

No. 26A477

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.

REPLY IN SUPPORT OF 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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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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INTRODUCTION

What the Candidates omit from their response says more than what they include. Absent from those thirty pages is any authority granting mandamus against an agency after five months, let alone in the middle of an open comment period on the eve of an election. Absent is any defense of the Fourth Circuit's holding that the three-month "objective" in 47 U.S.C. §155(d) applies to the application for review at issue here. And absent is any mention of *Trump v. Boyle*, 145 S. Ct. 2653 (2025), or the Fourth Circuit's failure to confront the Committees' irreparable harms. In the end, the Candidates can't even paper over the panel majority's errors: it ignored the equities of *Brown I*, it identified no indisputable right to expedited agency review, it did not explain how mandamus would aid jurisdiction, and it erroneously claimed that the Commission changed longstanding rules. That's why Judge Wilkinson described the "grant of a writ of mandamus" as a "direct affront to the Supreme Court's stay order in this case." App.40 (Wilkinson, J., dissenting). The Court should reiterate in *Brown II* that it meant what it said in *Brown I*, and stay the Fourth Circuit's order.

ARGUMENT

I. The Fourth Circuit ignored this Court's equitable balancing.

This Court's stay order in *Brown I* controls on the equities. The Candidates contend otherwise, claiming that this Court "did not balance the equities between the Party Committees' injuries and the Candidates'." Opp. 8. But as the Court explained, "[i]n close cases, we 'balance the equities and weigh the relative harms to the applicant and to the respondent.'" *NRCC v. Brown (Brown I)*, No. 26A274, 609 U.S. __ (Sept. 4, 2026) (slip op. at 3). So at best, the Candidates' claim that the Court "did not

balance the equities,” Opp. 8, is a concession that *Brown I* was not a “close cas[e],” *Brown I*, 609 U.S. ___, slip op. at 3. Disparaging their own litigation strategy makes it “embarrassingly plain” that they and the majority—not the Commission—are responsible for the “meddlesome effect on these proceedings.” App.41-42 (Wilkinson, J., dissenting).

At a minimum, *Brown I* “inform[s]” how the Fourth Circuit should have “exercise[d] its equitable discretion” in *Brown II. Boyle*, 145 S. Ct. at 2654. In their 30-page response, the Candidates never even cite *Trump v. Boyle*. The Fourth Circuit likewise said nothing about the harm its order would cause the Committees. Instead, it said that “in a matter of pure statutory interpretation, the equities readily favor an award of mandamus relief and a prompt resolution of the Application.” App.33 (majority op.). That’s the majority’s entire equitable analysis. The Candidates never address the Fourth Circuit’s failure to mention—let alone weigh—the Committees’ irreparable harms that justified the stay in *Brown I*. They ignore this Court’s instruction in *Boyle*, just as the Fourth Circuit ignored it.

It makes no difference that mandamus is a degree removed from vacating the public notice. As Judge Wilkinson put it, “[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). “Court orders affecting elections, especially conflicting orders,” necessarily affect those who participate in elections. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). Late-breaking

changes to campaign-finance rules affect them most of all. *See OPAWL v. Yost*, 118 F.4th 770, 774 (6th Cir. 2024).

Like the *Brown I* vacatur order, the mandamus order will sow “chaos,” confusion and uncertainty among candidates, committees, and broadcasters. App.53 (Wilkinson, J., dissenting from order deferring action). It will inject risk into advertising contracts being negotiated and executed during this period. Indeed, the panel has made it clear that it intends to rush the Commission’s order solely to vacate it, setting off yet another round of cancelled contracts and emergency motions. App.33 & n.2 (majority op.). This continual “churning” hinders the Committees’ ability “to plan, contractually or otherwise, for the rest of the election season.” App.53 (Wilkinson, J., dissenting). These risks and irremediable changes in contracting behavior during the “critical weeks leading up to the midterms” are the direct consequences of the Fourth Circuit’s order. *Brown I*, 609 U.S. ___, slip op. at 3. The Court should thus stay the *Brown II* order for the same reasons it stayed the *Brown I* order.

II. The Candidates have not identified a “clear and indisputable right” to rushed agency review.

The Fourth Circuit purported to find a “clear and indisputable right” to review “within three months’ from when an application for review is filed.” App.31-32 (majority op.) (quoting 47 U.S.C. §155(d)). But as the Committees explained, that three-month “objective” applies to applications for broadcasting licenses, not the application for review at issue here. *See* Comm. Stay Appl. 14-15; *see also* RNC Amicus Br. 7. The Candidates don’t even attempt to defend the panel’s reliance on that provision. *See* Opp. 17 (acknowledging, but not rebutting, the Committees’ argument). But without

that three-month objective, they have no statutory hook on which to hang their “clear and indisputable right” to a five-month review period.

So the Candidates pivot—for the first time—to cases involving “unlawful-delay claims” under the Administrative Procedure Act. Opp. 15-16. None are mandamus cases. One held that the agency unreasonably delayed under the APA because it sat on visa applications for “five years.” *Barrios Garcia v. DHS*, 25 F.4th 430, 452 (6th Cir. 2022). The second expedited review under the APA because the agency head “concede[d] that he failed to perform a non-discretionary duty.” *Forest Guardians v. Babbitt*, 174 F.3d 1178, 1191 (10th Cir. 1999). The third confirmed that when “relief under the APA” is available, petitioners “could not simultaneously obtain mandamus relief.” *South Carolina v. United States*, 907 F.3d 742, 755 (4th Cir. 2018). None of those cases help the Candidates, which is evident from their concession at the outset that “an unlawful-delay claim under the APA in federal district court is not available” here. App.75. Their backtracking merely confirms that no court has issued mandamus under circumstances remotely similar here.

Appealing to the absence of a “circuit split” isn’t the defense the Candidates think it is. Opp. 12. They note that “Applicants do not cite ... any case where this Court has granted certiorari to review a lower court’s equitable finding that an agency had unlawfully delayed taking a discrete action it is required to take—in either a mandamus or Administrative Procedure Act posture.” Opp. 13. True, but that’s only because there is no other case in which a court “demand[ed] at gunpoint an agency

decision which will allow [it] to reach the merits and recapitulate its own earlier conclusions, disrupting settled campaign finance rules in the hot breath of an impending election.” App.43 (Wilkinson, J., dissenting). In the end, the Candidates simply underscore that what the Fourth Circuit did here was unprecedented, which is of course why the majority cited “no cases it claims are analogous to this one.” App.41-42.

III. Short-circuiting agency review does not “aid” the courts’ jurisdiction.

The Fourth Circuit’s mandamus order bypasses the Commission’s open comment period, putting a stop to its review of the underlying issues. That’s the opposite of what mandamus is for: to “aid [the] jurisdiction [the] court already has or will have as a result of issuing the writ.” *In re Nat’l Nurses United*, 47 F.4th 746, 752 (D.C. Cir. 2022) (citation omitted). That is, “[b]ecause the statutory obligation of a Court of Appeals to review on the merits may be defeated by an agency that fails to resolve disputes, a Circuit Court may resolve claims of unreasonable delay in order to protect its future jurisdiction.” *Telecomms. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 76 (D.C. Cir. 1984).

The Candidates argue that mandamus “protect[s] the Fourth Circuit’s future jurisdiction” because review after this election “is too late to matter.” Opp. 1, 14-15. But they don’t claim that the election would moot the underlying dispute about the public notice or the lowest-unit-charge rule. So mandamus here is not “in aid of the appellate jurisdiction which might otherwise be defeated.” *McClellan v. Carland*, 217 U.S. 268, 280 (1910). Rather, the Candidates claim that immediate review is necessary to avoid their alleged injuries for this election cycle. But they cite no case extending mandamus to aid *expedited review* in light of bespoke budget constraints.

IV. The Commission’s approach to the lowest-unit-charge rule is not new.

The Fourth Circuit claimed that “[t]he Media Bureau upset the status quo” by issuing a “novel interpretation of the LUC requirement” too close to the election. App.33 n.2 (majority op.). It thus blamed “any ‘chaos’” from its decision on the Commission. *Id.* The premise is false. In the public notice the Fourth Circuit is chomping at the bit to review, the Media Bureau “remind[ed] broadcasters and the public” of what it “has long held”: the lowest-unit-charge rules “apply to both candidates and their authorized campaign committees.” Public Notice DA 26-300, FCC (Mar. 30, 2026), perma.cc/CXS8-6D4M. The majority claimed the Commission “identifie[d] no previous Media Bureau guidance” supporting its position. App.17-18. But that’s because the Commission provided that guidance through informal means, and the industry understood that guidance by uniform practice. *See* U.S. Br. 25-26, *Brown I*, No. 26A274 (U.S. Aug. 31, 2026).

Although the Candidates echo the panel’s “novel interpretation” claim, Opp. 2, they know it’s false. As Judge Wilkinson,¹ the United States,² and the Committees³ have explained, these same Candidates have profited from the very interpretation they claim is novel. Rather than resist that interpretation in prior election cycles, they exploited it to obtain the lowest unit charge for their advertisements.⁴ Those

¹ *Brown v. FCC*, __ F.4th __, 2026 WL 2493115, at *21 (4th Cir. Aug. 25) (Wilkinson, J., dissenting).

² U.S. Br. 25-26, *Brown I*, No. 26A274 (U.S. Aug. 31, 2026).

³ Reply Br. 5-6, *Brown I*, No. 26A274 (U.S. Sept. 3, 2026).

⁴ *Compare* FCC Political File, Kristen for Michigan/DCCC (Aug. 25, 2024), perma.cc/4T55-VB36, *with* FCC Political File, Kristen for Michigan (Aug. 25, 2024),

examples expose more than the Candidates' inconsistent position. They're unrebutted evidence that the Commission, the industry, and these Candidates' own committees have long understood that the lowest-unit-charge rules "apply to both candidates and their authorized campaign committees." Public Notice DA 26-300, *supra*.

The Media Bureau's public notice didn't change the status quo. The Fourth Circuit did. First, by vacating a Commission order without jurisdiction. Then, when that failed, by wielding an extraordinary writ to bypass ordinary administrative procedure. Both orders irreparably injure political committees like the NRCC and NRSC by injecting uncertainty into their contracts, upsetting business deals, and ultimately depriving them of a statutory right on the eve of the election. The upcoming election demands consistency and predictability, not rushed changes. The Commission isn't violating a "clear and indisputable right" by steering clear of that chaos. And even if it were, the equities favor avoiding the "intangible damage of election seasons thrown into limbo." App.40 (Wilkinson, J., dissenting).

CONCLUSION

The Court should grant the applications for a stay of the Fourth Circuit's judgment.

perma.cc/KMF9-H8G9 (fourth entry of each record shows identical orders at \$1,300 for ads during Good Morning America for party-coordinated ads and campaign committee ads run by congressional candidate Kristen McDonald Rivet).

Respectfully submitted,

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