

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

FRANK THOMPSON,

Plaintiff – Appellant,

JOEL STROUT; JASON LORD; CHRISTOPHER SMITH; JACK CUNNINGHAM,

Plaintiffs,

v.

CARL WILSON, in their official capacity as
Commissioner, Maine Department of Marine Resources,

Defendant – Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MAINE (CASE NO. 1:24-CV-00001-JAW)

**BRIEF OF ATLANTIC STATES MARINE FISHERIES COMMISSION
AS AMICUS CURIAE IN SUPPORT OF DEFENDANT-APPELLEE
AND AFFIRMANCE OF THE JUDGMENT BELOW**

Russell B. Pierce, Jr.
First Circuit Bar No. 46573
Norman Hanson DeTroy, LLC
220 Middle Street
P.O. Box 4600
Portland, Maine 04112
(207 553-4621
rpierce@nhdlaw.com

Sean H. Donahue
First Circuit Bar No. 63960
David T. Goldberg
First Circuit Bar No. 97664
Donahue, Goldberg & Herzog
1008 Pennsylvania Ave., SE
Washington, D.C. 20003
(202) 277-7085
sean@donahuegoldberg.com

Attorneys for Amicus Curiae

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), amicus Atlantic States Marine Fisheries Commission (ASMFC) states that it is an interstate compact commission approved by Congress under Article I, Section 10, Clause 3 of the United States Constitution. The ASMFC has no parent corporation, and no person or corporate entity owns ten percent or more of it.

Date: May 13, 2025

/s/ Sean H. Donahue

Sean H. Donahue
Donahue, Goldberg & Herzog
1008 Pennsylvania Ave., SE
Washington, D.C. 20003
(202) 277-7085
sean@donahuegoldberg.com

*Counsel for Amicus Atlantic States
Marine Fisheries Commission*

TABLE OF CONTENTS

RULE 26.1 DISCLOSURE STATEMENT.....	i
TABLE OF AUTHORITIES	iii
INTEREST OF AMICUS	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	5
I. THE VESSEL TRACKING PROGRAM REFLECTS YEARS OF DELIBERATION AND RESPONDS TO URGENT FISHERY MANAGEMENT NEEDS.....	5
A. The American Lobster Fishery.....	6
B. The Management Regime for American Lobster	9
C. The Development of Addendum XXIX	11
II. ANY REASONABLE EXPECTATION OF PRIVACY CONCERNING THE LOCATION OF COMMERCIALLY LICENSED LOBSTER FISHING VESSELS IS EXTREMELY MODEST	18
III. THE VESSEL TRACKING PROGRAM IS REASONABLY DESIGNED TO SERVE ITS VITAL PUBLIC PURPOSES	26
CONCLUSION	28
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Cases:

<i>Balelo v. Baldrige</i> , 724 F.2d 753 (9th Cir. 1984)	21
<i>Campanale & Sons, Inc. v. Evans</i> , 311 F.3d 109 (1st Cir. 2002).....	6
<i>City of Los Angeles v. Patel</i> , 576 U.S. 409 (2012)	28
<i>Douglas v. Seacoast Prods.</i> , 431 U.S. 265 (1977)	21
<i>Emigrant Residential, LLC v. Pinti</i> , 2025 WL 1088134 (1st Cir. 2025).....	25
<i>Goethel v. Pritzker</i> , 2016 WL 4076831 (D. N.H. 2016)	24
<i>Iverson v. City of Boston</i> , 452 F.3d 94 (1st Cir. 2006)	25
<i>Lovgren v. Byrne</i> , 787 F.2d 857 (3d Cir. 1986).....	21
<i>Marshall v. Barlow’s, Inc.</i> , 436 U.S. 307 (1978)	23
<i>Medeiros v. Vincent</i> , 431 F.3d 25 (1st Cir. 2005).....	1,10,11
<i>Mexican Gulf Fishing Co. v. Dep’t of Com.</i> , 60 F.4th 956 (5th Cir. 2023).....	25,26
<i>New York v. Burger</i> , 482 U.S. 691 (1987).....	5,28
<i>United States v. Biswell</i> , 406 U.S. 311 (1972).....	23
<i>United States v. Cardona-Sandoval</i> , 6 F.3d 15 (1st Cir. 1993)	20
<i>United States v. Dillon</i> , 701 F.2d 6 (1st Cir. 1983)	23
<i>United States v. Green</i> , 671 F.2d 46 (1st Cir. 1982)	20
<i>United States v. Hayes</i> , 653 F.2d 8 (1st Cir. 1981)	20
<i>United States v. Raub</i> , 637 F.2d 1205 (9th Cir. 1980).....	25
<i>United States v. Reeh</i> , 780 F.2d 1541 (11th Cir. 1986).....	20

Statutes:

U.S. Const., Article I, Section 10, Clause 3.....	i
U.S. Const., Amend. IV.	19
16 U.S.C. § 1383a(e)(1).....	24
16 U.S.C. §§ 1801-1883	9
16 U.S.C. § 1801(a)(8).....	11
16 U.S.C. § 1853(b)(8)	24
16 U.S.C. § 1854 note	10
16 U.S.C. § 1856(a)(3)(A)	10
16 U.S.C. § 1861(b)(1)(A)	19
16 U.S.C. § 5101	9
16 U.S.C § 5101(a)(3)	9
16 U.S.C § 5101(b)	10
16 U.S.C. § 5103(a)(1)	11
16 U.S.C. § 5103(b)	18
16 U.S.C. § 5103(b)(3)	18
16 U.S.C. § 5104(a)(2)(A)	11
16 U.S.C. § 5107a(a).....	10
16 U.S.C. § 5107(b)	10
44 U.S.C. § 3541	17

Pub. L. No. 77-539 (1942)	1
Pub. L. No. 81-721 (1950)	1
Enrollment and Licensing Act of Feb. 18, 1793, ch. 8, § 27, 1 Stat. 305.....	20

Regulations:

50 C.F.R. § 648.2	21
50 C.F.R. § 648.11	24
50 C.F.R. § 648.11(g)	22
50 C.F.R. § 648.11(h)	22
50 C.F.R. § 697.1	11
50 C.F.R. § 697.7(a)(2)	22
50 C.F.R. § 697.12(a)	24
50 C.F.R. § 697.19	8
89 Fed. Reg. 9548 (February 9, 2024)	18
Executive Order No. 14,008, 86 Fed. Reg 7619 (Jan. 27, 2021)	27
Executive Order No. 17,735, 90 Fed. Reg. 17735 (April 24, 2025)	27
Me. Code R. 13-188, ch. 25, § 25.98	18

ASMFC Documents:

Addendum XXVI to Amendment 3 of the Interstate Fishery Management Plan for American Lobster (2018), https://asmfc.org/resources/management/management-plan/ american-lobster-addendum-xxvi/	7,8,12
Addendum XXIX to Amendment 3 to the American Lobster Fishery Management Plan at 1 (March 2022)	passim

Amendment 3 to Interstate Fishery Management Plan for American Lobster (1997), https://asmfc.org/resources/management/management-plan/american-lobster-amendment-3/	11
American Lobster Benchmark Stock Assessment and Peer Review Report (Oct. 19, 2020), https://asmfc.org/uploads/file/63d417a12020AmLobsterBenchmarkStockAssmt_PeerReviewReport_reduced.pdf	9
Atlantic States Marine Fisheries Commission Compact (1942)	1
<i>FAQs on Electronic Vessel Tracking for American Lobster and Jonah Crab</i> (April 1, 2022), https://asmfc.org/news/faqs-on-electronic-vessel-tracking-for-american-lobster-and-jonah-crab/	17
Lobster Management Stock Area Map, https://asmfc.org/uploads/file/58f8cd9aLobsterManagement_StockArea_Map_Nov2016.JPG	8
Memorandum from Caitlin Starks to Lobster Board (July 28, 2021), LobsterWG_Report_VesselTracking_July2021.pdf	13
Proceedings of the Lobster Management Board (Aug. 2, 2021), https://asmfc.org/resources/management/species-board-proceedings/proceedings-of-the-american-lobster-management-board-august-2021/	13,14
<i>Review of the Interstate Fishery Management Plan for American Lobster: 2022 Fishing Year</i> (2023), https://asmfc.org/wpcontent/uploads/2025/01/AmLobsterFMPReviewFY2022.pdf	7
<i>Review of the Interstate Fishery Management Plan for American Lobster: 2023 Fishing Year 22</i> (2024) (map), https://asmfc.org/wp-content/uploads/2025/01/AmLobsterFMPReviewFY2023.pdf	8
 <u>Other Materials:</u>	
Atlantic Coastal Cooperative Statistics Program, https://www.accsp.org	18
Fed. R. App. P. 29(a)(4)(E).....	1
Maine DMR, 2020-2024 Commercial Maine Landings, https://www.maine.gov/dmr/sites/maine.gov.dmr/files/inline-files/LandingsBySpecies.Table_.pdf	8
Merriam Webster Dictionary, https://www.merriam-webster.com	16

National Institute of Standards and Technology, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations (Rev. 3) NIST SP 800-171 (2024), https://csrc.nist.gov/pubs/sp/800/171/r3/final	17
NOAA-Fisheries, <i>Northeast Canyons and Seamounts Marine National Monument</i> , https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/northeast-canyons-and-seamounts-marine-national	16
NOAA Fisheries, <i>A History of Fisheries Monitoring and Management in the North Pacific</i> (2022)	24
NOAA Fisheries, <i>Regional Vessel Monitoring Information</i> , https://www.fisheries.noaa.gov/national/enforcement/regional-vessel-monitoring-information	22
Patrice McCarron & Heather Tetreault, <i>Lobster Pot Gear Configurations in the Gulf of Maine</i> (2012), https://repository.library.noaa.gov/view/noaa/37957	7
Kate Cough, Trump Administration Seeks to Expand Offshore Oil and Gas Drilling, Including in Gulf of Maine, PORTLAND PRESS-HERALD (May 4, 2025), https://www.pressherald.com/2025/05/04/trump-administration-seeks-to-expand-offshore-oil-and-gas-drilling-including-in-gulf-of-maine/	27
University of Maine Lobster Institute, Lobstering Basics, https://umaine.edu/lobsterinstitute/educational-resources/lobstering-basics/	7

INTEREST OF AMICUS

Amicus Atlantic State Marine Fisheries Commission (“ASMFC”) was created by a congressionally approved compact among the 15 Atlantic Coastal States. Pub. L. No. 77-539 (1942), *as amended* Pub. L. No. 81-721 (1950). Its membership consists of each member State’s director of marine fisheries; a State legislator; and a public member appointed by the Governor. To “promote the better utilization of the fisheries, marine, shell and anadromous,” Compact, Art. I, the ASMFC promulgates fishery management plans, which member States then implement individually, usually by adopting regulations pursuant to State law. *See Medeiros v. Vincent*, 431 F.3d 25, 27-28 (1st Cir. 2005). The ASMFC today coordinates its member States’ management of 27 species or species complexes of fish and shellfish, including American lobster.

This case concerns regulations adopted by the Maine Department of Marine Resources to implement provisions of an ASMFC fishery management plan providing that commercial vessels fishing for American lobster in federal waters employ electronic location tracking devices. The ASMFC participated as amicus curiae in the district court, and the parties have consented to its participation here.

Pursuant to Fed. R. App. P. 29(a)(4)(E), the ASMFC confirms that no party’s counsel authored this brief in whole or in part; no party or party’s counsel

contributed money that was intended to fund preparing or submitting this brief, and no person—other than amicus and its counsel—contributed money that was intended to fund preparing or submitting this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The electronic vessel tracking requirement at issue serves vital public purposes. It provides fishery managers with needed information about the changing lobster fishery, which has experienced significant regional growth, but also rapid regional declines, in recent decades. Commercial lobster fishing coexists with other uses of the Northeast United States’ vast offshore areas—including, among other examples, fishing activity targeting other species; mineral development; offshore wind power; aquaculture; conservation of wildlife such as the endangered North Atlantic right whales; and nature conservation through marine protected areas. The information on aggregate fishing effort that the tracking program makes available will improve management of potential special conflicts, while also allowing for better-informed stock assessments, and therefore more effective management of the lobster fishery itself.

The ASMFC designed the program to meet what years of experience had revealed to be “critical need for high-resolution spatial and temporal data to

characterize effort in the federal American lobster and Jonah crab fisheries.”¹

Without adequate and accurate data about fish stocks and fishing effort, fishery management would be less effective, and lobster fishery advocates poorly positioned to engage effectively regarding potentially incompatible uses. The tracking program arose from a process that brought together all the States in the American lobster fishery, as well as federal fisheries experts, industry voices, and others. That process culminated in an essentially unanimous judgment of State and federal fishery managers that the information that the tracking program makes available was critical to proper fishery management. At the same time, the program was designed to impose only minimal costs and burdens for permittees, including by affording data obtained through tracking the same robust confidentiality protections that have long been successfully applied to other fisheries data.

The ASMFC did not adopt this program lightly and is aware that the program was an unwelcome innovation for some. But the vessel tracking program arose from a careful, multi-year, inclusive public process with multiple rounds of public comment; a successful voluntary pilot program; and input from a wide variety of federal, state, industry and scientific representatives and experts. The ASFMC is

¹ ASMFC, Addendum XXIX to Amendment 3 to the American Lobster Fishery Management Plan at 1 (Mar. 2022) (reprinted in Addendum of Defendant-Appellee at 3-42).

convinced that it is a necessary step that will benefit all who currently participate and rely on the vitally important American lobster fishery—and who hope to do so in the future.

Plaintiff-Appellant Frank Thompson (“Thompson”) contends that the program nonetheless violates the Fourth Amendment. That is wrong: A commercial fishing license is a privilege that comes with conditions to protect the public’s interests in sustainable fisheries and the marine environment. Any reasonable privacy expectations are limited in this context: Vessels and traps must be conspicuously identified, and permittees’ activities are subject to constant monitoring (including by law enforcement, which all vessel captains know has a right to board and search a vessel at any time without a warrant). The information the vessel tracking program collects—where one’s commercial fishing vessel is located on the water and how long it pauses in pulling up a trawl—is thus already public, and far afield from the “persons, houses, papers, and effects” the Fourth Amendment centrally protects. Multiple forms of electronic monitoring and (more intrusive) human onboard observation are commonplace in commercial fishery management—and have never required, and as a practical matter could not accommodate, judicial warrants. And the information collected is subject to careful and experience-tested confidentiality safeguards.

This challenge, if sustained, would severely hamper governments’ ability to manage fisheries in the public interest and to respond effectively to the serious challenges and conflicts that mark modern marine fishery management. The Fourth Amendment requires no such result, and the district court’s judgment should be affirmed.

ARGUMENT

The challenged Maine regulations implementing the vessel tracking program in no way affront the Fourth Amendment, and they easily fit the requirements for a reasonable search in a “closely regulated industry.” *See* Br. of Def.-Appellee 22-26 (“Maine Br.” discussing *New York v. Burger*, 482 U.S. 691 (1987)). Below, the ASMFC more fully demonstrates: (1) the extensive process culminating in the interstate fishery management plan that Maine’s regulation implements; (2) the attenuated character of any privacy interests in locational data of commercial lobstering vessels, and (3) the critical importance of the tracking information to successful management of the lobster fishery—and to the public that depends upon a thriving fishery.

I. THE VESSEL TRACKING PROGRAM REFLECTS YEARS OF DELIBERATION AND RESPONDS TO URGENT FISHERY MANAGEMENT NEEDS

Thompson’s brief portrays the challenged regulations as the result of the Maine Department of Marine Resources Commissioner’s mere “*wants*” for

information that will “make life easier for him,” rather than for any real “*need*” for “legitimate ends of conservation and sustainability.” Br. 4 (emphases original). Thompson also asserts that “no other state has successfully pushed any search technology like [Maine] has.” Br. 12. These characterizations do not accurately represent the realities of the vessel tracking program’s development.

In fact, Maine’s regulations follow a nearly decade-long, rigorous, multistate process in which all States participating in the Atlantic lobster fishery assessed the data that fishery managers will need to respond to a variety of new challenges already. These challenges occur in a fishery that has already undergone dramatic, and in some respects dramatically negative, changes in recent decades. All the States in the American lobster fishery – represented on the ASMFC’s Lobster Management Board – unanimously concluded, over years of careful policy development, that the tracking program was necessary to serve a long-recognized information gaps that had seriously impeded sound lobster fishery management.

A. The American Lobster Fishery. The lobster is one of New England’s “most famed resources,” *Campanale & Sons, Inc. v. Evans*, 311 F.3d 109, 110 (1st Cir. 2002), and the fishery too is of great economic importance.² In 2023, coastwide

² Lobstermen use traps, also known as “pots,” which are typically deployed a connected line (a “trawl,” which ranges from 5 to 40 traps in federal waters) anchored or attached to a buoy at one end to mark its location. This allows lobstermen to easily locate and retrieve the traps when checking their catch. Traps are baited with fish or other bait. Lobstermen typically check their traps every day

commercial landings totaling approximately 120 million pounds were valued at \$517.6 million.³

Recent decades have witnessed dramatic developments in the American lobster fishery. Overall, the fishery “has seen incredible expansion in landings” “with coastwide landings rising from roughly 39 million pounds in 1981 to over 158 million pounds in 2016.”⁴ This increase largely reflects activity in Maine, where landings increased by “over 500%” in that 35-year period. Addendum XXVI at 15. Today Maine is by far the largest producer of American lobster, accounting for nearly 90% of all landings, though very recent years have seen declines from the

or every few days, depending on regulations and local practices. They use boats equipped with hydraulic winches or other equipment to retrieve the traps from the ocean floor. When the traps are brought aboard the boat, the catch is sorted, lobsters of legal size are retained, and undersized or illegal lobsters are returned to the water. After sorting the catch, lobstermen rebait the traps and reset them in the water. *See, e.g.*, University of Maine, Lobster Institute, Lobstering Basics, <https://umaine.edu/lobsterinstitute/educational-resources/lobstering-basics/>; Patrice McCarron & Heather Tetreault, Lobster Pot Gear Configurations in the Gulf of Maine (2012), <https://repository.library.noaa.gov/view/noaa/37957>.

³ ASMFC, Review of the Interstate Fishery Management Plan for American Lobster: 2022 Fishing Year 1 (2023), <https://asmfc.org/wp-content/uploads/2025/01/AmLobsterFMPReviewFY2023.pdf>.

⁴ ASMFC, Interstate Fishery Management Plan for American Lobster, Amendment 3, Addendum XXVI 15 (2018) (“Addendum XXVI”), <https://asmfc.org/resources/management/management-plan/american-lobster-addendum-xxvi/>

2016 peak.⁵ The situation in other areas of the fishery, however, has become increasingly dire. “In 1996, New York lobster landings were 9.4 million pounds, but in 2016, only 218,354 pounds were landed” there. Addendum XXVI at 15. These and similar declines in the southern New England States are “the result of several factors including warming waters, increased predation, and continued fishing pressure.” *Id.* The ASMFC considers the southern New England lobster stock “severely depleted.” *Id.*

The American lobster’s range is divided into seven management areas, each of which is subject to distinct regulations that include, among other things, size limits on harvest, gear restrictions, trap limits, and measures to protect egg-bearing females.⁶ Most American lobster fishing still occurs in State waters: the average density of lobster gear deployed in state waters is more than 30 times that in federal waters. Federal (often called “offshore”) waters cover a much larger area—over 90% of the total area under United States management. But recent years have seen an

⁵ While Maine’s landings remain comparatively large, landings have declined significantly in recent years; landings were 96 million pounds in 2023 and 86 million pounds in 2024. Maine DMR, 2020-2024 Commercial Maine Landings, https://www.maine.gov/dmr/sites/maine.gov.dmr/files/inline-files/LandingsBySpecies.Table_.pdf.

⁶ See ASMFC, *Review of the Interstate Fishery Management Plan for American Lobster: 2023 Fishing Year 22* (2024) (map), <https://asmfc.org/wp-content/uploads/2025/01/AmLobsterFMPReviewFY2023.pdf>; 50 C.F.R. §§ 697.19-697.23.

expanded presence of American lobster into federal waters further from shore, and also a pronounced expansion of fishing effort in federal waters.⁷

B. The Management Regime for American Lobster. As a general matter responsibility for managing fisheries in the “federal” waters of the Exclusive Economic Zone (the “EEZ,” 3 to 200 nautical miles from shore) is principally vested in the Department of Commerce’s NOAA-Fisheries (and regional Councils) pursuant to the Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1883 (“Magnuson-Stevens Act”). Fishing in State jurisdictional waters (coastal waters extending three miles from shore) is principally the responsibility of the States under their police powers and the Atlantic Coastal Fisheries Cooperative Management Act, *id.* §§ 5101-5108 (“Atlantic Coastal Act”). Congress enacted the Atlantic Coastal Act to “support and encourage the development, implementation, and enforcement of effective interstate conservation and management” of interjurisdictional fisheries. *Id.* § 5101(a)(3), (b). In the Act, Congress sought to promote “effective interstate conservation and management” of “[c]oastal fishery resources that migrate, or are widely distributed, across the

⁷ The ASMFC’s 2020 stock assessment documented a “shift” of lobster stock and fishery from inshore toward offshore areas, in part as a result of warming waters. Atlantic States Marine Fisheries Commission 2020 American Lobster Benchmark Stock Assessment and Peer Review Report at 6 (Oct. 19, 2020), <https://asmfc.org/resources/science/stock-assessment/american-lobster-benchmark-stock-assessment-and-peer-review-report/>.

jurisdictional boundaries of two or more of the Atlantic States and of the federal Government,” *id.* § 5101(a)(3), (b), in part by giving the ASMFC additional responsibilities and providing a federal remedy for instances when member States fail to comply with ASMFC management plans. *See Medeiros*, 431 F.3d at 27-28.

Congress established a distinctive management regime for American lobster, in which States and the Commission have a broader role. Because lobster are found in, and move between, State and federal waters, State and federal fishery management processes have always been closely coordinated. *See Campanale & Sons*, 311 F.3d at 112-14. But, mindful that lobster fishing in State waters historically has accounted for an overwhelming share of activity and catch, Congress enacted legislation in the 1990s, establishing a central role for States in lobster management. In the 1993 Atlantic Coastal Act, Congress enacted special provisions dealing with Maine’s American lobster fishery, 16 U.S.C. § 5107a(a) (authorizing holders of Maine fishing permits to fish in certain federal waters), and initiated a “[t]ransition to management of American lobster fishery by [the ASMFC].” 16 U.S.C. § 5107(b); *see also id.* §§ 1854 note, 1856(a)(3)(A).

Under the existing statutory structure, lobster fishing in State jurisdictional waters is generally governed by State laws (including those implementing ASMFC’s lobster plan); while in the EEZ, fishing is governed by federal regulations under the Atlantic Coastal Act based on recommendations from the ASMFC “to support the

provisions of the [ASMFC's] coastal fishery management plan.” 16 U.S.C. § 5103(a)(1). *See* 50 C.F.R. §§ 697.1-697.11. State policymaking, in other words, is pivotal for lobster management in both State and federal waters.

The ASMFC's Interstate Fishery Management Plan for American Lobster seeks to promote “a healthy lobster resource and a management regime which provides for sustained harvest, maintains appropriate opportunities for participation, and provides for cooperative development of conservation measures by all stakeholders.”⁸ To ensure that the Plan reflects current scientific information on the fishery, the ASMFC periodically updates it through amendments and addenda, *see Medeiros*, 431 F.3d at 27-28.

C. The Development of Addendum XXIX. The ASMFC has long recognized that sound fishery management requires accurate, up-to-date information about fish stocks and fishing effort, consistent with its statutory obligation to develop management plans “based on the best scientific information available.” 16 U.S.C. §5104(a)(2)(A). As the Magnuson-Stevens Act puts it, “[t]he collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.” *Id.* §1801(a)(8).

⁸ Amendment 3 at ii (1997), <https://asmfc.org/resources/management/management-plan/american-lobster-amendment-3/>.

For many years, the ASMFC and other fishery managers have recognized that American lobster fishing effort in offshore areas was poorly understood—*i.e.*, the fishery was not well characterized. In 2016, the Commission convened a work group including ASMFC, State, and NOAA-Fisheries experts. The work group recommended, among other things, that the Commission require electronic vessel monitoring for commercial lobster vessels.⁹

In February 2018, the Commission finalized Addendum XXVI, which identified “deficiencies in the data collection requirements for lobster.” Addendum XXVI at 1. It explained that among the “foremost” of these deficiencies was that existing requirements yielded information “too coarse to respond to the increasing number of marine spatial planning efforts which require fine-scale data.” *Id.* The Commission noted that inadequate information about the location of lobster fishing had “impeded the [Commission’s] ability to accurately assess impacts” to the lobster fishery of a federal proposals to protect deep-sea corals found in the same offshore federal waters and “establishment of a national monument.” *Id.* at 4-5. Accordingly, the ASMFC undertook to “improv[e] the resolution and quality of data collected,” in part by using “the latest technology to improve reporting.” *Id.* at 1.

⁹ ASMFC, American Lobster Addendum XXVI to Amendment 3 and Jonah Crab Addendum III at 14 (2018) (“Addendum XXVI”), <https://asmfc.org/resources/management/management-plan/american-lobster-addendum-xxvi/>.

Addendum XXVI established an Electronic Tracking Pilot Program to “test electronic tracking devices” to determine which worked best for the lobster fishery. Addendum XXVI at 18. The pilot program’s success would be evaluated in light of factors including ease of compliance; ability to determine trap hauls from steaming; industry feedback; cost per fisherman, and law enforcement feedback. *Id.* The results of the pilot program showed that the devices had, in fact, been “able to deliver vessel positions and detect individual trap hauls.” *Id.* at 3. The working group recommended that the Commission require electronic vessel monitoring for the offshore (federal) lobster fishery.¹⁰

In the deliberations over the proposal, one major theme was that tracking information was vital to protect the lobster fishery itself. ASMFC Lobster Board Chair and head of the Massachusetts Division of Marine Fisheries Daniel McKiernan explained that tracking was “one of the more important issues of our time for the lobster fishery” because

it’s really hard to help the lobster fishery sort of be considered for the important role that it plays in the maritime economy, when it’s so difficult to identify places and times of fishing. The lobster fishery at this point is at a real disadvantage relative to its other counterparts, that being groundfish, scallops, herring, surf clams, all those other fisheries that have vessel tracking systems or vessel monitoring systems.

¹⁰ Memorandum from Caitlin Starks, FMP Coordinator, to American Lobster Board (July 28, 2021), *LobsterWG_Report_VesselTracking_July2021.pdf*.

Proceedings of the ASMFC Lobster Management Board 14 (Aug. 2, 2021).¹¹ As then-Maine DMR Commissioner and ASMFC Commissioner Keliher put it, “we are being asked to stand up and advocate in many cases for [the lobster] industry, without the data that we need to do it.” *Id.* at 18. ASMFC Commissioner and lobster industry representative David Borden of Rhode Island, noted the potential special conflicts with offshore wind development and added: “We need to know the spatial and temporal footprint of the fishery, so that we can document it and try to minimize the impacts on the industry.” *Id.*; *see also* Addendum XXVI at 5-6.

After a public notice and comment process conducted pursuant to the Commission’s Charter, the ASMFC’s Lobster Board finalized Addendum XXIX in March 2022. The Addendum’s goal is “to collect high resolution spatial and temporal data to characterize effort in the federal American lobster and Jonah crab fisheries for management and enforcement needs.” Addendum XXIX at 1.¹² The data provided by the program is expected to “improve stock assessment, inform discussions and management decisions related to protected species and marine spatial planning, and enhance offshore enforcement,” and respond to “a number of

¹¹ *Available at* <https://asmfc.org/resources/management/species-board-proceedings/proceedings-of-the-american-lobster-management-board-august-2021/> ASMFC has not found any public comments from Thompson or his co-plaintiffs in any of the four public meetings at which Addendum XXIX was deliberated upon.

¹² The Board also approved Addendum IV to the Jonah Crab Fishery Management Plan. *See* Maine Br. 6 n.9.

challenges the fishery is currently facing[that] pose a critical need for electronic tracking data in the offshore fishery.” *Id.* at 1-2.

The Board explained that the information afforded by existing self-reports prepared and submitted by fishermen (“Vessel Trip Reports”) provided only “coarse spatial data” that was “insufficient for management and scientific purposes” and failed to “provide the precision to accurately apportion effort within the stock units.” Addendum XXIX at 2. It noted that access to accurate, finer-grained information concerning the location of fishing effort would also be important when issues arose relating to potentially incompatible uses in federal waters. *Id.* (In such cases, the ASMFC would not be the proponent of the activity, but would rather be invited or expected to weigh in on the extent of conflicts or economic impacts.) Moreover, “the large geographic footprint and low density of lobster gear in the offshore federal management area makes it difficult to locate gear for compliance checks, reducing the efficiency and efficacy of offshore enforcement efforts.” *Id.*

The fact that lobster stocks span many management areas and travel routes to fishing grounds from different ports, the Board explained, made it “critically important to record the footprint of the U.S. lobster fishing,” particularly given “spatial allocation” issues likely to occur “as a result of emerging ocean uses such

as aquaculture, marine protected areas, and offshore energy development.”¹³ Furthermore, the Board noted that it had “long been recognized that enforcement efforts in the offshore federal lobster fishery need to be improved.” Addendum XXIX at 5. Such “acute need[s] for high-resolution data” were of “particular concern,” the Board explained, given the upturn in effort in federal waters and “the rapid increase in landings and value during the last decade.” *Id.* at 2.

To obtain the more detailed data, the Addendum requires that vessels with federal commercial lobster trap gear permits “install an approved electronic tracking device to collect and transmit spatial data” and specifies that “[t]he device must remain on board the vessel and powered at all times when the vessel is in the water, unless the device is authorized to power down by the principal port state.”¹⁴ The

¹³ Addendum XXIX at 2. For example, lobster fishing was phased out in 2023 in the new Northeast Canyons and Seamounts Marine National Monument, <https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/northeast-canyons-and-seamounts-marine-national>.

¹⁴ Addendum XXIX at 6. Thompson’s brief uses the phrase “black box” no fewer than 48 times to describe the tracking devices or program. But that term—normally signifying something whose workings are “hidden from or mysterious to the user,” Merriam Webster Dictionary, <https://www.merriam-webster.com>—is quite inapt. The tracking devices are simple cellular devices; their workings are well and widely understood (similar to a small subset of the functions performed by the cellular telephones now carried by most adults), and were fully explained in both the ASMFC and State processes. *E.g.*, ASMFC, *FAQs on Electronic Vessel Tracking for American Lobster and Jonah Crab* (April 1, 2022), <https://asmfc.org/news/faqs-on-electronic-vessel-tracking-for-american-lobster-and-jonah-crab/>.

devices must “collect location data at a minimum rate of one ping per minute for at least 90% of the fishing trip,”—a minimum rate “necessary to distinguish lobster fishing activity from transiting activity and []... allow estimation of the number of traps per trawl.” Addendum XXIX at 7. Thus, the one-minute ping rate is central the paramount goal of getting sufficiently accurate and granular data and “essential to estimating trawl size.”¹⁵

The Addendum provides for strict management of data secured from vessel tracking. It assigns a central data management and security role to the Atlantic Coastal Cooperative Statistics Program (“ACCSP”), an entity created in 1995 by agreement between 23 coastal resource agencies, including the fishery management agencies of each of the 15 Atlantic coastal States and federal agencies.¹⁶ The ACCSP, which has long been charged with administering (and maintaining the

¹⁵ Addendum XXIX: Ping Rate Analysis 24 (Maine Addendum 28).

¹⁶ See <https://www.accsp.org>. The ACCSP complies with the requirements of the Federal Information Security Management Act, 44 U.S.C. §§ 3541, *et seq.* which sets data security standards for organizations that handle federal information. To be compliant, an organization must satisfy standards and guidelines established by the National Institute of Standards and Technology, including a comprehensive set of security controls. National Institute of Standards and Technology, *Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations*, Revision 3. NIST SP 800-171 (2024), <https://csrc.nist.gov/pubs/sp/800/171/r3/final>. The ACCSP has extensive experience complying with federal and State-law restrictions on the release of fisheries information, and has appropriately followed procedures to prevent, monitor, and report cyber security incidents.

confidentiality of) fishery data for the federal and state fishery management agencies, is required to administer the trip and location data gathered by the devices, and to provide “the appropriate state or federal entities with confidential data access.”¹⁷ Maine’s regulations imposes strict limits on tracking data that the State has obtained from the ACCSP to protect permittees’ confidentiality. *See* Maine Br. 12-13 (citing regulations). Thus, data from the tracking program that could allow identification of particular permittees remains protected by federal and State law during post-collection storage and use for management.

Consistent with its obligations as an ASMFC member, and pursuant to a public process under state law, Maine adopted the challenged regulations to implement Addendum XXIX. *See* 13-188 C.M.R. ch. 25, § 25.98 (2023).¹⁸

¹⁷ In addition to adopting the federal permittee tracking requirement for state plans, the ASMFC recommended that “the federal government promulgate all necessary regulations” to implement the Addendum XXIX management measures pursuant to 16 U.S.C. §5103(b), and that it do so by December 15, 2023. NOAA-Fisheries has not met the recommended timeline. *Cf.* 89 Fed. Reg. 9548, 9548, 9553 (Feb. 9, 2024) (listing tracking regulations on the Department of Commerce’s “agenda of regulations under development or review over the next 12 months,” and the Addendum XXIX measures as “critical to improving stock assessments, informing discussions and management decisions related to protected species and marine spatial planning, and enhancing offshore enforcement”).

¹⁸ Most of the other ASMFC States with lobster fisheries have finalized their own regulations to implement Addendum XXIX. *See* Maine Br. 11.

II. ANY REASONABLE EXPECTATION OF PRIVACY CONCERNING THE LOCATION OF COMMERCIALY LICENSED LOBSTER FISHING VESSELS IS EXTREMELY MODEST

Thompson’s suggestions of incipient tyranny notwithstanding, the vessel tracking program is reasonable, measured, and respectful of regulated persons – and far from the concern with “secur[ity]” in “persons, houses, papers, and effects” at the heart of the Fourth Amendment. U.S. Const. Amend. IV. The lone permittee still seeking to invalidate the regime does not claim any property interest is invaded, and the location information the program collects is already public: no one disputes that commercial lobstermen must affirmatively and conspicuously identify their vessels and the location of their traps.

Marine rules (and mariners’ reasonable expectations) concerning governmental scrutiny differ dramatically from those that prevail in other spaces. As every experienced mariner understands, the U.S. Coast Guard may board any fishing vessel under United States jurisdiction without a warrant or probable cause to enforce laws and regulations related to marine safety, security, and environmental protection. 16 U.S.C. § 1861(b)(1)(A)(ii); see also *id.* § 1861(b)(1)(A)(vi) (allowing any authorized federal or State officer, “with or without a warrant or other process,” to “access, directly or indirectly, for enforcement purposes any data or information required to be provided under this subchapter or regulations under this subchapter, including data from vessel monitoring systems, satellite-based maritime distress and

safety systems, or any similar system, subject to the confidentiality provisions of [16 U.S.C.] section 1881a”). As Maine points out (Br. 12-13), state laws afford similar authority.

The basic realities of maritime commerce—activity often conducted far from shore (and from magistrates’ chambers), in sometimes dangerous conditions, with consequences for sensitive natural resources and sometimes competing human uses—explain why warrantless searches are reasonable in this context. *United States v. Cardona-Sandoval*, 6 F.3d 15, 23 (1st Cir. 1993) (“Because of the special circumstances implicated by searches and seizures of vessels while at sea, we have recognized a diminished expectation of privacy.”). “[T]he circumstances and exigencies of the maritime setting afford people on a vessel a lesser expectation of privacy than in their homes, obviating the usual fourth amendment requirements.” *United States v. Green*, 671 F.2d 46, 53 (1st Cir. 1982); *see also United States v. Hayes*, 653 F.2d 8, 12 (1st Cir. 1981) (finding “no fourth amendment violation” where search was “within the scope of Coast Guard authority”); *accord United States v. Reeh*, 780 F.2d 1541, 1546-47 (11th Cir. 1986) (noting that “American officials may constitutionally board an American ship at any time” and that “seafarers can have only a limited expectation of privacy on their vessels”). Nor is that understanding new: less than a year after the ratification of the Bill of Rights, Congress enacted legislation that authorized warrantless searches of licensed

vessels. *See* Enrollment and Licensing Act of Feb. 18, 1793, ch. 8, § 27, 1 Stat. 305, 315 (“it shall be lawful for any officer of the revenue, to go on board of any ship or vessel ... to inspect, search and examine”).

Thompson’s analogy (Br. 1, 16-19) of the challenged vessel tracking program to eighteenth-century royal excesses is thus particularly misplaced. To the contrary, “comprehensive federal regulation of ... fishing vessels was established in the earliest days of the Nation,” *Douglas v. Seacoast Prods.*, 431 U.S. 265, 272 (1977), and “the fishing industry has been the subject of pervasive governmental regulation” ever since. *Lovgren v. Byrne*, 787 F.2d 857, 865 & n.8 (3d Cir. 1986); *see also Balelo v. Baldrige*, 724 F.2d 753, 764-66 (9th Cir. 1984) (commercial tuna fishing is a closely regulated industry; upholding warrantless searches as reasonable). Commercial fishing in general, and lobster fishing in particular, have long marked by mandatory permitting and intensive regulation— and correspondingly modest expectations of privacy. Persons holding valuable governmental licenses to harvest public resources from public waters know that they are subject to intensive public monitoring of their activity—without a warrant or any quantum of individualized suspicion of wrongdoing. Various kinds of electronic monitoring programs are required for numerous commercial fisheries. Many vessels must be equipped with

an electronic device capable of providing accurate fixes for the area in which the vessel operates.¹⁹

Those engaged in commercial lobster fishing enjoy a special entitlement to public resources conditioned on substantial restrictions and compliance regulations intended to preserve those resources. Among other things, permit conditions and regulations restrict fishing seasons; sizes and reproductive status of lobsters that may be landed; and prescribe the permissible nature and technical features of lobster gear. Commercial lobster permittees understand that they—and their traps—are subject to continual observation and inspection by law enforcement. Indeed, constant visibility is itself a regulatory requirement; vessels and fishing gear must be prominently marked. *See, e.g.*, 50 C.F.R. § 697.8(a)(2) (requiring every lobster fishing vessel of 25 feet or more to have its “official number displayed on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft”); *see also* Maine Br. 21 (citing similar

¹⁹ *See, e.g.*, 50 C.F.R. § 648.2 (defining electronic monitoring as “a network of equipment” that may include “cameras and recording devices to collect data on catch and vessel operations”). Electronic monitoring is required for many fisheries, and sometimes may be adopted as an alternative to human observers or monitors. *See generally* *id.* §§ 648.11(g), 648.11(h); *see also* NOAA-Fisheries *Regional Vessel Monitoring Information* (summarizing requirements for satellite-based Vessel Monitoring Systems” for various fisheries), <https://www.fisheries.noaa.gov/national/enforcement/regional-vessel-monitoring-information>.

requirements under Maine law). Law enforcement officers not only may stop and board vessels at any time, they also may and do haul up trawls and traps (which must be conspicuously identified and linked to the permittee) to inspect for compliance with regulatory requirements. The lobster fishery's sustainability depends upon these long-settled management practices.

When a commercial lobster vessel permittee secures a license, he or she “does so with the knowledge,” *United States v. Biswell*, 406 U.S. 311, 316 (1972), that where they fish, where they drop lobster pots, and how many, what equipment they use, what they catch, and what catch they keep – is all subject to inspection by and disclosure to officials, at any time; permittees have “voluntarily chosen” to accept those burdens, *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 313 (1978). Electronic signaling indicating merely the location of a licensed commercial lobster fishing vessel does not implicate the Fourth Amendment's core concern with unreasonable intrusions upon persons and their property. *See United States v. Dillon*, 701 F.2d 6, 6-7 (1st Cir. 1983) (rejecting analogy between law enforcement search of vessel and searches of homes and automobiles).

The compelling need for accurate, verifiable information concerning fish stocks and fishing effort is reflected in well-established (and invariably warrantless) monitoring practices. Indeed, warrantless monitoring is standard in commercial fishing. Many fishery management regimes require vessels—without any

requirement of reasonable suspicion or any other quantum of vessel-specific cause—to provide access to onboard observers to monitor compliance with applicable regulations, to assess catch and bycatch, to inspect records, and more.²⁰ These human monitors or observers are not only aware of the vessel location at all times, but also take in and keep vastly more information (at much higher cost) than do the simple positional devices authorized under Addendum XXIX. Observer programs are widespread because it is recognized that obtaining full, independently verified information about commercial fishing activities (and not relying solely upon self-reporting) is vital to effective fishing management. *Goethel v. Pritzker*, 2016 WL 4076831, at *9 (D.N.H. 2016) (rejecting Fourth Amendment challenge to at-sea monitors requirement).

²⁰ See, e.g., 16 U.S.C. § 1853(b)(8) (under Magnuson-Stevens Act, a fishery management plan may “require that one or more observers be carried on board” any domestic vessel “engaged in fishing for species that are subject to the plan”); *id.* § 1383a(e)(1) (Marine Mammal Protection Act provision requiring Secretary of Commerce to place observers on board vessels with potential interactions with marine mammals for 20-35% of fishing operations “to obtain statistically reliable information” on such interactions); 50 C.F.R. §. 648.11 (“the Regional Administrator [of NOAA-Fisheries] may require any vessel holding a permit for [17 enumerated fish species or groups of species] to carry a fisheries observer”); NOAA-Fisheries, Fisheries Monitoring and Analysis Division History, “Domestic”) (2022) (listing multiple programs requiring that observers be carried on commercial fishing vessels), <https://www.fisheries.noaa.gov/alaska/fisheries-observers/fisheries-monitoring-and-analysis-division-history>. Current regulations provide that “The Regional Administrator [of NOAA-Fisheries] may request any vessel issued a Federal limited access American lobster permit to carry a NMFS–approved sea sampler/observer.” 50 C.F.R. § 697.12(a).

Finally, Thompson nowhere suggests how a warrant requirement—something unknown to any of the various kinds of monitoring that have been employed for commercial fisheries—could work for lobster vessel tracking. It plainly would not: The areas to be covered are vast and far from judicial chambers. And the key information the program seeks to gather is not about individual suspected wrongdoing, but about the location and intensity of fishing effort (the vast majority of it entirely lawful). An individualized suspicion regime would make so sense here. Instead, Thompson’s ultimate position appears to be that, contrary to the longstanding practices in commercial fishing management, and despite considered judgment of fishery managers throughout the American lobster fishery, the information the vessel tracking program makes available is not truly necessary and the States should just do without it. The Court should reject that proposition.²¹

²¹ Thompson seeks (Br. 35-42) to press in this Court the argument that the commercial lobster fishery is not a closely regulated industry. But Thompson not only failed to make this argument below, but conceded the opposite. *E.g.*, Pl. Mot. for Prelim. Inj. (D.Ct. Doc. 7) at 12 (“Plaintiffs concede that commercial fishing is a closely-regulated industry, *United States v. Raub*, 637 F.2d 1205, 1209 (9th Cir. 1980) (‘Commercial fishing has a long history of being a closely regulated industry’)). This Court has “held, with echolalic regularity, that theories not squarely and timely raised in the trial court cannot be pursued for the first time on appeal.” *Iverson v. City of Boston*, 452 F.3d 94, 102 (1st Cir. 2006) (citing cases); *see also Emigrant Residential, LLC v. Pinti*, 2025 WL 1088134, at *7 (1st Cir. 2025) (arguments not raised before district court were “waived”). As Maine points out, this Court has even more firmly resisted efforts to press arguments on appeal that directly contradict the party’s position below. Maine Br. 36-42. Nor is Thompson’s cause advanced by an out-of-Circuit opinion that avowedly did “not reach” or “address” the merits of the Fourth Amendment issue, *Mexican Gulf Fishing Co. v. U.S. Dep’t*

III. THE VESSEL TRACKING PROGRAM IS REASONABLY DESIGNED TO SERVE ITS VITAL PUBLIC PURPOSES

As Maine demonstrates, the program is needed to serve vital public interests. The American lobster fishery is vital to the regional economy, culture and even identity. Recent experience in the southern reaches of the fishery serves as a reminder that it, like other fisheries, can be prone to dramatic declines. And the fishery certainly faces new challenges. Even Thompson does not deny that lobster fishery must share space—and in some respects compete with—other economically important and legally protected interests and activities, from offshore energy and mineral development, to marine mammal protection, to other commercial fisheries, and more.

There was overwhelming agreement among the many fisheries experts active in the ASMFC proceedings leading to the Addendum that the tracking information was important to effective fishery management. Having current and accurate information on the fishery—including the extent and location of fishing effort—is critical in formulating plans to address current and future management challenges, and to ensuring that the fishery can thrive over the long term. And this need remains

of Com., 60 F.4th 956, 963, 971 (5th Cir. 2023), and found “no evidence whatsoever” that the markedly different type of fishing ventures at issue—“charter boats,” which take people out for short recreational fishing trips—were “closely regulated.” *Id.* at 970.

acute even as federal policies and priorities fluctuate over time.²² The Maine regulations implementing Addendum XXIX will provide managers with vitally needed information that will allow the lobster fishery to remain robust even as it confronts complex and looming economic, policy, and environmental challenges.

The vessel tracking program was carefully designed to meet these urgent needs without unreasonably burdening permittees. The category of information collected—electronic markers of physical location at points in time—is narrow, and far less capacious than, say, the senses of a human onboard observer or the workings of a camera or audio recorder. Maine, other ASMFC member States, and the

²². Compare, e.g., *Tackling the Climate Crisis at Home and Abroad*, Executive Order No. 14,008, 86 Fed. Reg 7619 (Jan. 27, 2021) (directing Secretary of the Interior to “review siting and permitting processes on public lands and in offshore waters to identify steps that can be taken ... to increase renewable energy production... with the goal of doubling offshore wind by 2030” and articulating goal of protecting 30 percent U.S. waters by 2030), with *Unleashing American’s Offshore Critical Minerals and Resources*, Executive Order No. 17,735, 90 Fed. Reg. 17735 (April 24, 2025) (“Our Nation must take immediate action to accelerate the responsible development of seabed mineral resources [and] reinvigorate American leadership in associated extraction and processing technologies, and ensure secure supply chains for our defense, infrastructure, and energy sectors”); see also Kate Cough, *Trump Administration Seeks to Expand Offshore Oil and Gas Drilling, Including in Gulf of Maine*, PORTLAND PRESS-HERALD (May 4, 2025), <https://www.pressherald.com/2025/05/04/trump-administration-seeks-to-expand-offshore-oil-and-gas-drilling-including-in-gulf-of-maine/>.

ASMFC have explicitly defined what information be collected, and the obligations of permittees. The program leaves no problematic degree of “discretion” to “inspecting officers,” *Burger*, 482 U.S. at 711-12—indeed, the programs fixed design leaves them virtually no discretion. *Cf. City of Los Angeles v. Patel*, 576 U.S. 409, 421 (2015) (expressing concern that ordinance requiring hotel owners to turn over registries to police officers could be used as a “pretext to harass hotel operators and their guests”). And the program keeps individually identifiable information confidential, using safeguards that have long been successfully in securely protecting other fisheries information. The program is reasonable and should be upheld.

CONCLUSION

The district court’s judgment should be affirmed.

Respectfully submitted,

/s/ Sean H. Donahue

Sean H. Donahue
First Circuit Bar No. 63960
David T. Goldberg
First Circuit Bar No. 97664
Donahue, Goldberg & Herzog
1008 Pennsylvania Ave., SE
Washington, D.C. 20003
(202) 277-7085
sean@donahuegoldberg.com

/s/ Russell B. Pierce, Jr.

Russell B. Pierce, Jr.
First Circuit Bar No. 46573
Norman Hanson DeTroy, LLC
220 Middle Street
P.O. Box 4600
Portland, Maine 04112
(207) 553-4621
rpierce@nhdlaw.com

*Counsel for Amicus Curiae
Atlantic States Marine Fisheries
Commission*

CERTIFICATE OF COMPLIANCE

I certify that, according to Microsoft Word, the foregoing brief contains 6425 words.

/s/ Sean H. Donahue

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2025, I filed the foregoing brief through the Court's CM/ECF system, which will provide copies to all registered counsel

/s/ Sean H. Donahue

Sean H. Donahue
Donahue, Goldberg & Herzog
1008 Pennsylvania Ave., SE
Washington, D.C. 20003
(202) 277-7085
sean@donahuegoldberg.com