

In the Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, APPLICANT

v.

SHERROD BROWN, ET AL.

**APPLICATION TO STAY THE ORDER
OF THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY**

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PARTIES TO THE PROCEEDING

The Federal Communications Commission is applicant here and was respondent in the court of appeals. The National Republican Congressional Committee and the National Republican Senatorial Committee are respondents here and were intervenor-respondents in the court of appeals. Sherrod Brown, John Ossoff, Roy Cooper, and Kristen McDonald Rivet are respondents here and were petitioners in the court of appeals.

RELATED PROCEEDINGS

United States Court of Appeals (4th Cir.):

Brown v. FCC, No. 26-1785 (Aug. 25, 2026)

In re Brown, No. 26-2230 (Oct. 7, 2026)

United States Supreme Court:

NRCC v. Brown, No. 26A274 (Sept. 4, 2026)

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No. 26A

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of the Federal Communications Commission—respectfully requests that this Court stay the order issued by the U.S. Court of Appeals for the Fourth Circuit (App., *infra*, 1a-29a) pending further proceedings in this Court. The Solicitor General also respectfully requests an immediate administrative stay of the order, which otherwise will become moot before this Court can review it because it compels the Commission to take a critical regulatory action by 12:00 pm tomorrow, October 9, 2026—just 48 hours after the Fourth Circuit issued the order.

The Fourth Circuit’s order is a flagrant abuse of the extraordinary writ of mandamus and a baseless effort to circumvent a prior stay entered by this Court. In March 2026, the Commission’s Media Bureau issued a public notice concerning the lowest-unit-charge requirement, which governs the rates that broadcasters charge for political advertising. See *NRCC v. Brown*, No. 26A274, slip op. 1 (Sept. 4, 2026). In August, before the Commission had acted on a pending application for it to review

the Bureau’s notice, a divided panel of the Fourth Circuit held that the public notice was judicially reviewable and unlawful. See *id.* at 2. On September 4, in a per curiam opinion that noted only one dissenting vote, this Court stayed that ruling. It explained that “an aggrieved party must wait for the Commission” to complete any review of a Bureau action “before filing a petition for judicial review,” *ibid.*, and that the Fourth Circuit’s premature intervention had caused irreparable harm by “hampering [political parties] efforts to reach the electorate in the critical weeks leading up to the midterms,” *id.* at 3. The Fourth Circuit then should have let the Commission complete its review. Instead, just yesterday, October 7, the same divided panel issued a new order—a writ of mandamus directing the FCC to issue a decision on the challengers’ pending application for review of the Bureau’s notice, and to do so within 48 hours, by noon, Friday, October 9. App., *infra*, 19a. The panel reiterated its view that the public notice is “plainly contrary to law,” *id.* at 9a—strongly suggesting that, if the FCC affirms or declines to review the Bureau’s notice, the panel will then immediately vacate that order. Judge Wilkinson dissented, observing that the panel’s decision “is a direct affront to [this] Court’s stay order” and “is ‘chaotic with a capital C.’” *Id.* at 25a.

The panel’s “egregious intrusion into the nation’s electoral process” should not be allowed to stand. App., *infra*, 25a (Wilkinson, J., dissenting). Wholly apart from the merits, a writ of mandamus is inappropriate under the circumstances of this case, given that the challengers delayed for months in seeking such relief and that judicial intervention at this late date could upend campaign-finance rules in the “critical weeks leading up to the midterms.” *NRCC*, slip op 3. Moreover, this case does not come close to clearing the high standard for mandamus. While the governing statute requires the Commission to act on the challengers’ application, it sets no deadline for

doing so. 47 U.S.C. 155(c)(4). And for numerous reasons, it is not remotely “clear and indisputable,” *Cheney v. U.S. District Court*, 542 U.S. 367, 381 (2004), that the Commission has unreasonably delayed in acting merely because it failed to act as quickly as the Fourth Circuit desires. Most notably, the Commission is still awaiting public comments on a parallel application, and it is also entirely reasonable to refrain from issuing a decision on campaign-finance rules in the middle of the election season. For similar reasons, the panel’s ruling causes irreparable harm to the FCC by “demand[ing] at gunpoint an agency decision” within two days, App., *infra*, 28a (Wilkinson, J., dissenting), and to the party committees by “disrupting settled campaign finance rules in the hot breath of an impending election,” *ibid*.

In sum, just as the Fourth Circuit seriously erred when it first tried to leapfrog the Commission’s decision, it has now seriously erred in trying to short-circuit the Commission’s deliberations. Under the statutory-review scheme that Congress established and this Court recently enforced, the Commission is not an inconvenient road-bump for the Fourth Circuit to jump over or blast through.

This Court thus should stay the Fourth Circuit’s order granting mandamus. Given that the Fourth Circuit required the FCC to issue a decision by tomorrow at noon, this Court should also issue an immediate administrative stay. Absent such relief, that grossly unreasonable 48-hour deadline will moot this Court’s ability to consider this stay application, because it will be too late to set aside the mandamus order after the Commission has already taken the compelled action of issuing a decision on the challengers’ pending application for review of the Bureau’s notice. Finally, the Court should make clear that the Fourth Circuit should not issue any further orders that require the Commission to review the Bureau’s notice, or that prevent the Bureau from implementing that notice, until after this year’s elections.

STATEMENT

The government's response in support of the earlier stay application in this case sets forth the relevant legal and factual background in full. See Gov't Br. at 4-9, *NRCC v. Brown*, No. 26A274. This brief focuses on the points that are relevant here.

1. On March 30, 2026, in anticipation of the upcoming election season, the Commission's Media Bureau issued a public notice concerning the lowest-unit-charge requirement. See *NRCC*, slip op. 1. 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). The Media Bureau's public notice "stated that political candidates, joint fundraising committees with noncandidate members, and political parties engaged in coordinated political activity were all entitled to the [lowest unit charge] subject to certain conditions." *NRCC*, slip op. 1. That interpretation is consistent with the Bureau's longstanding position, under which candidates, parties, and broadcasters have operated for years. See Gov't Br. at 25-26, *NRCC*, *supra* (No. 26A274).

On April 29, four Democratic candidates for Congress (collectively, challengers) filed an application asking the full Commission to review the Media Bureau's public notice. See *NRCC*, slip op. 1. Around two months later, while the application was pending before the agency, the challengers filed a petition for review in the Fourth Circuit. See *ibid.* The National Republican Congressional Committee and the National Republican Senatorial Committee (collectively, the party committees) intervened to defend the public notice. See *id.* at 2.

On August 25, the panel concluded, over Judge Wilkinson’s dissent, that it had jurisdiction to review the petition for review and that the public notice was unlawful. See *NRCC*, slip op. 2. On September 4, the day the lowest-unit-charge requirement was scheduled to take effect for the upcoming midterm elections, this Court stayed the Fourth Circuit’s decision. See *id.* at 1, 4. On the merits, the Court held that the Fourth Circuit likely lacked statutory jurisdiction because “the Communications Act makes clear that an aggrieved party must wait for the Commission to resolve its application for review by order before filing a petition for review.” *Id.* at 2. Turning to the equities, the Court determined that the party committees faced irreparable harm because “broadcasters [we]re already rescinding favorable rates” in light of the Fourth Circuit’s decision, “thereby hampering [the party committees] efforts to reach the electorate in the critical weeks leading up to the midterms.” *Id.* at 3.

2. On September 8, four days after this Court’s stay ruling, the challengers filed a petition for a writ of mandamus. App., *infra*, 11a. Over Judge Wilkinson’s dissent, the panel ordered expedited briefing. See *ibid.*

On September 15, the Commission solicited public comment on the challengers’ application for review. App., *infra*, 13a. Around the same time, another entity—an association of television broadcasters—filed its own application for FCC review of the Media Bureau’s public notice, raising issues that “substantially overlap” with those raised by the challengers here. D. Ct. Doc. 28-1, at 1 (Oct. 1, 2026). On September 30, the FCC sought public comment on that application as well. See *ibid.* Though the Commission “generally provides the public with at least 30 days for comment,” it determined that “a shorter timeline is more appropriate” here. D. Ct. Doc. 28-2, at 4 (Oct. 1, 2026). The comment period for the challengers’ application ended on September 30, and the comment period for the broadcasters’ application ends on October 19.

See D. Ct. Doc. 28-1, at 1. The panel deferred consideration of the mandamus petition until after the end of the former comment period. App., *infra*, 13a.

Yesterday, on October 7—just one week after the comment period for the challenger’s application closed, and while the comment period on the broadcasters’ application was still open—the panel granted mandamus, ordering the FCC to issue a decision by noon tomorrow, October 9. App., *infra*, 19a. The panel stated that the Commission has “delayed agency review in an obvious effort to preclude judicial review prior to the November 3 election.” *Id.* at 1a. “If allowed to continue dragging its feet,” the panel continued, “the FCC will have evaded meaningful judicial review of its newly created rule.” *Ibid.* The panel also signaled that it continued to regard the public notice as “plainly contrary to law.” *Id.* at 9a.

Judge Wynn issued a concurring opinion. App., *infra*, 20a-24a. He expressed the view that “[a]n unelected agency should not possess the practical authority to determine the conditions of electoral competition while also controlling whether its interpretation can receive timely judicial scrutiny.” *Id.* at 23a.

Judge Wilkinson dissented. App., *infra*, 25a-29a. He stated that “[t]he grant of a writ of mandamus is a direct affront to [this] Court’s stay order,” which “embraced what [this] Court has long emphasized: the need to preserve settled understandings prior to an election.” *Id.* at 25a. He also explained why “mandamus is uniquely inappropriate” given the “timeline of this litigation.” *Id.* at 26a.

3. The panel issued an unreasoned order denying the party committees’ motion for a stay, with Judge Wilkinson dissenting. App., *infra*, 30a. The panel has not yet acted on the government’s motion for a stay.

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’ decision 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. See *NRCC v. Brown*, No. 26A274, slip op. 4 (Sept. 4, 2026) (per curiam). In “close cases,” the Court balances the equities and weighs the relative harms. *Ibid.* All those factors strongly support a stay here.

A. This Court Is Likely To Reverse The Grant Of Mandamus

The writ of mandamus “is a ‘drastic and extraordinary’ remedy ‘reserved for really extraordinary causes.’” *Cheney v. U.S. District Court*, 542 U.S. 367, 380 (2004). A litigant seeking the writ must satisfy “three conditions.” *Ibid.* First, the litigant must have “no other adequate means to attain the relief he desires.” *Ibid.* Second, the litigant must show that his right to its issuance is “clear and indisputable.” *Id.* at 381. Third, “the issuing court, in its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Ibid.* At a minimum, the challengers have not satisfied the second and third requirements.

1. To start, it is extremely clear that a writ of mandamus is not “appropriate under the circumstances.” *Cheney*, 542 U.S. at 381. Whether mandamus is appropriate “is largely controlled by equitable principles.” *Duncan Townsite Co. v. Lane*, 245 U.S. 308, 312 (1917). Two such equitable principles are compelling here. First, mandamus is “subject to the equitable doctrine of laches,” *United States ex rel. Arant v. Lane*, 249 U.S. 367, 371 (1919), under which a litigant’s “unreasonable delay” in seeking relief “bar[s] * * * his right to the writ,” *Nicholas v. United States*, 257 U.S. 71, 75-76 (1921). Second, “lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Bost v. Illinois State Board of Elections*, 607

U.S. 71, 80 (2026); see *Purcell v. Gonzalez*, 549 U.S. 1, 4-6 (2006) (per curiam).

The challengers have unreasonably delayed their pursuit of mandamus. The Media Bureau issued its public notice on March 30; the challengers asked the Commission to review that notice on April 29; and the challengers sought the Fourth Circuit’s intervention on June 19. See Gov’t Br. at 7, *NRCC*, *supra* (No. 26A274). Though the challengers objected to the Commission’s “inaction” on their application, 26-1785 C.A. Opening Br. 56, they expressly disclaimed any request for mandamus, 26-1785 C.A. Reply Br. 24 n.4. Instead, they chose to pursue the baseless theory that the court of appeals could review the Media Bureau’s public notice even before the FCC’s administrative-review proceedings were complete. See 26-1785 C.A. Opening Br. 31-56. That strategy, which allowed the challengers to avoid the heightened standard for mandamus, failed when this Court stayed the Fourth Circuit’s initial decision. See *NRCC*, slip op. 4. Only on September 8—after this Court had issued its stay ruling, after the lowest-unit-charge requirement had taken effect for the current election cycle, and more than five months after the Media Bureau issued the public notice—did the challengers finally seek mandamus.

Granting mandamus at this late date threatens to “disrupt campaign finance ground rules * * * ‘in the critical weeks leading up to the midterms.’” App., *infra*, 26a (Wilkinson, J., dissenting) (quoting *NRCC*, slip op. 3). The party committees explained that, after the Fourth Circuit’s earlier decision, broadcasters began “rescinding favorable rates.” *NRCC*, slip op. 3. After this Court stayed that decision, broadcasters presumably “returned to their prior contractual agreements.” App., *infra*, 25a (Wilkinson, J., dissenting). The “downstream effects” of the Fourth Circuit’s writ, however, may prompt broadcasters “to flip again.” *Ibid.* “Neither parties nor candidates nor broadcasters have any idea how to plan, contractually or otherwise,

for the rest of the election season.” *Ibid.* Those harms make mandamus “uniquely inappropriate” in the circumstances of this case. *Id.* at 26a.

One of the members of the panel majority seemingly recognized as much in August, stating that it “elude[d] him” how “mandamus could be a solution * * * in the months before an election.” 2026 WL 2493115, at *13 n.1 (Wynn, J., concurring). But as Judge Wilkinson correctly observed, “[i]f mandamus was so obviously inappropriate in August, it cannot possibly be needed well into October.” App., *infra*, 28a (dissenting). “It is bad enough to unsettle long-planned advertising contracts right before the [lowest-unit-charge] rates begin, as [the panel] did earlier.” *Ibid.* “It is still worse to tinker with [lowest-unit-charge] contracts *after* they go into effect. *Ibid.*

2. The challengers also have not established a “clear and indisputable” right to relief. *Cheney*, 542 U.S. at 381. Although the Communications Act of 1934, 47 U.S.C. 151 *et seq.*, requires the Commission to act on the challengers’ application for review of the Bureau’s notice, it sets no deadline for doing so. 47 U.S.C. 155(c)(4). In light of the statute’s silence on timing, the Commission retains the freedom to formulate its own procedures for how long to take in acting on the application. See *Vermont Yankee Nuclear Power Corp. v. NRDC, Inc.*, 435 U.S. 519, 524 (1978). A reviewing court may intervene only if agency action is “*unreasonably* delayed.” 5 U.S.C. 706(1) (emphasis added). As Judge Wilkinson concluded, it is “[i]mpossible” to hold that the Commission’s modest delay in acting on the application is so unreasonable as to constitute “a ‘clear and indisputable’ violation of a duty to act.” App., *infra*, 27a (dissenting).

The challengers filed their application for review around five months ago, on April 29. There is no plausible argument that the Commission had a “clear and indisputable” duty to act on the application within that compressed time frame. As a

member of the panel majority recognized when the panel issued its earlier ruling, “a several-month delay is generally insufficient for mandamus relief.” 2026 WL 2493115, at *13 n.1 (Wynn, J., concurring). As the panel dissent explained, a few “months of agency inaction” in this “difficult and complex” case “is plainly not egregious.” *Id.* at *20 (Wilkinson, J., dissenting). Courts have been reluctant to issue mandamus “even in the face of far greater delays and far more extraordinary circumstances.” App., *infra*, 27a (Wilkinson, J., dissenting).

The “timeline of this litigation” makes it even clearer that the Commission has not acted unreasonably at all, much less indisputably so. App., *infra*, 26a (Wilkinson, J., dissenting). The challengers sought the Fourth Circuit’s intervention on June 19, less than two months after filing an application for review before the Commission. See Gov’t Br. at 7, *NRCC*, *supra* (No. 26A274). Because the filing of a petition for review triggers the court of appeals’ “exclusive jurisdiction,” 28 U.S.C. 2349(a), the challengers’ action created uncertainty about whether the Commission could lawfully act on the case while the challengers’ petition remained pending before the Fourth Circuit. Even putting aside that concern, it was reasonable for the Commission to focus its energies on the litigation rather than on the parallel administrative proceedings. See C.A. Oral Arg. 56:01 (Aug. 7, 2026) (Judge Wilkinson: “And so it seems to me quite possible that the time period that has elapsed was in part brought on by the fact that this petition was filed.”).

Soon after this Court stayed the Fourth Circuit’s earlier ruling, resolving any remaining “doubts about [the FCC’s] jurisdiction,” the FCC “went to work.” App., *infra*, 27a (Wilkinson, J., dissenting). The FCC swiftly solicited public comment—first on the challengers’ application for review, then on an overlapping application filed by television broadcasters. See D. Ct. Doc. 28-1, at 1. Those steps were “appro-

priate measure[s], since the [panel] majority complained, in its earlier opinion, that the FCC had not yet called for comments.” App., *infra*, 27a (Wilkinson, J., dissenting). Moreover, although the FCC usually provides 30 days for comments, it shortened that period here, seeking comments on the challengers’ application by September 30 and on the broadcasters’ application by October 19. See D. Ct. Doc. 28-1, at 1. To find unreasonable delay and to issue mandamus just one week after the former comment period closed, and while the latter comment period remains open, is “indefensible.” App., *infra*, 26a (Wilkinson, J., dissenting).

If all that were not enough, the lowest-unit-charge requirement has already taken effect for the upcoming midterms. As the Commission explained to the Fourth Circuit, upending the Media Bureau’s interpretation of that requirement now would cause “extensive and disruptive confusion” “in the middle of [an] election cycle.” Gov’t C.A. Opp. 15. The desire to avoid “disrupt[ing] campaign advertising rules in the middle of the general election period,” *id.* at 1, provides an eminently reasonable basis for declining to act before this year’s midterms.

The panel majority claimed that the FCC has “delayed agency review in an obvious effort to preclude judicial review.” App., *infra*, 1a. That unfounded charge ignores the challengers’ and the panel’s own “responsibility for the FCC’s delay.” *Id.* at 26a (Wilkinson, J., dissenting). It also ignores the legitimate reasons for the FCC’s inaction, such as the FCC’s obligation to address public comments and the desire to avoid uncertainty about campaign-finance rules in the run-up to an election. In sum, the challengers have not made the requisite clear and indisputable showing that the FCC has engaged in unreasonable delay. That, too, precludes mandamus.

B. The Other Factors Support A Stay

The Fourth Circuit’s decision warrants this Court’s review—indeed, summary

reversal. The decision defies the Court’s precedents setting a high bar for mandamus, prompting Judge Wilkinson to remark that the panel had deployed the writ “more aggressively, to [his] knowledge, than has ever yet been attempted.” App., *infra*, 27a (Wilkinson, J., dissenting). It also flouts this Court’s cases explaining that courts should generally avoid upending election rules shortly before an election. See, e.g., *Purcell*, 549 U.S. at 4-6. And it “palpably disregards [this] Court’s stay order,” which was issued “on September 4, the day [lowest-unit-charge] rates began,” presumably “to create a predictable, uniform [lowest-unit-charge] rule for this year’s elections.” App., *infra*, 27a (Wilkinson, J., dissenting).

The Fourth Circuit’s order causes irreparable harm to the government. The order “demands at gunpoint an agency decision” within two days. App., *infra*, 28a (Wilkinson, J., dissenting). Under that order, the FCC will have had little more than a week to consider the public comments on the challengers’ application for review, and will be forced to issue a decision while the comment period on the broadcasters’ overlapping application for review remains open. The order harms the Commission by “meddl[ing] in ‘the workings of’ the Executive Branch,” *Trump v. California*, No. 26A139, slip op. 9 (Aug. 24, 2026), and by impairing the agency’s ability to engage in “reasoned decisionmaking,” *Allentown Mack Sales & Service, Inc. v. NLRB*, 522 U.S. 359, 375 (1998).

Although the harm to the government alone justifies a stay, the order below also causes irreparable harm to the party committees. They have an important interest in “reach[ing] the electorate in the critical weeks leading up to the midterms”—an interest that “implicates their First Amendment rights to speak and coordinate their political activities freely.” *NRCC*, slip op. 3. The mandamus order irreparably impairs that interest by creating uncertainty about the lowest-unit-charge require-

ment after that requirement has already taken effect. See App., *infra*, 25a (Wilkinson, J., dissenting). The panel majority reiterated its view that the public notice is “plainly contrary to law,” *id.* at 9a, all but announcing that, if the Commission affirms the Bureau’s notice or declines to review it, the panel will immediately try to “reach the merits and recapitulate its own earlier conclusions, disrupting settled campaign finance rules in the hot breath of an impending election,” *id.* at 28a (Wilkinson, J., dissenting). Indeed, there would be no point to requiring the agency to act by October 9 *unless* the panel plans to reach the merits in time to influence the rates paid for political advertising during the ongoing election campaign. Under such circumstances, “[n]either parties nor candidates nor broadcasters have any idea how to plan, contractually or otherwise, for the rest of the election season.” *Id.* at 25a. That injury, which “cannot be remedied after the fact through refunds or reimbursements,” is irreparable. *NRCC*, slip op. 4.

Those harms to the government and the party committees justify issuing a stay now. By the time the Commission issues the compelled decision, the panel reviews it, and an inevitable third round of stay applications reaches this Court, it will be too late to redress the harm to the Commission—the compulsion to issue a ruling on a rushed timeline, before the agency has had a meaningful opportunity to review public comments on the challengers’ application and while the window for submitting public comments on the broadcasters’ overlapping application still remains pending. It will also be too late to redress the harm to the party committees, who need to be able to plan now for how to spend money in the coming weeks.

Because the government has made a strong showing that it is likely to succeed on the merits and that it faces irreparable harm, this is not the type of “close cas[e]” in which the Court would need to balance the challengers’ equities. *NRCC*, slip op.

4. Regardless, those equities also favor granting relief. The interpretation reflected in the Media Bureau’s 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 v. FEC*, 146 S. Ct. 2404, 2415 (2026). In fact, as the government has previously explained in more detail, the challengers’ asserted harms do not amount even to Article III injury, much less irreparable injury. See Gov’t Br. at 9-13, *NRCC*, *supra* (No. 26A274).

The panel majority suggested that the equities favor the challengers because “[t]he Media Bureau upset the status quo with the Public Notice’s novel interpretation of the [lowest-unit-charge] requirement.” App., *infra*, 18a n.2. In fact, the opposite is true. As the government has previously explained, the Bureau’s notice reiterated an interpretation that it had long endorsed, that was reflected in handbooks issued by the leading trade association for radio and television broadcasters, and that political parties and candidates (including one of the challengers) had relied on in previous election cycles. See Gov’t Br. at 25-26, *NRCC*, *supra* (No. 26A274). More importantly, as a result of this Court’s earlier stay ruling, the interpretation reflected in the public notice has been governing broadcast rates since the lowest-unit-charge requirement took effect for this election cycle on September 4. Requiring parties, candidates, and broadcasters to change course now, in the middle of the 60-day lowest-unit-charge period, would be “chaotic with a capital C.” App., *infra*, 25a (Wilkinson, J., dissenting).

Contrary to the panel majority’s suggestion, ruling in the government’s favor would not enable the Commission to “evad[e] meaningful judicial review.” App., *in-*

fra, 1a. There will be ample opportunity for judicial review after the 2026 elections. And the interest in meaningful judicial review cannot justify unsettling campaign-finance rules shortly before those elections—especially where, as here, the challengers delayed in seeking mandamus while pursuing their baseless jurisdictional theory that they did not need action by the Commission at all.

For all those reasons, this Court should stay the Fourth Circuit’s mandamus order. And because the mandamus order will take effect at noon on Friday, October 9, the Court should also issue an immediate administrative stay, to avoid this application becoming moot before it can reasonably be considered. Finally, because the court of appeals has shown “cavalier disregard” for the equitable judgment embodied in this Court’s earlier stay order, App., *infra*, 28a (Wilkinson, J., dissenting), the Court may wish to state explicitly that the Fourth Circuit should not issue any further orders that require the Commission to act on the Bureau’s notice, or that prevent the Bureau from implementing that notice, until after this year’s elections.

CONCLUSION

This Court should stay the court of appeals’ order pending the filing and disposition of a petition for a writ of certiorari. It should also issue an immediate administrative stay no later than 12:00 pm on Friday, October 9.

Respectfully submitted.

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