

FC.A. NO. 25-0682

In The
United States Court of Appeals
For The Twelfth Circuit

VANDALIA ENVIRONMENTAL ALLIANCE,

Appellant,

v.

BLUESKY HYDROGEN ENTERPRISES,

Appellee.

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

BRIEF FOR APPELLEE
BLUESKY HYDROGEN ENTERPRISES

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JURISDICTIONAL STATEMENT

The United States District Court for the Middle District of Vandalia (“District Court”) had subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, because the case involves a federal question arising under the Resource Conservation and Recovery Act (“RCRA”). R. at 11. Additionally, the District Court had supplemental jurisdiction over the public nuisance claim under 28 U.S.C. § 1367, because it is so related to the RCRA claim as to form part of the same case under Article III of the United States Constitution. *Id.* The United States Court of Appeals for the 12th Circuit has jurisdiction over this appeal pursuant to 28 U.S.C. § 1292, because the appeal is taken from the District Court’s order granting BlueSky Hydrogen Enterprises’ (“BlueSky”) motion to stay proceedings pending the appeal of the Vandalia Environmental Alliance’s (“VEA”) preliminary injunction motion.

The District Court entered its order granting the preliminary injunction on November 24, 2025. R. at 14. BlueSky filed its notice of appeal on December 1, 2025, and simultaneously filed its motion to stay proceedings in the District Court pending resolution of that appeal. R. at 15. On December 8, 2025, the District Court approved this motion to stay and the VEA filed for an interlocutory appeal pursuant to 28 U.S.C. § 1292(b), which the District Court granted. R. at 16. Both the VEA and BlueSky’s appeals were filed within the time limit prescribed by Federal Rule of Appellate Procedure 4(a)(1)(A). R. at 15-16

The 12th Circuit Court of Appeals permitted the VEA’s interlocutory appeal and consolidated it with BlueSky’s preliminary injunction appeal, and, on December 29, 2025, issued its order for the issues to be argued on appeal. R. at 16.

STATEMENT OF THE ISSUES PRESENTED

Issue 1: Whether the District Court correctly stayed its proceedings pending appeal of the preliminary injunction under *Coinbase Inc., v. Bielski*, 599 U.S. 736 (2023);

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

Issue 3: Whether BlueSky’s air emissions of PFOA is considered “disposal” under RCRA and thus the District Court correctly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim; and

Issue 4: Whether the irreparable harm prong of the *Winter* test considers only harm to the Plaintiff, or whether harm to the public can also be evidence of irreparable harm sufficient to issue a preliminary injunction.

STATEMENT OF THE CASE

I. Factual Background

BlueSky (“Appellee”) is a hydrogen company headquartered and incorporated in Richmond, Virginia that does business throughout the Appalachian region. R. at 4. BlueSky specializes in cutting-edge waste-to-hydrogen technology that converts organic, plastic, chemical, and sewage waste into hydrogen fuel. *Id.* This revolutionary process produces valuable carbon-neutral energy while tackling the ever-present problem of waste management. *Id.* One such hydrogen hub under BlueSky’s umbrella is the SkyLoop Hydrogen Plant (“SkyLoop”) located in the rural outskirts of Mammoth, Vandalia. *Id.* SkyLoop’s operation is particularly important to the region because Vandalia has extensive waste management issues; a by-product of its relaxed environmental laws that neighboring states have taken advantage of. R. at 4-5. While these states treat Vandalia as a landfill, SkyLoop uses an innovative process to convert this

waste to hydrogen, supplying vital energy to nearby industrial plants and creating jobs for Vandalia's residents in the process. R. at 5.

To create this hydrogen, SkyLoop first aggregates waste like plastics, biosolids, and even chemical by-products from several companies in the region. *Id.* These waste products, which would normally be relegated in-perpetuity to a landfill, are sorted and broken down before being transported to the SkyLoop Plant proper. *Id.* There, the processed waste goes through a controlled conversion system which efficiently extracts hydrogen. *Id.* The process later continues by cooling this hydrogen-rich gas, removing impurities and producing a quality hydrogen that is suitable for an array of uses. *Id.* Though this method significantly reduces the methane emissions that would result had the waste gone directly to the landfill, the process does have potential for air emissions, including carbon dioxide ("CO₂") and nitrogen oxides ("NO_x"). *Id.* Cognizant of this risk, SkyLoop has a Title V Clean Air Act permit. *Id.* However, SkyLoop's innovative methods and waste-to-hydrogen processes grant it a substantially lower greenhouse gas footprint than other, more conventional, hydrogen production methods. R. at 6.

Despite these methods, SkyLoop has not been shielded from the scrutiny of local public interest groups. The VEA ("Appellant") is one such organization that has members in Vandalia and Mammoth itself. *Id.* In 2025, the VEA was panicked by the Unregulated Contaminant Monitoring Rule's ("UCMR") testing of Mammoth Public Service District's ("PSD") water supply. R. at 7. The results of that 2024 test showed PFOA (a PFAS compound) levels of 3.9 ppt, which falls within the Environmental Protection Agency's ("EPA") recent ruling that PFOA's Maximum Contaminant Level ("MCL") and Maximum Contaminant Level Goal ("MCLG") should be 4 ppt and 0 ppt respectively. *Id.* That rule, however, does not go into effect until 2029.

Id. Due to this finding, the VEA launched an investigation into SkyLoop’s facility and discovered that one of its waste feedstocks contained traces of PFOA. *Id.*

The VEA contends the chemicals are in the sludge SkyLoop accepts from other facilities and remains present throughout SkyLoop’s waste-to-hydrogen process before it is released into the air. R. at 8. Due to this, the VEA advised its members to limit or entirely avoid using Mammoth municipal water and hoped the other citizens of Mammoth would follow suit, though most continue to drink the water without issue. *Id.* The VEA then ceased operations of its education center and farm, which is surrounded by non-VEA farms, out of fear that air emissions from SkyLoop would settle on its properties. R. at 9. Due to this apprehension, the VEA no longer donates its produce to local food banks and soup kitchens. R. at 9.

II. Procedural Background

On June 30, 2025, the VEA filed two separate claims against BlueSky regarding SkyLoop’s emissions. R. at 11. The first claim was for public nuisance and alleged that these emissions contaminated Mammoth’s water supply. *Id.* The second claim was filed under RCRA § 7002(a)(1)(B)—which is codified in 42 U.S.C. § 6972(a)(1)(B)—and alleged that the SkyLoop facility presents an imminent and substantial endangerment (“ISE”) to health or the environment. *Id.* Shortly after the complaint was filed, the VEA made a motion seeking a preliminary injunction to halt SkyLoop’s operations. *Id.*

On September 29, 2025, the District Court for the Middle District of Vandalia held an evidentiary hearing on the preliminary injunction motion. R. at 14. Several VEA members testified that they had stopped drinking water from Mammoth’s PSD and would not drink it again until the contaminants were removed. *Id.* Additionally, the VEA retained an expert toxicologist who testified that, in her opinion, Mammoth residents who drink water from the

PSD will suffer irreparable harm; however, she could not identify what harm would be prevented to VEA members if a preliminary injunction were granted. *Id.* Two months later, on November 24, 2025, the District Court granted the VEA’s motion, despite finding that “there was not enough evidence presented to show that the VEA’s members were likely to suffer irreparable harm between now and trial since they ceased drinking the contaminated water.” R. at 14-15. In its decision, the District Court relied on reasoning from *Little Hocking Water Ass'n v. E.I. du Pont de Nemours & Co.*, a Southern District of Ohio case. R. at 15.

On December 1, 2025, BlueSky appealed the granting of the preliminary injunction to the 12th Circuit and, on that same day, filed a motion to stay proceedings in the District Court pending the resolution of the injunction appeal. R. at 15. This motion to stay was granted on December 8, 2025, and the VEA later asked for an interlocutory appeal. *Id.* The interlocutory appeal was approved by the District Court and then permitted by the 12th Circuit, which consolidated the VEA’s appeal with BlueSky’s own on the preliminary injunction. R. at 16.

STATEMENT OF THE ARGUMENT

The District Court is required to stay its proceedings under *Coinbase* when the entire case is involved in the appeal. The entire case is involved in the appeal because this court is being asked to answer a threshold question. The threshold question involves the VEA’s public nuisance claim; however, the VEA’s RCRA claim is merely an alternative pleading. This means the two claims are so intertwined that one cannot proceed without the other. Therefore, the entire case is involved in the appeal, and the District Court proceedings must be stayed.

The VEA lacks standing to bring its public nuisance claim because it did not sustain a “special injury.” A “special injury” must be different in kind and degree from a similarly situated class. The similarly situated class in this case is comprised of the farms surrounding the VEA’s own farm and education center. The VEA failed to allege an injury distinct from the surrounding

farms. The alleged harm is not different in kind from a similarly situated class; therefore, the VEA lacks standing to bring a public nuisance claim and the ruling of the District Court should be reversed.

The District Court also erred when it concluded that BlueSky was disposing of PFOA particles through air emissions. The citizen-suit provision of RCRA was drafted to intentionally exclude air emissions in its definition of disposal. This is supported by the courts in the 9th Circuit, which have repeatedly found in interpreting 42 U.S.C. § 6903(3), that Congress was intentional in what it included both in the disposal definition, and the details of how and where the matter is released. Air emissions are addressed in other areas of the statute on what the EPA can regulate, however, it is not present in the citizen-suit provision. Under this analysis, BlueSky's air emissions are not considered "disposal" under RCRA.

Further, the District Court abandoned established caselaw when it allowed the VEA to use evidence of harm to the public to satisfy the irreparable harm prong of the *Winter* test. A preliminary injunction is an "extraordinary remedy" which is intended to be a difficult hurdle. Allowing the movant to include the public in the irreparable harm prong undermines the purpose of the *Winter* test. The VEA lacks evidence of a likelihood of irreparable harm to satisfy this prong, and the District Court erred in allowing it to use the public as an alternative. Thus, the preliminary injunction should be reversed.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY STAYED ITS PROCEEDINGS AS *COINBASE, INC. v. BIELSKI* REQUIRES A STAY PENDING AN INTERLOCUTORY APPEAL WHEN THE ENTIRE CASE IS INVOLVED IN THE APPEAL.

This Court should affirm the decision to stay trial court proceedings pending appeal of the preliminary injunction. It is a long-standing tenet of American procedure—the *Griggs* principle—that the "filing of a notice of appeal confers jurisdiction on the court of appeals and

divests the district court of control over those aspects of the case involved in the appeal.” *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023) (citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)). The 12th Circuit’s adoption of the reasoning and holding of *City of Martinsville, Virginia v. Express Scripts, Inc.* expands the mandatory stay requirement from *Coinbase* beyond appeals of arbitrability. 128 F.4th 265, 272 (4th Cir. 2025).

City of Martinsville focused on *Coinbase’s* reasoning, rather than its holdings. The Supreme Court’s reasoning behind a decision—*ratio decidendi*—is often more important than the decision itself. *Id.* at 270-71 (citing *Ramos v. Louisiana*, 590 U.S. 83, 104 (2020)); *see also Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579, 635 n.2 (1952) (separating *ratio decidendi* from dictum); *Poindexter v. Greenhow*, 114 U.S. 270, 288 (1885). The court in *City of Martinsville* held that while *Coinbase* was a case about arbitration, it was not *only* about arbitration. *Id.* The rationale of *Coinbase* does not discriminate between arbitration and other appeals. *Id.* at 271. The *Griggs* principle “requires an automatic stay of district court proceedings that relate to any aspect of the case involved in the appeal.” *Coinbase*, 599 U.S. at 744.

A. The mandatory stay requirement from *Coinbase* applies during an interlocutory appeal.

The Supreme Court in *Coinbase* relied on Congressional intent and the ineffectiveness of the discretionary stay factors. The Supreme Court in *Coinbase* established the mandatory stay requirement because the *Griggs* principle underlies every statute authorizing an appeal. *Id.* at 744. Moreover, a mandatory stay was required because the discretionary stay factors fail to consider all potential burdens. *Id.* at 746. These factors are: (1) whether the stay applicant has made a strong showing of likelihood to success on the merits, (2) whether the applicant will be irreparably injured absent a stay, (3) whether issuance of the stay will substantially injure the

other parties interested in the proceedings, and (4) where the public interest lies. *Nken v. Holder*, 556 U.S. 418, 426 (2009) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

The rationale of *Coinbase* applies beyond arbitration. In *Coinbase*, the Supreme Court did not limit its discussion to arbitration. *Coinbase*, 599 U.S. at 746. In fact, it reasoned that applying the *Griggs* principle to arbitration “simply subjects arbitrability appeals to the same stay principles that courts apply in other analogous contexts.” *Id.* The Supreme Court cited examples of qualified immunity and double jeopardy; however, it indicated the list was not exhaustive. *Id.* The court in *City of Martinsville* cited these “analogous contexts” when it extended the principle to appeals of orders to remand. *City of Martinsville*, 128 F.4th at 270.

The reasoning of *Coinbase* applies equally to interlocutory appeals under 28 U.S.C. § 1292(b). The *Griggs* principle is in the background of every statute authorizing an appeal. *Coinbase*, 599 U.S. at 744. Congress has enacted many “non-stay” provisions since the creation of the modern courts of appeals system in 1891. *See* 38 U.S.C. § 7292(b)(1) (“Neither the application for, nor the granting of, an appeal...shall stay proceedings...unless a stay is ordered”); 28 U.S.C. § 1292(d)(3) (“Neither the application for nor the granting of an appeal under this subsection shall stay proceedings...unless a stay is ordered”); 28 U.S.C. § 1292(b) (“application for an appeal hereunder shall not stay proceedings in the district court...unless the district judge or the Court of Appeals or a judge thereof shall so order.”). The *Griggs* principle remains in the background of these statutes, despite the “non-stay” provisions. District courts have discretion over whether to stay proceedings when the entire case is *not* involved in the appeal. While § 1292(b) contains a non-stay provision, the District Court lacks discretion to stay proceedings because the entire case is before this Court on appeal.

The traditional discretionary stay factors are ineffective. The Supreme Court in *Coinbase* considered whether the discretionary stay factors eliminated the need for a mandatory stay requirement. *Coinbase*, 599 U.S. at 746. It rejected this premise because the traditional four-factor test for a discretionary stay often fails to consider litigation-related burdens when weighing the irreparable harm prong. *Id.* The Supreme Court has previously held that “litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury.” *F.T.C. v. Standard Oil Co. of California*, 449 U.S. 232, 244 (1980). This dilemma is why the Supreme Court requires a mandatory stay under the *Griggs* principle, regardless of whether courts would grant a discretionary stay. *Coinbase*, 599 U.S. at 747. Therefore, the District Court’s dicta regarding whether proceedings would be stayed under the traditional factor test has no bearing on this analysis.

The VEA’s reliance on *North Mississippi Medical Center, Inc. v. Quartiz Techs* is misplaced. The *Griggs* principle applies regardless of the outcome of the ordinary four-factor test. *City of Martinsville*, 128 F.4th at 269. The VEA relies on *North Mississippi* as a reason *Coinbase* does not apply to preliminary injunctions. This reliance is misplaced because the reasoning and holding of *North Mississippi* are inconsistent with *City of Martinsville*. *N. Miss. Med. Ctr., Inc. v. Quartiz Techs*, No. 1:23-CV-00003, 2024 WL 2262684 at *1 (N.D. Miss. May 17, 2024). The petitioner in *North Mississippi* appealed a preliminary injunction under § 1292(a)(1). *Id.* The court then denied a motion to stay after applying the traditional four-factor test. *Id.* at 7. The court ignored the fact that there is no “non-stay” provision in § 1292(a)(1). *Id.* at *2. Under the reasoning of *City of Martinsville*, the four-factor test should have been applied only if the entire case was not involved in the appeal; however, the court applied the traditional

four-factor test regardless. Therefore, any reliance placed on *North Mississippi* is misplaced, as it does not follow the reasoning adopted by the 12th Circuit.

Several courts of appeals have not restricted *Coinbase's* reasoning to arbitration. Cases from the 11th Circuit have extended *Coinbase's* mandatory stay beyond appeals of arbitration on multiple occasions. See *In re Sealed Case*, 77 F.4th 815, 828 n.4 (D.C. Cir. 2023) (suggesting that *Coinbase* would apply to the appeal of a nondisclosure order, but the issue evaded review); *Boyd v. Secretary, Department of Corrections*, 114 F.4th 1232, 1238 (11th Cir. 2024) (extending *Coinbase's* mandatory stay to a federal habeas petition that was filed with the district court while an appeal was pending); *Shultz v. Emory University*, No. 23-12929, 2024 WL 4534428, at *3 (11th Cir. Oct. 21, 2024) (extending *Coinbase's* the reasoning to appeals of class certification). The 3rd Circuit has extended *Coinbase's* reasoning to appeals from summary judgment and motions to unseal. See *Zenith Insurance Co. v. Newell*, 78 F.4th 603, 609 (3rd Cir. 2023); *In re ESML Holdings Inc.*, 135 F.4th 80, 98 (3rd Cir. 2025). The 5th Circuit has not strictly limited *Coinbase*; however, it has yet to extend *Coinbase's* reasoning beyond motions to compel arbitration. See *U.S. v. Texas*, 144 F.4th 632, 694 n.2 (5th Cir. 2025) (declined to extend the reasoning of *Coinbase* when the trial court modified a preliminary injunction while an appeal was pending because the modification was immaterial); *Badon v. Berry's Reliable Resources, L.L.C.*, No. 23-30345, 2025 WL 2206972, at *4 (5th Cir. Aug. 4, 2025) (failed to consider *Coinbase* in its opinion because the moving party failed to make any meaningful argument on the issue).

By contrast, only two courts of appeals have expressly limited *Coinbase* to arbitration. The 10th Circuit held that *Coinbase's* reasoning applies only to appeals from motions to compel arbitration. *U.S. Sec. & Ex. Comm'n v. Reven Holdings, Inc.*, 1:22-CV-03181, 2024 WL

3691603, at *1 n.1 (D. Colo. Aug. 7, 2024). In a different case, the 10th Circuit failed to consider *Coinbase* in its decision; however, a dissenting opinion cited *Coinbase* as the basis for the dissent. *U.S. v. Campas*, No. 24-4024, 2024 WL 1526286, at *12 (10th Cir. Apr. 9, 2024). The 9th Circuit takes the opposite approach from *City of Martinsville*, strictly limiting *Coinbase*'s reasoning to appeals from motions to compel arbitration. *California v. Express Scripts, Inc.*, 139 F.4th 763, 773 (9th Cir. 2025). Of all cases to consider expanding *Coinbase* beyond arbitration, *City of Martinsville* takes the most liberal approach.

The subject of an appeal does not affect the mandatory stay requirement when all aspects of the case are involved in the appeal. The court in *City of Martinsville*, and courts with similar interpretations, have not excluded appeals from preliminary injunctions from *Coinbase*'s mandatory stay requirement. While dissenters in *Coinbase* were concerned that parties could appeal a preliminary injunction and automatically have proceedings stayed; *Coinbase*, 599 U.S. at 760-61; this issue is resolved by requiring all aspects of the case be involved in the appeal. A stay of the district court proceedings is required when all aspects of the case are involved in the appeal, even when the appeal is of a preliminary injunction.

B. The District Court's decision to stay proceedings should be affirmed because all aspects of the case are involved in the appeal.

The *Griggs* principle is in the background of every statute authorizing an appeal. *Id.* at 740. (citing *Griggs* 459 U.S. at 58). This principle states “[a]n appeal, including an interlocutory appeal, ‘divests the district court of its control over those aspects of the case involved in the appeal.’” *Id.* This principle has been applied throughout this country’s history and across every jurisdiction. See *Hovey v. McDonald*, 109 U.S. 150, 157 (1883); *Colon Berrios v. Hernandez Agosto*, 716 F.2d 85, 86 (1st Cir. 1983); *McCowan v. Sears, Roebuck and Co.*, 908 F.2d 1099, 1103 (2nd Cir. 1990); *Bensalem Twp. v. Int’l Surplus Lines Ins. Co.*, 38 F.3d 1303, 1314 (3rd Cir.

1994); *Dixon v. Edwards*, 290 F.3d 699, 708 n.14 (4th Cir. 2002); *Alice L. v. Dusek*, 492 F.3d 563, 565 (5th Cir. 2007); *Phillips v. Houk*, 587 F.App’x 868, 871 (6th Cir. 2014); *United States v. Ray*, 831 F.3d 431, 437 (7th Cir. 2016); *Skender v. Eden Isle Corp.*, 33 F.4th 515, 520 (8th Cir. 2022); *United States v. PetroSaudi Oil Servs. (Venezuela) Ltd.*, 70 F.4th 1199, 1211 (9th Cir. 2023); *United States v. McKinney*, No. 22-3090, 2023 WL 5608463, *3 (10th Cir. Aug. 30, 2023); *Trump v. Clinton*, 161 F.4th 671, 692 (11th Cir. 2025).

Trial court proceedings were stayed in *City of Martinsville* because all aspects of the case were involved in the appeal. 128 F.4th at 272. The entire case was involved in the appeal because the question of which forum will hear a case is a threshold question. *Id.* at 270. Furthermore, *City of Martinsville* provides that “[w]hatever part of a case is ‘involved in the appeal,’ *big or small*, it lies beyond the district court’s reach because two courts ‘should not attempt to assert jurisdiction over a case simultaneously.’” *Id.* at 271 (citing *Griggs* 459 U.S. at 58) (emphasis added). The two issues the VEA brought before the District Court are so intertwined that a threshold question for one of them will—however small—inherently involve the other.

BlueSky is appealing a threshold question, placing the entire case before this Court. In *Coinbase*, the respondent argued that questions of arbitrability were “severable from the merits of the underlying disputes.” *Coinbase*, 599 U.S. at 747. The Supreme Court rejected the theory because arbitrability is a threshold question. *Id.* Threshold questions include, but are not limited to venue, jurisdiction, or a dispositive element of the merits. *Id.* at 761. The “special injury” requirement is a dispositive element of a public nuisance claim. Restatement (Second) of Torts § 821C. If this Court determines the VEA does not have a “special injury,” there can be no resolution on the merits. While the VEA has brought two distinct claims, the factual scenario underlying each is the same.

The legal issues of both VEA claims are the same and cannot be separated. The VEA brought a claim under a common-law public nuisance theory and under RCRA. The VEA claims BlueSky violated a provision of RCRA that creates a cause of action for past handling, storage, treatment, transportation, or disposal of any solid or hazardous waste that presents an ISE to health or the environment. The VEA's second claim under the RCRA is merely an alternative pleading to its 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) (“§ 6972(a)(1)(B) is essentially a codification of the common law public nuisance.”) (internal citation omitted). The District Court is divested of control over all aspects of the case because both claims are essentially the same, and a threshold question to recovery for one of those claims is before this Court. Any determination made by this Court on the VEA's public nuisance claim will affect the RCRA claim due to the similar nature of the two. This Court is making decisions that will affect both claims involving, however big or small, the entire case in the appeal.

Further, the VEA attempts to support its argument with a case where the only similarity is the appeal of a preliminary injunction. The VEA relies on *Brown v. Taylor* to argue that *Coinbase's* reasoning does not apply to preliminary injunctions. There, the factual record and legal issues were significantly different between the trial and appellate courts. *Brown v. Taylor*, No. 2:22-CV-09203, 2024 WL 1600314 at *4 (C.D. Cal. Apr. 3, 2024). The only issue on appeal was whether the plaintiff was entitled to injunctive relief; therefore, the entire claim was not involved in the appeal. *Id.* Here, the factual record is the same before the District and Appellate Courts. Moreover, the legal issues presented are the same because the RCRA claim is “essentially a codification of the common law public nuisance,” *Fresh Air for the Eastside, Inc.*,

405 F. Supp. 3d at 434–45, and the threshold question of recovery for public nuisance is before this Court.

The District Court proceedings were appropriately stayed because the entire case is involved in the appeal, and *City of Martinsville* does not limit the *Griggs* principle to motions to compel arbitration.

II. THE VANDALIA ENVIRONMENTAL ALLIANCE HAS NOT SUFFERED A “SPECIAL INJURY” SUFFICIENT TO GIVE IT STANDING TO BRING ITS PUBLIC NUISANCE CLAIM.

This Court should reverse the District Court’s decision that the VEA has standing to bring its public nuisance claim. A person is guilty of public nuisance when she interferes with a right common to the general public. Restatement (Second) of Torts § 821B; *National Television Co-op. Ass’n v. Exxon Corp.*, 38 F.Supp.2d 1, 13 (D.D.C. 1998). BlueSky concedes that contamination of a public water supply must be brought as a public nuisance action; however, a private citizen cannot bring a public nuisance claim unless she has suffered a special injury. *Rhodes v. E.I. du Pont de Nemours & Co.*, 636 F.3d 88, 97 (4th Cir. 2011) (citing *Int’l Shoe Co. v. Heatwole*, 30 S.E.2d 537, 540 (1944)); *Hark v. Mountain Fork Lumber Co.*, 127 W. Va. 586, 596 (1945) (citation omitted); *In re Lead Paint Litigation*, 191 N.J. 405, 427 (2007). A “special injury” is a harm different in kind and degree from that of other members of the public. Restatement (Second) of Torts § 821C; *Baptiste v. Bethlehem Landfill Co.*, 965 F.3d 214, 221 (3rd Cir. 2020). In establishing whether a harm is different in kind and degree, the comparison should be between two similarly situated individuals. *E. Me. Med. Ctr. v. Teva Pharma. USA, Inc.*, No. BCD-CIV-2022-00025, at *10 (Me. Super. Ct. Feb. 13, 2023); *Fayetteville Ark. Hosp. Co., LLC v. Amneal Pharma., LLC*, No. 72CV-20-156, at *4 (Ark. Cir. Ct. Dec. 16, 2022). Suffering the same harm to a greater extent or degree is not sufficient for a private individual to recover from a public nuisance. Restatement (Second) of Torts § 821C cmt. b.

The VEA has not alleged a harm different in kind and degree from that of similarly situated individuals. Contamination of the VEA's drinking water is not a "special injury." *Rhodes v. E.I. du Pont de Nemours & Co.*, 636 F.3d at 98 ("because the plaintiffs allege that all the water customers exposed to PFOA since 2005 have suffered the same personal injury, the plaintiffs' own pleadings refute their contention of 'special injury.'") The VEA shares its water source with the entire community. Moreover, the VEA asserts that its concerns are not unique to its own land: "If PFOA is being deposited through air emissions, the resulting injury to farmland would likely be shared broadly across the agricultural community near SkyLoop." The VEA's farm is surrounded by similar farms that grow a variety of food and raise livestock. These surrounding farms ("Farms") are similarly situated individuals who serve as the point of reference when establishing a "special injury." *E. Me. Med. Ctr.*, No. BCD-CIV-2022-00025, at *10; *Fayetteville Ark. Hosp. Co., LLCs* No. 72CV-20-156, at *4. The Farms would suffer the same kind of harm as the VEA if PFOA emissions contaminated their crops. The VEA has not alleged that its injury is different in kind or degree; instead, it alleges that its special injury is the lack of access to its educational center and its inability to donate crops to local food shelves.

The lack of access to the VEA's farm and education center does not amount to a special injury. In *Nebraska Innkeepers v. Pittsburgh-Des Moines Corp.*, the plaintiff attempted to recover from the contractor of a bridge that was shut down due to safety concerns. 345 N.W.2d 124, 125 (Iowa 1984). The closing of the bridge limited access to the plaintiff's establishment. *Id.* The plaintiff failed because it was just one of several businesses that suffered economic harm from the loss of access to their premises. *Id.* The court reasoned that when so many businesses have suffered the same harm, the damages are no longer special. *Id.* at 130; *see also 532 Madison Ave. Gourmet Foods, Inc. v. Finlandia Ctr., Inc.*, 96 N.Y.2d 280, 294 (2001) ("the economic loss was

‘common to an entire community and the plaintiff[s] suffer[ed] it only in a greater degree than others, it is not a different kind of harm and the plaintiff[s] cannot recover for the invasion of the public right.’”)

While the VEA’s harm may not be entirely economic, its mission was harmed to the same kind and degree as the farms surrounding its own. The VEA uses the food it grows either on-site for hosted events or donates it. The local farms surrounding the VEA’s compound would also be harmed if PFOA emissions were to contaminate its crops. The farmers would likely be unable to sell their crops, and their way of life would be harmed. The VEA and Farms’ loss of their ability to utilize their land as they wish may constitute a special injury; however, when so many of those farmers suffer the same harm, it is no longer special. Allowing the VEA to bring a public nuisance claim as a private entity when its injury is not special would contradict the policy behind the special injury rule. *Rhodes*, 636 F.3d at 97.

The VEA’s alleged harm is not consistent with the policy behind the “special injury” requirement. The “special injury” requirement prevents multiple actions seeking damages for minor injuries suffered by various members of the public. *Id.* If the VEA is allowed to bring a public nuisance claim as a private individual, every farm owner in the area would also have the same “special injury” and be able to bring the same claim. Multiple private citizens bringing individual public nuisance claims for the same occurrence is not how this cause of action was intended to be used. Courts have been reluctant to grant standing to private individuals when their injury is not different in kind. *See, e.g., In re McKinsey & Co., Inc. Nat’l Prescription Opiate Consultant Litig.*, No. 21-MD-02996-CRB, 2023 WL 4670291, at *8 (N.D. Cal. July 20, 2023) (“the injuries are similar ... and others exposed to opioids means that they are not different in kind to confer the Plaintiffs with special standing to bring a public nuisance claim....”); *Lanser*

v. Riddle, No. 4FA1103117CI, 2013 WL 10408619, at *6 (Alaska Super. July 01, 2013) (“His exposure to the odors while he is working is not sufficiently different in kind from the injury suffered by Riddle's neighbors....”); *Arriaga v. New England Gas Co.*, 483 F.Supp.2d 177, 187 (D.R.I. 2007) (“the possibility that the *degree* of harm suffered by the plaintiffs might be greater than the degree of harm suffered by other members of the public would not establish that the plaintiffs' harm is separate and distinct.”).

By contrast, courts will find a “special injury” when the harm is distinct from members of a similarly situated class. *See, e.g., Hacala v. Bird Rides, Inc.*, 90 Cal.App.5th 292, 326 (2023) (members of a class were merely inconvenienced by a sidewalk obstruction, while the plaintiff was physically injured by it); *Johnson v. 3M*, 563 F.Supp.3d 1253, 1340 (N.D. Ga. 2021) (members of a class were harmed by the contamination of a water source, but the plaintiffs sustained a special injury because they bore the cost of decontaminating the water); *Westwood Columbia, LLC v. Town of Hebron*, 295 Conn. 802, 813 (2010) (the plaintiff suffered a special injury because they alleged a “specific, personal and legal interest..., distinguished from a general interest, such as is the concern of all members of the community.”).

The VEA has not suffered a “special injury,” and the District Court’s ruling should be reversed. The VEA’s harm is not different in kind or degree from a similarly situated class; therefore, does not have standing to bring a public nuisance claim.

III. THE DISTRICT COURT’S RULING SHOULD BE REVERSED BECAUSE BLUESKY’S AIR EMISSIONS ARE NOT A “DISPOSAL” UNDER RCRA.

The VEA filed suit against BlueSky under RCRA’s imminent and substantial endangerment clause. That provision permits any person to commence a civil action against any “owner or operator of a treatment, storage, or disposal facility who has contributed 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)(B). Thus, to prevail under this provision, the VEA must prove that BlueSky’s actions meet each element. The only element that is in contention is the second element, that the defendant has contributed to or is contributing to the handling, storage, treatment, transportation, or disposal of solid or hazardous waste. *Id.*

A. The citizen suit provision of RCRA does not include air emissions in its definition of “disposal.”

The VEA claims that BlueSky contributed to the disposal of hazardous waste. It is undisputed that SkyLoop accepts industrial sludge from neighboring facilities, which contains PFOA. Appellant contends this compound remains present through SkyLoop’s treatment and processing stages and is ultimately released into the air through SkyLoop’s stacks. The District Court relied on the Ohio Southern District Court’s reasoning in *Little Hocking Water Association*. There, the defendant released PFOAs via air emissions from its stacks, and the chemicals were carried by the wind and deposited on the plaintiff’s surface soils, which then seeped into the ground water which supplied drinking water for neighboring towns. *Little Hocking Water Ass’n v. E.I. du Pont de Nemours & Co.*, 91 F. Supp. 3d 940, 947 (S.D. Ohio 2015). The court reasoned the statute should be interpreted broadly, and because the aerial emissions of PFOA “fell onto the ground, remained there, and contaminated the groundwater, [it] constitutes disposal of solid waste under RCRA.” *Id.* 965. The court stated it is “a distinction without a difference,” in the varying methods in which PFOA is released. *Id.* However, this is not the case, and this reasoning should not be accepted by this Court.

Emissions into the air do not qualify as a “disposal” under the statute or comparable judicial precedent. The statute 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 any waters, including ground waters.

42 U.S.C § 6903(3). The statute lays out the order in which the process must follow for the action to be considered “disposal” under the definition. First, the hazardous waste must be discharged, deposited, or the like onto the land or water. *Id.* After the substance is on the land or water, it is then emitted into the air or discharged into any waters. *Id.*

In 2014, the 9th Circuit addressed a similar situation, questioning whether air emissions fall under the “disposal” prong of RCRA. *Ctr. for Cmty. Action & Env'tl. Justice v. BNSF Ry. Co.*, 764 F.3d 1019, 1020 (9th Cir. 2014). Several environmental organizations in California filed suit against Union Specific Railroad under RCRA for the diesel particulate matter it released into the air. *Id.* at 1021. Diesel particulate matter has the potential to cause cancer and other adverse health problems, according to the California Air Resources Board and the Environmental Protection Agency. *Id.* The plaintiffs claimed the defendants were “allowing diesel particulate matter to be discharged into the air, from which it falls onto the ground and water nearby, and is re-entrained into the atmosphere.” *Id.* Plaintiffs acknowledged that although the defendants emitted the matter into the air, it was then “transported by wind and air currents onto the land and water,” allowing defendant’s actions to fall under RCRA. *Id.*

The court rejected this reasoning by looking at the plain text of the statute. RCRA’s definition of disposal includes “discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste.” § 6903(3). It does not mention “emitting.” *Ctr. for Cmty. Action & Env'tl. Justice*, 764 F.3d 1024. Further, even if it did include “emitting”, the statute states “into or on any land or water.” *Id.* The court stated that “[w]e therefore conclude that ‘disposal’ occurs where the solid waste is *first* placed ‘into or on any land or water’ and is

thereafter ‘emitted into the air.’” *Id.* The court further stated that “as Congress has drafted it, ‘disposal’ does not extend to emissions of solid waste directly into the air.” *Id.*

In 2016, the 9th Circuit applied this reasoning once again in *Pakootas v. Teck Cominco Metals, Limited*. There, the defendant released lead, arsenic, cadmium, and mercury compounds through their smokestack and the wind carried the chemicals to contaminate land and water in the Upper Columbia River. *Pakootas v. Teck Cominco Metals, Ltd.*, 830 F.3d 975, 979 (9th Cir. 2016). This release allegedly caused damage to both humans and aquatic life. *Id.* at 980. Plaintiffs filed a claim under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), which cross-references RCRA’s definition of “disposal.” *Id.* The lower court ruled in favor of the plaintiff stating that “disposal” occurs when the hazardous substances emitted by Teck entered the land or water, not when they were initially released into the air. *Id.* On appeal, the court reversed, citing to the same textual analysis present in *Center for Community Action*: “Congress knew how to use the word ‘emit’ when it wanted to.” *Id.* at 984.

Applying this analysis to the disposal of PFOA from BlueSky’s stacks, RCRA’s citizen suit does not apply. Appellant contends that PFOA is surviving SkyLoop’s emissions control process and is being released into the air through its stacks. The VEA also claims once the particles are emitted into the air, the winds blow them north allowing them to land onto the PSD wellfield and enter the drinking water. Similar to the diesel exhaust in *Center for Community Action*, the order in which the events occur is important when interpreting the congressional intent behind RCRA. “Statutory interpretation begins with the text of the statute...we must read the words in their context and with a view to their place in the overall statutory scheme.” *Pakootas*, 830 F.3d at 980 (internal citations omitted). The disposal rests on how and where the matter is released. The passive migration of the matter after that first step is not included in the

citizen suit provision of RCRA. Accordingly, this sequence of events cannot be characterized as “disposal” under RCRA, and the VEA cannot establish a required element of its claim.

B. The citizen-suit provision of RCRA does not permit citizens to file suit for air emissions.

RCRA was enacted to give the EPA the authority to establish a “cradle-to-grave regulatory structure for the safe handling of hazardous wastes.” *Am. Petroleum Inst. v. United States EPA*, 906 F.2d 729, 741 (D.C. Cir. 1990). The statute gives the EPA the authority to enforce compliance through both civil fines, as well as imposing criminal liability. 42 U.S.C. § 6928. Section 6924(n) of RCRA allows the EPA to regulate “the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment.” *Ctr. for Cmty. Action & Envtl. Justice*, 764 F.3d at 1025.

The citizen suit provision of the statute, under which Appellant filed this claim, lists the guidelines for citizen suits as well as their elements and limits. 42 U.S.C. § 6972. Specifically, not listed is “air emissions.” Thus, although RCRA covers some hazardous air emissions, it stays in the hands of the EPA, not the citizen-suit provision. If Congress wanted to include air emissions in the citizen-suit provision, it would have.

For these reasons, the VEA cannot establish a required element of its RCRA citizen-suit claim. RCRA’s plain text, structure, and controlling precedent make clear that “disposal” does not encompass emissions released directly into the air, nor does it extend to the passive migration of substances after their initial release. Regulation of air emissions, including any emissions of PFOA from BlueSky’s SkyLoop facility, falls squarely within the EPA’s exclusive enforcement authority, not RCRA’s citizen-suit provision.

IV. APPELLANT FAILS UNDER THE *WINTER* TEST BECAUSE IT COULD NOT ESTABLISH IRREPARABLE HARM TO ITSELF.

A preliminary injunction is considered an “extraordinary remedy” that is only granted in certain circumstances. *Winter v. NRDC, Inc.* 555 U.S. 7, 22 (2008). “An applicant must demonstrate that in the absence of a preliminary injunction, the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.” *Id.* *Winter* establishes that a plaintiff seeking a preliminary injunction must prove that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 20.

BlueSky cedes the public interest and balance of equities elements of the *Winter* test; however, the VEA's claim still fails as public harm is insufficient to meet the final prong. The District Court was incorrect when it determined that harm to the public could be included in the “irreparable harm” prong of the *Winter* test and its holding should be reversed.

A. Irreparable Harm must be plaintiff-specific.

Caselaw has consistently shown that irreparable harm must be suffered by the plaintiff to obtain a preliminary injunction. “A *movant* suffers irreparable harm when it has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages” *Progressive Techs., Inc. v. Chaffin Holdings, Inc.*, 33 F.4th 481, 485 (8th Cir. 2022) (emphasis added). In *Winter*, the Supreme Court addressed whether a preliminary injunction should be imposed to keep the Navy from conducting its training activities that were allegedly causing threats to marine life. *Winter*, 555 U.S. at 14. The plaintiffs’ interests were “they take whale watching trips, observe marine mammals underwater, conduct scientific research on marine mammals, and photograph these animals in their natural habitats.” *Id.* at 25-26. They stated the use of the Navy’s sonar in their training exercises will injure the mammals or alter

their behavioral patterns, negatively affecting their ability to study the animals. *Id.* at 26.

Although there was an effect to the environment, the plaintiffs were still able to show they would suffer a likely irreparable harm themselves without a preliminary injunction.

In *National Wildlife Federation v. National Marine Fisheries Service*, three federal agencies challenged injunctions issued by the district court to protect various salmon species under the Endangered Species Act. 886 F.3d 803, 812 (9th Cir. 2018). On appeal, the agencies argued the court granted an injunction despite the plaintiffs only showing irreparable harm to the animals, not to themselves. *Id.* at 817. The court stated “[p]laintiffs seeking injunctive relief must show that they themselves are likely to suffer irreparable harm absent an injunction.” *Id.* at 822. Further, the “plaintiff must show ‘injury to the plaintiff’ rather than ‘injury to the environment.’” *Id.*

The District Court determined “there was not enough evidence presented to show that the VEA’s members were likely to suffer irreparable harm between now and trial since they ceased drinking the contaminated water.” Despite this observation, the District Court still granted the VEA’s preliminary injunction in consideration of those Mammoth residents still using the PSD’s water. This runs afoul of caselaw, which establishes an irreparable public harm is insufficient to satisfy the *Winter* test.

B. The District Court erred in concluding that harm to the public should be incorporated into the irreparable harm prong.

The District Court concluded harm to the public satisfied the irreparable harm prong of the *Winter* test. It based its decision on *West Virginia Rivers Coalition Inc. v. Chemours Co. FC, LLC*, which found that the defendant was not complying with its permit, and was actively discharging pollutants into the Ohio River for years, contaminating the drinking water. 793 F. Supp. 3d 790, 798 (S.D. W. Va. 2025). The plaintiff claimed a member of its organization was

exposed to the polluted water. *Id.* at 812. The court then determined that “incremental exposure is necessarily irreparable harm as long as any exposure to [the pollutant] harms the [p]laintiff’s members, even if they [do] not have obvious health issues at the time of the lawsuit.” *Id.* The court then stated it can look to environmental effects to the public because *Winter* does not state relief cannot be granted “in the face of irreparable harm to the public.” *Id.* at 813.

The District Court erred in relying on this case, and this Court should not perpetuate this error. On its face, there are plain differences between *West Virginia Rivers* and the case presently on appeal. The plaintiff in *West Virginia Rivers* was able to show that a member of its organization was actively being irreparably harmed by the defendant’s actions. The VEA cannot show the same. Granting a preliminary injunction is improper because any harm claimed by the Appellant can be cured by monetary damages. Further, the claims in *West Virginia Rivers* were based upon the defendant’s active violation of their Clean Water Permit. *Id.* at 798. Conversely, BlueSky is in compliance with its Title V permit. Neither is BlueSky in violation of the Clean Air Act, because PFOA levels are not enforced under it until 2029.

West Virginia Rivers stands in stark contrast to established case law holding that irreparable harm must be suffered by the plaintiff, not third parties, for a preliminary injunction. *Winter* itself states “a plaintiff seeking a preliminary injunction must establish...*he* is likely to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20 (emphasis added). In *Starbucks Corp. v. McKinney*, the Supreme Court referenced the *Winter* test, stating “[t]hese commonplace considerations applicable to cases in which injunctions are sought in the federal courts reflect a ‘practice with a background of several hundred years of history.’” 602 U.S. 339, 346 (2024) (internal citations omitted). The Supreme Court then stated, “[w]hen interpreting a statute that authorizes federal courts to grant preliminary injunctions, we do not lightly assume

that Congress intended to depart from established principles...[t]hus absent a clear command from Congress, courts must adhere to the traditional four-factor test.” *Id.* (internal citations omitted). It would be grave for this Court to fundamentally alter the test by allowing the moving party to include the public in the irreparable harm prong of the *Winter* test.

A preliminary injunction is considered an “extraordinary remedy,” only granted in certain circumstances. *Winter*, 555 U.S. at 22. A preliminary injunction is intended to impose a meaningful hurdle, not an easy one. The 8th Circuit in *Progressive Techs., Inc.*, stated “[g]enerally, no single factor is dispositive. The movant’s failure to show irreparable harm, however, is a sufficient ground to deny a preliminary injunction.” 33 F.4th at 485. A preliminary injunction is not warranted absent a clear showing of the likelihood of irreparable harm to the plaintiff. Accordingly, because the VEA failed to establish that it is likely to suffer irreparable harm, the District Court erred in granting a preliminary injunction, and the decision should be reversed.

C. The public interest is addressed under a separate *Winter* prong, and combining factors undermines the test.

Incorporating public harm into the irreparable harm prong would improperly dilute the preliminary injunction framework. Each element of the *Winter* test serves an independent function when determining whether to grant a preliminary injunction. Allowing public harm to satisfy the irreparable harm requirement would improperly conflate distinct injuries courts have repeatedly treated as separate. One of the elements of the *Winter* test already considers the public interest. It would be redundant to include it in the irreparable harm prong. Such an approach would relieve plaintiffs of their burden to demonstrate irreparable harm to themselves, allowing them to bypass a threshold requirement through a showing of public harm.

CONCLUSION

For the reasons stated above, BlueSky requests this Court affirm the motion to stay District Court proceedings, reverse the approval of the preliminary injunction, and remand with further instructions consistent with this Court's opinion.

CERTIFICATE OF SERVICE

Pursuant to *Official Rule IV*, *Team Members* representing BlueSkey Hydrogen Enterprises certify that our *Team* emailed the brief (PDF version) to the *West Virginia University Moot Court Board* in accordance with the *Official Rules* of the National Energy Moot Court Competition at the West Virginia University College of Law. The brief was emailed before 1:00 p.m. Eastern time, February 4, 2026.

Respectfully submitted,

Team No. 12