No. 26A274

In the Supreme Court of the United States

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, ET AL., APPLICANTS

v.

SHERROD BROWN, ET AL.

BRIEF FOR THE UNITED STATES AND THE FEDERAL COMMUNICATIONS COMMISSION AS RESPONDENTS IN SUPPORT OF THE APPLICATION

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The Solicitor General, on behalf of the United States and the Federal Communications Commission (FCC), respectfully submits this brief for respondents in support of the application of a stay pending certiorari of the judgment issued by the United States Court of Appeals for the Fourth Circuit (Appl. App. 91-92).

A federal statute provides that, during the 45 days before a primary election or the 60 days before a general election, the rates that broadcasters charge for certain campaign advertisements must be no greater than those charged to the broadcasters' most favored commercial advertisers. See 47 U.S.C. 315(b). That provision, known as the lowest-unit-charge provision, helps ensure that candidates have an adequate opportunity to explain their positions to voters. In March 2026, the FCC's Media Bureau issued a public notice reminding broadcasters and the public of that requirement. Appl. App. 106-107. The Bureau explained that the requirement applies to advertisements placed, not just by candidates or their authorized campaign committees, but also by authorized joint fundraising committees and, in some cases, by coordination between political parties and candidates. *Ibid.* That interpretation reiterated guidance that the Bureau had long been providing to private parties on an informal basis, and it reflected the widespread understanding of the statute in practice.

In the decision below, however, a divided panel of the Fourth Circuit held, at the behest of a group of candidates, that the public notice misinterprets the statute. Appl. App. 22-90. Judge Wilkinson's dissent observed that the decision effects "nothing less than the upending of settled campaign finance ground rules right in the middle of an election season." *Id.* at 71. For several reasons, this Court should immediately stay the judgment below.

To start, the candidates who initiated this proceeding lack Article III standing. The challengers claim, and the court of appeals agreed, that the notice injures them by making it cheaper for their opponents to run campaign advertisements. But the notice does not grant favored treatment to one side or the other; instead, the notice's interpretation offers the same benefit to all sides, including the challengers themselves and the committees and parties supporting them. This Court has held that a candidate lacks standing to challenge an evenhanded campaign-finance regulation that *reduces* a restriction on candidates by claiming that his opponents will take better advantage of it than he will. See *McConnell* v. *FEC*, 540 U.S. 93, 228 (2003). That reasoning applies here.

The court of appeals also lacked statutory jurisdiction over the petition for review of the public notice. Under the applicable judicial-review provisions, a decision issued by FCC staff, such as the staff-level Media Bureau notice here, is subject to "an application for review by the Commission," see 47 U.S.C. 155(c)(4), and only a "final orde[r]" of the "Commission" is subject to review by a court of appeals, 28 U.S.C. 2342(1). In particular, "[t]he filing of an application for review * * * shall be a condition precedent to judicial review" of any staff decision, and "[t]he time within which a petition for review [to a court of appeals] must be filed * * * shall be computed from the date upon which public notice is given of orders disposing of all applications for review filed." 47 U.S.C. 155(c)(7). Here, the challengers filed an application asking the Commission to review the public notice, yet sought review in the Fourth Circuit less than two months later, before the Commission acted on that application. Appl. App. 70 (Wilkinson, J., dissenting). As Judge Wilkinson recognized in dissent, that petition for review was premature. See *id.* at 69. The staff-level notice is not an order *of the Commission* because it remains under review at the FCC: The challengers could not leapfrog such agency review because it is a condition precedent to judicial review, and until that agency review is finished, the time within which to seek judicial review has not even begun. See *Western Union Telegraph Co.* v. *FCC*, 773 F.2d 375, 377-378 (D.C. Cir. 1985) (Scalia, J.). If challengers thought that the FCC was not moving quickly enough, the proper procedure would have been to seek a writ of mandamus from the court of appeals to compel agency action unlawfully withheld or unreasonably delayed—not simply to bypass the statutorily required agency-review procedure altogether.

Moreover, even if the staff-level decision could somehow be deemed the Commission's own decision, it still would not be a *final* order subject to judicial review. An order is final if it both marks "the consummation of the agency's decisionmaking process" and has "legal consequences." *Corner Post, Inc.* v. *Board of Governors*, 603 U.S. 799, 808 (2024). The staff-level decision here does not mark the consummation of the FCC's decisionmaking process, for the Commission is still reviewing it. The decision also has no legal consequences; instead, it just advises the public of the FCC staff's understanding of the statute. A litigant may not "preemptively" seek judicial review while an agency's internal "process" remains ongoing and the challenged action itself "imposes no legal requirements" on anyone. *Trump* v. *California*, No. 26A124, slip op. 7-8 (Aug. 24, 2026) (per curiam).

The underlying merits, too, favor applicants and the government. The public notice reiterates the Media Bureau's "longstanding" interpretation of the statutory text. Appl. App. 71 (Wilkinson, J., dissenting). Until this case, that interpretation had been widely shared among broadcasters, candidates, and political parties; in fact, at least one of the challengers had previously taken advantage of it. See *ibid.*

The other factors also support a stay. The Fourth Circuit's decision warrants this Court's review; its determination that the challengers have standing conflicts with this Court's decision in *McConnell*, while its interpretation of the judicial-review provisions conflicts with the decisions of other courts of appeals. In addition, the decision below causes irreparable harm to applicants and the public by judicially rewriting established rules governing the financing of campaigns in the run-up to a general election. Those equities far outweigh the challengers' interest in making it more expensive for their opponents (and also their own supporters) to engage in political speech.

This year, the 60-day period covered by the lowest-unit-charge will begin on September 4, 2026. Appl. App. 24. Because candidates and political parties need immediate relief from the uncertainty created by the Fourth Circuit's decision on the rates they need to pay for campaign advertising, this Court should grant an administrative stay while it considers the application.

STATEMENT

1. The Communications Act of 1934, 47 U.S.C. 151 *et seq.*, establishes the FCC and empowers it to regulate communications services. The Commission consists of five members appointed by the President with the advice and consent of the Senate.

See 47 U.S.C. 154(a). The Commission also may "organize its staff" into "bureaus." 47 U.S.C. 155(b). Exercising that authority, the Commission has established the Media Bureau to handle matters pertaining to "media, including * * * broadcast television and radio." 47 C.F.R. 0.61.

In general, the Commission may "delegate" "its functions"—including issuing interpretive rules advising the public of the agency's interpretation of the statutes it administers—to its staff. 47 U.S.C. 155(c)(1). A person aggrieved by action taken by the staff may "file an application for review by the Commission," and "every such application shall be passed upon by the Commission." 47 U.S.C. 155(c)(4). "[U]nless reviewed," staff actions "shall have the same force and effect" as "actions of the Commission." 47 U.S.C. 155(c)(3).

Under the Hobbs Act, 28 U.S.C. 2342 *et seq.*, "final orders" of the "Commission" are subject to review in the courts of appeals. 28 U.S.C. 2342(1); see 47 U.S.C. 402(a). The "filing of an application for review" by the Commission is a "condition precedent" to "judicial review of any * * * action made or taken pursuant to a delegation." 47 U.S.C. 155(c)(7). The "time within which a petition for [judicial] review must be filed" under the Hobbs Act "shall be computed from the date" when the Commission issues its "orders disposing of all applications for review." 47 U.S.C. 155(c)(7); see 28 U.S.C. 2344 (time for filing a petition for judicial review is "within 60 days after [the] entry" of "the final order" of the Commission).

2. In 1971, Congress amended Section 315(b) of the Communications Act to add the lowest-unit-charge requirement. See Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 103(a), 86 Stat. 4. That requirement provides that, during the 45 days preceding a primary election or 60 days preceding a general election, "[t]he charges made for the use of any broadcasting station by any person who is a

legally qualified candidate for any public office in connection with his campaign * * * shall not exceed * * * the lowest unit charge of the station for the same class and amount of time for the same time period." 47 U.S.C. 315(b)(1)(A).

That requirement seeks "to give candidates for public office greater access to the media so that they may better explain their stand on the issue[s] and thereby more fully and completely inform the voters." S. Rep. No. 96, 92d Cong. 20-21 (1971). To that end, it places the candidate "on par with a broadcasting station's most favored commercial advertiser." *Id.* at 27. By "mak[ing] use of each broadcaster's own commercial practices rather than imposing on him an arbitrary discount rate," the statute ensures that broadcasters receive remunerative returns. *Ibid.*; see *Hernstadt* v. *FCC*, 677 F.2d 893, 898 (D.C. Cir. 1980).

Congress has authorized the FCC to "prescribe appropriate rules and regulations to carry out" that requirement. 47 U.S.C. 315(d). The agency has issued various rules and orders implementing the provision. See, *e.g.*, 47 C.F.R. 73.1942, 76.206; *The Law of Political Broadcasting & Cablecasting: Political Primer*, 100 F.C.C.2d 1476 (1984) (*Political Primer*). The Media Bureau occasionally issues public notices in the run-up to federal elections to remind broadcasters of their obligations under Section 315(b). See, *e.g.*, *Media Bureau Provides Guidance on Political Advertising Lowest Unit Charge During Coronavirus (COVID-19) Pandemic*, 35 FCC Rcd. 2899 (Media Bur. 2020).

If a broadcaster fails to comply with the lowest-unit-charge requirement, an aggrieved party may file a formal complaint to be adjudicated by the FCC. See *Exclusive Jurisdiction with Respect to Violations of the Lowest Unit Charge Requirements*, 6 FCC Rcd. 7511, 7513-7514 (1991). But because disputes that arise in the heat of a political campaign often require immediate resolution, formal complaints are uncommon. As an alternative, parties may "obtain an oral staff opinion or ruling by placing a telephone call" to staff at the FCC's Media Bureau. *Political Primer*, 100 F.C.C.2d at 1478.

3. On March 30, 2026, in anticipation of the upcoming election season, the FCC's Media Bureau issued a public notice "to remind broadcasters and the public about the FCC's lowest unit charge [requirement]." Appl. App. 106. The Media Bureau first explained that the requirement applies to advertisements placed by an authorized "joint fundraising committee," *id.* at 107—*i.e.*, a type of entity through which multiple candidates, committees, or organizations can raise funds jointly, see 11 C.F.R. 102.17(a)(1)(i). The Media Bureau also "restate[d] previous Media Bureau guidance regarding" the requirement's applicability to "candidate-party coordinated ads," explaining that "candidate-party coordinated advertisements are subject to the [lowest-unit-charge] provisions, provided that the ad otherwise complies with other applicable requirements" in the Act and the FCC's regulations. Appl. App. 107.

On April 29, four candidates running for Congress (collectively, challengers) filed an application asking the full Commission to review the Media Bureau's public notice. Appl. App. 26. The Commission has not yet issued a decision.

3. On June 19, less than two months after filing the application for review, the challengers filed a petition for review in the Fourth Circuit. Appl. App. 99-103. The National Republican Congressional Committee and National Republican Senatorial Committee (applicants here) intervened. *Id.* at 25. A divided panel of the Fourth Circuit granted the petition and set aside the public notice. *Id.* at 22-90.

In a footnote, the court of appeals determined that the challengers have Article III standing to challenge the public notice. Appl. App. 38 n.9. The court reasoned that the challengers "have established a cognizable injury-in-fact by alleging that the

Public Notice unlawfully extends the [lowest unit charge] to joint fundraising committees and political parties, thereby reducing the cost of advertising against the [challengers], increasing the volume of opposing advertising they must confront, and placing them at a competitive disadvantage." *Ibid.*

The court of appeals next determined that it had jurisdiction under the Hobbs Act. Appl. App. 31-38. The court rejected the contention that, because the public notice is a staff-level guidance document that is still being reviewed by the Commission and that lacks legal consequences, it is neither an order of the Commission nor final. *Ibid.*

Turning to the merits, the court of appeals held the public notice unlawful. Appl. App. 39-50. The court emphasized that the lowest-unit-charge requirement applies only to "the use of any broadcasting station by a person who is a legally qualified candidate." 47 U.S.C. 315(b)(1); see Appl. App. 42-43. The court reasoned that, because "the term 'candidate' means 'candidate,'" the requirement does not extend "to political parties and joint fundraising committees." *Id.* at 39.

Judge Wynn issued a concurring opinion. Appl. App. 52-60. He opined that the court of appeals' interpretation of the Hobbs Act appropriately avoided the risk of "jurisdictional gamesmanship." *Id.* at 52.

Judge Wilkinson issued a dissenting opinion. Appl. App. 61-90. He first concluded that, because "[t]he full Commission has not acted," there is no "final order" for the court of appeals to review. *Id.* at 73. On the merits, he concluded that the interpretation reflected in the public notice "is more plausible" than the reading adopted by the Fourth Circuit, which "distort[ed]" the statutory language "in a way especially unsuited to the campaign environment." *Id.* at 77-78. He also concluded that the public notice avoids First Amendment concerns that would otherwise arise if the lowest-unit-charge requirement were construed to "favo[r] some forms of candidate speech over others." *Id.* at 74.

4. Applicants moved for a stay pending certiorari. Appl. App. 2. In an order without accompanying reasoning, the court of appeals denied the motion and directed that the mandate issue forthwith. *Ibid.* Judge Wilkinson would have granted a stay. *Ibid.*

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, an applicant seeking a stay of a court of appeals' judgment pending review in this Court must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. In close cases, the Court also balances the equities and weighs the relative harms. See *Trump* v. *California*, No. 26A124, slip op. 3 & n.1 (Aug. 24, 2026) (per curiam); *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam).

Those factors support a stay here. Applicants and the government are likely to prevail in this Court because the challengers lack Article III standing and because the court of appeals lacked statutory jurisdiction. While those threshold defects are sufficient to support a stay wholly apart from the underlying merits, the court of appeals' decision also misinterpreted the statute establishing the lowest-unit-charge requirement. In addition, the case warrants this Court's review; applicants and the government face irreparable harm in the absence of a stay; and the equities favor granting a stay (as well as an immediate administrative stay).

A. The Challengers Lack Article III Standing

This suit is not justiciable under Article III. To establish the existence of an Article III case or controversy, a plaintiff must show that it has standing—*i.e.*, that it suffered a judicially cognizable injury, that the injury was likely caused by the defendant's challenged action, and that the injury would likely be redressed by judicial relief. See *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 423 (2021). Those requirements are usually "easy" to satisfy where, unlike here, the challenged regulation "require[s] or forbid[s] some action by the plaintiff." *FDA* v. *Alliance for Hippocratic Medicine*, 602 U.S. 367, 382 (2024). But where, as here, the claimed injury hinges on the effect of the governmental action on a "third party," standing is "substantially more difficult to establish." *Id.* at 382-383.

The challengers lack standing to challenge the public notice, which "does nothing to them." *California*, No. 26A124, slip op. 6. It does not require them "to do anything or to refrain from doing anything." *Trump* v. *New York*, 592 U.S. 125, 134 (2020) (per curiam). To the contrary, it gives them an entitlement to obtain low rates from broadcasters when they buy advertising jointly or in coordination with political parties or other entities. That is a benefit, not an injury.

The court of appeals nonetheless concluded that the challengers have standing because the public notice purportedly puts them "at a competitive disadvantage" by "unlawfully extend[ing]" the lowest unit charge to "joint fundraising committees and political parties" that might run advertisements against them. Appl. App. 38 n.9. But this Court has "never accepted" the "boundless theory" that a person suffers an Article III injury "whenever a competitor benefits from something allegedly unlawful." *Already, LLC* v. *Nike, Inc.*, 568 U.S. 85, 99 (2013). Standing requires "an injury more particularized and more concrete than the mere assertion that something unlawful benefitted the plaintiff's competitor." *Ibid.*

More specifically, this Court's decision in *McConnell* v. *FEC*, 540 U.S. 93 (2003), establishes that a political candidate does not suffer a competitive *injury* from an evenhanded statute that makes it *easier* for candidates to compete by raising or spending *more* money in a campaign. In *McConnell*, a group of plaintiffs, including "candidates," challenged a statute that "increase[d] and indexe[d] for inflation certain [federal] contribution limits." *Id.* at 226. The candidates alleged that they had "suffered a competitive injury," contending that their "ability to compete or participate in the electoral process [wa]s diminished" because the increased limits "allowe[d] [their] opponents to raise more money." *Id.* at 228. This Court rejected that theory, explaining that any "'fundraising disadvantage'" experienced by the candidates was not caused by the evenhanded increase in the contribution limits. *Ibid.* Instead, any competitive harm was caused by the candidates' own unwillingness or inability to take advantage of the increased limits. See *ibid.*

By contrast, a candidate *can* suffer a competitive injury when the government treats his competitors better than him. For example, in *Davis* v. *FEC*, 554 U.S. 724 (2008), this Court held that a candidate had standing to challenge an "asymmetrical contribution scheme," under which a candidate's decision to spend his personal funds on his campaign would trigger higher contribution limits for his opponent (but would leave the candidate's own contribution limits unchanged). *Id.* at 735. The Court explained that the candidate "faced the requisite injury" because the challenged scheme "allow[ed] his opponent to receive contributions on more favorable terms" than him. *Id.* at 734-735.

Consistent with those decisions, the Sixth Circuit has concluded that a political party suffers no competitor injury from the opposing party's ability to raise or spend "unlimited funds," if the party remains free to raise and spend money "on the very same terms." *Weiser* v. *Benson*, 48 F.4th 617, 626 (2022). At the same time, the court recognized that a party does suffer an Article III injury from an "asymmetrical contribution scheme." *Id.* at 626-627.

This case resembles *McConnell*, not *Davis*. The interpretation of Section 315(b) set forth in the public notice treats all candidates evenhandedly. All candidates can take advantage of that interpretation by participating in joint fundraising committees or by coordinating with their political parties. And no one is allowed to raise or spend money "on more favorable terms" than his opponents. *Davis*, 554 U.S. at 734. The challengers accordingly cannot establish a "competitive injury" by contending that the Media Bureau's evenhanded reading of Section 315(b) "allows [their] opponents" to buy cheaper advertising. *McConnell*, 540 U.S. at 228. The notice equally allows the challengers, working with *their* parties and committees, to buy cheaper advertising. Any competitive harm to the challengers is caused, not by "the operation" of the notice itself, but by their own inability or unwillingness to take advantage of it. *Ibid.*

The more appropriate litigant to challenge the public notice would be a broadcaster, not a candidate. After all, a broadcaster faces a classic pocketbook injury from being required to charge lower rates to its customers. Yet no broadcaster has sought judicial review of the public notice. To review the notice anyway would fail to exhibit "due regard for the autonomy of those persons likely to be most directly affected." *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 473 (1982).

The principal case on which the challengers relied below, *Bost* v. *Illinois State Board of Elections*, 607 U.S. 71 (2026), does not show otherwise. This Court held in *Bost* that "a candidate has a personal stake in the rules that govern the counting of votes in his election," whether those rules "help, hurt, or have no effect on [the] candidate's electoral prospects." *Id.* at 76-77. The Court reasoned that the "counting of unlawful votes" causes concrete harm to candidates by "erod[ing] public confidence" in the election and "undermin[ing] the winner's political legitimacy." *Id.* at 78. The Court limited its decision to "rules that * * * govern the counting of votes," stating that its decision would not "'open the floodgates' to candidate-led challenges" to other types of laws. *Id.* at 82 n.7 (brackets omitted). Unlike *Bost*, this case does not involve a vote-counting rule that operates directly on a candidate's selection. It instead involves a campaign-finance rule that operates on third-party broadcasters and that treats all candidates the same. Under *McConnell*, a candidate cannot establish standing to challenge such an evenhanded rule by asserting that his opponents will take advantage of it better than he will.

B. The Court Of Appeals Lacked Statutory Jurisdiction

The Communications Act and Hobbs Act together establish an orderly scheme for reviewing the FCC's actions. The Communications Act provides that the Commission generally may delegate its functions to "an employee board." 47 U.S.C. 155(c)(1). Once the FCC's employees act, an aggrieved person "may file an application for review by the Commission," and "every such application shall be passed upon by the Commission." 47 U.S.C. 155(c)(4). The "filing of an application for review" is a "condition precedent to judicial review" of staff action, and the "time within which" to seek judicial review is "computed from the date" when the Commission issues a decision "disposing of all applications for review." 47 U.S.C. 155(c)(7). Once "the Commission" rules, 47 U.S.C. 402(a), parties may seek judicial review of its "final orders" under the Hobbs Act, 28 U.S.C. 2342(1). Applicants and the government are likely to prevail in showing that, under that scheme, the Fourth Circuit lacked jurisdiction to review the public notice.

1. The Hobbs Act provides that courts of appeals have "jurisdiction" to re-

view "final orders of *the Federal Communication[s] Commission* made reviewable by section 402(a) of [the Communications Act]." 28 U.S.C. 2342(1) (emphasis added). Section 402(a), in turn, authorizes judicial review only of orders "of the Commission." 47 U.S.C. 402(a). The staff-level public notice here is not an order of the Commission.

The Communications Act carefully distinguishes between the "Commission," which is "composed of five commissioners appointed by the President, by and with the advice and consent of the Senate," 47 U.S.C. 154(a); and the FCC's "bureaus," which consist of FCC "staff," 47 U.S.C. 155(b). "When Congress says 'the Commission,' it means the Commission." *NTCH, Inc.* v. *FCC*, 877 F.3d 408, 413 (D.C. Cir. 2017). And "[w]hen Congress means to refer to delegated subdivisions of the Commission, it does so explicitly." *Ibid.* Congress has authorized courts of appeals to review final orders of "the Commission," 47 U.S.C. 402(a), and it has authorized the Commission to review actions taken by staff "pursuant to a delegation," 47 U.S.C. 155(c)(7); see 47 U.S.C. 155(c)(4). The public notice here was issued by Media Bureau staff, so it is subject to review by the Commission, not by a court.

Reinforcing that reading, the Communications Act provides that, when FCC staff takes action "pursuant to a delegation," "[t]he filing of an application for review [by the Commission] shall be a condition precedent to judicial review," and that the "time within which a petition for [judicial] review must be filed" is "computed from the date" on which the Commission publishes its "orders disposing of all applications for review." 47 U.S.C. 155(c)(7). That text makes clear that a party must file an application for review, and that the Commission must dispose of it, before the party may go to court. In particular, "[t]he [party] must give the Commission an opportunity to issue a final decision; otherwise, the statutory prerequisite would be rendered useless." *Alabama Power Co.* v. *FCC*, 311 F.3d 1357, 1366 (11th Cir. 2002).

"Congress did not intend that the court review a staff decision that has not been adopted by the Commission itself." *Richman Bros. Records, Inc.* v. *FCC*, 124 F.3d 1302,1304 (D.C. Cir. 1997).

Similarly, the Hobbs Act provides that a party may seek review of a final order "within 60 days after its entry." 28 U.S.C. 2344. That text—"within 60 days after entry," rather than "no later than 60 days after entry"—establishes "a filing window," not "a filing deadline." *Western Union Telegraph Co.* v. *FCC*, 773 F.2d 375, 377 (D.C. Cir. 1985) (Scalia, J.) (ellipses omitted). In other words, a party may file a petition for review only during the 60 days after the entry of the Commission's order; it may not file such a petition beforehand and then wait for the petition to ripen. See Appl. App. 65 (Wilkinson, J., dissenting). That provision, too, shows parties must wait until the Commission issues its decision before resorting to court.

The statutory scheme established by Congress makes good sense. Article II of the Constitution requires a "chain of dependence" in the Executive Branch, so that "the lowest officers, the middle grade, and the highest" "depend, as they ought, on the President, and the President on the community." *Trump* v. *Slaughter*, 146 S. Ct. 2283, 2296 (2026). To that end, the Appointments Clause generally requires that principal officers, appointed by the President with the advice and consent of the Senate, retain the power to review decisions made by subordinates. See *United States* v. *Arthrex, Inc.*, 594 U.S. 1, 13-18 (2021). Consistent with those requirements, the statutory scheme ensures that "FCC Commissioners"—"principal officers appointed by the President and confirmed by the Senate"—have an opportunity to "review and refine the work of FCC staff members." Appl. App. 62 (Wilkinson, J., dissenting). To "wrest jurisdiction from the FCC before the Commissioners can perform the role Congress assigned to them" would "undermin[e] Congress's statutory scheme and disempowe[r] the most politically accountable actors within the Commission." *Ibid.*

2. Even if the Media Bureau's public notice could be viewed as an order of the "Commission," the court of appeals still lacked jurisdiction to review it because the order is not "final." 28 U.S.C. 2342(1). This Court has explained in the context of the APA that, to be final, an order must (1) mark "the consummation of the agency's decisionmaking process" and (2) determine "rights or obligations" or have "legal consequences." *Corner Post, Inc.* v. *Board of Governors*, 603 U.S. 799, 808 (2024). An order must satisfy the same two criteria to be "final" for purposes of the Hobbs Act. See *Brotherhood of Locomotive Engineers* v. *FRA*, 972 F.3d 83, 99-100 (D.C. Cir. 2020). The public notice here satisfies neither criterion.

The public notice does not mark "the consummation of the agency's decisionmaking process," *Corner Post*, 603 U.S. at 808, because, as explained above, that staff action remains subject to review by the Commission. See 47 U.S.C. 155(c)(4). The challengers have filed an application asking the Commission to review the Media Bureau's public notice, but the Commission has not yet issued a decision on the application. Because the agency remains "in the middle of its deliberations," the public notice is interlocutory, not final. Appl. App. 73 (Wilkinson, J., dissenting).

The statutory provisions governing the timing of judicial review confirm that staff-level action is not "final" if the Commission is still reviewing it. The Hobbs Act provides that a petition for review must be filed "within 60 days after [the] entry" of "the final order," 28 U.S.C. 2344, while the Communications Act provides that the "time within which a petition for review must be filed" is "computed from the date upon which" the Commission issues its "orders disposing of all applications for review," 47 U.S.C. 155(c)(7). Those provisions make clear that FCC action can become "final," 28 U.S.C. 2344, only when the Commission "dispos[es] of all applications for review," 47 U.S.C. 155(c)(7). If action could become "final," 28 U.S.C. 1344, *before* "disposi[tion] of all applications for review," 47 U.S.C. 155(c)(7), then the 60-day period for seeking judicial review would start running on different days under the two Acts—contrary to the principle that statutes "should be interpreted in a way that renders them compatible, not contradictory." *Maracich* v. *Spears*, 570 U.S. 48, 68 (2013).

Nor does the staff-level public notice determine "rights or obligations" or have "legal consequences." *Corner Post*, 603 U.S. at 808. The notice simply "advise[s] the public of [the Media Bureau's] construction of the [Act]"; it does not have or purport to have "the force and effect of law." *Perez* v. *Mortgage Bankers Ass'n*, 575 U.S. 92, 97 (2015). It does not purport to independently grant legal rights to candidates, political parties, or joint fundraising committees, or independently impose legal duties on broadcasters; and it adopts a general interpretation of the Act, without adjudicating the liability of any particular broadcaster for non-compliance. The notice does not bind the public; anyone who disagrees with the Media Bureau's reading of the statute remains free to act accordingly and, if challenged, to defend that position in litigation. The notice also does not bind the Commission itself; "[t]here is no authority for the proposition that a lower component of a government agency may bind the decision making of the highest level." *Community Care Foundation* v. *Thompson*, 318 F.3d 219, 227 (D.C. Cir. 2003); see *Amor Family Broadcasting Group* v. *FCC*, 918 F.2d 960, 962 (D.C. Cir. 1990) ("[D]ecisions of a subordinate body of the [FCC]" are "not binding on the Commission.") And the notice does not bind reviewing courts, which must "independently interpret the statute." *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369, 395 (2024); see *McLaughlin Chiropractic Assocs.* v. *McKesson Corp.*, 606 U.S. 146, 152 (2025). The notice, in short, has no legal consequences for broadcasters, candidates, the Commission, reviewing courts, or anyone else. Like other advice, the notice may well have practical, real-world effects, but those effects are not *legal* consequences.

Moreover, although this Court need not reach the issue here, even an order of the Commission affirming the Media Bureau's guidance would not be "final" because such an order would still lack legal consequences. In general, agency pronouncements that simply advise the public of the agency's "interpretat[ion]" of a statute "are not subject to judicial review" because they "do not establish a binding norm" and "are not finally determinative of the issues or rights to which they are addressed." *American Tort Reform Ass'n* v. *OSHA*, 738 F.3d 387, 395 (D.C. Cir. 2013) (brackets and quotation marks omitted). Such pronouncements do not bind even the agency, which remains free to change its mind about the statute's meaning; much less do they bind the public or courts. Of course, an agency's interpretation of a statute may be subject to judicial review when, for instance, it "is relied upon or applied to support an agency action in a particular case," *id.* at 395; or it is codified in a notice-and-comment rule that binds at least the agency itself, see *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 198 (1956). But bare agency advice about its understanding of a statute, bereft of any "direct and appreciable legal consequences" that "flow" from the agency action itself, is not final. *Bennett* v. *Spear*, 520 U.S. 154, 178 (1997).*

3. The court of appeals' contrary rationales lack merit.

First, the court of appeals concluded that the public notice "is, and always has

* Before *McLaughlin*, many courts read the Hobbs Act to "ba[r] district courts in enforcement proceedings from disagreeing with [the FCC's] interpretation of a statute." 606 U.S. at 152. Against that backdrop, the FCC's interpretive orders did have legal consequences, and courts thus treated them as final. See, *e.g.*, *US West Communications, Inc.* v. *Hamilton*, 224 F.3d 1049, 1055 (9th Cir. 2000). But that basis for finding finality evaporated in *McLaughlin*, where this Court determined that "[t]he Hobbs Act does not preclude district courts in enforcement proceedings from independently assessing whether an agency's interpretation of the relevant statute is correct." 606 U.S. at 152.

been, an order 'of the Commission'" because it was issued by FCC staff "under [a] delegation" and "an order made under such a delegation has 'the same force and effect' as orders of the Commission." Appl. App. 32 (quoting 47 U.S.C. 155(c)(3)). But the quoted statutory provision states: "Any order, decision, report, or action made or taken pursuant to any such delegation, *unless reviewed as provided in [Section 155(c)(4)]*, shall have the same force and effect * * * as orders, decisions, reports, or other actions of the Commission." 47 U.S.C. 155(c)(3) (emphasis added). Section 155(c)(4), in turn, authorizes "an application for review by the Commission" of any staff action. 47 U.S.C. 155(c)(4). As discussed above, filing such an application is a "condition precedent to judicial review," and the window "within which" petition for review may be filed begins only when the Commission issues a decision "disposing of all applications." 47 U.S.C. 155(c)(7). Because the Media Bureau's public notice is being "reviewed as provided in [Section 155(c)(4)]"—as it must be before judicial review can commence—the notice does *not* have "the same force and effect" as a Commission order. 47 U.S.C. 155(c)(3).

Second, the court of appeals reasoned that, under the statutory scheme here, an FCC staff order is "'final' upon issuance" by the staff, "remain[s] final pending completion of the review process" before the full Commission, but then "become[s] nonfinal" "when review is completed." Appl. App. 33-34. That convoluted theory upends the settled meaning of "final" in administrative law. An agency action is final if it "consummat[es]" "the agency's decisionmaking process," *Corner Post*, 603 U.S. at 808, and "interlocutory" if agency proceedings remain "ongoing," *Axon Enterprise, Inc.* v. *FTC*, 598 U.S. 175, 190, 192 (2023). Indeed, this Court has determined that an order is not final for purposes of the Hobbs Act even if, for instance, a motion for reconsideration of the agency's own decision remains pending before the agency. See

Stone v. *INS*, 514 U.S. 386, 391 (1995); *ICC* v. *Brotherhood of Locomotive Engineers*, 482 U.S. 270, 284-285 (1987) (Scalia, J.). *A fortiori*, a staff notice is not final when the agency's initial review remains pending—let alone when that review is an express precondition to judicial review and the time for judicial review does not even begin until the agency's own review ends. Contrary to the court of appeals' theory, agency action cannot be final "pending completion of the [agency's] review process." Appl. App. 34; see *id.* at 63-66 (Wilkinson, J., dissenting).

Third, the court of appeals reasoned that the public notice is final because it is equivalent to "a legislative rule." Appl. App. 36. That theory confuses legislative rules with interpretive rules. A legislative rule is a regulation in which an agency, exercising "quasi-legislative authority" granted by Congress and following notice-and-comment procedures, promulgates requirements that have the "force and effect of law." *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 302-303 (1979). By contrast, an interpretive rule is "issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers." *Mortgage Bankers Ass'n*, 575 U.S. at 97. The public notice is plainly an interpretive rule, not a legislative rule. It advises the public about how the Media Bureau construes Section 315(b) of the Communications Act; it does not purport to prescribe requirements with the force and effect of law, over and above those imposed by the statute. To be sure, the court of appeals believed that the Media Bureau's interpretation of the Act is wrong, but that would show only that the public notice is an incorrect interpretive rule, not that it is a legislative rule. In holding otherwise, the court collapsed the jurisdictional question of whether the public notice is final with the merits question of whether it is correct.

Finally, the court of appeals concluded that the public notice is final because the Commission had "constructively denied" the challengers' application for review by failing to act on it with sufficient expedition. Appl. App. 31. But the Hobbs Act does not use the term "deny" (which might then be construed to include denial through inaction). Instead, it uses the term "final orders of the * * * Commission," 28 U.S.C. 2342(1), a term that does not encompass the staff-level notice here. As far as we are aware, no court of appeals has ever before suggested, at any point during the Communications Act's 92-year history, that it may review an action of FCC staff based on the fiction that the Commission has "constructively denied" an application for review. At a minimum, a court should not find a constructive denial here, where the challengers have contested a public notice that merely maintains the "status quo" by reiterating the Media Bureau's "longstanding" position and have demanded that the Commission issue a ruling within two months. Appl. App. 71 (Wilkinson, J., dissenting). "At the very least, constructive denial demands more agency neglect than a two-month hesitation in upending" "settled campaign finance ground rules right in the middle of an election season." *Ibid.* In all events, even if a constructive-denial theory could show that the FCC's decision-making process has been consummated, the notice here still would not be final because it would still lack legal consequences. See p. 18, *supra*.

4. In a concurring opinion, Judge Wynn opined that the court of appeals' reading was necessary to avoid "jurisdictional gamesmanship." Appl. App. 52. He feared that, on the government's interpretation, an FCC bureau could issue a "broad reinterpretation of a statute," the full Commission could "d[o] nothing," and the new rule could "g[o] into effect with no judicial review." *Ibid.* Those concerns are misplaced here.

To begin, even if an FCC bureau issues a public notice containing a "broad reinterpretation of a statute," that notice would not go "into effect," Appl. App. 52

(Wynn, J., concurring), because it would have no legal consequences. It would "*advise* the public" of the FCC staff's interpretation of the law, but it would not "*bind* the public," because courts would retain independent authority to decide in subsequent proceedings "whether the law means what the agency [staff] says it means." *Mortgage Bankers Ass'n*, 575 U.S. at 109 (Scalia, J., concurring in the judgment). The legal effect of a public notice is no greater than, say, the legal effect of a social-media post in which an FCC Commissioner endorses a particular reading of a statute. Yet no one could plausibly contend that such a social-media post is subject to Hobbs Act review.

An aggrieved person also may file an application asking the Commission to review a bureau's notice, and the Commission may not lawfully "d[o] nothing" in response. Appl. App. 52 (Wynn, J., concurring). The Communications Act provides that "every such application *shall* be passed upon by the Commission." 47 U.S.C. 155(c)(4) (emphasis added). The "presumption of regularity" requires courts to presume that the Commission will "properly discharge [its] official duties," *United States* v. *Chemical Foundation*, 272 U.S. 1, 14-15 (1926), not to presume that it will engage in "jurisdictional gamesmanship," Appl. App. 52 (Wynn, J., concurring).

If the Commission takes too long to rule on an application, an aggrieved person can seek relief under the All Writs Act, 28 U.S.C. 1651, and Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq*. See Appl. App. 69-70 (Wilkinson, J., dissenting). Under the All Writs Act, a court of appeals may issue a writ of mandamus to the Federal Communications Commission even in the absence of a final order. See *TRAC* v. *FCC*, 750 F.2d 70, 75-77 (D.C. Cir. 1984). Under the APA, the court may award mandamus to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. 706(1); see *TRAC*, 750 F.2d at 76-77. To be sure, the standard for obtaining such relief is demanding; agency delay must be "unreasonabl[e]" before a court may intervene. 5 U.S.C. 706(1); see *TRAC*, 750 F.2d at 80 (discussing factors for assessing the reasonableness of a delay). But that demanding standard reflects Congress's judgment that, as a general matter, the agency rather than the reviewing court should get to decide how long it needs to take to complete its proceedings.

The challengers cannot satisfy that demanding standard here; indeed, they have not even tried to do so. See C.A. Reply Br. 24 n.4 (disavowing any request for mandamus). The challengers went to court less than two months after filing their application for review by the Commission, and "it is inconceivable for mandamus to be appropriate here after two months of agency inaction," especially given all the circumstances of this case. Appl. App. 70 (Wilkinson, J., dissenting); see p. 21, *supra*. More importantly, whatever one might think of the length of the delay here, the unreasonable-delay standard established by Congress in the APA provides the right framework for addressing concerns about "prolonged inaction." Appl. App. 52 n.1 (Wynn, J., concurring). The challengers had no warrant to bypass that standard.

C. The Court Of Appeals' Analysis Is Wrong On The Merits

This Court's cases recognize that an applicant can obtain interim relief based on "a threshold error without also showing that, at the end of the day, it will prevail on the underlying merits." *California*, No. 26A124, slip op. 9; see *Trump* v. *CASA*, 606 U.S. 831, 860 (2025). Consistent with those precedents, the Court should grant relief based on the straightforward jurisdictional issues discussed above; it need not reach the merits. Indeed, reaching the merits would "ignore the congressional judgment" underlying the Hobbs Act—namely, that "full agency deliberations have something worthwhile to contribute" before judicial review begins. Appl. App. 74 (Wilkinson, J., dissenting). Regardless, to the extent the merits may be considered relevant to the equitable calculus, see *California*, No. 26A124 (Jackson, J., dissenting), slip op. 9 & n.5, they further support a stay here.

1. The lowest-unit-charge provision governs the "charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign." 47 U.S.C. 315(b). In general, "use" means "'to convert to one's service, 'to employ,' 'to avail oneself of,' and 'to carry out a purpose or action by means of.'" *Dubin* v. *United States*, 599 U.S. 110, 118 (2023) (brackets omitted). Those definitions all imply some degree of "active employment." *Id.* at 119.

The Media Bureau correctly determined that "candidate-party coordinated ads" that satisfy the "other applicable requirements" of the statute and regulations, Appl. App. 107, involve the "use of any broadcasting station by * * * [a] candidate," 47 U.S.C. 315(b). "Coordinated" advertisements, by definition, are advertisements produced or distributed by the candidate and the political party acting together. See *NRSC* v. *FEC*, 146 S. Ct. 2404, 2413 (2026). The "other applicable requirements" of the statute, Appl. App. 107, meanwhile, include, as relevant here, a requirement that the candidate personally certify and approve the broadcast, see 47 U.S.C. 315(b)(2). In particular, a television advertisement must include a "photographic" image of the candidate and a statement "identifying the candidate and stating that the candidate has approved the broadcast." 47 U.S.C. 315(b)(2)(C). That is why political advertisements usually end with a photograph of the candidate and the words, "I'm John Smith and I approve this message." That combination of circumstances—a candidate and political party work together to produce and distribute an advertisement, and the advertisement includes an announcement by the candidate identifying himself and telling voters that he approves the message—readily qualifies as a "use of [the] broadcasting station by * * * [the] candidate." 47 U.S.C. 315(b)(1).

It makes no difference that the political party helped fund the advertisement. Section 315(b) asks whether the candidate is making "use" of a broadcast station, not whether he is "funding" the broadcast. When a candidate works with his party to run an advertisement and announces in the advertisement that he approves it, he uses the broadcast station, even if the party helps him foot the bill.

That interpretation accords with how the statute has long been understood. The public notice here reiterates "previous Media Bureau guidance regarding [lowest-unit-charge] eligibility for candidate-party coordinated ads" provided in response to informal inquiries from regulated parties. Appl. App. 107; see Gov't C.A. Br. 38-39 & n.10. The notice cited a judicial decision stating that "coordinated expenditures" can "qualify for the lowest rates on the purchase of broadcasting time." Appl. App. 107 n.7 (quoting *FEC* v. *Colorado Republican Federal Campaign Committee*, 41 F. Supp. 2d 1197, 1210 (D. Colo. 1999), rev'd on other grounds, 533 U.S. 431 (2001)). The National Association of Broadcasters, the leading national trade association for radio and television broadcasters in the United States, has advised members that "national political parties and their campaign committee[s] have limited 'hard money' funds; ads paid for from these funds can be coordinated with a federal candidate and would, if they are, be entitled to the [lowest unit charge]." National Ass'n of Broadcasters, *Political Broadcasting Catechism* 36 (18th ed. 2014); see National Ass'n of Broadcasters, *Political Broadcasting Handbook* 19 (19th ed. 2024); see also C.A. Doc. 53 (July 20, 2026) (reproducing those sources). Political parties and candidates, too, have relied on that interpretation. For example, public records suggest that, during the 2024 election cycle, then-Senator Sherrod Brown (one of the challengers here) and his party's national committee ran a coordinated advertisement that received the lowest-unit-charge rate. See Gov't C.A. Br. 3 & n.1.

The court of appeals invoked the "plain text" of the statute, stating that "the term 'candidate' means 'candidate.'" Appl. App. 39-40. But the Media Bureau has never disputed that the statute requires use by the "candidate," not simply use by a "party." The key point is that, when a candidate works with his party to run an advertisement, and announces in the advertisement, "I'm John Smith and I approved this message," the advertisement is a use of the broadcasting station by the candidate himself. The advertisement may well *also* be a use of the broadcasting station by the party, but the notion that party uses and candidate uses are mutually exclusive lacks a textual basis in the statute and "presents a false dichotomy." Appl. App. 78 (Wilkinson, J., dissenting).

In the court of appeals, the challengers contended that the public notice is in tension with a statement in the federal government's reply brief in this Court in *NRSC*. Paraphrasing a representation by the intervenors in that case, who were represented by the challengers' counsel here, the government's brief stated that Section 315(b) "require[s] broadcasters to charge low rates for candidate spending, but not for party spending—whether coordinated or independent." Gov't Reply Br. at 23, *NRSC*, *supra* (No. 24-621). But the court of appeals gave that statement "no weight in assessing the Public Notice," agreeing with the government that the challengers were taking it "out of context." Appl. App. 40. The statement concerned only "party spending"—that is, expenditures for advertisements that are aired in the party's own name and that need not be formally approved by the candidate. Such expenditures can still be "coordinated" within the meaning of federal campaign-finance law if the party "simply 'consults' with the candidate" about, for example, "which time slot the advertisement should run for maximum effectiveness." *FEC* v. *Colorado Republican*

Federal Campaign Committee, 533 U.S. 431, 467-468 (2001) (Thomas, J., dissenting) (brackets and citation omitted). Indeed, the full context of the reply brief confirms that the quoted statement focused on that scenario, which is not at issue here. See, *e.g.*, Gov't Reply Br. at 10, *NRSC*, *supra* (No. 24-621) (observing that "a party makes a coordinated expenditure * * * when it consults with a candidate in developing an advertising campaign"); *id.* at 23 ("discussing "[p]arty-coordinated expenditures, in which parties decide how to spend money after consulting with the candidate"). The notice challenged here does not cover advertising by the party after mere consultation with the candidate. It is instead limited to coordinated advertising that satisfies "other applicable requirements"—most importantly, the requirement of announcing the candidate's approval in the advertisement itself. Appl. App. 107.

2. The Media Bureau also correctly concluded that the lowest-unit-charge provision applies to advertisements placed by "authorized committees that engage in joint fundraising with legally qualified candidates." Appl. App. 106. Section 315(b) "repeatedly refers to candidates and authorized committees as sharing the rights it confers." *Ibid.*; see, *e.g.*, 47 U.S.C. 315(b)(2)(A) ("the candidate (and any authorized committee of the candidate)"); 47 U.S.C. 315(b)(2)(B) ("a candidate for Federal office (or any authorized committee of such candidate)"); 47 U.S.C. 315(b)(2)(E) ("the candidate (or any authorized committee of the candidate)"). The Commission has thus long recognized that "candidates *or their authorized campaign committees* are entitled to the [lowest unit charge] pursuant to Section 315(b)." *In re Codification of the Commission's Political Programming Policies*, 7 FCC Rcd. 4611, 4614 (emphasis added). And there is no dispute that joint fundraising committees may be designated as "authorized committees" of candidates. See 47 U.S.C. 315(b)(2)(F); 52 U.S.C. 30101(6); 52 U.S.C. 30102(e)(3)(A)(ii).

The court of appeals insisted that the lowest-unit charge provision "is limited to 'use by" the candidate" and "says nothing about 'authorized committees.'" Appl. App. 48 (ellipsis omitted). But because "'use' takes on different meanings depending on context," courts interpreting that term must "look not only to the word itself, but also to the statute and the surrounding scheme, to determine the meaning Congress intended." *Dubin*, 599 U.S. at 118. The surrounding provisions here make clear that a candidate can use a broadcast station not only by placing an advertisement himself, but also by having an authorized committee do so in his stead. Indeed, even the court of appeals recognized elsewhere in its opinion that "a commonsense and practical construction of the [lowest-unit-charge] requirement" would encompass "'candidates *and their authorized committees*.'" Appl. App. 44 (emphasis added).

D. The Decision Below Warrants This Court's Review

The court of appeals' decision warrants this Court's review several times over. For one, the court of appeals' analysis of standing conflicts with this Court's decision in *McConnell*. See Sup. Ct. R. 10(c). *McConnell* establishes that a candidate does not have competitor standing to challenge an evenhanded law that makes it easier for all sides to raise or spend money, even if he fears that his opponents will make better use of the new rules than he. See *McConnell*, 540 U.S. at 228. The decision below directly conflicts with that precedent, see pp. 10-12, *supra*, and with the Sixth Circuit's decision recognizing that candidates or parties do not suffer competitive injury from a deregulatory campaign-finance law that allows everyone to spend "on the very same terms," *Weiser*, 48 F.4th at 626.

For another, as applicants detail (Stay Appl. 10), the decision below conflicts with the D.C. Circuit's precedents identifying when an order qualifies as an order of the "Commission" for purposes of judicial review. The D.C. Circuit has determined that "[a] Bureau's order [i]s not a Commission order and, therefore, it [i]s not an order subject to judicial review." *NTCH*, 877 F.3d at 413. By contrast, the Fourth Circuit held here that, because "the Media Bureau 'acts for the Commission under delegated authority,'" an order issued by the Bureau "is * * * from the start * * * an order of the Commission." Appl. App. 32-33.

As applicants further detail (Stay Appl. 13), the decision below also creates a circuit conflict about when an FCC order becomes final for purposes of the Hobbs Act. Other courts of appeals have determined that "a petition for review filed after a bureau decision but before resolution by the full Commission is subject to dismissal as incurably premature" because "[o]ngoing agency review renders an order nonfinal for purposes of judicial review." *International Telecard Ass'n* v. *FCC*, 166 F.3d 387, 388 (D.C. Cir. 1999); see, *e.g.*, *Alabama Power*, 311 F.3d at 1366 (Eleventh Circuit concluding that "the Commission must in some way act on the application for review before a party may petition a court of appeals for review"). By contrast, the Fourth Circuit held here that a Bureau decision "[i]s 'final' upon issuance by the * * * Bureau" and "remain[s] final pending completion of the review process." Appl. App. 33-34.

Relatedly, the D.C. Circuit has held that interpretive rules "do not qualify" as final because they simply provide advice about how the agency reads the statute and "are not finally determinative of the issues or rights to which they are addressed." *American Tort Reform Ass'n*, 738 F.3d at 395. The Fourth Circuit concluded here, by contrast, that a staff-level notice *does* qualify as final even though it likewise provides nothing more than advice about how an agency—more precisely, agency staff—reads a statute. See pp. 17-18, *supra*. It is true that the D.C. Circuit's decision involved the APA while this case arises under the Hobbs Act, but "final" bears the same meaning in both contexts. See, *e.g.*, *Brotherhood of Locomotive Engineers*, 972 F.3d at 99-100.

Those circuit conflicts concern important issues. The judicial-review scheme created by the Communications Act and the Hobbs Act is designed to secure "a complete, collective judgment of the most accountable agency officials"—the Presidentially appointed and Senate-confirmed Commissioners—"before judicial review commences." Appl. App. 66 (Wilkinson, J., dissenting). That design "ensure[s] that those making policy in the executive branch face accountability for any missteps or abuses." *Id.* at 67. But by allowing parties to seek judicial review of staff-level actions, the decision below "[f]unctionally eras[es] Commission-level review" from the statute—blurring the "'lines of accountability'" that Congress sought to preserve. *Ibid.*

On a more practical level, the decision below opens the floodgates for parties to rush to court to obtain immediate judicial review of every action taken by FCC staff, even while review by the Commission remains ongoing. Under the court's logic, a party that objects to staff action is free to file a perfunctory application for review by the Commission, treating the statutory obligation to do so as a mere box-checking exercise, and then race to court later the same day. Courts would be flooded with judicial challenges to matters that are still being considered at the agency, and the resulting parallel proceedings would strain the FCC's resources and severely disrupt or delay ongoing Commission deliberations on those matters. See Appl. App. 70 (Wilkinson, J., dissenting).

E. The Equities Support A Stay

Applicants explain (Stay Appl. 17-18) why the court of appeals' judgment causes irreparable harm to them. They observe (*id.* at 17) that they "ha[d] budgeted tens of millions of dollars in ad buys at the [lowest-unit-charge] rates," but that, "[b]ecause of the Fourth Circuit's decision, broadcast stations in some States have already rescinded those rates." They correctly note (*ibid.*) that, because they "can't get back their spent money or their lost 'opportunities to persuade the electorate,' those harms are irreparable." They further explain (*id.* at 18) that the infliction of those injuries "on the eve of the election" "[c]ompounds these injuries."

While the harms to applicants provide a sufficient basis for a stay, the court of appeals' judgment inflicts additional injuries on the government. By depriving the Commission of the opportunity to complete its review of the staff-level public notice before judicial review commences, the court subverted the "lines of accountability" that run from the staff, through the Commission, to the President. Appl. App. 67 (Wilkinson, J., dissenting). And by intervening before the Commission issued a final order, the court improperly "meddle[d] in 'the workings of' the Executive Branch." *California*, No. 26A124, slip op. 9.

The challengers would not suffer any irreparable harm from a stay. The public notice does not cause the challengers even an Article III injury, see pp. 9-13, *supra*, much less an irreparable injury. Moreover, the interpretation of the Communications Act reflected in the public notice would simply allow cheaper campaign advertising. The notion that the challengers face irreparable injury from allowing more people to engage in more political speech more cheaply is inconsistent with our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *NRSC*, 146 S. Ct. at 2415. On top of that, the public notice did not "change the status quo in the first place"; "[i]nstead, as [the challengers] concede, party-coordinated ads received [lowest-unit-charge] rates in prior election cycles, too." Appl. App. 71 (Wilkinson, J., dissenting). "At worst, [the challengers] will keep facing for a few more months the [lowest-unit-charge] rules under which they have long labored—and, at times, profited." *Ibid.*; see *ibid.* (noting "cases in which [challenger] Brown received [lowest-unit-charge rates] for party-coordinated ads").

The public interest, too, supports granting relief. "Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters." *Merrill* v. *Milligan*, 142 S. Ct. 879, 880-881 (2022) (Kavanaugh, J., concurring); see *Purcell* v. *Gonzalez*, 549 U.S. 1, 7 (2006) (per curiam). The court of appeals' decision, however, threatens just such consequences by "upending" "longstanding" "campaign-finance ground rules right in the middle of an election season." Appl. App. 71 (Wilkinson, J., dissenting). As applicants note (Stay Appl. 18), "[c]hanging the [lowest-unit-charge] rules and industry practice" at this juncture "will, at a minimum, throw broadcasters, candidates, and campaigns into confusion."

Finally, the equities—especially the public interest in avoiding destabilizing judicial decisions immediately before an election—justify entering an administrative stay while this Court considers the stay application. The 60-day period covered by the lowest-unit-charge provision will begin on September 4, 2026. See Appl. App. 24. Applicants explain (Stay Appl. 18) that candidates and political parties have already begun drafting, negotiating, and signing contracts with broadcasters for advertisements that they plan to run in the coming weeks. Issuing an administrative stay would ensure that the Fourth Circuit's novel interpretation of the statute does not disrupt political speech during "the crucial phase of 60 days before the general election." *Citizens United* v. *FEC*, 558 U.S. 310, 337 (2010).

CONCLUSION

This Court should stay the judgment of the court of appeals pending the timely filing and disposition of a petition for a writ of certiorari.

Respectfully submitted.

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AUGUST 2026