No. 26A667

IN THE
Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION

Applicant,

v.

SHERROD BROWN, ET AL.

Respondents.

ON 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

RESPONDENTS' OPPOSITION TO APPLICATION FOR EXTENSION OF TIME

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Respondents Sherrod Brown, Jon Ossoff, Roy Cooper, and Kristen McDonald Rivet ("the Federal Candidates") oppose the application of the Federal Communication Commission ("the Commission") for an extension of time that would prevent this case from being heard this term if the Court grants certiorari and postpone a decision to 2028, in the midst of the 2028 election cycle. With no extension, the Federal Candidates plan to respond to any petition for certiorari by December 14, in sufficient time for the petition to be distributed for the Court's January 15, 2027, conference and—if certiorari is granted—heard this term. The Court should deny the Application to allow the issues raised by this case to be resolved well in advance of the 2028 election.

Last April, the Commission's Media Bureau issued a public notice extending the lowest unit charge for political advertising to joint fundraising committees with non-candidate members and to political parties engaging in coordinated expenditures in violation of Section 315(b) of the Communications Act, which requires broadcasters to offer lowest unit charge for "use . . . by" the *candidate* only. *See* App. 23a–28a. The Federal Candidates filed an expedited Application for Review before the Commission, but the Commission failed to take any action. App. 5a–7a. The Federal Candidates subsequently filed a Petition for Review before the Fourth Circuit. App. 7a–8a. The NRSC and the NRCC ("the party committees") intervened. App. 4a.

The Fourth Circuit held that it had jurisdiction to consider the petition for review and that the public notice is a final order of the Commission subject to judicial review based on the Commission's constructive denial of the Candidates' application.

App. 11a–15a. It further concluded that the public notice is contrary to the plain text of Communications Act and therefore vacated it. App. 18a–29a. The Commission and the party committees applied for a stay pending the filing of a petition for a writ of certiorari, which this Court granted. *Nat'l Republican Congressional Comm. v. Brown*, 609 U.S. 1082, 1085–86 (2026).[1]

The extension the Commission seeks would postpone the filing of their petition for certiorari until December 23. Even if the Federal Candidates then filed their brief in opposition just two weeks later, on January 6, 2027, the petition would not be considered until the February 19, 2027 conference—too late, barring an extraordinarily expedited briefing schedule, for the case to be heard this year. If the Court grants review, the Commission's requested extension would therefore push this case to next term, meaning that it would not be decided until the midst of the 2028 election cycle. Respondents Representative Kristen McDonald Rivet and Senator-elect Sherrod Brown are each up for reelection in 2028, and they will once again be subject to a barrage of discounted advertising in direct contravention of the text of the Communications Act if the public notice is permitted to stand.

This Court has repeatedly cautioned against "late-breaking, court-ordered rule changes" in the election context. *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 80

[1] The Federal Candidates subsequently filed a mandamus action requesting that the Fourth Circuit order the Commission to make a decision on the Candidates' Application for Review prior to the midterm elections. *See FCC v. Brown*, No. 26A476, 2026 WL 3080098, at *1 (U.S. Oct. 14, 2026). The Court stayed the Fourth Circuit's mandamus order, too. *Id.* at *3.

(2026). It should deny the Application and require any petition for certiorari in this case to be filed on time, so that the case can be heard this term if the Court grants review.

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Respectfully submitted,

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