IN THE SUPREME COURT OF THE UNITED STATES

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No. 26A-___

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

v.

SHERROD BROWN, ET AL.

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APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, the Solicitor General -- on behalf of the Federal Communications Commission and the United States of America -- respectfully requests a 30-day extension of time, to and including December 23, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case. The opinion of the court of appeals (App., infra, 1a-69a) is reported at 189 F.4th 362. The court of appeals entered its judgment on August 25, 2026. Unless extended, the time within which to file a petition for a writ of certiorari will expire on November 23, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. Section 315(b) of the Communications Act, 47 U.S.C. 315(b), provides that, during the weeks preceding a primary or general election, "[t]he charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign" must be set at favorable rates known as the "lowest unit charge." 47 U.S.C. 315(b)(1)(A). In March 2026, the FCC's Media Bureau issued a public notice stating that, subject to certain conditions, political candidates, joint fundraising committees with non-candidate members, and political parties engaged in coordinated political activity are all entitled to the lowest unit charge. See NRCC v. Brown (Brown I), No. 26A274, slip op. 1 (Sept. 4, 2026).

In April 2026, four Democratic candidates for Congress filed an application for review with the full Commission, claiming that only political candidates are entitled to the lowest unit charge. See Brown I, slip op. 1. Two months later, while the application was still pending, the candidates filed a petition for review in the Fourth Circuit. See ibid. The National Republican Congressional Committee and National Republican Senatorial Committee (collectively, party committees) intervened. See id. at 2.

2. In August 2026, a divided panel of the Fourth Circuit held that it had jurisdiction to consider the petition for review, granted the petition, and vacated the public notice. App., infra, 1a-69a. The court rejected the contention that, because the public notice is a staff-level guidance document that is still being

reviewed by the full Commission and that lacks legal consequences, it is not a final order of the Commission and thus is not subject to judicial review. See id. at 10a-17a. On the merits, the court concluded that the public notice is unlawful. See id. at 18a-29a.

Judge Wynn issued a concurring opinion stating that the court of appeals' jurisdictional holding appropriately avoided the risk of "jurisdictional gamesmanship." App., infra, 31a; see id. at 31a-39a. Judge Wilkinson issued a dissenting opinion in which he concluded that the court of appeals lacked jurisdiction and that the public notice is in any event lawful. Id. at 40a-69a.

3. This Court granted the party committees' application for a stay pending the filing of a petition for a writ of certiorari. See Brown I, slip op. 4. The Court concluded that the Fourth Circuit "likely lacked statutory jurisdiction." Id. at 3. It also concluded that the equities favored a stay. Id. at 3-4.

In a separate case filed a month later by the same candidates, the same Fourth Circuit panel issued a writ of mandamus ordering the Commission to act on the candidates' application for review within 48 hours. See FCC v. Brown (Brown II), slip op. No. 26A477, slip op. 2 (Oct. 14, 2026). This Court stayed that order as well. See id. at 4-5.

4. The Commission "is required to resolve every application [for review] it receives." Brown I, slip op. 3 (citing 47 U.S.C. 155(c)(4)). Its resolution of the candidates' application could affect what further proceedings are appropriate in this case. The

additional time sought in this application for an extension of time would enable the government to await the FCC's decision and to continue consultation about what steps would be appropriate after that decision. Additional time is also needed, if a petition for a writ of certiorari is authorized, to permit its preparation and printing.

An extension of time would not prejudice the candidates. The candidates have contended that the public notice harms them by enabling their political adversaries "to blanket the airwaves with discount advertising" before the 2026 midterm elections. Opp. at 27, Brown II, supra (No. 26A476). But those elections have now concluded, and granting the extension sought in this application would still leave the Court with ample time to resolve the case before the next election cycle.

Respectfully submitted.

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Solicitor General
Counsel of Record

NOVEMBER 2026