

In the Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, APPLICANT,

v.

SHERROD BROWN, JON OSSOFF, ROY COOPER, AND KRISTEN McDONALD
RIVET, RESPONDENTS

On Emergency Application for Stay and Administrative Stay Pending
Petition for a Writ of Certiorari from the Mandamus Order Issued by
the United States Court of Appeals for the Fourth Circuit, No. 26-2230

**BRIEF FOR THE REPUBLICAN NATIONAL COMMITTEE;
NATIONAL MEDIA RESEARCH, PLANNING & PLACEMENT;
SMART MEDIA GROUP; AND FLEXPOINT MEDIA
AS *AMICI CURIAE* IN SUPPORT OF APPLICANTS**

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INTEREST OF *AMICI CURIAE*¹

Amicus Republican National Committee (RNC) is the national committee of the Republican Party. *See* 52 U.S.C. § 30101(14). The RNC manages Republican Party business at the national level, including by developing and promoting the national platform; supporting candidates for public office at all levels of government nationwide; developing and implementing electoral strategies; educating, assisting, and mobilizing voters; and fundraising to support Republican Party candidates.

The RNC has a strong interest in the FCC's interpretation of lowest unit charge (LUC) for broadcast campaign advertisements. Federal law caps what a broadcaster may charge for candidate-authorized airtime in the weeks before an election. 47 U.S.C. § 315(b). The Fourth Circuit's ongoing efforts to revise settled practice directly affect the RNC's ability to communicate with voters, support candidates, and fulfill its role in the political process.

Amici National Media Research, Planning & Placement; Smart Media Group; and FlexPoint Media buy broadcast time for campaign committees. They have often purchased political airtime under the Commission's rules and can speak meaningfully to settled industry norms. *Amici* write to highlight how the Fourth Circuit badly erred in awarding mandamus in the face of minimal—if any—agency delay, and to address the profound legal and practical consequences stemming from the decision below.

¹ No counsel for a party authored this brief in whole or in part; no counsel or party contributed money intended to fund the preparation or submission of this brief; and no person other than *amici* or their counsel contributed money intended to fund its preparation or submission.

SUMMARY OF THE ARGUMENT

Congress gave the Federal Communications Commission no deadline. The Fourth Circuit gave it *two* days. It commanded the Commission to cut off public comments, cease ongoing deliberations, and instantly act on a matter properly committed to its discretion—substituting a judicially-created deadline for the judgment of *both* Congress and the executive branch. But mandamus is an extraordinary remedy. Nowhere is its remarkable nature more on display than when a federal court “exercise[s] its compulsive powers . . . to compel [the executive branch] to act.” *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 704 (1949). The consequences of judicial micromanagement can be severe: “interference” with “the ordinary duties of the executive” ordinarily produces only “mischief.” *Id.* at 704. This Court has therefore imposed strict guardrails on the writ precisely “to prevent a lower court from interfering with a coequal branch’s ability to discharge its constitutional responsibilities.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 382 (2004). Yet as Judge Wilkinson recognized in his dissent, “this is more a case of judicial meddling than agency neglect.” *In re Brown*, No. 26-2230, Slip Op. at 26 (4th Cir. Oct. 7, 2026) (Wilkinson, J., dissenting).

This Court should stay the lower court’s grant of mandamus. A stay is warranted where there is: “(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *See Hollingsworth v.*

Perry, 558 U.S. 183, 190 (2010) (per curiam). *Amici* write to emphasize that there is a fair prospect this Court will reverse. Before a writ may issue, an individual must establish that: “(1) no other adequate means [exist] to attain the relief he desires [and] (2) [the party’s] right to issuance of the writ is clear and indisputable.” *Cheney*, 542 U.S. at 380–81 (internal quotation marks omitted). And even then, the court still “must” in its discretion, “be satisfied that [a] writ [of mandamus] is appropriate under the circumstances.” *Id.* at 381.

The Fourth Circuit’s mandamus grant flunks each requirement. First, there is no clear and indisputable right to a Commission decision on the Candidates’ preferred timeline, and the federal courts may not supply one. Even were the lower court empowered to conjure up a nonexistent deadline, agency deliberations spanning a few months hardly constitute egregious delay. Indeed, the Candidates conceded that the traditional factors the lower courts use to assess whether delay justifies mandamus—the so-called *TRAC* factors—are “a poor fit.” Petition for Writ of Mandamus at 19, *In re Brown*, No. 26-2230 (4th Cir. Sept. 9, 2026), ECF No. 2 (Mandamus Pet.). That is putting it mildly.

Second, other adequate remedies exist. The Commission has opened up public comments, on an expedited basis, on the Candidates’ application for review and indicated that its deliberations on the underlying matter are not yet final. At this stage, the Candidates’ appropriate recourse is to participate in that process—not judicially hijack the agency’s ongoing work.

And third, mandamus is wholly inappropriate in these circumstances. Not only do the Candidates aim to interfere with ongoing election processes, in violation of settled principles that counsel against last-ditch rule changes by the courts, but the Candidates’ ultimate aim is to suppress rather than facilitate political speech. Far from suffering irreparable harm, they intend to inflict it. The equities weigh against mandamus.

This Court should grant the stay.

ARGUMENT

I. MANDAMUS RELIEF WAS INAPPROPRIATE.

Mandamus relief is a “drastic and extraordinary remedy reserved for really extraordinary causes.” *Cheney*, 542 U.S. at 380 (internal quotation marks omitted). Extraordinary means just that—*extra-ordinary*. Mandamus is not available every time someone thinks a federal agency is taking too long. This is true even where important interests are implicated—“an emergency may not call into life a power which has never lived.” *Wilson v. New*, 243 U.S. 332, 348 (1917).

No case is less suited for mandamus than this. Since Congress declined to impose a deadline, there is no clear right to relief. The alleged delay is hardly egregious. Other adequate remedies exist. And since this Court already concluded that *amici* and others would be irreparably injured were Candidates to prevail on the merits,² the equities foreclose the writ. *NRCC v. Brown*, No. 26A274, 2026 WL 2618462, at *2 (U.S. Sept. 4, 2026).

² The Fourth Circuit was wrong to suggest that LUC “has long been understood [to mean] that only candidates, that is real persons, are entitled to LUC.” Slip. Op. at 2. Not even the Federal Candidates

A. There Is No “Clear And Indisputable” Right to Relief.

Congress imposed no timetable on when the Commission must resolve applications for review, and the lower court was wrong to manufacture one. Mandamus is available “only where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take.” *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004). That “most potent [of] weapons in the judicial arsenal,” *Will v. United States*, 389 U.S. 90, 107 (1967), may be invoked only to enforce “a specific, unequivocal command,” *Norton*, 542 U.S. at 63–64 (quoting *ICC v. New York, N.H. & H.R. Co.*, 287 U.S. 178, 204 (1932)).

The requirement of a clear and indisputable right to relief serves “to protect agencies from undue judicial interference with their lawful discretion, and to avoid judicial entanglement in abstract policy disagreements which courts lack both expertise and information to resolve.” *Id.* at 66. To remove this requirement would effectively “inject[] the judge into day-to-day agency management,” turning courts into overseers. *Id.* at 67. Separation of powers principles dictate that the work of a coequal branch in fulfilling its statutory mandates “shall be hampered by writs of mandamus” only where the agency’s departure from the statute “is clear beyond debate.” *ICC*, 287 U.S. at 204. Mandamus, in other words, is appropriate only where “[t]here is *no room for the exercise of any discretion*, official or otherwise; all that is

take the extreme position that *only* real persons are entitled to LUC. Rather, the relevant statutory question is whether a candidate is “using” the broadcast—not who pays. 47 U.S.C. § 315(b)(1)(A). Accordingly, the FEC and industry have long accorded LUC to coordinated candidate and authorized committee advertisements—so long as the advertisement is a candidate “use.” Brief of National Media Research, Planning & Placement; Smart Media Group; And FlexPoint Media as *Amici Curiae* Supporting Respondents at 10–16, *Brown v. FCC*, No. 26-1785 (4th Cir. filed July 24, 2026) ECF No. 56-1

shut out by the direct and positive command of the law, and the act required to be done is, in every just sense, a mere ministerial act.” *U.S. ex rel. Dunlap v. Black*, 128 U.S. 40, 46 (1888) (emphasis added).

This principle applies to mandamus predicated on agency delay just as it does to any other alleged agency failure. Mandamus compels performance of a duty that is presently owed; it has never authorized a court to set a deadline to perform a duty not yet in default. *See Ex parte Cutting*, 94 U.S. 14, 20 (1876) (mandamus “is never granted in anticipation of an omission of duty, but only after actual default”). The question here is not whether the Commission must eventually act on the application for review—it must—but whether an agency currently engaged in active deliberation is in default at all where Congress did not set a fixed timetable.

The answer must be no. The limits on judicially supplied timetables flow from the long-recognized principle that courts may not “enquire how the executive, or executive officers, perform duties in which they have a discretion.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170 (1803). A right to relief by a date certain cannot be “clear beyond debate” when Congress provided no deadline. *See ICC*, 287 U.S. at 204 (explaining that mandamus is warranted only when the agency’s departure from a statute is “clear beyond debate”). Much less a right to relief in *two days*.

Norton is instructive. There the Court held that the writ does not authorize “pervasive oversight by federal courts” over “the manner and *pace of agency compliance with . . . congressional directives*.” *Norton*, 542 U.S. at 67 (emphasis added). Where Congress leaves timing to the agency’s discretion, the federal courts

may no more direct *when* an agency must act, than “direct[] *how* it shall act.” *Id.* at 63–64; see *Kendall v. U.S. ex rel. Stokes*, 37 U.S. 524, 613–14 (1838) (requiring a “precise, definite act, purely ministerial; and about which the postmaster general had no discretion whatever”).

The Fourth Circuit suggested that the Commission “is obligated to enter orders” that are necessary or appropriate “within three months.” Slip Op. at 16. The panel’s “see” citation to the statutory text lets the cat out of the bag: There is no statutory deadline. The relevant statutory text is merely hortatory. It sets out an “objective,” not a requirement. 47 U.S.C. § 155(d). Even that “objective” falls to the wayside when the Commission determines a hearing would be useful—something the Commission retains jurisdiction to find here. See 47 U.S.C. § 155(d) (six-month post-hearing objective); 47 C.F.R. § 1.115(h)(1)(iii) (Commission has discretion to order “proceedings, including briefs and oral argument, as may be necessary or appropriate”). Moreover, section 155(d) does *not* even govern applications for review—which are not “original application[s], renewal, [or] transfer cases.” Text and structure make clear that section 155(d) is about applications for broadcast licenses and their renewal and transfer—*not* applications for review of bureau-level actions writ large. And Congress of course knows how to require action by a date certain when it wants to. Compare 47 U.S.C. § 405(b)(1) (requiring the Commission to take action on certain petitions within 90 days).

Here, Congress declined to set a deadline. So the Commission has discretion over how it prioritizes agency resources and sequences agency decisions. To be sure,

the Communications Act provides that an application for review “shall be passed upon by the Commission,” 47 U.S.C. § 155(c)(4), but it leaves both the substance and pace of that determination to the Commission. Those decisions are committed to the agency, not federal courts. To compel immediate action—as the lower court did here—interjects the federal courts into day-to-day oversight of federal agencies, inevitably “divert[ing] [the agency’s] energies from other projects.” *Norton*, 542 U.S. at 71–72.

This is not a refusal-to-act case, where the agency has abrogated its duty entirely. *See Dunlap*, 128 U.S. at 48 (finding mandamus appropriate in the absence of a congressional deadline only when the agency “refuse[d] to act in a case at all”). Here, the Commission is actively considering the application for review and has opened a public comment period to address concerns raised by the Fourth Circuit and a Commissioner. Commandeering this ongoing agency process by devising a mandatory (and exploding) deadline found nowhere in the statute does exactly what *Dunlap* forbade—“interfer[ing] by *mandamus* with the executive officers of the government in the exercise of their ordinary official duties[.]” *Id.*

Left undisturbed, the Fourth Circuit’s decision will invite extreme gamesmanship. Future plaintiffs will demand agency action shortly before an election or other deadline, then immediately run to federal court seeking mandamus and alleging undue delay. That cannot be right. Mandamus is not a tool for kickstarting agency process on a litigant’s desired timetable. It is extraordinary relief.

B. The Alleged Delay Was Not Egregious.

Even if delay could warrant mandamus absent a statutory deadline, any delay here was not egregious. The lower courts agree that mandamus is inappropriate absent egregious delay. *E.g.*, *In re Core Commc'ns, Inc.*, 531 F.3d 849, 855 (D.C. Cir. 2008). The alleged delay in this case—a few months—does not come close.

The lower court went it alone. The divided panel imposed one of the most potent of judicial remedies based on a few months' alleged inaction. Yet neither that court nor Candidates identify a single case granting mandamus so reflexively. Candidates even grudgingly concede that “mandamus often requires a longer delay than has occurred in this case.” Mandamus Pet. at 16. Indeed. The lower court fails to cite even a single unreasonable-delay case. Instead, the Fourth Circuit appears to have believed that where a litigant seeks agency action in advance of an election, any delay is too much. The authority the court mustered for this novel proposition? None. All the lower court could manage was the bald assertion that it was “unable to accept the proposition that mandamus is unavailable in these circumstances.” Slip Op. at 17. But wanting the law to be a certain way does not make it so.

For their part, the best that the Candidates can offer are cases involving delays where *Congress* imposed a statutory deadline—and even then, courts routinely wait until that deadline has come and gone. *See In re Pub. Emps. for Env't Resp.*, 957 F.3d 267, 273 (D.C. Cir. 2020) (granting mandamus relief where agency had refused for nineteen years to comply with a two-year statutory deadline). In the mine run case, courts refuse to find a delay egregious in the absence of a statutory deadline. *See, e.g.*, *In re City of Va. Beach*, 42 F.3d 881, 885–86 (4th Cir. 1994) (delay of “four and one-

half years” not “so egregious as to meet the demanding standard required for us to interfere with the agency process through a writ of mandamus”). And the cases where courts have employed mandamus as a remedy for agency inaction in the absence of a statutory obligation to act on a certain timeline are best understood as refusal-to-act cases, where an action is unlawfully withheld. *See In re Core Commc’ns*, 531 F.3d at 856 (failure to respond to a remand order for six years).

In all events, a few months does not a mandamus action make. As Judge Wilkinson put it: “it is inconceivable for mandamus to be appropriate here after two months of agency inaction.” *Brown v. FCC*, 2026 WL 2493115, at *20 (4th Cir. Aug. 25, 2026) (*Brown I*) (Wilkinson, J., dissenting). Three more months change nothing. A short delay—and “delay” is generous—“in a difficult and complex case such as this one is plainly not egregious.” *Id.*

Taking us through the looking glass, the Fourth Circuit majority appears to have concluded that any delay—at least in the context of an election—entitles a plaintiff to mandamus, without any consideration of whether the alleged delay was unreasonable. Slip Op. at 16–17. But because not all agency delays are unreasonable, the lower courts uniformly analyze circumstances under six factors originally set forth in *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 79–80 (D.C. Cir. 1984) (*TRAC*). Since those factors all point the same way, the Candidates shrug them off as a “poor fit.” Mandamus Pet. at 19. *Amici* agree—but for a different reason. The *TRAC* factors are a poor fit because Congress was silent as to any deadline and the Commission has no duty to act on Candidates’ preferred timeline.

To the extent those factors are relevant, they establish that mandamus relief is not available.

Start with the first *TRAC* factor—that the timing of agency decisions must be governed by a “rule of reason.” 750 F.2d at 80 (citation omitted). The Candidates cannot identify a single case in which anything like a few months’ delay was deemed “unreasonable delay.” In fact, the lower courts routinely tolerate far longer delays, especially where complex questions are involved. *See, e.g., In re Monroe Commc’ns Corp.*, 840 F.2d 942, 945–47 (D.C. Cir. 1988) (finding three-year FCC delay to “fall so short of egregious delay”); *see also Her Majesty the Queen in Right of Ontario v. EPA*, 912 F.2d 1525, 1534–35 (D.C. Cir. 1990) (nine-year agency delay not unreasonable); *Oil, Chem. & Atomic Workers Int’l Union v. Zegeer*, 768 F.2d 1480, 1487–88 (D.C. Cir. 1985) (five-year agency delay not unreasonable). *TRAC* itself involved a *five-year* agency delay, which failed to justify mandamus. 750 F.2d at 80–81.

Other circuits agree. Surveying the landscape of agency-delay caselaw, Judge O’Scannlain explained that “cases in which courts have afforded relief have involved delays of years, not months.” *In re California Power Exch. Corp.*, 245 F.3d 1110, 1125 (9th Cir. 2001) (citing *Potomac Elec. Power Co. v. ICC*, 702 F.2d 1026, 1035 (D.C. Cir. 1983) (eight-year delay unreasonable); *MCI Telecommunications Corp. v. FCC*, 627 F.2d 322, 324–25 (D.C. Cir. 1980) (four-year delay unreasonable); *Nader v. FCC*, 520 F.2d 182, 206 (D.C. Cir. 1975) (ten-year delay unreasonable)). Based on this pattern, Judge O’Scannlain concluded that a “four-month delay does not run afoul of any ‘rule of reason.’” *In re California Power Exch. Corp.*, 245 F.3d at 1125.

Here, without invoking *any* analogous cases, the Fourth Circuit concluded that a five-month delay was unreasonable. The Fourth Circuit thus functionally split with the Ninth and D.C. Circuits. That conflict is itself reason to grant review. And the Fourth Circuit chose to ignore the decisions of other circuits despite this Court’s criticism—in this very case—of innovative decisions that “split[] with every other Circuit to have considered the issue.” *See NRCC*, 2026 WL 2618462, at *2.

On the second *TRAC* factor—whether “Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute,” 750 F.2d at 80—the Candidates’ argument fares no better. Citing 47 U.S.C. § 155(d), the Candidates claim that Congress set a goal for the Commission to render a decision on applications for review within “three months from the date of filing.” *Mandamus Pet.* at 19. Since five months have passed, the Candidates posit that the Commission’s delay is unreasonable. *Id.* The Fourth Circuit agreed, claiming that the Commission was effectively bound to a three-month timetable. *Slip Op.* at 16. There are three problems. First, as explained above, section 155(d) does *not* govern applications for review at all. *Supra* at Part I.A. That alone is fatal for the Candidates. Second, the statutory text is aspirational; it sets forth an “objective,” not a requirement. *See* 47 U.S.C. § 155(d). Third and finally, granting mandamus in response to such a short delay would be unprecedented. *See In re California Power Exch. Corp.*, 245 F.3d at 1125 (delay of years, not months, required to justify mandamus); *In re Barr Lab’sys, Inc.*, 930 F.2d 72, 74 (D.C. Cir. 1991) (finding “[e]quitable relief, particularly mandamus, does not necessarily follow” from even

unreasonable agency delay). In short, the fact that Congress required the agency to act at some point does not authorize the judiciary to impose its own exploding deadline in the absence of unreasonable delay.

The third *TRAC* factor—whether “human health and welfare are at stake,” 750 F.2d at 80—cuts against mandamus. In fact, the only harm Candidates can drum up is one to their pocketbook. Since virtually every agency delay affects someone’s bottom line, this sort of garden-variety interest cannot justify mandamus. This is especially true here, where the Public Notice merely reiterated longstanding industry practice. Brief for the United States and the FEC as Respondents in Support of the Application at 9–13, *NRCC v. Brown*, No. 26A274 (U.S. Aug. 31, 2026), 2026 WL 2584496. And let us not forget that three of the four Candidates have taken advantage of—and indeed, Senator Brown³ is currently taking advantage of—the very LUC entitlement Candidates now suggest warrants mandamus.⁴ Presumably the Candidates’ acceptance of lower rates did not detrimentally affect “human health and

³ Compare FCC Political File, DSCC – Brown (Oct. 5, 2026), <https://perma.cc/AZK7-CFQC>, with FCC Political File, Friends of Sherrod Brown (Oct. 5, 2026), <https://perma.cc/2Z2V-DWK2> (fifth entry of coordinated order and third entry of Brown order at \$240 for ads during *Late Night with Seth Meyers* during the week of October 6 for party-coordinated ads and campaign committee ads run by Senate candidate Sherrod Brown)

⁴ Compare FCC Political File, Kristen for Michigan/DCCC (Aug. 25, 2024), <https://perma.cc/J5NL-FEUR>, with FCC Political File, Kristen for Michigan (Aug. 25, 2024), <https://perma.cc/C9QB-78HS> (fourth entry of each record shows identical orders at \$1,300 for ads during *Good Morning America* during the week of August 20, 2024, for party-coordinated ads and campaign committee ads run by congressional candidate Kristen McDonald Rivet). Compare FCC Political File, Kristen for Michigan/DCCC (Aug. 25, 2024), <https://perma.cc/3RC6-JNM3>, with FCC Political File, Kristen for Michigan (Aug. 25, 2024), <https://perma.cc/RT4C-UMFL> (Second entry of coordinated buy and first entry of campaign buy show matching orders at \$350 rate for weekday ads beginning August 20, 2024, during 5 a.m. local news). Compare FCC Political File, NCDP – Cooper (Aug. 31, 2026), <https://perma.cc/SA6V-83AL>, with FCC Political File, Roy Cooper for North Carolina (Sept. 1, 2026), <https://perma.cc/26W6-W8B2> (fourth entry of each record shows identical orders at \$375 for ads during morning news program during the week of September 1 for party-coordinated ads and campaign committee ads run by Senate candidate Roy Cooper).

welfare.” *See id.* at 25–26. The fact that the Federal Candidates are not only eligible for but *actively claiming* LUC under the Commission’s Public Notice belies the Fourth Circuit’s supposition that the Federal Candidates are suffering harm because “they cannot recover the fair competitive opportunities they are losing.” *Cf.* Slip Op. at 17.

The fourth factor—whether expediting delayed action might adversely affect “agency activities of a higher or competing priority,” 750 F.2d at 80—counsels against mandamus. No one doubts the Commission is occupied with legitimate work. Opposition to Petition for Writ of Mandamus at 11, *In re Brown*, No. 26-2230 (4th Cir. Sept. 15, 2026), ECF No. 21 (Mandamus Opp.). And “respect for the autonomy and comparative institutional advantage of the executive branch”—including the Commission—“has traditionally made courts slow to assume command over an agency’s choice of priorities.” *Barr Lab’s*, 930 F.2d at 74. The Candidates posit that “the Commission’s only remaining task is to publish a decision it has already written or, if it does not wish to publish that one for whatever reason, to deny the Application without reasoning.” Mandamus Pet. at 20. Not so. The former claim misunderstands agency process. Mandamus Opp. at 12–13 (explaining the order has not been finalized). And the latter seeks to impermissibly dictate not only the timing of agency deliberations but also their substance. It is also plainly untrue that the Commission’s decision is “already written,” as the Commission is currently seeking comments on the Candidates’ Application as well as a related Application that raised issues previously unbriefed.

The fifth *TRAC* factor—the “nature and extent of the interests prejudiced by delay,” 750 F.2d at 80—weighs against the Candidates. As explained above, Candidates’ pocketbook injury does not justify mandamus. That is especially so when measured against the burden the writ imposes on political speech in the closing weeks of an election. So too, the Candidates themselves previously disclaimed the desire for mandamus relief because it would be insufficient to remedy their alleged injury. *See* Petitioners’ Reply Brief at 24 n.4, *Brown v. FCC*, No. 26-1785 (4th Cir. filed July 27, 2026), ECF No. 59. Now they say mandamus is indispensable.

And finally, the sixth *TRAC* factor—that agency delay need not be deliberate to be unreasonable, 750 F.2d at 80—is inapposite because the Candidates have not shown that the alleged delay is either deliberate or unreasonable. *Cutler v. Hayes*, 818 F.2d 879, 896 (D.C. Cir. 1987) (“[A]n administrative agency is entitled to considerable deference in establishing a timetable for completing its proceedings.”).

In sum, the *TRAC* factors *are* a “poor fit.” Not one supports mandamus. Any alleged delay was reasonable, and the Fourth Circuit’s contrary decision lights the way for mandamus anytime someone is unhappy with the speed of agency progress or simply prefers to litigate. That cannot be right.

C. Adequate Remedies At Law Exist.

Mandamus is unavailable where another adequate remedy exists. *Cheney*, 542 U.S. at 380–81. At least one exists here. On September 15, the Commission’s Media Bureau issued a public notice seeking public comment on an expedited basis regarding the Candidates’ application for review. *See Media Bureau Seeks Comment on Application for Review of Public Notice Pertaining to Lowest Unit Charge*

Requirements, Public Notice, DA 26-982 (MB Sept. 15, 2026), *available at* <https://docs.fcc.gov/public/attachments/DA-26-982A1.pdf>. The Commission has since moved to consolidate this public comment period with a related Application. *See In re Brown*, No. 26-2230, at 2 (4th Cir. Oct. 1, 2026), ECF No. 28 (FCC’s 28(j) letter). As the Commission explained, “these subsequent developments . . . may prove critical or relevant to any FCC decision.” Media Bureau Comment at 2. Now that a public comment period is open, the Candidates are free to file comments, press their reading of the statute, and persuade the Commission to grant their application and rescind the guidance. And of course, the Candidates are also free to file a petition for rulemaking with the Commission.

Yet the Candidates demanded—and the Fourth Circuit agreed—to short-circuit the very processes that could give them what they want. Mandamus is premature because it puts the cart before the horse. *Ex parte Cutting*, 94 U.S. at 20 (mandamus “is never granted in anticipation of an omission of duty, but only after actual default”). That an early draft order circulated internally—a fact Candidates and the Fourth Circuit belabor, *see* Mandamus Pet. at 11, Slip Op. at 5—does nothing to change the ongoing nature of the Commission’s process. The lower court’s order compelling the Commission to issue a decision while agency deliberations continue is precisely the sort of “pervasive interference” this Court has warned against. *See Norton*, 542 U.S. at 71.

D. The Equities Do Not Favor The Candidates.

To be eligible for the drastic remedy of mandamus, a petitioner must not only establish a clear and indisputable right to relief and show that no other adequate

remedy exists, but also prove mandamus is appropriate under the circumstances. *Cheney*, 542 U.S. at 380–81. The balance of equities must favor mandamus.

Yet, the lower court relegated this equitable inquiry to a footnote. Slip Op. at 18 n.2. It is not hard to guess why: The Candidates plainly cannot clear that bar. For one thing, the court’s mandamus order disrupts an ongoing election cycle in its closing weeks. For another, mandamus causes irreparable harm to multiple stakeholders—including *amici*—by restricting First Amendment rights at a critical juncture. Instead of considering these interests, the panel majority advanced an odd argument. Since the relevant question is one of “pure statutory interpretation,” the panel concluded that the equities favor mandamus relief. Slip Op. at 18. But many lawsuits involve questions of statutory interpretation—that bare fact does not entitle a party to mandamus. The equities favor a stay.

1. The Fourth Circuit’s Mandamus Disrupts an Ongoing Election Cycle at the Eleventh Hour.

The purpose of the Candidates’ petition is clear. They want to force the FCC into a premature order so they can win a last-minute ruling against it—all to handicap their opponents in the final weeks of an election cycle. That is not the stuff of mandamus. As this Court reminded the lower federal courts just days ago, equity does not authorize either litigants or the federal courts to throw an election into eleventh-hour disarray. *See People Not Politicians v. Onder*, No. 26A388, 2026 WL 2883222, at *2 (U.S. Sept. 25, 2026) (per curiam). Rather, “[w]hen an election is close at hand, the rules of the road must be clear and settled.” *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring in grant of applications for stays).

Here, the Fourth Circuit has already signaled it believes the Commission’s interpretation of the Communications Act to be unlawful. *See Brown I*, 2026 WL 2493115, at *1; Slip Op. at 8–9. Candidates’ unabashed request for “meaningful relief through judicial review before the November election,” Mandamus Pet. at 21, defies this Court’s repeated admonition that “lower federal courts should ordinarily not alter the election rules on the eve of an election,” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (per curiam); *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam). The issuance of the writ “does nothing but keep matters churning, in direct contradiction of the Supreme Court’s instruction that matters should be left in a stable state in the critical weeks leading up to the midterms.” *In re Brown*, No. 26-2230, 2026 WL 2806829, at *1 (4th Cir. Sept. 18, 2026) (Wilkinson, J., dissenting) (citation and internal quotation marks omitted). “At this late date, ordering [an agency to revise campaign finance rules] in the midst of an ongoing election would usher in electoral chaos.” *People Not Politicians*, 2026 WL 2883222, at *2. Because of the issuance of the writ, “[n]either parties nor candidates nor broadcasters have any idea how to plan, contractually or otherwise, for the rest of the election season.” Slip Op. at 25 (Wilkinson, J., dissenting). That fact makes mandamus particularly inappropriate. The lower court should have stayed its hand.

2. Mandamus Undermines Core First Amendment Interests and Inflicts Irreparable Harm.

This Court has already found that the relief Candidates seek would inflict irreparable harm on party committees in the last weeks before the midterms. *NRCC*, 2026 WL 2618462, at *2. Nothing less than “political speech at the heart of the

election season” is at stake. *Brown I*, 2026 WL 2493115, at *24 (Wilkinson, J., dissenting). Should the Candidates succeed, party committees will be forced to pay more—and speak less. *NRCC*, 2026 WL 2618462, at *2. That harm is irreparable: “once the election is over, it cannot be reversed[.]” *Lair v. Bullock*, 697 F.3d 1200, 1214 (9th Cir. 2012).

“[T]he First Amendment proscribes disproportionate regulations” that burden the speech of political parties, and impede their ability to “participate more freely and compete more fully in the political process, and to coordinate more closely with their candidates.” *NRSC v. FEC*, 146 S. Ct. 2404, 2427–28 (2026). Yet a Fourth Circuit merits determination would “disfavor” party-coordinated speech. *See Brown I*, 2026 WL 2493115, at *25–26 (Wilkinson, J., dissenting). Imposing novel restrictions on party-coordinated speech—by abruptly terminating LUC eligibility—is inconsistent with this Court’s decision in *NRSC*, raises the cost of political speech, and inflicts real and irreparable harm. Especially in light of this Court’s prior ruling, the lower court erred in granting extraordinary relief. *See People Not Politicians*, 2026 WL 2883222, at *1 (“Given this Court’s two prior orders in this litigation, our conclusion that this was error should come as no surprise.”).

As a last-ditch effort to defend mandamus, the Candidates argue that *they* will suffer “irreparable harm” from the Commission’s interpretation of LUC because it “reduc[es] the cost of advertising” and “plac[es] them at a competitive disadvantage.” *Brown I*, 2026 WL 2493115, at *7 n.9. But that gives the game away: the Candidates’ gripe is not with the FCC, but with how much money their party committees have

comparatively raised. The Candidates are eligible to benefit—and indeed, three of the four candidates have previously taken advantage of and one is currently using—the very LUC availability they contest. But parity is not the point. The Candidates’ dogged pursuit of this litigation reveals that the real goal is to limit the amount of speech by their political opponents.

Because the writ penalizes the exercise of core First Amendment rights, imposing harm that “cannot be remedied after the fact through refunds or reimbursements,” *NRCC*, 2026 WL 2618462, at *2, and disrupting an ongoing election cycle in its closing weeks, mandamus is the furthest thing from appropriate under the circumstances. Equity demands a stay.

CONCLUSION

The Emergency Application should be granted.

Respectfully submitted,

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