No. 22-11299-JJ

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

MARJORIE TAYLOR GREENE,

*Plaintiff-Appellant*,

v.

MR. BRAD RAFFENSPERGER, *et al*.,

*Defendants-Appellees*,

DAVID ROWAN, *et al*.,

*Defendants-Intervenors-Appellees*.

*On Appeal from the United States District Court*
*for the Northern District of Georgia*

# BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES AND AFFIRMANCE

Elizabeth B. Wydra
Brianne J. Gorod
Praveen Fernandes
Charlotte Schwartz
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

*Counsel for Amicus Curiae*

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* states that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

I also hereby certify that I am aware of no persons or entities, in addition to those listed in the party and *amicus* briefs filed in this case, that have a financial interest in the outcome of this litigation. Further, I am aware of no persons with any interest in the outcome of this litigation other than the signatory to this brief and its counsel, and those identified in the party and *amicus* briefs filed in this case.

Dated: June 14, 2022 /s/ Brianne J. Gorod

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**Page(s)**

## TABLE OF AUTHORITIES – cont'd

**Page(s)**

## TABLE OF AUTHORITIES – cont'd

**Page(s)**

## INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and to preserve the rights and freedoms it guarantees. Enacted in the wake of a bloody civil war that was started by individuals willing to take up arms against their own country, the Fourteenth Amendment fundamentally transformed our national charter, providing a means to hold accountable not only past insurrectionists, but also other individuals who might violate their oaths to uphold the Constitution in the future. CAC has a strong interest in ensuring that the Constitution, including Section Three of the Fourteenth Amendment, applies as robustly as its text and history require, and accordingly has an interest in this case.

## INTRODUCTION AND SUMMARY OF ARGUMENT

On January 6, 2021, a crowd of thousands violently breached the Capitol in a bid to prevent Congress from certifying the results of the 2020 presidential election. This unprecedented attack resulted in five deaths, at least 140 assaults, and the most

[1] *Amicus* states that no counsel for a party authored this brief in whole or in part, and no person other than *amicus* or its counsel made a monetary contribution to the brief's preparation or submission. Counsel for all parties have consented to the filing of this brief.

significant destruction of the Capitol complex since the War of 1812. *The Attack: The Jan. 6 Siege of the U.S. Capitol Was Neither a Spontaneous Act Nor an Isolated Event*, Wash. Post (Oct. 31, 2021), https://www.washingtonpost.com/politics/interactivee/2021/jan-6-insurrection-capitol/. The attack followed months of efforts by then-President Trump and some of his most fervent supporters in Congress to undermine the integrity of the election and organize a mass demonstration to prevent certification of the results. Hunter Walker, *Jan. 6 Protest Organizers Say They Participated in 'Dozens' of Planning Meetings with Members of Congress and White House Staff*, Rolling Stone (Oct. 24, 2021), https://www.rollingstone.com/politics/politics-news/exclusive-jan-6-organizers-met-congress-white-house-1245289/.

Representative Marjorie Taylor Greene was among those lawmakers who helped to plan the January 6 rally. *Id.* According to two of the rally organizers, Greene participated in "dozens" of planning meetings ahead of the January 6 demonstration. *Id*. She also publicly promoted it as a "1776 moment," and repeatedly told her supporters to attend and "fight for Trump." Representative Zoe Lofgren, *Georgia Social Media Review* 66-71 (2021), https://lofgren.house.gov/sites/lofgren.house.gov/files/Georgia2.pdf. And even after the violence that ensued in the rally's wake, Greene extolled the rioters facing criminal charges as "patriot[s]" and "prisoners of war." Alia Shoaib, *Marjorie*

*Taylor Greene Visited Accused Jan. 6 Rioters in Jail and Told Steve Bannon the Prisoners Cry While Singing the National Anthem Every Night*, Business Insider (Nov. 6, 2021), https://www.businessinsider.com/marjorie-taylor-greene-visited-jan-6-rioters-jailed-patriot-wing-2021-11.

Based on her participation in these events, several registered Georgia voters have challenged Greene's candidacy for federal office, alleging that she is disqualified from serving in Congress under Section Three of the Fourteenth Amendment. Ratified in the wake of the Civil War, that provision disqualifies from holding any state or federal office those who "having previously taken an oath . . . to support the Constitution of the United States" then "engaged in insurrection or rebellion against the same, or g[ave] aid or comfort to enemies thereof." U.S. Const. amend. XIV, § 3. That disqualification can be removed, but only by "a vote of two-thirds of each House." *Id.*

Section Three of the Fourteenth Amendment was written in the immediate aftermath of the Confederate rebellion. Its Framers sought to "secur[e] the key results of the Civil War in the Constitution so that when the southern states were restored to full participation in the Union these could not be undone." Eric Foner, *The Second Founding* 89 (2019). Section Three was seen as essential to preventing the reemergence of the "Slave Power" and ensuring that states would elect representatives who would "respect equality of rights." *Id.* at 84. As one proponent

of Section Three put it, this new constitutional provision would require "the citizens of the States lately in rebellion" to "raise up a different class of politicians." Cong. Globe, 39th Cong., 1st Sess. App. 228 (1866) (Rep. DeFrees).

But, significantly, Section Three disqualification is not limited to those individuals who supported the Confederacy. Its text applies broadly to any "insurrection or rebellion" against the United States, U.S. Const. amend. XIV, § 3, in recognition of the dangers posed by allowing individuals who have attempted to overthrow their own government to hold office in it. Indeed, the drafters of the Fourteenth Amendment rejected a version of the amendment that would have explicitly limited its application to the former Confederacy, *see* Cong. Globe, 39th Cong., 1st Sess. 2460 (1866), and in the debates over the Fourteenth Amendment, at least one member pointed to two historical examples, the Whiskey Rebellion and the Burr trial, as comparable instances of insurrection authorizing the government to "expel from its councils such as have participated in treasonable designs," *id.* at 2534 (Rep. Eckley).

According to the Georgia voters who have challenged Greene's eligibility to hold office, Greene's efforts to help plan the January 6 rally and to goad on its participants shortly before they breached the Capitol constitute "insurrection or rebellion" against the government, and Greene is therefore disqualified from serving under Section Three. Complaint at 4-5, *In re Challenge to the Constitutional*

*Qualifications of Rep. Marjorie Taylor Greene* (G.A. Sec'y of State filed Mar. 24, 2022); *see* 12 U.S. Op. Att'y Gen. 141, 161 (1867) ("persons may have engaged in rebellion without having actually levied war or taken arms"); *Worthy v. Barrett*, 63 N.C. 199, 203 (1869) ("engage[] in the rebellion" means "[v]oluntarily aiding the rebellion . . . by personal service, or by contributions . . . of any thing that was useful or necessary in the Confederate service"); 1 Hinds' Precedents of the House of Representatives of the United States § 457 (1901) [hereinafter Hinds' Precedents] ("'aid and comfort' may be given to an enemy by words of encouragement" spoken by someone "occupying an influential position").

In an effort to stop the state proceedings designed to adjudicate the merits of the Georgia voters' allegations, Greene filed this lawsuit, seeking a preliminary injunction to halt the state proceedings. Appellant's Br. 3-4. Among other things, she argued that an 1872 statute that removed Section Three disqualification from certain former Confederates not only gave amnesty to those who had already incurred Section Three disqualification, but also to all potential future insurrectionists. In other words, in Greene's view, no one alive today can be subject to Section Three disqualification. Appellant's Br. 3-4. The district court disagreed, concluding that the plain text of the statute precludes its prospective application. ECF No. 52, at 58.

The district court is correct that Greene's interpretation of the 1872 Amnesty

Act is at odds with both the plain text and history of the statute. *See Cawthorn v. Amalfi*, __ F.4th__, 2022 WL 1635116 at *1 (4th Cir. May 24, 2022) (rejecting the argument that the 1872 Act grants prospective amnesty in a nearly identical challenge to a Section 3 disqualification effort in North Carolina). The 1872 Act provides that "all political disabilities imposed by" Section Three "are hereby removed," plainly indicating that it only applies to Section Three disqualifications that were already "imposed" in the past. An Act to Remove Political Disabilities Imposed by the Fourteenth Article of the Amendments of the Constitution of the United States, ch. 193, 17 Stat. 142 (1872).

And the history of the statute confirms the plain meaning of the text—that is, that it only applies to individuals who had been disqualified from holding office prior to its passage. Before the 1872 Act was passed, Congress had been passing private bills to relieve former Confederates of Section Three disqualification. The 1872 statute was passed to take the place of that cumbersome process. *See* Cong. Globe, 42nd Cong., 2nd Sess. 3381-82 (1872) (Rep. Butler). In other words, rather than pass a statute with a long list of names, Congress elected to use a general phrase to identify those former Confederates it was relieving of disqualification. It was not a statute designed to grant amnesty to potential future insurrectionists.

Notably, in 1919, when a Congressman facing Section Three disqualification raised an argument similar to the one Greene is making here, Congress concluded

that Section Three disqualifications cannot be lifted prospectively, and it determined that Section Three barred that Congressman from serving as a member of Congress. 6 Cannon's Precedents of the United States House of Representatives § 56 (1935) [hereinafter Cannon's Precedents].

In summary, Greene's efforts to evade accountability for her role in the January 6 attack is at odds with the text and history of the statute on which she relies. And her argument, if accepted, would mean that Section Three of the Fourteenth Amendment is currently without effect. This Court should reject that argument.

## ARGUMENT

### I. The Text and History of the 1872 Amnesty Act Make Clear That It Was Passed to Grant Immunity Retrospectively to Certain Former Confederates, Not to Grant Immunity Prospectively to All Future Insurrectionists.

Greene argues that even if her actions qualify as "insurrection or rebellion" within the meaning of Section Three, she is nonetheless not disqualified from holding office under that provision because she was granted amnesty by a statute enacted in 1872. The Amnesty Act of 1872 "removed" "all political disabilities imposed by the third section of the fourteenth amendment to the Constitution," except those for certain government positions that were excluded in order to deny amnesty to the most prominent Confederate leaders. An Act to Remove Political Disabilities, 17 Stat. at 142 (1872). Greene insists that because she is not included in the exceptions listed in the statute, the 1872 Act grants her amnesty from any

Section Three disqualification that might otherwise apply. Appellant's Br. 26-31.

Greene's reading of the statute is at odds with the plain meaning of its text. By providing that "all political disabilities imposed by" Section Three "are hereby removed," An Act to Remove Political Disabilities, 17 Stat. at 142, the text of the 1872 Act plainly indicates that it only applies to Section Three disqualifications that were already "imposed" in the past. *See Carr v. United States*, 560 U.S. 438, 448-49 (2010) (the Supreme Court has "frequently looked to Congress' choice of verb tense to ascertain a statute's temporal reach," and it is the present tense that indicates a "prospective orientation" (quotation marks omitted)); *Gundy v. United States*, 139 S. Ct. 2116, 2127 (2019) (the past tense indicates application to pre-enactment conduct); *Florida Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 39-41 (2008) (adopting the view that use of the past participle "indicat[es] past or completed action" (quotation marks omitted)). As the Fourth Circuit put it, by employing the "past-tense version" of the verb "impose," Congress indicated "its intent to lift only those disabilities that had by then been 'imposed.'" *Cawthorn*, 2022 WL 16535116 at *8. The use of the word "removed" reinforces this interpretation, given that Congress cannot "'remove' something that does not yet exist," as the district court put it. ECF No. 52, at 58; *see Cawthorn*, 2022 WL 16535116 at *9 (the word "removed," "[i]n the mid-nineteenth century, as today, . . . generally connoted taking away something that already exists rather than

forestalling something yet to come").

The history of the 1872 Amnesty Act is consistent with the plain meaning of its text and confirms that it only granted amnesty to those who had incurred Section Three disqualification prior to the statute's enactment. As early as 1868, the same year the Fourteenth Amendment was ratified, the Republican Party raised the possibility of removing Section Three disqualifications "imposed upon the late rebels" for those who "honestly co-operate[d]" in Reconstruction as "the spirit of disloyalty" purportedly died out. *National Party Platforms* 70 (Kirk H. Porter ed., 1924). But instead of preserving the prospect of relief from Section Three disqualification as an incentive for cooperation, Congress acquiesced to political pressure and quickly began passing private bills to remove Section Three disabilities from thousands of people who had fought for or helped the Confederacy. *See, e.g.*, Private Act of December 14, 1869, ch. 1, 16 Stat. 607, 607-13. Some were relieved of Section Three disqualifications on the grounds that they had done little more than "continue[] in office doing their duty" in the Confederate states after the outbreak of the Civil War. Cong. Globe, 41st Cong., 2nd Sess. 1463 (1870) (Rep. Beck). Indeed, some of these individuals went on to fight in the Union army. *See* Cong. Globe, 40th Cong., 2nd Sess. 1977 (1868) (Sen. Trumbull) (explaining that Roderick R. Butler was to be granted amnesty because "after Being a member of the rebel Legislature of the State of Tennessee he joined the Union armies").

The removal of Section Three disabilities was also a mechanism for doling out political favors, and soon many received amnesty with little scrutiny as to their worthiness. On at least one occasion, when pressed as to why former Confederates named in a long list of those to be granted amnesty were so deserving, proponents of amnesty essentially told their colleagues just to trust them. *See, e.g.*, Cong. Globe, 40th Cong., 2nd Sess. 3030 (1868) (Rep. Paine) (explaining that a list of Arkansans set for receiving amnesty had "the recommendation of the constitutional convention of Arkansas" and the "verbal assurance of the entire Arkansas delegation," but without explaining what any of them had done to deserve amnesty). In fact, many of those who received amnesty as a result of these private bills had, at best, questionable records of rehabilitation. *See* 2 James G. Blaine, *Twenty Years of Congress: From Lincoln to Garfield* 512 (1886) (noting that "some of the most prominent and influential" Confederates were among those given amnesty in those private bills).

Congress's decision to remove Section Three disqualifications through the use of private bills raised a number of problems. First, this approach was criticized as an obvious vehicle for political favoritism. Early on, Senator Charles R. Buckalew complained that this process was "partial and unfair," as members of Congress would just "pass around the State" and "pick out their prominent, active, useful political friends," who were then "passed here upon the ground that the convention

has recommended them." Cong. Globe, 40th Cong., 2nd Sess. 3181 (1868) (Sen. Buckalew). Senator Buckalew proposed that Congress should instead enact "a bill which removed disabilities as a general rule, leaving some particular exceptions." *Id.* Years later, this criticism persisted, as the growing number of people receiving amnesty only heightened the sense of unfairness for "those who are too obscure or have not influence enough" to have their cases taken up by Congress. Cong. Globe, 42nd Cong., 1st Sess. 62 (1871) (Rep. Beck); *see* Cong. Globe, 42nd Cong., 2nd Sess. 3180 (1872) (Sen. Boreman) ("It engenders unkind feeling that some gentlemen in particular States are relieved of their disabilities while others are still subject to them.").

Second, some worried that relieving Section Three disabilities from some but not others only fueled "a white terror campaign in the South." Gerard N. Magliocca, *Amnesty and Section Three of the Fourteenth Amendment*, 36 Const. Comment. 87, 113 (2021). While some members of Congress strongly opposed giving amnesty to former Confederates as "an attempt to pay a premium for disloyalty," Cong. Globe, 42nd Cong., 1st Sess. 102 (1871) (Rep. Eliot), others argued that continuing to enforce Section Three disqualifications for those remaining Confederates still subject to it was only exacerbating political violence in the South, *see id.* at 63 (Rep. Farnsworth) ("I believe that the continuance of these disqualifications, instead of quieting matters in the South, only stirs up strife."); *id.* at 103 (Rep. Blair) (arguing

that Section Three disqualifications did not stop "murder, arson, and disloyalty of all kinds" from "running riot" in the South). Meanwhile, Republicans began to fear that Democratic calls for broader amnesty posed a threat to their power. In anticipation of the 1872 election, President Grant, "wisely read[ing] Northern public opinion," Magliocca, *supra*, at 116, called on Congress to grant amnesty to former Confederates, excluding those "great criminals, distinguished above all others for the part they took in opposition to the Government." Third Annual Message to Senate and House of Representatives (Dec. 4, 1871), *in* 7 *A Compilation of the Messages and Papers of the Presidents* 153 (James D. Richardson ed., 1898).

As pressure to relieve former Confederates of Section Three disqualification grew over time, the enormous number of requests for amnesty "soon overwhelmed Congress and led to calls for general Section Three amnesty legislation." Magliocca, *supra*, at 112. Members of Congress complained that they had been "annoyed during the last three years to an almost unparalleled extent" by individual applications for amnesty and begged Congress to finally just "dispos[e] of the whole subject at once." Cong. Globe, 42nd Cong., 1st Sess. 62 (1871) (Rep. Beck). One of the last private bills that the House considered originally contained some "sixteen or seventeen thousand names," and was then amended to include "some twenty-five more pages of additional names." Cong. Globe, 42nd Cong., 2nd Sess. 3381-82 (1872) (Rep. Butler). Notably, as members kept adding names to the list, one

member proposed adding the words "and all other persons" to the bill. *Id.* at 3382 (Rep. Perry). The sponsor of the bill rejected that proposal out of hand precisely because it suggested that amnesty would be extended to those who had not yet incurred Section Three disqualification, quipping that he "did not want to be amnestied" himself. *Id.* at 3382 (Rep. Butler). That remark elicited laughter on the House floor, *see id.*, underscoring that the argument that Greene is now advancing—that Congress is empowered to grant Section Three amnesty prospectively—was not taken seriously even at the time of the Act's passage.

But rather than take up yet another bill consisting mostly of an extraordinarily long list of names, the Judiciary Committee proposed "a general amnesty bill," which became the 1872 Amnesty Act. *Id.* at 3381 (Rep. Butler). The exceptions listed in the bill were crafted with the list of names contained in the longer private bill in mind, ensuring that "none of the names come within the classes which have been objected to upon the floor of this House." *Id.* at 3382 (Rep. Butler). In other words, the 1872 Act was merely a replacement for another in a long line of extraordinarily lengthy bills naming individual Confederates. It was a solution to an administrative problem that Congress had created and was not passed to allow potential future insurrectionists to hold office. *See Cawthorn*, 2022 WL 1635116 at *9 (the historical evidence reveals that the Congress that enacted the 1872 Act was "laser-focused on the then-pressing problems posed by the hordes of former

Confederates seeking forgiveness"). As the Fourth Circuit observed, the categories of exceptions in the law "reflect[ed] Congress' judgment that certain ex-Confederates had been sufficiently wicked to warrant continued exclusion from public office," and having withheld amnesty from "the *actual* Jefferson Davis, the notion that the 1872 Congress simultaneously deemed any future Davis worthy of categorical advance forgiveness seems quite a stretch." *Id.* at *10.

The campaign materials of Republicans and Democrats from that year's presidential election also indicate that both parties understood the 1872 Amnesty Act to apply only to former Confederates. The Republicans celebrated the fact that they had passed a bill "extending amnesty to those *lately in rebellion*." *National Party Platforms*, *supra*, at 84 (emphasis added). The Democrats demanded that Congress go even further and eliminate the exceptions contained in the 1872 Act, but even their imaginations did not extend beyond "disabilities imposed *on account of the Rebellion*." *Id.* at 77 (emphasis added).

In summary, there is nothing in the text or history of the 1872 Amnesty Act that supports the conclusion that it granted immunity prospectively to all future insurrectionists, thereby leaving Section Three without any practical effect. Indeed, Congress has previously concluded that it does not even have the authority to grant immunity prospectively, as the next Section discusses.

## II. Congress Has Previously Concluded that Section Three Disqualifications Cannot Be Removed Prospectively.

Subsequent to the 1872 Act's passage, Congress concluded that Section Three disqualifications cannot be removed prospectively. In 1919, the House investigated whether Victor L. Berger, who had been convicted of violating the Espionage Act of 1917, was disqualified from serving as a member of Congress under Section Three. Jack Maskell, Cong. Rsch. Serv., *Qualifications of Members of Congress* 19-20 (2015).

Before the special committee investigating his case, Berger argued that Section Three had been "entirely repealed by an Act of Congress." Cannon's Precedents § 56. Instead of pointing to the 1872 Act, Berger argued that an amnesty act passed in 1898 forever nullified Section Three. *Id.* The 1898 statute, enacted at the outbreak of the Spanish-American War to enhance national unity, *see* Magliocca, *supra*, at 126, removed Section Three disqualification for those few remaining Confederates subject to the exceptions from the 1872 statute, stating that "the disability imposed by section three of the fourteenth amendment to the Constitution of the United States heretofore incurred is hereby removed." Act of June 6, 1898, ch. 389, 30 Stat. 432. In defending his position against the contention that Congress cannot repeal a constitutional amendment by statute, Berger argued, much like Greene does now, that Section Three allows for its own repeal by giving Congress the power to lift its disqualification by a two-thirds vote of both Houses of Congress.

1 *Hearings Before the Special Comm. Appointed Under the Auth. of H. Res. No. 6 Concerning the Right of Victor L. Berger to Be Sworn in as a Member of the Sixty-Sixth Cong.*, 66th Cong. 32 (1919) (statement of Henry F. Cochems, Counsel for Victor L. Berger).

The House rejected that argument outright. After acknowledging that Section Three authorizes Congress to remove Section Three disqualifications, it concluded that "manifestly it could only remove disabilities incurred previously to the passage of the [1898] act, and Congress in the very nature of things would not have the power to remove any future disabilities." Cannon's Precedents § 56. In other words, the 1898 Act could not prospectively remove Section Three disqualifications because Congress was not empowered to do so.

Greene downplays the importance of the Berger case on the grounds that it concerned the 1898 Amnesty Act, which she argues is distinguishable from the 1872 Act because it uses the words "heretofore incurred." According to Greene, that language indicates an exclusively retrospective application that is not present in the 1872 Act. Appellant's Br. 28. But this ignores the fact that the House's conclusion about the effect of the 1898 Act was based primarily on its understanding of the scope of Section Three, which it determined only empowers Congress to lift the disqualification retrospectively. Cannon's Precedents § 56. While the House also looked to the words "heretofore incurred" in the 1898 statute, it pointed to that phrase

as further evidence of Congress's understanding that Section Three disqualifications can only be removed after they have been incurred. *Id.* (concluding that Congress "plainly recognized" the limited scope of Section Three "when the words 'heretofore incurred' were placed in the [1898] act itself").

* * *

Section Three of the Fourteenth Amendment is an important mechanism for holding public officials accountable when they violate their oaths of office. The 1872 Amnesty Act was part of a shameful chapter in our nation's history, as it allowed those who had recently taken up arms against the United States in defense of slavery to hold office once again. As a result of the statute, former Confederates immediately returned to power, including the former vice president of the Confederacy who took a seat in the House of Representatives that year. Blaine, *supra*, at 546-47. While Greene would have this Court extend the effects of this statute to the present day, the text and history of the 1872 Act confirm that its reach is limited to the past, and it provides no basis for denying Georgia voters the opportunity to hold Greene accountable for her role in the tragic events of January 6th.

## CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

*/s/ Brianne J. Gorod*
Elizabeth B. Wydra
Brianne J. Gorod
Praveen Fernandes
Charlotte Schwartz
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

*Counsel for Amicus Curiae*

Dated: June 14, 2022

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(d) because it contains 4,055 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman font.

Executed this 14th day of June, 2022.

*/s/ Brianne J. Gorod*
Brianne J. Gorod

*Counsel for Amicus Curiae*

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on June 14, 2022.

I certify that all parties in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed this 14th day of June, 2022.

*/s/ Brianne J. Gorod*
Brianne J. Gorod

*Counsel for Amicus Curiae*