C.A. No. 24-0682

IN THE

UNITED STATES COURT OF APPEALS

FOR THE TWELFTH CIRCUIT

Vandalia Environmental Alliance v. BlueSky Hydrogen Enterprises

---

ON APPEAL FROM
THE MIDDLE DISTRICT OF VANDALIA

OPENING BRIEF OF PLAINTIFF-APPELLANT

Counsel for Vandalia Environmental Alliance:
Team 16

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Session Laws

Law Review Articles

Treatises and Other Authorities

JURISDICTIONAL STATEMENT

Plaintiff filed suit in United States District Court in the Middle District of Vandalia. Jurisdiction was proper under 18 U.S.C. § 3231. A preliminary injunction against Defendant was granted on November 24, 2025. Defendant filed timely notice of appeal on December 1, 2025. This Court has appellate jurisdiction under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUES PRESENTED

I: Whether the District Court correctly stayed its proceedings pending appeal of the preliminary injunction under *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023).

II. Whether the VEA has a special injury sufficient to give it standing to bring its public nuisance claim for BlueSky's PFOA air emissions.

III. Whether BlueSky's air emissions of PFOA is considered "disposal" under RCRA and thus the District Court correctly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim.

IV. Whether the irreparable harm prong of the *Winter* test considers only harm to the Plaintiff, or whether harm to the public can also be evidence of irreparable harm sufficient to issue a preliminary injunction.

STATEMENT OF THE CASE

A. The Vandalia Environmental Alliance is forced to abandon its mission.

For years, the Vandalia Environmental Alliance ("VEA") has operated the VEA Sustainable Farm in Mammoth, Vandalia as a space to "protect[] the State's natural environment" and "encourage and educate" the community about sustainable living. (R. 7). The VEA operates an "educational outreach center" on the small farm to teach "community members . . . how to start

and maintain a small farm or garden." (R. 7). All the food grown on the VEA's farm is "either used on site for events hosted at the farm or donated to . . . local community food banks and soup kitchens." (R. 7).

But recently, the VEA has been forced to "cease[] providing food to the community food banks and soup kitchens . . . out of fear that it could be unwittingly poisoning those who eat the food." (R. 9). Perfluorooctanoic Acid ("PFOA")—a toxic "forever chemical" in the PFAS family—has been detected in Mammoth's water supply and in the soil at the VEA's farm. (R. 7, 14).

B. BlueSky's facility burns PFOA-laden toxic sludge, turning a rural community into a dumping ground for "forever chemicals."

Vandalia has long struggled with "extensive waste management issues," but the arrival of BlueSky Hydrogen Enterprises ("BlueSky") turned a longtime problem into a public health crisis. (R. 4). BlueSky operates the SkyLoop Hydrogen Plant, which BlueSky touts as an "advanced" facility that "transform[s] complex waste streams" into hydrogen gas. (R. 4). But the facility's feedstock includes hazardous industrial byproducts, including wastewater from a treatment plant that accepts PFOA-laden "industrial sludge" from a nearby chemical company. (R. 7-8).

While BlueSky's website claims it sorts and conditions incoming waste to "ensure consistent quality," PFOA is thought to survive the incineration process used to generate BlueSky's hydrogen gas. (R. 8). The VEA alleges that PFOA particles exit through SkyLoop's stacks and are carried by prevailing winds in a northernly direction. (R. 6, 8). These particles are believed to settle onto the surrounding land, including the VEA's farm and the Mammoth Public Service District's ("PSD") wellfield. (R. 8).

Before BlueSky arrived, the water in Mammoth was safe; testing in 2023 "detected no PFOA in the Mammoth PSD water supply." (R. 7). However, shortly after SkyLoop commenced operations in January 2024, the water quality deteriorated rapidly. (R. 7-8). By December of that year, testing revealed "PFOA levels of 3.9 ppt in the Mammoth water supply." (R. 7). This sudden spike "coincided with SkyLoop's operations beginning." (R. 7).

C. Residents of Mammoth are slowly poisoned by drinking municipal water.

PFOA presents a severe danger to the community because it is a "persistent PFAS compound" that "does not readily break down in the environment" and "accumulate[s] in the body." (R. 7). Regulators have linked PFOA to "long-term health risks, including cancer, birth defects, and liver problems." (R. 7). Recognizing these dangers, the U.S. EPA recently established a Maximum Contaminant Level Goal ("MCLG") for PFOA of "0 ppt," indicating that there is no safe level of exposure. (R. 7).

Compounding the crisis, the Mammoth PSD currently "lacks any treatment technology capable of removing PFOA from drinking water." (R. 8). Installing the necessary treatment systems would be a total "system overhaul" that would involve installing equipment with "at least a twelve-month lag time." (R. 8). Consequently, the residents of Mammoth are consuming water containing detectable levels of a carcinogen "without any practical means of filtration or mitigation in place." (R. 8). An air emissions expert testified that if SkyLoop continues to operate unchecked, PFOA levels in the water could more than double, reaching "as high as 10 ppt by May 2026." (R. 14).

Having learned of the contamination, VEA members in Mammoth "have ceased drinking the public water" entirely. (R. 9). They must now "expend considerable funds each month buying bottled water." (R. 14). The public still remains at risk, with many residents continuing to drink

the water either due to "ignorance or an inability to afford an alternative water source." (R. 8). Expert toxicologist testimony confirmed that residents who continue to drink this water will suffer "irreparable harm" in the form of "increased health risks" before a trial even commences. (R. 14).

D. The District Court intervenes to stop the poisoning, but BlueSky stalls through tactical procedural maneuvers.

Faced with imminent irreparable damage to health and to the environment, the VEA filed suit against BlueSky to enjoin their continued PFOA emissions. (R. 11). They did so under two theories. First, the VEA brought a public nuisance claim against BlueSky. Second, the VEA brought a claim under the Resource Conservation and Recovery Act's ("RCRA") Imminent and Substantial Endangerment (ISE) citizen suit provision.

The VEA sought a preliminary injunction to halt the disposal of PFOA onto Mammoth's wellfield. (R. 11-12). On November 24, 2025, the District Court granted a preliminary injunction. (R. 14-15). BlueSky immediately appealed and moved to stay the District Court's proceedings entirely. (R. 15). Although the District Court "expressed its reluctance" and noted it "would not have used its discretionary powers to stay the case," it felt compelled by its interpretation of *Coinbase v. Bielski* to stay proceedings pending the appeal. (R. 16).

This stay halts the VEA's preparations for the upcoming trial on the merits, scheduled for May 2026, despite the significant resources already invested in discovery and experts. (R. 16). Consequently, the VEA sought and received permission for an interlocutory cross-appeal to challenge this misapplication of *Coinbase.* (R. 16).

SUMMARY OF THE ARGUMENT

The VEA's Motion for Preliminary Injunction was properly granted, but BlueSky's Motion to Stay Proceedings was not.

The District Court believed itself to be bound to issue an automatic stay of proceedings during the pendency of this appeal. But it was mistaken. Only appeals that involve the entire case require an automatic stay of the proceedings below. Recent cases have held that appeals that decide whether the case can be heard in federal court (as opposed to in arbitration or in state court) involve the entire case and therefore require an automatic stay. But the appeal of a grant of a preliminary injunction is not such a case. The District Court therefore retains jurisdiction over all aspects of the case not at issue on appeal.

As for the grant of the preliminary injunction, the District Court found that the VEA met all four *Winter* factors required to obtain its requested relief. Defendant BlueSky now challenges the VEA's standing to bring a public nuisance claim, the likelihood of success of a RCRA ISE claim, and whether there has been a showing of irreparable harm. But the District Court was correct each time.

The VEA has standing to bring a public nuisance claim because it can show that it suffered a special injury—an injury different in kind from what the public suffered. The residents of Mammoth suffer the harms associated with toxic waste polluting their water supply. But the VEA suffers in two additional ways. First, soil contamination from Defendant's facility constitutes a physical invasion of the VEA's land. And second, Defendant's PFOA has caused physical harm to the VEA's crops causing the VEA pecuniary loss.

The VEA is also likely to succeed on its RCRA ISE claim because Defendant's emissions of PFOA from its stacks constitute "disposal" under RCRA. To "dispose" under RCRA means "discharge, deposit . . . or plac[e] . . . solid waste or hazardous waste into or on any land." Defendant's PFOA emissions do exactly what the unambiguous plain language of RCRA

prohibits. And Congress, in passing RCRA to close loopholes in environmental law, designed the statute to prohibit conduct exactly like Defendant's.

Finally, the District Court properly considered irreparable harm to the public in its *Winter* analysis because the VEA seeks to enjoin Defendant from harming the public. When a private plaintiff brings a claim premised on the legal rights and interests of others, they are authorized to "invoke the general interest in support of their claim." That is exactly what the VEA is doing. The VEA seeks redress for the public interest through both public nuisance and RCRA's ISE provision; the District Court can therefore consider harm to the public in its *Winter* analysis.

Accordingly, we ask that the District Court's grant of preliminary injunction be affirmed. We also ask that the District Court's stay be reversed and the merits remanded to the District Court where they belong.

ARGUMENT

Two appeals have been consolidated into the present case. The first is about the propriety of the preliminary injunction granted by the District Court. The second is about the necessity of a stay of proceedings during the pendency of the first appeal. We proceed in reverse order, first addressing why a stay of proceedings is not required, then explaining why the District Court correctly issued the preliminary injunction.

To win a preliminary injunction, a plaintiff must "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). The District Court correctly determined that the VEA had satisfied all four prongs of the *Winter* test. The balance of equities and the public interest are not at issue on appeal. But the District Court was also correct in its determinations

that (1) the VEA has standing to bring a public nuisance claim; (2) the VEA is likely to succeed on the merits of its RCRA ISE claim; and (3) the VEA has shown irreparable harm under *Winter*.

I. The District Court was not required to stay its proceedings pending appeal of the preliminary injunction under *Coinbase*.

Under the Supreme Court's decision in *Griggs*, filing a notice of appeal "confers jurisdiction on the court of appeals and divests the District Court of its control over those aspects of the case involved in the appeal." *Griggs v. Providence Consumer Discount Co.*, 459 U.S. 56, 58 (1982). This is meant to prevent the confusion of two courts analyzing the same judgment simultaneously. *Griggs*, 459 U.S. at 58. This divestiture is limited: the District Court loses authority only over the specific issues under appellate review, not necessarily the entire litigation. *Id*.

To be sure, some interlocutory appeals are so sweeping that the "entire case" is essentially on appeal. *See e.g.*, *Coinbase v. Bielski*, 599 U.S. 736 (2023). In those instances, a mandatory stay is the only logical outcome. *See id*. But where the "entire case" is not on appeal, the District Court retains its traditional discretion to weigh the equities and decide whether to pause proceedings. *See Nken v. Holder,* 556 U.S. 416, 433 (2009) ("A stay is not a matter of right. . . . It is instead an exercise of judicial discretion") (internal quotation marks omitted).

Here, the District Court erred by interpreting *Coinbase* to impose a mandatory stay for all interlocutory appeals. The District Court's conclusion of law that informed its decision to impose a mandatory stay is reviewed de novo. *See In re Nassau Cnty. Strip Search Cases*, 461 F.3d 219, 224 (2d Cir. 2006).

A mandatory stay is unjustified for three simple reasons: first, an appeal of interim relief does not involve the "entire case;" second, a century of precedent confirms that proceedings on the merits should continue while a preliminary injunction is reviewed; and third, expanding

Coinbase to this context would create perverse incentives that threaten the administration of justice.

A. *An appeal of a preliminary injunction does not involve the "entire case."*

The *Griggs* principle is a matter of common sense—two courts should not adjudicate the same issues at the same time**.** With preliminary injunctions, there is no risk of that happening—the District Court should remain perfectly free to adjudicate the merits. *Coinbase* doesn't change the traditional discretionary nature of these decisions; it simply applies *Griggs* to the rare instance where the appeal asks whether the District Court has any business hearing the case at all. That is not our case.

In *Coinbase*, the defendant appealed a denial of a motion to compel arbitration. *Coinbase*, 599 U.S. 736. The Federal Arbitration Act ("FAA") affords the losing party this "right to an interlocutory appeal" for such denials. *Id.* at 738; 9 U.S.C. § 16(a). Notably, the FAA "does not say whether the District Court proceedings must be stayed." *Coinbase,* 599 U.S. at 740. To fill this gap, the Court assumed that "Congress enacted § 16(a) against a . . . background principle prescribed by th[e] Court's precedents." *Id.* In this instance, that background principle was *Griggs*. *Id.* at 741 ("The *Griggs* principle resolves this case").

The Court viewed the question on appeal as "whether the case belongs in arbitration or instead in the District Court." *Id.* Applying *Griggs*, the Court explained the "entire case" was essentially on appeal because the appeal decided the case's very survival in that forum. *Id*. Moreover, if proceedings continued while the appeal was pending, the specific benefit of arbitration—avoiding the costs of litigation—would be "irretrievably lost." *Id*. at 743. Proceeding would have "nullified" the very right being asserted on appeal. *Id*. at 743. Thus, "the

Griggs rule require[d] that [the] District Court stay its proceedings while the interlocutory appeal on the question of arbitrability" was underway. *Id*. at 745.

This Circuit adopted the reasoning of *City of Martinsville v. Express Scripts, Inc.*, wherein the Fourth Circuit applied *Griggs* to an appeal of a remand order under the federal-officer removal statute. 128 F.4th 265 (4th Cir. 2025). Like in *Coinbase,* the statute "expressly authorized interlocutory appeals," but did not mention whether a stay was mandatory pending such an appeal. *Id.* at 270 ("[n]othing in [the statute] overrides the background *Griggs* principle"). The "rationale of *Coinbase* applie[d]" because a federal officer remand order poses the same question: "Which forum will hear the case?" *Id.* at 270, 271. Applying *Coinbase*, the court reiterated "if the issue being appealed is *whether* the District Court [may act], the District Court cannot jump the gun before the appeal is resolved." *Id.* at 271. Like *Coinbase*, "the whole case" was essentially on appeal. *Id* at 270. And yet again, "[d]oing otherwise would largely defeat the point of the appeal." *Id.* (internal quotation marks omitted) (citing *Coinbase*, 599 U.S. at 743).

A preliminary injunction appeal is nothing like that. Several District Courts have correctly distinguished these jurisdictional disputes from appeals of preliminary injunctions under 28 U.S.C. § 1292(a)(1). *See Brown v. Taylor*, No. 2:22-cv-09203, 2024 WL 1600314, *1, *4 (C.D. Cal. Apr. 3, 2024). In *Brown*, the court denied a stay pending appeal of a preliminary injunction, reasoning that the appeal concerned only entitlement to injunctive relief based on the preliminary record, while the pending summary judgment motion concerned the ultimate merits of the claim. *Id*. Because the issues were distinct, the court found that the summary judgment proceedings were "not an 'aspect[] of the case involved in the appeal'" under *Griggs*. *Id*. at *4.

The *Brown* court explicitly declined to extend *Coinbase*, noting that unlike arbitration, an injunction appeal does not question "whether the case should be litigated in the District Court at all." *Id*. at *4; *See also North Mississippi Medical Center, Inc. v. Quartiz Technologies*, No. 1:23-cv-00003-CWR-LGI, 2024 WL 2262684, *1, *6 (N.D. Miss. May 17, 2024) (denying defendant's motion to stay, explaining that the "limited issue on appeal"—entitlement to a preliminary injunction—did "not fully resolve this case").

BlueSky's appeal concerns a narrow question: whether the VEA met its burden to justify a preliminary injunction. (R. 15). This is a far cry from the jurisdictional crises in *Coinbase* and *Martinsville*. BlueSky does not assert a right not to stand trial that would be "irretrievably lost" by the continuation of the litigation process. It does not challenge the court's authority to hear the case—it merely challenges the court's decision to put a pause to its pollution while proceedings continue. (R. 15). As the court in *Brown* correctly noted, there is no risk of conflicting decisions here. Because the appeal challenges a specific preliminary remedy rather than the forum itself, the "entire case" is not involved, and the District Court retains jurisdiction to proceed to the merits.

B. *More than one hundred years of federal civil procedure confirm that the District Court has discretion to deny the stay.*

The District Court's decision to stay all proceedings rests on a simple error: it mistook a gap-filler in the Federal Arbitration Act for a revision of settled civil procedure. While *Coinbase* applied the *Griggs* principle to manage a statutory silence regarding arbitration, there is no such silence here. On the contrary, the power of a trial court to proceed to the merits pending an injunction appeal has been the preferred practice for over a century.

We do not need to guess whether Congress intended to stall litigation during these appeals, because Congress told us. The Evarts Act of 1891—the statute that first authorized appellate

review of interlocutory orders granting injunctions—came with an explicit instruction: "the proceedings in other respects in the court below *shall not be stayed* unless otherwise ordered by that court during the pendency of such appeal." Act of Mar. 3, 1891, 26 Stat. 826 § 7. This created a background rule that has survived for over a hundred years. *See* 16 Charles A. Wright & Arthur R. Miller, Fed. Prac. & Proc. Juris. § 3921.2 (3d ed. 2025). As the Supreme Court paraphrased in 1906, an appeal of an equitable remedy does not transfer the "case as a whole" to the appellate docket; rather, the "case . . . is to proceed in the lower court as though no such appeal had been taken." *Ex parte Nat'l Enameling & Stamping Co.*, 201 U.S. 156, 162 (1906).

Coinbase didn't ignore this history—it cited it. The majority reasoned that when Congress wants to authorize an appeal without a stay, it "typically says so," pointing to a legislative practice involving "multiple statutory 'non-stay' provisions" enacted since 1891. *Coinbase,* 599 U.S. at 744; *see also id.* at 752 (highlighting the Judiciary Act of 1891) (Jackson, J., dissenting).

Following the 1948 revision of the Judicial Code, under § 1292(a)(1) it remains "accepted that the District Court retains power to act on the case pending appeal." Wright & Miller, Fed. Prac. & Proc. Juris. § 3921.2; *See e.g.*, *Zundel v. Holder*, 687 F.3d 271, 282 (6th Cir. 2012) ("A District Court retains jurisdiction to proceed on the merits pending an appeal from an order granting or denying a preliminary injunction"); *U.S. v. Lynd*, 321 F.2d 26, 28 (5th Cir. 1963) (noting the "general proposition that an appeal from the denial or granting of a preliminary injunction should not ordinarily delay the final trial of the case on its merits"); *U.S. v. Prince*, 688 F.2d 204, 215 (3d Cir. 1982) ("A District Court may proceed to determine the action on the merits even while an appeal is pending from denial of a preliminary injunction").

Far from demanding a stay, appellate courts frequently express frustration that trial courts haven't moved faster. The Eight Circuit, for example, pointedly noted that "so far as any

requirements of law are concerned, [the case] could have been tried already," precisely because the appeal "does not wholly divest the District Court of jurisdiction." *West Pub. Co. v. Mead Data Cent. Inc.*, 799 F.2d 1219, 1229 (8th Cir. 1986); *See also Soc'y for Animal Rights, Inc. v. Schlesinger*, 512 F.2d 915, 918 (D.C. Cir. 1975) (assuming "that the case will proceed forward expeditiously in the District Court despite the pendency of the § 1292(a) appeal").

The suggestion that *Coinbase*—a decision interpreting the Federal Arbitration Act—silently abrogated this unbroken chain of authority is nonsensical. The District Court has jurisdiction to proceed; it has since 1891.

C. *Extending* Coinbase *to preliminary injunctions would create an "automatic stay trap" that undermines public policy goals.*

By expanding *Coinbase* beyond its arbitration-specific context, the District Court has inadvertently constructed the precise "automatic stay trap" that Justice Jackson warned would "upend federal litigation as we know it." *Coinbase*, 599 U.S. at 760 (Jackson, J., dissenting). If every appeal of a preliminary injunction triggers a mandatory stay, then Section 1292(a)(1) ceases to be a shield against irreparable harm and becomes a weapon for inflicting delay.

To grant an automatic stay in this context is to award the defendant a windfall Congress never intended: the power to "press pause on the case—leaving plaintiffs to suffer harm, lose evidence, and bleed dry their patience and funding." *Id.* at 759 (Jackson, J., dissenting). As Justice Jackson noted, "[a]ny defense lawyer worth her salt" would immediately recognize that a preliminary injunction motion is no longer a risk, but a tactical opportunity. *Id.* at 761. Even if the defendant loses the motion, they can still appeal to "stop the trial court proceedings in their tracks." *Id.* Thus, the plaintiff who succeeds in showing a likelihood of success on the merits is punished for that victory. *See id.*

The damage is compounded because a mandatory stay strips the District Court of the ability to weigh the equities before halting litigation. *Id. a*t 752 ("discretionary stays are the default for interlocutory appeals"). Under the traditional *Nken* framework, a court retains the discretion to weigh the "public interest"—a vital safeguard in cases involving environmental hazards and public safety. *Id.* at 757. The mandatory stay obliterates this discretion, imposing a blanket rule that a defendant's convenience always outweighs the public's safety. *Id.* at 761.

BlueSky has sprung this precise trap. By invoking a mandatory stay, they have frozen the docket, preventing the District Court from addressing the "forever chemicals" currently threatening the Mammoth community. (R. 15-16). The "public interest" in resolving this case should be paramount, but this misapplication of *Coinbase* has prevented the District Court from fulfilling its duty to protect that interest. (R.16).

II. The VEA has suffered a special injury sufficient to give it standing to bring its public nuisance claim for BlueSky's PFOA air emissions.

The District Court's finding that the VEA has met the special injury requirement necessary to bring a public nuisance claim is a legal determination, reviewed de novo. *See Palmer v. Amazon.com, Inc.*, 51 F.4th 491, 512 (2d Cir. 2022).

A public nuisance is "an unreasonable interference with a right common to the general public." Restatement (Second) of Torts § 821B(1) (1979). It involves a "public right" that is "collective in nature," such as the right to public health, safety, peace, comfort, or convenience. *Id*. § 821B cmts. b, g. Generally, a public official or public agency has the authority to represent the state in such matters to "relieve the defendant of the multiplicity of actions that might follow if everyone were free to sue for the common wrong." *Id.* § 821C(2)(b) cmt. a. However, a private plaintiff may recover damages in an individual action if they "have suffered harm of a kind

different from that suffered by other members of the public exercising the right common to the general public that was the subject of interference." *Id.*

This 'special injury' must be qualitatively distinct from that suffered by the general public; it is "not enough that he has suffered the same kind of harm or interference but to a greater extent or degree." *Id*. §821C cmt. b. Nor does liability turn on uniqueness. Rather, it is the nature of the interference that matters. *See id.* § 821C illus. 10. The controlling factor is whether the plaintiff's damage is "distinguished from that sustained by other members of the public." *Id.* § 821C cmt. a.

The question before this Court is whether the VEA has standing to bring a public nuisance claim as a private plaintiff. It does. The VEA has suffered "special injury" distinct from the general public on two separate grounds: (1) physical harm to its real property; and (2) physical harm to its chattels resulting in pecuniary loss. Satisfaction of *either* theory is sufficient to confer standing.

A. *BlueSky's emissions physically invaded the VEA's private property, causing physical harm to land sufficient to establish a special injury different in kind from that suffered by the public.*

The VEA has standing because BlueSky's emissions physically invaded the VEA's private soil. Under the Restatement, a plaintiff suffers a special injury when a public nuisance causes "physical harm to [the plaintiff's] land," or interferes with the "use and enjoyment" of that land. *Id*. § 821C cmts. d, e.

The Third Circuit demonstrated how interference with use and enjoyment of private land fulfills the special injury requirement needed for a public nuisance claim. *Baptiste v. Bethlehem Landfill Co.*, 965 F.3d 214 (3d Cir. 2020). There, homeowners alleged that "noxious odors, pollutants and air contaminants" physically invaded their property, rendering their porches and pools unusable. *Id*. at 218. The District Court had dismissed the claim, reasoning that because the

odors affected thousands of households, the injury was too generalized to allow a private claim for public nuisance to be brought. *Id*. at 221. The Third Circuit rejected this and reversed, holding that the "critical difference. . . is not the number of persons harmed but the nature of the right affected." *Id*. at 223.

The court distinguished between the "general, non-possessory right to clean air," which is held in common with the public, and the right to the use and enjoyment of private land, which is "qualitatively different." *Id*. at 221. The "interference with private land supplies the basis for both [a] private nuisance claim and the particular harm required to sustain a private claim for public nuisance." *Id*. at 223. Because the plaintiffs alleged specific injuries to their property interests—such as the inability to use swimming pools or porches—they established a harm "different in kind" from the general public. *Id*. at 221.

Similarly, in *Weinstein v. Lake Pearl Park, Inc.*, the defendant's unauthorized filling of a public pond caused the plaintiffs' adjacent land to become "wetter" and created "spongy spots" due to underground springs pushing up against the new fill. 196 N.E.2d 638, 640 (Mass. 1964). The court held that the private plaintiffs had suffered a special injury because the nuisance had touched their soil specifically. *Id*. at 640-41. The creation of "spongy spots" was a tangible, physical change to the property's condition, constituting "special and peculiar damage" that separated the plaintiffs from the general public. *Id*.

Conversely, the Fourth Circuit's decision in *Rhodes* shows what a "special injury" is not. *Rhodes v. E.I. du Pont de Nemours & Co.*, 636 F.3d 88 (4th Cir. 2011). There, residents sued over PFOA contamination in their municipal water, but their claim failed because the pollution "did not interfere with any private water source," or otherwise grant standing for the private plaintiffs. *Id*. at 97. Their connection to the nuisance was strictly as customers of a municipal

utility. *Id*. The chemicals flowed through public pipes, not onto private soil. *Id*. The court emphasized that because the right to clean municipal water is shared equally by the public, the fact that the water was pumped into private homes "did not transform the right interfered with from a public right to a private right." *Id*.

Here, the VEA stands firmly on the side of *Baptiste* and *Weinstein*, distinct from the generalized claimants in *Rhodes*. While the residents of Mammoth generally suffer from the contaminated municipal water supply, the VEA suffers physical deposition of PFOA particulates onto its private soil. (R. 8, 9). The District Court found that the VEA's soil tested positive for these chemicals—a physical invasion that has altered the land's condition just as surely as the "spongy spots" in *Weinstein*, or the "noxious odors" in *Baptiste*. (R. 14). Unlike the plaintiffs in *Rhodes*, whose claim relied on general harm to a public resource, the VEA's own land has been poisoned. (R. 14). This physical accumulation of a "forever chemical" on private farmland is a tangible interference with the VEA's use and enjoyment of its property, constituting a special injury different in kind from the general public.

B. *The contamination rendered the VEA's crops unfit for consumption, inflicting physical harm to chattels and pecuniary loss sufficient to establish a special injury different in kind from that suffered by the public.*

Additionally, the VEA has standing because the contamination physically damaged its crops and caused significant harm to its commercial operations. While generalized economic loss is insufficient, the Restatement recognizes that "physical harm to [the plaintiff's] . . . chattels," and "pecuniary loss to the plaintiff" resulting from interference with an "established business" constitute special injuries distinct from the community's harm. Restatement (Second) of Torts § 821C cmts. d, h.

The District Court for the District of Maine provided guidance over this boundary in *Brugess v. M/V Tamano,* analyzing the economic fallout of an oil spill. 370 F. Supp. 247 (D. Me. 1973) *aff'd* per curiam, 559 F.2d 1200 (1st Cir. 1977). The court bifurcated the plaintiffs into distinct classes: commercial fisherman and clam diggers who had standing, and local hoteliers and restauranteurs who did not. *Id*. at 248-49, 250-51. The court explained the harm suffered by the commercial fisherman and clam diggers is unique because they have "an established business making commercial use of the public right with which the defendant interferes." *Id*. at 250 (quoting Prosser, Law of Torts § 88 at 590 (4th ed. 1971)). The hoteliers and restauranters, by contrast, merely lost customers because the beach had been polluted. *Id*. at 251. The court dismissed their claims as "derivative from that of the public at large," reasoning that an indirect loss of income is a "common misfortune," whereas the inability to ply one's trade is a distinct, actionable harm. *Id*.

Turning specifically to agriculture, the District Court for the Northern District of Illinois applied similar reasoning to a case involving the contamination of the U.S. corn supply. *In re StarLink Corn Prods. Liab. Litig.*, 212 F. Supp. 2d 828, 833-34 (N.D. Ill. 2002). There, corn farmers sued after their crop supply was contaminated by a genetically modified strain of corn approved only for animal feed. *Id*. at 835. The court rejected the defendant's attempt to group the farmers with the general public, holding that "[c]ommercial corn farmers, as a group, are affected differently than the general public." *Id*. at 848. While the general public has a "right to safe food," the farmers "depend on the integrity of the corn supply for their livelihood." *Id*. Because the nuisance caused "physical harm to chattels"—the crops themselves—and a resulting "pecuniary loss to business," the farmers' injury was qualitatively different from a consumer's generalized concern over food safety. *Id*.

Here, the VEA is the fisherman, not the hotelier; it is the farmer, not the consumer. The VEA is engaged in an established business making commercial use of its land to produce food and offer educational opportunities. (R. 7). The District Court found that the VEA has ceased operations because its crops—its chattels—have been physically contaminated by BlueSky's PFOA emissions. (R. 14-15). This is not a harm shared by the general public. (R. 8-9). By rendering the VEA's crops unfit for human consumption, BlueSky has inflicted a specific pecuniary loss on an established commercial operation, satisfying the special injury requirement.

* * * *

In sum, the VEA's injuries are legally distinct from the generalized harm suffered by the Mammoth community. While the public at large suffers a common interference with the municipal water supply, the VEA suffers a dual invasion of private property rights: the physical contamination of its soil, and the destruction of its commercial crops. (R. 8, 9). Whether viewed as an interference with the "use and enjoyment of the plaintiff's land," or as a "pecuniary loss," the VEA's injuries are distinguishable from that sustained by the general public. Accordingly, the VEA has sufficiently pleaded the special injury required to maintain a private action for public nuisance.

III. BlueSky's air emissions of PFOA is considered "disposal" under RCRA and thus the District Court correctly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim.

A preliminary injunction is appropriate when the plaintiff can show they are likely to succeed on the merits. *Winter*, 555 U.S. at 20. The VEA is likely to succeed on the merits of its ISE claim if Defendant's emission of PFOA is "disposal" under RCRA. Whether a plaintiff is likely to

succeed on the merits is a question of law reviewed de novo. *Liberty Coins, LLC v. Goodman*, 748 F.3d 682, 689 (6th Cir. 2014).

RCRA authorizes citizens to seek injunctive relief against any person "who . . . is contributing to the . . . disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or to the environment." 42 U.S.C. § 6972(a)(1)(B). "Disposal," in turn, is the "discharge, deposit . . . or placing of any solid waste or hazardous waste into or on any land." 42 U.S.C. § 6903(3). At issue here is whether Defendant's deposition of PFOA from its stacks onto the ground constitutes "disposal." According to (1) the plain language of the law; and (2) Congress's intent in passing RCRA, it does.

A. *The definition of "disposal" found in RCRA is unambiguous and includes BlueSky's release of PFOA at issue here.*

According to "settled principles of statutory construction . . . [courts] must first determine whether the statutory text is plain and unambiguous. *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009). If "the words of a statute are unambiguous," then the "judicial inquiry is complete." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992). In such cases, the interpretive process is easy: courts "must apply the statute according to its terms." *Carcieri*, 555 U.S. at 387.

Application of a statute "according to its terms" is no more complicated. To discern the meaning of words in a statute, courts defer first to definitions provided by the legislature. *Bostock v. Clayton County*, 590 U.S. 644, 654 (2020). But in the absence of statutory definitions, the "ordinary public meaning of its terms" controls. *Id.*

Turning to the statutory text at issue, a person disposes of waste if they "discharge," "deposit," or "place," it "into or on any land." 42 U.S.C. § 6903(3). The Oxford English Dictionary provides definitions of "discharge," "deposit," and "place." To "discharge" is to let "flow out" or "escape." *Discharge*, *Oxford English Dictionary*. To "deposit" is "to lay, put, or set

down." *Deposit*, *Oxford English Dictionary*. And to "place" is "to put or set," or "to put into, or cause to be in." *Place*, *Oxford English Dictionary*. All three definitions are broad. When read together, they make the definition of "disposal" sweeping indeed.

This common-sense understanding of RCRA's disposal provision has found support in other Circuits. *See Citizens Against Pollution v. Ohio Power Co.*, No. C2–04–CV–371, 2006 WL 6870564, *1, *5 (S.D. Ohio, July 13, 2006); *and United States v. Power Engineering Co.*, 10 F.Supp.2d 1145, 1158 (D. Colo. 1998). For instance, plumes of flue gas emitted from 830-foot stacks were "discharged or placed on land" when the plumes merely "touch[ed] the ground." *Citizens Against Pollution*, 2006 WL 6870564, at *5.

Similarly, the court in *United States v. Power Engineering Co.* noted the "broad scope" of RCRA's disposal provision in applying it to the discharge of a hexavalent chromium mist. 10 F.Supp.2d 1145, 1158 (D. Colo. 1998). The chromium mist was discharged from scrubbers, where it fell to the ground below. *Id.* (dismissing defendant's argument that discharge into the air does not constitute placement "into or on any land" as an "overly narrow interpretation of the definition" that would "exclude recognized acts of disposal . . . merely because the hazardous waste becomes airborne briefly before contacting the land).

Finally, in *Little Hocking Water Association*, PFOA released from the defendant's stacks was transported by wind until it fell on plaintiff's wellfield, where it eventually seeped into the water supply. *Little Hocking Water Association v. E.I. du Pont Nemours and Co.*, 91 F.Supp.3d 940, 949 (2015). The *Little Hocking* court explained that this was "precisely the type of harm RCRA aims to remediate in its definition of "disposal." *Id.* at 965.

Here, Defendant's facility discharges PFOA into Mammoth's wellfield. That Defendant's PFOA is first vented through stacks before settling into Mammoth's water supply is of no real

significance. PFOA enters the land shortly after leaving Defendant's facility. Nothing more is required by the plain language of RCRA. This court's analysis of this issue should stop here.

B. *A commonsense understanding of "disposal" is congruent with Congress's intent to close environmental loopholes by passing RCRA.*

Although the unambiguous plain language of RCRA is dispositive, a broad interpretation of "disposal" is consistent with Congress's intent. We need not look far afield to determine what Congress meant. RCRA was designed to "assur[e] that hazardous waste management practices are conducted in a manner which protects human health and the environment." 42 U.S.C. § 6902(a)(4). Because remedial action is often "expensive, complex, and time consuming," *id.* § 6901(b)(6), RCRA "require[s] that hazardous waste be properly managed in the first instance thereby reducing the need for corrective action at a future date." *Id.* § 6902(a)(5).

Congress acknowledged that environmental protection laws that addressed air and water pollution left the land largely unregulated, creating a loophole for polluters to escape regulation. *Id.* § 6901(b)(3) ("[A]s a result of the Clean Air Act, the Water Pollution Control Act, and other Federal and State laws respecting public health and the environment, greater amounts of solid waste . . . have been created."). But RCRA closed that loophole because land "is too valuable a national resource to be needlessly polluted by discarded materials" and "disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment." *Id.* § 6901(b)(1)-(2).

Section 6902 ends with a sweeping pronouncement: "[T]he national policy of the United States [is] that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible." *Id.* § 6902(b). This statement of policy was part of the same 1984 amendment to RCRA that added the citizen suit ISE provision. Act of Nov. 8, 1984, ch. 616, 98 Stat. 3221. The 1984 amendment "vastly extended the regulatory authority of the

Environmental Protection Agency (EPA) over . . . private industry in the area of toxic waste." Richard Ottinger, *Strengthening of the Resource Conservation and Recovery Act in 1984: The Original Loopholes, the Amendments, and the Political Factors Behind Their Passage*, 3 PACE ENV. L. REV. 1, 1 (1985).

Accordingly, RCRA is interpreted liberally. *See United States v. Waste Industries, Inc.*, 734 F.2d 159, 164 (4th Cir. 1984). For instance, in *United States v. Waste Industries, Inc.*, the Fourth Circuit held that "disposal" was not limited to "active human conduct" because that reading would "frustrate the remedial purpose of the Act." 734 F.2d 159, 164 (4th Cir. 1984). The court emphasized the gap-filling nature of RCRA, bolstering its conclusion by pointing out that "Congress expressly intended that this and other language of the Act close loopholes in environmental protection." *Id.*; *see also Fresh Air for the Eastside, Inc. v. Wate Management of New York, LLC*, 405 F.Supp.3d 408, 434 (W.D.N.Y. 2019) ("[A] citizen's RCRA [ISE] claim pursuant to § 6972(a)(1)(B) is 'essentially a codification of the common law public nuisance' and is intended to be construed 'more liberal[ly] than [its] common law counterparts.'" (quoting *Waste Industries*, 734 F.2d at 167.)).

Here, defendant's deposition of PFOA into Mammoth's wellfield is precisely the type of harm Congress sought to end. Mammoth's wellfield has been "needlessly polluted" by Defendant's hazardous waste. (R. 8). Remediation will be expensive, complex, and time consuming. (R. 8). And all the while, the public of Mammoth continue to drink municipal water that will elevate their chances of cancer and other diseases. (R. 8).

Without RCRA, defendant's deposition of PFOA is not adequately regulated by the Clean Air Act or any other environmental law. (R. 8). In fact, Defendant is in full compliance with their permits. (R. 8). This regulatory gap is the result of PFOA's relatively recent rise in national

prominence as a pollutant; it wasn't until 2019 that EPA released its PFAS Action Plan, which started the process of "evaluat[ing] the need for a MCL" and "beg[an] the necessary steps to propose designating PFOA and PFOS as 'hazardous substances.'" Kyle E Bjornlund & Elizabeth S Dillon, *Percolating PFAS*, 67 FED. LAW. 11, 12 (2020). Since then, EPA has established a MCL for PFOA, but it is not enforceable until 2029. (R. 7); *cf. Center for Community Action and Environmental Justice v. BNSF R. Co.*, 764 F.3d 1019, 1027–28 (9th Cir. 2014) (using Congress's rejection of air emissions standards for railyards as evidence that Congress left that regulatory decision to the states).

RCRA is the appropriate mechanism to fill the PFOA regulatory gap. The environmental injury caused by Defendant's PFOA deposition is to the land—precisely the subject of RCRA's concern. (R. 7). That the PFOA first travels through the air does not change the underlying nature of the degradation to the land and the groundwater therein. *Cf. BNSF*, 764 F.3d at 1023, 1030 (holding that particles inhaled by people *directly from the pollution source* and after reentry into the atmosphere fell outside RCRA's purview and within the purview of the Clean Air Act) (emphasis added).

Exempting Defendant's deposition of PFOA from a RCRA ISE claim would create, not close, a regulatory loophole. Were Defendant's PFOA placed directly on the ground, it would unquestionably be subject to an ISE claim. That the PFOA first travels through the air presents a distinction without a difference.

IV. Harm to the public can be evidence of irreparable harm sufficient to issue a preliminary injunction under the *Winter* test.

A preliminary injunction must be supported by a finding of a likelihood of irreparable harm. *Winter*, 555 U.S. at 20. This determination is reviewed for an abuse of discretion. *Burlington Northern & Santa Fe Ry. Co. v. Brotherhood of Locomotive Engineers*, 367 F.3d 675, 678 (7th

Cir. 2004). BlueSky does not challenge the trial court's finding that the continued consumption of PFOA-laden water will cause irreparable harm to the community of Mammoth. Instead, BlueSky challenges the court's holding that irreparable harm to the public can be used as evidence to support a preliminary injunction.

But they are wrong: plaintiffs who seek redress "on the basis of the legal rights and interests of others" are authorized to "invoke the general public interest in support of their claim." *Warth v. Seldin*, 422 U.S. 490, 501 (1975). This is particularly true in the environmental context, since "[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often . . . irreparable." *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987).

The VEA seeks to do exactly what the Supreme Court has authorized: to rely on irreparable harm *to the public* in seeking an injunction *to benefit the public*. This is appropriate for two reasons: first, RCRA explicitly authorizes the VEA to rely on public harms through its citizen suit provision; and second, the doctrine of public nuisance implicitly grants the VEA the same authority.

A. *RCRA explicitly authorizes courts to consider irreparable harm to the public by creating a public right enforceable by claims brought by private citizens.*

When Congress "grants an express right of action" premised on the "legal rights and interests of others," a plaintiff using that right of action may "invoke the general public interest in support of their claim." *Warth*, 422 U.S. at 501. In such circumstances, "concerns underlying the usual reluctance to exert judicial power when the plaintiff's claim to relief rests on the legal rights of third parties" are "outweighed" by congressional imperative. *Id.*

This makes good sense: so long as the plaintiff has established Article III standing, they may seek relief for violations of third-party rights because those are the rights that the cause of action was designed to protect. *See Sierra Club v. Morton*, 405 U.S. 727, 737 (1972); *see also*

Hazardous Waste Treatment Council v. State of South Carolina, 945 F.2d 781, 788 (4th Cir. 1991) ("[I]f litigation were to take so long that the absence of a new facility . . . would create irreparable harm, not only to HWTC but to the public . . . then the balance [of equities] might tip the other way.").

When Congress authorizes citizen suits, plaintiffs take the role of a "private attorney general" to enforce the public interest. *See Sierra Club v. Morton*, 405 U.S. at 737–38. Take for instance *West Virginia Rivers Coalition v. Chemours Company*. 793 F.Supp.3d 790 (S.D.W. Va. 2025). There, the plaintiff sued Chemours for a violation of the Clean Water Act, using the Clean Water Act's citizen suit provision. *Id.* at 817. The court emphasized that the plaintiff was acting as a "private attorney general[] to defend the rights of the public" through a statutory mechanism explicitly designed to protect the public from harm. *Id.* at 813. Naturally, the court granted a preliminary injunction on the basis of that public harm. *Id.* at 823.

Here, Congress "grant[ed] an express right of action" premised on the "legal rights and interests of others." *Warth*, 422 U.S. at 501; *see* 42 U.S.C. § 6972(a)(1)(B). Specifically, RCRA allows private citizens to sue persons who have imminently and substantially endangered "health or the environment." *Id*. The rights and interests of third parties—those related to the public's health and the environment—are at the heart of the RCRA citizen suit provision. Congress could not more clearly authorize courts to consider public harm in fashioning ISE claim remedies.

Here, the VEA seeks an injunction to prevent imminent and substantial harm to health and the environment. (R. 11). PFOA from Defendant's facility will "accumulate in the bod[ies]" of the residents of Mammoth and will "not readily break down in the environment." (R. 8). Uncontroverted evidence below established that even the period of time leading up to a trial would be enough to irreparably injure the public. (R. 14). Enjoining Defendant's behavior is

exactly what RCRA is designed to do. The District Court properly considered these public injuries to allow RCRA to work as intended.

B. *The doctrine of public nuisance implicitly authorizes courts to consider irreparable harm to the public by allowing a remedy for the interference with a public right through a private suit.*

A public nuisance is "an unreasonable interference with a right *common to the general public.*" Restatement (Second) of Torts § 821B(1) (1979) (emphasis added). Because of the public nature of the harm, public nuisance claims are usually brought by governments seeking injunctions to protect the public that the government represents. *Id.* § 821C(2)(b). But there is an exception: when a private plaintiff can show a "special injury," they can stand in for the typical government plaintiff as a private attorney general seeking relief on behalf of themselves and the community. *Id*. § 821C(1). In that way, the doctrine of public nuisance exhibits "hybrid characteristics of both private torts and public law." David Bullock, *Public Nuisance is a Tort*, J. TORT L. 137, 139 (2022).

The similarities between the public nuisance doctrine and citizen suit causes of action are obvious. In both cases, a community suffers widespread harm that is vindicated through litigation conducted by a private plaintiff. In fact, RCRA's ISE provision is "essentially a codification of the common law public nuisance." *Fresh Air for the Eastside*, 405 F.Supp.3d at 434.

Public nuisance doctrine does implicitly what RCRA made explicit: it allows plaintiffs to stand in for the public as a private attorney general. In considering the propriety of a preliminary injunction, a court remedies public wrongs through private litigation. The public harm inherent in the public nuisance claim invites the court to consider whether the public will be irreparably harmed without a preliminary injunction. And to reiterate: they will. Defendant does not

challenge the veracity of the allegations that underly the VEA's public nuisance claim. (R. 14). Nor could they. In the absence of a preliminary injunction, the public will be exposed to a toxic waste which will stay in the environment and in their bodies *forever*. (R. 8).

CONCLUSION

An interlocutory appeal of a preliminary injunction does not involve the entire case and therefore does not require an automatic stay of proceedings. Accordingly, we ask this Court to remand the merits of this trial back to the District Court where it belongs.

But the VEA has standing to bring a public nuisance claim against Defendant. The VEA is also likely to succeed on its RCRA ISE claim. And the VEA has shown irreparable harm sufficient to support a preliminary injunction. Accordingly, the District Court was correct in finding that VEA has established all four *Winter* factors—we ask the District Court's grant of the preliminary injunction be affirmed.

CERTIFICATE OF COMPLIANCE

Pursuant to *Official Rule* III.C.9, the Vandalia Environmental Alliance certifies that its brief contains 27 pages (36 total pages) in Times New Roman 12-point font.

We further certify that we have read and complied with the *Official Rules* of the National Energy Moot Court Competition at the West Virginia University College of Law. This brief is the product solely of the *Team Members* of *Team No.*16, and the *Team Members* of *Team No*.16 have not received any faculty or other assistance in the preparation of this brief.

Respectfully submitted,

Team No. 16

CERTIFICATE OF SERVICE

Pursuant to *Official Rule* IV, *Team Members* representing Plaintiff-Appellant Vandalia Environmental Alliance certify that our *Team* emailed the brief (PDF version) to the *West Virginia University Moot Court Board* in accordance with the *Official Rules* of the National Energy Moot Court Competition at the West Virginia University College of Law. The brief was emailed before 1:00 p.m. Eastern time, February 1, 2023.

Respectfully submitted,

Team No. 16