No. 20-1094

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRANDON SODERBERG; BAYNARD WOODS; OPEN JUSTICE BALTIMORE; BALTIMORE ACTION LEGAL TEAM; QIANA JOHNSON; and LIFE AFTER RELEASE,

Plaintiffs-Appellants,

v.

HON. AUDREY J.S. CARRION, as Administrative Judge for Maryland's Eighth Judicial Circuit; and HON. SHEILA R. TILLERSON ADAMS, as Administrative Judge for Maryland's Seventh Judicial Circuit,

Defendants-Appellees.

On appeal from the U.S. District Court for the District of Maryland
(Civil Action No. 19-1559-RDB)

REPLY BRIEF FOR APPELLANTS

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RULE 26.1 DISCLOSURE STATEMENT

Plaintiffs Baltimore Action Legal Team, Open Justice Baltimore, and Life After Release are unincorporated associations with no parent corporations and no stock.

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INTRODUCTION

Maryland's brief is most notable for what it does not say. The State does not dispute, for instance, that it is the only state in the country to ban the broadcast of publicly available court recordings. *See* Maryland Br. 28 (acknowledging that its ban is "unique"). Nor does it contend that such a ban would actually survive strict scrutiny. *See id.* at 12-33 (applying intermediate scrutiny only). The most glaring omission in the State's brief, however, is the lack of authority for its position: it fails to cite a single case—from any jurisdiction—upholding a ban on disseminating material that the *government itself* has made public.

Absent such authority, the State relies instead on mischaracterizations of the relevant case law. It attempts, for example, to read a new requirement into the *Daily Mail* rule restricting the rule's application to circumstances involving "absolute" or "outright" bans on disseminating truthful information—a position that squarely conflicts with Supreme Court precedent. The State also seeks to inflate the scope and significance of several lower-court cases rejecting challenges to Federal Rule of Criminal Procedure 53, despite obvious differences between that rule and the statute challenged here. Ultimately, all of the State's efforts to avoid the controlling precedents are unavailing here. Thus, for the reasons set forth below and in their opening brief, Plaintiffs respectfully ask this Court to reverse the district court's decision.

ARGUMENT

I. The State cannot distinguish § 1-201 from the restrictions invalidated in *Cox Broadcasting*, *Daily Mail*, *Florida Star*, and *Bartnicki*.

In *Cox Broadcasting Corp. v. Cohn*, the Supreme Court declared that "States may not impose sanctions on the publication of truthful information contained in official court records open to public inspection." 420 U.S. 469, 496 (1975). That holding directly controls the outcome of this case. As Plaintiffs explained in their opening brief, § 1-201 imposes sanctions (i.e., "contempt") on the publication of truthful information contained in official court records (i.e., on the "broadcast" of publicly available court recordings). *See* Opening Br. 13-32. The State's effort to distinguish § 1-201 from the statutes struck down in *Cox Broadcasting* and subsequent cases is not persuasive.

A. The State's "absolute prohibition" limitation cannot be reconciled with *Daily Mail*, *Florida Star*, or *Bartnicki*.

The Supreme Court distilled the constitutional principles underlying *Cox Broadcasting* into a simple test in *Smith v. Daily Mail Publishing Company*, 443 U.S. 97 (1979). Under that test, "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order." *Id.* at 103.

Maryland seeks to evade that test here by arguing that *Daily Mail* does not apply unless the challenged restriction constitutes an "*absolute* prohibition" or "*outright* ban"

on conveying "[s]pecific [i]nformation." Maryland Br. 10, 15-16 (emphases added); *see also id.* at 17 (describing *Daily Mail* and its progeny as "absolute-prohibition" decisions). It is not entirely clear whether the State's theory is that *Daily Mail* applies only to (1) speech restrictions that are "absolute" in scope (i.e., restrictions that cover all possible forms of dissemination) or (2) speech restrictions that target "specific information" (i.e., restrictions that explicitly identify specific categories of speech for proscription). But, regardless of which theory the State intended to raise, the result here is the same because both theories are flatly contradicted by Supreme Court precedent.

First, to the extent that the State is arguing that the *Daily Mail* rule applies only to restrictions that cover *all* forms of speech, that argument directly conflicts with *Daily Mail* itself. Once again, the statute invalidated in *Daily Mail* did not impose an "absolute prohibition" or an "outright ban" on publication. Rather, it prohibited publication only in *newspapers*. 443 U.S. at 98 (emphasis added). The Court itself repeatedly noted that the "statute does not restrict the electronic media or any form of publication, except 'newspapers,' from printing the names of the youths charged in a juvenile proceeding." *Id.* at 104-05. In fact, the Court specifically cited the statute's under-inclusiveness as a reason why the statute was not narrowly tailored. *See id.* at 105 ("In this very case, three radio stations announced the alleged assailant's name before the Daily Mail decided to publish it. Thus, even assuming the statute served a

state interest of the highest order, it does not accomplish its stated purpose."). In short, the statute's under-inclusiveness was a basis for *invalidating* it—not upholding it.

The Court adhered to that same approach in *Florida Star v. B.J.F.*, 491 U.S. 524 (1989). The statute at issue in that case made it unlawful to "print, publish, or broadcast" a rape victim's name in "any instrument of mass communication." *Id.* at 526 (quoting statute). Although Maryland asserts that the *Florida Star* statute rendered rape-victim names "unpublishable in any form," Maryland Br. 16, the Court itself described the statute as a "*partial* prohibition[]" and a "*selective* ban on publication." *Id.* at 540-41 (emphases added). And, as in *Daily Mail*, the Court expressly cited the prohibition's under-inclusiveness as a reason why the statute was unconstitutional—directly refuting Maryland's contention that a prohibition's under-inclusiveness somehow immunizes it from exacting scrutiny. *See id.* ("Without more careful and inclusive precautions against alternative forms of dissemination, we cannot conclude that Florida's selective ban on publication by the mass media satisfactorily accomplishes its stated purpose."); *see also, e.g.*, *Publius v. Boyer-Vine*, 237 F. Supp. 3d 997, 1020 (E.D. Cal. 2017) ("That the statute [in *Florida Star*] did not prohibit the same information being spread by other means raised 'serious doubts' as to whether the statute was serving the interests it purportedly served." (quoting 491 U.S. at 525)).

These decisions (and others) demonstrate that even *partial* bans on publishing lawfully acquired, truthful information remain subject to exacting scrutiny. Maryland's assertion to the contrary not only ignores those precedents but also makes little sense

as a matter of constitutional logic. After all, there is no reason that the First Amendment would tolerate governmental efforts to *partially* suppress truthful information any more than it would tolerate the "outright" or "absolute" suppression of such information. *See* Opening Br. 36. If anything, the government's effort to single out a specific method of dissemination would simply raise additional constitutional concerns. *See City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1994) ("Our prior decisions have voiced particular concern with laws that foreclose an entire medium of expression.").

Finally, to the extent that Maryland contends that *Daily Mail* does not apply unless a statute targets "specific information"—such as "someone's name," Maryland Br. 16—that approach, too, runs contrary to Supreme Court precedent.[1] Any law that targets "specific information" for prohibition would constitute an archetypal content-based restriction. Yet, in *Bartnicki v. Vopper*, 532 U.S. 514 (2001), the Court made clear that the *Daily Mail* framework applies even to laws that are content-neutral. *See id.* at 526 ("The statute does not distinguish based on the content of the intercepted conversations . . . ."). In fact, the statute at issue in *Bartnicki* proscribed speech nearly identical to the speech that § 1-201 proscribes: the broadcast of a lawfully obtained

[1] As explained elsewhere, even if Maryland's reading of the *Daily Mail* line of cases were correct, its argument would still fail because § 1-201 *does* prohibit the dissemination of distinct information. *See infra* Part I.B (explaining why the information contained in court recordings cannot be conveyed through other means); Opening Br. 37 (same).

audio recording on a matter of public concern. *See id.* at 517-18. Maryland has not offered any cogent reason why § 1-201 should not be subject to the same exacting standards as the statute in *Bartnicki*. Nor has it offered any basis for injecting a new "content-based" requirement into the *Daily Mail* framework.

B. Section 1-201 is not a "manner" restriction.

The State insists that § 1-201 is a mere "manner" regulation because Plaintiffs remain free to "convey the same information" through non-broadcasting means. Maryland Br. 15 (noting that Plaintiffs "can describe, transcribe, or reenact any portion of the proceeding"). As explained, that argument cannot be squared with the Supreme Court's approach to restrictions on the dissemination of information in the public domain. *See* Opening Br. 32-41; *supra* Part I.A. But, even beyond that foundational flaw, the State's attempt to cast § 1-201 as a "manner" regulation fails for two other, independent reasons.

First, the State's claim that *all* restrictions on broadcasting court proceedings must be construed as restrictions on the "manner" of speech sweeps far too broadly. Maryland Br. 13. Maryland attempts to derive this rule from cases rejecting constitutional challenges to Federal Rule of Criminal Procedure 53, which forbids "the broadcasting of judicial proceedings from the courtroom." But those cases merely held that the public does not have a *freestanding* right to record or broadcast criminal proceedings. None of the cases addresses the narrower right Plaintiffs are asserting here: specifically, the right to "give[] further publicity" to court recordings

that have *already been released* into "the public record." *Cox Broadcasting*, 420 U.S. at 494-95 (quotation marks omitted). That right—which is much more modest than any of the rights asserted in the Rule 53 cases—is squarely protected by *Cox Broadcasting* and *Daily Mail*.

Indeed, in its effort to analogize this case to the cases upholding Rule 53, Maryland attempts to caricature Plaintiffs' claims here and repeatedly suggests that they are asserting "a First Amendment right to *unlimited* broadcasting." Maryland Br. 25 (emphasis added). But Plaintiffs are not asserting an "unlimited" right to broadcast all court proceedings any more than the newspaper in *Florida Star* was asserting an "unlimited" right to publish the names of all sexual-assault victims. Rather, Plaintiffs assert a narrow right to broadcast *specific* court recordings that they *obtained lawfully* from court officials (just as the newspaper in *Florida Star* asserted a narrow right to publish the name of a specific victim that it obtained lawfully from police officials). *See* 491 U.S. at 541. In other words, Plaintiffs' claim rests on the undisputed fact that the materials they seek to disseminate are *publicly available*. That is the factual predicate that mandates the application of the *Daily Mail* framework in this case and none of the decisions concerning Rule 53 provides a basis for disregarding that framework here.

In fact, Rule 53 does not even purport to prohibit the dissemination of *lawfully obtained* court recordings—as the State's own authorities recognize. For instance, the State repeatedly cites *United States v. Kerley*, 753 F.2d 617 (7th Cir. 1985), which rejected a First Amendment challenge to Rule 53 by a criminal defendant who wanted

to televise his own trial. *See* Maryland Br. 10, 14-15 (citing *Kerley*). But the court in that case openly acknowledged that the defendant could share his (lawfully made) audio recordings of the trial with the news media. *See* 753 F.2d at 621-22 ("[T]he record indicates that the trial court will permit Kerley to record the proceedings on audiotape. Thus, Kerley's concern about the accuracy of news-reporting should be met by the audiotapes he will be permitted to make."). That observation confirms what the language of Rule 53 makes evident: that the rule is much narrower in scope than § 1-201. For that reason, the State's reliance on the case—and others upholding Rule 53—does not support its contention that the government can constitutionally punish the dissemination of lawfully obtained court recordings.

Maryland cites only two cases to support its (atextual) claim that Rule 53 reaches conduct occurring outside the courtroom. *See* Maryland Br. 13 n.7. In both cases, however, the court cited Rule 53 as a basis for *withholding* recordings of court proceedings from the press. *See United States v. McDougal*, 103 F.3d 651, 657 (8th Cir. 1996) (withholding video of trial testimony); *United States v. McVeigh*, 931 F. Supp. 753, 756 (D. Colo. 1996) (withholding audio of trial proceedings). Thus, those cases merely crystalize the central problem with Maryland's position here—namely, that it is not seeking to restrict the public's *access* to court recordings in the first instance but, rather, to prohibit the *dissemination* of recordings that it has already made public. In sum, Maryland has not cited a single case upholding Rule 53 (or construing it) that

supports its claim that banning the broadcast of publicly available court recordings qualifies as a valid restriction on the "manner" of speech.

Second, the State's contention that § 1-201 allows Plaintiffs to convey "the same information" through other means, Maryland Br. 15, is simply wrong. Unlike traditional "manner" regulations—such as restrictions on decibel levels or billboard sizes—Maryland's ban on sharing court recordings prohibits the dissemination of information that cannot be conveyed through other means.

As Plaintiffs and amici have explained, audio recordings capture critical elements of a proceeding that cannot be gleaned from a cold transcript. These elements include a speaker's tone, inflections, volume, cadence, and emotional state, as well as any telltale signs of mendacity or truthfulness. *See* Opening Br. 36-37. These human aspects of the proceeding—which a transcript cannot convey—provide important context for assessing the *content* of spoken words. *See Cohen v. California*, 403 U.S. 15, 26 (1971) ("We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech has little or no regard for that emotive function which practically speaking, may often be the more important element of the overall message sought to be communicated.").

Maryland suggests that these shortcomings can be redressed through artful description and reenactment. *See* Maryland Br. 17. But anyone who has heard Martin Luther King, Jr.'s "I Have a Dream" speech can attest that there is a world of difference between hearing an original audio recording of an event and reading

another person's account of that event. Even the most gifted writer (or impressionist) cannot fully recreate the impact of hearing another person speak.

Maryland itself has conceded as much, at least implicitly. After all, if a descriptive approximation of a proceeding were functionally equivalent to a recording of the proceeding, then it would be irrational for the State to prohibit the broadcast of one but not the other. Yet the State repeatedly asserts that it has a valid basis for banning the dissemination of court recordings but permitting their "transcription, description, or reenactment." Maryland Br. 10. And the State further asserts that its broadcasting ban is "narrowly tailored" to serve that purpose. *Id.* at 25-28. Maryland cannot have it both ways: court recordings either convey distinct information (in which case, banning their dissemination cannot be classified as a "manner" restriction) or they do not (in which case, there can be no valid justification for banning their dissemination).[2]

C. To the extent that § 1-201 is a "manner" regulation, it would still be subject to strict scrutiny because it is content-based.

Even if § 1-201 could be classified as a "manner" restriction—and it cannot—it must be classified as a content-based restriction. *See generally Consolidated Edison Co. v.*

[2] Maryland's attempt to cast its ban on broadcasting publicly available court recordings as an "ongoing experiment" is also unconvincing. Maryland Br. 25. The State enacted § 1-201 forty years ago—two decades before it began distributing court recordings to the public—and it has steadfastly rejected all calls to revisit it ever since. Whatever justifications the State might assert for its outlier status in banning the dissemination of publicly available recordings, experimentation is not plausibly one of them.

Pub. Serv. Comm'n, 447 U.S. 530, 536 (1980) ("[W]e have emphasized that time, place, and manner regulations must be applicable to all speech irrespective of content.") (quotation marks omitted)). By its express terms, the statute prohibits only one type of broadcasting: broadcasts that depict a trial-level "criminal matter." Md. Code, Crim. Proc. § 1-201(a)(1). It is therefore impossible to describe the restricted "manner" of speaking without reference to the content of the speech itself. And it is similarly impossible to identify an example of forbidden speech without viewing or listening to its content. These are the hallmarks of content-based speech restrictions.[3]

As the Supreme Court has explained, genuine time, place, and manner restrictions "regulate *features* of speech unrelated to its content." *McCullen v. Coakley*, 573 U.S. 464, 477 (2014) (emphasis added). Such restrictions "appl[y] to all speech" falling within one of those three categories, "[n]o matter what its message." *Consolidated Edison Co.*, 447 U.S. at 536 (citation omitted). Critically, the fact that a speech regulation is confined to particular times, places, or manners does not, on its own, render the regulation content-neutral. *See, e.g.*, *Boos v. Barry*, 485 U.S. 312, 318-19 (1988) (classifying as content-based a prohibition on "[o]ne category of speech . . . within 500 feet of embassies"); *Linmark Assocs., Inc. v. Twp. of Willingboro*, 431 U.S. 85,

[3] Maryland wrongly asserts that Plaintiffs "no longer dispute" whether § 1-201 is content-neutral or content-based. Maryland Br. 15. Plaintiffs explicitly stated in their opening brief: "To the extent that the district court construed the broadcasting ban as regulating the 'manner' of speech, then it should have also construed the statute as a content-based regulation." Opening Br. 40 n.15.

94 (1977) ("That the proscription applies only to one mode of communication . . . does not transform this into a 'time, place, or manner' case." (citation omitted)). Rather, to qualify as content-neutral, a regulation must draw no distinctions among the types of information conveyed.

Section 1-201 does not satisfy that test. Once again, the provision prohibits the broadcast of "any criminal matter, including a trial, hearing, motion, or argument, that is held in trial court or before a grand jury." One cannot determine whether a broadcast violates that proscription without first "examin[ing] the content of the message that is conveyed." *McCullen*, 573 U.S. at 479 (citation omitted). Specifically, one must watch or hear the broadcast to determine not only whether it depicts a Maryland court proceeding, but also: (1) whether the proceeding occurred before a trial court (as opposed to an appellate court); (2) whether the proceeding occurred in a criminal matter (as opposed to a civil matter); and (3) whether it is a real proceeding (as opposed to a reenactment). Thus, to determine whether a particular broadcast violates § 1-201 "depend[s] entirely on [its] communicative content" rather than some other property of the speech. *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015).

The content-based distinctions that § 1-201 draws are not abstract or insignificant. By the State's own account, the Maryland General Assembly deliberately singled out trial-level broadcasts of criminal proceedings (and refrained from regulating comparable civil or appellate broadcasts) due to the supposedly unique risks they pose to trial fairness. *See* Maryland Br. 4 (describing § 1-201's legislative history);

id. at 26 (citing § 1-201's distinctions in prohibited broadcasts as evidence of narrow tailoring). The State cannot tout its interest in preserving fair criminal trials while, at the same time, trivializing the distinctions its own laws have drawn in service of that end. Section 1-201's status as a content-based speech restriction is yet another reason why it must be subject to strict scrutiny.[4]

D. Section 1-201 does not satisfy strict scrutiny.

Maryland makes no attempt to argue that § 1-201 survives strict scrutiny. That choice is not surprising. If the State had attempted to raise such an argument, it would have faced an insurmountable barrier: the statute's lack of narrow tailoring. Plaintiffs have cited numerous cases—from the Supreme Court, this Court, and other courts—holding that government efforts to restrict the dissemination of material that the government itself has made public are, by definition, not narrowly tailored. *See* Opening Br. 22-32; *e.g.*, *Ostergren v. Cuccinelli*, 615 F.3d 263, 280 (4th Cir. 2010) ("*Cox Broadcasting* and its progeny indicate that punishing truthful publication of private information will almost never be narrowly tailored to safeguard privacy when the government itself released that information to the press."). Neither the State nor the district court has cited a single case to the contrary.

[4] Of course, the Court need not reach the question of whether § 1-201 is content-based or content-neutral if it examines the statute under the standards set forth in *Cox Broadcasting* and *Daily Mail*, as explained above.

II. Even if § 1-201 were reviewed under intermediate scrutiny, the statute would still be unconstitutional.

Maryland urges this Court to construe § 1-201 as a content-neutral "time, place, and manner" regulation and to review it under intermediate (rather than strict) scrutiny. That argument is untenable for all of the reasons outlined above and in Plaintiffs' opening brief. But even if the State's argument were correct—and § 1-201 were properly subject to intermediate scrutiny—the statute's prohibition on disseminating lawfully obtained court recordings would still be unconstitutional.

A "regulation of the time, place, and manner of speech is generally valid if it furthers a substantial government interest, is narrowly tailored to further that interest, and leaves open ample alternative channels of communication." *American Legion Post 7 v. City of Durham*, 239 F.3d 601, 609 (4th Cir. 2001). Here, the State argues that § 1-201 is narrowly tailored to further the State's interest in ensuring fair trials. Maryland Br. 20-28. That argument is not persuasive for several reasons.

As an initial matter, § 1-201 is not narrowly tailored. Once again, numerous cases—from both the Supreme Court and this Court—have held that restrictions on the dissemination of material that the government itself released are not narrowly tailored. *See supra* Part I.D. The narrow-tailoring section of the State's brief conspicuously fails to mention any of those cases. *See* Maryland Br. 25-28. And, even more conspicuously, it fails to acknowledge that the material it now seeks to suppress was originally made public by the State's own judiciary. *See id.*

Instead, Maryland rests its narrow-tailoring argument on the general proposition that a statute can survive intermediate scrutiny even if it does not employ the "least restrictive means" of achieving the government's stated purpose. But that generic rule cannot rescue § 1-201, which is not tailored in any discernible way. Indeed, it is difficult to imagine a blunter tool for safeguarding fair-trial rights than § 1-201: the statute imposes a blanket ban on broadcasting all criminal proceedings, regardless of when they occurred, whether they remain pending, whether they involved witnesses, whether they previously garnered public attention, and—most importantly—whether the government has released its own recordings of the proceedings. *See* Opening Br. 22-30 (explaining how § 1-201 sweeps much more broadly than necessary to serve its stated purpose).

At any rate, the State cannot rely on intermediate scrutiny's more forgiving tailoring standard for other reasons. The Supreme Court has made clear that statutes that punish the dissemination of truthful information that the government itself made public do not fall *just* shy of narrow tailoring; rather, they fall *significantly* short. As the Court stated in *Florida Star*, "where the government itself provides information to the media, it is most appropriate to assume that the government had, but failed to utilize, *far* more limited means of guarding against dissemination than the extreme step of punishing truthful speech." 491 U.S. at 538 (emphasis added); *see generally C.B.C. Distribution & Mktg., Inc. v. Major League Baseball Advanced Media*, 505 F.3d 818, 823 (8th Cir. 2007) (noting, outside the strict-scrutiny context, that "it would be strange law

that a person would not have a first amendment right to use information that is available to everyone"). Thus, even under the less demanding standard that Maryland seeks to invoke, § 1-201 cannot satisfy narrow tailoring.[5]

The statute also fails to permit "alternative channels of communication." As explained, court recordings provide a uniquely valuable means of conveying information about judicial proceedings. *See supra* Part I.B; Opening Br. 41-43. Just like recordings of other government activities, court recordings play an important role in facilitating public discourse "because of the ease in which they can be widely distributed via different forms of media." *Fields v. City of Philadelphia*, 862 F.3d 353, 359 (3d Cir. 2017); *see also ACLU v. Alvarez*, 679 F.3d 583, 607 (7th Cir. 2012) ("[A]udio and audiovisual recording are uniquely reliable and powerful methods of preserving and disseminating news and information about events that occur in public."). These features, along with the "self-authenticating character" of recordings, make "it highly unlikely that other methods [of speech] could be considered

[5] Maryland's argument also focuses almost exclusively on the State's purported need to stop court proceedings from being televised. *See* Maryland Br. 10, 20-23, 27. But only one of the court recordings in Plaintiffs' possession is a video recording, *see* JA 16-17, and the public's access to video recordings is severely limited under the Maryland Rules. *Compare* Md. Rule 16-504(j) (providing access to video recordings to people affiliated with the case), *with* Md. Rule 16-504(h) (providing access to audio recordings to "any person" who requests one). Public access to video recordings is also severely restricted by practical realities—in particular, the fact that Baltimore City is the only jurisdiction in Maryland that actually video-records its proceedings. Thus, the State's focus on preventing the dissemination of video recordings only highlights the extent to which § 1-201 is not narrowly tailored to the State's specific concerns.

reasonably adequate substitutes." *Alvarez*, 679 F.3d at 607. Section 1-201 therefore does not permit "ample alternative channels of communication" and cannot be upheld as a "time, place, and manner" restriction.

CONCLUSION

For the foregoing reasons, and the reasons previously set forth in Plaintiffs' opening brief, the judgment of the district court should be reversed and Plaintiffs' First Amendment claims should be reinstated.

Respectfully submitted,

/s/ Nicolas Y. Riley

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JUNE 26, 2020

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume, typeface, and type-style requirements of Federal Rule of Appellate Procedure 32(a). This brief contains 4,270 words, excluding the parts of the document exempted by Rule 32(f), and was prepared in fourteen-point Garamond font, a proportionally spaced typeface, using Microsoft Word.

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2020, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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