

In the Supreme Court of the United States

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE
AND NATIONAL REPUBLICAN SENATORIAL COMMITTEE,
APPLICANTS,

v.

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

**EMERGENCY APPLICATION FOR STAY AND ADMINISTRATIVE STAY
PENDING PETITION FOR WRIT OF CERTIORARI**

To the Honorable John G. Roberts, Jr.,
Chief Justice of the United States and
Circuit Justice for the Fourth Circuit

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

The parties to the proceeding below are as follows:

Applicants are the National Republican Congressional Committee and the National Republican Senatorial Committee. Applicants were intervenor-respondents in the court of appeals proceedings.

Respondents are Sherrod Brown, Jon Ossoff, Roy Cooper, and Kristen McDonald Rivet. Respondents were applicants in the agency proceedings and petitioners in the court of appeals proceedings.

The Federal Communications Commission is also a Respondent. It was a respondent in the agency proceedings and in the court of appeals proceedings.

The related proceedings below are:

1. *In re: Brown*, 26-2230 (4th Cir.) – Judgment entered October 7, 2026; Applicants’ stay motion filed October 7, 2026, denied October 7, 2026; FCC stay motion filed October 7, 2026;
2. *National Republican Congressional Committee v. Brown*, No. 26A274, (U.S.) – Stay entered September 4, 2026;
3. *Brown v. Federal Communications Commission*, No. 26-1785 (4th Cir.) – Judgment entered August 25, 2026;
4. *In the Matter of Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees*, DA 26-300 (Federal Communications Commission) – pending

CORPORATE DISCLOSURE STATEMENT

Per Supreme Court Rule 29, Applicants the National Republican Congressional Committee and the National Republican Senatorial Committee state that they have no parent companies or publicly held companies with a 10% or greater ownership interest in them.

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TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT:

Just one month ago, this Court stayed a Fourth Circuit order interfering with the Federal Communication Commission’s lowest-unit-charge rules “in the critical weeks leading up to the midterms.” *NRCC v. Brown (Brown I)*, No. 26A274, 609 U.S. __ (Sept. 4, 2026) (slip op. at 3). Intent on its aim to throw out longstanding rules before the midterms, the same Fourth Circuit panel has since awarded mandamus to the same group of federal candidates seeking review of the same FCC public notice. This time, the panel acted in the middle of an open comment cycle. As Judge Wilkinson put it, “[t]he grant of a writ of mandamus is a direct affront to the Supreme Court’s stay order in this case.” App.40 (Wilkinson, J., dissenting).

If the case for a stay was strong the first time around, it’s open and shut now. In *Brown I*, this Court held that “the Fourth Circuit likely lacked jurisdiction” to review a staff-level public notice regarding broadcasting rates for political committees, since the Federal Communications Commission was still considering the “application for review.” *Brown I*, 609 U.S. __, slip op. at 3. The Commission is still considering that application. In fact, the Commission opened an expedited comment period, partly in response to the Fourth Circuit and a dissenting commissioner “suggesting that releasing any decision on the Application for Review without some sort of public process would amount to a legal error.”¹ The Commission requested comment in part on

¹ See Public Notice DA 26-982, *Media Bureau Seeks Comment on Application for Review of Public Notice Pertaining to Lowest Unit Charge Requirements*, (FCC Sept. 15, 2026), perma.cc/4DZP-XQCN.

the appropriateness of changes this late in the election cycle, given this Court’s finding that political parties would be irreparably harmed by late-breaking rule changes affecting their speech. Public Notice DA 26-982, *supra* note 1, at 2.

Again, the Fourth Circuit short-circuited agency review. It should have followed this Court’s stay in *Brown I*, which “inform[s] how a court should exercise its equitable discretion in like cases.” *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). Instead, it “ignored the Supreme Court’s concern and unraveled its work” by granting the extraordinary relief of mandamus. App.40 (Wilkinson, J., dissenting). Worse yet, this order comes even later than *Brown I* and inflicts greater injury closer to the election. To vindicate its *Brown I* order, the Court should again stay the Fourth Circuit’s judgment.

Even if the Court were to look at the remaining mandamus factors, the candidates don’t come close to showing they are entitled to the “‘drastic and extraordinary’ remedy ‘reserved for really extraordinary causes.’” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004). The Fourth Circuit lacks jurisdiction to review the Commission’s public notice top to bottom, so mandamus cannot be in “aid of [its] respective jurisdiction[n].” 28 U.S.C. §1651(a). Even if the Fourth Circuit did (or would) have jurisdiction to review the public notice, the Commission hasn’t “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). It need not rule on the application for review by any particular deadline, let alone bypass an ongoing comment period to cater to the political whims of the

Candidates. At a minimum, those are not “crystal-clear legal dut[ies]” that can justify mandamus. *In re Nat’l Nurses United*, 47 F.4th 746, 752 (D.C. Cir. 2022).

The Fourth Circuit ordered the Commission “to resolve by 12:00 noon on Friday, October 9, 2026, the Federal Candidates’ Application for FCC Review.” App.35 (majority op.). Given that impending order, **Applicants request a stay of the Fourth Circuit’s judgment and mandate. They also request an immediate administrative stay before the Fourth Circuit’s impending deadline of 12:00 PM this Friday, October 9.**

STATEMENT OF THE CASE

The Court has seen this case before. The legal and factual background hasn’t changed since *Brown I*. Only the procedural posture is different: rather than rule on the merits, the Fourth Circuit granted mandamus.

A. The Federal Election Campaign Act amended the Communications Act of 1934, requiring broadcasters to offer “a legally qualified candidate” for a federal office “and any authorized committee of the candidate” the “lowest unit charge of the station for the same class and amount of time for the same period” in the runup to an election. 47 U.S.C. §315(b)(1)-(2). Candidate “use of any broadcasting station” triggers the “lowest unit charge” entitlement, known as the “LUC Rule.” *Id.* §315(b)(1). Both the FCC and the broadcasting industry have long taken the position that coordinated ad buys and joint-fundraising-committee ad buys for candidate use receive the favorable LUC rate. And that’s the way it’s always been done.

The Candidates sought to upset that status quo as election day draws near. They challenged a public notice issued by the Commission’s Media Bureau in March

that “remind[ed] broadcasters and the public about the FCC’s lowest unit charge (LUC) requirements.” *Guidance on Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Fed. Off. & All Authorized Committees*, No. DA 26-300, 2026 WL 1013722, at *1 (FCC Mar. 30, 2026). The notice reiterated that the lowest unit rate applies to both “authorized committees, including authorized committees that engage in joint fundraising with legally qualified candidates for federal office,” and to “advertisements that qualify as coordinated expenditures of political parties and legally qualified candidates for federal office.” *Id.* The Candidates filed an application for review, asking the full Commission to revisit and set aside that guidance. The Commission is still considering that application.

On June 22, while their application was pending before the Commission, the Candidates petitioned for review in the Fourth Circuit. The Republican Committees intervened to prevent last-minute changes to the lowest-unit-charge rules. On August 25, a split panel granted the petition, denied the Commission’s motion to dismiss, and set aside “the Public Notice issued by the FCC’s Media Bureau.” *Brown v. FCC* (*Brown I*), __F.4th__, 2026 WL 2493115, at *12 (4th Cir. Aug. 25, 2026). Judge Wilkinson dissented. The panel denied the Republican Committees’ stay motion and *sua sponte* expedited issuance of the mandate to take effect that day. Again, Judge Wilkinson dissented.

The Republican Committees applied for a stay in this Court, which granted the application on September 4. The Court held that “[b]ecause the candidates’ applica-

tion for review was pending when they filed their petition for review, the Fourth Circuit likely lacked statutory jurisdiction to address their challenge.” *Brown I*, 609 U.S. ___, slip op. at 3. It also held that the Republican Committees “demonstrated that they will likely suffer irreparable harm absent a stay” because the Fourth Circuit’s order was “hampering their efforts to reach the electorate in the critical weeks leading up to the midterms,” which “implicates their First Amendment rights to speak and coordinate their political activities freely.” *Id.* (citing *NRSC v. FEC*, 146 S. Ct. 2404, 2414-16 (2026)). The Court thus granted the application, stayed the Fourth Circuit’s judgment, and recalled the mandate. *Id.* at 4.

B. Undeterred, the Candidates sought to end run this Court’s stay order. Four days after the Court issued that order, the Candidates returned to the Fourth Circuit. This time, they petitioned for a writ of mandamus, seeking an order “requiring the Federal Communications Commission to issue a decision on [their] Application for Review by September 18.” App.81. The case was assigned to the same Fourth Circuit panel that handled *Brown I*. On the Candidates’ motion, the panel expedited briefing, ordering the Commission to answer the petition in six days. App.55.

Again, Judge Wilkinson dissented. He wrote that “[a]ny attempt to proceed at this late date to introduce multiple advertising rates and new campaign finance ground rules in the middle of the election season is a direct affront to the Supreme Court and its stay order.” App.56 (Wilkinson, J., dissenting from order expediting briefing). He added that this Court’s “stay order stressed the importance of not keeping matters in a continually unsettled state in the ‘critical weeks leading up to the

midterms.” App.56 (quoting *Brown I*, 609 U.S. ___, slip op. at 3). The Fourth Circuit granted Republican Committees’ motion to intervene, and the parties briefed the expedited mandamus petition.

Meanwhile, “the FCC went to work.” App.42 (Wilkinson, J., dissenting). The Commission opened an expedited comment period on the Candidates’ application for review. See Public Notice DA 26-982, *supra* note 1. That comment period addressed a dissenting commissioner’s criticism for releasing the public notice “without seeking comment,” which she claimed deviated from the “normal process.” Statement of Comm’r Anna M. Gomez, *In re: Entitlement to Lowest Unit Charge*, No. DA 26-851, 2026 WL 2583279, at *1 (FCC Aug. 25, 2026). The Fourth Circuit likewise thought it relevant in *Brown I* that the Commission did not “seek responses from impacted parties, or engage in fact finding, or secure supplemental briefing, or solicit public comment, or schedule or conduct an oral argument.” __F.4th, 2026 WL 2493115, at *6. And the Commission set that comment cycle on a far “shorter timeline” than is typical. See Public Notice DA 26-982, *supra*, at 2.

In light of the comment period, the Fourth Circuit deferred action on the mandamus petition “until at least October 1, 2026.” App.51. Again, Judge Wilkinson dissented. He would have “den[ied] the petition for a writ of mandamus” outright since deferred action “keep[s] 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.’” App.53 (Wilkinson, J., dissenting from order deferring action) (quoting *Brown I*, 609 U.S. ___, slip op. at 3). Judge Wilkinson criticized the

majority for “emphasiz[ing] Congress’s aspirational timelines after consistently casting shade on the agency’s authority to act at all.” 354 (citation omitted).

The expedited comment period remains ongoing because of a related application for review. Like the Candidates here, the Television Bureau of Advertising asked the Media Bureau to reconsider its public notice on the lowest-unit-charge rule. *See In re Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees*, DA 26-851, 2026 WL 2427163 (FCC Aug. 13, 2026). The Media Bureau first dismissed the petition for lack of jurisdiction, since the public notice is not a “final agency action.” *Id.* at *1. After this Court’s stay order in *Brown I*, the Television Bureau sought the full Commission’s review of the Media Bureau’s dismissal and of the underlying public notice. App.46. The Television Bureau’s application raised “issues that substantially overlap with petitioners’ challenges, and also a separate First Amendment challenge.” App.46. In part because “the Communications Act makes the disposition of ‘all applications for review filed in any case’ a precondition to judicial review,” the Commission opened a comment period on the Television Bureau’s application. App.47 (quoting 47 U.S.C. §155(c)(7)). And although “the FCC generally provides the public with at least 30 days for comment,” the Commission determined “that a shorter timeline is more appropriate.” App.49. Comments in the Television Bureau matter are due October 12; replies are due October 19. App.48.

In the midst of the ongoing comment period, the Fourth Circuit granted mandamus. Displeased even with the expedited process, the panel thought the Commission should move faster. So it ordered the Commission to “resolve by 12:00 noon on Friday, October 9, 2026, the Federal Candidates’ Application for FCC Review.” App.34. The Fourth Circuit first found that because this Court’s stay order “has kept the Public Notice in effect,” the “Candidates have no other adequate remedy through which they could obtain relief.” App.14. It then conjured up a finding that the Candidates “have a clear right to relief” and the Commission “has a clear duty to act” because federal law “requires that the Commission ‘shall pass upon’ every application for review.” App.31 (citing 47 U.S.C. §155(c)(4)). The Fourth Circuit rejected the Commission’s argument that it should not disturb the rules this close to the election, finding the argument “irreconcilable with the reality that the Public Notice’s stated purpose was to address the impending election.” App.32. Finally, the Fourth Circuit found that “the procedural posture” weighs in favor of mandamus, since the underlying question about the lowest-unit-charge rule is “a matter of pure statutory interpretation.” App.33. The panel never addressed the Republican Committees’ arguments that they would be irreparably harmed by mandamus.

Again, Judge Wilkinson dissented. He criticized the majority for flouting “the Supreme Court’s stay order in this case.” App.40 (Wilkinson, J., dissenting). He highlighted the “intangible damage” that mandamus would work to the existing and future contracts in this election cycle. App.40. He disputed the majority’s characterization of agency delay, stating that “this is more a case of judicial meddling than agency

neglect.” App.41. And “even in the face of far greater delays and far more egregious circumstances,” the majority cited “no cases it claims are analogous to this one.” App.41-42. As for the Commission’s ongoing comment period, the majority “tacitly endorses[ed]” the procedure, “since the majority complained, in its earlier opinion, that the FCC had not yet called for comments.” App.42. So, as Judge Wilkinson put it, “[t]he FCC’s only ‘extraordinary’ demerit is a lack of mind-reading talent. It is to be punished for sloth when it supposedly lacked jurisdiction, and then condemned for industry when it obeyed our instructions.” App.43. Finally, Judge Wilkinson criticized the majority for “tinkering” with the FCC’s lowest-unit-charge rules “*after* they go into effect.” App.43. The panel’s order “palpably disregards the Supreme Court’s stay order,” thus “disrupting settled campaign finance rules in the hot breath of an impending election.” App.43.

The Republican Committees and the Commission moved for emergency stays in the Fourth Circuit on October 7. App.2, 9. The Fourth Circuit has not yet ruled on the Commissions’ motion, but it denied the Republican Committees’ motion on the same day. App.1. For the sixth time, Judge Wilkinson dissented.

ARGUMENT

This Court will stay a circuit court’s order if 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.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). “In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to

the applicant and to the respondent.” *Id.* Applicants satisfied those standards the first time, and this Court ordered a stay. By granting mandamus in the face of that stay order, the panel majority invited this Court to “Say It Twice.” App.40 (Wilkinson, J., dissenting). If anything, it’s easier for Applicants to satisfy the stay factors the second time around.

I. There is a reasonable probability that four Justices would vote to grant review and a fair prospect that this Court would reverse.

Mandamus “is a ‘drastic and extraordinary’ remedy ‘reserved for really extraordinary causes.’” *Cheney*, 542 U.S. at 380 (citation omitted). The Candidates’ budget woes are not “really extraordinary.” *Id.* Indeed, the only extraordinary thing about this case is the panel majority’s lack of “respect for the Supreme Court” and its stay order in *Brown I*. App.43 (Wilkinson, J., dissenting). The Court is likely to grant certiorari and reverse for at least three reasons.

A. The Fourth Circuit’s “grant of a writ of mandamus is a direct affront to the Supreme Court’s stay order in this case.”

When the Candidates sought rushed relief in *Brown I*, this Court put on the brakes for this election cycle. As Judge Wilkinson flagged at the outset of the mandamus proceedings, “[a]ny attempt to proceed at this late date to introduce multiple advertising rates and new campaign finance ground rules in the middle of the election season is a direct affront to the Supreme Court and its stay order.” App.56 (Wilkinson, J., dissenting from order expediting briefing). This Court’s stay “inform[s] how a court should exercise its equitable discretion in like cases.” *Boyle*, 145 S. Ct. at 2654. And there’s no doubt that these cases are alike. The same panel handled the same matter brought by the same parties litigating the same injuries. That the Candidates seek

even more extraordinary relief at an even later date are differences—they’re just differences that make the Fourth Circuit’s tinkering “still worse.” App.43 (Wilkinson, J., dissenting).

The Fourth Circuit never acknowledged that this Court already balanced the equities in this case. To the contrary, it found that the Candidates “have no other adequate remedy ... *because*, by staying on jurisdictional grounds this Court’s mandate in *Brown I*, which set aside and held for naught the Public Notice, the Supreme Court has kept the Public Notice in effect.” App.30 (majority op.) (emphasis added). But that’s just a concession that this Court balanced the harms the first time around, and held that the Republican Committees’ irreparable injuries outweighed the Candidates’ alleged injuries. Those injuries are not the same. The Republican Committees suffer “irreparable harm” from an order that would lead broadcasting stations to cancel existing and future contracts in the midst of the election. *Brown I*, 609 U.S. ___, slip op. at 3-4. By contrast, the Candidates claim an injury from *their competitors* having equal access to favorable broadcasting rates, and thus assert a right to interfere with those contracts. This Court didn’t credit that injury the first time around. *See generally id.* And if this Court didn’t explicitly “balance the equities and weigh the relative harms,” it’s only because *Brown I* wasn’t a “close cas[e].” *Id.* at 3. Either way, the Fourth Circuit erred in exercising its “equitable discretion.” *Boyle*, 145 S. Ct. at 2654.

B. The Fourth Circuit cannot order mandamus to preserve non-existent jurisdiction.

The All Writs Act gives federal courts authority to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. §1651(a). “As this statutory language makes clear, the Act is not itself a grant of jurisdiction.” *In re Tennant*, 359 F.3d 523, 527 (D.C. Cir. 2004) (Roberts, J.). “Instead, it authorizes the issuance of a writ of mandamus in aid of jurisdiction [the] court already has or will have as a result of issuing the writ.” *Nat’l Nurses*, 47 F.4th at 752 (citing *Tennant*, 359 F.3d at 527). But here, mandamus neither preserves existing jurisdiction nor protects future jurisdiction.

Start with existing jurisdiction, since this Court already addressed it. The Court concluded in *Brown I* that “the Fourth Circuit likely lacked jurisdiction to issue” its vacatur order. 609 U.S. ___, slip op. at 3. Courts cannot grant mandamus “in aid of jurisdiction” they don’t have. *Nat’l Nurses*, 47 F.4th at 752. If “the court does not and would not have jurisdiction to review the agency action sought by petitioners, it cannot bootstrap jurisdiction via the All Writs Act.” *Id.* This Court’s holding in *Brown I* that “the Fourth Circuit likely lacked jurisdiction,” 609 U.S. ___, slip op. at 3, means the Fourth Circuit can’t mandamus itself into jurisdiction in *Brown II*.

Nor would mandamus protect the Fourth Circuit’s future jurisdiction. The Fourth Circuit never even claimed it could. Indeed, back in August, one of the panel members remarked that it “elude[d] him” how “mandamus could be a solution ... in the months before an election.” *Brown I*, 2026 WL 2493115, at *13 n.1 (Wynn, J., concurring). Mandamus is appropriate only to compel agency acts that “if and when

taken, would be within [the court’s] appellate jurisdiction.” *Tennant*, 359 F.3d at 530. But as the Republican Committees and the Solicitor General explained the first time around,² the public notice is not a final agency action “from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (cleaned up). The D.C. Circuit has thus held that an FCC bureau order issued under delegated authority “is not an order of the Commission,” and “without a final order from the Commission,” courts lack jurisdiction. *NTCH, Inc. v. FCC*, 877 F.3d 408, 409-10 (D.C. Cir. 2017). Neither the staff-level public notice—nor any future order disposing of the application for review—determine “rights or obligations” or have “legal consequences.” *Bennett*, 520 U.S. at 177-78 (cleaned up). At most, they “advise the public of [the Media Bureau’s] construction of the [Act].” *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 97 (2015). They do not have “the force and effect of law.” *Id.* That the “cause already instituted” before the agency” is not judicially reviewable means that mandamus “cannot be justified as ‘in aid of’ [the court’s] prospective appellate jurisdiction over the FCC under the All Writs Act.” *Tennant*, 359 F.3d at 530 (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 175-76 (1803)). In short, the Fourth Circuit lacks jurisdiction to review the public notice at all, so speeding up the Commission’s review cannot be appropriate grounds for mandamus.

² See Appl. for Stay at 9-11, *Brown I*, No. 26A274 (U.S. Aug. 28, 2026); Br. for the United States at 13-16, *Brown I*, No. 26A274 (U.S. Aug. 31, 2026).

C. The Candidates do not have a “clear and indisputable right” to bypass an ongoing comment period.

Only “if the court has jurisdiction,” can it “consider whether the agency has a crystal-clear legal duty to act.” *Nat’l Nurses*, 47 F.4th at 752. The Court can stop there, and stay the mandamus order. But even if the Fourth Circuit had jurisdiction, the writ “remains ‘reserved only for the most transparent violations of a clear duty to act.’” *Id.* (quoting *In re Core Commc’ns*, 531 F.3d 849, 855 (D.C. Cir. 2008)). The Fourth Circuit began its analysis with the premise that the Commission “‘shall pass upon’ every application for review.” App.31. On that premise, it ordered the Commission “to resolve by 12:00 noon on Friday, October 9, 2026, the Federal Candidates’ Application for FCC Review.” App.34. Missing from that logical leap is the other necessary premise: that the Commission has a “clear duty to act” on the application for review *by October 9*, in the midst of an ongoing comment period in the middle of an election. *Nat’l Nurses*, 47 F.4th at 752.

The Fourth Circuit purported to find a deadline in an inapplicable and aspirational time period. It claimed that “the Commission is obligated to enter orders that are ‘necessary or appropriate to expedite the prompt and orderly conduct of the business of the Commission with the objective of rendering a final decision ... within three months’ from when an application for review is filed.” App.31 (quoting 47 U.S.C. §155(d)). But the majority omitted the key language from its quote: that three-month objective applies to “the date of filing in all original application, renewal, and transfer cases in which it will not be necessary to hold a hearing.” 47 U.S.C. §155(d). And an “original application” (§155(d)) is not an “application for review” (§155(c)). Rather, an

“original application” refers to the Commission’s core activities: “Applications for TV stations” and other broadcasting licenses. *E.g.*, 47 C.F.R. §73.3572(a). *Those* are the sorts of applications that can request “renewal” of a license or “transfer” control of a station. *E.g.*, *Application for Cable Television Relay Service Station License*, Form 327, FCC (Nov. 2020), perma.cc/8RC7-XTNP. So in context, §155(d)’s three-month timeline for “original application, renewal, and transfer cases” refers to those applications that apply for, renew, or transfer licenses—not applications for review.

Even if §155(d) referred to applications for review, the three-month timeline is “aspirational,” not mandatory. App.53 (Wilkinson, J., dissenting from order deferring action). The majority attempted to spin the statute by insisting the Commission is “obligated” to observe that timeline. App.31. But adding “obligated” before Congress’s words can’t transform the statute into what the majority would prefer it to say. Congress assigned an “objective of rendering a final decision” within three months after an application is filed. 47 U.S.C. §155(d). That’s discretion, not a “clear duty to act.” *Lovitky v. Trump*, 949 F.3d 753, 760 (D.C. Cir. 2020). Even if the command were stronger, the Commission has no clear duty to act on the Candidates’ preferred schedule, especially when doing so would bypass a comment period at least “tacitly endors[ed]” by the Fourth Circuit, App.42 (Wilkinson, J., dissenting), and inflict “irreparable harm” on parties to the case in the midst of election season, *Brown I*, 609 U.S. ___, slip op. at 3.

Agency inaction is eligible for mandamus relief when the agency has “failed to take a discrete agency action that it is required to take.” *Norton*, 542 U.S. at 64. But

here, the Commission has not “failed” to act, let alone failed to take the “discrete” action of abiding by the Candidates’ preferred timeline. *Id.* To the contrary, “[t]he Commission is actively reviewing” the comments submitted by the Candidates and numerous other groups, App.46, and doing so on a far “shorter timeline” than is typical, App.49. The Commission can hardly be faulted for taking seriously suggestions that the absence of “some sort of public process would amount to a legal error.” Public Notice DA 26-982, *supra* note 1, at 2. And the Candidates do not have a “clear and indisputable” right to bypass the normal agency process. *See Kerr v. U.S. Dist. Ct. for N. Dist. of Cal.*, 426 U.S. 394, 403 (1976).

Even if the Commission weren’t still in a comment period, the Candidates don’t have a clear right to an agency order on their preferred timeline—particularly where that timeline would impose “irreparable harm” on Applicants. *Brown I*, 609 U.S. ___, slip op. at 3. Mandamus petitions routinely fail for the mistake the Fourth Circuit made here by “conflat[ing]” an agency’s discretionary duty to take a specific action with a “non-discretionary duty” to act in general. *Nat’l Nurses*, 47 F.4th at 756. Without a “specific, unequivocal command” that the Commission must resolve applications by a specific deadline, the pace of the Commission’s decisionmaking “is left to the agency’s discretion.” *See Norton*, 542 U.S. at 63-65 (cleaned up). So even if the Fourth Circuit could order the Commission to “pass upon” the application, it could not compel it to do so by a particular date. *See id.* at 65 (“[W]hen an agency is compelled by law to act within a certain time period, but the manner of its action is left to the agency’s discretion, a court can compel the agency to act, but has no power to specify what the

action must be.”). Courts construe the agency’s duty narrowly, asking “whether the agency has a crystal-clear legal duty to act.” *In re W. Coal Traffic League*, 108 F.4th 905, 909 (D.C. Cir. 2024) (citation omitted). But there’s no “crystal-clear legal duty” to bypass the comment period and resolve the Candidates’ application on their preferred timeline.

Framing the issue as one of “pure statutory interpretation” doesn’t relieve the Fourth Circuit of these rules. *Cf.* App.33. When this Court overturned *Chevron*, it told courts that they should not “defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). *Loper Bright* did not toss aside the rules governing agency finality. Nor did it rewrite discretionary rules into mandatory ones. Congress left the Commission discretion on *when* to resolve applications for review, so resolution by a particular date is not a proper subject for mandamus.

Very rarely, courts have granted mandamus in the absence of a statutory deadline. But “it is inconceivable for mandamus to be appropriate” after just a few months “of agency inaction.” *Brown I*, __F.4th__, 2026 WL 2493115, at *20 (Wilkinson, J., dissenting). Perhaps after “six years” of failing to respond to a circuit court’s “own remand” order, mandamus could be justified. *See Core Commc’ns*, 531 F.3d at 856. Or maybe after “nineteen years” of failing to comply with a “statutory mandate” requiring action “within two years,” the writ could be appropriate. *In re Pub. Emps. for Env’t Resp.*, 957 F.3d 267, 273 (D.C. Cir. 2020). But a matter of “months” in a “difficult and complex case such as this one is plainly not egregious.” *Brown I*, __F.4th__, 2026

WL 2493115, at *20 (Wilkinson, J., dissenting); *cf. In re City of Va. Beach*, 42 F.3d 881, 885 (4th Cir. 1994) (delay of “four and one-half years” was not “so egregious as to meet the demanding standard required for us to interfere with the agency process through a writ of mandamus”). The Fourth Circuit could “cit[e] no cases” in support of its two-month concern. App.42 (Wilkinson, J., dissenting).

The question is not whether the Candidates are entitled to a ruling on their application. The question is whether they’re entitled to a ruling *right now*. Neither statute, nor precedent, nor an impending election requires the Commission to bypass an ongoing comment period to resolve the Candidates’ application on their preferred timeline. So the Candidates don’t have “a clear and indisputable right to the relief sought.” *South Carolina v. United States*, 907 F.3d 742, 754 (4th Cir. 2018) (citation omitted).

II. The remaining factors warrant a stay.

The remaining factors—irreparable harm, the balance of equities, and the public interest—each favor a stay. *Hollingsworth*, 558 U.S. at 190. Applicants brief the equities in this section as part of the stay factors. But each is reason to reverse on the merits, since mandamus “is controlled by equitable principles.” *U.S. ex rel. Greathouse v. Dern*, 289 U.S. 352, 359 (1933).

A. Applicants will be irreparably harmed without a stay.

In *Brown I*, this Court held that the Fourth Circuit’s order inflicted irreparable injuries on Applicants that “implicat[e] their First Amendment rights to speak and coordinate their political activities freely.” 609 U.S. ___, slip op. at 3. Those injuries are present here, and (if anything) magnified. The lowest unit charge rule has

now been in effect this election cycle for over a month. Parties have already negotiated, signed, and executed contracts under those rules, and they continue to do so. The Fourth Circuit’s mandamus order renews the same ills this Court prevented with its stay order in *Brown I*. Indeed, “[i]t is still worse to tinker with LUC contracts *after* they go into effect.” App.43 (Wilkinson, J., dissenting).

“Court orders affecting elections, especially conflicting orders,” necessarily affect those who participate in elections. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). The mandamus order will sow confusion and uncertainty among candidates, committees, and broadcasters during these “critical weeks leading up to the midterms.” *Brown I*, 609 U.S. ___, slip op. at 3. In addition to renewing the harms and costs around those last-minute changes, the Fourth Circuit’s order injects risk and uncertainty into advertising contracts being negotiated and executed during this period. That risk and uncertainty is itself an injury that once again hinders Applicants’ “First Amendment rights to speak and coordinate their political activities freely.” *Id.* Each day the “election draws closer, that risk will increase.” *Purcell*, 549 U.S. at 5.

B. The balance of harms and public interest favor a stay.

Every equitable principle supporting the stay in *Brown I* is present—and stronger—here. Applicants’ “irreparable harm” is well established. *See Brown I*, 609 U.S. ___, slip op. at 3-4. Compare those injuries to the Candidates’ claimed injury of “being forced to contend with rival committees” leveraging statutorily “discounted party committee and JFC advertisements” that they benefit from themselves. App.79. This Court did not credit that alleged injury the first time around. *Cf. Brown I*, 609 U.S. ___, slip op. at 2 (noting that “[i]n close cases, we ‘balance the equities and weigh

the relative harms to the applicant and to the respondent”). Even assuming the Candidates’ alleged competitive injury were irreparable,³ awarding mandamus doesn’t remedy that injury. It just speeds up the Commission’s review of the application. For that reason, the Candidates previously disclaimed mandamus as “cold comfort” to them. *See* Pet. Reply Br. (Doc. 59) at 24 n.4, *Brown I*, No. 26-1785 (4th Cir. July 27, 2026). It beggars belief that now “only a writ of mandamus can prevent” those harms. App.79.

Regardless, those alleged competitive injuries don’t outweigh Applicants’ irreparable harms. After all, the Candidates “profited” from party-coordinated LUC rates in past election cycles. *Brown I*, __F.4th__, 2026 WL 2493115, at *21 (Wilkinson, J., dissenting). And because the public notice did not “change the status quo in the first place,” at “worst” the Candidates will continue operating under those same rules for a few more weeks. *Id.* Indeed, the Candidates will still be able to benefit from the lowest unit charge rule themselves, just as they always have. And so will their committees, just as they always have. That those committees have less money than rival committees is not the stuff of equitable balancing.

Moreover, that the Candidates delayed for months before seeking mandamus cuts against them on the equities. A significant delay factors into “the balance of equities among the parties.” *Benisek v. Lamone*, 585 U.S. 155, 160 (2018) (per curiam). That the Candidates tried to avoid the difficult mandamus standard the first time is

³ *Contra* Appl. for Stay at 19-20, *Brown I*, No. 26A274 (U.S. Aug. 28, 2026) (arguing that the competitive injury is not irreparable); U.S. Br. at 9-13, *Brown I*, No. 26A274 (U.S. Aug. 31, 2026) (arguing that the competitive injury doesn’t satisfy Article III).

no excuse. The Candidates’ claims and litigation choices were always “circumstance[s] within [their] control.” *Id.* “At some point, a litigant must bear the consequences of conscious strategic or tactical decisions of this kind.” *Adams v. AlliedSignal Gen. Aviation Avionics*, 74 F.3d 882, 887 (8th Cir. 1996).

Finally, the public interest favors a stay. Mandamus “is controlled by equitable principles,” *Greathouse*, 289 U.S. at 359, and “relief may be inequitable if it is issued shortly before an election, when candidates, election officials, and voters have relied on the rules in place at that time,” *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring in grant of a stay) (citing *Purcell*, 549 U.S. at 4-5). The public interest counsels against late-breaking orders interfering with election rules. *See OPAWL v. Yost*, 118 F.4th 770, 774 (6th Cir. 2024). The pending comment period bolsters the public interest in preventing “premature interruption of the administrative process.” *See McKart v. United States*, 395 U.S. 185, 193-94 (1969). In announcing the first comment period, the Commission noted this Court’s finding “that the political parties that sought a stay would be harmed” if the Media Bureau’s public notice were vacated. *See* Public Notice DA 26-982, *supra* note 1, at 2. Short-circuiting that process injures the public interest. *See McKart*, 395 U.S. at 193-94.

The Fourth Circuit has no jurisdiction—let alone proper equitable discretion—to upend “longstanding election rules” in the weeks before the midterms. *See Brown I*, __F.4th__, 2026 WL 2493115, at *21 (Wilkinson, J., dissenting). Much less does it have power to order the FCC to bypass ordinary agency procedures in its rush to exercise that power. The equities favor staying the Fourth Circuit’s mandamus order.

CONCLUSION

The Court should issue an administrative stay before 12:00 PM on October 9, 2026, and then grant Applicants' emergency application for a stay of the Fourth Circuit's judgment.

Respectfully submitted,

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October 8, 2026

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In the Supreme Court of the United States

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE
AND NATIONAL REPUBLICAN SENATORIAL COMMITTEE,
APPLICANTS,

v.

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

APPENDIX TO EMERGENCY APPLICATION FOR STAY

To the Honorable John G. Roberts, Jr.,
Chief Justice of the United States and
Circuit Justice for the Fourth Circuit

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FILED: October 7, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 26-2230

In re: SHERROD BROWN; JON OSSOFF; ROY A. COOPER, III; KRISTEN
MCDONALD RIVET

Petitioners

O R D E R

Upon consideration of intervenors' motion for stay of this Court's order granting the mandamus petition, the Court denies the motion.

Judge King and Judge Wynn voted to deny the motion. Judge Wilkinson voted to grant the motion.

For the Court

/s/ Nwamaka Anowi, Clerk

No. 26-2230

United States Court of Appeals
for the Fourth Circuit

IN RE SHERROD BROWN, JON OSSOFF, ROY COOPER,
AND KRISTEN McDONALD RIVET,
Petitioners.

On Petition for a Writ of Mandamus
to the Federal Communications Commission

INTERVENORS' EMERGENCY MOTION FOR STAY

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October 7, 2026

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CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1 and Fourth Circuit Rule 26.1(b), each Intervenor discloses that it has no parent corporations and that no publicly held corporations hold 10% or more of its stock. No publicly held corporation not a party to this proceeding has a financial interest in the outcome of this proceeding.

Dated: October 7, 2026

/s/ Thomas R. McCarthy
Thomas R. McCarthy
Counsel for Intervenors
NRCC and NRSC

This Court should stay its order because Intervenors are likely to succeed on appeal, they will be irreparably injured absent a stay, a stay would impose no substantial harm on the Candidates, and the public interest favors a stay. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). Petitioners oppose this motion, but the Commission does not.

ARGUMENT

1. Mandamus “is a ‘drastic and extraordinary’ remedy ‘reserved for really extraordinary causes.’” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004) (citation omitted). As Intervenors and the Commission explained in their opposition briefs, the Candidates do not meet that demanding standard. *See* Interv. Opp., Doc. 20-1; FCC Opp., Doc. 21. Intervenors are likely to succeed on the merits of their appeal for the reasons explained in those opposition briefs and in Judge Wilkinson’s dissenting opinion. *See* Order at 25-29 (Wilkinson, J., dissenting).

2. Intervenors will be irreparably harmed absent a stay. The Supreme Court recognized as much in *Brown I*, when it held that this Court’s order inflicted irreparable injuries on Intervenors that “implicat[e] their First Amendment rights to speak and coordinate their political activities freely.” *NRCC v. Brown*, 609 U.S. ___, 2026 WL 2618462, at *3-4 (Sept. 4, 2026) (per curiam). It’s no answer to say that forcing the Commission to issue an order is a degree removed from vacating the public notice. Continuing this case on

the Candidates' rushed timeline "is a direct affront to the Supreme Court's stay order in this case." Order, Doc. 30 at 25 (Wilkinson, J., dissenting). "Court orders affecting elections, especially conflicting orders," necessarily affect those who participate in elections. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). A mandamus order will sow confusion and uncertainty among candidates, committees, and broadcasters during these "critical weeks leading up to the midterms." NRCC, 2026 WL 2618462, at *2. In addition to exacerbating the harms and costs around those last-minute changes, a mandamus order will inject risk and uncertainty into advertising contracts being negotiated and executed during this period. Each day the "election draws closer, that risk will increase." *Purcell*, 549 U.S. at 5.

3. A stay will not irreparably harm the Candidates. At the Supreme Court, the Candidates argued that a stay would injure their competitive prospects. *See* Resp. Opp. to Appl. for Stay, NRCC, 2026 WL 2622104, at *13. The Supreme Court did not credit those alleged injuries. *Cf.* NRCC, 2026 WL 2618462, at *1 (noting that "[i]n close cases, we 'balance the equities and weigh the relative harms to the applicant and to the respondent'"). The Supreme Court's equitable balancing of those harms controls here. *See Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). In any event, the Candidates will still be able to leverage the lowest unit charge rule, just as they always have. And so will their committees, just as they always have.

4. The public interest favors a stay. Mandamus “is controlled by equitable principles,” *Greathouse v. Dern*, 289 U.S. 352, 359 (1933), and “relief may be inequitable if it is issued shortly before an election, when candidates, election officials, and voters have relied on the rules in place at that time.” *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring in grant of a stay) (citing *Purcell*, 549 U.S. 1). The public interest counsels against late-breaking orders interfering with election rules. See *OPAWL v. Yost*, 118 F.4th 770, 774 (6th Cir. 2024). The public likewise has an interest in preventing “premature interruption of the administrative process.” *McKart v. United States*, 395 U.S. 185, 193-94 (1969). Each interest justifies a stay.

CONCLUSION

The Court should immediately stay its mandamus order. Due to the emergency nature of these proceedings and this Court’s Friday noon deadline for the Commission to act, Intervenor’s will likely apply for a stay with the Supreme Court without awaiting this Court’s decision on this motion.

Respectfully submitted,

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October 7, 2026

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COMBINED CERTIFICATIONS

This brief complies with Rule 27(d)(2)(A) because it contains 644 words, excluding the parts that can be excluded. This brief also complies with Rule 32(a)(5)-(6) because it has been prepared in a proportionally spaced face using Microsoft Word for Mac in 14-point Palatino font.

Dated: October 7, 2026

/s/ Thomas R. McCarthy
Thomas R. McCarthy

*Counsel for Intervenors
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CERTIFICATE OF SERVICE

I filed this brief with the Court via ECF, which will email everyone requiring notice.

Dated: October 7, 2026

/s/ Thomas R. McCarthy
Thomas R. McCarthy

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In re Sherrod Brown, et al.,	)	
	)	No. 26-2230
Petitioners.	)	
	)	

EMERGENCY MOTION FOR STAY

The Federal Communications Commission respectfully seeks an emergency stay of the Court’s October 7, 2026 order granting petitioners’ mandamus petition and directing the FCC to resolve their application for review by 12:00 noon on Friday, October 9, 2026 (less than 48 hours from now). We have notified the other parties of this motion. Petitioners oppose the motion. Intervenors supporting the FCC have filed their own motion for stay, and they do not oppose the FCC’s motion. As we explain below, the requested relief is warranted under the traditional four-part test for granting a stay. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

BACKGROUND

In June 2026, petitioners filed a petition for review of a Public Notice issued by the FCC’s Media Bureau concerning implementation of the Communications Act’s “lowest unit charge” requirements for political broadcast advertisements. *See* Public Notice, FCC Media Bureau Provides Guidance on Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All

Authorized Committees, DA 26-300 (Media Bur. Mar. 30, 2026) (Public Notice). Dismissing the FCC’s objections that this Court lacked jurisdiction to review the Public Notice, a divided panel ruled that the Public Notice had incorrectly construed 47 U.S.C. § 315(b)(1)(A) to require broadcasters to make the “lowest unit charge” available to political parties and joint fundraising committees that seek to buy advertising time in coordination with a political candidate. *Brown v. FCC*, 2026 WL 2493115 (4th Cir. Aug. 25, 2026). The National Republican Congressional Committee and the National Republican Senatorial Committee, intervenors in the case, then petitioned the Supreme Court for a stay of the mandate. The Supreme Court granted the stay and recalled this Court’s mandate on September 4, 2026, finding that “the Fourth Circuit likely lacked statutory jurisdiction to address [petitioners’] challenge,” and that the Committees would “likely suffer irreparable harm absent a stay.” *Nat’l Republican Congressional Comm. v. Brown*, 2026 WL 2618462 (U.S. Sept. 5, 2026) (per curiam) (NRCC).

On September 8, 2026, petitioners filed a petition for writ of mandamus asking this Court to direct the Commission to act on petitioners’ pending application for review of the Public Notice by September 18, 2026. After the FCC and the Republican Committees filed oppositions to the petition, the Court issued an order on September 18 indicating that it would not act on the mandamus petition until at least October 1 (one day after the close of the comment cycle for

petitioners' application for review). The Commission informed the Court on October 1 that it had just received another application for review of the Public Notice, and that the comment cycle for the new application would not close until October 19.

On October 7, 2026, at 11:31 a.m., the Court issued an order granting the mandamus petition and directing the Commission to resolve petitioners' application for review by 12 noon on Friday, October 9, 2026. Judge Wilkinson dissented.

ARGUMENT

A stay is plainly warranted in this case. As Judge Wilkinson said in his dissent, the order is “a direct affront to the Supreme Court’s stay order in this case.” Order at 25 (Wilkinson, J., dissenting).

To begin with, the Court was unjustified in granting the extraordinary remedy of mandamus. The majority asserts that petitioners “have a clear right to relief” and “the Commission has a clear duty to act on the Application.” Order at 16. But petitioners have not shown that they have a “clear and indisputable right” to agency action on the expedited timetable set by the Court. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988); *South Carolina v. United States*, 907 F.3d 742, 754 (4th Cir. 2018). The Court reads 47 U.S.C. § 155(c)(7) to obligate the Commission to act ““with the objective of rendering a

final decision ... within three months' from when an application for review is filed." Order at 16. But that provision applies to "original application, renewal, and transfer cases"—not administrative applications for review. In any event it sets forth an "objective"—not a deadline—of three months. By any measure, it does not give petitioners a "clear and indisputable right" to expedited resolution of their application for review.

The Court's order also inflicts irreparable harm on the Commission. As the FCC has previously informed the Court, the agency is in the process of reviewing comments on petitioners' application for review. It is also awaiting comments on an overlapping application for review filed by the Television Bureau of Advertising. Initial comments on that application are not due until October 12, with reply comments due on October 19. The Court's order abruptly cuts off the agency's orderly process for seeking and reviewing public comment on the issues raised by the applications for review, and requires the agency to issue a decision without the benefit of all the information it has called for. "Agencies," as Judge Wynn acknowledged in concurrence, "must have an adequate opportunity to deliberate." Order at 22 (Wynn, J., concurring). But the Court did not explain why it gave the Commission just 48 hours to act.

Finally, the public interest and the equities strongly support a stay. As Judge Wilkinson noted in his dissent from the mandamus order, the decision that the

Court has directed the FCC to issue will inevitably precipitate further litigation that will have the effect of “disrupting settled campaign finance rules” in the closing weeks of “an impending election.” Order at 28 (Wilkinson, J., dissenting). The Supreme Court “has repeatedly cautioned that lower federal courts should not alter the election rules of a state on the eve of an election.” *People Not Politicians v. Onder*, 2026 WL 2883222 (U.S. Sept. 25, 2026) (per curiam); *see also Allen v. Milligan*, 608 U.S. 511, 514 (2026) (per curiam); *Purcell v. Gonzalez*, 549 U.S. 1, 4-6 (2006) (per curiam). And when it recalled this Court’s mandate in *Brown v. FCC*, the Supreme Court emphasized that this concern about upending settled rules is especially pronounced “in the critical weeks leading up to” the midterm elections. *NRCC*, 2026 WL 2618462; *see also* Order at 26 (Wilkinson, J., dissenting).

CONCLUSION

For the foregoing reasons, the Court should grant this emergency motion and immediately stay its order granting the mandamus petition.

Respectfully submitted,

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October 7, 2026

CERTIFICATE OF COMPLIANCE

This brief complies with Rule 27(d)(2)(A) of the Federal Rules of Appellate Procedure because it contains 1,030 words, excluding the parts that can be excluded. This brief also complies with Rule 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

Dated: October 7, 2026

/s/ James M. Carr
Counsel for Respondent
Federal Communications
Commission

CERTIFICATE OF SERVICE

Undersigned counsel filed this brief with the Court via ECF, which will provide electronic service to everyone requiring notice.

Dated: October 7, 2026

/s/ James M. Carr
Counsel for Respondent
Federal Communications
Commission

FILED: October 7, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 26-2230

In re: SHERROD BROWN; JON OSSOFF, ROY COOPER, and KRISTEN
MCDONALD RIVET,

Petitioners.

O R D E R

KING and WYNN, Circuit Judges:

In the face of the 2026 general election season, the Federal Communications Commission (the “FCC,” or the “Commission”) has endeavored to create from whole cloth a new rule entirely outside the purview of judicial review. Specifically, the FCC’s Media Bureau has extended to political parties favorable campaign advertising rates to which under law only the candidates themselves are statutorily entitled. And the Commission has since delayed agency review in an obvious effort to preclude judicial review prior to the November 3 election day. If allowed to continue dragging its feet, the FCC will have evaded meaningful judicial review of its newly created rule. The FCC’s actions are not only unfortunate — but also an assault on our Constitution’s separation of powers. Put simply, the FCC has thumbed its nose at Congress’s statutory commands and the settled principle of judicial review. *See Marbury v. Madison*, 1 Cranch 137, 177 (1803) (Marshall, C.J.) (“It is emphatically the province and duty of the judicial department to say what the

law is.”). We have heretofore accorded the FCC a substantial amount of grace, but its gamesmanship must end. Consequently, as explained herein, we are obliged to grant the pending petition for mandamus relief.

I.

These mandamus proceedings are part of an ongoing dispute over who is entitled to the “lowest unit charge,” or “LUC,” for broadcast campaign advertisements in the run-up to elections. The statutory LUC requirement provides that during the 45-day period preceding a primary election and the 60-day period 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” must not exceed “the lowest unit charge of the station for the same class and amount of time for the same period.” *See* 47 U.S.C. § 315(b)(1)(A). Pursuant to the plain statutory language, it has long been understood and accepted — including by the FCC itself — that only candidates, that is real persons, are entitled to the LUC.

On March 30, 2026, however, the FCC’s Media Bureau issued a “Public Notice” that requires broadcasters to extend the LUC to political parties engaged in coordinated expenditures with candidates and to joint fundraising committees with political-party and other non-candidate members. Although the Public Notice purports to merely restate previous Media Bureau guidance concerning LUC eligibility, it identifies no previous Media Bureau guidance specifying that non-persons and non-candidates — political parties

and joint fundraising committees with non-candidate members — can ever be entitled to the LUC.

In the resulting dispute, the FCC is joined on one side by the intervenors National Republican Congressional Committee and National Republican Senatorial Committee (together, the “Party Committees”). On the other side are a Democratic candidate for the U.S. House of Representatives, Kristen McDonald Rivet of Michigan, and three Democratic candidates for the U.S. Senate, Sherrod Brown of Ohio, Jon Ossoff of Georgia, and Roy Cooper of North Carolina (collectively, the “Federal Candidates”).

A.

More than five months ago, on April 29, 2026, the Federal Candidates filed an Application for Review with the FCC (the “Application for FCC Review,” or the “Application”), seeking to have the full Commission set aside the Media Bureau’s Public Notice. The Application argues that rather than reiterating well-settled principles, the Public Notice constitutes a novel statutory interpretation that is directly contradicted by FCC and other precedents, and that is incompatible with the plain language of the LUC requirement and relevant campaign finance statutes.

The Application also addresses how the Public Notice aggrieves the Federal Candidates, explaining that they are in highly competitive races for U.S. House and Senate seats being targeted by the Party Committees; that the Party Committees are expected to heavily spend on advertisements opposing the Federal Candidates and supporting their opponents, including through coordinated expenditures and joint fundraising committee advertising; and that by requiring broadcasters to extend the LUC to political parties and

joint fundraising committees for such advertisements, the Public Notice places the Federal Candidates at a competitive disadvantage, forcing them to respond to a higher volume of opposing advertisements than otherwise could have been purchased at the same price point, and diluting their independent campaign messaging.

Twice, the Application explicitly urges an expedited decision by the Commission given the impending November general election. Nevertheless, in the more than five months that have followed, the Commission has yet to resolve the Federal Candidates' Application for FCC Review.

B.

1.

The Federal Candidates first turned to this Court in late June 2026, filing a Petition for Review in matter No. 26-1785, *Brown v. FCC*, and successfully moving to expedite our proceedings. With the support of the Party Committees, the FCC sought dismissal of the Petition for Review for lack of jurisdiction, principally contending that there could be no judicial review of the Public Notice under 47 U.S.C. § 155(c)(7) until the Commission issues a decision on the Application for FCC Review.

In response to the FCC's jurisdictional contention, the Federal Candidates maintained that the only statutory precondition to filing their Petition for Review was first filing the Application for FCC Review, such that there was no need to await the Commission's decision. Alternatively, the Federal Candidates asserted that because the Commission, up to that point, had taken no action whatsoever on the Application for FCC Review, the Application had been constructively denied.

2.

Following the August 7, 2026, oral argument in this Court on the Federal Candidates' Petition for Review — and with the matter poised for decision — the FCC notified us on August 17, 2026, that there had finally been a modicum of action on the Application for FCC Review. Specifically, the FCC advised that its Chairman had circulated a proposed order to his fellow Commissioners on August 14, 2026, that would dismiss the Federal Candidates' Application as an “improper vehicle” for the Commission's review of the Public Notice. *See Brown v. FCC*, No. 26-1785 (4th Cir. Aug. 17, 2026), ECF No. 63, at 1 (FCC's letter to this Court under Federal Rule of Appellate Procedure 28(j)). According to the FCC, the premise of the proposed order is that the Public Notice merely restates previous Media Bureau guidance, such that the Application would have the Commission improperly “revisit[] existing law on the eve of an election, after primaries have occurred and plans have been made for the general election based on the existing rules.” *Id.*

Along with the proposed order dismissing the Federal Candidates' Application, the FCC proffered a recent order of the Media Bureau denying a petition of the Television Bureau of Advertising, Inc. (“TVB”), for reconsideration of the Public Notice. *See In re Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees*, DA 26-851, Order on Reconsideration (FCC Aug. 13, 2026). Sticking with the FCC's erroneous characterization of the Public Notice as a reiteration of previous guidance, the Media Bureau's order asserts that “[s]uch a reminder is not a decision or action that can be challenged through a petition for reconsideration.”

Id. at 1. Once again, however, the Media Bureau failed to identify any previous FCC guidance stating that political parties and joint fundraising committees with non-candidate members can be entitled to the LUC. Instead, the order vaguely references prior “response[s] to informal inquiries from regulated parties.” *Id.* at 2.

One of the three FCC Commissioners dissented from the Media Bureau’s denial of reconsideration in the TVB matter, while also criticizing irregular processes utilized with respect to the Federal Candidates’ Application and the Public Notice itself. *See In re Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees*, DA 26-851, Statement of Commissioner Anna M. Gomez (FCC Aug. 25, 2026). The dissent laments that “[n]othing about this proceeding was handled correctly.” *Id.* at 2. In conjunction with the dissent, the same Commissioner issued a public statement asserting that “[t]he American people should not have sweeping election-year rule changes forced on them in the dark, on the eve of an election, without a single opportunity for public input.” *See Anna M. Gomez, FCC to Unleash Flood of Dark Money into Broadcast Advertising Ahead of Midterm Election*, at 1 (Aug. 25, 2026).¹

¹ By law, the FCC is to be comprised of five Commissioners, who are appointed by the President and confirmed by the Senate. *See* 47 U.S.C. § 154(a). No more than three of the five Commissioners can be members of the same political party. *Id.* § 154(b)(5). Currently, the FCC has only three Commissioners — two Republicans and one Democrat — meaning that the Commission has two vacancies. The dissenting Commissioner, Anna M. Gomez, is the lone Democrat on the Commission.

3.

On August 25, 2026, this Court granted the Federal Candidates’ Petition for Review, setting aside and holding for naught the Public Notice. *See Brown v. FCC*, No. 26-1785 (4th Cir. Aug. 25, 2026), ECF No. 66 (“*Brown I*”). Rejecting the FCC’s jurisdictional contention, we recognized that the Public Notice “constitutes a ‘final’ order because it is — in both substance and operation — a legislative rule, meaning that the Public Notice is necessarily the law of the land and final.” *Id.* at 15-16.

We further recognized that by its actions — and inaction — the Commission had constructively denied the Federal Candidates’ Application for FCC Review and adopted the Media Bureau’s Public Notice. We explained:

The present circumstances readily constitute a constructive denial. When the Federal Candidates initiated this action on June 22, 2026, their Application for FCC Review was pending with the Commission for approximately two months. When we conducted our oral argument earlier this month, the Application was pending for 100 days. On September 4 — the date the LUC requirement becomes effective for the impending November election — it will be 128 days since the Federal Candidates filed their Application.

Despite the time-sensitive nature of these proceedings, the Commission intentionally took no action and offered no response to the Application for more than three months. The Commission did not, for example, seek responses from impacted parties, or engage in fact finding, or secure supplemental briefing, or solicit public comment, or schedule or conduct an oral argument.

Meanwhile, at our oral argument, the FCC’s lawyer admitted — with commendable candor — that “it is very unlikely that the Commission will act here before September 4th.” *See Oral Argument at 49:49-50:12, Brown v. FCC*, No. 26-1785 (4th Cir. Aug. 7, 2026). Concomitantly, the lawyer also represented to this Court that there would be value in awaiting the Commission’s decision on the Public Notice’s merits and that the Public Notice is, in any event, absolutely correct.

Ten short days later, the Commission finally took some action on the Federal Candidates' Application. But that action had nothing to do with assessing the merits of the Public Notice either by September 4, 2026, or ever. Rather, the FCC Chairman proposed the summary dismissal of the Application as unreviewable by the Commission.

In these unusual circumstances, we are satisfied that the Commission has constructively denied the Application for FCC Review and thereby adopted the Public Notice. *Cf. Friedman v. FAA*, 841 F.3d 537, 542-43 (D.C. Cir. 2016) (finding constructive denial where the FAA “placed [the applicant] in a holding pattern” by refusing to issue a formal decision). The Public Notice is “final” for this reason.

See Brown I at 14-15. Given our constructive denial ruling, we further recognized that “we need not wade into the parties’ dispute as to whether the only statutory precondition to filing the Petition for Review was first filing the Application for FCC Review (as the Federal Candidates contend), or whether 47 U.S.C. § 155(c)(7) permits judicial review only after the Commission has ruled on the Application (as the FCC argues).” *Id.* at 15 n.8.

As for the merits of the Public Notice, we emphasized “that the legitimacy of the Public Notice turns on a question of pure statutory interpretation, and that our Court is obliged to ‘exercise [its own] independent judgment’ in conducting that review.” *See Brown I* at 18 (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024)). That is, we underscored that “it is ‘emphatically the province and duty of’ our Court — not the FCC — ‘to say what the law is.’” *See id.* (quoting *Loper Bright*, 603 U.S. at 412 (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803))).

We then easily concluded “the LUC requirement and pertinent campaign finance statutes are clear that neither political parties nor joint fundraising committees with non-

candidate members can be entitled to the LUC.” *See Brown I* at 28-29. And we ruled that, “in asserting otherwise, the Public Notice is plainly contrary to law and cannot stand.” *Id.* at 29. Consequently, we granted the Federal Candidates’ Petition for Review and held for naught the Public Notice.

Our distinguished colleague dissented, asserting both that we lacked jurisdiction to review the Public Notice and that the Public Notice is correct on the merits. On the latter issue, the dissent relied on a First Amendment theory not raised by the FCC or Party Committees. *See Brown I* at 40 (Wilkinson, J., dissenting) (introducing the theory that “the First Amendment would disfavor [the Federal Candidates’] view of [what the dissent deemed to be] ambiguous statutory text”).

On August 26, 2026, the Party Committees moved to stay the issuance of the *Brown I* mandate, pending disposition of a petition for writ of certiorari to the Supreme Court. On August 27, 2026, this Court denied the Party Committees’ motion and directed the clerk to immediately issue the mandate.

C.

On August 28, 2026, the Party Committees filed an emergency application in the Supreme Court for a stay of our *Brown I* mandate pending the filing and disposition of a petition for a writ of certiorari. By an opinion of September 4, 2026, the Supreme Court granted the requested stay and recalled our mandate. *See Nat’l Republican Congressional Comm. v. Brown*, No. 26A274 (U.S. Sept. 4, 2026) (per curiam) (“*Brown II*”). In doing so, the Court concluded that the Party Committees showed “(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.” *Id.* at 2 (quoting *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam)).

The Court specified that “the first and second stay factors weigh in favor of granting the application,” in that “the Fourth Circuit likely lacked statutory jurisdiction to address [the Federal Candidates’] challenge.” *See Brown II* at 3. Without addressing our ruling that the Commission constructively denied the Federal Candidates’ Application for FCC Review, the Court concluded that “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 judicial review.” *Id.* at 2. Key to the Court’s conclusion was that “[t]he Commission is required to resolve every application it receives.” *Id.* at 3 (citing 47 U.S.C. § 155(c)(4)). The Court summarized that “[t]he Communications Act thus contemplates that an aggrieved party will file an application for review with the Commission, that the Commission will resolve that application by order, and that public notice of that order will issue before an aggrieved party may petition for further review in federal court.” *Id.*

With respect to the third factor, the Court considered the likelihood of irreparable harm to only the Party Committees. *See Brown II* at 3. In ruling in favor of the Party Committees on this stay factor, the Court explained:

They represent that, in light of the Fourth Circuit’s decision — which the Fourth Circuit likely lacked jurisdiction to issue — broadcasters are already rescinding favorable rates. Current and future rescissions will require the [Party Committees] to pay more for advertising space, thereby hampering their efforts to reach the electorate in the critical weeks leading up to the midterms. That injury, which implicates their First Amendment rights to

speak and coordinate their political activities freely, cannot be remedied after the fact through refunds or reimbursements.

Id. at 3-4 (citing *Nat’l Republican Senatorial Comm. v. FEC*, 146 S. Ct. 2404 (2026)).

Since the Supreme Court’s stay, the Commission has neither entered its proposed dismissal order circulated by the FCC Chairman on August 14, 2026, nor otherwise resolved the Federal Candidates’ Application.

D.

On September 8, 2026, the Federal Candidates commenced the present action by filing a petition for a writ of mandamus, requesting that this Court order the Commission to decide the still-pending Application for FCC Review. *See In re Brown*, No. 26-2230 (4th Cir. Sept. 8, 2026), ECF No. 2 (the “Mandamus Petition”). The Federal Candidates explain therein that they “bring this [Mandamus Petition] to address the Supreme Court’s jurisdictional concern and enable a decisive ruling on the validity of the Public Notice before it is too late to matter.” *Id.* at 1. As the Federal Candidates put it, “[m]andamus is urgently needed to prevent ongoing statutory violations and irreparable harm that th[is] Court already recognized in *Brown I*.” *Id.* at 14.

We again expedited our proceedings, but this time over the dissent of our good colleague. *See In re Brown*, No. 26-2230 (4th Cir. Sept. 9, 2026), ECF No. 12. He preferred to immediately deny the Mandamus Petition on the premise that “[t]he Supreme Court’s [*Brown II*] stay order stressed the importance of not keeping matters in a continually unsettled state in the ‘critical weeks leading up to the midterms.’” *Id.* at 2 (quoting *Brown II* at 3). The dissent thereby mischaracterizes *Brown II*’s discussion of the likelihood of

irreparable harm to the Party Committees in the “critical weeks leading up to the midterms” as being an admonition to hold the Public Notice sacrosanct for the November 2026 general election.

Nearly five months after the Federal Candidates filed their Application for FCC Review, and just hours before the FCC’s response to the Mandamus Petition was due, the Media Bureau issued a public notice on September 15, 2026, seeking comment on the Federal Candidates’ Application through September 30, 2026. In its response to the Mandamus Petition, the FCC asserts that it had just solicited public comment “in response to statements by this Court and one of the Commissioners that the agency had not solicited [such] comment.” *See In re Brown*, No. 26-2230 (4th Cir. Sept. 15, 2026), ECF No. 21, at 3 (referring to, *inter alia*, our mention in *Brown I* of soliciting public comment as an example of actions not taken in the months after the Application was filed). Representing that therefore the “‘agency process’ remains ongoing” and that “[t]he Commission requires the opportunity to consider comments submitted by interested parties before it issues an order addressing the [Federal Candidates’ Application],” the FCC contends that mandamus relief is unwarranted. *Id.*

In their reply of September 17, 2026, the Federal Candidates refer to the FCC’s solicitation of public comment as “a farce” and as confirmation “that the Commission’s only goal is to postpone judicial review by any means necessary.” *See In re Brown*, No. 26-2230, at 2 (4th Cir. Sept. 17, 2026), ECF No. 25. The reply elaborates that “[i]t is only now, having obtained a Supreme Court stay that heads off the risk of pre-election judicial review in the absence of a final Commission order, that the Commission is suddenly back

to insisting that it needs more time — with the request for public comment serving as the fig leaf for that insistence.” *Id.* at 4.

On September 18, 2026, however, we accorded grace to the FCC and deferred action on the Mandamus Petition until at least October 1, 2026. *See In re Brown*, No. 26-2230 (4th Cir. Sept. 18, 2026), ECF No. 27. In so doing, we reminded the parties that under 47 U.S.C. § 155(c)(4), the Commission “is required to resolve every application it receives.” *Id.* at 1 (quoting *Brown II* at 3). We further reminded the parties “that by statute, the Commission is required to conduct its business ‘prompt[ly] . . . with the objective of rendering a final decision (1) within three months from the date of filing in all original application . . . cases in which it will not be necessary to hold a hearing, and (2) within six months from the final date of the hearing in all hearing cases.’” *Id.* at 1-2 (alterations in original) (quoting 47 U.S.C. § 155(d)). Our good colleague again dissented, once more expressing a preference to deny the Mandamus Petition “forthwith” and asserting that the Supreme Court instructed us in *Brown II* “that matters should be left in a stable state ‘in the critical weeks leading up to the midterms.’” *Id.* at 3 (quoting *Brown II* at 3).

That brings us to October 1, 2026, when the FCC informed us that it has now solicited public comment in the related TVB matter, such that we should “further defer[]” these mandamus proceedings, if not outright deny the Mandamus Petition. *See In re Brown*, No. 26-2230, at 2 (4th Cir. Oct. 1, 2026), ECF No. 28 (FCC’s letter to this Court under Federal Rule of Appellate Procedure 28(j)). As related by the FCC, on September 14, 2026, TVB filed an application for review of the Media Bureau’s denial of reconsideration of the Public Notice, and on September 30, 2026, the FCC invited comment

on the TVB application through October 19, 2026. The FCC now contends that because there are “substantially overlap[ping]” issues between that application and the Federal Candidates’ Application, the Commission should be accorded even more time to issue a decision on the Federal Candidates’ Application so that it can “address the [applications] jointly.” *Id.* at 1-2.

In response, the Federal Candidates assert that “the Commission seems again to have unnecessarily delayed its proceedings.” *See In re Brown*, No. 26-2230, at 1 (ECF No. 29 (Federal Candidates’ response to FCC’s Rule 28(j) letter)). The Federal Candidates emphasize that “TVB filed its [application] on September 14, *before* FCC opened public comment on the [Federal Candidates’ Application].” *Id.* “Yet FCC waited until September 30 to open a new comment period on the ‘substantially overlap[ping]’ issues in TVB’s [application].” *Id.* at 1-2 (first alteration in original). Addressing “[t]he new comment deadline [of] October 19,” the Federal Candidates characterize it as “past any window for meaningful judicial relief this election.” *Id.* at 2. The Federal Candidates thus implore this Court to immediately grant the Mandamus Petition.

II.

The All Writs Act provides this Court with jurisdiction to issue “all writs necessary or appropriate.” *See* 28 U.S.C. § 1651. We have consistently recognized that writs of mandamus have “long been reserved for extraordinary cases,” where a petitioner “has no other adequate means to obtain relief.” *See South Carolina v. United States*, 907 F.3d 742, 754 (4th Cir. 2018) (citation modified). Nevertheless, “courts may calibrate their discretion

to issue the writ and act more aggressively when the circumstances warrant it.” *See Brown I* at 49 (Wilkinson, J., dissenting). To obtain a writ of mandamus, the petitioner must demonstrate “a clear and indisputable right to the relief sought and show that the responding party has a clear duty to do the specific act requested.” *See South Carolina*, 907 F.3d at 754 (citation modified). Finally, after weighing the equities, a court must exercise its discretion and “be satisfied that the writ is appropriate under the circumstances.” *Id.*

III.

The extraordinary circumstances of these proceedings readily demand that the Federal Candidates are immediately entitled to mandamus relief. Simply put, the FCC’s professed need for further deliberation of the Federal Candidates’ challenge to the Public Notice rings hollow, and our willingness to tolerate the FCC’s delay tactics is at an end. *See Dep’t of Com. v. New York*, 588 U.S. 752, 785 (2019) (recognizing that in reviewing agency action, a court is “not required to exhibit a naivete from which ordinary citizens are free”).

First of all, at this critical juncture, the Federal Candidates have no other adequate remedy through which they could obtain relief. That is so because, by staying on jurisdictional grounds this Court’s mandate in *Brown I*, which set aside and held for naught the Public Notice, the Supreme Court has kept the Public Notice in effect. With the Public Notice still in effect, political parties are continuing to secure discounted LUC advertising rates in contravention of 47 U.S.C. § 315(b)(1)(A)’s plain statutory text. Furthermore, the

Public Notice constitutes a final order of the Commission, *see Brown I* at 15-16, so a claim for unlawful agency delay under the Administrative Procedure Act is unavailable. *See South Carolina*, 907 F.3d at 759 (“An action that is ‘delayed’ rather than ‘withheld’ is not generally a ‘final action’ that can be addressed under the APA.” (citation modified)).

Second, the Federal Candidates have demonstrated that they have a clear right to relief and that the Commission has a clear duty to act on the Application. As the Supreme Court recognized in *Brown II*, 47 U.S.C. § 155(c)(4) explicitly requires that the Commission “shall pass upon” every application for review. *See Brown II* at 3; *see also South Carolina*, 907 F.3d at 756 (explaining that “the word ‘shall’ usually creates a mandate” indicating a nondiscretionary duty to perform). Moreover, the Commission is obligated to enter orders that are “necessary or appropriate to expedite the prompt and orderly conduct of the business of the Commission with the objective of rendering a final decision . . . within three months” from when an application for review is filed. *See* 47 U.S.C. § 155(d).

Yet more than five months have passed since the Federal Candidates filed their Application for FCC Review, and nearly two months have passed since the FCC’s Chairman circulated his proposed order to the Commission disposing of the Application. This proposed order does not even address the merits of the Application — it would simply dismiss the Application as an improper vehicle. As the Federal Candidates have correctly highlighted for us, “[t]he Commission has made its decision — it simply must publish the order.” *See* Mandamus Petition 18. Moreover, the Commission is not legally obligated to explain or justify its decision on the merits of the Application. *See* 47 U.S.C. § 155(c)(5)

(“In passing upon applications for review, the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefor.”). The Federal Candidates have thus demonstrated that they have a clear right to relief and that the Commission possesses a clear and specific statutory duty to act.

We have highlighted the extraordinary circumstances here — circumstances that the FCC has been fully aware of since the Federal Candidates filed their Application. Approximately seven months before the November 2026 general election — the same election for which the Federal Candidates seek relief — the FCC’s Media Bureau issued its Public Notice, unlawfully extending the LUC to political parties in the critical period leading up to the election. Less than a month later, the Federal Candidates filed their Application for FCC Review. And despite its illegal expansion of the LUC from solely candidates to include political parties, the Commission has left the Application unresolved.

The FCC argues that the LUC should not be disturbed in the face of an impending election. But that contention is entirely irreconcilable with the reality that the Public Notice’s stated purpose was to address the impending election. If this Court were to accept the FCC’s position that mandamus is not available in this situation, the FCC could issue any rule regarding the LUC — without respect to its lawfulness — and be shielded from judicial review. We are unable to accept the proposition that mandamus is unavailable in these circumstances. As the Federal Candidates have carefully explained, they “are candidates in *this year’s* election — they cannot recover the fair competitive opportunities they are losing while the Commission withholds its final order.” *See* Mandamus Petition 20.

Finally, the procedural posture of this matter weighs heavily in favor of issuing a mandamus writ. As we recognized in *Brown I*, “the legitimacy of the Public Notice turns on a question of pure statutory interpretation.” *See Brown I* at 18. As a result, we need not accord any deference to the Commission in this regard. Notwithstanding the view of the Commission majority, we are obliged to review and resolve the statutory interpretation question ourselves. *Id.* (underscoring that “it is ‘emphatically the province and duty of’ our Court — not the FCC — ‘to say what the law is’” (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)))). And in a matter of pure statutory interpretation, the equities readily favor an award of mandamus relief and a prompt resolution of the Application.²

² In dissenting from this award of mandamus relief, our distinguished colleague repeats his mischaracterization of the Supreme Court’s stay order as “embrac[ing] what the Supreme Court has long emphasized: the need to preserve settled understandings prior to an election, here, in the ‘critical weeks leading up to the midterms.’” *See post* 25 (Wilkinson, J., dissenting) (quoting *Brown II* at 3). The dissent also rests on several other false premises, including the following: (1) that the Public Notice and its extension of the LUC to political parties constitute “settled understandings” of election law; (2) that our panel majority is to blame for the Commission’s inaction on the Federal Candidates’ Application for FCC Review, in that we have given “repeated signals that the FCC lacked authority to act”; and (3) that “we firmly rejected mandamus only a few weeks ago, and our conclusion ought to be still firmer now.” *Id.* at 25-26. As the dissent would have it, the majority’s “decision is chaotic with a capital C.” *Id.* at 25 (citation modified).

Suffice to say that any “chaos” is the FCC’s fault, not ours. The Media Bureau upset the status quo with the Public Notice’s novel interpretation of the LUC requirement, the Commission then took no action for months on the Federal Candidates’ pleas for urgent review, and still today the Commission continues to conjure one excuse after another for further delay. Meanwhile, we have never suggested that the Commission somehow lacks authority to act; rather, we have consistently faulted the Commission for its failure to act and its blatant flouting of its obligation to do so. We award mandamus relief today as the only means to finally move forward with meaningful and essential judicial review.

IV.

Pursuant to the foregoing, we hereby grant the Mandamus Petition and direct the Commission to resolve by 12:00 noon on Friday, October 9, 2026, the Federal Candidates' Application for FCC Review.

Entered at the direction of Judge King and Judge Wynn. Judge Wynn filed a concurring opinion. Judge Wilkinson filed a dissenting opinion.

FOR THE COURT

/s/ Nwamaka Anowi
Clerk

WYNN, J., concurring in the order granting mandamus:

When the question proves inconvenient, change it. That is the course our dissenting colleague takes today. The dissent asks whether we owe respect to the Supreme Court. Of course we do. But that proposition, beyond dispute, does not resolve the question before us. Respect for the judicial hierarchy does not release an administrative agency from its obligation to obey Congress.

The question is whether the Federal Communications Commission may withhold the decision necessary for judicial review while its disputed interpretation sets the terms of an election. Congress's command cannot depend upon an unelected agency's willingness to open the courthouse door. Yet that is the practical consequence of the dissent's position.

The blueprint is simple. The Commission's Media Bureau announces what a congressional statute means. Regulated parties must order their affairs accordingly. Those who object are told that they must first seek review by the full Commission. The Commission then delays its decision while the election approaches. And when the time for effective relief has nearly run, the expectations formed under the disputed interpretation become a reason to leave it undisturbed.

What was once too early to review has become too late to remedy. The agency need never establish that its reading of the statute is right. It need only wait until the statute's protection has lost its practical worth.

Congress did not create an administrative process in which the agency holds both the power to impose an interpretation and the power to prevent its timely examination. Today's writ requires the Commission to make the decision through which the controversy

may properly reach a reviewing court. It leaves the substance of that decision where Congress placed it: with the Commission in the first instance.

That distinction answers the dissent's principal objection. The Supreme Court stayed our earlier mandate and explained that the pending application likely deprived this court of statutory jurisdiction to review the challenged notice. That order binds us. We may not revive our earlier merits judgment under another name.

But requiring the Commission to decide the application does not evade the prerequisite the Supreme Court identified. It requires the Commission to fulfill it. The stay remains controlling. Any later request for judicial relief must satisfy the applicable jurisdictional and equitable requirements on its own terms. Nothing in today's writ prejudices those questions.

The dissent would turn a prerequisite to judicial review into a means of preventing review. A requirement that the Commission first act becomes a license for the Commission not to act. The Supreme Court's order warrants no such conclusion.

Congress imposed obligations on both sides of the administrative process. An aggrieved party must seek Commission review. The Commission, in turn, must pass upon the application. 47 U.S.C. § 155(c)(4). The agency cannot demand obedience to the first obligation while treating the second as a matter of indefinite convenience. The Administrative Procedure Act likewise requires an agency to conclude matters presented to it within a reasonable time. 5 U.S.C. § 555(b). These duties belong to the statutory scheme no less than the requirement of administrative review itself.

What constitutes a reasonable time must account for what time takes away. An election affords a finite opportunity to speak, to purchase advertising, and to answer an opponent. Once that opportunity passes, a decision may resolve the legal question and yet afford scant relief to those whose rights were at stake. The calendar is therefore no incidental feature of this dispute. Counting months tells us little unless we also consider what those months consume.

Our dissenting colleague emphasizes that the earlier proceedings complicated the Commission's position and that the agency has since opened an expedited comment period. Those circumstances deserve consideration. Agencies must have an adequate opportunity to deliberate, and courts should not mistake every intervening procedural step for evasion.

But a new round of procedure does not discharge the duty to decide. Activity and resolution are different things. The relevant inquiry concerns the proceeding as a whole: whether the Commission has had a reasonable opportunity to address the application, and whether a concrete deadline can preserve meaningful review while allowing the agency to complete its work. The statutory obligation cannot recede each time another procedural stage begins.

The dissent's concern for settled expectations also carries weight. Candidates and broadcasters must plan their conduct, and judicial intervention near an election may impose real costs. But those considerations cannot automatically place an administrative interpretation beyond the reach of the legislation it purports to administer.

Otherwise, delay becomes its own justification. The longer the agency's interpretation governs conduct, the more reliance it produces. The more reliance it

produces, the stronger the argument against examining it in time to provide effective relief. An interpretation thus acquires practical immunity through the very delay that shields it from review. Congress's enactment becomes subordinate to the expectations generated by the agency's disputed account of it.

The danger is structural. It requires no attribution of partisan motive, and it would be no less troubling if the candidates who benefited were different. An 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. The distribution of that power matters whatever its immediate political consequences.

We are accustomed to debating whether courts have intruded too far upon the legislative domain. Here we confront a different prospect: an agency escaping both legislative constraint and effective judicial review through its control of procedure. Congress supplies the governing text. The agency supplies an interpretation. And then the agency decides whether a court may examine that interpretation before its consequences have become irreversible.

That arrangement gives administrative delay a force Congress did not confer upon it.

The writ preserves the arrangement Congress did establish. The Commission must issue a disposition. It remains free to determine the substance of that disposition. A court may review it when the statutory conditions for review have been satisfied. The Supreme

Court's stay remains undisturbed, and the requirements governing any subsequent judicial relief remain fully applicable.

Each institution thus performs its assigned task. The Commission decides. The reviewing court acts within its jurisdiction. And Congress's command retains its force throughout. Procedural convenience cannot excuse any of us from that allocation of responsibility.

Because today's writ enforces the Commission's duty to decide while leaving the decision itself to the Commission, I concur.

WILKINSON, Circuit Judge, dissenting:

Litigants far and wide will be eager to purchase the majority's new board game: Make The Supreme Court Say It Twice. Once is enough for me, so I vote to deny the petition for a writ of mandamus.

The grant of a writ of mandamus is a direct affront to the Supreme Court's stay order in this case. That order embraced what the Supreme Court has long emphasized: the need to preserve settled understandings prior to an election, here, in the "critical weeks leading up the midterms." *National Republican Congressional Committee v. Brown*, No. 26A274, 609 U.S. ___ (2026) (slip op. at 3). The majority has now ignored the Supreme Court's concern and unraveled its work. I respectfully dissent.

The timing of the majority's egregious intrusion into the nation's electoral process has made no difference to the majority at all. Its decision is "chaotic with a capital C." *In re Brown*, No. 26-2230 (4th Cir. Sept. 18, 2026) (Wilkinson, J., dissenting from order deferring proceedings) (slip op. at 3). After this court's earlier decision in this case, broadcasters began "rescinding favorable rates" for political advertising. *NRCC*, 609 U.S. ___ (2026) (slip op. at 3). Presumably they have returned to their prior contractual agreements after the Supreme Court's stay. The downstream effects of this writ may force them to flip again. Neither parties nor candidates nor broadcasters have any idea how to plan, contractually or otherwise, for the rest of the election season. Any unlawful expenses incurred "cannot be remedied after the fact through refunds or reimbursements." *Id.* at 4. Who can tally the intangible damage of election seasons thrown into limbo?

The timeline of this litigation demonstrates why mandamus is uniquely inappropriate. First, this is more a case of judicial meddling than agency neglect. We have inexcusably absolved ourselves of any responsibility for the FCC's delay, notwithstanding our repeated signals that the FCC lacked authority to act. Second, we firmly rejected mandamus only a few weeks ago, and our conclusion ought to be still firmer now.

The record makes all this embarrassingly plain. On April 29, 2026, petitioners filed an Application for Review with the FCC challenging the agency's guidance on LUC rates, which are lower-cost rates for political advertisements. Less than two months later, petitioners asked this court to intervene. The FCC objected that we lacked jurisdiction until the agency disposed of petitioners' application. This court expedited the proceedings, signaling that it was about to take jurisdiction away from the FCC, and it finally did so on August 25.

The majority concluded it was unnecessary for the FCC to dispose of petitioners' application in the first place; the FCC had already "constructively denied" it. *Brown v. FCC*, No. 26-1785, 2026 WL 2493115, at *4 (4th Cir. Aug. 25, 2026). The Supreme Court disagreed. On September 4, the Court stayed the Fourth Circuit's mandate and noted that our court lacked jurisdiction to disrupt campaign finance ground rules in this way "in the critical weeks leading up to the midterms." *NRCC*, slip op. at 3.

So, as of September 4, we had first signaled our intent to deprive the FCC of jurisdiction, and then actually done so, triggering Supreme Court correction. To blame the FCC for inaction after we had signaled its inability to act is an indefensible basis for invoking what all agree is an extraordinary writ even in the face of far greater delays and

far more egregious circumstances. *See Brown*, 2026 WL 2493115, at *20 (Wilkinson, J., dissenting). And the majority cites no cases it claims are analogous to this one. *See Maj. Op.* at 15–18. It thus uses a writ of mandamus more aggressively, to my knowledge, than has ever yet been attempted.

Has the further delay between September 4 and today been such a “clear and indisputable” violation of a duty to act, *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988), that it is proper for a court to issue the writ? *See In re Core Communications*, 531 F.3d 849, 850 (D.C. Cir. 2008). Impossible. With doubts about its jurisdiction resolved by the Supreme Court, the FCC went to work. On September 15, it opened and expedited its comment period on the application for review. The majority deferred consideration of this mandamus petition until after those comments were complete, tacitly endorsing the comment period—an appropriate measure, since the majority complained, in its earlier opinion, that the FCC had not yet called for comments. *See Brown*, 2026 WL 2493115, at *6.

But following instructions did the FCC no good, either. Still oblivious to its own meddlesome effect on these proceedings, the majority now holds that the FCC was so neglectful of its duty to dispose of petitioners’ application that the situation warrants the “extraordinary” remedy of a writ of mandamus. *Gulfstream Aerospace Corp.*, 485 U.S. at 289. The FCC’s only “extraordinary” demerit is a lack of mind-reading talent. It is to be punished for sloth when it supposedly lacked jurisdiction, and then condemned for industry when it obeyed our instructions.

How could mandamus possibly fix this mess? One of my colleagues had the answer back in August, remarking that it “elude[d] him” how “mandamus could be a solution . . . in the months before an election.” *Brown*, 2026 WL 2493115, at *13 n.1 (Wynn, J., concurring). If mandamus was so obviously inappropriate in August, it cannot possibly be needed well into October. It is bad enough to unsettle long-planned advertising contracts right before the LUC rates begin, as we did earlier, to the Supreme Court’s displeasure. It is still worse to tinker with LUC contracts *after* they go into effect.

That tinkering is doubly disrespectful—an affront both to the Supreme Court and to the FCC. The Supreme Court issued its order on September 4, the day LUC rates began, to create a predictable, uniform LUC rule for this year’s elections. We expedited our own (mistaken) earlier holding for the same reason. Now, it seems, our prior solicitude for stable rules has evaporated as swiftly as our respect for the Supreme Court. The majority further assigns the FCC no more than a ministerial role. It demands at gunpoint an agency decision which will allow the majority to reach the merits and recapitulate its own earlier conclusions, disrupting settled campaign finance rules in the hot breath of an impending election.

Once again, the issuance of a writ of mandamus palpably disregards the Supreme Court’s stay order. The majority’s action will reverberate well beyond the specifics of this case. Why set an example of cavalier disregard for the edicts of a higher court? We are better than that. We would make short work of a district court that approached our own orders the way the majority treats the Supreme Court’s guidance. The judicial system

depends upon the demonstration of some modicum of respect by lower courts to higher ones. That respect is all too sadly absent in this action.

FILED: October 7, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 26-2230

In re: SHERROD BROWN; JON OSSOFF; ROY A. COOPER, III; KRISTEN
MCDONALD RIVET

Petitioners

J U D G M E N T

In accordance with the decision of this court, the petition for writ of
mandamus is granted.

/s/ NWAMAKA ANOWI, CLERK



Federal Communications Commission
Office of General Counsel—Litigation Division
45 L Street NE • Washington, DC 20554
Tel: (202) 418-1740 • Fax: (202) 418-2819

October 1, 2026

Nwamaka Anowi, Clerk of Court
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219

Re: *In re Sherrod Brown, et al. v. FCC & USA*, No. 26-2230

Dear Ms. Anowi:

We write with an update on the FCC's ongoing administrative proceeding. As the Court is aware, the petition for a writ of mandamus seeks to compel Commission action on petitioners' application for review (AFR) of a Public Notice issued by the agency's Media Bureau concerning the "lowest unit charge" (LUC) requirements for election-season political advertising. *See* Public Notice, DA 26-300 (Media Bur. Mar. 30, 2026). The FCC's opposition, filed on September 15, explained that the agency had invited public comment on petitioners' AFR, with a comment period ending September 30. On September 18, this Court deferred action on the mandamus petition "until at least October 1."

Separate from petitioners' challenges to the Public Notice, another party—the Television Bureau of Advertising, Inc. (TVB)—sought reconsideration by the Media Bureau. The Media Bureau issued an order on that petition on August 13.

On September 14, TVB filed an AFR seeking Commission review of both the August 13 decision and the underlying Public Notice. TVB raises issues that substantially overlap with petitioners' challenges, and also a separate First Amendment challenge. On September 30, the Media Bureau invited public comment on the TVB AFR (see enclosed). Comments are due by October 12 and reply comments by October 19.

Meanwhile, the FCC has received comments concerning petitioners' AFR, including from (among others) the Campaign Legal Center, the Fair Media Council, the Center for American Rights, and Tim Scott for America. The Commission is actively reviewing these submissions.

Nwamaka Anowi, Clerk of Court

October 1, 2026

Page 2 of 2

Given the overlapping issues between petitioners' and TVB's AFRs, to allow for full administrative consideration of arguments concerning the proper application of the LUC requirements, and because the Communications Act makes the disposition of "all applications for review filed in any case" a precondition to judicial review, 47 U.S.C. § 155(c)(7), the Commission is considering both AFRs jointly. The Commission's need to address the AFRs jointly is a further reason that the pending petition for a writ of mandamus should be denied, or at a minimum, that action on the petition during this ongoing election season should be further deferred.

Respectfully submitted,

/s/ Scott M. Noveck

Jacob M. Lewis

Associate General Counsel

Sarah E. Citrin

Deputy Associate General Counsel

Scott M. Noveck

Counsel

(Enclosure)

cc: All counsel (via CM/ECF)



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov

DA 26-1056

Released: September 30, 2026

**MEDIA BUREAU SEEKS COMMENT ON APPLICATION FOR REVIEW OF MEDIA
BUREAU DECISION DISMISSING RECONSIDERATION PETITION REGARDING PUBLIC
NOTICE PERTAINING TO LOWEST UNIT CHARGE REQUIREMENTS**

MB Docket No. 26-253

Comment Date: October 12, 2026

Reply Comment Date: October 19, 2026

Today, the Media Bureau (Bureau) announces the procedures and other requirements governing the application for review filed by The Television Bureau of Advertising, Inc. (TVB).¹ TVB seeks reversal of the Bureau's dismissal of TVB's Petition for Reconsideration of the Bureau's March 30, 2026 Public Notice reminding broadcasters and the public about preexisting law and FCC guidance pertaining to the "lowest unit charge" (LUC) requirements.² By this Public Notice, the Bureau establishes comment and reply comment dates on the application for review and takes additional action to consolidate matters to ensure efficient administrative resolution of pleadings.

The LUC Public Notice addressed the applicability of the LUC to two categories of advertisements: "(1) [advertisements purchased by] authorized committees, including authorized committees that engage in joint fundraising with legally qualified candidates for federal office," and (2) "advertisements that qualify as coordinated expenditures of political parties and legally qualified candidates for federal office."³

The TVB filed a Petition for Reconsideration of the LUC Public Notice, which the Bureau dismissed.⁴ Separately, Sherrod Brown, Jon Ossoff, Roy Cooper, and Kristen McDonald Rivet (Brown) filed an Application for Review of the LUC Public Notice (Brown AFR).⁵

TVB's Application for Review was filed on September 14, 2026, just one day prior to the release of our Public Notice seeking comment on the Brown AFR.⁶ To ensure that we develop a complete and full record on the issues involving the LUC and the Media Bureau's March 30 Public Notice, we now

¹ *FCC Media Bureau Provides Guidance on Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees*, Public Notice, DA 26-300, 2026 WL 1013722 (MB Mar. 30, 2026) (*LUC Public Notice*), *affirmed by* Order on Reconsideration, DA 26-851 (MB Aug. 13, 2026) (Order on Reconsideration). See Application for Review of The Television Bureau of Advertising, Inc. (Sep. 14, 2026) (TVB AFR).

² 47 U.S.C. § 315(b); 47 CFR § 73.1942.

³ *LUC Public Notice*.

⁴ Petition for Reconsideration or, In the Alternative, for Declaratory Ruling of the Television Bureau of Advertising, Inc. (Apr. 29, 2026) (Petition for Reconsideration). On August 13, 2026, the Media Bureau dismissed TVB's Petition for Reconsideration. See Order on Reconsideration.

⁵ Application for Review of Sherrod Brown, Jon Ossoff, Roy Cooper, and Kristen McDonald Rivet (Apr. 29, 2026).

⁶ See *Media Bureau Seeks Comment on Application for Review of Public Notice Pertaining to Lowest Unit Charge Requirements*, Public Notice, DA 26-982, 2026 WL 2731664 (MB Sept. 15, 2026) (Brown Public Notice).

Federal Communications Commission

DA 26-1056

seek comment on TVB's Application for Review on a more expedited timeline than normal. Because of the overlapping issues raised in the TVB AFR and the Brown AFR—and the novel issues raised by the TVB AFR concerning the LUC—the two AFRs will be consolidated and considered jointly. In particular, TVB raises issues pertaining to the First Amendment.⁷ For example, TVB argues that the LUC provisions as a whole cannot withstand First Amendment scrutiny and that broadcasters are entitled to full First Amendment protections, dismissing all concerns related to spectrum scarcity.⁸ Accordingly, we seek public comment on the issues raised by TVB.

In the course of challenges to the Bureau's March 30 Public Notice both before the Commission and the courts, some have noted a lack of public input, including arguing or suggesting that releasing any decision on an Application for Review without some sort of public process would amount to a legal error. For example, in an August 25, 2026 statement, Commissioner Gomez issued a statement criticizing the Bureau's actions because, among other things, the "Media Bureau failed to seek public comment on the [TVB] Petition for Reconsideration . . . as well as the [Brown] Application for Review."⁹ In addition, in discussing the Brown Application for Review, the Fourth Circuit admonished the Commission because it "did not . . . seek responses from impacted parties, or engage in fact finding, or secure supplemental briefing, or solicit public comment, or schedule or conduct an oral argument."¹⁰

Accordingly, we issue this Public Notice to facilitate similar public comment on the TVB AFR.

While the FCC generally provides the public with at least 30 days for comment, the agency determines here that a shorter timeline is more appropriate.

Service Requirements. We find good cause to waive the service requirements in section 1.115(f) of the Commission's rules,¹¹ and instead allow commenters to file comments and reply comments in the Electronic Comment Filing System (ECFS).¹² We find deviation from the general service rule for applications for review is warranted because the rule would unduly burden filers by requiring them to individually serve each party, which may be affected by potentially broad participation. In a similar context where a proceeding involves twenty or more parties, the Commission allows a public notice to take the place of individualized service by the Commission.¹³ A waiver of the service rule also will serve the public interest by reducing the burden of serving filings, thereby encouraging participation by interested parties. In this limited circumstance, we find that the filing in ECFS will provide a suitable alternative to individualized service.

Ex Parte Presentations. The pending Application for Review is a "restricted" proceeding under the Commission's *ex parte* rules.¹⁴ All written submissions filed in this docket will be made part of the record of the pending Application for Review. *Ex parte* presentations (other than *ex parte* presentations

⁷ Application for Review at 17-25.

⁸ Application for Review at 21-25.

⁹ Statement of Commissioner Anna M. Gomez, DA 26-851 (Aug. 13, 2026) (emphasis added), available at <https://docs.fcc.gov/public/attachments/DOC-424365A1.pdf>.

¹⁰ *Brown*, slip op. at *14.

¹¹ 47 CFR § 1.115(f).

¹² *Id.* § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.").

¹³ 47 CFR § 1.47(a) ("In proceedings involving a large number of parties, and unless otherwise provided by statute, the Commission may satisfy its service obligation by issuing a public notice that identifies the documents required to be served and that explains how parties can obtain copies of the documents."); *id.* § 1.47(a), note to paragraph (a) ("The Commission expects that service by public notice will be used only in proceedings with 20 or more parties.").

¹⁴ See 47 C.F.R. § 1.1208.

Federal Communications CommissionDA 26-1056

exempt under section 1.1204(a)) to or from Commission decision-making personnel are prohibited until the proceeding is no longer subject to administrative reconsideration or review or judicial review.¹⁵

Although a written presentation is prohibited in a restricted proceeding unless it is served on Parties to the proceeding, we waive this requirement for this proceeding.¹⁶ Because all written submissions filed in response to this *Public Notice* will be available to the public on the Commission's Electronic Comment Filing System ("ECFS"), requiring service on individual parties is unnecessary.

Filing Procedures. Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). **All filings regarding the TVB application for review should include the following docket number: MB Docket No. 26-253.**

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

Persons with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

Action by Acting Chief, Media Bureau.

– FCC –

¹⁵ See *id.*; 47 C.F.R. § 1.1204(a).

¹⁶ See 47 C.F.R. §§ 1.1202(b)(1), 1.1208.

FILED: September 18, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 26-2230

In re: SHERROD BROWN; JON OSSOFF; ROY A. COOPER, III; KRISTEN
MCDONALD RIVET,

Petitioners.

ORDER

Upon consideration of the petition for writ of mandamus, the court defers action on the petition until at least October 1, 2026. If action during the deferral period renders the mandamus petition moot, the court will issue an opinion dismissing the petition on that basis.

The court asks the parties to keep in mind that the Federal Communications Commission “is required to resolve every application it receives,” *Nat’l Republican Cong. Comm. v. Brown*, 609 U.S. ---, No. 26A274, 2026 WL 2618462, at *1 (U.S. Sept. 4, 2026) (per curiam) (citing 47 U.S.C. § 155(c)(4)), and that by statute, the Commission is required to conduct its business “prompt[ly] . . . with the objective of rendering a final decision (1) within three months from the date of filing in all original application . . . cases in which

it will not be necessary to hold a hearing, and (2) within six months from the final date of the hearing in all hearing cases,” 47 U.S.C. § 155(d).

Entered at the direction of the panel. Judge King and Judge Wynn voted to defer action on the petition for writ of mandamus. Judge Wilkinson voted to deny the petition and filed a dissenting opinion.

FOR THE COURT

/s/ Nwamaka Anowi
Clerk

WILKINSON, Circuit Judge, dissenting:

I would deny the petition for a writ of mandamus forthwith. A postponement 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.” *National Republican Congressional Committee v. Brown*, No. 26A274, 609 U.S. __ (2026) (slip op. at 3).

It takes no special powers of discernment to understand the state of affairs the majority has created. After this court’s earlier decision in this case, broadcasters began “rescinding favorable rates” for party-coordinated advertising. *Id.* Presumably they have returned to their prior contractual agreements after the Supreme Court’s stay. And presumably they may flip again depending on the downstream effects of a writ, if one is eventually granted. By this point, neither parties nor candidates nor broadcasters have any idea how to plan, contractually or otherwise, for the rest of the election season. They have no idea what their rights and obligations even are. This is chaotic with a capital C, chaos that “cannot be remedied after the fact through refunds or reimbursements.” *Id.* at 4.

It is not only the plain import of the Supreme Court’s stay order that the majority ignores. It creates further disruption by thrusting itself into the heart of the FCC’s deliberative process. The majority now emphasizes Congress’s aspirational timelines, 47 U.S.C. § 155(d), after consistently casting shade on the agency’s authority to act at all. *See Brown v. FCC*, No. 26-1785, 2026 WL 2493115, at *4 (4th Cir. Aug. 25, 2026) (concluding it was unnecessary for the FCC to act because it had already “constructively denied” the

application for review). The agency desisted, understandably, when its very jurisdiction was called into question by this very court.

With the opening of the comment period, which the majority itself earlier demanded, *see id.* at *6, agency action is well underway. Petitioners' statutory argument will be resolved in the normal course of proceedings as the Supreme Court contemplated. The majority should deny the mandamus petition here and now.

FILED: September 9, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 26-2230

In re: SHERROD BROWN; JON OSSOFF; ROY A. COOPER, III; KRISTEN
MCDONALD RIVET

Petitioners

O R D E R

Upon consideration of petitioners' motion to expedite, the Court grants the motion and directs the Federal Communications Commission to file an answer to the petition for writ of mandamus no later than September 15, 2026.

Entered at the direction of the panel. Judge King and Judge Wynn voted to grant the motion to expedite. Judge Wilkinson voted to deny the motion to expedite and filed a dissenting opinion.

For the Court

/s/ Nwamaka Anowi, Clerk

WILKINSON, Circuit Judge, dissenting:

I would deny the motion to expedite and I would deny any issuance of a writ of mandamus to the Federal Communications Commission. The fact that we may have jurisdiction to issue a writ of mandamus says nothing about whether it would be an appropriate exercise of that jurisdiction to issue one. The Supreme Court’s stay order stressed the importance of not keeping matters in a continually unsettled state in the “critical weeks leading up to the midterms.” *National Republican Congressional Committee v. Brown*, No. 26A274, 609 U.S. __ (2026) (slip op. at 3); *see also Purcell v. Gonzalez*, 549 U.S. 1 (2006).

There will be a good debate on the merits of the statutory interpretation issue when a petition for certiorari is filed, but opening up this whole matter at this time is a bridge too far. Continual churning is all that lies ahead of the majority’s chosen path. Any attempt to proceed at this late date to introduce multiple advertising rates and new campaign finance ground rules in the middle of the election season is a direct affront to the Supreme Court and its stay order. I dissent.

No. 26-_____

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

IN RE SHERROD BROWN, JON OSSOFF, ROY COOPER, AND KRISTEN McDONALD
RIVET,

Petitioners.

**PETITION FOR WRIT OF MANDAMUS
TO THE FEDERAL COMMUNICATIONS COMMISSION**

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INTRODUCTION

Two weeks ago, this Court held in *Brown v. FCC* that the Federal Communications Commission’s Media Bureau violated the Communications Act when it issued a Public Notice on March 30, 2026, that instructed broadcasters to offer “lowest unit charge” advertising rates to political parties and joint fundraising committees, because the Act reserves those rates for candidates only. *Brown v. FCC* (“*Brown I*”), No. 26-1785, [2026 WL 2493115](#) (4th Cir. Aug. 25, 2026), *stay granted sub nom. NRCC v. Brown*, No. 26A274, [2026 WL 2618462](#) (U.S. Sep. 4, 2026) (per curiam). On Friday, the Supreme Court stayed that decision on procedural grounds only, ruling that the Court likely lacks jurisdiction to review the Public Notice while Petitioners’ Application for Review of the Public Notice remains pending before the FCC. *See NRCC*, [2026 WL 2618462](#). In doing so, however, the Supreme Court did not question *Brown I*’s merits conclusion that the Public Notice is unlawful, and it recognized that the Public Notice is not an ordinary economic regulation, but rather one that implicates “efforts to reach the electorate in the critical weeks leading up to the midterms.” *Id.* at *2.

Petitioners—the four candidates from *Brown I*—bring this mandamus petition to address the Supreme Court’s jurisdictional concern and enable a decisive ruling on the validity of the Public Notice before it is too late to matter. There is no legitimate justification for the Commission’s delay in adjudicating Petitioners’

Application for Review, which was filed more than four months ago. The Commission told the Court weeks ago that it planned to deny it and that a proposed order doing so was circulating, and it has defended the underlying Public Notice on the merits in this Court and in the Supreme Court. If it does not wish to issue a reasoned order, it does not need to do so. *See* [47 U.S.C. § 155\(c\)\(5\)](#). But the Court should compel it to issue some order, rather than sitting on Petitioners' Application and barring judicial review in advance of the November election.

The Court should therefore grant this Petition and order the Commission to decide Petitioners' Application for Review by no later than September 18, 2026.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under the All Writs Act, [28 U.S.C. § 1651](#), to review unreasonable delay of agency action “whenever a statute commits review of the relevant action to the courts of appeals.” *In re Pub. Emps. for Env’t Resp.*, [957 F.3d 267, 271](#) (D.C. Cir. 2020). Because Section 402(a) of the Communications Act of 1934 commits review of the Commission’s orders to the courts of appeals, this Court has jurisdiction to compel the Commission to issue a final order on Petitioners’ Application for Review. [47 U.S.C. § 402\(a\)](#); *see also Telecomm. Rsch. & Action Ctr. v. FCC* (“TRAC”), [750 F.2d 70, 75–77](#) (D.C. Cir. 1984). Venue is appropriate in this Court because Petitioner Governor Roy Cooper resides in North Carolina. [28 U.S.C. § 2343](#).

RELIEF SOUGHT

Petitioners seek an order granting this Petition and instructing the Commission to issue a decision on Petitioners' Application for Review by Friday, September 18. Petitioners also ask this Court to retain jurisdiction over the matter solely to ensure the Commission's compliance with the Court's order.

STATEMENT OF THE ISSUES

Whether this Court should issue a writ of mandamus compelling the Commission to comply with its express statutory obligation to decide all applications for review of actions taken pursuant to delegated authority by issuing a final order denying Petitioners' Application for Review of the Media Bureau's Public Notice, which the agency has already decided to deny, and which may be denied "without specifying any reasons therefor," [47 U.S.C. § 155\(c\)\(5\)](#).

STATEMENT OF THE CASE

I. Statutory and Regulatory Framework

A. The Communications Act requires broadcasters to charge candidates "lowest unit charge" for advertising before elections.

Section 315(b)(1) of the Communications Act of 1934 entitles "legally qualified candidate[s] for any public office" who "use . . . any broadcasting station" shortly before their elections to do so at "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 LUC requirement"). This valuable entitlement takes effect 45 days before the

candidate's primary election and 60 days before the general election. *Id.* § 315(b)(1)(A). Its present text was enacted as part of the Federal Election Campaign Act of 1971 (FECA), which comprehensively regulates federal campaign finances. *See Hernstadt v. FCC*, [677 F.2d 893, 897](#) (D.C. Cir. 1980).

FECA requires all federal candidates to designate a “principal campaign committee” to accept contributions and make expenditures on the candidate's behalf. [52 U.S.C. § 30102\(e\)\(1\)](#). Everyone agrees that stations must offer lowest unit charge for advertisements purchased by those principal campaign committees on behalf of the “legally qualified candidate” they support. This Petition concerns whether stations must *also* offer lowest unit charge to advertisements purchased by two other categories of committees that are further removed from the candidates themselves: party committees engaged in coordinated expenditures under [52 U.S.C. § 30116\(d\)](#), and joint fundraising committees established by candidates and non-candidates “solely for the purpose of joint fundraising,” *id.* § 30102(e)(3)(A)(ii).

Party Committee Coordinated Expenditures. FECA sharply limits the size of “contributions” that may be made to federal political committees, including candidate committees. *See* [52 U.S.C. § 30116\(a\)](#). To prevent donors from evading those limits by directly paying vendors on a candidate's behalf, FECA generally treats as contributions, subject to those same limits, expenditures that are “made by any person in cooperation, consultation, or concert, with, or at the request or

suggestion of, a candidate, his authorized political committees, or their agents.” *Id.* § 30116(a)(7)(B)(i). But as the Supreme Court held a few months ago, political party committees are constitutionally entitled to make unlimited “coordinated” expenditures, which, the Court explained, “are the party’s expenditures on, for example, advertisements produced or distributed in consultation with a candidate’s campaign.” *NRSC v. FEC*, [146 S. Ct. 2404, 2413](#) (2026).

Joint Fundraising Committees. In addition to establishing a principal campaign committee, FECA allows federal candidates to “designate a political committee established solely for the purpose of joint fundraising by such candidates as an [additional] authorized committee.” [52 U.S.C. § 30102\(e\)\(3\)\(A\)\(ii\)](#); [11 C.F.R. § 102.17\(a\)\(1\)–\(2\)](#). Such committees are known as “joint fundraising committees” or “JFCs.” A JFC’s only permissible purpose is to “collect contributions, pay fundraising costs from gross proceeds and from funds advanced by participants, and disburse net proceeds to each participant.” [11 C.F.R. § 102.17\(b\)\(1\)](#); *see* [52 U.S.C. § 30102\(e\)\(3\)\(A\)\(ii\)](#). FEC regulations require JFC participants to split expenses for fundraising in proportion to their share of the proceeds. [11 C.F.R. § 102.17\(c\)\(7\)](#).

In recent election cycles, Republican candidates have formed JFCs with non-candidate committees as advertising vehicles. These JFCs are structured to ensure that an overwhelming majority of their proceeds flow to non-candidate committee members, so that the non-candidate committees bear the overwhelming majority of

expenses as well.¹ They have then demanded lowest unit charge from broadcasters for advertising that is overwhelmingly funded by non-candidates.

B. The Commission’s Media Bureau enforces the LUC requirement through authority delegated by the Commission.

The Commission’s organic statute authorizes the agency to “organize its staff into . . . integrated bureaus” and “delegate any of its functions” accordingly. 47 U.S.C. § 155(b), (c)(1). “Any order, decision, report, or action made or taken pursuant to any such delegation” has “the same force and effect” as a Commission order, “unless reviewed” by the full Commission. *Id.* § 155(c)(3). The FCC Media Bureau’s delegated authority over broadcast media includes “[a]dminister[ing] and enforc[ing] rules and policies regarding political programming,” such as the LUC requirement. 47 C.F.R. § 0.61(e). A party aggrieved by one of the Commission’s integrated bureaus, like the Media Bureau, must “file an application for review by the Commission” before seeking judicial review. 47 U.S.C. § 155(c)(4), (7). And Congress required that “every such application shall be passed upon by the Commission.” *Id.* § 155(c)(4).

¹ See, e.g., *Nevada Victory Committee*, FEC, <https://www.fec.gov/data/committee/C00890962/> (last visited Sep. 8, 2026); *Wisconsin Victory Committee*, FEC, <https://www.fec.gov/data/committee/C00889493/> (last visited Sept. 8, 2026).

II. Procedural Background

A. The Commission's Media Bureau announces a new rule requiring broadcasters to provide lowest unit charge for party-coordinated and JFC advertising.

The lowest unit charge requirement has existed for decades, but before the Public Notice, the Commission had never provided public guidance on whether party committees engaged in candidate-coordinated spending or JFCs with non-candidate members are entitled to lowest unit charge. The Government, however, did take a position last year, when the Republican Party's national senatorial and congressional committees sought to invalidate FECA's cap on party-coordinated expenditures—including broadcast advertisements. Responding to concerns that eliminating unlimited coordinated expenditures “threaten[ed] to destabilize the lowest-rate-charge system for political advertising,” Brief for Intervenor-Resp'ts at 46–48, *NRSC v. FEC*, No. 24-621 (U.S. filed Sep. 29, 2025), the Solicitor General responded that lowest unit charge rules “require broadcasters to charge low rates for candidate spending, but not for party spending—whether coordinated or independent.” Reply Br. of Fed. Resp'ts at 23, *NRSC*, No. 24-621 (U.S. filed Oct. 29, 2025) (citing [47 U.S.C. § 315\(b\)\(1\)](#)). Even if the Court allowed unlimited coordinated spending, the Solicitor General explained, “broadcasters still would not be required to charge parties special low rates.” *Id.* Citing the Solicitor General's statement, the National Association of Broadcasters then advised its broadcaster

members that they need not offer lowest unit charge for party-coordinated and JFC ads. Add. 30–32.

On March 30, 2026, after NAB advised its members they need not offer lowest unit charge to party committees and JFCs, the Commission’s Media Bureau issued a Public Notice directing broadcasters to do just that. The Public Notice requires broadcasters to offer lowest unit charge to “(1) authorized committees that engage in joint fundraising with legally qualified candidates for federal office, and (2) [for] advertisements that qualify as coordinated expenditures of political parties and legally qualified candidates for federal office.” Add. 27. It purports to “restate previous Media Bureau guidance”—which it neither cites nor otherwise identifies—that “candidate-party coordinated advertisements are subject to the LUC provisions, provided that the ad otherwise complies with other applicable requirements.” *Id.* Both the Media Bureau and the Commission have since confirmed that the only past “guidance” on this score consists of “informal oral opinions” conveyed to broadcasters by telephone. Add. 37 n.18; *see also* Br. for Resp’ts at 39 n.10, *Brown I*, No. 26-1785 (4th Cir. July 20, 2026), Dkt. 49.

B. Petitioners seek expedited agency review.

On April 29, 2026, Petitioners Senator Sherrod Brown, Senator Jon Ossoff, Governor Roy Cooper, and Representative Kristen McDonald Rivet—four Democratic candidates in hotly contested races in the upcoming general election—

timely filed an Application for Review asking the Commission to set aside the Public Notice. Add. 1–32. On the same day, the Television Bureau of Advertising, Inc. (“TVB”), filed a separate petition for reconsideration before the Media Bureau. *See* Add. 35, 44–71. Petitioners’ Application explained that the Public Notice is unlawful because it purports to require stations to offer lowest unit charge for advertisements that do not constitute candidate use, in violation of Section 315(b)(1)’s plain text. Petitioners twice requested expedited relief due to the imminent harm they faced from the Public Notice’s unlawful expansion of lowest unit charge to non-candidate advertising. Add. 4, 19. But the Commission did nothing.

Meanwhile, Republican Party committees supporting Petitioners’ opponents were promising to unleash exactly the deluge of party-funded, candidate-rate advertising that the Solicitor General had previously promised would *not* result from *NRSC*. The RNC touted in an interview that Republican Party committees stand ready to spend *hundreds of millions* of dollars on coordinated TV advertising “at the candidate rate” to “obliterate” Democratic candidates this election.²

² Matthew Foldi, *INTERVIEW: RNC Chair Joe Gruters on the RNC’s Election Integrity Wins and How the GOP Can Defy History in 2026*, Wash. Rep. (June 23, 2026), <https://perma.cc/9F8G-UZUR>.

C. Petitioners seek expedited review of the Public Notice in this Court, and the Commission reveals it has internally decided to dismiss the Application for Review.

Facing imminent, irreparable harm, Petitioners filed a Petition for Review of the Public Notice in this Court on June 19, 2026. The Court expedited the appeal to enable a decision before lowest unit charge became available on September 4 in advance of the general election. The Republican Party’s national senate and congressional committees intervened as respondents, and they and the Commission objected to the Court’s jurisdiction while simultaneously defending the Public Notice on the merits, with the Commission contending that it “is entirely consistent with Section 315(b)” of the Communications Act. Br. for Resp’ts at 36, *Brown I*, No. 26-1785 (4th Cir. July 20, 2026), Dkt. 49.

The Court heard oral argument at a special sitting on August 7, 2026. By then, the Candidates’ Application for Review had been pending before the Commission for more than three months. But when pressed by the panel, the Commission’s counsel admitted with “commendable candor” that “it [was] very unlikely that the Commission [would] act” on the Application before lowest unit charge became available on September 4, *Brown I*, [2026 WL 2493115](#), at *6 (quoting Oral Arg. at 49:49–50:12)—even though the Commission had already authorized the filing of a brief rejecting the legal basis for Petitioners’ Application on the merits, and even

though the Commission would have been entitled to deny the Application “without specifying any reasons therefor,” [47 U.S.C. § 155\(c\)\(5\)](#).

Just ten days later, however—after an oral argument at which a panel majority seemed inclined to grant relief—the Commission changed course. It filed a notice of supplemental authority informing the Court that (1) the Media Bureau had issued an order denying the TVB’s petition for reconsideration of the Public Notice; and (2) “the FCC Chairman circulated a proposed order” on Petitioners’ Application for Review “dismiss[ing] the application as an improper vehicle” to review the Public Notice in the first place. Add. 33. Consistent with this notice, Commissioner Anna M. Gomez later published a dissent to the Media Bureau’s order. Add. 41–43. In a related public statement announcing the Commission’s action, cautioned that the “FCC is unleashing a flood of coordinated campaign money into broadcast advertising,” “forc[ing] [broadcasters] into a fire sale on the one thing that could actually help them compete and increase revenue,” and she argued that the Commission had done so through irregular procedures “with no opportunity for the public to weigh in.” Add. 39.

On August 25, 2026, this Court ruled for Petitioners and set aside the Public Notice. The Court found that the “unusual circumstances” of the case supported finding the Commission had constructively denied Petitioners’ Application for Review, thereby conferring jurisdiction to review the Public Notice. *Brown I*, 2026

WL 2493115, at *6. It thus expressly declined to “wade into the parties’ dispute as to whether the only statutory precondition to filing the Petition for Review was first filing the Application for FCC Review,” or whether judicial review is available “only after the Commission has ruled on the Application.” *Id.* at *6 n.8. On the merits, the Court rightly found that the Public Notice conflicted with the plain text of the Communications Act by extending the valuable entitlement to lowest unit charge that Congress reserved for federal *candidates* to non-candidate political committees, including party committees and JFCs.

D. The Supreme Court stays this Court’s judgment, inflicting the irreparable harm that this Court had sought to avoid.

Shortly after the Court ruled, the intervening party committees sought an emergency stay pending certiorari in the U.S. Supreme Court. They complained that “broadcast stations [were] already rescinding [LUC] rates” in light of this Court’s decision vacating the Public Notice. Emergency Appl. for Stay at 1, *NRCC*, No. 26A274 (U.S. filed Aug. 28, 2026), [2026 WL 2584468](#). In so doing, they effectively confirmed this Court’s finding that the Public Notice is, “in both substance and operation,” a “substantive” or “legislative rule” that “[left] broadcasters with ‘no choice but to comply’ with its unlawful expansion of the LUC statute” until the Court set those new requirements aside. *Brown I*, [2026 WL 2493115](#), at *7 (citation omitted).

On September 4, 2026—the first day that lowest unit charge became available for the upcoming general election—the Supreme Court granted the Republican committees’ stay application on procedural grounds. In a *per curiam* opinion, the Supreme Court held that this Court “likely lacked statutory jurisdiction to address [Petitioners’] challenge” because the “application for review was pending when [Petitioners] filed their petition for review.” *NRCC*, [2026 WL 2618462](#), at *2. The Supreme Court further held that the intervenor party committees faced irreparable harm if they were required to pay ordinary rates for their advertisements. *Id.* The Supreme Court did not address whether the Public Notice is substantively lawful.

ARGUMENT

The Commission’s handling of Petitioners’ Application for Review, coupled with the exigencies of the impending election, justifies prompt mandamus relief. The Administrative Procedure Act authorizes federal courts to “compel agency action unlawfully withheld or unreasonably delayed.” [5 U.S.C. § 706\(1\)](#). Mandamus relief requires showing that, (1) there is “no other adequate means to attain the relief sought,” *South Carolina v. United States*, [907 F.3d 742, 754](#) (4th Cir. 2018) (quoting *Kerr v. U.S. Dist. Ct. for N. Dist. of Cal.*, [426 U.S. 394, 403](#) (1976)); (2) that the petitioner has a “clear and indisputable right to the relief sought,” and specifically that “the responding party has a clear duty to do the specific act requested,” *id.*

(quoting *Cumberland Cnty. Hosp. Sys., Inc. v. Burwell*, [816 F.3d 48, 52](#) (4th Cir. 2016)); and (3) granting the writ is a sound “exercise [of] equitable discretion,” *id.*

Each factor is satisfied here. Mandamus is urgently needed to prevent ongoing statutory violations and irreparable harm that the Court already recognized in *Brown I*. The Court should direct the Commission to publish its already-written decision dismissing Petitioners’ Application for Review by September 18, to allow Petitioners to obtain judicial review of a *de facto* legislative rule that this Court has already held violates federal law.

I. Only mandamus relief can ensure the Commission complies with its nondiscretionary duty to decide Petitioners’ Application for Review.

Petitioners readily satisfy the first two requirements for mandamus relief. *See Brown I*, [2026 WL 2493115](#), at *20 (Wilkinson, J., dissenting) (recognizing the court would “ha[ve] jurisdiction under the All Writs Act to issue a writ of mandamus compelling the agency to render its final decision”). Petitioners have no other option besides mandamus to compel the Commission to perform its mandatory duty to issue a final decision on Petitioners’ Application for Review, without which the Supreme Court stay has now precluded effective relief from the Public Notice.

A. In light of the Supreme Court’s ruling staying this Court’s prior decision, mandamus is the only remedy available to Petitioners. The Commission has refused to issue an order on Petitioners’ Application for Review for more than four months, despite Petitioners’ request for expedition and the Commission’s having already

decided to defend the challenged agency action on the merits. While Petitioners continue to maintain that the Communications Act does not require them to wait for a Commission order on their Application for Review before seeking judicial review, the Supreme Court's stay order forecloses that option. And because the Commission's final orders fall within this Court's exclusive jurisdiction, 47 U.S.C. § 402(a), an unlawful-delay claim under the APA in federal district court is not available. *See TRAC*, 750 F.2d at 79–80. All that remains is mandamus.

B. Petitioners have a “clear right to relief” because the Communications Act imposes upon the Commission a “clear duty to act” on the Application for Review. *Lovitky v. Trump*, 949 F.3d 753, 760 (D.C. Cir. 2020) (explaining that these elements are “often” addressed “concurrently”). Agency inaction is eligible for mandamus relief when the agency has “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). Here, Congress unmistakably imposed upon the Commission a nondiscretionary duty to decide all applications for review of any action taken pursuant to delegated authority. The Communications Act provides that “every such application [for review] *shall be passed upon* by the Commission.” 47 U.S.C. § 155(c)(4) (emphasis added). “The use of ‘shall’ in the statute indicates a mandatory duty that must be undertaken.” *Brown I*, 2026 WL 2493115, at *20 (Wilkinson, J., dissenting) (citing *Bufkin v.*

Collins, [604 U.S. 369, 379](#) (2025)). The Commission therefore cannot simply “table an application indefinitely” without “violating the law.” *Id.*

II. Withholding a final order on a decision the Commission has already made constitutes egregious delay.

The circumstances here cry out for the Court to exercise its discretion to grant mandamus relief requiring the Commission to issue its final decision on Petitioners’ Application for Review. To be sure, mandamus often requires a longer delay than has occurred in this case. *See Brown I*, [2026 WL 2493115](#), at *13 n.1 (Wynn, J., concurring); *id.* at *20 (Wilkinson, J., dissenting). But “courts may calibrate their discretion to issue the writ and act more aggressively when the circumstances warrant it.” *Id.* at *20 (Wilkinson, J., dissenting). This Court has already found that the “unusual circumstances” here constituted constructive denial of Petitioners’ Application for Review—specifically, that the Commission has already authored its final decision, and the agency would otherwise inflict irreparable harm on Petitioners while evading judicial review. *Id.* at *6 (majority opinion); *id.* at *13–14 (Wynn, J., concurring). The Supreme Court then held, in granting a stay, that the Communications Act likely precluded that form of relief. But the Supreme Court’s order does not question this Court’s conclusions that the Commission has unreasonably delayed, that Petitioners face irreparable harm without immediate judicial review, or that the underlying agency action is unlawful. Those

considerations support granting mandamus relief here, to enable review despite the jurisdictional limitation that is the basis for the Supreme Court’s stay.

The Commission has already done the substantive work on Petitioners’ Application. It opted to defend the challenged agency action on the merits in *Brown I*. And the Commission informed this Court weeks ago that “on August 14, the FCC Chairman circulated a proposed order on [Petitioners’] application for Commission review.” Add. 33. The order will not “explain[] . . . the Commissioners’ views” on the “intricate questions of campaign finance law” raised in Petitioners’ Application. *Brown I*, [2026 WL 2493115](#), at *21 (Wilkinson, J., dissenting). Instead, the Commission has stated categorically that it will not consider the issues in the Application at all, and it plans to “dismiss the . . . application as an ‘improper vehicle’” to review the Media Bureau’s new rule “on the eve of an election.” *Id.* at *3 (majority opinion) (citation omitted). In any event, the Commission has no legal obligation to explain or justify its views on the merits—it may deny the application “without specifying any reasons therefor.” [47 U.S.C. § 155\(c\)\(5\)](#). And whether the Commission explains itself or not, this Court’s review of Petitioners’ argument that the challenged action violates the Communications Act will be *de novo* review of a pure question of statutory construction. *Loper Bright Enters. v. Raimondo*, [603 U.S. 369, 398–99](#) (2024).

For those reasons, this is not a garden-variety case of agency delay, where an agency’s “resource constraints and competing priorities” frequently counsel against judicial intervention before the passage of time alone renders the agency’s delay egregious. *Gonzalez v. Cuccinelli*, [985 F.3d 357, 375](#) (4th Cir. 2021); *see Brown I*, [2026 WL 2493115](#), at *20 (Wilkinson, J., dissenting) (“[J]udges are not in a strong position to question the agency’s relative priorities or to formulate a view of how long disposing of any given application ‘should’ take.”). The Commission has made its decision—it simply must publish the order. And there is no reason to doubt that the Chairman’s proposed order, about which the Court was notified weeks ago, carried the vote. The lone dissent of the three commissioners, Commissioner Gomez, published “an unofficial announcement of [the] Commission[’s] action,” criticizing “this FCC [for] unleashing a flood of coordinated campaign money into broadcast advertising.” Add. 39. And she likewise published a dissent to the Public Notice. Add. 41–43.

Further delay by the Commission will accomplish nothing beyond evading the judicial review it knows will follow. *See* Pet’rs Resp. to Letter of Suppl. Authorities at 2, *Brown I*, No. 26-1785 (4th Cir. Aug. 19, 2026), Dkt. 65 (stating Petitioners will file a second Petition for Review after the Commission’s final order issues). Allowing this “dangerous” tactic to continue would allow the Commission to “use its delegated authority as a get-out-of-review-free card,” where the Media

Bureau’s “broad reinterpretation of” the LUC requirement carries “the ‘same force and effect’ as a rule promulgated by the Commission” yet “goes into effect with no judicial review” when “the full Commission does nothing.” *Brown I*, [2026 WL 2493115](#), at *13 (Wynn, J., concurring). Meanwhile, Petitioners are being forced to contend with rival committees’ systemic campaign to “obliterate” them with *hundreds of millions* of dollars in unlawfully discounted party committee and JFC advertisements.³ Because the Supreme Court stayed the Court’s judgment in *Brown I*, only a writ of mandamus can prevent the Commission’s “jurisdictional gamesmanship” from inflicting any further irreparable harm on Petitioners and broadcasters alike. *Brown I*, [2026 WL 2493115](#), at *13 (Wynn, J., concurring).

In these unique circumstances, the traditional *TRAC* factors are a poor fit to assess the reasonableness of the Commission’s delay. *See Gonzalez*, [985 F.3d at 375](#) (noting that courts in this Circuit are “not limited to [the *TRAC*] factors and [are] not required to use them”). But those factors likewise favor Petitioners:

Under the first and second factors, Congress has supplied a “rule of reason” that directs the Commission to meet at least once a month “with the objective of rendering a final decision” on “all original application[s]” “within three months from the date of filing.” [47 U.S.C. § 155\(d\)](#); *see TRAC*, [750 F.2d at 80](#) (the timing of agency “decisions must be governed by a ‘rule of reason,’” which may be

³ Foldi, *supra* note 2.

“suppl[ied]” by a congressional “timetable” to act (citation omitted)). Petitioners’ Application for Review has now been pending for more than four months. On the third factor, although the Public Notice does not implicate “human health and welfare,” it is not merely an “economic regulation” either. *TRAC*, 750 F.2d at 80. Unlawful campaign finance regulations like this one undermine the “electoral fairness” essential to a successful democracy. *Randall v. Sorrell*, 548 U.S. 230, 249 (2006). The Supreme Court’s stay of *Brown I* recognized the irreparable harm that inheres in this area. *NRCC*, 2026 WL 2618462, at *2. That is especially true for candidates themselves, who “have an interest in a fair [electoral] process” and “suffer when the process departs from the law.” *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 77 (2026). On the fourth, “expediting delayed action” here will not impact any other “agency activities of a higher or competing priority” because 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. *TRAC*, 750 F.2d at 80. And on the fifth, Petitioners are candidates in *this year’s* election—they cannot recover the fair competitive opportunities they are losing while the Commission withholds its final order. *See id.* (Courts should consider “the nature and extent of the interests prejudiced by delay.”). Finally, although “the court need not find any impropriety lurking behind agency lassitude,”

id. (internal quotation marks and citation omitted), the Court’s previous concerns about “jurisdictional gamesmanship” are well-founded on this record.

CONCLUSION

The Court should grant the Petition and issue a writ of mandamus requiring the Federal Communications Commission to issue a decision on Petitioners’ Application for Review by September 18, allowing Petitioners to obtain meaningful relief through judicial review before the November election.

Dated: September 8, 2026

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CERTIFICATE OF COMPLIANCE

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By: /s/ David R. Fox

David R. Fox

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2026, I filed a copy of the foregoing with the Clerk of the Court using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that I have caused the foregoing petition to be served by FedEx overnight service and by electronic mail on the Federal Communications Commission as follows:

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