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C.A. No. 25-0682

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In The

**United States Court of Appeals for  
the Twelfth Circuit**

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**VANDALIA ENVIRONMENTAL ALLIANCE**

*Plaintiff-Appellant,*

v.

**BLUESKY HYDROGEN ENTERPRISES,**

*Defendant-Appellee*

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ON APPEAL FROM THE  
UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF VANDALIA

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**APPELLEE'S BRIEF**

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Counsel for Appellee  
Team 25

## **STATEMENT OF THE ISSUES PRESENTED**

- I. Under *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), did the district court correctly issue a mandatory stay pending appeal of the preliminary injunction when threshold questions of whether the district court may hear the case are on appeal?
- II. Should this Court find that the Vandalia Environmental Alliance (“VEA”) lacks a special injury sufficient to give it standing to bring its public nuisance claim when the VEA’s injury does not result from its use of the public water supply and it does not possess an injury different in kind from other farms?
- III. Did the district court err in determining that the VEA was likely to succeed on the merits of its Resource Conservation and Recovery Act claim when the plain language of the statute does not consider air emissions to constitute disposal?
- IV. Under the irreparable harm prong of the *Winter* test, can harm to the public be sufficient to issue a preliminary injunction when the movant fails to make a showing they personally have suffered irreparable harm, and allowing public harm to satisfy irreparable harm undermines Supreme Court precedent?

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**JURISDICTIONAL STATEMENT**

The district court had jurisdiction over this action under 28 U.S.C. § 1331 because the Vandalia Environmental Alliance (“VEA”) asserted claims arising under 42 U.S.C. § 6972(a)(1)(B), the Resource Conservation and Recovery Act. R. at 11. The VEA sent notice of intent to sue on June 30, 2025, and after 90 days filed a lawsuit in the United States District Court for the Middle District of Vandalia. R. at 11. The district court had supplemental jurisdiction over the state-law public nuisance claim under 28 U.S.C. § 1367.

This Court has jurisdiction over BlueSky Hydrogen Enterprises’ appeal of the district court’s order granting a preliminary injunction under 28 U.S.C. § 1292(a)(1). This Court also has jurisdiction over VEA’s cross-appeal of the district court’s order staying proceedings under 28 U.S.C. § 1292(b). BlueSky filed a timely notice of appeal on December 1, 2025, within 30 days of the district court’s preliminary injunction order on November 24, 2025. R. at 15. Additionally, BlueSky asked the district court to stay proceedings. R. at 15. On December 8, 2025, the district court granted the motion to stay. R. at 16. Under 28 U.S.C. § 1292(b), the VEA asked the district court to permit an interlocutory cross-appeal, which the district court and Twelfth Circuit permitted. R. at 16. Although this appeal is not from a final judgment, this Court’s jurisdiction is proper under 28 U.S.C. § 1292.

## **STATEMENT OF THE CASE**

### *Factual Background*

***A Cleaner Future.*** In efforts to promote cleaner and more sustainable energy, the Bluesky SkyLoop Hydrogen Plant is at the forefront of the charge. R. at 4. Through the unique characteristics of hydrogen, energy-dependent industries are beginning to transition from the use of fossil fuels to the use of hydrogen. R. at 3. The Regional Clean Hydrogen Hubs Program (“H2Hubs”) supports hydrogen hubs with the goal of creating a national economy for hydrogen infrastructure. R. at 3. As an alternative to fossil fuels, hydrogen hubs provide a far cleaner form of energy, while also providing more energy security, job opportunities, and various benefits to the community. R. at 3. Many of these hubs employ waste-to-hydrogen technology, which converts different forms of waste into clean hydrogen fuel. R. at 4. Not only does this technology create sustainable hydrogen fuel, but it also diminishes the need for landfills and other toxic waste disposal sites. R. at 4.

***Hydrogen Hubs in Vandalia.*** The city of Vandalia is a part of the Appalachian Regional Clean Hydrogen Hub (“ARCH2”). R. at 3. ARCH2 proposes to develop several hydrogen hubs in the Appalachian region, which will utilize primarily natural gas to create hydrogen fuel. R. at 3. These hubs will produce an environmentally friendly hydrogen economy in the region for industry, transportation, and power generation. R. at 3. Further, the hubs will support the local economy by providing long-term employment opportunities for the residents. R. at 3.

***BlueSky’s Operations in Vandalia.*** The transition towards hydrogen energy led to the creation of BlueSky Hydrogen Enterprises. R. at 4. BlueSky is considered an innovative company in the field, as they have already completed several hydrogen facilities which are widely considered to be great successes. R. at 4. One of BlueSky’s greatest achievements is its waste-to-hydrogen SkyLoop Plant in Mammoth, Vandalia. R. at 4. The SkyLoop Plant is especially

effective in Mammoth, due to Vandalia's severe waste management problems. R. at 4. Through the SkyLoop Plant, it not only provides Vandalia with renewable, eco-friendly energy, but also assists in reaching the city's goals of reducing landfill waste. R. at 5.

The SkyLoop process begins with a waste collection facility, compiling several different types of hazardous waste from chemical companies, landfills, and other sources. R. at 5. Once the SkyLoop plant conditions and processes the waste to ensure safety and compliance protocols are met, the materials, known as feedstock, are transported to the SkyLoop Plant. R. at 5. BlueSky's protocols ensure that only properly treated waste is ultimately transported to the SkyLoop Plant. R. at 5. After the SkyLoop Plant receives the waste, the plant subjects the waste to a conversion process carefully designed to extract hydrogen gas while excluding hazardous by-products. R. at 5. Following several more purification procedures, the hydrogen gas can be efficiently stored, transported, or utilized by industrial customers. R. at 5. Many regard the SkyLoop Plant as a prime example of how waste materials can be utilized to satisfy energy needs in an environmentally friendly way. R. at 5.

***Alleged Byproducts of SkyLoop.*** While it is true that the SkyLoop has the potential to emit carbon dioxide, nitrogen oxides, and other particulates, the SkyLoop produces far less emissions than traditional landfills. R. at 5. SkyLoop treats gases prior to discharge to ensure emissions comply with local, state, and federal air quality standards. R. at 6. Additionally, BlueSky possesses a Title V Clean Air Act permit, and has complied with all standards since the opening of SkyLoop in January 2024. R. at 5-6. Through multiple stages of treatment, SkyLoop not only significantly reduces greenhouse gas emissions compared to traditional energy production, but also cuts emissions by using waste and chemical-by-products to create sustainable energy. R. at 6.

SkyLoop's advanced gas treatment plants display BlueSky's priority of ensuring environmentally friendly energy production. R. at 6.

***Vandalia Environmental Alliance.*** The Vandalia Environmental Alliance ("VEA") is a regional public interest group focused on environmental issues. R. at 6. The VEA emphasizes protecting Vandalia's environment, and educating the population on living more sustainably. R. at 7. To aid these goals, the VEA owns a small farm in Mammoth where community members can learn how to garden and farm. R. at 7. The VEA farm is located 1.5 miles north of the SkyLoop plant, along with several other local farms. R. at 7.

Initially, the VEA supported the SkyLoop plant and BlueSky's mission in order to reduce the environmental impact of landfills and provide long-term job opportunities to community members. R. at 7. However, the VEA's perspective changed after the 2024 results of a contaminant test on Mammoth's Public Service District ("PSD") water supply. R. at 7. The UCMR showed PFOA levels of 3.9 ppt in the water supply, a contaminant previously undetected in Mammoth. R. at 7. The U.S. EPA Office recently established standards for a Maximum Contaminant Level at 4 ppt, but the standards do not apply until 2029. R. at 7. The VEA began investigating the SkyLoop Plant as potentially responsible for the PFOA contamination and found that SkyLoop accepts industrial sludge from Martel Chemicals, a chemical company known to use PFOA. R. at 7. Through documents at the Vandalia Department of Environmental Protection, the VEA found the presence of PFOA in Martel's sludge and discovered that the Title V does not require SkyLoop to remove PFOA. R. at 8. The VEA alleges that SkyLoop's treatment process does not clear PFOA from exhaust gases, and that SkyLoop allegedly releases through air stacks at the plant. R. at 8. The VEA believes the wind blows the contaminant in northerly direction onto farmlands, including VEA farm and the PSD's wellfield. R. at 8.

***Alleged Harm from PFOA Emissions.*** As a result of the PFOA emissions, the VEA alleges that water from the PSD is unsafe for human consumption. R. at 8. Since several VEA members live in Mammoth, the VEA advised their members to severely limit or avoid use of water from the PSD water supply. R. at 8. The VEA believes that all its members in Mammoth now buy bottled water, rather than drinking from the public water supply. R. at 8. However, the VEA is still concerned for the general population, as the Mammoth PSD provides water to the entire city, and most of the public continues to drink the water unknowingly. R. at 8. Additionally, the VEA worries about the PFOA emissions affecting its farm near the SkyLoop Plant, believing the emissions allegedly pollutes their soil and crops. R. at 9. As a precaution, the VEA halted all operations on its farm, and no longer provides food to the community. R. at 9. The VEA admits that if PFOA is deposited onto their farm, all surrounding farms would suffer very similar injuries. R. at 9.

#### *Procedural History*

***Preliminary Injunction.*** The VEA sued BlueSky for public nuisance and violations of the Resource Conservation and Recovery Act (“RCRA”), seeking a preliminary injunction. At the district court level, the court granted the VEA’s preliminary injunction. R. at 11. Regarding the public nuisance claim, the court ruled the VEA had standing and satisfied all 4 of the *Winter* factors. R. at 14. Specifically related to standing, the court held the VEA established a special injury because the property damage to its farmland differentiated it from the general public’s injury of drinking the water. R. at 15. About the RCRA claim, the court held there was a likelihood of success on the merits, following the guidance of the Sixth Circuit interpretation which ruled that emissions constituted “disposal” under the RCRA. R. at 15. Under the irreparable harm factor, the Court held that although the VEA did not provide enough evidence that it was likely to suffer irreparable

harm, it presented enough evidence that the general public will suffer irreparable harm, which satisfies that *Winter* factor. R. at 15.

***Motion to Stay.*** Following the district court's ruling, BlueSky filed an appeal with the Twelfth Circuit asking for the preliminary injunction to be vacated. R. at 15. In addition to its appeal to vacate the injunction, BlueSky also filed a motion to stay proceedings in the lower court pending its appeal. R. at 15. Shortly after, the district court granted BlueSky's motion to stay, explaining that a stay was mandatory under *Coinbase*. R. at 16. The VEA promptly cross-appealed the motion to stay, which the Twelfth Circuit consolidated with the pending interlocutory appeal of the preliminary injunction. R. at 16.

## **SUMMARY OF THE ARGUMENT**

***Automatic Stay.*** Generally, courts exercise discretion in granting stays, however, certain scenarios require a mandatory stay. Courts must grant an automatic stay when issues on appeal determine whether the district court may hear the case. Here, this Court must uphold the district court's stay order because the issues on appeal govern whether the district court may hear the case. On appeal, this Court must determine whether the VEA has standing and if it states a plausible claim. Both issues implicate questions about whether the district court will ultimately hear the case, therefore an automatic stay is necessary. Through limiting the number of claims litigated at the district court, automatic stays increase judicial efficiency and economy, while saving money for the parties.

***Lack of Standing.*** The VEA fails to show a special injury distinguishing it from the public and thus lacks standing. For a private party to possess standing to bring a public nuisance claim, it must suffer an injury different in kind from the public. This injury must result from exercising the same right shared with the public. Here, the public right interfered with is the public water supply, while the VEA alleges contamination to its farmland. Because the VEA suffers an injury unrelated to its use of the public water supply, it does not suffer a special injury sufficient to grant standing. Even if this Court accepted a broader public right, the VEA fails to show special injury because all surrounding farms experience identical harm. Considering either interpretation of the public right, it is evident the VEA lacks standing.

***Definition of Disposal.*** In determining Congress' intent through statutes, courts consider the plain text of the statute and different canons of construction. For example, when Congress includes a list of terms, and one term is omitted, that term is deemed to be intentionally excluded. Additionally, when the term appears elsewhere in the statute, but not in the clause at issue, the canon treats that term as intentionally absent. Here, Congress did not include "emissions" under

the definition of “disposal,” yet it appears elsewhere in the RCRA. Therefore, Congress intended for emissions to not constitute “disposal” under the RCRA. Further, this Court should decline to follow the Sixth Circuit’s interpretation of the RCRA, because it renders clauses in the RCRA moot, violating one of the cardinal principles of statutory interpretation. For these reasons, this Court must hold SkyLoop’s air emissions do not constitute disposal under the RCRA.

***Irreparable Harm Analysis.*** For a party to succeed on a preliminary injunction motion, there must be a showing *the movant* is likely to suffer irreparable harm in the absence of an injunction. Under a strict textual analysis, by requiring the plaintiff themselves to show irreparable harm, courts foreclose upon the notion that harm to the public satisfies the irreparable harm standard. Here, the VEA fails to allege irreparable harm to its interests, and instead alleges its irreparable harm on damage to the public. Further, construing the irreparable harm standard to allow for public harm violates the policies behind preliminary injunction analysis. Specifically, if this Court allowed public harm to constitute irreparable harm, it would conflate differing prongs of preliminary injunction analysis, destroy the distinction between citizen suits and government actions, and substitute standing for irreparable harm. This Court should decline to invite those outcomes for the sake of judicial efficiency. Therefore, this Court must overrule the district court’s holding that the VEA suffered irreparable harm through the public.

### **STANDARD OF REVIEW**

Determining if a lower court correctly applied Supreme Court precedent, whether a party sufficiently alleges special injury to grant standing, and a district court's statutory interpretation are all questions of law reviewed *de novo*. See *Miller v. Fenton*, 474 U.S. 104, 114 (1985); *Colo. Outfitters Ass'n v. Hickenlooper*, 823 F.3d 537, 544 (10th Cir. 2016); *United States v. Lopez*, 998 F.3d 431, 434 (9th Cir. 2021). Generally, reviews of preliminary injunctions are limited solely to determine if the district court abused their discretion. See *Grand River Enterprise Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 60 (2d Cir. 2007). However, when purely legal questions arise, such as whether public harm satisfies irreparable harm, the appeals court reviews *de novo*. See *St. Louis Effort for AIDS v. Huff*, 782 F.3d 1016, 1021 (8th Cir. 2015).

## ARGUMENT

### **I. This Court must uphold the motion to stay because the interlocutory appeal raises foundational questions concerning the district court’s authority to proceed.**

American Courts strictly adhere to the longstanding principle that a federal district court and a federal court of appeals must not concurrently possess jurisdiction over a case. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). To avoid simultaneous jurisdiction, courts may grant a stay of district court proceedings during a pending interlocutory appeal. *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023). While normally courts exercise discretion in granting or denying a stay, in certain scenarios Supreme Court precedent deems an automatic stay necessary. *Id.* at 744; *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). These scenarios often arise when the appeal involves threshold questions of whether the district court may hear the case. *Coinbase*, 599 U.S. at 744. Here, the Court must uphold the motion to stay because standing and claim validity both determine whether the lower court may hear the case.

#### **A. Standing presents a threshold jurisdictional issue prompting a mandatory stay.**

The *Griggs* principle prohibits federal district courts and federal courts of appeals from jointly possessing jurisdiction over the same matter. 459 U.S. at 58. A notice of appeal functions to establish jurisdiction at the appellate court, while “divest[ing] the district court of its control” relating to the matters of the case involved in the appeal. *Id.* In *Coinbase*, the Court utilized the *Griggs* principle to establish that interlocutory appeals of arbitration orders mandate an automatic stay. *Coinbase*, 599 U.S. at 740. While some circuits limit the interpretation of *Coinbase* to only arbitration order appeals, a broader interpretation involves the full scope of the *Griggs* principle. *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265, 271 (4th Cir. 2025). Interpreting *Coinbase* in the scope of the *Griggs* principle leads to the proposition that if a court faces foundational questions of whether the district court may hear the case, the whole case must be

stayed. *Coinbase*, 599 U.S. at 741. The whole case must be stayed because “the entire case is essentially ‘involved in the appeal.’” *Id.* (quoting *Griggs*, 459 U.S. at 58).

In *Express Scripts*, the city of Martinsville, Virginia, sued Express Scripts and other defendants alleging public nuisance claims. 128 F.4th at 268. The defendants attempted to remove the case to federal court; however, the district court denied the removal and issued an order to remand. *Id.* Before a state court may proceed with the case, the district court clerk must send a copy of the remand order to the state court under 28 U.S.C. § 1447. *Id.* Prior to the clerk sending a copy of the order, the defendant promptly appealed the remand order, arguing that under *Coinbase* the court must stay the remand order pending appeal. *Id.* The district court denied the motion to stay, reading *Coinbase* as applying only to arbitration orders. *Id.*

On appeal, the court held that the rule in *Coinbase* extends to interlocutory appeals beyond orders compelling arbitration. *Id.* at 270. The court opined that by relying on the *Griggs* principle in justifying an automatic stay, *Coinbase* did not distinguish between arbitration and other appeals. *Id.* at 271. *Express Scripts* further clarifies that the matters of a case involved in the appeal are “beyond the district court’s reach” to prohibit separate courts from simultaneously exercising jurisdiction. *Id.* When the issue on appeal decides a “foundational question” such as “which forum will hear the case,” the appeal concerns essentially the entire case. *Id.* at 270. Therefore, the lower court lacks jurisdiction over the entire case because any other interpretation of *Coinbase* would render the appeal useless. *Id.*

Similar to *Express Scripts*, the question on appeal regarding the Vandalia Environmental Alliance’s (“VEA”) public nuisance claim presents a foundational question: Whether the VEA possesses standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (explaining that “standing to sue is a doctrine rooted in the traditional understanding of a case or controversy”). Here, this Court

must uphold the automatic stay because without the VEA properly establishing standing, it cannot litigate its claim. *Id.* Following the precedent established in *Coinbase* and *Express Scripts*, proceeding in the lower court during this appeal would be futile. *Coinbase*, 599 U.S. at 741; *Express Scripts, Inc.*, 128 F.4th at 271. More plainly, this Court will determine whether the district court even possesses the ability to resolve the dispute. *Id.* The lower court should not continue with a trial “while the court of appeals cogitates on whether there should be one.” *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989).

By adopting the Fourth Circuit’s reasoning in *Express Scripts*, this Court previously recognized that *Coinbase* extends beyond arbitration order appeals. R. at 15. While Appellant might argue that an expansive reading of *Coinbase* will lead to mandatory stays in every preliminary injunction appeal, courts have already declined to accept such a proposition. *See Forester-Hoare v. Kind*, No. 23-CV-537, 2025 U.S. Dist. LEXIS 7672, at \*3 (E.D. Wis. Jan. 15, 2025) (declining to apply *Coinbase* when the preliminary injunction appeal only involved a narrow issue of the overall case). Although preliminary injunction appeals will always not warrant an automatic stay, *Coinbase* demands an automatic stay when the appeal involves the same dispositive legal issues. *See Am. Encore v. Fontes*, No. CV-24-01673, 2025 U.S. Dist. LEXIS 121339, at \*6 (D. Ariz. June 26, 2025) (granting a motion to stay pending an interlocutory appeal of a preliminary injunction where the appeal involved substantive legal issues).

Further, a broad interpretation of *Coinbase* promotes the underlying policies behind *Griggs*. *Coinbase*, 599 U.S. at 743. Through requirements of an automatic stay, parties will spend less money litigating baseless claims, and district courts will increase judicial efficiency while not wasting valuable resources. *NRDC, Inc. v. Sw. Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). Additionally, allowing district court proceedings to continue creates a risk of inconsistent rulings

from different tribunals. *Levin v. Alms & Assocs.*, 634 F.3d 260, 263 (4th Cir. 2011). Here, because the interlocutory appeal decides whether the VEA has a viable public nuisance claim at all, continuing proceedings forces the parties and the district court to litigate a claim that might not exist. *Id.* Rule one of the Federal Rules of Civil Procedure provides additional guidance: Rules should be administered and construed to provide “just, speedy, and inexpensive” determinations of every proceeding. Fed. R. Civ. P. 1. Allowing for continuation of claims that potentially do not exist directly contradicts these core tenets. *Levin*, 634 F.3d at 263–64. While the issue on appeal here does not present a question of arbitration or jurisdiction, standing serves the same function because it determines whether the district court may hear the case. *Express Scripts, Inc.*, 128 F.4th at 271. As a result, this Court must uphold the motion to stay proceedings related to the public nuisance suit.

**B. The VEA’s Resource Conservation and Recovery Act claim hinges on whether air emissions constitute “disposal,” mandating an automatic stay.**

The same rules discussed above apply to determine whether this Court must stay the Resource Conservation and Recovery Act (“RCRA”) claim. For the VEA to properly invoke the Imminent and Substantial Endangerment (“ISE”) provision under the RCRA, it must show that BlueSky participated in “handling, storage, treatment, transportation, or disposal of any solid or hazardous waste.” 42 U.S.C. § 6972(a)(1). If SkyLoop’s air emissions do not fall under the purview of the statute, the VEA fails to state a plausible claim under the RCRA. *Ctr. for Cmty. Action & Env’tl. Justice v. BNSF Ry. Co.*, 764 F.3d 1019, 1021 (9th Cir. 2014).

Similar to *Express Scripts* and *Coinbase*, the issue here on appeal determines a crucial aspect of the case – whether BlueSky’s actions constitute a violation under the RCRA. *Coinbase*, 599 U.S. at 741; *Express Scripts, Inc.*, 128 F.4th at 271. Because this Court must first determine whether the VEA states a plausible claim, it would be futile for the district court to proceed.

*Coinbase*, 599 U.S. at 741. Specifically, if this Court finds emissions do not constitute disposal under the RCRA, the district court wastes judicial economy and efficiency, while parties waste money. *NRDC*, 242 F.3d at 1166. Until this Court concludes its interlocutory appeal, *Coinbase* demands an automatic stay. 599 U.S. at 741.

This Court must not stray from the principles set forth by the Supreme Court in *Griggs* and *Coinbase* because this appeal involves a preliminary injunction, rather than an arbitration or remand order appeal. *Express Scripts, Inc.*, 128 F.4th at 271. Regardless of the type of appeal, the rule stays the same: When the issue on appeal implicates dispositive questions, the court must impose an automatic stay. *Coinbase*, 599 U.S. at 744. Following that precept, this Court must uphold the order to stay because without standing or a plausible claim, the district court lacks a controversy to resolve. *Id.*; *BNSF*, 764 F.3d at 1021; *Spokeo*, 578 U.S. at 338.

## **II. The VEA lacks standing when its alleged injury does not arise from the public right at issue and it is not an injury different in kind**

When determining whether non-governmental entities may bring public nuisance charges, Courts impose a deliberately high standard. *In re Lead Paint Litig.*, 191 N.J. 405, 427 (2007). Vandalia defines a public nuisance as “an unreasonable interference with a right common to the general public.” Restatement (Second) of Torts § 821B(1) (A.L.I. 1979); R. at 9. Because public nuisance claims involve disturbances of a right common to the public, state or local governments generally possess the power to bring suits against violators. *Poulos v. Dover Boiler & Plate Fabricators*, 5 N.J. 580, 586 (1950). Thus, non-governmental entities only possess the ability to bring public nuisance suits when it can prove a special injury distinguishing it from the public. *Id.* When a private party fails to demonstrate a special injury, the court must dismiss the case. *Id.* Here, this Court must find the VEA lacks standing because it fails to show a special injury that is distinct from the public.

**A. The VEA lacks standing because its injury does not arise from its use of the allegedly interfered with public right, the public water supply.**

For a private party to bring a public nuisance claim, the court must first determine the relevant comparative population. Restatement (Second) of Torts § 821C. The relevant comparative population encompasses “persons exercising the same public right” that was the subject of the interference. Restatement (Second) of Torts § 821C cmt. b. A private plaintiff may only bring a public nuisance suit when it suffers an injury different in kind from the relevant comparative population. *In re Lead Paint Litig.*, 191 N.J. at 427. An injury is “different in kind” only when the plaintiff exercises the same public right that was the subject of the interference. *Phila. Elec. Co. v. Hercules, Inc.*, 762 F.2d 303, 316 (3d Cir. 1985). Here, the district court identified the public right interfered with as alleged contamination of Mammoth’s Public Service District (“PSD”) water supply. R. at 11, 15. Because the alleged interference concerns the public water supply, the relevant comparative population encompasses all the residents of Mammoth that use the PSD water. Restatement (Second) of Torts § 821C cmt. b.

In *Hercules*, the Philadelphia Electric Company (“PECO”) sued for public nuisance, alleging economic costs related to cleanup of their land, which contaminated the Delaware River under a prior owner. 762 F.2d at 316. There, the public right interfered with was the contaminated water. *Id.* The court held PECO could not maintain a special injury because the injury did not result from use of the contaminated water. *Id.* Although the court noted that PECO might possess a special injury to its land if the harm resulted from the pollution of the Delaware River, there, PECO suffered an entirely separate injury. *Id.*

Conversely, in *Baker v. St-Gobain Performance Plastics Corp.*, residents of Hoosick Falls sued defendant’s manufacturing facilities for allegedly contaminating the groundwater with PFOA. 232 F.Supp.3d 233, 236 (N.D.N.Y. 2017). The court opined that the “Municipal Water

Plaintiffs” could not sustain a public nuisance claim because they did not suffer a distinctive injury from the public. *Id.* at 248. However, the court held plaintiffs with private wells on their land could sustain a public nuisance claim. *Id.* The private well owners sustained a special injury, damage to their private wells, while exercising the same public right as the population, access to potable groundwater. *Id.*

Similar to *Hercules*, the VEA’s injury, harm to its land, did not result from its exercise of the city’s contaminated water supply. R. at 11. Although the VEA alleges that the same PFOA emissions affected both its property and the municipal water, *Hercules* makes clear that harm arising from the same pollution event does not constitute a special injury unless it results from pollution of the public right itself. 762 F.2d at 316. Under the Restatement, this does not constitute an injury different in kind to satisfy standing for a public nuisance claim. Restatement (Second) of Torts § 821C. Further, unlike the private well plaintiffs in *Baker*, the VEA claims an altogether different injury which does not result from its use of the allegedly contaminated water. 232 F.Supp.3d at 248.; R. at 11. Here, the VEA sustains a separate injury to its farmland, not tethered to its use of the public water supply. R. at 11. The district court erred in concluding the VEA satisfied the special injury requirement, thus, this Court must hold that the VEA lacks standing.

**B. Even if this Court recognizes a broader public right, the VEA still lacks special injury because it does not suffer an injury different in kind.**

Here, Appellant may argue a broader public right, such as freedom from contaminated land. However, even if this Court accepts freedom environmental pollution or contaminated land as a valid public right, the VEA still lacks standing. Restatement (Second) of Torts § 821C. If the Court describes that right as freedom from contaminated land, the only other parties exercising that right are surrounding farms in Mammoth. Restatement (Second) of Torts § 821C cmt. b. In this scenario, the contamination to the public water supply is merely a downstream consequence of the public

nuisance. Restatement (Second) of Torts § 821C. When comparing the VEA’s injury to the surrounding farms’ injury, they are identical. R. at 9. In fact, the VEA admitted its “concerns are not unique to its own land.” R. at 9. Based on the VEA’s own admission, it cannot allege a special injury compared to the relevant population. R. at 9.; Restatement (Second) of Torts § 821C. Further, if this Court accepts such broad public rights, VEA’s public nuisance claim effectively serves a private nuisance, precisely what the Restatement designed the special injury rule to prevent. Restatement (Second) of Torts § 821B(1).

Ultimately, regardless of how this Court classifies the public right interfered with, the result is the same – the VEA lacks standing. If access to clean water is the public right interfered with, the VEA lacks standing because its alleged injuries do not flow from exercising its right to use clean water. *Hercules, Inc.*, 762 F.2d at 316. If the public right interfered with is freedom from contaminated land, the VEA does not suffer a special injury because surrounding farms would all be similarly contaminated. Restatement (Second) of Torts § 821C. For these reasons, the VEA does not possess standing to bring the public nuisance claim. This Court must overrule the district court and deny the VEA standing.

### **III. Congress did not intend for the RCRA’s disposal provision to cover air emissions, and contrary interpretations strip statutory language of independent meaning.**

The Resource Conservation and Recovery Act (“RCRA”) allows private citizens to sue anyone involved in the “treatment, storage, or disposal facility, who has contributed or who is contributing to the. . . handling, storage, treatment, transportation, or disposal of any solid or hazardous waste” 42 U.S.C. § 6972(a)(1). Essentially, the RCRA codifies the common law public nuisance claim. *Fresh Air for the Eastside, Inc. v. Waste Mgmt. of N.Y., L.L.C.*, 405 F.Supp.3d 408, 434–45 (W.D.N.Y. 2019). Courts have historically construed the RCRA “in a liberal, though not unbridled, manner.” *Davis v. Sun Oil Co.*, 148 F.3d 606, 609 (6th Cir. 1998). However, even

construing the RCRA liberally, air emissions from the SkyLoop facility do not constitute “disposal” under the act. *BNSF*, 764 F.3d at 1030. Therefore, this Court should vacate the preliminary injunction because the VEA is unlikely to succeed on the merits of its claim.

**A. Congress did not intend for air emissions to constitute disposal under the RCRA.**

In deciding whether air emissions constitute “disposal” under the RCRA, the definition of disposal is paramount. *Id.* at 1021. The RCRA defines disposal as “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water.” 42 U.S.C. § 6903(3). When using canons of construction in interpreting statute, Congress’ intent becomes clearer.

Following a textual analysis of the RCRA and relevant definitions, SkyLoop’s air emissions do not constitute “disposal.” 42 U.S.C. § 6903(3). First, under the definition of “disposal” in the RCRA, Congress makes no mention of emissions, despite providing a litany of other terms that constitute disposal. *Id.* This at least provides preliminary support that Congress did not intend air emissions to fall under the statute. *BNSF*, 764 F.3d at 1024. Further, different canons of construction provide additional support for this proposition. *Id.* Under *expressio unius est exclusio alterius*, courts may infer that when Congress expresses its intent through a list, what is not listed should be naturally excluded. *Ford v. United States*, 273 U.S. 593, 611 (1927) (describing *expressio unius est exclusio alterius* yet cautioning against overreliance on the doctrine). Here, because Congress declined to include air emissions in a lengthy list of what constitutes disposal, this Court should infer Congress intended to exclude the term. *BNSF*, 764 F.3d at 1024. While *Ford* cautions overreliance on the doctrine, other canons of construction provide additional support. *Russello v. United States*, 464 U.S. 16, 23 (1983). The term emit appears in other definitions in the RCRA, providing further support that if Congress intended to

include air emissions under disposal, it would have been listed. 42 U.S.C. § 6991(8); *Russello*, 464 U.S. at 23. Clearly, Congress contemplated including emissions in other relevant definitions yet declined to include emissions in the definition of “disposal.” 42 U.S.C. § 6903(3). While courts should read the RCRA liberally, courts caution against an unbridled interpretation. *Davis*, 148 F.3d at 609. Attempting to include air emissions into the definition of disposal, when emissions appear elsewhere in the RCRA, amounts to an unbridled interpretation of Congress’ language. *Id.*

**B. This Court must decline to follow contrary interpretations of the RCRA because it renders clauses in the statute obsolete.**

One of the foundational canons in statutory construction is a presumption that every clause and word in a statute must be given effect and meaning. *Loughrin v. United States*, 573 U.S. 351, 358 (2014). Courts consistently apply this rule and refer to the canon as one of the “cardinal principles” of statutory interpretation. *Id.*; *Statutory Interpretation in the Federal and State Courts* § 3.05 (Canons Based on Intrinsic Sources). Because other interpretations of the RCRA deprive the statutory language of meaningful function or are factually distinguishable, this Court should decline to adhere to their reasoning.

This Court should follow the Ninth Circuit’s interpretation of the RCRA. In *BNSF*, the court held that railroad locomotive emissions did not constitute disposal based on a statutory interpretation of the RCRA. 764 F.3d at 1025. However, other district courts present differing interpretations. In *Little Hocking Water Ass’n v. E.I. du Pont de Nemours & Co.*, the District Court for the Southern District of Ohio concluded that C8 emissions that settled on the plaintiff’s land and contaminated the ground amounted to disposal. 91 F.Supp.3d 940, 965 (S.D. Ohio 2015). The court distinguished *BNSF* because it involved emissions that fell to the ground, which then were swept back up into the atmosphere, while in *Little Hocking*, emissions fell to the ground and then contaminated groundwater. *Id.* However, in making this distinction, the court confused the

definition of “disposal” with downstream contamination. 42 U.S.C. § 6903(3). Under the RCRA, the point of initial release is dispositive, rather than the consequences of the release. *Id.*

Further, construing the RCRA this broadly renders statutory language moot. *Loughrin*, 573 U.S. at 358. By its definition, the RCRA requires a sequencing of events that must be satisfied for disposal to occur. 42 U.S.C. § 6903(3). Under the definition of disposal, waste must first be placed “into or on any land or water” which then “may enter the environment or be emitted into the air or discharged into any waters.” *Id.* (emphasis added). Here, the SkyLoop does not directly place waste onto the land or into water, rather the SkyLoop allegedly disposes of waste through air emissions, which then fall to the ground and contaminate the land, the inverse of the RCRA definition. *Id.*; R. at 8. If all air emissions constituted disposal, the language of placing waste “into or on any land” is effectively rendered useless. *Loughrin*, 573 U.S. at 358. The language would serve no purpose because any release of emissions that settle and deposit into the ground would automatically qualify as disposal, regardless of the manner of release. *Id.*; 42 U.S.C. § 6903(3). Under this interpretation, the RCRA’s requirement that waste must first be placed into the ground becomes obsolete and would have no independent effect. *Loughrin*, 573 U.S. at 358. Such a reading of the RCRA improperly expands the statutory definition of disposal, beyond the purview of this Court’s power. *Bostock v. Clayton Cty.*, 590 U.S. 644, 654 (2020).

Although some courts recognize emissions as disposal in limited scenarios when emissions physically contact the ground at the point of release, those cases are factually distinguishable. *Citizens Against Pollution v. Ohio Power Co.*, No. C2-04-CV-371, 2006 U.S. Dist. LEXIS 100839, at \*15 (S.D. Ohio July 15, 2006) (holding air emissions did touch the ground when first-hand witness accounts described seeing “blue plumes” of flue gas land near their house). Here, by

contrast, there is no such evidence that SkyLoop's emissions were disposed of onto any land at the point of release, only allegations of downstream contamination. R. at 8.

Even if this Court construes the RCRA broadly, it cannot expand a statutory definition to include actions not contemplated by Congress. *Bostock*, 590 U.S. at 654. By adding terms to statutes that Congress did not intend, this Court risks "amending statutes outside the legislative process," a process not within this Court's purview. *Id.* This Court ought to stray from rewriting the RCRA and enforce the statute by its plain terms. *Id.*

Ultimately, considering the plain language of the RCRA and applying common canons of statutory interpretation, this Court should not overlook Congress' exclusion of air emissions in the definition of disposal. *BNSF*, 764 F.3d at 1024. Further, the interpretation set forth in *Little Hocking* renders language in the statute obsolete, a conclusion which courts rarely accept. *Loughrin*, 573 U.S. at 358. For the foregoing reasons, this Court should hold that air emissions do not amount to disposal and vacate the preliminary injunction.

**IV. This Court must vacate the preliminary injunction because the VEA relies on generalized public injury, without showing irreparable harm to its own interests.**

Historically, courts stress that preliminary injunctions should only be issued in cases where intervention is essential to protect against irreparable harm. *Cavanaugh v. Looney*, 248 U.S. 453, 456 (1919). A preliminary injunction is an "extraordinary" remedy, which courts should never give merely as a matter of right. *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008). Because of the significance of preliminary injunctions, the Supreme Court imposed a strict test to determine whether a particular case warrants an injunction. *Id.* at 20. To warrant a preliminary injunction, the movant must show 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.* Here, the district court misinterprets the high standard set

forth to receive a preliminary injunction and the VEA fails to present requisite facts to meet that threshold. R. at 13. Therefore, this Court must vacate the preliminary injunction.

**A. *Winter* places the burden on the VEA to show irreparable harm to its own interests.**

In *Winter*, the Court set forth explicit requirements that the movant must meet to receive a preliminary injunction. 555 U.S. at 20. Regarding the second prong, the Court dictates that the movant must establish “that *he* is likely to suffer irreparable harm” to warrant an injunction. *Id.* To make a showing of irreparable harm, the movant must present more than just a mere possibility of harm, but rather a strong likelihood of imminent harm. *Id.* Generally, irreparable harm occurs when a movant’s injuries cannot be compensated through monetary awards, and the movant has no other available remedies. *Id.* Courts traditionally rule that economic loss by itself does not satisfy irreparable harm because it can be recovered through a court awarding compensatory or punitive damages. *Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 461 (8th Cir. 2025). The movant failing to show *they* are likely to suffer irreparable harm is a sufficient basis to deny a preliminary injunction. *Id.*

In order to strictly adhere to the textual analysis required by the Supreme Court, this Court must require the movant to show they will suffer irreparable harm. *See Winter*, 555 U.S. at 22. While the court may consider the interests of the public – in environmental cases – the court may only consider these interests after the movant first establishes irreparable harm to its interests. *Wilson v. Amoco Corp.*, 989 F. Supp. 1159, 1171 (D. Wyo. 1998). A mere showing of irreparable harm to the public, without any corresponding harm to the movant, is insufficient to meet the heightened threshold necessary to receive a preliminary injunction. *Beber*, 140 F.4th at 461. Considering the “extraordinary” nature of the preliminary injunction itself, the Supreme Court

intended lower courts to exercise discretionary caution when considering preliminary injunctions. *See Winter*, 555 U.S. at 22.

Here, the district court erred by allowing public harm to replace movant-specific harm. *Id.* The district court found that while the VEA itself will not suffer irreparable harm, the public will suffer irreparable harm from drinking the contaminated water. R. at 15. Thus, the district court misinterpreted the basis of the irreparable harm prong, requiring that “*the movant* must show harm.” *Beber*, 140 F.4th at 461. Here, the VEA concedes that after learning about potential contamination of the PSD water well, its members only drank bottled water. R. at 8. This type of harm does not fall within the definition of irreparable harm because the court can provide relief to VEA members through compensatory damages. *Beber*, 140 F.4th at 461. This Court must vacate the preliminary injunction because the VEA shows irreparable harm to the public, rather than its members. *See id.*

**B. Allowing generalized public harm to satisfy *Winter*'s irreparable harm prong undermines the Supreme Court's precedent.**

Appellant is likely to argue that in cases involving environmental interests, courts evaluate irreparable harm through the lens of either harm to the movant or harm to the public. However, this argument goes against the reasoning behind the strict standard established in *Winter*.

First, this argument conflates different factors in preliminary injunction analysis. *Winter*, 555 U.S. at 20. While the second factor measures whether the movant is likely to suffer irreparable harm, the fourth factor considers public interest for and against an injunction. *Id.* Creating a loophole in environmental cases allowing for consideration of the public in irreparable harm analysis, renders the public interest factor useless. *See Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) (emphasizing the importance of the public interest in exercise of equitable discretion). Further, an exception for public irreparable harm in environmental cases serves no

purpose, when public interest analysis already exists in every preliminary injunction analysis. *See Winter*, 555 U.S. at 20. The Supreme Court was clear in distinguishing the irreparable harm prong and the public interest prong. *Id.* Harm to the public, without corresponding harm to the movant, does not justify a preliminary injunction. *Id.*

Appellant might argue that through Congress allowing private citizens to bring environmental suits, courts should impose a more lenient irreparable harm analysis. While these statutes expand who may bring environmental lawsuits, they do not change any requirement regarding whether the court may grant equitable relief. *See Amoco*, 480 U.S. at 542. Courts uphold this principle even in violations of the RCRA and engage in discretionary preliminary injunction analysis rather than automatically granting injunctions. *Id.* Further, allowing public harm to replace movant-specific harm essentially converts every environmental citizen suit into a *parens patriae* action. *See Env'tl. Def. Fund, Inc. v. Lamphier*, 714 F.2d 331, 337 (4th Cir. 1983). When the Government motions for preliminary injunction, courts consistently hold that “the United States . . . is not bound to conform with the requirements of private litigation.” *Shafer v. United States*, 229 F.2d 124, 128 (4th Cir. 1956). Acting as a guardian for the public, the Government does not have to prove irreparable harm specific to its interests. *Id.* However, expanding this principle to all citizen suits undermines this important distinction. *See Lamphier*, 714 F.2d at 337. In effect, allowing public harm to satisfy the movant’s irreparable harm eliminates the strict standard set forth by the Supreme Court in evaluating preliminary injunctions. *See Id.*; *Winter*, 555 U.S. at 22.

Last, allowing public harm to satisfy the irreparable harm prong collapses the distinction between standing and preliminary injunction analysis. Standing determines whether a movant may bring a case, while preliminary injunction analysis determines whether the court may grant an “extraordinary” remedy. *Spokeo*, 578 U.S. at 338; *Winter*, 555 U.S. at 20. While it is true that once

a movant establishes standing it may utilize public injury to support its claim, the same standard does not apply to preliminary injunctions. *See Sierra Club v. Morton*, 405 U.S. 727, 737 (1972); *Winter*, 555 U.S. at 20. In effect, every movant who establishes standing in an environmental case could then automatically receive a preliminary injunction. The Court set forth different tests for standing and preliminary injunctions for a reason, and it would be a mistake for this Court to combine the two.

When implementing standards articulated by the Supreme Court, this Court is bound to strictly follow those standards. *Agostini v. Felton*, 521 U.S. 203, 237 (1997). When viewing the plain language of the irreparable harm prong, the Supreme Court clearly establishes that the movant must show irreparable harm to its interests. *Winter*, 555 U.S. at 20. Further, allowing public harm to replace movant-specific harm conflates prongs in the preliminary injunction analysis, collapses the distinction between citizen suits and *parens patriae* actions, and equates standing with irreparable. This Court must adhere to longstanding precedent and ought to decline to overrule the reasoning behind preliminary injunction analysis. Therefore, this Court must vacate the preliminary injunction.

## CONCLUSION

There is a reason the Federal Rules of Civil Procedure begin with the principle of securing efficient and economic determinations of judicial proceedings. Judicial efficiency limits the excessive caseload on courts, preserves limited judicial resources, and protects parties from the costs of litigating baseless claims. Automatic stays support that purpose. When, as here, the issues on appeal determine whether the district court may hear a case, an automatic stay is necessary to uphold these principles. Because this Court must determine threshold issues of standing and whether the VEA presents a plausible claim, this Court must uphold the stay order.

Similarly, by requiring plaintiffs to satisfy standing requirements, courts ensure that only proper parties bring actual controversies before the court. Even in regrettable cases involving environmental pollution, standing requirements do not change. For a private party to bring a public nuisance suit, it must allege a special injury distinct from the public while exercising the same interfered with public right. Here, the VEA fails to allege a special injury flowing from that interfered with right, therefore, thus, this Court must overrule the district court's standing determination. By upholding the stay order and overruling the VEA's standing, this Court complies with applicable law, while maintaining judicial efficiency.

In addition to efficiency, courts are bound by the language of the statutes that Congress enacted and precedent of the Supreme Court, emphasizing consistency and restraint. Without these principles, courts risk engaging in judicial lawmaking, and overstepping the boundaries of its power. Specifically, when Congress writes a statute, courts may not rewrite that statute with its own words. Here, because the RCRA fails to include emissions under the definition of disposal, common canons point to that exclusion being intentional, and contrary interpretations render language in the RCRA moot, this Court must follow the plain language of the statute. Therefore,

this Court must overrule the likelihood of success on the merits, and vacate the preliminary injunction.

Similarly, binding Supreme Court precedent confirms that courts must apply environmental statutes as written. Applying statutes as written closely follows the text of the Supreme Court, while upholding its reasoning behind its decisions. Here, because the Court's precedent establishes the movant must show irreparable harm, this Court should decline to expand allow public harm to substitute that high standard. That interpretation not only fails to strictly follow precedent, but undermines the Court's reasoning in placing such a high burden on the movant. Because the VEA relies on generalized public harm, rather than movant-specific harm, it fails to reach this burden. In following the plain language of statutes and precedent, this Court more closely reflects the intentions of Congress and the Supreme Court, while avoiding judicial lawmaking. Therefore, this Court must hold that under the RCRA, emissions do not constitute disposal, and under the preliminary injunction standard, movant-specific harm is required. This Court must vacate the preliminary injunction.

Respectfully submitted,

Attorneys for Appellee

Team 25

**Appendix B**

**Certificate of Service**

Pursuant to *Official Rule IV*, *Team Members* representing BlueSky 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. 25*