C.A. No. 24-0682

IN THE

UNITED STATES COURT OF APPEALS

FOR THE TWELFTH CIRCUIT

Vandalia Environmental Alliance
Appellant-Plaintiff,

v.

BlueSky Hydrogen Enterprises
Appellee-Defendant.

On Appeal From

United States District Court for the Middle District of Vandalia,

C.A. No. 24-0682

BRIEF OF APPELLANT-PLAINTIFF
Vandalia Environmental Alliance

BRIEF SUBMITTED BY:
Team No. 2
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JURISDICTIONAL STATEMENT

Jurisdiction of the United States District Court for the Middle District of Vandalia is invoked under 28 U.S.C. § 1331. The district court's federal question jurisdiction was based on a violation of the Resource Conservation and Recovery Act ("RCRA") under 42 U.S.C. § 6972 and maintains supplemental jurisdiction over the appellant-plaintiff's state law claim pursuant to 28 U.S.C. § 1367. The United States Court of Appeals for the Twelfth Circuit has jurisdiction over the appeal of BlueSky (defendant-appellee) regarding the preliminary injunction, as well as jurisdiction for the cross-appeal for the Vandalia Environment Alliance ("VEA") regarding the district court's grant of the motion to stay proceedings under 28 U.S.C. § 1292. This rule permits jurisdiction over appeals from district courts' granting of interlocutory orders to appellate courts.

The district court issued an order granting the VEA's motion for preliminary injunction on November 24, 2025, which was followed by BlueSky's timely appeal on December 1, 2025, as it fell within the 30-day limit pursuant to Fed R. App. P. 4(a)(1)(A). The district court granted the motion to stay proceedings pending appeal on December 8, 2025. Following the granting of this motion, the VEA requested an interlocutory cross-appeal over the stay order, which this Court permitted and consolidated with BlueSky's appeal of the granting of preliminary injunction on December 29, 2025. This cross-appeal is timely, as the VEA's request was filed within the 30-day period required under Fed R. App. P. 5(a)(2).

STATEMENT OF THE ISSUES PRESENTED

With Respect to this appeal, the United States Court of Appeals for the 12th Circuit ordered the Vandalia Environment Alliance and BlueSky to brief the following issues:

Issue 1: Whether the district court correctly stayed its proceedings pending appeal

of the preliminary injunction under *Coinbase, Inc. v. Bielski,* 599 U.S. 736 (2023).

Issue 2: Whether the VEA has a special injury sufficient to give it standing to bring its public nuisance claim for BlueSky's PFOA air emissions.

Issue 3: 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.

Issue 4: 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. Factual Background

The VEA is an environmental public interest and charitable organization based in the State of Vandalia. (R. 6-7). The key goals of the VEA are to protect Vandalia's natural environment and to promote values of sustainability in their community. (R. 6-7). They accomplish these goals through their educational outreach center and small farm, VEA Sustainable Farms, which supplies local community food banks and soup kitchens with food. (R. 7). VEA Sustainable Farms is located in a rural area of Mammoth, Vandalia, alongside numerous other farms. (R. 7).

Just 1.5 miles south of the farm is the SkyLoop Hydrogen Plant, which is a waste-to-hydrogen production plant owned by BlueSky Hydrogen Enterprises. (R. 4). Vandalia's less-restrictive environmental regulations have incentivized many companies to locate landfills in the state, and, in turn, this has led to an excess of waste management issues for the state to deal with. (R. 4-5). Built in lieu of a landfill, SkyLoop was designed as a plant to restructure waste streams

into a clean energy resource, thus accomplishing two sustainability goals at the core of the VEA's mission. (R. 4, 7).

However, in March of 2025, following the release of Unregulated Contaminant Monitoring Rule testing results for Mammoth's water supply, detectable levels of PFOA were present. (R. 7). PFOA is a persistent PFAS compound, commonly referred to as a forever chemical, "that does not readily break down in the environment and has been linked by regulators to long-term health risks, including cancer, birth defects, and liver problems." (R. 7). The sudden appearance of PFOA in Mammoth's water coincided with SkyLoop's operations in the area, leading the VEA to dig into the issue. (R. 7).

After a series of investigations and making Freedom of Information Act (FOIA) requests, the VEA learned that a primary waste feedstock for the SkyLoop Plant contains PFOA. (R. 7). This led to the discovery that PFOA is being emitted from SkyLoop's smokestacks which is then carried by prevailing winds to the north, and ending on lands in Mammoth including VEA Sustainable Farms and other surrounding farms. (R. 8). This has forced the VEA to throw out all of its food and stop supplying community non-profit organizations to ensure that no one is poisoned by eating PFOA-contaminated food. (R. 9). While this precaution has been taken by the VEA, other surrounding farms that are also within the bandwidth of SkyLoop's reach remain uninformed of the chemical's circulation. (R. 9).

After landing on the soil of Mammoth farms, PFOA then seeps into the ground and infects the Mammoth soil and ground water. (R. 8). Mammoth is a home for many members of the VEA, who utilize the city's water supply. (R. 8). Following the VEA's investigations, members residing in the area, after consuming the water under the guise of it being untampered, were advised to limit or avoid use of the water where necessary. (R. 8). This forced VEA

members into the short-term solution of purchasing bottled water in lieu of facing exposure to PFOA still present in the water supply. (R. 8). While members of the VEA have taken precautions to reduce immediate exposure, the city's water supply remains at risk to the entire community that continues to rely on it as their primary water source. (R. 8).

B. Procedural Background

This cross appeal arose from a suit brought by the VEA against BlueSky after the discovery of the PFOA presence in Mammoth. (R. 11). Following a 90-day period after sending notice of intent to sue to BlueSky, the VEA filed suit against the company. The Complaint alleged two claims: a public nuisance claim and an RCRA imminent and substantial endangerment ("ISE") citizen suit claim. (R. 11).

The public nuisance claim alleged that SkyLoop's air emissions of PFOA are a public nuisance, as the emissions have contaminated the entirety of Mammoth's drinking water supply, and Mammoth does not have the ability to remove this forever chemical before the water is distributed to customers. (R. 11). Vandalia's public nuisance statute generally follows the Restatement (Second) of Torts, which defines a public nuisance as "an unreasonable interference with a right common to the general public." (R. 9).

Private citizens are able to bring public nuisance claims if they can prove that they have suffered a "special injury" that differentiates themselves from the rest of the general public. (R. 10). The VEA alleges that they have such a "special injury" in this case due to VEA Sustainable Farms being contaminated with PFOA, thus halting their ability to run their educational center and donate food to local community food banks and soup kitchens. (R. 11). BlueSky argued that Mammoth residents drinking the water are the relevant comparative population, and as such, these other residents have been similarly injured by SkyLoop's PFOA emissions. (R. 12).

The VEA's second claim is made under the RCRA, which is a federal law enacted in 1976 designed "to fill the gaps of other federal environmental laws." (R. 10). The RCRA ISE claim asserted that SkyLoop's release of PFOA from their smokestacks constitutes "disposal" under the statute and that this presents an imminent and substantial endangerment to Mammoth farmlands and Mammoth's water supply. (R. 11). BlueSky argues that their air emissions of PFOA do not constitute "disposal" because the word "emission" is not included in the seven terms listed at the beginning of the definition in § 6903(3). (R. 12). However, BlueSky has conceded that all of the other requirements of the "disposal" definition found in RCRA § 6903(3) have been met in this case. (R. 12-13).

Following the filing of the original Complaint, the VEA motioned for preliminary injunction against BlueSky to cease its air emissions. (R. 11). In BlueSky's response in opposition to the preliminary injunction, the company argued that while the contamination of the water supply would be a public nuisance claim as opposed to a private one, the VEA lacked standing in making their public claim, and that the air emissions asserted as disposal in the RCRA ISE claim did not qualify under the statutory language as "disposal." (R. 12). BlueSky also asserted that the VEA failed to establish all *Winter* factors to establish a preliminary injunction. (R. 12).

The district court issued an order granting a preliminary injunction to the VEA, finding validity in both claims brought by the organization and that all *Winter* factors had been satisfied to establish a preliminary injunction, relying on the Mammoth residents aside from the VEA members continued to drink the contaminated water. (R. 14-15). Specifically, for the public nuisance claim, the district court found that the damage to VEA Sustainable Farms, in particular to their vegetable garden, were sufficient to establish a "special injury" differentiating them from the general public. (R. 15).

BlueSky appealed this judgement to the United States Court of Appeals for the Twelfth Circuit, praying for a vacation of the preliminary injunction order. (R. 15). BlueSky filed a motion to stay proceedings in the lower court pending the appeal. (R. 15). The District Court ordered an expedited response from the VEA regarding the stay motion, which the organization did respond to in opposition. (R. 16). Following response, the District Court granted BlueSky's motion to stay proceedings pending appeal. (R. 16). In this ruling, however, the district court expressed its reluctance to stay the case and stated that it would not have used its discretionary powers to stay the case pending this appeal. (R. 16). As a result, the VEA asked for an interlocutory cross-appeal of the stay order, which has been granted and consolidated with BlueSky's appeal of the initial granting of preliminary injunction. (R. 16).

SUMMARY OF THE ARGUMENT

First, the district court misinterpreted *Coinbase, Inc. v. Bielski* as requiring a categorical stay of all proceedings pending appeal of the preliminary injunction. *Coinbase* reaffirmed the narrow *Griggs* divestiture principle, under which a district court is divested of jurisdiction only over those aspects of a case involved in the appeal. Specifically, appeals that determine whether litigation may proceed at all or in what forum. An appeal from a preliminary injunction does neither. It addresses only whether interim relief was warranted under a preliminary standard, not whether the underlying claims may proceed to adjudication on the merits. Because the appeal here concerns only temporary relief and does not resolve standing, liability, or entitlement to permanent relief, the district court retained jurisdiction to continue merits proceedings. By treating *Coinbase* as mandating a stay of the entire proceedings, the district court extended that decision beyond its rationale and limits, and the stay order should therefore be reversed.

Second, the district court correctly held that the VEA has standing to pursue its public nuisance claim because it suffered a special injury distinct in kind from that suffered by the general public. The public right at issue is access to uncontaminated municipal drinking water, and the injury shared by the public arises from exposure through consumption of that water. By contrast, the VEA alleges direct contamination and loss of use of land it owns and operates, resulting in interference with agricultural production and food distribution. That property-based injury does not arise from the public's exercise of the common right and is therefore qualitatively different under settled public nuisance doctrine. Neither the Restatement nor governing precedent requires that a special injury be exclusive, and the existence of similar land-based harm to other farms does not defeat standing. Because the VEA's injury is different in kind from the public's shared injury, the special-injury requirement is satisfied, and the district court's standing determination should be affirmed.

Third, BlueSky's air emissions of PFOA from their SkyLoop Plant constitute "disposal" under RCRA § 6903(3). The term "discharge" is a much broader term than "emission" as these two terms are defined by Merriam-Webster, and it thus "discharge" encompasses the much narrower term of "emission." Even if "emission" was not under the umbrella of "discharge," the term "discharge" still applies to the releases being made from SkyLoop's smokestacks, as made clear by Merriam-Webster's definition of "smokestack." While the Ninth Circuit has held that a rigid order constrains what constitutes "disposal" under RCRA § 6903(3), this is a judicially-created alteration of the broad language of the statute. In addition, the case in which the Ninth Circuit erroneously reached this holding is factually distinguishable from the current case due to their case not involving the contamination of soil and water. Congress made it clear in RCRA § 6902(b) that the purpose of the RCRA was to create broad measures to curb the generation of

hazardous waste in the U.S., including involving private American citizens in the process with two citizen suit provisions, making it untenable to argue that Congress left any sort of loophole in its definition of "disposal." The other requirements of RCRA § 6903(3) are met, and the releases from SkyLoop's smokestacks constitute "disposal."

Lastly, the district court correctly included consideration of harm to the public when analyzing the irreparable harm prong of the *Winter* test. Courts must evaluate the *Winter* factors in light of the nature and purpose of the cause of action asserted. Both the VEA's RCRA ISE claim and public nuisance claim are inherently connected to the public. The RCRA expressly prioritizes the protection of human health and the environment, and the Restatement (Second) of Torts, which forms the foundation of the VEA's public nuisance claim, requires proof of harm to the public as a predicate to the plaintiff's specialized injury. The use of the public's harm in the irreparable harm prong is not redundant, as courts have applied the concept to more than one *Winter* factor. Irreparable harm, along with the balancing of equities and the public's interest prongs, utilize a distinct and essential analysis of harm to the public.

For these reasons, the Vandalia Environmental Alliance respectfully asks this honorable Court to uphold the district court's decision granting the motion for a preliminary injunction against BlueSky and to vacate the district court's subsequent order granting BlueSky's request to stay proceedings pending their appeal of the preliminary injunction.

ARGUMENT

Federal appellate courts review a district court's decision to grant or deny a stay pending appeal for abuse of discretion, while reviewing underlying legal conclusions *de novo* and factual findings for clear error. *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). The same standard is used when reviewing a district court's granting of preliminary injunction for abuse of discretion. *All.*

for the Wild Rockies v. Petrick, 68 F.4th 475, 491 (9th Cir. 2023). Such an abuse of discretion will be found where the district court has based its decision on "an erroneous legal standard or clearly erroneous finding of fact." *Id*. (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)).

Standing is a question of law, and therefore it will be reviewed *de novo* by the appellate court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). The court must review the district court's fact-finding regarding such issues for clear error. *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 865 (9th Cir. 2014). The VEA's RCRA ISE claim focuses on the statutory interpretation of specific terms, such as "disposal." As such, the standard of review for statutory construction is *de novo*. *Orquera v. Ashcroft*, 357 F.3d 413, 418 (4th Cir. 2003) (citation omitted).

I. The district court erred in concluding that it was required to stay all proceedings pending appeal of the preliminary injunction under the *Coinbase* decision.

A. Coinbase *reaffirmed a limited divestiture rule tied to protecting appellate jurisdiction, not a general litigation freeze.*

The district court's decision to stay all proceedings once BlueSky filed its interlocutory appeal from the preliminary injunction (R. at 16) is contrary to the holding in *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023), and the divestiture principle on which the *Coinbase* decision rests.

In *Coinbase*, the Supreme Court grounded their holding in the rule articulated in *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982), which provides that the filing of a notice of appeal "divests the district court of its control over those aspects of the case involved in the appeal." *Coinbase*, 599 U.S. at 740; *Griggs,* 459 U.S. at 58. The Court in *Griggs* explained that this "rule is a judge-made doctrine designed to prevent the confusion and waste of time that

might flow from putting the same issues before two courts at the same time." *Griggs*, 459 U.S. at 58.

The Fourth Circuit in *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265 (4th Cir. 2025) applied the same logic outside the arbitration context. There, the appeal challenged a remand order determining whether the case would proceed in federal court or in state court. *City of Martinsville*, 128 F.4th at 272. Because the appeal resolved which court could exercise jurisdiction at all, the court held that the district court was divested of authority to take further action related to the remand once the notice of appeal was filed. *Id.* The court emphasized that divestiture applied because "the district court did not fully transfer control over the case until it mailed a copy of the remand order to the state court," and that act was "a proceeding in the district court to which *Coinbase* applies." *Id.*

Thus, in both *Coinbase* and *City of Martinsville*, divestiture was triggered not simply because an interlocutory appeal had been filed, but because the appeal concerned whether litigation could proceed at all, be it in federal court or in any court. *Coinbase,* 599 U.S. at 741; *City of Martinsville*, 128 F.4th at 272. Neither case holds that every interlocutory appeal divests a district court of jurisdiction over the entire case. To the contrary, both decisions reaffirm the same limiting principle that divestiture extends only to "those aspects of the case involved in the appeal." *Coinbase,* 599 U.S. at 740; *Griggs,* 459 U.S. at 58. The scope of divestiture therefore turns on what the appeal seeks to resolve. Because *Coinbase* applies automatic divestiture only when the appeal determines whether litigation may proceed at all, *Coinbase* does not announce a general rule requiring district courts to halt all proceedings whenever an interlocutory appeal is filed. Therefore, the district court erred in its application of *Coinbase* as requiring complete divestiture

beyond the matters placed before the court of appeals, even though *Coinbase* itself rested on the appeal's resolution of whether the case could proceed at all. 599 U.S. at 740-41.

B. A preliminary injunction appeal does not decide whether litigation may proceed and therefore does not justify broad divestiture.

An appeal from a preliminary injunction does not present the type of question that triggers complete divestiture under *Coinbase*. Courts have held that *Coinbase* does not apply to appeals from preliminary injunctions because such appeals do not determine whether litigation may proceed or which court may hear the case. *N. Miss. Med. Ctr., Inc. v. Quartiz Techs.*, No. 23-cv-00003, 2024 WL 2262684, at *7 (N.D. Miss. May 17, 2024); *U.S. Sec. & Exch. Comm'n v. Reven Holdings, Inc.*, No. 1:22-cv-03181, 2024 WL 3691603, at *1 n.1 (D. Colo. Aug. 7, 2024).

A preliminary injunction order "only determin[es] whether [the plaintiff] ha[d] met his burden for a preliminary injunction" and is "not a final decision on the merits." *Brown v. Taylor*, No. 2:22-cv-09203, 2024 WL 1600314, at *4 (C.D. Cal. Apr. 3, 2024). The legal issues raised on appeal from a preliminary injunction, therefore, differ from those presented at the merits stage. *Id.* A preliminary injunction appeal asks whether interim relief was properly granted under the preliminary injunction standard, while the merits determination asks whether the plaintiff is ultimately entitled to permanent relief on a fully developed record. *Id.* Because those inquiries perform different judicial functions, review of a preliminary injunction does not place the underlying claims before the court of appeals.

Consistent with that distinction, courts have permitted district court proceedings to continue while a preliminary injunction appeal is pending. *See Forester-Hoare v. Kind*, No. 23-cv-537-JPS, 2025 WL 101660, at *1 (E.D. Wis. Jan. 15, 2025) (declining to stay proceedings pending preliminary injunction appeal). Unlike the appeals in *Coinbase* and *City of Martinsville*, which resolved whether the case could proceed in a particular forum or at all, an appeal from a

preliminary injunction addresses only whether temporary relief was warranted.. Therefore, the preliminary injunction appeal does not justify case-wide divestiture because this appeal does not determine whether the litigation may proceed.

C. The district court was not required to stay the case because the appeal only concerns interim relief, not whether the litigation may proceed at all.

The appeal now before the Court is limited to whether the district court properly granted temporary relief. (R. 16). It does not decide whether the VEA ultimately has standing, whether BlueSky violated the statute, or whether permanent relief is warranted. Those questions remain for resolution on a full record at the merits stage. *Brown*, 2024 WL 1600314, at *4. The appeal before this court does not resolve whether litigation may proceed at all because it does not place the entire case within "those aspects of the case involved in the appeal" within the meaning of *Griggs* and *Coinbase*.

Unlike *Coinbase* and *City of Martinsville*, this appeal does not determine whether the case belongs in another forum or whether litigation must cease entirely. In *Coinbase*, the appeal decided "whether the case belongs in arbitration or instead in the district court." *Coinbase*, 599 U.S. at 741. In *City of Martinsville*, the appeal concerned whether the case would remain in federal court or be transferred to state court. *City of Martinsville*, 128 F.4th at 272. Here, by contrast, the appeal neither controls the forum nor extinguishes the litigation. It asks, as in *Brown*, only whether interim relief was properly granted while the case proceeds. *Brown*, 2024 WL 1600314, at *4.

The district court therefore was not divested of authority to continue adjudicating the merits. A preliminary injunction appeal does not convert a provisional ruling into a final one, nor does it transform a limited interlocutory appeal into a case-dispositive proceeding. A preliminary injunction order "only determin[es] whether [the plaintiff] ha[d] met his burden for a preliminary injunction" and is "not a final decision on the merits." *Id*. Because the appeal concerns only

temporary relief, the district court retained jurisdiction over the merits and was not required to impose a categorical stay. *See, e.g., Forester-Hoare*, 2025 WL 101660, at *1; *N. Miss. Med. Ctr.*, 2024 WL 2262684, at *7; *Reven Holdings*, 2024 WL 3691603, at *1 n.1.

The stay has concrete consequences. The record explains that the VEA has already invested substantial resources in discovery and expert witnesses in preparation for the May 2026 trial. (R. at 16). A rule requiring that automatic stays whenever a preliminary injunction is appealed would halt litigation even where the appeal concerns only interim relief, delaying resolution of the merits without serving the purpose of divestiture. Therefore, *Coinbase* requires case-wide divestiture only when an interlocutory appeal determines whether litigation may proceed at all or in what forum. An appeal from a preliminary injunction does neither. Because this appeal addresses only whether temporary relief was warranted, it does not place the entire case "involved in the appeal," and the district court retained jurisdiction to continue proceedings. By treating *Coinbase* as mandating a categorical stay, the district court extended that decision beyond its rationale and beyond its limits. This Court should hold that *Coinbase* does not apply to preliminary injunction appeals and that the stay was entered in error.

II. The district court correctly held that the VEA has standing to bring a public nuisance claim because it suffered a special injury distinct from the general public.

A. Public nuisance claims require a "special injury" distinct from the public's exercise of the same public right.

A public nuisance is an unreasonable interference with a right common to the general public. Restatement (Second) of Torts § 821B(1) (A.L.I. 1979). Although public nuisances are ordinarily addressed by the state, a private party may maintain an action when it has suffered a "special injury" distinct from that suffered by the public at large. *In re Lead Paint Litig.*, 191 N.J. 405, 436-37 (2007). That special-injury requirement governs whether a private plaintiff, such as the VEA, may invoke the courts to abate an interference with a public right.

The Restatement makes clear that the inquiry is qualitative, not quantitative. A private plaintiff may recover only if it "has suffered a harm of a different kind from that suffered by other persons exercising the same public right." Restatement (Second) of Torts § 821C cmt. b (A.L.I. 1979). Thus, the relevant comparison is not to all persons affected by a defendant's conduct in any way, but to those exercising the same public right that forms the basis of the nuisance claim. *Id*. The focus is therefore on the nature of the plaintiff's injury, not on how many others may also have been affected.

This principle has long governed public nuisance law. *See Arizona Copper Co. v. Gillespie*, 230 U.S. 46, 57-58 (1913). In *Arizona Copper*, the Supreme Court held that a downstream landowner had standing to abate pollution of a public river because contamination caused a "special injury" affecting the use and value of his property, even though the pollution affected an entire agricultural community. *Id.* The Court emphasized that the existence of widespread harm did not defeat standing where the plaintiff suffered a distinct, property-based injury. *Id*.

B. The relevant public right here is access to uncontaminated municipal drinking water.

BlueSky correctly concedes that the alleged contamination of the Mammoth municipal water supply falls into public nuisance, not private nuisance. (R. at 12). The dispute, therefore, centers on whether the VEA has suffered a special injury "different from those directly arising from the common right." *In re Lead Paint Litig.*, 191 N.J. at 436-37

The public right at issue is access to uncontaminated municipal drinking water, a core public health interest protected by public nuisance law. *See* Restatement (Second) of Torts § 821B(1); Restatement (Second) of Torts § 821B(1) cmt. a (A.L.I. 1979). Here, the injury shared by the general public is exposure to PFOA through consumption of water supplied by the Mammoth Public Service District. *See* (R. at 8) (asserting PFOA contamination of Mammoth municipal drinking water); *See also Rhodes v. E.I. du Pont de Nemours & Co.*, 657 F. Supp. 2d

751, 769-70 (S.D.W. Va. 2009) (treating exposure to contaminants through a municipal water supply as a generalized public injury); *In re Lead Paint Litig.*, 191 N.J. at 436-37 (defining public nuisance injury as harm directly arising from the common public right).

Therefore, the proper comparative population is residents exercising that same public right by drinking municipal water, not every person or entity affected in some manner by SkyLoop's operations. Restatement (Second) of Torts § 821C cmt. b (A.L.I. 1979). BlueSky's attempt to redefine the comparison class to include surrounding farms disregards the Restatement's instruction that the inquiry must remain anchored to the public right that defines the nuisance claim. *See Id*. (limiting the comparison to "other persons exercising the same public right").

C. The VEA's injury is different in kind because it does not arise from the public's consumption of drinking water.

Unlike the general public, the VEA does not assert injury based solely on consumption of contaminated drinking water or increased health risk shared by all municipal water customers. Instead, the VEA alleges direct contamination and loss of use of specific parcels of land it owns and operates as a result of SkyLoop's PFOA emissions, including interference with agricultural production and food distribution. Such injuries do not "directly arise from the common right" to drink municipal water. *In re Lead Paint Litig.*, 191 N.J. at 436-37. They arise from interference with property interests separate from the public's shared use of the water supply. Instead, they constitute classic nuisance harms involving interference with the use and enjoyment of land, an injury historically recognized as "special" in public nuisance cases. Restatement (Second) of Torts § 821B cmt. g (A.L.I. 1979); Restatement (Second) of Torts § 821B cmt. i (A.L.I. 1979); *Arizona Copper*, 230 U.S. at 57-58.

The fact that other landowners may have suffered similar land-based contamination does not defeat standing. Neither *In re Lead Paint Litigation* nor the Restatement requires a plaintiff's

injury to be unique. So long as the injury to the VEA's land is different in kind from the injury suffered by members of the public exercising the common right to drink municipal water, the special-injury requirement is satisfied. The doctrine requires only that the injury be qualitatively different from the injury suffered by the public exercising the common right, not that the plaintiff be the sole victim. Restatement (Second) of Torts § 821C cmt. b (A.L.I. 1979).

D. Rhodes v. E.I. du Pont de Nemours & Co. *Involved Only Injuries Arising From the Public's Use of Municipal Drinking Water.*

In *Rhodes*, the court addressed whether private plaintiffs had standing to pursue a public nuisance claim based on alleged contamination of a municipal drinking water supply. 657 F. Supp. at 768-69. There, the plaintiffs alleged exposure to contaminated drinking water and an increased risk of disease associated with that exposure. *Id.* at 768-70.

The court held that those alleged injuries were shared by all customers of the municipal water system and therefore did not constitute a special injury sufficient to confer standing to maintain a public nuisance claim. *Id.* at 769-71. In reaching that conclusion, the court explained that the plaintiffs "have not suffered a special injury different in degree and kind from the other [municipal water] customers." *Id.* at 769-70. The court's analysis turned on the fact that the plaintiffs' alleged injuries arose solely from their status as water customers exercising the same public right as the general population. *Id.* at 769-71.

The *Rhodes* court grounded its analysis in Restatement (Second) of Torts § 821C cmt. b, which limits private actions for public nuisance to plaintiffs who have suffered a harm "of a different kind from that suffered by other persons exercising the same public right." *Id.* at 771 (quoting Restatement (Second) of Torts § 821C cmt. b (A.L.I. 1979)). Applying that principle, the court distinguished cases in which plaintiffs alleged direct, property-based injuries different in kind from the generalized harms suffered by the public at large. *Rhodes,* 657 F. Supp. at 771.

By contrast, the VEA alleges direct contamination of land it owns and operates, resulting in loss of use of its farm and agricultural activities. Those alleged harms do not arise from the public's shared consumption of municipal drinking water, but from interference with specific property interests held by the VEA. *See Rhodes,* 657 F. Supp. at 771 (recognizing that property-based injuries may constitute a special injury under § 821C); *Arizona Copper*, 230 U.S. at 57-58. For that reason, *Rhodes* does not foreclose standing here, but instead illustrates the distinction between generalized water-exposure claims and property-based injuries sufficient to satisfy the special-injury requirement. *Rhodes*, 657 F. Supp. 2d at 769-71.

E. BlueSky's "other farms" argument misstates the special-injury standard.

BlueSky argues that because surrounding farms have allegedly suffered similar land-based harm, the VEA's injury cannot be "special." *See* (R. at 12). That argument rests on an incorrect premise that a special injury must be exclusive. *See* Restatement (Second) of Torts § 821C cmt. b (A.L.I. 1979) (requiring a harm "of a different kind," not an injury suffered by no one else); *Arizona Copper*, 230 U.S. at 57-58. (recognizing standing based on property injury despite pollution affecting an entire agricultural community).

The governing authorities impose no such requirement. The public right at issue is access to uncontaminated municipal drinking water. *See* Restatement (Second) of Torts § 821B(1) (A.L.I. 1979); Restatement (Second) of Torts § 821B(1) cmt. a (A.L.I. 1979). Although other farmers may have suffered similar contamination of their land, the law does not require the VEA to be the only landowner harmed. *See* Restatement (Second) of Torts § 821C cmt. b; *Arizona Copper*, 230 U.S. at 57-58. The relevant inquiry is whether injury to the VEA's farmland is different in kind from the public's shared injury arising from contamination of the drinking water supply. *See In re Lead Paint Litig.*, 191 N.J. at 436-37; *Rhodes*, 657 F. Supp. 2d at 769-71.

The district court erred in concluding that it was required to stay all proceedings pending appeal of the preliminary injunction. An appeal from a preliminary injunction addresses only whether interim relief was properly granted; it does not determine whether the litigation may proceed at all or in what forum. Under *Coinbase* and *Griggs*, divestiture extends only to those aspects of the case involved in the appeal. Because this appeal concerns only temporary relief, the district court retained jurisdiction to continue adjudicating the merits.

The district court correctly held that the VEA has standing to pursue its public nuisance claim. The public right at issue is access to uncontaminated municipal drinking water, and the injury shared by the public arises from exposure through water consumption. By contrast, the VEA alleges direct contamination and loss of use of land it owns and operates. That property-based harm is different in kind from the public's shared injury and satisfies the special-injury requirement. The existence of similar land-based harm to other farms does not defeat standing. Accordingly, the stay order should be reversed, and the district court's standing determination should be affirmed.

III. BlueSky's air emissions of PFOA constitute "disposal" under the RCRA because of the definitions of the words in the statute's text and Congress' stated purpose in enacting the statute.

As the federal courts have "repeatedly noted, 'the starting point for interpreting a statute is the language of the statute itself.'" *Hallstrom v. Tillamook Cty.*, 493 U.S. 20, 25 (1989) (quoting *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)). In creating the RCRA, and § 6903(3) in particular, Congress employed numerous overlapping terms in order to craft a statute of broad application to "fill the gaps of other federal environmental laws." (R. 10). By taking this approach, Congress made sure to cover their bases so that entities looking to grasp for loopholes would be out of luck. Both the language and stated intent of Congress contained in the RCRA make it clear that BlueSky's emissions constitute the discharge

of a hazardous solid waste that is emitted into the air, lands on the surrounding farmland (including VEA Sustainable Farms), and then seeps into the ground to contaminate the soil and Mammoth's water supply.

A. The term "discharge" in RCRA § 6903(3) encompasses the term "emission," and even if it did not, the term "discharge" applies to the releases from SkyLoop's smokestacks.

RCRA § 6903(3) begins with a list of seven different terms that Congress has selected as methods by which waste can be disposed of under the statute. The first of these terms is "discharge," which is a broad term for which the Merriam-Webster Dictionary has 36 different definitions. 42 U.S.C. § 6303(3); *Discharge*, MERRIAM-WEBSTER, https://merriam-webster.com/dictionary/discharge [https://perma.cc/S9QY-J7SF]. Multiple of the definitions are pertinent to this context. One of these definitions is "to give outlet or vent to : emit," for which Merriam-Webster uses the following example: "vehicles *discharging* exhaust fumes." *Id.* Two more of these definitions are "something that…releases" and "something that is emitted." *Id.*

In contrast, "emission" is a much narrower term for which Merriam-Webster only has seven different definitions. *Emission*, MERRIAM-WEBSTER, https://merriam-webster.com/dictionary/emission [https://perma.cc/YX9M-ZSFF]. Chief among them in this context is as follows: "substances *discharged* into the air (as by a smokestack or an automobile engine)." *Id.* (emphasis added). These definitions make it clear that "emission" is regarded as within the umbrella of the much broader term "discharge." Thus, by employing the term "discharge" in RCRA § 6903(3), there was no need for Congress to include the already-covered word "emission."

The fact that the word "emission" is used in other parts of the RCRA, (*see* 42 U.S.C. §§ 6924(n) and 6991(8)) while not being used in § 6903(3), does not mean that § 6903(3) is inapplicable to the releases from SkyLoop's smokestacks for two reasons. First, because

"emission" is already encompassed within the term "discharge," there is no need for the word "emission" to be in § 6903(3). Second, even if the term "emission" was not included within the broader term "discharge," it is clear that the word "discharge" applies to the process of PFOA being released from SkyLoop's smokestacks. SkyLoop, like many similar facilities, has smokestacks to make releases into the air. (R. 8). While "emission" is a word commonly used to refer to these releases, "discharge" is equally applicable. Upon another consultation of Merriam-Webster, the term "smokestack" is defined as follows: "a pipe or funnel through which smoke and gases are *discharged*." *Smokestack*, MERRIAM-WEBSTER, https://merriam-webster.com/dictionary/smokestack [https://perma.cc/9MZA-HHVQ] (emphasis added). Thus, with the word "discharge" being explicitly included in RCRA § 6903(3), SkyLoop's release of PFOA from their smokestacks constitutes disposal under the statute.

B. The Ninth Circuit was in error to assume that a rigid order constrains what constitutes "disposal," and their case is factually distinguishable from the present case.

In *Ctr. for Cmty. Action & Envtl. Justice v. BNSF Ry. Co.*, the Ninth Circuit erroneously inserts into RCRA § 6903(3) a specific order that waste must follow in order for it to constitute disposal. 764 F.3d 1019, 1024 (9th Cir. 2014). The court argued that waste is disposed of only when it "is *first* placed 'into or on any land or water' and is *thereafter* 'emitted into the air.'" *Id.* (quoting RCRA § 6903(3)). Thus, the court argued that waste that is first emitted into the air and subsequently falls on land is not disposal under RCRA § 6903(3). *Id.* No such order is specified in RCRA § 6903(3). This section is written broadly to cover all solid waste that ends up "into or on any land or water," regardless of whether this occurs by "discharge, deposit, injection, dumping, spilling, leaking, or placing." 42 U.S.C. § 6903(3). It is a matter of common sense that the waste will have to travel through the air for some distance to reach the land or water. If an individual takes a barrel of waste and literally dumps it on some farmland, the waste will have to

travel through the multiple feet of air between the top of the barrel and the ground. Likewise, when waste exits the smokestacks of the SkyLoop Plant, it travels through the air for as far as a few miles before settling down on the local Mammoth farmland. The Ninth Circuit's argument would have the first of these two examples constitute disposal under the RCRA, but not the latter, with the only distinction between the two being the distance traveled in the air. If such a distinction was to govern the applicability of RCRA § 6903(3), then Congress would have specified this. Without any particular sequence of events being written into the statute, the Ninth Circuit ended up legislating from the bench to narrow the scope of broadly-written text.

As argued by the Southern District of Ohio in *Little Hocking Water Ass'n v. E.I. du Pont de Nemours & Co.*, in addition to the Ninth Circuit's mandated order of events being a misread of RCRA § 6903(3), their case is factually distinguishable from the present case. 91 F. Supp. 3d 940, 965 (S.D. Ohio 2015). In *BNSF Ry.*, various vehicle engines on sixteen California railyards emitted tons of diesel particulate matter into the air, which then fell to the ground before being swept back up into the air again. 764 F.3d at 1021. In contrast, in *Little Hocking*, just like in the current case, particles were emitted into the air, fell to the ground, and then seeped into the soil and ground water below. 91 F. Supp. 3d at 965; (R. 8). The core issue that the RCRA is designed to address, to use the language of RCRA § 6903(3), is that of waste disposal that ends up "on any land or water." The waste disposal that occurred in *Little Hocking* and in the present case, both of which caused contamination of the surrounding land and water, are the precise kinds of problems that the RCRA was created to solve.

C. Congress' stated intent in RCRA § 6902(b) and common sense dictate that releases from smokestacks constitute disposal under the RCRA.

Congress explicitly outlined their intentions in enacting the RCRA in § 6902(b), declaring it "to be the national policy of the United States that, wherever feasible, the generation

of hazardous waste is to be reduced or eliminated as expeditiously as possible." 42 U.S.C. § 6902(b). This stated purpose of the RCRA makes it clear that the statute's provisions were intended "to fill the gaps of other federal environmental laws" and to regulate harmful waste generated by American facilities as best as possible. (R. 10). The significance of this stated purpose is exemplified by the fact that Congress built in two different private citizen suit provisions to ensure that these sustainability goals are enforced. 42 U.S.C. § 6972(a)(1). Given these great lengths to which Congress has gone to protect the country's environment, it is untenable to argue that Congress would condone BlueSky's attempt to weasel their way out of having the statute apply to their actions. In order to make their argument, BlueSky has to rely on what they perceive to be a loophole in the statute with the word "emission" not explicitly being listed in RCRA § 6903(3).

In addition to this argument being defeated textually, as explained in Subsections A and B, common sense dictates that Congress had every intention of regulating releases from smokestacks that contaminate miles of farmland and an entire city's water supply. If all environmental harm caused by releases from plants and factories were to be expected from coverage by the RCRA and its citizen suit provisions, the statute would be gutted, and the stated congressional purpose that the generation of waste will be "reduced or eliminated as expeditiously as possible" would be rendered hollow words.

D. The remaining requirements for disposal under RCRA § 6903(3) are met in this case.

The first requirement of RCRA § 6903(3) is that waste be disposed of via one of seven methods: "discharge," "deposit," "injection," "dumping," "spilling," "leaking," or "placing." 42 U.S.C. § 6903(3). This is the only part of § 6903(3) that BlueSky has contested, and Section III to this point has explained why "discharge" covers the releases from SkyLoop's smokestacks. As

for the rest of § 6903(3), it is required that (2) hazardous or solid waste be disposed of (3) "into or on any land or water" (4) so that this waste may (a) enter the environment, (b) be emitted into the air, or (c) be "discharged into any waters, including ground waters." 42 U.S.C. § 6903(3).

The second requirement is met because the releases from SkyLoop's smokestacks constitute both hazardous and solid waste. PFOA is officially classified as a hazardous substance by the EPA, and PFOA particles are solids contained within the gaseous releases from SkyLoop's smokestacks. *Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances*, EPA (July 8, 2024), https://epa.gov/superfund/designation-perfluorooctanoic-acid-pfoa-and-perfluorooctanesulfonic-acid-pfos-cercla [https://perma.cc/84WP-WSDA]; *Little Hocking*, 91 F. Supp. 3d at 965.

The third and fourth requirements are met because the PFOA released from SkyLoop's smokestacks is disposed of on the surrounding Mammoth farmland and into Mammoth's water supply, which means that this waste enters the Mammoth environment, is emitted into the air, and is discharged into the ground water. As a result, all of the requirements of RCRA § 6903(3) have been met, and the releases from SkyLoop's smokestacks constitute disposal.

IV. Harm to the public is a necessary factor to consider when analyzing the irreparable harm prong of the *Winter* test and therefore should be acknowledged when addressing harm the VEA faces from BlueSky's operations.

A preliminary injunction, as authorized under Federal Rule of Civil Procedure 65, allows the court to issue relief in the form of a preliminary injunction. Fed. R. Civ. P. 65(a). Such an injunction shall only be granted as an extraordinary remedy preceding the starting of trial, and never "as of right" to the requesting plaintiff. *S.C. Coastal Conservation League v. United States Army Corps of Eng'rs, Charleston Dist.,* 127 F.4th 457, 466 (4th Cir. 2025) (citing *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7 (2008)). The movant must "demonstrate by a clear showing" entitlement to the relief sought. *Winter*, 555 U.S. at 22. The test for balancing necessity for

preliminary injunction, the *Winter* test, requires fours prongs to be met to grant a plaintiff such relief: "[a] plaintiff seeking a preliminary injunction 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." *Id*. at 20.

The prong regarding *irreparable harm* is under controversy in this appeal. (R. 1). Irreparable harm is held to a separate remedy from the obvious injunction awarded post-adjudication, with a higher level of damage warranting more aggressive relief. *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 545 (1987). Apart from the general harm asserted by a plaintiff, the harm claimed for a preliminary injunction, specifically one that is environmental, is one that typically will not be remedied through monetary compensation. *Id.* The harm discussed in the VEA's claim is one that does not simply affect its members but also those outside of the organization and the environment at large, therefore analyzing repercussion of BlueSky's actions towards the public will be necessary to fully consider the consequences of this conduct, in determining the severity of the harm experienced by the VEA.

A. The factors of the **Winter** *test must be interpreted in light of the cause of action the plaintiff is asserting, making consideration of the public necessary for both claims brought by the VEA.*

Courts have assessed compliance with the irreparable harm prong of the *Winter* test through the purpose of the statute. *See, e.g., Garcia v. Google, Inc.*, 786 F.3d 733, 745-746 (9th Cir. 2015) (The court reasoned that the alleged harm proposed by the plaintiff did not stem from her interests as an author under copyright, which she brought suit under, but instead stemmed from a protection of privacy which was not proper remedy under the law.); *Sierra Club v. Marsh*, 872 F.2d 497, 502-503 (1st Cir. 1989) (The court recognized the potential for harm to become irreparable differed based on the governing statute, and distinguished the relevant harm between NEPA and ANILCA violations.); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d

803, 818-820 (9th Cir. 2018) (The court acknowledged based on the ESA's purpose of prevention of species extinction, a smaller level of threat outside of imminent extinction justified an injunction.).

In *West Virginia Rivers Coalition, Inc. v. Chemours Company FC, LLC,* the court found a strict application of the *Winter* test would not protect the purpose of granting preliminary injunction as connected the plaintiff's statutory-created cause of action. 793 F. Supp. 3d 790, 809 (S.D. W. Va. 2025). Instead, the court argued under such a rigid analysis of the rule, "judicial formalism turn[ed] the citizens suit into a paper right." *Id.* The two claims brought by the VEA each contain purpose behind creation that emphasize the importance of the public's role when analyzing the four prongs of the Winter test. For both the public nuisance claim and the RCRA ISE claim, denying relief under the right essentially crushes the purpose of the law. To do so otherwise would be to create a right while denying possibility of enforceability to the right's full extent. Maintaining a strict application of the original test would provide individuals such as BlueSky with "procedural or remedial hurdles" to prolong their failure to comply with any serious violation of a law. *Id.* The claims asserted by the VEA, both the public nuisance claim and the RCRA ISE claim, are created in connection with the public and therefore, such a component should be considered when analyzing the irreparable harm prong.

i. The RCRA's purpose centers around protection of the public, and the purpose of the statute should be included in analysis of harm.

Looking at the VEA's RCRA ISE claim, the purpose of the statute's promulgation holds the public's safety at the forefront making the public's harm a necessary step in analyzing the irreparable harm prong. The objectives and intentions behind the establishment of the RCRA are found under RCRA § 6902. 42 U.S.C. § 6902. One objective listed within the statute is to "assur[e] that hazardous waste management practices are conducted in a manner which protects

human health and *the environment*." *Id.* at § 6902(a)(4) (emphasis added). Congress lays out a national policy that pushes for minimization of "present and future threat to human health and the environment." *Id.* at § 6902(b). The purpose of the statute looks holistically at prevention of injury to human health and the environment, and as such, looking at the irreparable harm prong, the public must be accounted for in analyzing the harm for this claim.

ii. Vandalia's public nuisance claim emphasizes the importance of protecting the public, and such emphasis must be included in interpretation of the irreparable harm prong.

Under the Second Restatement of Torts, an individual may assert a public nuisance claim if they show harm separate from that which is suffered by other members of the public. Restatement (Second) of Torts § 821C (A.L.I. 1979). Such a claim's purpose requires a distinguishing of the harms faced by the claimant and those experienced by the rest of the community. *Id.* at cmt. b. By its nature, this claim requires establishment of the harm felt by the public to showcase the severity faced by the claimant. *Id.* "It is not enough that he has suffered the same kind of harm or interference but to a greater extent or degree." *Id.* As Vandalia has adopted the Second Restatement of Torts, such a claim is established under the same principles. (R. 9). With a claim that is established through the harm inflicted upon the public, it is necessary for said harm to be considered in the establishment of the VEA's irreparable harm, as it aligns with the purpose of the statute.

B. Courts have acknowledged harm to the public in other prongs of the* Winter *test, albeit in differing application, making the consideration necessary in analyzing the VEA's irreparable harm.

Under a plain reading of the requirements outlined in *Winter,* the language suggests that the public belongs in a separate analysis removed from irreparable harm to avoid redundancy, however such an approach disregards the applicability of the public's role in both the irreparable harm prong *and* the balance of equities, as well as the public's interest. Harm to the public must

be analyzed not only in the prong under controversy, but under a different application than what courts have assigned for other prongs, to match the essence of the factor.

Harm to the public has been recognized in more than just the irreparable harm prong. The application of such harm showcases the individuality between the prongs and demonstrates the necessity of the topics in each analysis. The balance of equities looks at the conflict of claims between the defendant and the plaintiff. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). The balance of equities prong has provided a basis to "arrive at a 'nice adjustment and reconciliation'" from the claim asserted by the parties. *Id.* In doing this, courts have analyzed repercussions of the public's interests in the claims asserted by both parties. *See, e.g., Amoco Prod. Co.,* 480 U.S. at 545 (recognizing that "the balance of harms will usually favor the issuance of an injunction to protect the environment," when such environmental injury is sufficient to favor the plaintiff's claim); *Idaho Conservation League v. Atlanta Gold Corp.,* 879 F. Supp. 2d 1148, 1161-62 (D. Idaho 2012) (finding that the financial burden placed on the defendant when balancing the harms did not outweigh the public's necessity for clean water).

The prong covering public interest is the most obvious use of the public in analysis, however its application still differs from the manner it attaches in the irreparable harm prong. As noted in *West Virginia Rivers Coal.*, the final prong looks at the "*consequences* of an injunction." 793 F. Supp. 3d at 814-815. The difference between the role the public plays in the public interest prong and irreparable harm is massive, as one seeks to acknowledge the consequences of relief while the other analyzes the consequences to individuals and the environment without such relief being granted. *Id.* As separate prongs, the application of the public is inherently different, yet all require the concept to be included within their analysis to completely understand those affected by the conduct in question and the potential relief. To argue that recognizing the public

within the irreparable harm prong is redundant, would be to call into question analysis of balancing equities and the public's interest: irreparable harm is not the only prong that considers the public, it is one of three. Therefore, the concept must be included in analysis of the irreparable harm asserted by the VEA.

CONCLUSION

For these reasons, the Vandalia Environmental Alliance respectfully requests that this honorable Court hold that the district court was in error to stay its proceedings pending appeal of the preliminary injunction, that the VEA has a special injury sufficient to give it standing to bring its public nuisance claim, that the district court correctly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim due to BlueSky's air emissions constituting "disposal" under the RCRA, and that the district court correctly issued a preliminary injunction, as harm to the public should be evaluated.

CERTIFICATE OF COMPLIANCE

Pursuant to *Official Rule* III.C.9, the Vandalia Environmental Alliance certifies that its brief contains 28 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. 2*, and the *Team Members* of *Team No. 2* have not received any faculty or other assistance in the preparation of this brief.

Respectfully submitted,

Team No. 2

CERTIFICATE OF SERVICE

Pursuant to *Official Rule* IV, *Team Members* representing the 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. 2