Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 26A274

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, ET AL. *v.* SHERROD BROWN, ET AL.

ON APPLICATION FOR STAY

[September 4, 2026]

PER CURIAM.

On March 30, 2026, the Media Bureau, a division of the Federal Communications Commission (FCC), issued a "public notice" concerning the FCC's lowest unit charge (LUC) requirements. Pursuant to those requirements, "[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" in the weeks leading up to primary and general elections. 47 U. S. C. §315(b)(1)(A). The notice stated that political candidates, joint fundraising committees with noncandidate members, and political parties engaged in coordinated political activity were all entitled to the LUC subject to certain conditions.

On April 29, 2026, four Democratic candidates for Congress filed an application for review with the FCC, arguing that only political candidates were entitled to the LUC and asking the full Commission to set aside the public notice as unlawful. Two months later, while their application was still pending before the Commission, the candidates filed a petition for review against the FCC and the United States in the Fourth Circuit seeking the same relief. With the LUC requirements scheduled to take effect on September 4, 2026 ahead of the upcoming midterm elections, the Fourth

Circuit expedited briefing and oral argument. It also allowed the National Republican Congressional Committee and the National Republican Senatorial Committee (collectively, the party committees) to participate as intervenors. For their part, the FCC, the United States, and the party committees argued that the Fourth Circuit lacked statutory jurisdiction to consider the petition for review while the candidates' application for review was still pending before the Commission. They also defended the notice on the merits.

On August 25, 2026, a divided panel of the Fourth Circuit concluded that it had jurisdiction, granted the candidates' petition for review, and set aside the public notice. The Fourth Circuit then denied the party committees' motion for a stay pending disposition of a petition for writ of certiorari, and the mandate issued.

The party committees now seek a stay from this Court. To succeed, they must show "(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, we "balance the equities and weigh the relative harms to the applicant and to the respondent." *Ibid.* We grant the application.

On the first two factors, 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. To start, the Act provides that "[t]he filing of an application for review . . . shall be a condition precedent to judicial review of any order, decision, report, or action made or taken pursuant to a delegation." 47 U. S. C. §155(c)(7). It continues that "[t]he time within which a petition for [judicial] review must be filed . . . shall be computed from the date upon which public notice is given

of orders disposing of all applications for review filed in any case." *Ibid.*; see also 28 U. S. C. §2344 ("On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies."). The Commission is required to resolve every application it receives. 47 U. S. C. §155(c)(4). The 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.

Because the candidates' application for review was pending when they filed their petition for review, the Fourth Circuit likely lacked statutory jurisdiction to address their challenge. Its holding to the contrary splits with every other Circuit to have considered the issue. *Council Tree Communications, Inc.* v. *FCC*, 503 F. 3d 284, 287 (CA3 2007); *Alabama Power Co.* v. *FCC*, 311 F. 3d 1357, 1366 (CA11 2002); *International Telecard Assn.* v. *FCC*, 166 F. 3d 387, 388 (CADC 1999) (*per curiam*). Accordingly, the first and second stay factors weigh in favor of granting the application.

The party committees have also demonstrated that they will likely suffer irreparable harm absent a stay. 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 recissions 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, *National Republican Senatorial*

Committee v. *FEC*, 609 U. S. ___, ___–___ (2026) (slip op., at 7–10), cannot be remedied after the fact through refunds or reimbursements. Like the first and second stay factors, the third factor thus warrants granting the application.

* * *

For the foregoing reasons, the application for stay presented to THE CHIEF JUSTICE and by him referred to the Court is granted. The mandate of the United States Court of Appeals for the Fourth Circuit in case No. 26–1785 is recalled and stayed pending the filing and disposition of a petition for a writ of certiorari, if such a writ is timely sought. Should certiorari be denied, this stay shall terminate automatically. In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

It is so ordered.

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JUSTICE JACKSON, dissenting.

I would deny the stay. In my view, the applicants are not likely to succeed on the merits of their argument that the Fourth Circuit lacked statutory jurisdiction. See *Brown* v. *FCC*, ___ F. 4th ___, ___ (CA4 2026) (Wynn, J., concurring), App. 55 (concluding there is statutory jurisdiction on constructive-denial grounds because "an agency may not reserve to itself the power to defeat judicial review through delay or inaction"); see also *Santos-Zacaria* v. *Garland*, 598 U. S. 411, 417 (2023) (explaining that the Court "routinely" treats threshold requirements claimants must complete before filing a lawsuit as "nonjurisdictional" and has "yet to hold that any statutory exhaustion requirement is jurisdictional" (internal quotation marks omitted)).