IN THE
UNITED STATES COURT OF APPEALS
FOR THE TWELFTH DISTRICT

VANDALIA ENVIRONMENTAL ALLIANCE,	)	
Appellant,	)	
-v.-	)	**C.A. No. 25-0682**
BLUESKY HYDROGEN ENTERPRISES,	)	
Appellee.	)	

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

BRIEF OF APPELLEE

Team No. 11

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

FEDERAL RULES

SECONDARY SOURCES

JURISDICTIONAL STATEMENT

The United States District Court for the Middle District of Vandalia (the "District Court") had subject matter jurisdiction under 28 U.S.C. § 1331 because the Vandalia Environmental Alliance (the "VEA") alleged a federal claim under the Resource Conservation and Recovery Act ("RCRA"). 42 U.S.C. § 6901 *et seq.* The District Court had supplemental jurisdiction over the VEA's state-law public nuisance claim under 28 U.S.C. § 1367(a) because that claim is so related to the VEA's RCRA claim that it forms part of the same case or controversy.

This Court has appellate jurisdiction under 28 U.S.C. § 1292(a)(1) because this appeal is from the District Court's interlocutory order granting the VEA's motion for a preliminary injunction (the "Injunction Order"). The District Court entered the Injunction Order on November 24, 2025. BlueSky Hydrogen Enterprises ("BlueSky") filed a timely notice of appeal on December 1, 2025, pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A).

STATEMENT OF THE ISSUES PRESENTED

I. Under *Coinbase,* which held that the filing of an interlocutory appeal divests the district court of control over aspects of the case involved on appeal, did the District Court correctly stay proceedings pending appeal of the Injunction Order when, in the Injunction Order, the District Court determined (1) that the VEA had standing to bring a public nuisance claim, (2) that air emissions are "disposal" under RCRA, and (3) that the irreparable harm prong of the *Winter* test is satisfied absent irreparable harm to the plaintiff?

II. Vandalia common law states that an individual has standing to bring a public nuisance claim only if they suffer harm different in kind from that suffered by the general public exercising the public right that was subject to interference. Thus, under Vandalia common law, does the VEA have standing to bring a public nuisance claim for PFOA contamination of the Mammoth Public Service District's (the "PSD") water supply when the alleged harm to the VEA farm was not incurred in the exercise of the right to clean water, and the only harm allegedly incurred in the exercise of that public right directly arises from it?

III. RCRA governs the handling, storage, treatment, transportation, or disposal of any solid or hazardous waste. Under RCRA, did the district court err in deciding that the VEA was likely to succeed on the merits of its RCRA imminent and substantial endangerment ("ISE") claim through determining that BlueSky's air emissions are considered "disposal"

when BlueSky vents the emissions through SkyLoop Hydrogen Plant's ("SkyLoop") stacks and the emissions are first emitted into the air rather than directly onto land or water?

IV. Under the *Winter* test, which in part requires that a plaintiff prove that they are likely to suffer irreparable harm in the absence of preliminary relief, can the Court consider only harm to the VEA, or can the Court consider harm to the public as evidence of irreparable harm sufficient to issue a preliminary injunction?

STATEMENT OF THE CASE

BlueSky is a Virginia-based hydrogen company that is committed to converting waste to hydrogen in an environmentally friendly way, including in Vandalia. R. 4. SkyLoop is considered one of BlueSky's greatest successes because it shows "how innovation can align environmental stewardship with economic and energy needs," and it is located in a rural area of Mammoth, Vandalia. R. 4-5. Vandalia has suffered from "extensive waste management issues," and SkyLoop seeks to address this waste management problem as well as the growing demand for low-carbon hydrogen. R. 4. SkyLoop is "an advanced waste-to-hydrogen facility designed to transform complex waste streams into a clean, valuable energy source." *Id*. Regional Clean Hydrogen Hubs ("H2Hubs"), such as SkyLoop, generate clean energy, aid community development, process various types of waste, and handle end-use hydrogen. R. 3.

H2Hubs utilize waste-to-hydrogen technology, which converts a number of waste streams into clean hydrogen fuel. R. 4. The process begins with waste preprocessing: sorting, cleaning, and preparing different types of waste while also removing contaminants. *Id*. Then, the preprocessed waste goes through gasification and thermolysis: heating the waste to extreme temperatures with controlled oxygen or steam and breaking the waste down into a hydrogen and carbon monoxide-rich gas. *Id*. The synthesis gas then undergoes a water-gas shift reaction to produce more hydrogen, while purification removes the carbon monoxide and other gases. *Id*. Finally, the process separates captured carbon dioxide from the high-purity hydrogen so that the carbon dioxide can be stored or

used commercially and the hydrogen can be used as fuel. *Id*. Once the process is complete, the remaining byproduct serves as a reusable construction material, thus reducing landfill waste. *Id*. This process reduces waste going to landfills and provides decentralized energy hubs. *Id*. Put differently, this important technology allows for "tackling waste management issues while producing a valuable, carbon-neutral energy source for transportation or industry." *Id*.

At SkyLoop specifically, the process starts at an upstream dedicated waste collection and preparation facility that collects waste from multiple sources, including "plastic waste, biosolids from wastewater treatment plans, and by-products from several chemical companies in the region." R. 5. This facility sorts, conditions, and processes the various types of waste to ensure that they are safely prepared to be transported to SkyLoop because only properly prepared feedstock goes to SkyLoop. *Id*. At SkyLoop, the processed waste undergoes high-temperature thermal and chemical processes to break down the compounds and produce a hydrogen-rich synthesis gas with minimized by-products. *Id*. All inorganic materials and trace residues are separated and responsibly managed at this stage to further reduce waste. *Id*. Then, the hydrogen-rich gas is cooled, cleaned, and refined multiple times during the purification stages, which involves removing particulates, carbon compounds, and other impurities. *Id*. Then, the "final hydrogen product can be stored, transported, or directly supplied to nearby industrial customers, supporting decarbonization efforts across the region." *Id*.

Because SkyLoop engages in this process, a significant amount of waste in Vandalia is converted into a reliable source of clean hydrogen instead of being incinerated, brought to a landfill, or treated as hazardous residuals. R. 5. Thus, SkyLoop's operations support "Vandalia's environmental goals of reducing landfill waste while supplying hydrogen for industrial and energy applications nearby and creating jobs for the community." *Id*. BlueSky's "commitment to

responsible operation and environmental stewardship" inspired support from the Vandalia Environmental Alliance ("VEA"), a regional environmental public interest group, because SkyLoop was built in lieu of a landfill, hydrogen is more environmentally friendly than fossil fuels, and SkyLoop would bring good paying jobs to the Mammoth community. R. 6-7. Additionally, many consider BlueSky's projects to be large successes, and investors seek out BlueSky to create new hydrogen projects in the area. R. 4.

Although SkyLoop significantly reduces waste and methane emissions in landfills, these plants do have the potential for air emissions. R. 5. Because of this potential, SkyLoop acquired a Title V Clean Air Act permit regulating criteria pollutants, such as carbon dioxide, nitrogen oxide, and particulates, and it has remained in compliance since operations began. *Id*. SkyLoop also considers the management of air emissions as "a core design and operational priority" as its process "is designed to tightly control reaction conditions, limit atmospheric releases, and ideally treat all process gases before any discharge occurs." R. 6. The thermal and chemical processes prevent uncontrolled combustion and reduce the formation of criteria pollutants. *Id*. Additionally, process gases are routed through downstream treatment systems instead of being released directly into the atmosphere. *Id*. Finally, prior to venting, the exhaust gases go through extensive gas cleanup and emission control to ensure that emissions meet or exceed all applicable air quality standards. *Id*. Because of all of these processes, "SkyLoop's overall greenhouse gas emissions footprint is substantially lower than conventional hydrogen production methods," and SkyLoop helps "avoid methane and other uncontrolled emissions that would otherwise occur." *Id*.

Although SkyLoop's practices minimize impacts on local air quality in Mammoth and Vandalia, testing of the Mammoth PSD water supply found detectable levels of PFOA. R. 7. However, the detected 3.9 ppt level remains below the U.S. EPA's Maximum Containment Level

("MCL"), which does not even become enforceable until 2029. *Id*. The VEA suspected that SkyLoop could be responsible based only on a timeline comparison of the beginning of SkyLoop's operations and the discovery of PFOA. *Id*. Although one of SkyLoop's sources of feedstock contains PFOA, the VEA cannot prove that SkyLoop emits PFOA. R. 7-8. Further, if PFOA is present in a feedstock, SkyLoop is not required to remove it. *Id*. The VEA believes that the PFOA is released through SkyLoop's stacks, blows in the wind, later settles onto surrounding land, including the PSD's wellfield and the VEA's farm, and ultimately contaminates the water. R. 8-9. Because of this, all of the VEA's members stopped drinking the public water. R. 8.

Despite SkyLoop's air emissions strategy reflecting "BlueSky's commitment to responsible operation and environmental stewardship," the VEA filed this lawsuit against BlueSky in the District Court on June 30, 2025. R. 6, 11. In its complaint, the VEA asserted two claims against BlueSky: a common law public nuisance claim and an ISE citizen suit claim under RCRA. R. 11.

The VEA subsequently filed a motion for a preliminary injunction (the "Injunction Motion") against BlueSky, asking the District Court to temporarily shut down SkyLoop or stop SkyLoop from accepting and using as feedstock any waste that could contain PFOA. *Id.* BlueSky opposed this motion, and the parties submitted briefs to the District Court. R. 12–14.

The District Court held an evidentiary hearing on September 29, 2025. R. 14. At the hearing, the VEA's Executive Director testified that a private test of the VEA farm's soil found detectable levels of PFOA. *Id.* Further, the VEA presented expert testimony from an air emissions expert who opined that PFOA levels could reach 10 ppt by May 2026 if emissions continued, and from a toxicologist who opined that Mammoth residents who drink the PSD water supply will suffer irreparable harm in the form of increased health risks. *Id.* However, the toxicologist also

asserted that she could not provide an expert opinion on what harm the VEA members who stopped drinking the PSD water would suffer that a preliminary injunction could prevent. *Id.* During the hearing, BlueSky asserted that the VEA failed to show that its members would be irreparably harmed, as they ceased drinking the PSD water, and that any monetary damages they suffered from buying bottled water are compensable by money damages. *Id.*

On November 24, 2025, the District Court issued the Injunction Order, granting the Injunction Motion. *Id.* In the Injunction Order, the District Court determined that the VEA had standing to bring a public nuisance claim, finding that the VEA suffered special injury in the form of property damage to the VEA farm resulting from PFOA emissions contaminating the farm's soil. R. 15. Further, the District Court ruled that the VEA had shown a likelihood of success on the merits, concluding that the PFOA air emissions from SkyLoop constitute "disposal" under RCRA. R. 15. Finally, the District Court held that while the VEA failed to show that any of its members would suffer irreparable harm from the PFOA emissions, the VEA's evidence that Mammoth residents would suffer irreparable harm was sufficient to support a preliminary injunction. *Id.*

On December 1, 2025, BlueSky filed this appeal and a motion to stay proceedings (the "Stay Motion") in the District Court pending resolution of this appeal. *Id.* A week later, the District Court granted the Stay Motion, asserting that a stay of proceedings was mandatory (the "Stay Order"). R. 16.

The VEA subsequently asked the District Court for an interlocutory appeal of the Stay Order, which was granted. R. 16. This Court permitted the VEA's discretionary cross-appeal of the Stay Order, and consolidated it with this appeal of the Injunction Order. *Id.*

SUMMARY OF THE ARGUMENT

This Court should affirm the District Court's Stay Order, as the district court was divested of control over the aspects of the case involved in the Injunction Order. The aspects of the case involved in the Injunction Order, and thus on appeal, are whether: (1) the VEA has standing to bring a public nuisance claim; (2) air emissions are "disposal" under RCRA; (3) injunctive relief is warranted absent irreparable harm to the VEA.

Further, this Court should reverse the District Court's determination that the VEA has standing to bring an individual public nuisance claim, as the VEA did not suffer any special injury in the exercise of the public's right to a clean Mammoth PSD water supply. The only injury suffered in the exercise of this right directly arises from it, so it does not constitute a special injury. The Court should also reverse the District Court's decision that BlueSky's air emissions are considered "disposal" under RCRA because RCRA does not include "emitting" in its definition of "disposal," and the emissions are emitted directly into the air instead of first being placed into or on any land or water. Finally, the Court should reverse the District Court's determination that the irreparable harm prong of the *Winter* test considers harm to the public because the *Winter* test contains two separate prongs for irreparable harm to the plaintiff and the public interest, and courts routinely narrow the irreparable harm prong to only harm to the movant.

ARGUMENT

I. The District Court correctly stayed proceedings pending appeal of the Injunction Order, as BlueSky's interlocutory appeal under 28 U.S.C. § 1292(a)(1) divested the District Court of control over all of the VEA's claims.

28 U.S.C. § 1292(b) authorizes discretionary interlocutory appeals of district court orders that involve "a controlling question of law" as to which the district judge determines there is substantial ground for a difference of opinion. This Court's review is limited to issues "fairly

included" in the certified order. *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 204-05 (1996). Here, whether the District Court correctly concluded that 28 U.S.C. § 1292(a)(1) interlocutory appeals impose an automatic stay on district court proceedings over aspects of the case involved in the appeal is a question of law reviewed de novo. *See Monasky v. Taglieri*, 589 U.S. 68, 84 (2020).

"The 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." *Griggs v. Provident Consumer Co.*, 459 U.S. 56, 58 (1982). This "divestiture rule" reflects a "longstanding tenet of American procedure" regulating the "allocation of power among multiple courts with claims over the same case." *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740, 744 (2023); *City of Martinsville v. Express Scripts Inc.*, 128 F.4th 265, 272 (4th Cir. 2025). It eliminates the possibility that "the district court will waste scarce judicial resources," "reduces the risk of confusion from potentially inconsistent judgments," and, as a result, "promote[s] judicial economy." *Coinbase,* 599 U.S. at 743; *Am. Encore v. Fontes*, No. CV-24-01673-PHX, 2025 WL 1839464, at *3 (D. Ariz. June 26, 2025); *Nat. Res. Def. Council, Inc. v. Sw. Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001).

In *Coinbase*, the Supreme Court confirmed that the divestiture rule applies to interlocutory appeals. 599 U.S. at 740. The Court analyzed whether a district court was required to stay its proceeding pending the interlocutory appeal of an order denying a party's motion to compel arbitration under 9 U.S.C. § 16(a). *Id*. The Court concluded that § 16(a) interlocutory appeals impose an automatic stay on district court proceedings because "Congress enacted § 16(a) against a clear background principle"—the divestiture rule. *Id.* at 740–41. While § 16(a) does not include

language imposing a stay, the Court reasoned that "Congress's longstanding practice both reflects and reinforces the [divestiture] rule." *Id.* at 743. "When Congress wants to authorize an interlocutory appeal and to automatically stay the district court proceedings . . . Congress need not say anything about a stay. At least absent contrary indication, the background [divestiture rule] already requires an automatic stay . . . ." *Id.* at 743–44. Alternatively, the Court observed that "when Congress wants to authorize an interlocutory appeal, but *not* to automatically stay district court proceedings . . . Congress typically says so," noting that "Congress has enacted multiple statutory 'non-stay' provisions." *Id.* at 744. As § 16(a) does not include such a provision, the Court held that the divestiture rule applied to § 16(a) interlocutory appeals. *Id.*

In *City of Martinsville*, the Fourth Circuit analyzed *Coinbase* and held that the divestiture rule applies to all interlocutory appeals, not just § 16(a) appeals, "unless and until Congress tells us otherwise." 128 F.4th at 270, 272. The Fourth Circuit adopted the *Coinbase* reasoning and recognized that the divestiture rule is a background principle against which Congress authorizes all interlocutory appeals. *See id.* 270, 272. This Circuit recently adopted the Fourth Circuit's reasoning and holding in *City of Martinsville*. R. 15.

Under the *Coinbase* and *City of Martinsville* reasonings and holdings, the divestiture rule applies to interlocutory appeals under 28 U.S.C. § 1292(a)(1). § 1292(a)(1), like 9 U.S.C. § 16(a), was enacted against the background divestiture rule. *See Coinbase*, 599 U.S. at 740. § 1292(a)(1) was enacted in its original form in 1948. *See* Act of June 25, 1948, ch. 646, 62 Stat. 929. By that time, the divestiture rule had been well-settled for seventy-five years. *See Hovey v. McDonald*, 109 U.S. 150, 157 (1883) ("One general rule in all cases . . . is that an appeal suspends the power of the court below to proceed further in the cause."); *Newton v. Consol. Gas Co. of N.Y.*, 258 U.S.

165, 177 (1922) (affirming the *Hovey* rule but noting a narrow exception allowing a district court to "preserve the status quo until decision by the appellate court" when "the purposes of Justice require"); *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 79 (9th Cir. 1951) (affirming the *Hovey* rule and the *Newton* exception).

Additionally, prior to the enactment of § 1292(a)(1), Congress explicitly included non-stay provisions in statutes authorizing interlocutory appeals. *See* Act of Apr. 3, 1926, ch. 102, 44 Stat. 233-234 (authorizing interlocutory appeals in admiralty cases, and explicitly stating that "such appeal shall not stay proceedings under the interlocutory decree"); Act of Feb. 28, 1927, ch. 228, 44 Stat. 1261 (authorizing appeals of final decrees in patent cases made before an order of accounting, and explicitly stating "the proceedings upon the accounting in the court below shall not be stayed"). Most notably, when Congress authorized interlocutory appeals of injunctions in a 1900 predecessor to § 1292(a)(1), it explicitly stated that "the proceedings in other respects in the court below shall not be stayed." Act of June 6, 1900, ch. 803, 31 Stat. 660-661. When Congress revisited this provision in 1948, it chose to remove this language. Act of June 25, 1948, ch. 646, 62 Stat. 929.

Further, 28 U.S.C. § 1292(b) includes a non-stay provision stating that the application for a discretionary interlocutory appeal does not stay district court proceedings. Along with adherence to the *Coinbase* and *City of Martinsville* rationales, well-settled canons of statutory construction support the conclusion that Congress's removal of a non-stay provision from § 1292(a)(1), and its subsequent inclusion in § 1292(b), were intentional and made in full recognition of the background divestiture rule. *See, e.g.*, *Dep't of Homeland Sec. v. MacLean*, 574 U.S. 383, 392 (2015) ("Congress acts intentionally when it omits language included elsewhere . . . ."); *Gonzalez v.*

Herrera, 151 F.4th 1076, 1088 (9th Cir. 2025) ("[F]aced with statutory silence . . . we presume that Congress is aware of the legal context in which it is legislating." (quoting *Abbey v. United States*, 112 F.4th 1141, 1153 (9th Cir. 2024)).

Thus, the filing of a § 1292(a)(1) interlocutory appeal divests the district court of control over, and imposes an automatic stay on proceedings about, aspects of the case involved in the appeal. In the majority of cases, the aspects of a case involved in the appeal of a preliminary injunction order will be limited to narrow issues bearing only on the merits of preliminary relief. *E.g., Forester-Hoare v. Kind*, No. 23-CV-537, 2025 WL 101660, at *1 (E.D. Wis. Jan. 15, 2025) (denying a motion to stay district court proceedings because "[t]he interlocutory appeal will focus on the narrow issue of . . . whether preliminary relief was warranted."). In such cases, district court proceedings will be largely unaffected.

However, in cases where the interlocutory appeal of an order granting a preliminary injunction implicates a question of standing, "whether 'the litigation may go forward in the district court is precisely what the court of appeals must decide.'" *See Coinbase*, 599 U.S. at 741 (quoting *Bradford-Scott Data Corp. v. Physician Comput. Network, Inc.*, 128 F.3d 504, 506 (7th Cir. 1997)). Analogous to the *Coinbase* court's recognition in the arbitrability context, when a party's standing to bring suit is at issue on appeal, "the entire case is essentially 'involved in the appeal,'" with respect to the challenged claim. *See Coinbase*, 599 U.S. at 741 (quoting *Griggs*, 459 U.S. at 58); *see also Am. Encore*, 2025 WL 1839464, at *2 (granting a motion to stay pending appeal of an order granting a preliminary injunction as the appeal challenged plaintiffs' standing).

Here, in granting the Injunction Motion, the District Court necessarily had to determine that the VEA had standing to bring a public nuisance claim. R. 12, 15. Thus, as this Court must

first determine the issue of standing to determine if the District Court erred in granting preliminary relief, whether the VEA's public nuisance claim may proceed is an aspect of the case on appeal. Further District Court proceedings on the merits of the VEA's public nuisance claim risk a waste of judicial resources, as this Court may find the VEA lacks standing to bring the claim altogether.

Additionally, when an interlocutory appeal of a district court's order granting a preliminary injunction implicates substantive legal issues in the dispute, those issues become aspects of the case on appeal. *See Am. Encore*, 2025 WL 1839464, at *3 (granting a motion to stay proceedings pending appeal as "most, if not all, substantive legal issues in th[e] case [were] implicated in the pending interlocutory appeal"); *Safari Club Int'l v. Bonta*, No. 22-CV-01395, 2023 WL 3505373, at *1 (E.D. Cal. May 17, 2023) (granting a motion to stay proceedings pending appeal as the "order denying plaintiffs' motion for a preliminary injunction . . . contained all of the substantive legal issues in dispute in th[e] litigation" and thus "t[he] court no longer ha[d] jurisdiction of those legal issues").

Here, in the Injunction Order, the District Court decided the two substantive legal issues in this case. R. 14–15. To conclude that the VEA had shown a likelihood of success on the merits, the District Court held that PFOA air emissions are "disposal" under RCRA. R. 15. To assess whether preliminary relief was warranted, this Court must determine whether the District Court's interpretation is correct. Thus, whether the VEA's RCRA claim fails as a matter of law is an aspect of the case involved in this appeal. Additionally, when an issue involved in the appeal of a preliminary injunction order requires the court of appeals to establish a new legal standard for a claim in the case, the merit of the claim is inherently an aspect of the case involved in the appeal. *Cf. U.S. Sec. & Exch. Comm'n v. Reven Holdings, Inc.*, No. 22-cv-02181-DDD, 2024 WL

3691603, at *4 (D. Colo. Aug. 7, 2024) (denying a motion to stay pending appeal as "the issues in the preliminary injunction [we]re not likely to result in the [appeals court] establishing any new legal standards for the claims"). Further District Court proceedings on the merits of the VEA's RCRA claim risk a waste of judicial resources, as this Court may find that the claim should be dismissed.

Further, in the Injunction Order, the District Court determined that the irreparable harm prong of the *Winter* test could be satisfied absent irreparable harm to the plaintiff. R. 15. Thus, to review whether preliminary relief was warranted, this Court must determine whether *Winter* can be satisfied without irreparable harm to the plaintiff themselves. This determination will influence whether the VEA is entitled to the permanent injunctive relief they seek. R. 11; *see Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156-57 (2010) (stating that an award of permanent injunctive relief requires a party to prove irreparable harm). Thus, whether injunctive relief is permissible absent irreparable harm to the plaintiff is an aspect of the case on appeal. Further proceedings on the merits of the VEA's plea for permanent injunctive relief risk a waste of judicial resources, as this Court's holding will be determinative on the issue. *Cf. Bray v. QFA Royalties, LLC*, No. 06-cv-02528, 2007 WL 2688858, at * 1 (D. Colo. Sept. 12, 2007) (granting a motion to stay proceedings pending appeal as "the [appeals court's] determination of the legal issues inherent in [the] preliminary injunction decision will edify further proceedings on those same Plaintiff's claims for permanent injunctive relief").

As the divestiture rule applies to appeals under § 1292(a)(1), and the issue of standing and both substantive legal issues in this case are aspects of the case involved in the current appeal, the District Court correctly stayed proceedings pending this Court's resolution.

II. The VEA lacks standing to bring a public nuisance claim for interference with the Mammoth PSD's water supply, as it did not suffer a special injury in the exercise of the public right to clean water.

A district court's determination of a party's standing to sue is reviewed de novo. *See, e.g.*, *Collins v. Ne. Grocery, Inc.*, 149 F.4th 163, 170 (2d Cir. 2025); *Garcia v. Cnty. of Alameda*, 150 F.4th 1224, 1229 (9th Cir. 2025).

A public nuisance is an unreasonable interference with a right common to the general public. Restatement (Second) of Torts § 821B(1) (Am. L. Inst. 1979). To bring an individual action for public nuisance, a plaintiff must suffer "harm of a kind different from that suffered by other members of the public exercising the right common to the general public that was subject of interference." Restatement (Second) of Torts § 821C(1)–(2). The relevant comparative population is the community seeking to exercise the same public right as the plaintiff. *Rhodes v. E.I. du Pont de Nemours & Co.*, 657 F. Supp. 2d 751, 769 (S.D. W. Va. 2009), *aff'd*, 636 F.3d 88 (4th Cir. 2011). This limitation is imposed to avoid "the multiplicity of actions that might follow if everyone were free to sue for a common wrong" and in recognition that "invasions of rights common to all of the public should be left to be remedied by action by public officials." Restatement (Second) of Torts § 821C cmt. a, cmt. b.

To bring an individual public nuisance claim for the interference with a public water supply, an individual must suffer a special injury in the exercise of the right to clean public water. *Philadelphia Elec. Co. v. Hercules, Inc.*, 762 F.2d 303, 316 (3rd Cir. 1985); *Hydro-Mfg., Inc. v. Kayser-Roth Corp.*, 640 A.2d 950, 958 (R.I. 1994). In *Philadelphia Electric Co.*, the Pennsylvania Department of Environmental Resources (the "DER") discovered resinous materials leaching into the Delaware River from the plaintiff's property. 762 F.2d at 307. Before the plaintiff owned the

property, the defendant's corporate predecessor had produced resinous materials—similar to those the DER discovered—on the same property. *Id.* The plaintiff cleaned up the hazardous resin on its property, then sued the defendant, alleging that its corporate predecessor's pollution of the property caused a public nuisance when it leached into the Delaware River. *Id.* at 307-08.

The plaintiff asserted that it had suffered special harm sufficient to give it standing, as it incurred monetary expenses cleaning the hazardous resin off its property. *Id.* at 316. The Third Circuit, applying the Restatement Second of Torts, disagreed. *Id.* at 315–16. The Court began its analysis by defining the public right subject to interference as the right to "pure water." *Id*. at 316. The Court noted that the plaintiff did "not allege that it used the waters of the Delaware River itself, or that it was directly harmed in any way by the pollution of those waters." *Id.* Thus, the Court concluded that while "pecuniary harm certainly may be a harm of a different kind from that suffered by the general public," the plaintiff lacked standing to bring a public nuisance claim for interference with the public right to pure water because its clean-up expenses were not suffered in the exercise of that right. *Id.*

Here, the VEA alleges that PFOA air emissions from SkyLoop are a public nuisance because the emissions have allegedly contaminated the Mammoth PSD water supply. R. 11. The right to a clean source of drinking water is a public right, and an interference with the exercise of such a right supports a public nuisance action. *See, e.g.*, *Rhodes*, 657 F. Supp. 2d at 768. However, the VEA has not suffered a special injury in the exercise of the public right to clean drinking water. The VEA's members have ceased exercising this public right, as they have stopped drinking from the Mammoth water supply. R. 14. While VEA members now pay for bottled water, this injury is not different in kind from those directly arising from the common right. *See In re Lead Paint Litig.*,

924 A.2d 484, 503 (N.J. 2007) (explaining that a special injury must be different from those "directly arising from the common right").

The District Court determined that property damage to the VEA's farm, allegedly resulting from PFOA contamination from SkyLoop, constitutes a special injury sufficient for standing. R. 15. However, this injury was not sustained in the exercise of the public right to clean water that the VEA bases its public nuisance claim upon. R. 11. Instead, PFOA air emissions settled directly onto the VEA's farm. R. 9, 14. Thus, the VEA has not alleged that they suffered any special injury resulting from the interference with the Mammoth PSD. Instead, the VEA's alleged special injury stems only from the exercise of its private property rights in its farm. Injuries stemming solely from the exercise of private rights will not support a public nuisance action. *See Hydro-Mfg., Inc.,* 640 A.2d at 958 (holding that a plaintiff who had to forfeit property due to the defendant's prior contamination of the property did not suffer a special injury sufficient to bring a public nuisance claim for interference with a public water source as the plaintiff's damages were suffered in the "exercise of its private-property right").

Additionally, granting the VEA standing when it suffered no special injury in the exercise of the public right to clean water directly contradicts the policy justifications for imposing a special injury limitation. The special injury limitation seeks to avoid the "multiplicity of actions that might follow if everyone were free to sue for a common wrong." Restatement (Second) of Torts § 821C cmt. a. Granting the VEA standing would bestow standing upon the numerous other farms in the area that the VEA admits would suffer the same kind of property harm. R. 9. Additionally, the Mammoth populations' shared right is best remedied by Mammoth's public officials, who have a

greater interest in seeing the rights of their citizens vindicated. *See* Restatement (Second) of Torts § 821C cmt. b.

Therefore, the District Court erred in concluding that the VEA has standing to bring a public nuisance claim for any interference with the Mammoth PSD's water supply. Any damage to the VEA's farm did not arise from the VEA's exercise of the public right to clean drinking water. Any harm the VEA suffered in the exercise of the right to clean water is of the same kind as will be suffered by the general public as a result of the interference. Therefore, in line with well-settled policy, any public nuisance action should be left to public officials to pursue.

III. The District Court incorrectly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim because BlueSky's air emissions are not "disposal" under RCRA.

The Court reviews the District Court's determination that the VEA was likely to succeed on the merits of its RCRA ISE claim under an abuse of discretion standard. *Att'y Gen. of Okla. v. Tyson Foods, Inc.*, 565 F.3d 769, 775 (10th Cir. 2009) (applying an abuse of discretion standard to the denial of a lower court's preliminary injunction under RCRA). "An abuse of discretion occurs when the district court 'commits an error of law or makes clearly erroneous factual findings.'" *Id*. at 775-76 (quoting *Gen. Motors Corp. v. Urban Gorilla, LLC*, 500 F.3d 1222, 1226 (10th Cir. 2007)). While reviewing for abuse of discretion, an appellate court will "examine the district court's legal determinations de novo, and its underlying factual findings for clear error." *Id*. at 776.

Enacted in 1976, RCRA aims to expeditiously reduce or eliminate the generation of hazardous waste and minimize the present and future threat of generated waste to human health and the environment. 42 U.S.C. § 6902(b). Based on this goal, RCRA authorizes two types of private lawsuits:

> 1. Against any person who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to [RCRA]; or
> 2. Against any person . . . who has contributed to or who 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). Therefore, a plaintiff must satisfy all of the elements of either subsection one or subsection two to succeed in bringing a private lawsuit under RCRA.

The Court should reverse the Injunction Order because RCRA's definition of "disposal" does not include "air emissions," nor do courts often interpret the definition to include emissions. 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 so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into the waters, including ground waters.

Id. § 6903(3). Absent from this list of qualifying actions is emitting. Because RCRA itself does not include emissions in the definition of disposal, the Court should begin with a presumption that emissions do not constitute disposal. *See Ctr. for Cmty. Action & Env't Just. v. BNSF Ry. Co.*, 764 F.3d 1019, 1030 (9th Cir. 2014) (conducting an in-depth analysis of RCRA's definition of disposal and ultimately holding that particulate matter emissions do not fall under the definition).

In *Center for Community Action & Environmental Justice*, the Ninth Circuit determined that air emissions, in the form of diesel particulate matter, do not constitute a disposal under RCRA. *Id*. at 1030. To reach this conclusion, the court started with the plain text of RCRA and decided that the absence of emitting in the disposal definition allows it "to assume, at least preliminarily, that 'emitting' solid waste into the air does not constitute 'disposal' under RCRA." *Id*. at 1024. The court also considered that RCRA limits disposal to "particular conduct causing a particular result" because the definition "includes only conduct that results in the placement of

solid waste 'into or on any land or water.'" *Id*. (citing 42 U.S.C. § 6903(3)). After the solid waste is placed into or on any land or water, "[t]hat placement, in turn, must be 'so that such solid waste . . . may enter the environment or be emitted into the air or discharged into any waters, including ground waters.'" *Id*. Based on the language of RCRA, the Ninth Circuit concluded that disposal only occurs "where the solid waste is *first* placed 'into or on any land or water' and is *thereafter* 'emitted into the air.'" *Id*. (emphasis in original).

Additionally, the court noted that Congress knew how to define disposal to include emissions based on its inclusion in other definitional provisions, but because Congress did not include it in RCRA's disposal definition, "Congress must have intended to exclude" emissions from disposal. *Id*. at 1024-25. The Ninth Circuit also emphasized how the statutory and legislative history of RCRA and the Clean Air Act resolve any ambiguities regarding the definition of disposal. *Id*. at 1025-26. Finally, the court stated that although RCRA has a section that addresses air emissions, it does not provide a private right of action, so a plaintiff cannot bring a citizen suit to enforce the emissions section. *Id*. at 1024-25. For these reasons, the Ninth Circuit held that "emitting diesel particulate matter into the air does not constitute 'disposal' as that term is defined under RCRA." *Id*.

Here, the air emissions coming from SkyLoop do not fall under RCRA's disposal definition for the same reasons that the Ninth Circuit discussed in *Center for Community Action and Environmental Justice*. SkyLoop's air emissions are released into the atmosphere only after the exhaust gases are treated extensively to clean up the emissions and to comply with local, state, and federal air quality standards. R. 6. Like the emissions in *Center for Community Action and Environmental Justice,* these emissions are not placed into or on any land or water before being emitted into the air, so the air emissions are not considered a disposal under RCRA.

Further, courts assert that the assessment of what constitutes disposal of solid waste under RCRA should be completed on a case-by-case basis. *See Little Hocking Water Assoc., Inc. v. E.I. Du Pont de Nemours & Co.*, 91 F. Supp. 3d 940, 966 (S.D. Ohio 2015) (holding that the courts should proceed on a case-by-case basis because "the focal point of the wide-reaching ISE provision is the harm caused by the placement of industrial waste on land and in water"); *see also United States v. Power Eng'g Co.*, 10 F. Supp. 2d 1145, 1158 (D. Colo. 1998). In *Power Engineering Co*., the court addressed whether the defendants' air scrubbers' discharge of condensate into the air constituted a "disposal" under RCRA. 10 F. Supp. 2d at 1158. Although the air scrubbers were placed off of the ground, the court emphasized that the scrubbers were only a few inches to a few feet off of the ground. *Id*. The court rejected the defendants' argument that this small distance from the ground places their emissions outside of RCRA's "disposal" definition, but the court did not hold that all air emissions constitute a disposal. *Id*. The court explicitly drew the distinction between certain types of air emissions when it stated that an emitter cannot avoid RCRA liability "merely because the hazardous waste becomes airborne *briefly before contacting the land*." *Id*. (emphasis added). The court noted that "defendants' overly narrow interpretation of the definition [of disposal] would exclude recognized acts of disposal, such as the dumping of waste by a dump-truck and the discharge of liquid waste by an effluent pipe situated *several inches or feet above the land*." *Id*. (emphasis added). Finally, the court acknowledged that although the definition of disposal is broad, it "is not limitless." *Id*.

Here, the Court should conduct a case-by-case analysis and determine that the cleaned-up SkyLoop air emissions are not comparable to the close-to-the-ground emissions discussed in *Power Engineering Co*. First, there is no indication that SkyLoop's venting system is extremely close to the ground because the air emissions are released through stacks. R. 6, 8. Therefore, the

air emissions are not airborne for only a very brief period of time before contacting the land, unlike the low-to-the-ground scrubbers in *Power Engineering Co*. The air emissions coming from SkyLoop's venting system are also nothing like the other examples of disposal in *Power Engineering Co.*: dumping waste out of a dump truck and discharging waste through an effluent pipe that is located above the land. R. 6. The differences between the SkyLoop venting system and the methods of airborne disposal in *Power Engineering Co*. are too great to suggest that the BlueSky emissions constitute a disposal.

Additional support for the contention that BlueSky's air emissions are not a RCRA disposal comes from case law construing the definition of disposal in the context of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA itself does not define disposal, but it does cross-reference RCRA's definition. *Pakootas v. Teck Cominco Metals, Ltd.*, 830 F.3d 975, 981 (9th Cir. 2016). In *Pakootas*, a smelter emitted lead, arsenic, cadmium, and mercury compounds through a smokestack, and those compounds contaminated land and water downwind. *Id.* at 978. To impose liability under CERCLA, the court had to determine whether these smokestack emissions constituted a "disposal." Because CERCLA references RCRA's disposal definition, the court utilized RCRA's definition and case law interpreting whether smokestack emissions are a disposal under RCRA. *Id*. at 981. The court ultimately held that the smokestack emissions did not constitute disposal because RCRA's definition of "release" uses the term "emitting" along with "disposing," suggesting that "Congress did not imagine 'emission' as a 'disposal,' although it did allow that hazardous substances could escape into the environment through emission *after they were disposed of*, such as if a container of gas began to leak." *Id*. at 984 (emphasis added). Although *Pakootas* deals with CERCLA, the Ninth Circuit interpreted the language of RCRA to deem that both RCRA and CERCLA's disposal definitions

do not include air emissions. *Id*. Therefore, the Court should hold that the District Court improperly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim because BlueSky's air emissions are not a "disposal" under RCRA.

IV. The irreparable harm prong of the *Winter* test considers only harm to the Plaintiff based on the language of the test and other courts' application of the test.

The Court reviews the District Court's determination that the *Winter* test irreparable harm prong considers both harm to the plaintiff and the public de novo because it is a question of law. *See, e.g.*, *Akebia Therapeutics, Inc. v. Azar*, 976 F.3d 86, 92 (1st Cir. 2020) (applying the de novo standard of review to "the district court's answers to legal questions"); *Karnoski v. Trump*, 926 F.3d 1180, 1198 (9th Cir. 2019) (per curiam) ("We review an order regarding preliminary injunctive relief for abuse of discretion, but review any underlying issues of law de novo."). Therefore, an appellate court should reverse a preliminary injunction ruling if the district court "based its decision on an erroneous legal standard." *United States v. Peninsula Commc'ns, Inc.*, 287 F.3d 832, 839 (9th Cir. 2002).

"A preliminary injunction is an extraordinary remedy never awarded as of right," and it requires "a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 24 (2008). To be entitled to a preliminary injunction, the plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tip in his favor, and that an injunction is in the public interest." *Id*. at 20. The Supreme Court stated that "[o]ur frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction." *Id*. at 22.

When the District Court determined that the VEA sufficiently proved that it is likely to suffer irreparable harm in the absence of preliminary relief, it improperly considered and relied on

the VEA's evidence regarding potential harm to the public. The language of the *Winter* test itself suggests that the irreparable harm prong only considers harm to the plaintiff because it states that a plaintiff must prove "that *he* is likely to suffer irreparable harm in the absence of preliminary relief." *Id*. at 20 (emphasis added). The use of the singular pronoun "he" indicates that the irreparable harm must impact the plaintiff, not a third party or the public at large.

Courts across the circuits explicitly consider only harm to the plaintiff when analyzing the irreparable harm prong of the *Winter* test. *See, e.g.*, *Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 462 (8th Cir. 2025); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 822 (9th Cir. 2018) ("Plaintiffs seeking injunctive relief must show that *they themselves* are likely to suffer irreparable harm absent an injunction.") (emphasis added); *Hazardous Waste Treatment Council v. South Carolina*, 945 F.2d 781, 787 (4th Cir. 1991) (considering "the likelihood of *irreparable harm to the plaintiff* if the preliminary injunction is denied") (emphasis added).

In *Beber*, the Eighth Circuit stated that "a federal court must consider the threat of irreparable harm *to the movant*, or whether *the movant* is likely to suffer irreparable harm in the absence of preliminary relief." 140 F.4th at 462 (emphasis in original) (cleaned up). The court then explicitly narrowed its inquiry to "whether enforcement of the covenants [at issue] would irreparably harm the individual movants," not "whether enforcement of the covenants would irreparably harm Nebraska public policy." *Id*. The District of Massachusetts similarly distinguished between harm to the plaintiffs and harm to third parties or the public in *Cunningham v. Lyft, Inc.* 19-CV-11974, 2020 WL 2616302, at *13 (D. Mass. May 22, 2020). In *Cunningham*, the plaintiffs requested a preliminary injunction because they alleged that Lyft's denial of sick leave to its drivers would create irreparable harm to the public in the form of passengers fearing that drivers are working while sick. *Id*. However, the court denied the plaintiffs' request in part

because "this potential harm to the public . . . is not the same as harm to the Plaintiffs themselves," and the potential harm to the public does not amount "to an irreparable injury to Plaintiffs themselves." *Id*.

The Tenth Circuit applied the *Winter* test to an environmental case in *Colorado v. U.S. Env't Prot. Agency*, 989 F.3d 874, 883 (10th Cir. 2021). The court emphasized the extraordinary nature of injunctive relief and the "high bar" that movants face in the form of the irreparable harm prong because the movant "must make a clear and unequivocal showing it will likely suffer irreparable harm absent preliminary relief." *Id*. at 886. Put simply, the court phrased the irreparable harm prong of the *Winter* test in terms of harm that *the movant* will suffer in the absence of injunctive relief. *Id*. at 884 (citing *N.M. Dep't of Game & Fish v. U.S. Dep't of the Interior*, 854 F.3d 1236, 1249 (10th Cir. 2017)).

The First Circuit applied a similar preliminary injunction standard when it required "a showing of irreparable harm *to the movant* rather than to one or more third parties." *CMM Cable Rep., Inc. v. Ocean Coast Properties, Inc.*, 48 F.3d 618, 622 (1st Cir. 1995) (emphasis in original). Finally, in *California v. Kennedy*, the District of Massachusetts specified that "the only relevant harms are those which affect the parties directly" because "injury that might occur to third parties is not probative." 25-CV-12019, 2025 WL 2807729, at *5 (D. Mass. Oct. 1, 2025). The court then applied this standard and held that the plaintiffs' evidence of harm to third parties was insufficient to support a preliminary injunction. *Id*. Based on this extensive case law, the irreparable harm prong of the *Winter* test only considers harm to the plaintiff, not the public.

The Court should only consider harm to the Plaintiff, not the public, when analyzing the irreparable harm prong because considering harm to the public would combine two separate prongs of the *Winter* test. The final prong of the *Winter* test is whether "an injunction is in the public

interest," and that prong operates independently of the irreparable harm prong. *Winter*, 555 U.S. at 20; *see also Beber*, 140 F.4th at 463. In *Beber*, the Eighth Circuit determined that "considering potential harm to Nebraska public policy conflates the irreparable-harm factor and the public-interest factor" of the *Winter* test. 140 F.4th at 463. The two *Winter* prongs are distinct because irreparable harm "is about the individual interests of *each movant*," and public interest "is about the good of society as a whole." *Id*. Although they are both prongs of the same test, "they are not interchangeable." *Id*. The court ultimately concluded that the district court's "consideration of potential harm to Nebraska public policy, in its analysis of the irreparable-harm factor, was an abuse of discretion." *Id*. Therefore, considerations about harm to the public fit within the public interest prong of the *Winter* test, not the irreparable harm prong.

Even when courts consider public harm, they do not substitute harm to the plaintiff as sufficient evidence of irreparable harm to justify injunctive relief. *See Hazardous Waste Treatment Council*, 945 F.2d at 788; *Novidades y Servicios, Inc. v. Fin. Crimes Enf't Network*, 785 F. Supp. 3d 785, 820 (S.D. Cal. 2025) (emphasizing that the plaintiffs alone could establish the irreparable harm prong while also discussing potential harm to specific interested third parties). In *Hazardous Waste Treatment Council*, the court started its analysis with the irreparable harm that the plaintiff would suffer without injunctive relief. 945 F.2d at 788. After establishing the sufficient evidence of irreparable harm to the plaintiff, the court also considers that the public might also face irreparable harm in the absence of a preliminary injunction. *Id*. However, the court does not state that harm to the public alone would be sufficient to satisfy the *Winter* irreparable harm prong, but it does conclude that the "likelihood of irreparable harm *to the plaintiff* will be measurably greater if the preliminary injunction . . . is denied." *Id*. at 795 (emphasis added). The analysis and holding

of *Hazardous Waste Treatment Council* highlight that harm to the public is not sufficient to satisfy the *Winters* test irreparable harm prong.

The VEA cites *Sierra Club v. Morton* to support its argument that public harm should be considered under the irreparable harm prong of the *Winters* test, but the case is not as instructive as it may appear. 405 U.S. 727 (1972). To prove injury in fact to establish standing, "the party seeking review [must] be himself among the injured." *Id*. at 734-35. The Supreme Court notes that the plaintiff's requirement to "allege facts showing that he is himself adversely affected does not . . . prevent any public interests from being protected through the judicial process." *Id*. at 740. In a footnote, the Court states that once standing is established, in part through proof of private injury in fact, "the party may assert the interests of the general public in support of his claim for equitable relief." *Id*. at 740 n. 15. However, the Supreme Court does not reach the issue of injunctive relief, so the opinion does not discuss how the public interest would be considered in the preliminary injunction analysis. It is also relevant that this 1972 opinion predates the 2008 *Winter* test, so it is impossible to conclusively assert that *Sierra Club* mandates consideration of public harm within the irreparable harm prong specifically. Instead, the interests of the general public would more likely fit within the public interest prong of the *Winter* test, while the harm to the plaintiff would fit within the irreparable harm prong, and the numerous cases cited above support this division of considerations.

Because the irreparable harm prong of the *Winter* test considers only harm to the plaintiff, the Court should reverse the District Court's preliminary injunction ruling. Following the *Winter* test, the Court should consider only harm to the VEA, not to third parties or the public. Therefore, the Court should focus solely on the VEA's claimed harm of its members having to spend money to buy bottled water. R. 8. The Court should not consider any harm regarding the VEA's farm

because the VEA solely relied on the harm associated with not drinking the town's water, not on the harm associated with the Sustainable Farms, in its preliminary injunction motion. R. 13; *see Novidades y Servicios, Inc.*, 785 F. Supp. 3d at 820 (allowing plaintiffs to rely on allegations in their complaint and preliminary injunction motion to meet their burden of establishing irreparable harm).

Although members of the VEA did decide to stop drinking the town's water and start buying their own bottled water, this does not constitute the irreparable harm required for a preliminary injunction. *See Turnell v. CentiMark Corp.*, 796 F.3d 656, 665 (7th Cir. 2015) (determining that a plaintiff did not suffer irreparable harm because "it should be possible to quantify his losses and compensate him fully with damages" if he prevails in a trial on the merits); *CMM Cable Rep., Inc.*, 48 F.3d at 622 (asserting that the entitlement to money damages "rarely constitutes an adequate basis for injunctive relief"). Like the plaintiff in *Turnell*, it should be possible to quantify the VEA members' losses and compensate them fully with damages because their alleged harm is monetary, and the amount of money spent on water bottles is easy to determine. R. 8. Therefore, the VEA's alleged harm is not irreparable, so the Court should reverse the District Court's erroneous preliminary injunction decision.

CONCLUSION

For the reasons set forth above, BlueSky respectfully requests that the Court affirm the District Court's grant of the Stay Order and reverse the District Court's grant of the Injunction Order.

CERTIFICATE OF SERVICE

Pursuant to *Official Rule IV*, *Team Members* representing BlueSky Hydrogen Enterprises (Appellee) 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. 11