No. 26A274

In the Supreme Court of the United States

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, *et al.*,
Applicants,

v.

SHERROD BROWN, *et al.*,
Respondents.

On Emergency Application for Stay and Administrative Stay Pending Petition for a Writ of Certiorari from the Order Issued by the United States Court of Appeals for the Fourth Circuit, No. 26-1785

BRIEF OF *AMICUS CURIAE* CAMPAIGN LEGAL CENTER IN SUPPORT OF RESPONDENTS

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INTERESTS OF *AMICUS CURIAE*[1]

Amicus Curiae Campaign Legal Center ("CLC") is a nonpartisan, nonprofit organization working in the areas of campaign finance, political disclosure, and election law to advance a more transparent, inclusive, and accountable democracy. CLC has a longstanding, demonstrated interest in the preservation and operation of existing laws governing the financing of election campaigns, including the statute at issue here, which provides that qualified federal candidates, but no other individuals or entities, are entitled to receive the "lowest unit charge" ("LUC") for certain broadcast campaign advertising, Communications Act of 1934, as amended, 47 U.S.C. § 315(b)(1) ("Communications Act").

Since its founding in 2002, CLC has participated in every campaign finance case heard by this Court, including in its recently decided campaign finance case, *National Republican Senatorial Committee v. Federal Election Commission*, 146 S. Ct. 2404 (2026). CLC is also active in rulemaking and advisory opinion proceedings at the Federal Election Commission ("FEC"), Federal Communications Commission ("FCC"), and other federal agencies to ensure the proper administration and enforcement of campaign finance and related political advertising laws.

CLC thus has substantial experience in matters addressing the intersection of political advertising, the regulation of broadcast communications, and federal campaign finance law. *Amicus* submits this brief to explain how the FCC's recent

[1] No counsel for a party authored this brief in whole or in part, and no person other than CLC or its counsel contributed money that was intended to fund preparing or submitting this brief.

notice, *see* Public Notice, Media Bureau, FCC (Mar. 30, 2026), https://docs.fcc.gov/public/attachments/DA-26-300A1.pdf ("FCC Notice"), unlawfully extends the LUC for broadcast advertising to entities other than federal candidates, in violation of the clear text and limited scope of the Communications Act, and how recent FEC guidance relaxing the rules governing joint fundraising in federal elections underscores the impermissibly expansive scope of the FCC's guidance.

SUMMARY OF ARGUMENT

Congress enacted the LUC requirement in the Communications Act, 47 U.S.C. § 315(b)(1), to address the "increasing cost" of political advertising and to ensure that candidates were not priced out of reaching voters just before an election. *Hernstadt v. FCC*, 677 F.2d 893, 897, 900 (D.C. Cir. 1980). The Communications Act accordingly provides that "legally qualified candidate[s] for any public office"—and only such candidates—have a right to purchase ad time at the same rate as a broadcast station's "most favored commercial advertiser[s]." *Id.* at 898, 900 (quoting S. Rep. No. 92-96, at 27 (1971)). This approach enables candidates to access volume and frequency discounts that would otherwise be reserved for the broadcasters' largest advertisers, while minimizing the financial burdens on the broadcast stations. *Id.*

The FCC Notice, however, extends the right of "legally qualified candidate[s]" to purchase LUC broadcast advertising to (1) political party committees making coordinated expenditures with candidates, and (2) joint fundraising committees ("JFCs") in which a candidate is a participant. This interpretation contravenes not only the plain language and purpose of this statute, but also the FCC's own consistent position that only candidates and their campaign committees are entitled to LUC rates. The Fourth Circuit Court of Appeals correctly rejected the FCC's "significant and unilateral expansion of the LUC requirement" as contrary to law, noting that the "statutory text is unambiguous" that the LUC discount is available only to candidates. *See* App. to Appl. for Stay at 41 ("Appl. App.").

Applicants National Republican Congressional Committee, *et al.*, supported by the United States and FCC (the "government") and a group of *amici* including the Republican National Committee, now seek a stay of the Fourth Circuit's judgment, principally on jurisdictional and procedural grounds. For the reasons articulated by respondents Sherrod Brown, *et al.*, and the Fourth Circuit, *see* Appl. App. 31-38, these jurisdictional objections are unfounded, but *amicus* CLC here primarily focuses on applicants' merits argument. In particular, CLC writes to highlight how broadly the FCC Notice expands the statutory LUC requirement, particularly in light of recent FEC decisions interpreting federal campaign finance law to permit super PACs[2] to participate in joint fundraising committees together with the candidates they support and to fund the JFCs' ads for those candidates. Thus, as *amicus* explains, by extending the lowest unit charge to JFCs, the FCC Notice, in conjunction with these FEC rulings, effectively allows even super PACs to access the LUC discount when spending through JFCs.

[2] Super PACs, "independent-expenditure-only political committees," are political committees that are legally permitted—pursuant to this Court's decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), and the D.C. Circuit's decision in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010)—to raise and spend unlimited amounts of money provided they do not coordinate with any candidate or party committee and make only independent expenditures. *See* FEC Advisory Op. 2010-11 (Commonsense Ten) (July 22, 2010), https://perma.cc/Z6D3-YR2B.

Joint fundraising is a long-standing practice, authorized by FEC regulations and advisory opinions, wherein candidates enhance their fundraising power by "jointly" raising funds with other entities, oftentimes forming a separate political committee—a JFC—that exists "solely for the purpose of joint fundraising," 52 U.S.C. § 30102(e)(3)(A)(ii), *i.e.*, to collect and distribute funds raised among the participants, and finance the fundraising venture. Until recently, JFCs were typically a joint effort between candidates of the same political party, candidate-sponsored "leadership political action committees" ("leadership PACs"),[3] and the national and state committees of the candidates' political party. 11 C.F.R. § 102.17; *see* FEC Advisory Op. 2007-24 (Burkee) (Dec. 10, 2007), https://perma.cc/PL9D-R2K7. But the FEC supercharged this fundraising practice in August 2024 by issuing an advisory opinion that for the first time authorized a candidate's campaign committee to participate in a JFC with a super PAC, and the JFC to disseminate public communications. *See* FEC Advisory Op. 2024-07 (Team Graham, Inc.) (Aug. 29, 2024), https://perma.cc/25AR-CNMH. In a different 2024 proceeding, the FEC also failed to prohibit JFCs from financing advertisements that expressly advocate for the JFC's participating candidates, enabling super PACs participating in the joint effort to effectively underwrite the costs of candidates' electoral advocacy (using JFC-funded

[3] A leadership PAC is "a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual." 11 C.F.R. § 100.5(e)(6). Historically, officeholders use leadership PACs to make contributions "to other Federal candidates to gain support when . . . seek[ing] a leadership position in Congress." Leadership PACs, 68 Fed. Reg. 67013, 67014 (Dec. 1, 2003).

ads that mimic campaign ads). *See infra* Part I.B.1. Although super PACs are plainly ineligible for the LUC under the Communications Act, the FCC Notice thus effectively extends the discount to super PACs as long as they pay for election ads through a JFC. This outcome illustrates not only the potentially broad harmful effects of the Notice but also the unlawfulness of the FCC's position, which would apparently interpret the LUC provision to cover any committee that was "authorized," approved, or otherwise blessed by a candidate. *See* Br. of United States and FCC in Supp. of Appl. for Stay at 27-28 ("Gov't Br.").

The harms threatened by the Notice are also imminent. The 2026 midterm election is the first full election cycle since the FEC issued the relevant advisory opinion, *i.e.*, the first cycle in which candidates' campaign committees and super PACs may participate in JFCs. A growing number of such committees are registering with the FEC. *See infra* Part I.B.2. Under the FCC Notice, these JFCs will be able to access the LUC, despite the fact that they might include multiple super PACs, with the participating candidate paying only a small fraction of the costs of any JFC-funded advertisements. The prospect that the FCC Notice will require broadcasters to subsidize super PAC-funded JFC political ads underscores how far the FCC has deviated from the text of the statute. Compelling stations to offer the LUC to JFCs that may be substantially or predominantly underwritten by super PACs contravenes the clear text of the Communications Act and its dual purposes, namely to provide *candidates* and their campaigns with a discount so that they can reach voters, while avoiding placing undue financial burdens on broadcast stations. *See Hernstadt*, 677 F.2d at 897-98.

The harms threatened by the FCC Notice also confirm why respondents "easily satisfy" the requirements of Article III, as the Fourth Circuit correctly held. Appl. App. 38 n.9. The respondents here are seeking to ensure their electoral opponents are required to comply with the Communications Act by challenging the FCC's harmful misinterpretation of that statute, which unlawfully extends the LUC beyond legally qualified candidates, thereby placing them at a competitive disadvantage.

For all these reasons, the application should be denied.

ARGUMENT

I. The Fourth Circuit Correctly Set Aside the FCC Notice as an Unlawful Interpretation of the Communications Act.

A. The FCC has consistently maintained that entities and individuals other than candidates are not entitled to the LUC for their "use" of broadcasting stations.

The Communications Act provides that, within the period immediately preceding a primary or general election, "[t]he charges made for the use of any broadcasting station by any person who is a legally qualified candidate . . . shall not exceed . . . the lowest unit charge of the station for the same class and amount of time for the same period." 47 U.S.C. § 315(b)(1). The statute thus requires broadcasting stations to provide discounted ad time to "legally qualified candidate[s]" making "use" of their facilities to disseminate campaign advertising. *Id.*; *see also Hernstadt*, 677 F.2d at 898.

The legislative record makes clear that Congress created the LUC requirement because it was concerned about the rising cost of political advertising and wanted to provide an "additional break for candidates," *Hernstadt*, 677 F.2d at 897, by ensuring that "during the pre-election period, candidates would receive . . . volume and frequency discounts regardless of the number of announcements purchased," *id.* at 900. Congress decided to require broadcast stations to offer candidates their lowest available rate—rather than mandating a set rate or a specific percentage discount—to avoid imposing unreasonable and "possibly economically devastating" burdens on small stations, which might face financial hardship if they had to give away a portion of their ad inventory for a fraction of what they usually charge. *Id.* at 898. Congress thus sought to advance two goals in legislating the LUC: (1) making advertising affordable for candidates shortly before an election so that voters can hear their positions, and (2) ensuring broadcast stations are not substantially harmed by being required to run discounted campaign ads.

In line with those two legislative goals, the government has, for decades, consistently reaffirmed in formal guidance that broadcasting stations are required to offer the LUC only to candidates, and has stated explicitly that broadcasting stations do not have to offer the discount to entities or individuals other than candidates. *See* Use of Broadcast and Cablecast Facilities by Candidates for Public Office, 37 Fed. Reg. 5796, 5802 (Mar. 21, 1972). In guidance issued in 1991, the FCC reiterated that "only candidates," not "independent groups," are "entitled to [the] lowest unit charge benefits." Report & Order, *In re Codification of the Comm'n's Pol. Programming Pol'ys*, 7 FCC Rcd. 678, 686 ¶ 38 (1991). In a footnote, it further explained that the "legislative history of Section 315(b) clearly demonstrates Congressional effort to reduce candidates' escalating campaign costs" and thus "reiterate[d] that the lowest unit charge inures to the benefit of candidates only." *Id.* 685 ¶ 34 n.54 (citing S. Rep. No. 92-96, at 20 (1971)).

In 1992, the FCC responded to a broadcaster asking whether the LUC extends to "an independent entity [that] produces an advertisement that includes an approved appearance" by the candidate by explaining that "only candidates or their authorized campaign committees are entitled to the LUC pursuant to Section 315(b). Thus, even if an independent entity produces an advertisement that includes an appearance by a candidate, that independent entity is not entitled to the LUC." Mem. Op. & Order, *In re Codification of the Comm'n's Pol. Programming Pol'ys*, 7 FCC Rcd. 4611, 4614 ¶¶ 18, 23 (1992).

In 2020, the FCC issued guidance again stating that only "individuals running for public office" are entitled to the LUC. Public Notice, Media Bureau, FCC (Nov. 2, 2020), https://docs.fcc.gov/public/attachments/DA-20-1305A1.pdf. As recently as fall 2025, the federal government even told this Court—in the course of briefing *National Republican Senatorial Committee v. FEC*, 146 S. Ct. 2404 (2026)—that the LUC provision requires "low rates for candidate spending" only. *See* Reply Br. for the Fed.

Respondents, *Nat'l Republican Senatorial Comm. v. FEC*, No. 24-621, 2025 WL 3068193, at *23 (U.S. Oct. 29, 2025).

However, less than a year later, the FCC published its Notice extending the LUC to both JFCs and political party committees coordinating with a candidate. While drastically expanding the categories of advertisers that must receive the LUC, the FCC Notice also acknowledged the uninterrupted line of guidance stating that independent groups are not entitled to receive the LUC. *See* FCC Notice & n.7. No party to this litigation has disputed this position, but the FCC Notice would, in effect, allow such groups to routinely access the LUC by funding JFC advertising.

B. The FCC Notice, together with recent FEC rulings, extends the LUC to non-candidate-authorized groups, including super PACs.

Recent decisions by the FEC permit super PACs—entities that are legally allowed to sponsor only independent expenditures—to form JFCs together with candidates, and those JFCs can run television and radio ads paid for in whole or in large part by the participating super PAC(s), as long as the advertisements nominally fundraise for the JFC. *See infra* at 10-12. Accordingly, by classifying the specified JFC advertisements as a "use" by a "legally qualified candidate," the FCC is effectively extending the LUC not only to party committees, but also to super PACs, despite the fact that the agency and the regulated community have agreed for more than 50 years that the "use" of the airwaves by an independent spending group—even for a communication benefitting a candidate in which the candidate appears—does not qualify for the LUC. *See supra* Part I.A.

1. The FEC has allowed JFCs to run campaign-style ads that are largely financed by and speaking for a variety of different groups, including super PACs.

Through its responses to a pair of 2024 advisory opinion requests, the FEC now permits JFCs to run campaign-style ads featuring candidates that are underwritten by—and effectively speak for—a wide variety of political actors, including non-candidate-authorized committees and even some groups (like super PACs and hybrid PACs) that raise and spend “soft money,” *i.e.*, funds that do not comply with federal contribution limits and source prohibitions.

On June 12, 2024, Team Graham, Inc.—the late Senator Lindsey Graham’s campaign committee—submitted an advisory opinion request asking the FEC whether it could form a JFC that would be made up of the campaign committee, Graham’s leadership PAC, Fund for America’s Future, the National Republican Senatorial Committee (“NRSC”), and an unnamed super PAC. Advisory Op. Request at 1, Team Graham, Inc. to FEC (June 12, 2024), https://perma.cc/BRU9-MBKV. The request explained that the JFC would disseminate “public communications in the form of solicitations” as part of its fundraising efforts. *Id.* at 2.

On August 29, 2024, the FEC issued an advisory opinion permitting the campaign and super PAC to jointly participate in the proposed JFC. FEC Advisory Op. 2024-07 (Team Graham, Inc.). The FEC concluded that the JFC’s communications would not be treated as coordinated communications, which super PACs are legally prohibited from making with candidates under the federal campaign finance laws.[4] FEC Advisory Op. 2024-07 (Team Graham, Inc.) at 6-8. The opinion concluded that as long as the JFC limited contributions to the super PAC to $5,000 (the annual limit for contributions to traditional PACs), as well as barring contributions from sources not allowed to give money to candidates, like corporations and unions, Team Graham would not run afoul of federal campaign finance laws. *Id.* at 4-6.

The following month, the FEC received an advisory opinion request asking whether a JFC could "run television advertisements that primarily advocate for the election" or defeat of a federal candidate "but also contain a brief fundraising solicitation at the end of the advertisements." Advisory Op. Request at 1, Democratic Senatorial Campaign Committee ("DSCC"), Montanans for Tester & Gallego for Arizona to FEC (Sep. 18, 2024), https://www.fec.gov/files/legal/aos/2024-13/202413R_1.pdf. The requesters—the DSCC and the principal campaign committees for then-Senator Jon Tester and then-Representative Ruben Gallego—proposed that each candidate would form a JFC with the DSCC, and the first two thirds of incoming contributions would be allocated to the DSCC and the final third to the candidate. *Id.* at 2. Each JFC would then use the money to finance television ads that advocated the candidate's election and showed "a QR code during the final few seconds that, when scanned, link[ed] to an online fundraising page" along with "a brief oral solicitation." *Id.* Despite the ads being almost fully dedicated to candidate

[4] This conclusion defied common sense, as the campaign and super PAC would be working together—coordinating—to develop the JFC's public communications.

advocacy—and never mentioning the DSCC—the DSCC would pay for two thirds of the ads' costs and each candidate would pay the remaining one third.[5] *See id.*

The FEC split 3-3 on whether the proposed JFC ads and cost allocations were lawful. *See* Certification, FEC Advisory Op. 2024-13 (DSCC, Montanans for Tester & Gallego for Arizona) (Oct. 10, 2024), https://perma.cc/8R8N-E75K. Since then, party committees, presumably reading the Commission's split as tacit permission,[6] have engaged in the very conduct described in the advisory opinion request.

As a result of these FEC actions, JFCs are now poised to disseminate ads that feature and expressly advocate for candidates, yet are paid for and speak on behalf of super PACs and other soft money committees, leadership PACs, and party committees—none of which are authorized by any candidate to serve as campaign

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[5] JFCs are required to establish an allocation formula that controls how contributions received, and expenses paid, are divided between the participants. 11 C.F.R. § 102.17(c)(1), (c)(6)(i). For example, three political committees could form a JFC and determine that Committee A (super PAC) gets the first cut of each contribution (up to its legal limit), Committee B (leadership PAC) gets the next cut (up to its legal limit), and Committee C (candidate's campaign committee) gets whatever is left (up to its legal limit). Under such a formula, Committee C may not get much money from the venture but would also end up paying little of the JFC's expenses, including its advertising costs.

[6] The FEC has six Commissioners, and issuing an advisory opinion requires the affirmative vote of at least four Commissioners. 52 U.S.C. § 30106(a)(1), (c). Likewise, in the enforcement context, it takes at least four votes to initiate an investigation, enter into a conciliation agreement to resolve a violation, or institute a lawsuit seeking a civil penalty against a party. *Id.* §§ 30106(c), 30109(a)(2), (a)(4)(A)(i), (a)(6)(A). Because of this structure, if the Commission deadlocks 3-3 on an advisory opinion, there is unlikely to be the four-vote majority needed to initiate an enforcement action against the requester or a similarly situated party. The regulated community is aware of this and, accordingly, regularly engages in conduct that has failed to gain the required four-vote approval in the advisory opinion context.

committees. The FCC Notice, if allowed to stand per the applicants' request, would allow such non-candidate-authorized groups to pay for JFC ads at the LUC (as long as a candidate stamped their approval on the ads), thus grossly undermining the clear language and purposes of the Communications Act.

2. Candidates are increasingly forming joint fundraising committees with super PACs.

Numerous candidates in the 2026 election cycle have already formed JFCs with allied super PACs. This development opens the door to the possibility that super PAC-funded JFC ads will supplant campaign advocacy, a trend that would be exacerbated if super PACs could exploit the LUC for this purpose.

For example, Senator Graham—pursuant to the FEC's Team Graham advisory opinion discussed *supra*—amended the statement of organization for his pre-existing JFC, Graham Majority Fund, to include his campaign, leadership PAC, the NRSC, and a super PAC named Security is Strength PAC.[7] Similarly, Texas Senator John Cornyn created the Cornyn Victory Committee, which included his campaign committee and leadership PACs, the NRSC, and the super PACs "Conservative Majority Project Super PAC" and "Texans for a Conservative Majority."[8] Maine

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[7] Graham Majority Fund, Am. Statement of Org. at 2, 5 (Sep. 11, 2025), https://docquery.fec.gov/pdf/245/202509119790045245/202509119790045245.pdf; Security is Strength PAC, Am. Statement of Org. at 2 (Jan. 29, 2026), https://docquery.fec.gov/pdf/148/202601299794429148/202601299794429148.pdf.

[8] Cornyn Victory Committee, Am. Statement of Org. at 2, 5 (Apr. 22, 2025), https://docquery.fec.gov/pdf/259/202504229756342259/202504229756342259.pdf; Texans for a Conservative Majority, Am. Statement of Org. at 2 (Sep. 23, 2025),

Senator Susan Collins created the Collins Victory Committee, whose participants include Collins's campaign committee, her leadership PAC, the NRSC, and a super PAC called Pine Tree Results PAC.[9]

House candidates are following suit. Representative Ritchie Torres, for example, has a JFC, the Torres Victory Fund, which includes his campaign committee, leadership PAC, the New York State Democratic Committee, and two hybrid PACs:[10] Equality PAC and Equality Project PAC.[11] Representative Max Miller's "Max Miller Victory" JFC is comprised of his campaign committee, his

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https://docquery.fec.gov/pdf/503/202509239790382503/202509239790382503.pdf.

[9] Collins Victory Committee, Am. Statement of Org. at 2, 5 (Mar. 20, 2025), https://docquery.fec.gov/pdf/830/202503209754278830/202503209754278830.pdf; Pine Tree Results PAC, Am. Statement of Org. at 2 (Sep. 10, 2025), https://docquery.fec.gov/pdf/684/202509109789979684/202509109789979684.pdf.

[10] A hybrid PAC is like two committees under one roof: it maintains one account that operates like a regular committee (*i.e.*, it is subject to federal source prohibitions and contribution limits, and can make contributions to candidates and/or party committees) and a separate, segregated account that operates like a super PAC (*i.e.*, it can accept unlimited amounts of money, including money from corporations and labor unions, but must operate independently of candidates and party committees). *See Registering as a Hybrid PAC*, FEC, https://perma.cc/5Q53-VU9H (last visited Sep. 2, 2026).

[11] Torres Victory Fund, Am. Statement of Org. at 2, 5 (Feb. 10, 2026), https://docquery.fec.gov/pdf/678/202602109834300678/202602109834300678.pdf; Equality PAC, Am. Statement of Org. at 2 (Mar. 25, 2026), https://docquery.fec.gov/pdf/711/202603259856841711/202603259856841711.pdf; Equality Project PAC, Am. Statement of Org. at 2 (June 29, 2026), https://docquery.fec.gov/pdf/199/202606299874277199/202606299874277199.pdf.

leadership PAC, the Ohio Republican Party State Central and Executive Committee, a multicandidate PAC, and the super PAC "Jobs & Prosperity PAC."[12]

Using such JFCs to finance campaign-style ads presents undeniable advantages to JFC participants and their donors, particularly in light of the FEC's and FCC's recent guidance. But even if JFC ads feature and expressly advocate for a candidate, they are fundamentally distinct—both in how they are funded and whose political speech they represent—from ads paid for and disseminated by a candidate's campaign committee. A JFC's allocation formulation can be structured to ensure that the participating non-candidate groups pay all or most of the cost for the JFC's advertisements. *See supra* at 12 n.5. And unlike with campaign ads, which are funded by and speak solely for a candidate, JFC advertisements speak for *all* the JFC participants—a wide array of perspectives that, in the examples discussed above, include candidates, party committees, leadership PACs, and even "soft money" committees like super PACs and hybrid PACs. These soft money committees are legally permitted to raise and spend unlimited sums of money, including corporate funds, underscoring how their interests may be wildly distinct from candidates, who cannot accept corporate contributions or amounts above federally-mandated limits. It is therefore untenable to conclude, as the FCC did in its recent guidance, that the

12 Max Miller Victory, Am. Statement of Org. at 2, 5 (Dec. 4, 2025), https://docquery.fec.gov/pdf/392/202512049793376392/202512049793376392.pdf; Jobs & Prosperity PAC, Am. Statement of Org. at 2 (Nov. 27, 2025), https://docquery.fec.gov/pdf/444/202511279793334444/202511279793334444.pdf.

resulting JFC ads are entitled to a discounted rate that, under the law, is reserved exclusively for "use" by "candidates." *See* FCC Notice.

In short, a JFC is a perfect vehicle for super PACs seeking to finance campaign-style ads at LUC rates—and to thereby provide maximal financial support to candidates—raising clear risks of corruption to our political system. Indeed, this type of super PAC-backed JFC is already operating in the 2026 election cycle and will almost certainly be exploited by super PACs and other soft money groups if the FCC Notice is permitted to go into effect. While candidates will certainly find such JFC ads desirable, the fact remains that a JFC ad neither speaks for the candidate nor is necessarily financed by the candidate.

C. Extending the LUC to JFCs comprised of candidates and super PACs contradicts the plain language and purposes of the Communications Act.

The FCC's move to make the LUC available to JFCs with a candidate participant is unsupported by the law, as underscored by super PACs' newfound ability to participate in JFCs with candidates. The Communications Act extends the LUC for the "use of any broadcasting station by any person who is a legally qualified candidate," 47 U.S.C. § 315(b)(1), and not other groups, including JFCs, that also spend money on advertising in connection with an election. Neither the text or purpose of the statute supports an interpretation of the LUC provision that would make the discount available to any group in which a candidate participates, or for the dissemination of any communication that a candidate authorizes or approves.

Nonetheless, applicants insist on reading "use of any broadcasting station" by a "candidate" so broadly as to encompass the ads of any group that the candidate authorizes or approves, even for a narrow purpose—including one, like a super PAC-backed JFC, that is funded by and represents the speech of one or more non-candidate-authorized groups. Appl. for Stay at 14-15 ("Applicants' Br."); Gov't Br. at 27-28. This interpretation grossly distorts the plain meaning of the Communications Act, as well as Congress's clearly expressed intent. It also has no limiting principle. According to applicants, any move by a candidate to include a group in their joint fundraising operation or to otherwise "authorize" or bless an independent committee would potentially entitle this committee to the LUC, stretching the LUC provision—and broadcasters' financial obligations thereunder—to cover an ever-expanding number of groups.

And it is no answer to say that this problem arises from the FEC's regulation of joint fundraising, not the FCC Notice. The Notice expressly extends the LUC provisions to JFCs, which, by definition, are multi-member operations. *See supra* at 4-5. A JFC's "membership" thus inherently extends beyond the candidate's campaign committee to include *other* committees—which are not entitled to LUC rates under the Communications Act.[13] True, the FEC's recent opinion allowing super PACs to join JFCs may itself be a faulty interpretation of federal law, *see supra* at 10-11 & n.4—and, together with the FCC Notice, may potentially bring a particularly inapposite type of committee under the umbrella of the LUC requirement. But the fundamental flaw here is the FCC Notice's extension of the LUC provision to JFCs,

[13] One exception would be the rare joint fundraising effort that includes only the campaign committees of two or more candidates.

which, in virtually all cases, will include entities beyond "legally qualified candidates" and their campaign committees. Even if the FEC were to reconsider its recent opinions allowing super PACs to participate in candidate joint fundraising, the FCC Notice would necessarily extend the LUC to entities that are not candidates in contravention of the statute and the FCC's own past guidance.

A simple hypothetical perfectly illustrates the flaw in the FCC's reasoning: three super PACs and one candidate could form a JFC with an allocation formula dictating that incoming contributions (up to the prevailing PAC contribution limit of $5,000) will flow to each super PAC before even a penny reaches the candidate's campaign committee. If every donor to this JFC gave $15,000 or less, the campaign would receive no money from the JFC distributions—all of the donors' funds would go to the three super PACs (receiving $5,000 each) under the JFC's allocation formula.[14] Then, the JFC could use the proceeds to place ads expressly advocating for the participating candidate, who would not be required to pay anything for the JFC's ads because their campaign did not receive any money from the JFC's distributions. The resulting ads would be subject to the approval of all the JFC participants, including the non-candidate-authorized super PACs—not just the candidate. Yet per the FCC's guidance and applicants' position, the JFC would be able to place those ads, which represent the views of and were wholly paid for by super PACs, at the

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[14] Considering donors turn to super PACs when they have already made the maximum contribution to the candidate, it would not be unusual for a supporter to contribute just to the participating super PACs.

LUC. That absurd, deeply problematic, and yet entirely plausible outcome is unsupported by the law and undermines Congress's basic legislative purpose.

This hypothetical JFC's advertisements—which are in no part financed by a candidate or their campaign, and which "speak" on behalf of one or more super PACs legally barred from spending money on elections "in cooperation, consultation, or concert with" a candidate or their campaign—plainly do not amount to "use of [a] broadcasting station by" a "legally qualified candidate," within the meaning of a statutory provision designed to reduce the cost of political advertising *for campaigns*. 52 U.S.C. § 30116(a)(7)(B); 47 U.S.C. § 315(b)(1).

The FCC itself recognizes that super PACs spending on electoral ads from their own accounts would not be entitled to the LUC as super PACs are obviously not "candidates." *See* FCC Notice; *see also* Report & Order, *In re Codification of the Comm'n's Pol. Programming Pol'ys*, 7 FCC Rcd. 678, 685 ¶ 34 n.54 (1991). That admission should resolve the question here, as the same result must hold for super PACs (and other, similarly unauthorized groups) spending on electoral ads through a JFC. The FCC Notice allowing such committees to air ads at the LUC is unlawful and threatens to severely harm both our electoral system and broadcasters, who will be forced to provide discounted ad time to a far wider swath of political groups than Congress ever intended to benefit.

II. Respondents "Easily Satisfy" the Requirements of Article III.

The government also challenges respondents' Article III standing but it misapplies this Court's precedents to respondents' claimed injury.

In particular, the government misreads *McConnell v. FEC*, 540 U.S. 93 (2003), to foreclose a finding that respondents have standing to challenge the FCC's unlawful interpretation of the Communications Act. Gov't Br. at 10-11. But the competitive injury that *McConnell* declined to recognize was based on the preference of the plaintiff-candidates in that case not "'to solicit or accept large campaign contributions *as permitted by BCRA*' because '[t]hey believe such contributions create the appearance of unequal access and influence.'" *McConnell*, 540 U.S. at 228 (emphasis added). The respondents here are not claiming a competitive injury based on a desire to avoid engaging in statutorily authorized activity. On the contrary, they are seeking to ensure their electoral opponents are required to comply with the Communications Act and they accordingly challenge the FCC's unlawful and harmful misinterpretation of that statute, which "unlawfully extends the LUC" beyond legally qualified candidates to include JFCs and political parties, with the effect of "increasing the volume of opposing advertising [respondents] must confront, and placing them at a competitive disadvantage." Appl. App. 38 n.9 (citing *Shays v. FEC*, 414 F.3d 76, 86 (D.C. Cir. 2005)).

As this Court has recognized, when a statute "reflect[s] a legislative purpose to protect a competitive interest"—such as the exclusive right of "legally qualified candidates" to access the LUC, 47 U.S.C. § 315(b)(1)—"[an] injured competitor has standing to require compliance with that provision." *Hardin v. Ky. Utils. Co.*, 390 U.S. 1, 6 (1968); *see also, e.g.*, *Clarke v. Secs. Indus. Ass'n*, 479 U.S. 388, 390-94 (1987) (upholding standing of securities dealers to challenge agency decision authorizing certain brokerage services by regulated banks, based on their interest in limiting market competition); *Shays*, 414 F.3d at 86 (finding standing to challenge legality of FEC regulations because "under FEC rules permitting what BCRA prohibits, the two Congressmen must anticipate and respond to a broader range of competitive tactics than federal law would otherwise allow"). The Communications Act reflects just such a purpose in providing legally qualified candidates with advantageous broadcast advertising rates shortly before an election. *See Hernstadt*, 677 F.2d at 898, 900.

Here, respondents have sought to reserve that narrow statutory discount, which Congress created exclusively for "legally qualified candidates," for their own broadcast campaign advertisements. 47 U.S.C. § 315(b)(1). The FCC's flawed interpretation of the statute unlawfully expands the scope of beneficiaries of that discount to political parties, JFCs, and even super PACs, and thus poses a legally cognizable injury to the respondents, by "illegal[ly] structuring [the] competitive environment," *Shays*, 414 F.3d at 87, and "placing them at a competitive disadvantage." Appl. App. 38 n.9. Respondents have thus demonstrated a competitive injury and "easily satisfy the requirements for Article III standing." *Id.*

CONCLUSION

Amicus respectfully requests that the Court deny the application.

Dated: September 3, 2026

Respectfully submitted,

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