

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' UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF IN
OPPOSITION TO PETITION FOR A WRIT OF MANDAMUS**

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September 15, 2026

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INTERVENORS' UNOPPOSED MOTION FOR LEAVE TO FILE SEPARATE BRIEF

Intervenors the National Republican Congressional Committee and National Republican Senatorial Committee seek leave to file a separate opposition brief from the FCC. While Intervenors join the Commission's brief and adopt those arguments by reference, *see* Fed. R. App. P. 28(i), they attach a separate, proposed opposition brief and contemporaneously seek leave due to the expedited nature of these proceedings. The proposed brief of 3,827 words explains additional reasons why the Court should deny the Candidates' extraordinary request.¹ The FCC consents and the Candidates do not oppose a separate brief.

Good cause exists for the Court to grant Intervenors leave to file a separate opposition brief. As the rules authorizing intervention reflect, a party has the right to participate as an intervenor if it has an "interest" in the action that could be "impaired" by an adverse decision and is not "adequately represented by existing parties." *Stuart v. Huff*, 706 F.3d 345, 349 (4th Cir. 2013) (cleaned up). That same rationale supports the filing of a separate opposition brief here. Intervenors' "partisan" interests easily distinguish them from the FCC's "public interests." *La Union del Pueblo*

¹ For clarity, Intervenors refer to the Petitioners in this mandamus action as "the Candidates," consistent with the Supreme Court's naming convention in the first *Brown* case. *NRCC v. Brown*, 609 U.S. ___, 2026 WL 2618462, at *2 (Sept. 4, 2026) (per curiam).

Entero v. Abbott, 29 F.4th 299, 309 (5th Cir. 2022) (allowing “[s]everal committees associated with the Republican Party” to participate as intervenor-defendants).

Unlike the FCC, Intervenors are *regulated parties* defending their partisan and political interests that the FCC, as the *regulator*, can’t possibly share. This Court has twice recognized this by granting the Republican Committees’ intervention in both *Brown* cases and permitting Intervenors to file a separate brief in the first *Brown* case. *Brown v. FCC*, Dkt. 36, No. 26-1785 (4th Cir. July 10, 2026). Likewise, the Supreme Court identified Intervenors’ distinct interests related to the upcoming election in analyzing the equities that supported a stay in the first *Brown* case. *NRCC*, 2026 WL 2618462, at *2. Intervenors’ distinct interests provide good cause for a separate opposition to address those interests at this stage.

Based on their unique interest and position as regulated parties, Intervenors’ separate opposition will aid the Court’s consideration of the issues. *See United States v. Ali*, 735 F.3d 176, 192 (4th Cir. 2013) (recognizing that “the court clearly ha[s] broad discretion to manage the docket” in a way that furthers judicial economy and aids in its consideration of the issues). As regulated parties, Intervenors uniquely can speak to how FCC regulation interacts with political advertising, regulated parties’ role in the regulatory process, and the implementation of the lowest unit charge rules in practice.

Plus, the Candidates expressly target the Republican Committees in their petition. Pet. 9. Only the Committees can speak for themselves in response to the Candidates' claims, making a separate opposition particularly useful in this case.

Additionally, no party will be prejudiced by Intervenors' separate opposition. The FCC consents to the relief requested and the Candidates recognize this by not opposing a separate brief. *See, e.g., Hussain v. Gonzales*, 477 F.3d 153, 156 (4th Cir. 2007) (explaining that if a party "does not file a response to a motion, it is deemed unopposed"). Accordingly, the unopposed motion is ripe for immediate resolution.

A separate brief also remains consistent with judicial economy in this case, as the Court permitted in the first *Brown* case. By filing their proposed opposition brief contemporaneous with this motion, and before the FCC's expedited deadline to answer the petition, Intervenors ensure no delay will be had by granting this motion. Intervenors have limited their opposition to only 3,827 words—about half of the 7,800 words allowed under FRAP 21(d). Upon granting this motion for leave, the Court can simply direct the Clerk of Court to deem the attached proposed opposition filed to complete the process without needing to await any subsequent filing. Intervenors' full participation will allow the parties to fully and efficiently address the issues pending before the Court.

CONCLUSION

For these reasons, the Court should grant Intervenors' unopposed motion for leave to file a separate brief and accept the attached, proposed brief as Intervenors' opposition brief to the mandamus petition.

Respectfully submitted,

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COMBINED CERTIFICATIONS

In accordance with the Federal Rules of Appellate Procedure and the Local Rules of this Court, I certify the following:

1. I am a member in good standing of the Bar of this Court.
2. This motion complies with the type-volume limitations of Fed. R. App. P. 27(d)(2) and 32(a)(7)(B) because it contains 717 words, excluding the parts exempted by Fed. R. App. P. 32(f).
3. This motion complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) & (a)(6) because it has been prepared using Microsoft Word in 14-point Palatino.
4. The text of the electronic motion is identical to the text in the paper copies.
5. The electronic file containing the motion was scanned for viruses using the most recent version of a commercial virus scanning program, and no virus was detected.

Dated: September 15, 2026

/s/ Thomas R. McCarthy
Thomas R. McCarthy

*Counsel for Intervenors
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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2026, this document was electronically filed with the Clerk of Court using the appellate CM/ECF system, which will provide notice and service on counsel for all parties.

Dated: September 15, 2026

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BY INTERVENORS NRCC & NRSC**

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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: September 15, 2026

/s/ Thomas R. McCarthy
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INTRODUCTION

The Candidate Petitioners first tried to appeal an agency order that didn't exist. Now they attempt to force the agency to issue that order so that they can appeal it. But mandamus "is controlled by equitable principles," *Greathouse v. Dern*, 289 U.S. 352, 359 (1933), and the Supreme Court already held that the equities cut against the Candidates, *NRCC v. Brown*, 609 U.S. ___, 2026 WL 2618462, at *2 (Sept. 4, 2026) (per curiam). The Supreme Court's stay order in *Brown I* controls the equities in this case. See *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). "To conclude otherwise would relegate the Supreme Court's stay order to a shallow exercise." *AFL-CIO v. Soc. Sec. Admin.*, 172 F.4th 361, 374 (4th Cir. 2026) (Wilkinson, J., concurring in the judgment).

Even if the Supreme Court hadn't weighed in, the Candidates are miles away from meeting the standard to obtain the "rare and extraordinary remedy" of mandamus. *Brown v. FCC (Brown I)*, __F.4th__, 2026 WL 2493115, at *20 (4th Cir. Aug. 25, 2026) (Wilkinson, J., dissenting). Their months-long delay in seeking mandamus undermines their equitable claims. Moreover, changing the rules at this stage would irreparably injure Intervenor's electoral interests and "First Amendment rights to speak and coordinate their political activities freely," as the Supreme Court already concluded. *NRCC*, 2026 WL 2618462, at *2. Ordering mandamus this late in the election

season after the statutory broadcasting rules have gone into effect would magnify those already irreparable injuries.

In any event, the Candidates don't meet the other requirements for mandamus. Even if they have a right for the Commission to rule on their application for review, they don't have a clear and indisputable right to a ruling on their preferred timeline. And the Commission isn't delaying review "'indefinitely.'" *Contra* Pet. at 16. It's actively considering the application and addressing concerns raised by this Court and the dissenting commissioner, as shown by the comment period opened earlier today. *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. That the comment period has been expedited is just further evidence that the Commission isn't delaying at all, much less indefinitely.

The Court should thus deny the petition. Anything less "is a direct affront to the Supreme Court and its stay order." Order Granting Mot. to Expedite, Doc. 12 at 2 (Wilkinson, J., dissenting).

BACKGROUND

Under the Federal Election Campaign Act's amendments to the Communications Act of 1934, broadcasters must 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” (LUC) entitlement. *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 have received the favorable LUC rate. And that’s the way it’s always been done.

The Candidates sought to upset that status quo. 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.

While their application was pending before the Commission, the Candidates filed a petition for review in this Court. On August 25, the Court granted the petition, denied the Commission's motion to dismiss, and set aside "the Public Notice issued by the FCC's Media Bureau." *Brown I*, 2026 WL 2493115, at *12. Judge Wilkinson dissented, noting that "[t]here is no final order here because the full Commission is still formulating its final decision." *Id.* at 17 (Wilkinson, J., dissenting). The next day, Intervenors moved for an emergency stay. The Court denied that motion on August 27 and *sua sponte* expedited issuance of the mandate to take effect that day. Judge Wilkinson dissented from that order.

Intervenors then applied for a stay in the Supreme Court. They argued that the Supreme Court would likely reverse for three reasons. First, the Media Bureau's public notice is an interpretive guidance document that isn't a judicially reviewable agency action. 28 U.S.C. §2342(1); 47 U.S.C. §402(a). Second, the Commission is still reviewing the Candidates' application for review and has not taken "final" agency action. 47 U.S.C. §155(c)(1), (7). And third, the statutory requirement of "use of any broadcasting station" by a candidate, *id.* §315(b)(1), "cannot be quite so narrow" to exclude party-candidate coordinated or joint fundraising committee ads for candidate use simply because another "committee is the one footing the bill," *Brown I*, 2026 WL 2493115, at *22 (Wilkinson, J., dissenting). Intervenors further argued

that a stay was necessary to prevent irreparable harm to their electoral interests and First Amendment rights, and that the equities and public interest counsel against late-breaking changes to election rules. The United States filed a response brief urging the Court to grant the application.

On September 4, the Supreme Court granted the application, stayed this Court's judgment, and recalled the mandate. *See NRCC*, 2026 WL 2618462, at *2. The Supreme Court held that "[b]ecause 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." *Id.* It further held that Intervenors "demonstrated that they will likely suffer irreparable harm absent a stay" because this Court'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)).

Four days later, the Candidates filed a petition for writ of mandamus in this Court. They seek an order "requiring the Federal Communications Commission to issue a decision on the Candidates' Application for Review by September 18." Pet. at 21. This Court granted Intervenors party status on September 10. Intervenors file this proposed brief to explain why the Court should deny the Candidates' extraordinary request.

LEGAL STANDARD

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). A petitioner seeking mandamus must meet three elements. First, mandamus is available “only” if the petitioner “has ‘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. Court for N. Dist. of Cal.*, 426 U.S. 394, 403 (1976)). Second, 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.’” *Id.* (citation omitted). And third, in the court’s “equitable discretion,” mandamus must be “‘appropriate under the circumstances.’” *Id.* at 755 (quoting *Cheney*, 542 U.S. at 380).

ARGUMENT

Taking the elements in reverse order, the equities are the simplest reason for denying the petition: The Supreme Court has already held that Intervenor would suffer irreparable harm, and it did not credit the Candidates’ claims of competitive harm. The Supreme Court’s stay order balanced the equities in this case already. Even if the Supreme Court hadn’t weighed in, the Candidates’ months-long delay before seeking mandamus weighs heavily against granting their extraordinary request. Moreover, even

assuming the Candidates have a right to an ultimate decision on their application for review, they don't have a "clear and indisputable" right to a decision on their preferred schedule. Finally, the Candidates have other avenues for relief—most obviously, in the Commission's newly opened comment period. Each element is sufficient reason to deny the petition.

I. The equities require denying the petition for writ of mandamus.

A. The Supreme Court's stay order controls on the equities.

When the Candidates sought rushed relief in *Brown I*, the Supreme Court put on the brakes for this election cycle. "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." Order Granting Mot. to Expedite, Doc. 12 at 2 (Wilkinson, J., dissenting). The Supreme Court's stay "inform[s] how a court should exercise its equitable discretion in like cases." *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). And if the Candidates' naming didn't give it away, "*Brown II*" is certainly "like" "*Brown I*." See Pet. at 1. That's why the same panel is handling 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 confirm the Candidates have no right to the writ.

At a minimum, the Supreme Court’s balancing of harms controls. “In applying the usual equitable standards, a court must, of course, balance the harms to the nonmoving party against the threat of irreparable harm to the party seeking” extraordinary relief. *Muffley ex rel. NLRB v. Spartan Mining Co.*, 570 F.3d 534, 544 (4th Cir. 2009). And here, the Supreme Court held that “[c]urrent 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.” *NRCC*, 2026 WL 2618462, at *2. That injury “cannot be remedied after the fact through refunds or reimbursements,” and it “implicates their First Amendment rights to speak and coordinate their political activities freely.” *Id.*

The Supreme Court also noted that “[i]n close cases, we ‘balance the equities and weigh the relative harms to the applicant and to the respondent.’” *Id.* at *1. And the Court didn’t credit the Candidates’ alleged competitive injuries. *Cf. Opp. to Appl. for Stay, NRCC*, No. 26A274, at *26-27. The Candidates even claim that the Supreme Court’s stay order “inflict[s] the irreparable harm [on them] that this Court had sought to avoid.” *Pet.* at 12. But that’s just a concession that the Supreme Court held that Intervenors’ irreparable harms outweighed the Candidates’ alleged competitive injuries. The Supreme Court’s equitable balancing of those harms in *Brown I* controls in *Brown II*. *See Boyle*, 145 S. Ct. at 2654.

B. The Candidates unduly delayed in seeking mandamus.

Even setting aside that the Supreme Court already balanced the equities and credited Intervenor's likely irreparable injuries, the Candidates cannot demand equitable relief after delaying for months before filing their petition. "Diligence is always expected of those who seek equitable relief, and courts of equity universally discountenance negligence." *Thurmond v. Chesapeake & O. Ry.*, 140 F. 697, 699 (4th Cir. 1905). "The doctrine of courts of equity to withhold relief from those who have delayed the assertion of their claims for an unreasonable length of time is thoroughly settled." *O'Brien v. Wheelock*, 184 U.S. 450, 493 (1902). 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 slip in through the backdoor to avoid the mandamus standard is no excuse. Even a "'convoluted procedural history'" and state officials' "'dogged refusal to cooperate in discovery'" doesn't excuse a party's obligation to show "reasonable diligence." *Id.* at 159. Plaintiffs seeking a preliminary injunction, for example, are not excused from acting promptly because of "their failure to plead the claims giving rise to their request for preliminary injunctive relief." *Id.*

Mandamus is the accepted vehicle for seeking to force an agency to act. The Candidates could have tried to seek mandamus from day one, as the

Commission, Intervenors, and Judge Wilkinson consistently noted. *See Brown I*, 2026 WL 2493115, at *20 (Wilkinson, J., dissenting); FCC Br. at 49, *Brown I*, Doc. 49, No. 26-1785; Interv. Mot. to Stay at 10, *Brown I*, Doc. 68, No. 26-1785. The Candidates' claims and litigation choices were always "circumstance[s] within [their] control." *Benisek*, 585 U.S. at 160. As the FCC and Intervenors pointed out in *Brown I*, the Candidates undoubtedly didn't seek mandamus then because they knew they couldn't meet the standard for the "rare and extraordinary remedy." *Brown I*, 2026 WL 2493115, at *20.

It's no answer to the diligence requirement that the Candidates first tried what they thought to be an easier (yet improper) avenue for relief. "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). "If a particular strategy later proves unavailing, the litigant cannot forsake her earlier tactical decision at will and 'attempt to change horses midstream in hopes of finding a swifter steed.'" *Cabrera v. Lynch*, 805 F.3d 391, 394 (1st Cir. 2015) (quoting *Genereux v. Raytheon Co.*, 754 F.3d 51, 59 (1st Cir. 2014)).

* * *

Even if the Supreme Court hadn't already resolved the equities against the Candidates in *Brown I*, and even if the Candidates hadn't unduly delayed, the equities would still cut against them. It is too late to change the

rules. The Candidates consistently flagged September 4, 2026, as the date by which they needed relief. *See* Mot. to Expedite, *Brown I*, No. 26-1785, Doc. 8-1 at 2-4. That date has come and gone. The lowest unit charge rules have kicked in. Parties have already negotiated, signed, and executed contracts under those rules, and they continue to do so. That’s why the Supreme Court granted the stay on September 4, the beginning of “the critical weeks leading up to the midterms.” *NRCC*, 2026 WL 2618462, at *2. Issuing mandamus now would thwart the Supreme Court’s order and throw election participants into confusion. *See OPAWL v. Yost*, 118 F.4th 770, 774 (6th Cir. 2024). And it would irreparably harm Intervenor’s electoral interests and First Amendment rights in the midst of the election. *See NRSC*, 146 S. Ct. at 2415. The equities require denying the petition.

II. The Candidates do not have an indisputable right to agency action on their preferred schedule.

The Candidates begin and end their argument with the premise that the Commission “shall” resolve each application for review. *See* Pet. at 15-16. On that premise, they demand an order requiring the Commission “to issue a decision on the Candidates’ Application for Review by September 18.” Pet. at 21. Missing from that logical leap is the other necessary premise: that the Commission has “clear duty to act” on the application for review *by September 18*. Nowhere do the Candidates cite a statutory deadline by which the Commission must resolve their application for review. The Commission

does not have a “clear duty to act” on the Candidates’ preferred schedule. *Lovitky v. Trump*, 949 F.3d 753, 760 (D.C. Cir. 2020).

The Candidates do not cite any precedent from any court ordering an agency to expedite an order of this kind. And the cases they rely on undermine their argument. As the Candidates put it, “[a]gency inaction is eligible for mandamus relief when the agency has ‘failed to take a discrete agency action that it is required to take.’” Pet. at 15 (quoting *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004)). But the past tense is telling: an agency has “failed” to act only when it has failed to take “a *discrete* action,” such as failing to make “some decision by a statutory deadline.” *Norton*, 542 U.S. at 63. Without a “specific, unequivocal command” that the Commission must resolve applications by a certain deadline, the pace of the Commission’s decisionmaking “is left to the agency’s discretion.” *See id.* at 63-65 (cleaned up). So even if the Court 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.”).

For similar reasons, the Candidates don’t meet the APA standard to “compel agency action unlawfully withheld or unreasonably delayed.” 5

U.S.C. §706(1). Indeed, they don't even seek relief under the Administrative Procedure Act, proceeding instead under the stringent mandamus standard. That's in part because the Commission hasn't "withheld" anything, let alone violated a statute by doing so. *See Norton*, 542 U.S. at 63 (emphasizing that "the only agency action that can be compelled under the APA is action legally *required*"). Nor can the Candidates argue unreasonable delay under the APA, since "a delay cannot be unreasonable with respect to action that is not required." *Id.* at 63 n.1.

Even if delay where there's no statutory deadline could warrant mandamus, "it is inconceivable for mandamus to be appropriate here after two months of agency inaction." *Brown I*, 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 In re Core Commc'ns*, 531 F.3d 849, 856 (D.C. Cir. 2008). 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). "[B]ut two months" (or even three) "in a difficult and complex case such as this one is plainly not egregious." *Brown I*, 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"

not “so egregious as to meet the demanding standard required for us to interfere with the agency process through a writ of mandamus”).

Moreover, mandamus exists “to ensure that an agency does not thwart [the circuit court’s] jurisdiction by withholding a reviewable decision” *after remand* to the agency. *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004). That’s why the D.C. Circuit has ordered mandamus following remand to “prevent the frustration of [judicial] orders previously issued.” *Potomac Elec. Power Co. v. ICC*, 702 F.2d 1026, 1032 (D.C. Cir. 1983); *accord Core Commc’ns*, 531 F.3d at 856; *Am. Rivers*, 372 F.3d at 419; *TRAC v. FCC*, 750 F.2d 70, 76 (D.C. Cir. 1984). But here, mandamus wouldn’t ensure jurisdiction on remand, since this Court didn’t remand anything to the Commission. It just “set aside” the public notice. *Brown I*, 2026 WL 2493115, at *12. And the Supreme Court stayed that judgment in any event, which is one more reason that granting mandamus here would be a direct affront to the Supreme Court’s order.

Relatedly, mandamus here wouldn’t protect “prospective jurisdiction,” *In re W. Coal Traffic League*, 108 F.4th 905, 909 (D.C. Cir. 2024), because as the Commission has explained,¹ the public notice is not a final agency action “from which legal consequences will flow,” *Bennett v. Spear*,

¹ See *In re Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Fed. Off. & All Authorized Committees*, No. DA 26-851, 2026 WL 2427163, at *1 (FCC Aug. 13, 2026).

520 U.S. 154, 177-78 (1997) (cleaned up). This Court lacks jurisdiction to review the public notice at all, so speeding up the Commission's review of that notice is futile, and thus not appropriate grounds for mandamus.

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*. And neither statute, nor precedent, nor an impending election requires the agency 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*, 907 F.3d at 754 (citation omitted).

III. The Commission is currently providing the Candidates other avenues for relief.

The Court should deny the petition for a third reason: the Commission is still considering their application. In fact, just today the Commission opened an expedited comment period in response to increased interest in the Media Bureau's public notice. *See* Public Notice DA 26-982, *supra*. In her dissent from the order on reconsideration, Commissioner Gomez criticized the Media Bureau for releasing the public notice "without seeking comment," which she claims 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). This Court likewise thought it relevant 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.” *Brown I*, 2026 WL 2493115, at *6. The Commission can hardly be faulted for addressing these concerns.

As the open comment period shows, the Commission is still considering the Candidates’ application. It is not tabling the “application indefinitely.” *Contra* Pet. at 16 (quoting *Brown I*, 2026 WL 2493115, at *20 (Wilkinson, J., dissenting)). In fact, the Commission is considering their application on a far “shorter timeline” than is typical, Public Notice DA 26-982, *supra*, at 2, which cuts strongly against mandamus, *see Va. Beach*, 42 F.3d at 886. The Candidates, Intervenors, and many others have an interest in participating in that comment period. No doubt the Commission will issue a decision after that deliberation “established agency procedure,” as Congress intended. *Id.* That deliberative process is “adequate means to attain the relief” the Candidates seek, even if it is not on their preferred timeline. *South Carolina*, 907 F.3d at 754 (quoting *Kerr*, 426 U.S. at 403).

* * *

This case is far from the “really extraordinary cause” for which mandamus is appropriate. *Cheney*, 542 U.S. at 380. The Commission is acting according to Congress’s design, and it has no obligation to bend that design according to the political whims of electoral candidates. “[T]his case is ‘squarely controlled’ by the Supreme Court’s earlier interim order granting

a stay.” *AFL-CIO*, 172 F.4th at 377 (Richardson, J., concurring in the judgment) (quoting *Boyle*, 145 S. Ct. at 2654). Granting mandamus here would thus be “a direct affront to the Supreme Court and its stay order.” Doc. 12 at 2 (Wilkinson, J., dissenting).

CONCLUSION

For these reasons, the Court should deny the mandamus petition.

Respectfully submitted,

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September 15, 2026

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COMBINED CERTIFICATIONS

In accordance with the Federal Rules of Appellate Procedure and the Local Rules of this Court, I certify the following:

1. I am a member in good standing of the Bar of this Court.
2. This opposition complies with the type-volume limitations of Fed. R. App. P. 21(d) and 32(a)(7)(B) because it contains 3,827 words, excluding the parts exempted by Fed. R. App. P. 32(f).
3. This opposition complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) & (a)(6) because it has been prepared using Microsoft Word in 14-point Palatino.
4. The text of the electronic file is identical to the text in any paper copies.
5. The electronic file containing the motion was scanned for viruses using the most recent version of a commercial virus scanning program, and no virus was detected.

Dated: September 15, 2026

/s/ Thomas R. McCarthy
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Counsel for Intervenor
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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2026, this document was electronically filed with the Clerk of Court using the appellate CM/ECF system, which will provide notice and service on counsel for all parties.

Dated: September 15, 2026

/s/ Thomas R. McCarthy
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