizing speech and associational activity that seeks to secure meaningful access to the courts. Plaintiffs do not argue that the UPL regime is unconstitutional on its face, but the restrictions *are* unconstitutional as applied to Plaintiffs' specific proposal to provide free, accurate, and limited legal guidance to tenants facing eviction—especially where those served otherwise have few legal services available to them. The State has no significant interest that justifies this intrusion on Plaintiffs' speech and associational rights. Plaintiffs therefore are entitled to a preliminary injunction barring the State from enforcing its UPL restrictions against Plaintiffs for the free and limited legal guidance they wish to provide.

FACTS

Evictions and Access to the Courts in South Carolina. South Carolina has one of the highest eviction rates in the country, and tenants facing eviction rarely have the benefit of legal representation. Compl. ¶¶ 20–21; *see also* Chambliss Decl. ¶¶ 11–14. Despite the ceaseless work of South Carolina Legal Services—South Carolina's only statewide legal services provider—tenants are unrepresented in more than 99 percent of eviction actions in the State. Compl. ¶¶ 24, 21. The consequences of this lack of representation are severe, as South Carolina's fast-moving eviction process does not even provide for a hearing unless the tenant affirmatively requests one within a matter of days. *Id.* ¶¶ 27–30. The vast majority of tenants faced with eviction proceedings in South Carolina—most of whom are

poor and unrepresented—are evicted from their homes without any chance to present their case to a judge. *Id.* ¶ 32.

South Carolina NAACP's Efforts to Assist Individuals Facing Eviction. Since its founding in 1939, the South Carolina State Conference of the NAACP (the "South Carolina NAACP") has been a leader in efforts to ensure the political, social, educational, and economic equality of all persons and to eliminate race-based discrimination in South Carolina. This work historically has included collective action to redress unjust housing conditions and prevent evictions. Compl. ¶ 9.

Housing justice continues to be a priority for the South Carolina NAACP today, and the organization currently runs several programs aimed at assisting tenants facing eviction. Since 2020, for example, the South Carolina NAACP's Columbia Branch has operated a housing navigator program that has paired tenants with trained volunteers who have helped these tenants access services like rental assistance and legal representation. Campbell Decl. ¶ 4. And around the state, the South Carolina NAACP has worked with thousands of tenants who are behind on rent to help these tenants apply for and receive emergency rental assistance funding. Murphy Decl. ¶ 8.

The South Carolina NAACP now wishes to expand its free services to provide tenants facing eviction with limited legal guidance that will help them assert their rights in court. To this end, the South Carolina NAACP plans to train and supervise "Housing Advocates"—volunteers who are well versed in the legal process of evictions but are not lawyers. Drawing on helpful consultations with an array of South Carolina housing law experts and legal services providers, the South Carolina NAACP has created a thorough

training guide that will enable Housing Advocates to provide advice about the legal proceeding and flag certain defenses the tenant may be able to assert in court. One of South Carolina's leading eviction defense lawyers, Mark Fessler, has reviewed the training guide, provided feedback on the program, and attested to the training's accuracy, usefulness, and complementarity with existing legal services. Fessler Decl. ¶¶ 7–13. After studying the training guide and attending in-person training sessions, Housing Advocates will be well equipped to provide limited legal advice to tenants facing eviction.

Specifically, the South Carolina NAACP will train its Housing Advocates to provide three pieces of limited but critical guidance to tenants who are facing an eviction action: (1) how they should request a hearing; (2) when they should request a hearing; and (3) some limited defenses they might be able to raise at that hearing. *See* Housing Advocate Training, Exhibit A at 10–16. The first piece of advice—how to request a hearing—consists of little more than walking the tenant through the instructions on a court-issued form called the "Rule to Vacate or Show Cause." *Id.* at 10. For the second piece of advice, the Advocate will determine the amount of time remaining to request a hearing and then advise the tenant when they should request a hearing. *Id*. at 11. Finally, the Advocate will follow steps laid out in the training to determine whether the landlord provided proper notice to terminate the tenant's lease—a prerequisite to filing a court action for eviction—and, if it appears that the landlord did not do so, will advise the tenant of simple notice-based defenses that may be available to them in the eviction proceeding, while also flagging several other common defenses covered in the training. *Id.* at 11–16.

Each of these three pieces of advice is designed to work in tandem with the others to give tenants an opportunity to have a hearing, give tenants as much time as possible before that hearing to prepare—including by obtaining legal representation or by finding alternative housing—and enable tenants to defend themselves at that hearing if they cannot access a lawyer in time. And each part of this guidance is essential to achieving Plaintiffs' goal of increasing tenants' access to the courts and avoiding unjust evictions: if tenants miss their chance to request a hearing, the court will issue a default judgment and they will not be able to offer any argument in their defense; to raise arguments in their favor at that hearing, tenants also need to have some knowledge of the defenses they can raise with the court.

As a key part of its training, the South Carolina NAACP will also instruct its Advocates to help tenants access legal services providers who can offer additional advice or representation. In every conversation with tenants, Advocates will recommend that tenants contact a legal services provider and will offer to assist them in doing so. *Id.* at 1–2, 16. In addition to these general referrals, the training also flags several circumstances that would require Advocates to cease providing advice and refer the tenant directly to legal services attorneys, ensuring that Advocates are not venturing beyond the limits of their training when providing advice. *Id.* at 3 n.1, 7, 9, 11–12, 15.

Beyond the substantive limits of the Advocates' advice—its accuracy, narrow scope, and complementarity with legal services—the South Carolina NAACP has developed additional safeguards to protect the tenants the program would serve. The program is entirely free to tenants; Housing Advocates cannot accept any form of

remuneration. *Id.* at 1. Advocates must inform the tenants with whom they work that they are not lawyers and that they can provide only the advice specified in the training; and they must secure the tenants' informed consent. *Id.* at 1–2. Advocates also must perform an initial, broad check to ensure that they have no conflict or anything that would create the appearance of a conflict with helping an individual tenant. *Id.* at 2. Professor Elizabeth Chambliss, the Henry Harman Edens Professor of Law of the University of South Carolina Law School and the director of the law school's Center on Professionalism, has concluded that, "in light of the many guardrails the program establishes to protect the public, the South Carolina NAACP's effort to share limited legal advice with tenants facing eviction would provide benefits to tenants without implicating the sort of concerns that justify restrictions on the practice of law by nonlawyers." Chambliss Decl. ¶ 62.

The South Carolina NAACP urgently seeks to provide its training in order to stem the tide of unnecessary evictions. If allowed, it would immediately begin recruiting and training Advocates. It has already identified volunteers who are eager and willing to do this work. Murphy Decl. ¶ 17. Plaintiff Marvin Neal, one of the Vice Presidents of the South Carolina NAACP, has provided nonlegal advice and support to hundreds of low-income tenants facing eviction in South Carolina. Neal Decl. ¶¶ 1, 7–10. But he has observed that most tenants do not understand their legal rights in the eviction process, and he believes that he could have prevented more evictions if he had been allowed to communicate basic legal advice to tenants. *Id.* ¶¶ 11–14. He is eager to expand the scope of the advice he can provide by receiving the training and serving as a Housing Advocate as soon as possible. *Id.* ¶ 18. Plaintiff Robynne Campbell, a trained mediator, has worked to provide nonlegal

advice to tenants facing eviction as a volunteer housing navigator with the Columbia Branch of the South Carolina NAACP. Campbell Decl. ¶¶ 1, 4–5. She has been frustrated by the prohibition on providing even the most basic legal guidance to the tenants she assists, and she is eager to receive the South Carolina NAACP's training and serve as a Housing Advocate. *Id.* ¶¶ 12–17. Finally, Plaintiff De'Ontay Winchester is a licensed clinical social worker and President of the Georgetown Branch of the South Carolina NAACP, and he also has significant experience helping tenants navigate the nonlegal aspects of eviction. Winchester Decl. ¶¶ 1, 3–7. He is eager to receive the training as soon as possible in order to complement the nonlegal advice he already provides with accurate and limited legal advice. *Id.* ¶¶ 10–13. He expects that many members of the Georgetown Branch would want to receive the training and help to provide this advice to members of the community. *Id.* ¶ 14.

South Carolina's UPL Restrictions. Currently, Plaintiffs refrain from providing tenants facing eviction with any advice about their legal proceedings because of the threat of prosecution under South Carolina's sweeping and severe UPL restrictions. Neal Decl. ¶ 15; Campbell Decl. ¶ 12; Winchester Decl. ¶ 10; Murphy Decl. ¶ 12. By statute, South Carolina prohibits any person from "practic[ing] law . . . unless he is enrolled as a member of the South Carolina Bar," S.C. Code Ann. § 40-5-310 (2009), but what constitutes the practice of law is not defined by statute or court rule. The South Carolina Supreme Court has decided that it would be "neither practicable nor wise to attempt a comprehensive definition" of the unauthorized practice of law, instead choosing to determine the contours

of the unauthorized practice of law in the context of "actual case[s] or controvers[ies]." *In re Unauthorized Prac. of L. Rules Proposed by S.C. Bar*, 422 S.E.2d 123, 124 (S.C. 1992).

Through its decisions, the South Carolina Supreme Court has adopted an overly broad interpretation of UPL that sweeps in the limited legal advice that Plaintiffs wish to provide. Chambliss Decl. ¶¶ 34–47. For example, in *Doe v. Condon*, 532 S.E.2d 879 (S.C. 2000), the court held that a paralegal who sought to conduct legal seminars for the public about wills and trusts would "engage in the unauthorized practice of law as a non-attorney offering legal advice" because the seminar would at least "implicitly advise participants that they require estate planning services." *Id.* at 882. South Carolina also prohibits nonlawyers from conducting real estate closings because "instructing clients in the manner in which to execute legal documents" and "offer[ing] a few words of explanation, however innocent," about what the documents mean both constitute UPL. *State v. Buyers Serv. Co.*, 357 S.E.2d 15, 19 (S.C. 1987). And where an insurance agent's "'advice' may simply have been pointing out the policy language to the [insureds], it still constituted counsel on the [insureds'] rights under the policy." *Linder v. Ins. Claims Consultants, Inc.*, 560 S.E.2d 612, 622 (S.C. 2002). These cases make clear that nonlawyers may not communicate even simple and accurate guidance to help someone understand and act on their legal rights. And Plaintiffs intend to communicate simple and accurate guidance to help tenants facing eviction understand and act on their legal rights, by: explaining tenants' legal right to a hearing; suggesting that they should request a hearing and when to do so; and advising tenants about one set of defenses they can raise at the hearing. *See also* Chambliss Decl. ¶¶ 46–47.

Because they are motivated by ideological and social goals rather than commercial interests, Plaintiffs would provide advice for free, but the South Carolina Supreme Court has said that the fact that a non-lawyer "received no compensation" is "irrelevant" to the UPL determination. *See Franklin v. Chavis*, 640 S.E.2d 873, 876 n.5 (S.C. 2007) (suggesting that, in some circumstances, "a lack of compensation" may even "make[] the situation worse"); *see also Hous. Auth. of Charleston v. Key*, 572 S.E.2d 284, 285 (S.C. 2002) (where a paralegal "prepared and filed a complaint in federal court alleging unlawful evictions," it was "irrelevant" to the UPL determination that he "accepted no payment and in fact paid the filing fees out of his own pocket").

This unusually broad understanding of UPL is enforced through an unusually harsh penalty. Nearly all states consider UPL to be a civil infraction or at most a minor misdemeanor, *see* Chambliss Decl. ¶ 37, but South Carolina makes it a felony, punishable by up to five years of imprisonment, *see* S.C. Code Ann. § 40-5-310 (2009). So long as the "type of conduct" at issue has been deemed UPL by the South Carolina Supreme Court, the State can bring felony charges. *Id.* And anyone who aids or counsels an individual engaging in the unauthorized practice of law also may face criminal liability. *See id.* § 16-1-40. The State actively enforces this law. *See, e.g.*, *State v. Shatten*, No. 2019-000825, 2021 WL 5826749, at *1 (S.C. Ct. App. Dec. 8, 2021) (affirming conviction for unauthorized practice of law).

Under South Carolina's caselaw interpreting the UPL statute, a conversation about how to respond to an eviction notice, request a hearing with a judge, and raise certain

defenses at that hearing requires a license to practice law. Engaging in such a conversation without a license could result in felony prosecution.

STANDARD OF REVIEW

To obtain a preliminary injunction, the moving party must show that: (1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 339 (4th Cir. 2021) (en banc). Where, as here, "the irreparable harm . . . alleged is inseparably linked to [Plaintiffs'] claim of a violation of [their] First Amendment rights," Plaintiffs' "likelihood of success on the merits" becomes the key question and the starting point for the Court's analysis. *Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 254–55 (4th Cir. 2003); *see also Pursuing Am.'s Greatness v. Fed. Election Comm'n*, 831 F.3d 500, 511 (D.C. Cir. 2016) ("In First Amendment cases, the likelihood of success 'will often be the determinative factor' in the preliminary injunction analysis." (quoting *Joelner v. Village of Washington Park*, 378 F.3d 613, 620 (7th Cir. 2004))).

ARGUMENT

Plaintiffs are entitled to a preliminary injunction that would allow them to provide limited legal advice, under the supervision of the South Carolina NAACP, without the threat of prosecution for the unauthorized practice of law. Plaintiffs are likely to prevail on their First Amendment claims because they want to engage in protected expressive and associational activity—meeting with tenants facing eviction to provide free, accurate, and

helpful advice concerning their legal rights—that South Carolina has no interest in prohibiting. Although South Carolina does have an interest in prohibiting some forms of unauthorized legal advice, the current prohibition is not sufficiently tailored insofar as it reaches the kind of speech and associational activity at issue here. Because irreparable harm is inevitable and the public interest favors Plaintiffs, this Court should grant preliminary relief.

I. Plaintiffs Are Likely to Prevail on the Merits

Here, Plaintiffs are likely to prevail in showing that South Carolina's UPL regime violates their First Amendment rights to freedom of speech and association to the extent that it prevents them from conversing with individuals facing eviction in order to provide free, limited legal advice that would facilitate access to the courts.[1]

A. As Applied to Plaintiffs, South Carolina's UPL Regime Violates the First Amendment's Free Speech Clause.

The Free Speech Clause of the First Amendment, which applies to the states through the Fourteenth Amendment, *see Fusaro v. Cogan*, 930 F.3d 241, 248 (4th Cir. 2019), prohibits South Carolina from "abridging the freedom of speech." U.S. Const. amend. I. "Above 'all else, the First Amendment means that government' generally 'has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" *Barr*

[1] Plaintiffs are likely to prevail on both of their First Amendment claims, but injunctive relief is warranted so long as Plaintiffs demonstrate a likelihood of success on at least one of their claims. *See Roe v. Dep't of Def.*, 947 F.3d 207, 234 (4th Cir. 2020), *as amended* (Jan. 14, 2020) (affirming imposition of preliminary injunction where plaintiffs had "demonstrated a likelihood of success [on] the merits of at least one claim"); *see also League of Women Voters v. North Carolina*, 769 F.3d 224, 237–38, 248 (4th Cir. 2014) (granting a preliminary injunction where the plaintiffs were likely to succeed on one claim).

v. Am. Ass'n of Pol. Consultants, Inc., 140 S. Ct. 2335, 2346 (2020) (plurality opinion) (quoting *Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 95 (1972)). As applied to Plaintiffs—who seek to speak freely with tenants facing eviction about their legal rights—South Carolina's UPL regime restricts expression and violates the First Amendment's Free Speech Clause.

1. Legal Advice Is Speech Protected by the First Amendment.

Plaintiffs seek to provide guidance to tenants facing eviction that the South Carolina Supreme Court would deem legal advice and, as such, the unauthorized practice of law. But calling Plaintiffs' speech legal advice doesn't change the fact that it is protected speech under established Supreme Court precedent. The Supreme Court on multiple occasions has acknowledged that legal advice is speech. *See Holder v. Humanitarian L. Project*, 561 U.S. 1, 27 (2010) ("advice derived from specialized knowledge," including advice on legal matters, considered speech); *see also Nat'l Inst. of Fam. & Life Advocs. v. Becerra* (*NIFLA*), 138 S. Ct. 2361, 2374 (2018) (noting that First Amendment scrutiny applied to "laws that regulate the noncommercial speech of . . . [*inter alia*] organizations that provided specialized advice about international law"); *In re Primus*, 436 U.S. 412, 438 n.32 (1978) (explaining that lawyer's "speech"—advising a lay person of their legal rights and the opportunity for free legal assistance—"was expression intended to advance 'beliefs and ideas'"). Thus, prohibiting Plaintiffs from sharing that advice—for free, with people who could benefit greatly from receiving it—implicates Plaintiffs' free speech rights. *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 568 (2011) ("An individual's right to speak is implicated when information he or she possesses is subjected to 'restraints on the way in

which the information might be used' or disseminated." (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32, (1984))).

Plaintiffs' speech is constitutionally protected even though it occurs against the backdrop of a professional licensing scheme. In 2018, the Supreme Court confirmed that labeling speech as "professional speech" does not remove First Amendment protections for that speech, disapproving of circuit precedents that had drawn such a distinction. *See NIFLA*, 138 S. Ct. at 2375.[2] In reaching this conclusion, the Court rejected a rule that would give "the States unfettered power to reduce a group's First Amendment rights by simply imposing a licensing requirement." *Id.*

Relatedly, the State's decision to establish a UPL regime and classify the communication of certain information and advice as UPL does not convert Plaintiffs' speech into conduct deserving of less protection. Even if South Carolina's UPL restrictions are in many instances directed at conduct, or a combination of conduct and speech, here, the prohibition on UPL is triggered by plaintiffs' pure speech. *Cf. Humanitarian L. Project*, 561 U.S. at 28 ("The law here may be described as directed at conduct, . . . but as applied to plaintiffs the conduct triggering coverage under the statute consists of communicating a message."). As applied to Plaintiffs—who seek only to engage in conversations to provide

[2] The Fourth Circuit was one of the circuits that recognized the "professional speech" doctrine prior to *NIFLA*. But even before that doctrine was abrogated by *NIFLA*, the Fourth Circuit exempted regulations from First Amendment scrutiny only where the regulated entity "would provide services to their clients *for compensation*." *Moore-King v. County of Chesterfield*, 708 F.3d 560, 569 (4th Cir. 2013) (emphasis added), *abrogated by NIFLA*, 138 S. Ct. 2361 (2018). Because Plaintiffs seek to provide legal advice for free, even the Fourth Circuit's pre-*NIFLA* precedent would not have stripped Plaintiffs' speech of First Amendment protection.

"free, accurate, and limited" legal advice outside of court in order to help "reduce the number of unnecessary or wrongful evictions" and "improve the integrity and fairness of the civil legal system in their communities," Compl. ¶¶ 44, 46–47—the prohibition touches core expressive activity and regulates "speech as speech." *NIFLA*, 138 S. Ct. at 2374.

Billups v. City of Charleston, 961 F.3d 673 (4th Cir. 2020), confirms that Plaintiffs' proposed speech is speech that must receive full First Amendment protection. In *Billups*, the Fourth Circuit reached the "straightforward conclusion" that Charleston's tour guide licensing ordinance "undoubtedly burdens protected speech, as it prohibits unlicensed tour guides from leading paid tours—in other words, speaking to visitors—on certain public sidewalks and streets." *Id.* at 683. *Billups* reasoned that giving a tour was "an activity which, by its very nature, depends upon speech or expressive conduct," so the fact that "the City enacted the Ordinance to protect Charleston's economic well-being and safeguard its tourism industry" did not exempt the ordinance from the First Amendment's protections. *Id.* at 683–84. The court likewise rejected the city's argument that the ordinance was merely a regulation on the licensed professional conduct of giving tours that "incidentally burden[ed] speech." *Id.* at 683 (citing *Humanitarian L. Project*).[3] Like the ordinance in *Billups*, the UPL prohibition, as interpreted by the South Carolina Supreme Court and as applied to Plaintiffs, "undoubtedly burdens protected speech" and is subject to First

[3] Other circuits have reached similar conclusions post-*NIFLA*. *See, e.g.*, *Vizaline, L.L.C. v. Tracy*, 949 F.3d 927, 931 (5th Cir. 2020) ("*NIFLA* makes clear that occupational-licensing provisions are entitled to no special exception from otherwise-applicable First Amendment protections."); *Pac. Coast Horseshoeing Sch., Inc. v. Kirchmeyer*, 961 F.3d 1062, 1069 (9th Cir. 2020) ("[T]he First Amendment deprives the states of 'unfettered power to reduce a group's First Amendment rights by simply imposing a licensing requirement.'" (quoting *NIFLA*, 138 S. Ct. at 2375)).

Amendment scrutiny.

The Fourth Circuit's opinion in *Capital Associated Industries, Inc. v. Stein* (*CAI*), 922 F.3d 198 (4th Cir. 2019), further supports the conclusion that Plaintiffs' speech is constitutionally protected. In *CAI*, the plaintiff trade association challenged an aspect of North Carolina's UPL rules that prohibited it, as a corporation, from "practicing law" by selling commercial legal services to its members. *Id.* at 202. CAI wanted to provide its members with a range of legal services, including "draft[ing] legal documents (such as contracts or employee handbooks)." *Id.* And it hoped to "charge hourly fees" for some of these services. *Id.* at 203. Under those circumstances, the Fourth Circuit held that "the ban on corporate law practice" operated as "a regulation of professional conduct that incidentally burden[ed] speech"—not a regulation of speech. *Id.* at 207. This case is different. Here, Plaintiffs wish to communicate limited advice about tenants' legal rights, and the UPL prohibition would be triggered solely by Plaintiffs' speech. *Cf. Cap. Associated Indus., Inc. v. Cooper*, 129 F. Supp. 3d 281, 295 (M.D.N.C. 2015) (noting that CAI sought "to provide legal services that extend[ed] beyond just rendering 'legal advice'").

To be clear, South Carolina's UPL regime covers a wide range of activity, most of which is not protected speech. In some situations, the application of the UPL restrictions will be triggered at least in part by conduct—appearing in court or other actions with independent legal effect like filing a complaint or serving discovery. In other situations, the UPL restrictions might be triggered by unprotected fraudulent speech, such as when a nonlawyer falsely holds themselves out as a lawyer. In those situations, the UPL

restrictions would not be subject to the heightened scrutiny that accompanies restrictions on protected speech. But the First Amendment does not allow a State merely to invoke a generalized interest in regulating professions to penalize the sort of free, helpful educational communication that Plaintiffs seek to provide. *See Billups*, 961 F.3d at 683.

2. The Application of UPL Restrictions to Plaintiffs' Speech Is a Content-Based Restriction Subject to Strict Scrutiny.

A speech restriction is content-based if it "target[s] speech based on its communicative content"—that is, if it "applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Strict scrutiny applies to content-based regulations of speech, while intermediate scrutiny applies to content-neutral regulations. *See City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 142 S. Ct. 1464, 1471, 1475 (2022).

Here, the UPL law applies to Plaintiffs' proposed speech "because of the topic discussed," so it operates as a content-based restriction subject to strict scrutiny. *Reed*, 576 U.S. at 163. Plaintiffs are free to advise the tenants they serve on any number of matters, including how to navigate government benefits or how to access temporary housing, but they are prohibited from giving these tenants any advice about their legal rights or how to prepare for their legal proceeding. That restriction is content-based because it "draws distinctions based on the message a speaker conveys." *Id.*; *see also Humanitarian L. Project*, 561 U.S. at 27 (holding that speech restriction was content-based where advice based on specialized knowledge was barred but advice based on "general or unspecialized knowledge" was not barred); *Upsolve, Inc. v. James*, 604 F. Supp. 3d 97, 114 (S.D.N.Y.

2022) (holding, in an analogous case to this one, that New York's UPL rules created content-based distinction where plaintiffs could provide "non-legal advice" but were barred from providing "legal advice"). Because the application of the UPL restrictions here amounts to a content-based regulation of Plaintiffs' speech, strict scrutiny is appropriate. *See Am. Ass'n of Pol. Consultants*, 140 S. Ct. at 2347 (plurality opinion); *see also Brokamp v. District of Columbia*, No. CV 20-3574, 2022 WL 681205, at *1 (D.D.C. Mar. 7, 2022) ("Because the District's licensing requirement is content-based regulation of speech, strict scrutiny applies, and Plaintiff has adequately alleged that the requirement does not survive such scrutiny."); *Upsolve*, 604 F. Supp. 3d at 117 (applying strict scrutiny).

3. The State Cannot Meet Its First Amendment Burden Under Any Level of Scrutiny.

Strict scrutiny is "the most demanding test known to constitutional law," *Kolbe v. Hogan*, 849 F.3d 114, 133 (4th Cir. 2017) (quoting *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997)), and "it is the rare case" in which a state is able to satisfy it, *Burson v. Freeman*, 504 U.S. 191, 211 (1992) (plurality opinion). The high bar of strict scrutiny is satisfied only where a speech restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011). To survive strict scrutiny, the State must demonstrate both that it has a compelling interest in prohibiting Plaintiffs' free advice regarding eviction proceedings and that the UPL regime is narrowly tailored to achieve that interest. This burden is a "heavy" one, *Ark. Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 231 (1987), and the State cannot meet it here.

Indeed, the application of South Carolina's UPL prohibition to Plaintiffs' speech cannot survive even intermediate scrutiny. *Cf. Billups*, 961 F.3d at 685 (declining to decide whether strict or intermediate scrutiny applied because government could not satisfy either standard); *Sharpe v. Winterville Police Dep't*, 59 F.4th 674, 681–82, 682 n.10 (4th Cir. 2023) (same); *Edwards v. District of Columbia*, 755 F.3d 996, 1000 (D.C. Cir. 2014) (same). Under intermediate scrutiny, the government must show that a speech restriction is "narrowly tailored to serve a significant governmental interest." *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (internal quotation marks omitted). This standard "require[s] the government to present actual evidence supporting its assertion that a speech restriction does not burden substantially more speech than necessary." *Reynolds v. Middleton*, 779 F.3d 222, 229 (4th Cir. 2015). "[I]t is not enough for [the government] simply to say that other approaches have not worked," *id.* at 231 (alteration in original) (quoting *McCullen*, 573 U.S. at 496)—"the government must '*show*[] that it seriously undertook to address the problem with less intrusive tools readily available to it,' and must '*demonstrate* that [such] alternative measures . . . would fail to achieve the government's interests, not simply that the chosen route is easier,'" *id.* at 231–32 (alterations and emphases in original) (citation omitted) (quoting *McCullen*, 573 U.S. at 494–95). Here, applying the prohibition on unauthorized legal advice to Plaintiffs fails to advance any significant governmental interest and is not narrowly tailored, so it cannot withstand even intermediate scrutiny.

No Significant Government Interest Is Furthered by the Restriction Here. The State may, of course, regulate UPL as a general matter and restrict many kinds of unauthorized legal advice, but there is no significant governmental interest—and certainly no compelling

governmental interest—furthered by prohibiting the kind of free, limited, and carefully vetted legal guidance that Plaintiffs wish to communicate.

The South Carolina Supreme Court has recognized that "regulation of the practice of law 'is not for the purpose of creating a monopoly in the legal profession, nor for its protection, but to assure the public adequate protection in the pursuit of justice.'" *Matter of Anonymous Applicant for Admission to S.C. Bar*, 875 S.E.2d 618, 622 (S.C. 2022) (quoting *Boone v. Quicken Loans, Inc.*, 803 S.E.2d 707, 711 (S.C. 2017)). In the particular context of legal *advice*, which falls within the South Carolina Supreme Court's broad conception of the practice of law, the Court has concluded that there is an interest in protecting the public from "the potentially severe economic and emotional consequences which may flow from . . . inaccurate legal advice given by persons untrained in the law." *Linder v. Ins. Claims Consultants, Inc.*, 560 S.E.2d 612, 617 (S.C. 2002).

But the State's interest in protecting the public is not furthered by banning the kind of free, limited, vetted, out-of-court legal advice that Plaintiffs hope to offer. As described, Plaintiffs share the State's commitment to ensuring that legal guidance is truthful and not misleading. By providing specialized training and close supervision to nonlawyer volunteers, Plaintiffs have erected safeguards to ensure that the advice provided is accurate and helpful. In particular, a third-party expert on South Carolina eviction law has carefully reviewed the South Carolina NAACP's training to ensure its accuracy and complementarity with existing legal services. Fessler Decl. ¶ 7. The advice Advocates will provide is also limited: Advocates will assist tenants in reading the instructions on a court-issued notice and calculating a date, *see* Housing Advocate Training, Exhibit A at 10–11—

hardly tasks requiring specialized knowledge and expertise. And they will advise tenants of potential straightforward defenses they may raise in a hearing, thereby offering broadly applicable guidance that does not require deeply nuanced decision-making. The training also directs Advocates not to go beyond the limited advice covered in the training and instructs them to make referrals to legal services providers, ensuring that nonlawyers are not wading into complex or contested areas of the law. *Id.* at 1–2, 3 n.1, 7, 9, 11–12, 15–16. By requiring nonlawyer advocates to comply with a series of ethical rules—including a strict prohibition against seeking or accepting compensation, a requirement to disclose that they are not lawyers, and confidentiality and conflict of interest limitations, *see id.* at 1–3—Plaintiffs further safeguard the public's trust.[4]

There is no significant governmental interest in disallowing this advice from non-lawyers when individuals want the advice and know what they are getting. *See* Chambliss Decl. ¶¶ 48–62. This is particularly so when the likely alternative is that the individuals proceed *pro se* without any assistance at all—or rely on nonlawyer family members and friends, or the internet, for legal advice that may well be error-ridden. *See id.* ¶ 60; *see also* Lauren Sudeall, *The Overreach of Limits on "Legal Advice,"* 131 Yale L.J. F. 637, 650 (2022).

In fact, applying the prohibition on UPL in these circumstances actively *disserves* the State's interest in protecting the public. South Carolina has an extraordinarily high

[4] Because the advice is free, there is also no risk that the Advocates will go beyond the training to avoid "losing a fee for his or her employer." *State v. Buyers Serv. Co.*, 357 S.E.2d 15, 19 (S.C. 1987).

eviction rate, and there simply are not enough legal services providers in South Carolina to provide legal advice to every tenant facing eviction. *See* Compl. ¶¶ 20–24; Chambliss Decl. ¶¶ 10–15. The choice presented to many tenants facing eviction in South Carolina is not between a lawyer and a nonlawyer, but between some help and none. Many tenants default because they do not know how to request an eviction hearing. *See* Neal Decl. ¶ 6; Campbell Decl. ¶ 9; Chambliss Decl. ¶ 49. Plaintiffs' advice merely helps tenants to preserve their rights. Plaintiffs' speech would contribute to the goal of protecting the public that motivated the UPL prohibition in the first place, by helping low-income South Carolinians access the free legal guidance they need to understand their rights and prevent eviction.

Plaintiffs' advice would help tenants understand their legal rights and access the courts. While inaccurate legal advice may lead to "potentially severe economic and emotional consequences," *Linder*, 560 S.E.2d at 617, here, the advice has been vetted for accuracy, and its focus on accessing the courts will serve only to make the severe economic and emotional consequences of eviction *less* likely.

No Narrow Tailoring. Moreover, the State's blanket ban on unauthorized legal advice is not narrowly tailored. "[W]hen [laws] affect First Amendment rights they must be pursued by means that are neither seriously underinclusive nor seriously overinclusive," *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 805 (2011), and the "government must demonstrate" that this tailoring requirement is satisfied, *McCullen*, 573 U.S. at 467. Here, the UPL regime suffers from both of these defects.

The prohibition on unauthorized legal advice is overinclusive insofar as it bans free advice that would help unrepresented individuals desperately in need of legal guidance.

The Fourth Circuit has "made clear that 'intermediate scrutiny . . . require[s] the government to present actual evidence supporting its assertion that a speech restriction does not burden substantially more speech than necessary.'" *Billups*, 961 F.3d at 687 (quoting *Reynolds*, 779 F.3d at 229). And the court has "further explained that 'the burden of proving narrow tailoring requires the [government] to *prove* that it actually *tried* other methods to address the problem.'" *Id.* (quoting *Reynolds*, 779 F.3d at 231). Here, the State may be able to address its interest in protecting the public by requiring full disclosure of qualifications and experience in order to provide free legal advice to the indigent, *cf. McCutcheon v. FEC*, 572 U.S. 185, 223 (2014) (noting that "disclosure often represents a less restrictive alternative to flat bans on certain types . . . of speech"), or by requiring some state training short of bar certification. The South Carolina NAACP already plans to impose these guardrails on its own program by requiring Housing Advocates to follow ethical rules that include fully disclosing their nonlawyer status and requiring all Advocates to successfully complete its training program before talking with tenants. Rather than broadly construing the "practice of law" and then banning unauthorized legal advice in every circumstance, the State could limit its prohibition on unauthorized legal advice to those situations most closely connected to the State's asserted interest—situations where advice is provided for a fee, or where advice is not accompanied by disclosures of the individual's lack of legal training. The success of nonlawyer legal services initiatives in other states and for federal agency proceedings suggests that a more narrowly tailored solution is entirely possible. *See* Compl. ¶¶ 70–73.

In *NAACP v. Button*, 371 U.S. 415 (1963), the Supreme Court concluded that "[b]road prophylactic rules in the area of free expression are suspect," because there "inheres in [such a] statute the gravest danger of smothering all discussion" necessary to exercise rights. *Id.* at 438, 434. "Narrow tailoring is crucial where First Amendment activity is chilled—even if indirectly—'[b]ecause First Amendment freedoms need breathing space to survive.'" *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2384 (2021) (quoting *Button*, 371 U.S. at 433). Insofar as South Carolina's UPL regime extends to the kind of legal guidance Plaintiffs wish to provide, it flouts that narrow tailoring requirement.

The prohibition on unauthorized legal advice is also underinclusive, because South Carolina permits nonlawyers to do much *more* than give advice in certain areas of the law. For example, nonlawyer law enforcement officers are allowed to *prosecute* certain kinds of cases in South Carolina courts. *See In re Unauthorized Prac. of L. Rules Proposed by S.C. Bar*, 422 S.E.2d 123, 125 (S.C. 1992). And most strikingly, magistrates—the judges who actually review and adjudicate eviction actions—do not need to be lawyers. Indeed, a majority of them are not. *See* Christel Purvis, *Should I Stay or Should I Go? South Carolina's Nonlawyer Judges*, 73 S.C. L. Rev. 1145, 1146 (2022). There is no plausible explanation for the asymmetry in this regard: as Plaintiff Marvin Neal expressed, nonlawyer magistrates "can decide that the law means that a tenant should lose his home," but nonlawyer advocates "can't even try to give that tenant some legal advice about how to keep his home." Neal Decl. ¶ 17.

"'The First Amendment directs [courts] to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good.'" *Sorrell*, 564 U.S. at 577 (quoting *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 503 (1996) (opinion of Stevens, J.)). As applied to Plaintiffs' efforts to demystify eviction proceedings for unrepresented tenants, South Carolina's prohibition on unauthorized legal advice keeps people in the dark. And the result is that tenants face the serious consequence of eviction without even the most basic information that might help their cause. The application of this prohibition to Plaintiffs' activity cannot withstand either strict or intermediate scrutiny.

B. As Applied to Plaintiffs, South Carolina's UPL Regime Violates the First Amendment Right to Associate.

The First Amendment protects the "right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). Plaintiffs here seek to associate for the purposes of ensuring access to the courts and securing legal rights—the very kind of association that the Supreme Court has deemed fundamental and has long protected under the First Amendment. But South Carolina law prohibits them from doing so. As applied to Plaintiffs, South Carolina's UPL regime thus violates the First Amendment right to associate.

1. The Right to Associate Protects Plaintiffs' Efforts to Use Collective Action to Facilitate Access to the Courts.

Beginning with *NAACP v. Button*, 371 U.S. 415 (1963), the Supreme Court has held that the First Amendment right to associate specifically protects groups' efforts to secure access to our courts for a range of reasons, including ending school segregation, as the

NAACP sought in *Button*, or ensuring that individuals can exercise their individual rights to redress injustices, as Plaintiffs seek here. *See Bhd. of R.R. Trainmen v. Virginia ex rel. Va. State Bar*, 377 U.S. 1, 4–8 (1964). In fact, the Supreme Court and the Fourth Circuit have repeatedly stated that "collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment." *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576, 585 (1971); *Bates v. State Bar of Ariz.*, 433 U.S. 350, 376 n.32 (1977); *Capital Associated Industries, Inc. v. Stein* (*CAI*), 922 F.3d 198, 206 (4th Cir. 2019). And "collective activity undertaken to obtain meaningful access to the courts" is precisely what is at issue here, where Plaintiffs seek to connect with tenants on the verge of eviction and provide free, accurate, and limited legal advice so that those tenants can access the courts and assert their rights. These activities fall squarely within the First Amendment's protections for the right to associate.

What the Fourth Circuit has called the "*Button* cases" involve the right of organizations to act "not [for] commercial ends" but to "secure constitutionally guaranteed civil rights" or those legal rights "authorized by Congress to effectuate a basic public interest." *CAI*, 922 F.3d at 204–06 (quoting *Button*, 371 U.S. at 442–43; *Trainmen*, 377 U.S. at 7). In these cases, the Supreme Court concluded that, as applied to "public interest organizations like the NAACP" and unions, state regulations of the legal profession unnecessarily burdened these groups' ability to "associate for non-commercial purposes to advocate the enforcement of legal and constitutional rights." *Id.* at 205 (quoting *In re N.H. Disabilities Rts. Ctr., Inc.*, 541 A.2d 208, 213 (N.H. 1988)). *Button*, for instance, involved the NAACP's challenge to the application of Virginia practice-of-law rules that prohibited

the NAACP from assisting Black communities in litigation to end school segregation. 371 U.S. at 419–26. In holding that Virginia's laws "unduly inhibited" the NAACP's ability "to associate for the purpose of assisting persons who seek legal redress for infringements of their constitutionally guaranteed and other rights," *Button* emphasized that the NAACP's court-directed activities were "a form of political expression," aimed at "achieving the lawful objectives of equality of treatment by all government . . . for the members of the [Black] community in this country." *Id.* at 428, 429, 437; *see also In re Primus*, 436 U.S. 412, 431 (1978) (concluding that South Carolina could not use its professional conduct rules to prohibit the ACLU from soliciting clients, because the ACLU's work is "a vehicle for effective political expression and association, as well as a means of communicating useful information to the public").

The Fourth Circuit's decision in *CAI* leaves little doubt that the protections afforded the right to associate apply to Plaintiffs' activity here. In concluding that the proposal of a for-profit trade association of employers to provide legal services to its members did not fall within the protections of the right to associate, *CAI* distilled three important "considerations" from the *Button* cases: (1) whether the "proposed activity" would be pursued for "commercial ends"; (2) whether it "would facilitate access to the courts"; and (3) whether it "would pose ethical concerns not present in the *Button* cases." 922 F.3d at 206. The trade association's activity in *CAI* fell on the wrong side of each of these factors. The association sought to provide legal services for "commercial ends"—to "increase revenues and recruit new members who will pay dues and additional legal fees." *Id*. No additional access to the courts offset the association's underlying commercial purpose

because the association's members already "consistently had access to legal services and the court." *Id*. And the fees paid by these members would create "ethical concerns," because "the corporation's interests could trump loyalty to clients." *Id*.

By contrast, Plaintiffs' proposed provision of limited legal advice satisfies all three of these considerations. First, the South Carolina NAACP is a nonprofit advocacy organization, and the advice provided through its program would be free; its certified advocates may not accept any form of remuneration. Murphy Decl. ¶ 15; Housing Advocate Training, Exhibit A at 1. *Compare In re Primus*, 436 U.S. at 438 n.32 (protections of right to associate apply to ACLU lawyer's noncommercial expressive activity intended to advance "beliefs and ideas"), *with Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 459 (1978) (protections of right to associate do not apply to lawyer acting to advance own financial interests). Second, unlike the employer members of the trade association in *CAI*, the tenants who would be served by the South Carolina NAACP's program cannot otherwise "meet the costs of legal representation or obtain meaningful access to the courts." 922 F.3d at 206 (quoting *United Transp. Union*, 401 U.S. at 585–86). As noted above, nearly all of these tenants are unrepresented; the limited legal advice that Advocates would provide is designed to help these unrepresented tenants exercise their rights and avoid defaulting on their eviction actions. *See* Fessler Decl. ¶¶ 11–13. And, not only would Advocates assist tenants in accessing the judicial process, but by advising tenants to request a hearing, Advocates would also increase tenants' time to secure legal representation.

Third and finally, Plaintiffs' provision of free, accurate, and helpful legal advice does not pose any elevated ethical concerns. The collective activity here could not be more remote from the sort of "ambulance chasing" that the Supreme Court has cautioned is "a commercialization that might threaten the moral and ethical fabric of the administration of justice." *Trainmen*, 377 U.S. at 7 (citation omitted). Instead, it is carefully fashioned so as to avoid ethical issues like those present in *CAI*. The advice is free, so there is no risk that the South Carolina NAACP's commercial interests "could trump loyalty to" any of the tenants Plaintiffs help. The disclosure requirements built into the training also protect against any risk of fraud. And because the advice is accurate and complementary with any available legal services, *see* Fessler Decl. ¶¶ 7–9, 12, providing that advice would not involve "the specific evils that the general State regulations [of the practice of law] are intended to prevent," *In re N.H. Disabilities Rts. Ctr.*, 541 A.2d at 213—that is, fraudulent legal services that harm consumer welfare. Rather than creating ethical issues, Plaintiffs' activity epitomizes the kind of association of "laymen . . . to help one another to preserve and enforce rights granted them under federal laws" that the Supreme Court has said "cannot be condemned as a threat to legal ethics." *Trainmen*, 377 U.S. at 7 (citation omitted).

That it is nonlawyers in this case who would provide the limited legal advice necessary "to preserve and enforce" tenants' rights does not limit the reach of the First Amendment's protections in this context. The right to associate "to ensure meaningful access to the courts" does not belong only to lawyers—that right belongs to organizations, their members, and their staffs, too. The *Button* cases involved lawyers, but they uniformly

"uph[eld] the First Amendment principle that *groups* can unite to assert their legal rights as effectively and economically as practicable." *United Transp. Union*, 401 U.S. at 580 (emphasis added); *id*. at 584 (describing a prior case as securing "the right of workers to act collectively to obtain affordable and effective legal representation"). *United Transportation Union*, for example, struck down an injunction that would have prohibited a "Union from 'giving or furnishing legal advice to its members or their families,'" because, "[g]iven its broadest meaning, this provision would bar the Union's members, officers, agents, or attorneys from giving any kind of advice or counsel to an injured worker or his family concerning his [statutory] claim." *Id*. In doing so, *United Transportation Union* rejected the suggestion from two separate concurrences to allow the injunction to stand so long as it "prohibit[ed] only legal advice by nonlawyers." *Id*. at 600 (White, J., concurring in part and dissenting in part). As *United Transportation Union* explained, "the principle here involved cannot be limited to the facts of [any one] case. At issue is the basic right to group legal action." *Id.* at 585 (majority opinion).[5]

In other words, the right to associate in this context does not turn on the participation of a lawyer in the collective activity at issue. *See Jacoby & Meyers, LLP v. Presiding Justs. of the First, Second, Third & Fourth Dep't*s, 852 F.3d 178, 187 (2d Cir. 2017) (describing

[5] As noted *supra*, the district court in *Upsolve, Inc. v. James*, 604 F. Supp. 3d 97 (S.D.N.Y. 2022), concluded that the First Amendment's guarantees for freedom of speech protected the efforts by a nonprofit to provide "non-lawyer legal advice," but the court rejected the related freedom of association claim. *Id.* at 111. The court reasoned that *Button* and its progeny applied only to attorneys who seek to exercise the right to associate. *Id.* But the court overlooked the *Button* cases' discussions of the associational rights of the organizations—and not solely their lawyers—thereby unnaturally converting a First Amendment right that belongs to "the people" into one solely for lawyers. *Cf. Jacoby & Meyers, LLP v. Presiding Justs. of the First, Second, Third & Fourth Dep't*s, 852 F.3d 178, 187 (2d Cir. 2017) ("[T]he rights of petition and assembly attach to 'the people.'").

United Transportation Union and the other union cases as "uniformly decid[ing] that unions and union members have rights under the First Amendment to associate and to act collectively to pursue legal action—action that *ordinarily*," but not always, "necessitates the involvement of lawyers."). Nor should it. A shortage of lawyers should not diminish the right of groups and individuals to work collectively to secure meaningful access to the courts. Indeed, the Supreme Court has recognized the critical problem created by lawyer scarcity in holding that incarcerated individuals have the right to provide legal advice necessary to help other incarcerated individuals exercise "federally protected rights," despite "the power of the State to restrict the practice of law to licensed attorneys" and generally to "control the practice of law." *Johnson v. Avery*, 393 U.S. 483, 490 n.11 (1969) (citing *Button*, 371 U.S. at 415; *Sperry v. Florida ex rel. Fla. Bar*, 373 U.S. 379 (1963)). As the *Johnson* Court explained, barring help from fellow prisoners would effectively "den[y] access to courts" to all but the exceptional few "who are able to help themselves." *Id.* at 488. So too here, where the Housing Advocates program is needed precisely because of the access-to-justice gap experienced by low-income tenants facing eviction in South Carolina.

Plaintiffs' proposed legal advice is free, it is designed to expand access to the courts, and it does not pose ethical concerns. Accordingly, Plaintiffs' efforts to associate with others to provide this advice are protected by the First Amendment.

2. The State Cannot Satisfy Its First Amendment Burden.

Where the State places restrictions on the First Amendment right to associate to ensure meaningful access to the courts, those restrictions face "exacting scrutiny." *In re*

Primus, 436 U.S. at 432 (quoting *Buckley v. Valeo*, 424 U.S. 1, 44–45 (1976) (per curiam)). The Supreme Court explained in *Button* that "only a compelling state interest" can "justify limiting First Amendment freedoms" in this space. 371 U.S. at 438. And even if there is a compelling interest at stake, the State "must demonstrate . . . that the means employed in furtherance of that interest are 'closely drawn to avoid unnecessary abridgment of associational freedoms.'" *In re Primus*, 436 U.S. at 432 (quoting *Buckley*, 424 U.S. at 25). Here, the State cannot make that showing.

To start, the State lacks a compelling interest that justifies prohibiting Plaintiffs' proposed associational activity. In general, as the South Carolina Supreme Court has explained, the State's regulation of UPL is designed solely to "assure the public adequate protection in the pursuit of justice." *Matter of Anonymous Applicant for Admission to S.C. Bar*, 875 S.E.2d 618, 622 (S.C. 2022) (quoting *Boone v. Quicken Loans, Inc.*, 803 S.E.2d 707, 711 (S.C. 2017)); *see supra* Part I.A.3 (discussing lack of state interest in the context of speech claim). But here, the State cannot demonstrate any "substantive evils flowing from [Plaintiffs'] activities" of the sort that the UPL regime was designed to prevent. *Button*, 371 U.S. at 444. In fact, "assur[ing] the public adequate protection in the pursuit of justice" is the objective around which Plaintiffs have designed their efforts. Plaintiffs seek to provide free, limited, and carefully vetted advice to tenants facing eviction proceedings—tenants who would otherwise likely receive no legal advice. *See* Chambliss Decl. ¶¶ 11, 15. By helping these tenants access the courts and avoid forfeiting their legal rights, Plaintiffs will *advance* the UPL regime's "paramount concern" of protecting the public. *See State v. Buyers Serv. Co.*, 357 S.E.2d 15, 19 (S.C. 1987).

Not only are the State's legitimate concerns with respect to unauthorized legal advice—that it will be inaccurate, misleading, or unduly costly—inapplicable here, where Plaintiffs' advice is accurate and free, but the prohibition also is not "closely drawn to avoid unnecessary abridgement of associational freedoms." *In re Primus*, 436 U.S. at 432 (quoting *Buckley*, 424 U.S. at 25); *see also id.* at 434 (holding that a South Carolina attorney discipline rule that burdened the challenging party's freedom to associate could not be applied against her "unless her activity in fact involved the type of misconduct at which South Carolina's broad prohibition is said to be directed"). As *Button* explained, "[b]road prophylactic rules . . . are suspect" in this context, and "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." 371 U.S. at 437–38.

South Carolina's UPL regime reflects no such precision. Instead, it creates a blanket ban on virtually any activity that so much as touches on the law, including Plaintiffs' efforts here to provide free, accurate, and helpful legal guidance. *See* Chambliss Decl. ¶¶ 46–47. As *Button* emphasized, "First Amendment freedoms need breathing space to survive." *Id.* at 433; *see also Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2384 (2021) (discussing "the need for narrow tailoring"). But South Carolina's prohibition on UPL has left no space whatsoever for Plaintiffs to associate for the purpose of advising tenants of their legal rights.

The State's broad UPL prohibition prevents Plaintiffs from exercising their freedom to associate together to secure access to the courts and stop unjust evictions. In this case,

that prohibition is neither furthering a compelling state interest nor closely drawn, so it fails exacting scrutiny and cannot bar Plaintiffs' associational activity.

II. Plaintiffs Will Suffer Irreparable Harm Absent an Injunction

Because Plaintiffs face a credible threat of criminal prosecution that is chilling the exercise of their First Amendment rights, they are likely to suffer irreparable harm absent injunctive relief. Indeed, the Fourth Circuit has explained that where "there is a likely constitutional violation, the irreparable harm factor is satisfied." *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021) (en banc); *see also* 11A Charles Allen Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (3d ed. 2022) ("When an alleged deprivation of a constitutional right is involved, such as the right to free speech . . . , most courts hold that no further showing of irreparable injury is necessary.").

This is especially clear in the First Amendment context, as the Supreme Court has explained that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). Here, Plaintiffs are eager to meet and speak with tenants facing eviction to provide them with the advice they need to navigate their legal proceedings and, hopefully, avoid losing their homes. Compl. ¶ 43. They already are providing *nonlegal* advice to these tenants, but they are refraining from communicating even the most basic legal advice because they know they could face felony prosecution under South Carolina's UPL regime. *Id.* ¶¶ 60–62; *see also* Neal Decl. ¶ 15; Campbell Decl. ¶ 12; Winchester Decl. ¶ 10; Murphy Decl. ¶ 12.

As a result, tenants—including members of the South Carolina NAACP—are going without the advice they need to access the courts and exercise their rights. Compl. ¶ 63; Murphy Decl. ¶¶ 12–13. Nearly all of these tenants will default and be evicted from their homes. Chambliss Decl. ¶ 49. These evictions limit the effectiveness of Plaintiffs' housing advocacy and carry devastating consequences for the individuals whom Plaintiffs seek to serve. Compl. ¶¶ 39–41; Winchester Decl. ¶ 15 ("When our neighbors and friends are evicted, our community gets torn apart.").

Plaintiffs will suffer irreparable harm in the absence of a preliminary injunction—and the communities they seek to serve will suffer, too.

III. The Balance of Equities Favors Plaintiffs, and Injunctive Relief Serves the Public Interest

The balance of equities and the public interest also favor Plaintiffs because the irreparable constitutional injuries described above outweigh any marginal burden on the State that might result from allowing Plaintiffs to help tenants by providing limited, free, and accurate legal advice about their eviction proceedings.[6] "Surely, upholding constitutional rights serves the public interest," *Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003), and "'a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be

[6] When the government is the opposing party, these two preliminary-injunction factors—the balance of equities and the public interest—are analyzed together. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

found unconstitutional,'" *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (quoting *Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 191 (4th Cir. 2013)).

Moreover, Plaintiffs' First Amendment activity in this case would advance the public interest by helping South Carolinians facing eviction access the court system. South Carolina has one of the highest eviction rates in the nation; some counties within the State see more than one out of 10 tenants evicted every year. Compl. ¶ 20. Yet 99% of tenants facing eviction are unable to secure legal representation, and the predictable result is that as many as 90% of tenants do not manage to get a hearing before they are evicted from their homes—a hearing to which they are statutorily entitled. *Id.* ¶¶ 21, 32. For those who are evicted, research shows that that tragedy is frequently accompanied by a range of other negative consequences, from mental health problems, to diminished employment opportunities, to educational disruptions for children. *Id.* ¶ 39. And at the neighborhood level, evictions disrupt communities and consolidate poverty. The balance of equities and the public interest weigh heavily in favor of Plaintiffs.

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs' Motion for a Preliminary Injunction.

Respectfully submitted,

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**Application for admission pro hac vice forthcoming*

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