CASE NO. 24-0682

IN THE

UNITED STATES COURT OF APPEALS

FOR THE TWELEFTH CIRCUIT

VANDALIA ENVIRONMENTAL ALLIANCE,
Appellant-Plaintiff

v.

BLUESKY HYDROGEN ENTERPRISES,
Appellee-Defendant

ON APPEAL FROM

THE MIDDLE DISTRICT OF VANDALIA

OPENING BRIEF ON APPELLEE-DEFENDANT
BlueSky Hydrogen Enterprises

SUBMITTED BY:
Team 24
Counsel for Appellee-Defendant

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Jurisdictional Statement

The United States District Court for the Middle District of Vandalia had jurisdiction pursuant to 28 U.S.C. § 1331. The district court's federal question jurisdiction was based on an alleged violation of the Resource Conservation and Recovery Act ("RCRA") under 42 U.S.C. § 6972. The district court had supplemental jurisdiction over the Vandalia Environmental Alliance's ("VEA") (plaintiffs-appellants) state law claim pursuant to 28 U.S.C. § 1367.

The United States Court of Appeals for the Twelve Circuit has jurisdiction over BlueSky Hydrogen Enterprises' ("BlueSky") (defendant-appellee) appeal pursuant to 28 U.S.C. § 1292, which grants courts of appeals jurisdiction over appeals from interlocutory orders of district courts. On November 24, 2025, the district court entered an order granting the VEA's motion for a preliminary injunction against BlueSky. BlueSky filed a timely notice of appeal on December 1, 2025, within the time prescribed by Federal Rule of Appellate Procedure 4(a)(1)(A).

This Court also has jurisdiction over the VEA's cross-appeal of the district court's December 8, 2025, order staying proceedings pending the appeal pursuant to 28 U.S.C. § 1292(b). The district court certified that order for interlocutory appeal, and the VEA timely filed a petition for permission to appeal, as required by Federal Rule of Appellate Procedure 5(a)(2). This Court granted permission to appeal and consolidated the cross-appeal with BlueSky's appeal of the preliminary injunction order. *See* 28 U.S.C. § 1292(b).

Statement of Issues Presented

With respect to this appeal, the United States Court of Appeals for the 12th Circuit ordered the parties 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

The present legal controversy is rooted in the federally funded clean energy investment initiative, known as The Regional Clean Hydrogen Hubs Program. (R. 3). The program has invested in the construction of numerous regional hydrogen hubs to form an interconnected network of hydrogen consumers and producers throughout the nation. (R. 3). One such hub, the Appalachian Regional Clean Hydrogen Hub ("ARCH2"), is operating within the Appalachian region and the state of Vandalia. (R. 3). With 12 proposed projects focusing on hydrogen production and numerous end-use cases, ARCH2 has attracted outside investment and created jobs in Vandalia and the surrounding region. (R. 3). BlueSky Hydrogen Enterprises has been a critical partner in the ARCH2 program's goal of creating a clean and sustainable hydrogen

economy throughout the region. (R. 3). BlueSky has a proven track record of hydrogen investment and has already completed several plants. (R. 4). BlueSky's SkyLoop plant, located in the town of Mammoth, was a much-needed solution to Vandalia's waste management issues. (R. 4). The state's pliable environmental regulations have resulted in numerous companies dumping their waste in Vandalia landfills. (R. 5).

SkyLoop converts materials that would otherwise be incinerated or dumped into hydrogen-rich gas, which has a wide range of uses. (R. 5). SkyLoop receives waste products from a dedicated treatment facility that aggregates and treats waste from a wide variety of sources, including biosolids, chemical by-products, and plastic waste. (R. 5). At the plant, thermal and chemical processes convert the treated waste into hydrogen-rich gas while operating in an oxygen-limited environment that reduces the formation of pollutants produced by uncontrolled combustion. (R. 6). Before any venting occurs, numerous filtration and scrubbing systems operate to ensure that emissions meet or exceed state and federal air quality guidelines. (R. 6). Since SkyLoop opened in January 2024, BlueSky's Title V Clean Air Act permit has remained in compliance. (R. 6).

In March of 2025, the 2024 results for the Unregulated Contaminant Monitoring Rule were released. (R. 7). The results indicated that the water supply for the Mammoth Public Service District ("PSD") contained detectable levels of perfluorooctanoic acid ("PFOA") at 3.9 ppt. (R. 7). PFOA is a persistent per/polyfluoroalkyl substance ("PFAS") that does not readily degrade and is linked to numerous health problems, such as cancer and birth defects. (R. 7). No PFOA levels were detected in the Mammoth water supply in 2023. (R. 7). These results prompted a local public interest group, the Vandalia Environmental Alliance, to investigate PFOA contamination in the Mammoth area. The VEA has numerous members throughout

Vandalia, including Mammoth, where it operates a small farm and educational center called VEA Sustainable Farms. (R. 6, 7). The VEA grows food at its farm, which is distributed to local food banks and soup kitchens and used for on-site events. (R. 7).

Upon submitting a Freedom of Information Act request to the Vandalia Department of Environmental Protection, the VEA discovered that the SkyLoop plant processes waste from Martel Chemicals which contains PFOA. (R. 7). The PFOA present in Martel's waste is currently not required to be removed during SkyLoop's waste processing and treatment stages nor at Mammoth's Wastewater Treatment Plant. (R. 7, 8). The Environmental Protection Agency ("EPA") has established containment levels for PFOA in drinking water, but the regulation is not enforceable until 2029. (R. 7). The VEA has maintained that PFOA survives the waste treatment and filtration processes at the SkyLoop plant and is subsequently expelled into the air. (R. 8). Once released, the PFOA particles settled onto the Mammoth PSD wellfield and surrounding land, including VEA Sustainable Farms. (R. 8). Currently, Mammoth lacks the waste treatment technology necessary to remove PFOA from the local drinking water and will not be able to install the necessary equipment for two more years. (R. 8). As a result, the VEA has urged its members to stop consuming water from the Mammoth PSD water supply and has ceased distributing food produced at its farm. (R. 8, 9).

On June 30, 2025, the VEA filed suit against BlueSky in the Middle District of Vandalia. (R. 11). The first claim, sounding in tort, is a state law public nuisance claim brought in the VEA's capacity as a private party due to an alleged special injury that would grant standing. (R. 11). Vandalia has adopted the Second Restatement of Torts for special injury and standing for private litigants bringing a public nuisance claim. (R. 9). The second claim is an alleged violation of § 7002(a)(1)(B) of the RCRA, wherein the VEA maintains that the SkyLoop facility poses an

imminent and substantial danger to public health and the environment due to PFOA emissions. (R. 11). The VEA sought declaratory and injunctive relief in its original filing, looking to stop the release of PFOA into the surrounding environment. (R. 11) Additionally, it sought to force BlueSky to pay for the treatment of Mammoth's water supply. (R. 11). Several days after the initial filing, the VEA filed a motion for a preliminary injunction. (R. 11). Bluesky opposed the preliminary injunction motion, and the matter was fully briefed. (R. 14). An evidentiary hearing was scheduled by the Court to take place on September 29, 2025. (R. 14). At the hearing, the VEA presented testimony from its own members and expert testimony from a toxicologist and air emissions expert. (R. 14). Bluesky did not submit opposing expert testimony; however, it emphasized that the VEA was unable to present evidence of irreparable harm due to its members no longer consuming water from the Mammoth PSD. (R. 14).

On November 24, 2025, the district court issued its ruling, siding with the VEA, and granting the preliminary injunction. (R. 14, 15). Additionally, the district court found that the VEA had standing to bring a public nuisance claim, with damage to its vegetable garden being sufficient to grant a special injury. (R. 15). On the RCRA claim, the district court ruled that the VEA was likely to be successful on the merits, determining that the air emissions were classified as a "disposal" under the RCRA. (R. 15). Finally, the district court ruled that PFOA emissions from BlueSky's SkyLoop plant did cause irreparable harm, satisfying the *Winter* test. (R. 15). While irreparable harm was unlikely to occur to VEA members due to these members no longer drinking water from the Mammoth PSD, such harm will occur to Mammoth residents who are continuing to drink public water. (R. 15).

In response, BlueSky filed this appeal on December 1, 2025, in the United States Court of Appeals for the 12th Circuit, seeking to vacate the district court's preliminary injunction ruling.

(R. 15). Additionally, on the same day as its appeal filing, BlueSky filed a motion to stay proceedings in the lower court while the appeal is pending. (R. 15) The district court ordered an expedited response from the VEA, which it delivered on December 5, 2025, opposing the motion for a stay in the proceedings. (R. 16). Bluesky argued that the application of the *Griggs* principle in *Coinbase*, and the Twelfth Circuit's adoption of this reasoning in *Express Scripts*, necessitated and automatic stay of proceedings. (R. 15 n.6). Ultimately on December 8, 2025, the district court decided to grant the motion to stay proceedings. (R. 15). Utilizing 28 U.S.C. § 1292(b), the VEA urged the district court to grant an interlocutory appeal of the stay order, and the district court assented. (R. 16). The Twelfth Circuit permitted the interlocutory cross-appeal of the stay order from the VEA, and consolidated both the VEA's appeal and Bluesky's appeal of the preliminary injunction. (R. 16). On December 29, 2025, the Twelfth Circuit set the issues to be briefed and argued on appeal. (R. 16).

Summary of the Argument

The district court correctly granted BlueSky's motion to stay proceedings under *Coinbase*. The US Supreme Court's recent ruling in *Coinbase* has divided courts across the nation on the issue of interlocutory appeals. Adopting the reasoning in *Express Scripts*, the Twelfth Circuit has extended *Coinbase* to contexts outside of arbitration. Based on this precedent and the Twelfth Circuit's analysis, it is clear that *Coinbase* should apply to interlocutory appeals of preliminary injunction orders. The authorities cited by the VEA in its brief do little to alter this conclusion. The jurisprudence is either easily distinguishable from the incident case or wholly inapplicable to the Twelfth Circuit's ruling. Finally, the VEA's concerns about the weaponization of *Coinbase* and litigation costs following appeals are overstated. The district court correctly interpreted Twelfth Circuit precedent when it granted BlueSky's order for a stay to the proceedings. Such a stay is mandatory under the *Griggs* principle following *Coinbase*.

Secondly, the district court erred in finding the VEA had a sufficient special injury to establish standing. Normally, a special injury is necessary to confer standing when a private litigant brings a public nuisance claim. Vandalia follows the Second Restatement of Torts, which requires a private plaintiff to allege an injury different in kind and degree from other members of the public. The VEA has failed to allege such a special injury. When compared to other members of the Mammoth population, the VEA has suffered the same kind of harm. Both water and airborne contamination result in harm that is not different in kind or degree. Pecuniary damages do not suffice to establish a special injury, nor does any special use that the VEA might claim for the land based on its educational outreach activities. Jurisdictions relying on the Second Restatement have also failed to find special injuries in private litigants who have alleged special

uses for land. Thus, the district court erred when ruling that the VEA had alleged a special injury sufficient to confer standing for a public nuisance claim.

Third, the district court erred in its categorization of BlueSky's emissions as a "disposal" under the RCRA. The district court's broad interpretation of the RCRA conflicts with the plain statutory construction of the statute. The congressional intent derived from the text and the legislative history of the RCRA supports a limited reading of "disposal" under the citizen suit provision. Jurisprudence reinforces a narrower interpretation of the RCRA given the nature of BlueSky's emissions and continued regulation of air emissions under the Clean Air Act ("CAA").

Finally, the district court abused its discretion in granting the preliminary injunction. The court was unable to identify any irreparable harm to the VEA or its members before trial. The court then improperly substituted the harm to the public to satisfy their irreparable harm analysis. Injunctive relief must be grounded in irreparable harm to the plaintiff, not a generalized harm to the public. The district court's reliance on third-party harm, absent any irreparable injury to the plaintiff, essentially reduces the irreparable harm analysis to a generalized environmental policy assessment.

Argument

Because standing is a question of law, appellate courts review a district court's legal conclusions regarding standing *de novo*. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). For issues concerning statutory interpretation, such as the interpretation of 42 U.S.C. § 6972(a)(1)(A), reviewing courts review district court decisions *de novo*. *United States v. Ide*, 624 F.3d 666, 668 (4th Cir. 2010). " Courts "review preliminary injunction grants for abuse of discretion [and] review the underlying legal analysis de novo and factual findings for clear

error." *EOG Res., Inc. v. Lucky Land Mgmt., LLC*, 134 F.4th 868, 874 (6th Cir. 2025). The Court has discretion whether to grant a motion to stay. *Gardner v. Md. Mass Transit Admin*., No. JKB-18-365, 2018 U.S. Dist. 2018 WL 2193692, at *7 (D. Md. May. 11, 2018). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes [sic] on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis v. North Am*. Co., 299 U.S. 248, 254-55 (1936).

(1) The district court correctly granted BlueSky's motion to stay proceeding pending the appeal before this Court.

The first matter before this Court is the district court's order granting BlueSky's motion to stay proceedings pending an appeal of the preliminary injunction. (R. 16). In *Griggs v. Provident Consumer Disc. Co.*, the Supreme Court held that "[t]he filing of a notice of appeal is an event of jurisdictional significance—it 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." 459 U.S. 56, 58 (1982). The *Griggs* principle was applied to an interlocutory appeal of a denied motion to compel arbitration, with the appellant court explaining that its prior reasoning "requires an automatic stay of district court proceedings that relate to any aspect of the case involved in the appeal." *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 744 (2023). Though the appellate court stated that this analysis applied only to arbitrability issues under the relevant federal statute, some jurisdictions have applied the Court's analysis to issues beyond arbitration. *Id.* at 747. The Twelfth Circuit is one such jurisdiction. (R. 15 n.6).

Nonetheless, the VEA argued in its brief opposing the motion to stay proceedings that the extension of *Coinbase* to preliminary injunctions is not appropriate. (R. 16). The VEA's reasoning is misguided for three main reasons. First, the Twelfth Circuit's precedent supports a

motion to stay on interlocutory appeals of preliminary injunctions. Additionally, the case law cited by the VEA does not support its contention that *Coinbase* is inapplicable to preliminary injunction orders. Finally, the VEA's concerns that *Coinbase* will be used to trap plaintiffs and delay proceedings, resulting in greater litigation costs, are overstated.

A. The Twelfth Circuit's adoption of Express Scripts extends Coinbase to appeals of preliminary injunctions, requiring the Middle District to grant a stay of proceedings.

On April 1, 2025, the Twelfth Circuit adopted the Fourth Circuit's position, extending *Coinbase* outside of the arbitration context. (R. 15 n.6). In *City of Martinsville v. Express Scripts, Inc.*, the Fourth Circuit held that *Coinbase* applies to federal officer removal orders. 128 F. 4th 265, 267 (4th Cir. 2025). The Supreme Court held that Congress does not have to designate when it desires to make a stay of an interlocutory appeal automatic. *Coinbase*, 599 U.S at 743-44. Of course, Congress is free to designate instances where stays will not automatically accompany appeals. See *Id* at 744, n.6. However, the *Griggs* principle operates in the background to provide an automatic stay without Congressional action for all aspects of the case that are incorporated in the appeal. *Id.* at 744-45.

The Fourth Circuit adopted this line of reasoning, stating that "the *Griggs* principle applies just as forcefully here as it did in *Coinbase* itself." *Express Scripts, Inc.*, 128 F. 4th at 270. Based on this application of *Coinbase*, so long as Congress authorizes an interlocutory appeal, an automatic stay will operate in the background to halt district court proceedings on all matters implicated in the appeal. *Id.* at 270-71.

In the case of preliminary injunctions, interlocutory appeals are clearly authorized by 28 U.S.C. § 1292(a)(1). Thus, the *Griggs* principle operates in the background to make stays automatic. Congress has enacted multiple "non-stay" statutory provisions since the modern appellate court system was established in 1891. *Coinbase*, 599 U.S. at 744. If Congress truly

wished preliminary injunctions to be excluded from this background automatic stay principle, it was fully capable of wording the statute appropriately. The Twelfth Circuit has adopted the above approach, and, absent a specific statutory exclusion, the district court is constrained by the underlying *Griggs* principle. Therefore, the district court correctly characterized the stay of the court proceedings as mandatory. (R. 16).

B. The cases cited by VEA fail to adequately argue that Coinbase should not be extended beyond arbitration.

In its brief opposing the motion to stay proceedings, the VEA cited several cases which it maintains preclude the application of *Coinbase* to preliminary injunctions. (R. 16) However, these cases either do not address *Coinbase* or misinterpret the holding. First, in *North Mississippi Medical Center, Inc. v. Quartiz Techs.*, the Northern District of Mississippi applied the traditional four factor test instead of the *Coinbase* rule to a motion to stay. No. 23-00003, 2024 WL 2262684, at *7 (N.D. Miss. May 17, 2024). The district court merely noted the defendant's use of *Coinbase*. *Id.* at *2. Ultimately, the district court did not engage with the defendant's *Coinbase* argument and launched into an analysis of the traditional four factor test relying almost exclusively on Fifth Circuit precedents. *Id*. The VEA's use of this case ignores pre-existing precedent in the Twelfth Circuit and provides no useful analysis on the benefits of applying this approach to the Twelfth Circuit.

Additionally, the VEA cites to *U.S. Sec. & Exch. Comm'n v. Reven Holdings, Inc.,* a case which does not include any real *Griggs* principle or *Coinbase* analysis. 1:22-CV-03181, 2024 WL 3691603, at *1 n.1 (D. Colo. Aug. 7, 2024). The District Court of Colorado admits that "[b]ecause most of the cases cited herein pre-date *Coinbase*, for clarity's sake this court notes that the *Griggs* principle does not decide the issue here." *Id*. The district court did not address the Supreme Court's analysis of interlocutory appeals, congressional intent, or the presence of a

background principle. *Id*. Instead, the district court notes that *Coinbase* is only applicable to the Federal Arbitration Act. *Id*. The VEA's use of *Reven Holdings* provides no reason to limit *Coinbase* to arbitration in the Twelfth Circuit.

In *Brown v. Taylor*, the district court applied *Coinbase* to a motion for summary judgment. 222-CV-09203, 2024 WL 1600314, at *4 (C.D. Cal. Apr. 3, 2024). The defendant, appealing the denial of a motion for a preliminary injunction, requested a stay in the pending summary judgment proceedings. *Id.* at *2. The District Court for the Central District of California held that "the appeal concerns only whether Brown should be entitled to injunctive relief based on the factual record at the time of the PI Order, and regardless of whether he won that relief, the case would have eventually proceeded to the MSJ stage." *Id* at *4. The district court correctly noted that the *Griggs* principle does not permit a stay when the issue is not relevant to the appeal and is, at most, relevant only to potential future proceedings after the preliminary injunction order has been ruled on. *Id*.

Brown is clearly distinguishable from BlueSky's case, where the preliminary injunction order clearly raises issues of standing, irreparable harm, and "disposal" under the RCRA. (R. 14). All of these issues are related to the appeal and are of continuing relevance to the case. (R. 15). Each of these issues will need to be addressed at a trial on the merits, and because the district court included these aspects in the preliminary injunction order, a stay is required under this circuit's adoption of *Express Scripts*. (R. 15). Therefore, *Brown* is easily distinguishable from the current case before the Twelfth Circuit. While the discussion and application of *Griggs* is enlightening, the VEA has brought a case where the issues involved in the motion to stay are unrelated to the denial of the preliminary injunction and associated interlocutory appeal.

Finally, *Forester-Hoare v. Kind* concerns a denial of a motion for preliminary injunction related to the safety of an inmate. 23-CV-537-JPS, 2025 WL 101660, at *1 (E.D. Wis. Jan. 15, 2025). This issue is clearly severable from the other legal issues concerning the merits of the argument. *Id.* at *1-2. The preliminary injunction thus contains a separate claim unrelated to the issues affected by the potential stay. *Id*. The district court reasoned that, under *Coinbase,* there is no need to grant a stay since the issues are so clearly unrelated. *Id.* Once again, this case is readily distinguishable from the current matter on appeal. The issues contained in the preliminary injunction order are closely tied to the merits of the case and are appropriate for a stay. As stated previously, both the stay and interlocutory appeal of the preliminary injunction concern related issues of standing, irreparable harm, and the meaning of "disposal" under the RCRA. (R. 14). Unlike *Forester-Hoare,* there are aspects of the case involved in the appeal and affected by the motion to stay.

C. The VEA's concerns about litigation costs and the weaponization of Coinbase by defendants are overstated.

The VEA claims to be concerned that the application of *Coin*base to matters outside arbitration will lead to severe legal consequences, both to itself and the justice system as a whole. (R. 16). First, the VEA's concern that this application of *Coinbase* will have extreme ramifications on judicial efficiency and the allowance of frivolous appeals is greatly exaggerated. However, as the Supreme Court has noted: appellate courts maintain the ability to declare interlocutory appeals frivolous, to streamline the disposition of claims lacking merit, and to apply sanctions to deter frivolous appeals. *Coinbase*, 599 U.S. at 744-45. The VEA's concerns about litigation costs are fair; however, with the current tools available to the federal courts, the Twelfth Circuit should be able to quickly dispose of the case.

Additionally, as the Fourth Circuit notes, "[p]eople often say that you shouldn't have too many cooks in the kitchen...but culinary clutter can't compare to the havoc of multiple courts taking actions in the same case, on the same issues, at the same time." *Express Scripts, Inc.*, 128 F. 4th at 265. Rather than harming judicial efficiency, *Coinbase* ensures that the district and appellate courts do not step on each other's toes and do not rule on duplicate proceedings. At the same time, *Coinbase* prevents an already strained federal court system from being overwhelmed with parallel litigation.

The ruling of the district court granting BlueSky a stay was correct. Under the Twelfth Circuit's *Express Scripts* precedent, *Coinbase* is clearly applicable to situations outside arbitration. Furthermore, the cases cited by the VEA either do not relate to *Coinbase* or are distinguishable from the instant case. Finally, despite the VEA's concerns about the effect of *Coinbase,* the appellate courts are more than capable of dealing with frivolous appeals, and the ruling actually promotes judicial efficiency and prevents parallel litigation. For these reasons, the Court should uphold the findings of the lower court on the motion to stay.

(2) The district court erred when determining that VEA had suffered a special injury sufficient to grant standing for a public nuisance claim.

On appeal before this Court is the public nuisance claim brought by VEA. Particularly, BlueSky contests the existence of a special injury which would provide VEA with standing for the public nuisance claim. Vandalia has followed the Second Restatement of Torts which states that a public nuisance claim can only be maintained by a private entity when that entity has "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." Restatement of Torts (Second) § 821C(1) (A.L.I 1965). This special injury, which distinguishes the plaintiff from other members of the public sharing the same right, must be of a different kind than that

suffered by others in the comparative population. *Id*. at §821C cmt. J . Additionally, the plaintiff must suffer harm different in kind and degree from that suffered by the general public. *Id*.

The special injury requirement serves two critical functions in the context of public nuisance claims. First, the requirement relieves "defendants and the courts of the multiple actions that might follow if every member of the public were allowed to sue for a common wrong." *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Arizona*, 712 P. 2d 914, 918 (Ariz. 1985). Additionally, it reflects a belief that "a harm which affected all members of the public equally should be handled by public officials." *Id*.

The VEA's public nuisance claim centers on the farm and education center it maintains in Mammoth, Vandalia. The VEA has alleged airborne PFOA contamination by BlueSky and contamination of the Mammoth water supply, which it utilizes. (R. 9). In its complaint, the VEA claimed that the airborne deposition of PFOA provided it with a special injury by contaminating the food grown on the farm. (R. 11). The district court sided with the VEA on the special injury issue, finding that the property damage was sufficient to confer a special injury. (R. 15). However, when reviewing similar special injury rulings, it becomes clear that the VEA has not alleged an injury different in kind and degree from other members of Mammoth. By itself, the water contamination will not suffice to grant the finding of a special injury. Even when other contamination is considered, such as the airborne contamination alleged by the VEA, it remains insufficient to grant the VEA a special injury that is different in kind or degree from the comparative population.

A. Water contamination alone is not sufficient to produce a special injury that will grant VEA standing. When the effects on the appropriate comparative population are analyzed it is clear that the VEA has suffered the same kind of injury.

The first step in determining whether or not a special injury has occurred is defining the comparative population. *Rhodes v. E.I. du Pont de Nemours & Co.*, 657 F. Supp. 2d 751, 769 (S.D.W. Va. 2009), *aff'd in part,* 636 F. 3d 88 (4th Cir. 2011), *cert. denied*, 565 U.S. 977 (2011). The Second Restatement of Torts has defined the comparative population as the "persons exercising the same public right." Restatement (Second) of Torts § 821C (A.L.I. 1965). In *Rhodes v. E.I. du Pont*, the district court determined that the comparative population included members of the Parkersburg Water District ("PWD"), who were affected by the discharge of PFOA into the local water supply. 657 F.Supp.2d 751 at 769. On this basis, the Court determined that the plaintiffs had not suffered a special injury from the "PFOA contamination of their properties and bodies and their increased risk of disease." *Id*. The plaintiffs consumed the same water as other PWD members and were subject to the same increased risk of disease. *Id*. Ultimately, the Court found that "PFOA contamination alone, without any evidence of physical harm, is not an injury at all and certainly not one upon which the plaintiffs could base their public nuisance claim." *Id*.

Based on the Second Restatement's definition of comparative population, it is evident that the numerous farms located near SkyLoop fall within the comparative population. The occupants of these farms exercise the same public right to enjoy their land free from environmental contamination. The VEA has also relied on the same contaminated water as other Mammoth community members, including the farmers. If their claim relied on water contamination alone, it would not rise to the level of a special injury. The water contamination in the Mammoth PSD has similarly affected both the VEA and the other farmers. The contamination produces the same potential risk for disease and has disrupted the operations of

others who rely on groundwater for agricultural reasons. At the very least, water contamination has caused the same kind of injury to the VEA as it has to other farmers. Clearly, based on the water contamination alone, the VEA cannot claim a special injury.

B. The VEA's claims of airborne contamination is not sufficient to produce a special injury even when accounting for the potential pecuniary effects

The VEA does not base its public nuisance claim solely on water contamination. The airborne PFOA contamination of the VEA's property remains a key element of its claim. The VEA relies on this airborne PFOA contamination to distinguish its claim from other potential claims. As the Restatement notes, "[i]t is not enough that he has suffered the same kind of harm or interference but to a greater extent or degree." Restatement (Second) of Torts § 821C cmt. b (A.L.I. 1965). The VEA has admitted that these property damage concerns are not unique. (R. 9). Between the VEA's farm and BlueSky's SkyLoop plant are numerous other farms that grow crops for local consumption and raise various types of livestock. (R. 9). If the VEA was subjected to property damage from PFOA emissions, then these other farms were undoubtedly affected as well. Since the special injury requirement stipulates that a plaintiff must have an injury different in kind and degree, the potential contamination of the vegetable garden is insufficient. There are many farms subject to the same potential contamination that are growing crops in similar, if not greater, quantities. Of course, there are potential pecuniary effects to consider. The VEA has admitted to using its produce for local events held on the farm and for donations to local food banks. (R. 7). The Second Restatement of Torts states that while pecuniary effects are normally sufficient to produce an injury different in kind to the public, "[i]f, however, the pecuniary loss is common to an entire community and the plaintiff suffers it only in a greater degree than others, it is not a different kind of harm and the plaintiff cannot recover for the invasion of the public right." Restatement (Second) of Torts § 821C cmt. h (A.L.I

1965). If the VEA had been selling produce or meals prepared using its produce at these local events, it would have suffered a pecuniary loss common to all other farms in the region. These farms have also had their food contaminated by the airborne spread of PFOA and will undoubtedly suffer pecuniary harm. Additionally, since the VEA is a public interest organization, it may rely on its members for financial support, while commercial farms in the area will likely suffer the economic effects of contamination to a far greater degree. Accordingly, the VEA's airborne contamination allegations do not establish a harm different in kind or degree, even when pecuniary effects are taken into consideration.

C. The VEA's use of the land for educational activities is not sufficient to grant a special injury different in kind and degree from the surrounding community.

The deficiencies in the VEA's alleged special injury come into even greater focus when considering similar cases involving public nuisance claims. In *Alaska Native Class v. Exxon Corp.,* Alaskan Natives sued over the eponymous oil spill, alleging a public nuisance and special injury due to their unique religious and cultural use of the land.104 F. 3d 1196, 1197-98 (9th Cir. 1997). The appellate court applied the same standard for public nuisance claims as the Second Restatement. *Id*. Ultimately, the Ninth Circuit ruled against the existence of a special injury stating, "the right to obtain and share wild food, enjoy uncontaminated nature, and cultivate traditional, cultural, spiritual, and psychological benefits in pristine natural surroundings is shared by all Alaskans." *Id*.

The Arizona Supreme Court relied on *Exxon* in a similar case, finding that the plaintiff did not suffer a special injury when contaminated wastewater sold to a ski resort by the city government was used to generate artificial snow. *Hopi Tribe v. Arizona Snowbowl Resort Ltd. P'ship*, 430 P.3d 362, 371 (2018). The plaintiff argued that their unique religious and cultural uses of the land were affected by the contamination. *Id* at 364. Ultimately, the Arizona

Supreme Court ruled that this special interest in the land was shared by the general public and involved the right to use the land in an unimpaired and natural state. *Id* at 369-70.

The VEA also has a special interest in its Mammoth farm. Notably, it has claimed that it uses its farmland for educational demonstrations related to farming. (R. 7). These educational uses can ultimately be reduced to the same public right shared by other farms in the area: the right to enjoy the natural fruits of one's own land free from contamination. While the difference in degree is debatable, it is an injury involving the same public right and is not distinguishable by kind.

D. An analysis of the VEA's special injury standing claim produces no support for an injury different in kind and degree from the general public. VEA lacks standing to bring a public nuisance claim.

After reviewing the VEA's allegations of contamination and comparing the potential injuries with those in the relevant comparative population, it is apparent that the VEA lacks standing to bring a public nuisance claim. Based on the water contamination allegations, the VEA has not suffered an injury different in kind and degree from the neighboring farms that also rely on the Mammoth PSD. Similarly, airborne contamination produces the same type of injury for all farms in the Mammoth area, and any adverse pecuniary effects are shared by the public and are not unique to the VEA. Relying on the VEA's special educational uses for its land is also not sufficient to grant a special injury. When applying similar precedents from jurisdictions that also rely on the Second Restatement, it is evident that the same underlying public right is involved. Therefore, the district court erred in finding that the VEA suffered a special injury sufficient to grant standing for a public nuisance claim. This Court should vacate the opinion of the district court and remand with instructions to dismiss the public nuisance claim for lack of standing.

(3) The district court erred in holding that the definition of "disposal" under the RCRA is satisfied.

The Court should rule that the BlueSky's emission of PFOA does not constitute "disposal" within the meaning of the RCRA, and that the VEA therefore cannot state a plausible claim for relief under 42 U.S.C. § 6972(a)(1)(B). The RCRA, enacted in 1976, was designed to address gaps in federal environmental regulation, particularly concerning the disposal of solid and hazardous waste on land. 42 U.S.C. § 6902. The act's primary purpose is to reduce the generation of hazardous waste and ensure its proper treatment, storage, and disposal to minimize threats to human health and the environment. *Id*. The RCRA's citizen-suit provision permits "any person" to sue the owner or operator of a solid waste treatment, storage, or disposal facility if the owner or operator "has contributed or ... is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(B). The RCRA defines "disposal" as discharging, depositing, injecting, dumping, spilling, leaking, and placing any solid waste or hazardous material into or on any land or water so that the waste may enter the environment or be emitted into the air or discharged into any waters. 42 U.S.C. § 6903(3).

A. The legislative history of the RCRA supports that BlueSky's emission is not within the scope of "disposal" as defined in the RCRA.

The analysis of congressional intent regarding air emissions is limited since, while it primarily focuses on land disposal, the RCRA acknowledges air emissions as a potential pathway of exposure to hazardous waste. Congress enacted the RCRA to close the "last remaining loophole in environmental law," which was the unregulated disposal of hazardous waste on land. H.R. Rep. No. 94-1491, 94th Cong., 2d Sess. 4, *reprinted in* 1976 U.S. Code Cong. & Ad. News 6238, 6241-42. While the statute was not designed to regulate air emissions comprehensively,

which was the primary purpose behind the passing by the Clean Air Act, Congress recognized that improper land disposal could result in air pollution, subsurface leachate, and surface runoff, which could affect air and water quality. *Id*. Congress anticipated the potential overlap between the RCRA and other environmental statutes, including the CAA. To address this, the RCRA requires the EPA to integrate the RCRA's provisions with those of the CAA and other statutes to avoid duplication, provided such integration aligns with the goals of each statute. 42 USCS § 6905. This provision highlights Congress's intent to ensure that the RCRA's regulation of air emissions does not conflict with or duplicate the CAA's broader authority over air pollutants.

The Hazardous and Solid Waste Amendments ("HSWA") of 1984 marked a shift by explicitly addressing air emissions from hazardous waste facilities, thus creating a narrow overlap with the CAA. Congress required the EPA to promulgate regulations for monitoring and controlling air emissions at hazardous waste treatment, storage, and disposal facilities. 42 U.S.C 6924(n). The HSWA provides a non-illustrative list of sources of emissions including open tanks, surface impoundments, and landfills. *Id*. The RCRA's definition of "disposal" further demonstrates Congress's recognition that air emissions could result from the land disposal of solid and hazardous waste, thereby necessitating some level of regulation under the RCRA. 42 U.S.C. § 6903(3). However, the broader regulation of air pollutants remains within the purview of the CAA, consistent with Congress's intent to avoid duplication and ensure coordinated environmental regulation.

B. The statutory language of the RCRA supports that BlueSky's emission is not a "disposal."

The statutory language of the RCRA supports the conclusion that the BlueSky's emissions are not a "disposal" under the RCRA. When interpreting congressional acts, "our task is to construe what Congress has enacted." *Duncan v. Walker*, 533 U.S. 167, 150 (2001). "We

look first to the plain language of the statute, construing the provisions of the entire law, including its object and policy, to ascertain the intent of Congress." *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 830 (9th Cir. 1996) (internal quotation marks and citation omitted). The statutory interpretation cannon of *expressio unius est exclusio alterius* stands for when Congress expresses meaning through a list, a court may assume that what is not listed is excluded. *Esteras v. United States*, 606 U.S. 185, 186 (2025).

Under § 6903(3), there is a "disposal" when there has been a discharge, deposit, injection, dumping, spilling, leaking, or placing of solid or hazardous wastes into or on any land or water. 42 U.S.C. § 6903(3). The RCRA's definition of "disposal" notably lacks the word "emitting" from its construction. Instead, it includes acts of discharging, depositing, injecting, dumping, spilling, leaking, and placing. *Id*. A plain reading of the text shows an exclusion of "emitting" from such conduct that constitutes "disposal" indicates that emitting solid waste into the air does not fall within "disposal" under the meaning of the RCRA. The arrangement of the text further distinguishes BlueSky's emissions from the RCRA definition of "disposal." The definitive list of conduct is followed by a qualifying result requirement: "so that the waste may enter the environment or be emitted into the air or discharged into any waters." *Id*. For BlueSky's emission to qualify as a "disposal," solid waste would have to have first been placed "into or on any land or water" and is thereafter "emitted into the air." Instead, BlueSky's emissions are directly vented into the air, after which the wind carries such material away. (R. 8). Therefore, BlueSky emissions fall under the purview of the CAA.

While the RCRA does not further define what constitutes "disposal", other defined terms in the RCRA indicate that it was the legislature's choice to intentionally not include emissions. For example, the term "release," which was added via the HSWA governing underground storage

tanks, included "spilling, leaking, emitting, discharging, escaping, leaching, or disposing . . . into ground water, surface water or subsurface soils." 42 U.S.C. § 6991(8). "[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Barnhart v. Sigmon Coal Co*., 534 U.S. 438, 452 (2002) (internal quotation marks omitted). Congress knew how to define "disposal" to include emissions, but chose not to, indicating Congress likely intended to exclude such emissions from the scope of the statute.

Furthermore, while the RCRA does not define other conduct terms like discharge or what an emission is in the definition of disposal, Title 40 of the Code of Federal Regulations contains EPA's regulations concerning solid waste disposal. The EPA regulations incorporate the same definition of disposal found in the RCRA into their subpart on solid and hazardous waste management. 40 C.F.R. § 257.2 (2025). The general provision's subpart explicitly provides what it means for pollutants to be discharged and what an emission is. 40 C.F.R. § 240.101 (2025). "Discharge" means water-borne pollutants released to a receiving stream directly or indirectly or to a sewerage system. 40 C.F.R. § 240.101(e) (2025). "Emission" means gas-borne pollutants released to the atmosphere. 40 C.F.R. § 240.101(f) (2025). Thus, the RCRA statutory language in conjunction with other legislative acts and regulations, supports the finding that BlueSky's emissions are not a "deposit."

C. Jurisprudence supports BlueSky's emissions into the air that are then deposited elsewhere are not "disposal" under the RCRA.

The district court, when ruling in favor of the VEA, relied on the reasoning in *Little Hocking Water Ass'n Inc.* to conclude that BlueSky's emissions are a "disposal" under the RCRA. (R. 15). This precedent, however, is a broad interpretation of the RCRA's "disposal"

definition, and this Court should instead follow the Ninth Circuit's narrower reading of the RCRA.

The Sixth and Ninth Circuits hold conflicting views regarding what constitutes "disposal" of hazardous waste under the RCRA. In *Center for Community Action v. BNSF Railroad Company*, the Ninth Circuit held that emissions of particulate matter in diesel exhaust which were emitted into the air and later fell onto the ground and water nearby did not meet the definition of "disposal" under the RCRA. 764 F.3d 1019, 1024 (9th Cir. 2014). Specifically, under § 6903(3), a "disposal" is strictly confined to a particular order. *Id*. When solid waste is "first placed 'into or on any land or water' and is thereafter 'emitted into the air, '" and thus emitting directly into the air which then fell on the ground, it is not "disposal" under the RCRA. *Id*. The Court relied on both the statutory interpretation and legislative history of the RCRA to find an intentional legislative gap established by Congress. *Id*. Similarly, BlueSky's emissions are emitted from the Skyloop facility via the air before being carried by the wind. (R. 8).

The Sixth Circuit, however, in *Little Hocking Water Association v. E.I. du Pont de Nemours & Co.*, held that the defendant's air and water pathways constituted "disposal" under the RCRA. 91 F. Supp. 3d 940, 947 (S.D. Ohio 2015). The plaintiff claimed that the defendant's waste disposal practices, including the release of PFOAs, contaminated the wellfield through air emissions, water disposal, and other pathways. *Id*. The Court distinguished *BNSF Railroad* by not finding that Congress left an intentional regulatory gap over the type of aerial emissions of solid particulate matter in this case and instead relying on the broad remedial scheme. *Id*. at 965. Under the CAA, rather than the RCRA, the EPA sets national air quality standards for particulate matter. 42 U.S.C. § 7409. The EPA, acting under the authority granted by the CAA, has not

previously designated PFOAs as hazardous substances or established national air quality standards for PFOAs.

Furthermore, the Ninth Circuit has upheld its interpretation of "disposal" in suits arising under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). 42 U.S.C. § 9601 et seq. While the RCRA focuses on regulating active hazardous waste, CERCLA governs the cleanup of hazardous waste sites. *Id*. Congress passed CERCLA in 1980 and explicitly incorporated the RCRA definition of "disposal." 42 U.S.C. § 9601(29). In *Pakootas v Teck Cominco Metals, Ltd*., the court concluded that defendant's aerial emissions, which were carried by wind and deposited on land and water, did not meet the statutory definition of "disposal." *Pakootas v Teck Cominco Metals, Ltd.,* 830 F.3d 975, 978 (9th Cir. 2016).

(4) The district court abused its discretion in granting a preliminary injunction based on harm suffered by a third party

Courts have long recognized that a preliminary injunction is an "extraordinary remedy never awarded as a right." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). It "should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (*per curiam*)). The Supreme Court has provided that plaintiffs seeking a preliminary injunction must prove: (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of a preliminary injunction, (3) the balance of equities tips in their favor, and (4) an injunction is in the public's best interest. *Winter*, 555 U.S. at 20. The traditional function of a preliminary injunction is to protect the status quo and to prevent irreparable harm during the pendency of a lawsuit in

order to preserve the court's ability to render a meaningful judgment based solely on the merits. *Sun Microsystems, Inc. v. Microsoft Corp.*, 333 F.3d 517, 525 (4th Cir. 2003).

A. The district court improperly considered harm to the public when analyzing the "irreparable harm" prong of the Winter test for the issuance of preliminary injunctions

The district court incorrectly considered the harm to the general population of Mammoth as part of its irreparable harm analysis. Courts have consistently stated that harm to the plaintiff alone is considered when analyzing irreparable harm. *See, e.g., Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 462 (8th Cir. 2025) ("When a preliminary injunction is sought, a federal court must consider 'the threat of irreparable harm *to the movant*.'") (quoting *Dataphase Sys. v. C L Sys.*, 640 F.2d 109, 114 (8th Cir. 1981)) (emphasis added); *Coleman v. Winbigler*, 615 F. Supp. 3d 563, 575 (E.D. Ky. 2022) ("The *moving party* must show that in the absence of injunctive relief, it would suffer irreparable injury.") (emphasis added); *Winter*, 555 U.S. at 22 ("The *applicant* must demonstrate that in the absence of a preliminary injunction, 'the *applicant* is likely to suffer irreparable harm before a decision on the merits can be rendered.'") (quoting 11A Charles Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2948.1, p. 139 (2d ed. 1995) (emphasis added). Although the irreparable harm analysis under Winter focuses solely on the injury to the plaintiff, that focus does not preclude the consideration of harm to the public in the other factors.

The Court in *Winter* expressly addressed possible harm to the public in the fourth factor, which requires that an injunction be "in the public's best interest." *Winter*, 555 U.S. at 20. Although these factors often overlap, the court in *Beber* made clear the fact that standards serve separate purposes, stating that "[t]he irreparable harm factor is about the individual interests of each movant. The public interest factor is about the good of society as a whole. Both factors are

components of the preliminary injunction test, but *they are not interchangeable*." 140 F.4th at 463. (emphasis added).

It therefore becomes clear that the district court's reliance on the holding from *West Virginia Rivers Coalition, Inc. v. Chemours Co. FC. LLC* in its reasoning is misguided. 793 F. Supp. 3d 790, 810 (S.D. W. Va. 2025). In *West Virginia Rivers*, the district court granted a preliminary injunction when the defendant was continuously exceeding the numeric effluent limits set by the Clean Water Act in violation of its permit. *Id*. at 810–11. Although the court noted that the *Winter* factors are best applied in cases involving procedural violations, it nevertheless applied the *Winter* factors. *Id*. at 809. Looking to the plain language of the irreparable harm standard from *Winter*, the court admitted that "[o]n its face, this [standard] forecloses consideration of the irreparable harm to the public." *Winters*, 555 U.S. at 20; *West Virginia Rivers,* 793 F. Supp. 3d at 813. Although the court emphasized the significance of the environmental harm that would affect the general population, it ultimately relied on irreparable harm to the plaintiff, determining that a member of the plaintiff organization was still consuming the affected water, which was deemed sufficient to establish irreparable harm to the plaintiff. *Id*. at 812–13. The fact that the court directed the lion's share of its focus to the importance of the harm to the environment and the public does not diminish the requirement that the plaintiff suffer irreparable harm.

The VEA has been unable to prove that any of its members are suffering irreparable harm, as all members have stopped drinking the affected water, and the expert provided by the VEA was unable to testify on what harm those members might encounter from their limited exposure to the affected water. (R. 14). This lack of irreparable harm to any member of the plaintiff organization is fatal to the VEA's claim. In *West Virginia Rivers*, the court weighed the

extreme environmental harm alongside the irreparable injury to a singular member of the organization. 793 F. Supp. 3d at 812. Here, no such irreparable injury to the plaintiff exists for the court to weigh alongside the environmental and public health concerns. As the court in *D.T. v. Sumner Cty. Sch*. stated, "although the extent of an injury may be balanced against other factors, the *existence* of an irreparable injury is mandatory." 942 F.3d 324 (6th Cir. 2019). For the foregoing reasons, this Court should not consider the harm to the public in its review of the Winter factors and should only consider the harm suffered by the members of the VEA.

B. The harm to the members of the VEA does not rise to the level of "likely" nor "irreparable" as required by Winter, and therefore the preliminary injunction should be vacated

In the absence of the wrongly considered harm to the public, the harm suffered by the members of the VEA is merely "possible" and not "likely." *Winter*, 555 U.S. at 22. The experts provided by the VEA were unable to provide an evidence-based opinion on what harm to the members of the VEA—who have all stopped consuming the affected water—would be prevented by the issuance of a preliminary injunction. (R. 14). The Supreme Court specifically contemplated issues such as this in *Winter*, stating that "[a] preliminary injunction will not be issued simply to prevent the possibility of some remote future injury." 555 U.S. at 22 (quoting 11A Charles Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2948.1, p. 154-155 (2d ed. 1995). This notion is consistent with the widely accepted "characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id*.

Furthermore, the harm suffered by the members of the VEA resulting from their having to buy bottled water and distribute produce not grown on their farm is in no way "irreparable." Their grievance stems not from the frustration with consuming these products, but the money expended on procuring them. This category of harm is purely financial and easily

redressable through monetary relief. As the court explained in *Beber,* once it had been determined that "the plaintiff's harms were purely economic, compensable by the defendant, and therefore not irreparable, the *Winter* analysis was complete. Preliminary injunctive relief was foreclosed." 140 F.4th at 463. If we are to believe that the purpose of preliminary injunctions "is merely to preserve the relative positions of the parties until a trial on the merits can be held," it follows that an injunction granted in the absence of irreparable harm is completely arbitrary. *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)).

Members of the VEA are not being put in any imminent danger of irreparable injury by drinking bottled water and consuming store-bought produce until trial, therefore defeating the preventative purpose of injunctive relief. *Hinton v. District of Columbia*, 567 F. Supp. 3d 30, 58 (D.D.C. 2021) ("[F]ailure to show any irreparable harm is … grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief.") (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)); *D.T.*, 942 F.3d at 327 ("If the plaintiff isn't facing imminent and irreparable injury, there's no need to grant relief *now* as opposed to at the end of the lawsuit."); *Loc. Union No. 884, United Rubber, Cork, Linoleum & Plastic Workers v. Bridgestone/Firestone*, 61 F.3d 1347, 1355 (8th Cir. 1995) ("The absence of irreparable harm 'is sufficient grounds for vacating a preliminary injunction.'") (quoting *Modern Comput. Sys., Inc. v. Modern Banking Sys., Inc.*, 871 F.2d 734, 738 (8th Cir. 1989)). To put it plainly: "No irreparable harm? No preliminary injunction." *EOG Res., Inc.*, 134 F.4th at 885. Therefore, the harm to the members of the VEA is neither irreparable nor likely, as required by the *Winter* test, and the preliminary injunction should be vacated.

Conclusion

For these reasons, BlueSky Hydrogen Enterprises respectfully requests that this Court reverse the district court's decision, vacate the preliminary injunction, and uphold the stay of proceedings. BlueSky further requests that this Court reverse those parts of the Judgment that granted the VEA's Motion for preliminary injunction and find that the VEA does not have standing and has not satisfied all four Winter factors.

Respectfully submitted,

Team No. 24

Certificate of Compliance (Brief)

Pursuant to Official Rule III.C.9, BlueSky Hydrogen Enterprises certifies that its brief contains 30 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 24, and the Team Members of Team No. 24 have not received any faculty or other assistance in the preparation of this brief.

Respectfully submitted,

Team No. 24

Certificate of Service

Pursuant to Official Rule IV, Team Members representing BlueSky Hydrogen Enterprises 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 4, 2026.

Respectfully submitted,

Team No. 24