C.A. No. 24-0682

In The

United States Court of Appeals for the Twelfth Circuit

Spring Term, 2026

VANDALIA ENVIRONMENTAL ALLIANCE

Appellant,

v.

BLUESKY HYDROGEN ENTERPRISES

Appellees.

On Appeal from the United States District Court of Vandalia

BRIEF FOR APPELLANT

Attorneys for Appellant
February 4, 2026

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TO THE UNITED STATES COURT OF APPEALS FOR THE TWELFTH CIRCUIT:

Appellant, Vandalia Environmental Alliance, Plaintiff in C.A. No. 24-0682 before the United States District Court of Vandalia, respectfully submits this brief on the merits and asks this Court to reserve the District Court's ruling on the mandatory stay order, and affirm the District Court's ruling regarding the preliminary injunction, standing, and its RCRA claim.

JURISDICTIONAL STATEMENT

The United States District Court for the Middle District of Vandalia had subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the Vandalia Environmental Alliance ("VEA") asserted a federal claim under the Resource Conservation and Recovery Act ("RCRA") as a private citizen suit under 42 U.S.C. § 6972(a)(1)(b), and supplemental jurisdiction over its related state-law public nuisance claim pursuant to 28 U.S.C. § 1367.

This Court has appellate jurisdiction over BlueSky Hydrogen Enterprises ("BlueSky") and its appeal from the district court's order granting a preliminary injunction under 28 U.S.C. § 1292(a)(1). This Court also has jurisdiction over the VEA's discretionary cross-appeal of the district court's order staying proceedings pending appeal pursuant to 28 U.S.C. § 1292(b). The district court certified the mandatory stay order for interlocutory appeal. This Court granted permission to appeal and consolidated the issues.

BlueSky filed a timely notice of appeal on December 1, 2025. R. at 15. The VEA timely sought and obtained certification of its discretionary interlocutory appeal under 1292(b), and this Court's December 29, 2025, order established the issues to be briefed. R. at 16.

STATEMENT OF THE ISSUES PRESENTED

I. Whether the district court erred in concluding it was required to stay all proceedings pending appeal of its order granting a preliminary injunction under *Coinbase, Inc. v. Bielski*.

II. Whether allegations of direct contamination and loss of use of the VEA's property constitute a special injury different in kind from the public sufficient to give it standing to bring a public nuisance claim.

III. Whether the district court correctly applied the definition of disposal when determining that the VEA was likely to succeed on the merits of its RCRA ISE claim.

IV. Whether the district court correctly considered the public in addressing the irreparable harm factor under *Winter v. Nat. Res. Def. Council, Inc.*, in granting the preliminary injunction.

STATEMENT OF THE CASE

Factual Background

The VEA's Mission. The VEA is an environmental public interest group consisting of members located throughout Vandalia, including the town of Mammoth. R. at 6. The VEA's core mission is to protect the state's natural environment, promoting clean air and clean water. R. at 7. The VEA believes educational outreach to be an integral part in furthering this mission—teaching others how to live sustainably. R. at 7. As part of their educational outreach program, the VEA has a center and a small farm known as VEA Sustainable Farms ("Sustainable Farms") R. at 7. Sustainable Farms is located just outside Mammoth, approximately 1.5 miles north of BlueSky Hydrogen Enterprises' SkyLoop Plant. R. at 7. Through hands-on programming, the farm teaches community members how to start and maintain small farms and gardens. R. at 7. Most of the food grown at the farm is donated to local food banks and soup kitchens serving the Mammoth community. R. at 7.

BlueSky's Hydrogen Plant. BlueSky Hydrogen Enterprises ("BlueSky") owns and operates the SkyLoop Hydrogen Plant ("SkyLoop") in a rural portion of Mammoth, Vandalia. R. at 4–5. SkyLoop is a waste-to-hydrogen facility that processes various waste streams—including plastic waste, biosolids, and chemical byproducts—into hydrogen fuel. R. at 5. SkyLoop began operations in January 2024. R. at 6.

One of SkyLoop's primary waste feedstocks includes biosolids originating from a wastewater treatment facility that accepts industrial sludge from Martel Chemicals, a company known to have historically used PFAS compounds in its operations, including PFOA. R. at 6–8. PFOA are a forever chemical—it persists throughout the conversion and cleanup stages, and is being released through SkyLoop's stacks. R. at 8. Once emitted, these chemicals travel throughout

the air and settle onto surrounding land and water, where they accumulate in soil and groundwater. R. at 8. SkyLoop operates under a Title V air permit that regulates emissions of traditional criteria pollutants and requires continuous monitoring of certain chemicals. R. at 6. However, the biggest concern is that the EPA does not regulate PFOA under the Clean Air Act. R. at 8. Furthermore, SkyLoop's Title V permit does not require them to remove, monitor, or treat PFOA or other PFAS compounds, allowing forever chemicals to escape regulatory oversight. R. at 8.

The Water and Soil Contamination. In March 2025, results from the EPA's Unregulated Contaminant Monitoring Rule ("UCMR") testing revealed detectable levels of PFOA in the Mammoth Public Service District's ("PSD") drinking water. R. at 7–8. The PSD provides water to the entire community of Mammoth and the surrounding farms. R. at 7–8. Specifically, testing from December 2024 showed PFOA concentrations of 3.9 parts per trillion—just below the EPA's newly established maximum contaminant level, which becomes enforceable in 2029. R. at 7. The goal, promulgated by the EPA, is to have 0 parts per trillion because of the devastating health effects PFOAs have on the population including elevated risks of cancer, birth defects, and liver problems. R. at 7. PFOA had not been detected in the Mammoth water supply in 2023. R. at 7.

The timing of the contamination coincided with the commencement of SkyLoop's operations. R. at 7. Through Freedom of Information Act requests to the Vandalia Department of Environmental Protection, the VEA learned that PFOA was present in one of SkyLoop's waste feedstocks and was not required to be removed during processing. R. at 7–8. These forever chemicals survive the treatment and processing stage which is then released into the air through SkyLoop's stacks. R. at 8. Based on prevailing wind patterns, the VEA concluded that PFOA-containing particles deposited from SkyLoop's stacks were being emitted onto surrounding land, including the PSD's wellfield and nearby farms. R. at 8.

Since SkyLoop began its operations, PFOA has been rapidly accumulating in the water supply and surround farmland. R. at 8. The Mammoth PSD currently lacks treatment technology capable of removing PFOA from the drinking water and will not be able to install such treatment for at least two years. R. at 8. As a result, the entire Mammoth community continue to receive drinking water containing PFOA without any practical means of limiting exposure. R. at 8, 9. The VEA also conducted private soil testing at their farm and detected PFOA contamination. R. at 14. Out of concern for public health and safety, the VEA ceased distributing food grown at the farm to community food banks and soup kitchens and curtailed certain programming activities. R. at 9.

Procedural History

The Lawsuit and Preliminary Injunction. After discovering BlueSky's airborne waste containing PFOA in Mammoth, the VEA provided BlueSky with a notice of intent to sue under the Resource Conservation and Recovery Act's ISE provision, as required by statute. R. at 11. After the notice period elapsed, the VEA filed this action in the United States District Court for the Middle District of Vandalia on June 30, 2025. R. at 11.

The complaint asserted two claims arising from BlueSky's airborne waste containing PFOA: (1) a public nuisance claim, and (2) a citizen suit under RCRA's imminent and substantial endangerment provision, 42 U.S.C. § 6972(a)(1)(b). R. at 11–12. The VEA sought injunctive relief to halt the alleged disposal of PFOA or alternatively to stop SkyLoop from accepting any waste that contained PFOA, to prevent further contamination of Mammoth's water supply and surrounding land. R. at 11.

The VEA argued that ongoing PFOA emissions posed an imminent and irreparable threat to human health and the environment, and that relief was necessary to prevent permanent contamination pending resolution on the merits. R. at 11. BlueSky opposed the motion, disputing

standing, likelihood of success on the merits, and irreparable harm, while conceding the public-interest and balance-of-equities factors. R. at 12.

Evidentiary Findings and District Court's Decisions. The district court held an evidentiary hearing on the VEA's motion for a preliminary injunction on September 29, 2025. R. at 14. The VEA presented testimony from its members regarding their reliance on the Mammoth water supply and the steps they had taken to avoid further exposure. R. at 14–15. The VEA also introduced evidence that PFOA had been detected in the soil at its farm and presented expert testimony regarding the accumulation of PFOA in the water supply and the health risks associated with continued exposure. R. at 14. On November 24, 2025, the district court granted the VEA's motion for a preliminary injunction. R. at 14. The court found that the VEA had standing to pursue its public nuisance claim based on injuries to its farm and operations. R. at 14–15. The court further concluded that the VEA was likely to succeed on the merits of its RCRA imminent and substantial endangerment claim, holding that BlueSky's air emissions of PFOA constituted "disposal" under RCRA. R. at 15. The court also found that irreparable harm was occurring due to continued contamination of the community's drinking water and surrounding land and that the remaining factors for injunctive relief were satisfied. R. at 15.

The Appeal. Following the entry of the preliminary injunction, BlueSky filed both a notice of appeal and a motion to stay district court proceedings pending appeal. R. at 15. BlueSky argued that a stay was mandatory under *Coinbase, Inc. v. Bielski*. R. at 15. While the district court expressed reluctancy about staying the case, it granted the stay based on its interpretation of controlling precedent. R. at 16. BlueSky timely appealed the district court's order granting the preliminary injunction. R. at 15. The VEA, in turn, sought interlocutory review of the district court's stay order under 28 U.S.C. § 1292(b). R. at 16. The district court certified appeal for the

stay order. R. at 16. on December 29, 2025, this Court granted permission to appeal. R. at 16.

SUMMARY OF THE ARGUMENT

First, the district court erred in treating *Coinbase* as requiring a mandatory stay of all district court proceedings during an appeal from a preliminary injunction. Preliminary injunction appeals under 28 U.S.C. § 1292(a)(1) are fundamentally different from arbitration appeals. Extending *Coinbase* to preliminary injunction appeals would convert § 1292(a)(1) into a de facto litigation-stopping device, disregard longstanding divestiture principals, undermine judicial efficiency, and frustrate the equitable purpose of preliminary injunctions—especially in cases involving ongoing environmental harm. The stay here was not based on a case-specific discretionary analysis; the district court expressly stated it would not have stayed proceedings absent its belief that *Coinbase* compelled it. The stay order should therefore be reversed.

Second, the VEA has standing to pursue its public nuisance claim because it has suffered a special injury different in kind from that suffered by the general public. While the public injury is the contamination of the community's drinking water, the VEA also suffered a distinct property-based injury: PFOA deposition damaged its farm's soil and crops interfering with its unique use of the land for educational outreach and food donation. Because the district court found the VEA demonstrated harm to its land and organizational operations, it has a special injury sufficient to maintain a public nuisance action and should be affirmed.

Third, the district court correctly concluded that the VEA is likely to succeed on the merits of its RCRA imminent and substantial endangerment claim because BlueSky's airborne waste containing PFOA constitutes "disposal" under RCRA. Any other interpretation is inconsistent with statutory construction canons and would create a loophole in environmental law. Here, the alleged mechanism is straightforward: PFOA-containing particulate emissions leave SkyLoop's stacks,

deposit on the wellfield and nearby land, and contaminate groundwater. That is disposal under the statute's text and purpose. Thus, the district court's finding should be affirmed.

Fourth, courts do not interpret the *Winter* factors to exclude public harm, particularly in environmental cases and statutory citizen-suit contexts where Congress authorized private litigants to seek equitable relief for threats to public health and the environment. The district court found unrebutted evidence that Mammoth residents who continue to drink contaminated water face increased health risks that cannot be undone by monetary damages. Those ongoing public-health harms are sufficient evidence of irreparable harm supporting preliminary relief, and the district court's injunction should be affirmed.

STANDARD OF REVIEW

The district court's ultimate decision to grant a preliminary injunction is reviewed for abuse of discretion. *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 664 (2004). An abuse of discretion occurs when the district court "commits an error of law or makes clearly erroneous factual findings." *Attorney Gen. of Oklahoma v. Tyson Foods, Inc.*, 565 F.3d 769, 775–76 (10th Cir. 2009). Any underlying legal conclusions are reviewed de novo, and any factual findings are reviewed for clear error. *AM Intern., Inc. v. Datacard Corp.*, 106 F.3d 1342, 1346 (7th Cir. 1997).

Accordingly, whether the district court's stay order is mandatory is reviewed for abuse of discretion. *California by & through Harrison v. Express Scripts, Inc.*, 139 F.4th 763 (9th Cir. 2025). Furthermore, whether the VEA has standing to bring a public nuisance claim is reviewed de novo. *Cranor v. 5 Star Nutrition, L.L.C.*, 998 F.3d 686 (5th Cir. 2021). Finally, whether the district court correctly interpreted RCRA, determining that BlueSky's conduct constitutes "disposal" under 42 U.S.C. § 6903(3), is reviewed de novo. *Simsbury-Avon Pres. Club, Inc. v. Metacon Gun Club, Inc.*, 575 F.3d 199, 204 (2d Cir. 2009).

ARGUMENT

I. This Court Should Decline to Extend *Coinbase's* Mandatory Stay Rule to Appeals from Preliminary Injunctions.

Appeals from preliminary injunctions are a distinct procedural tool in federal litigation. *See* 28 U.S.C. §1292(a)(1). While the filing of a notice of appeal transfers jurisdiction to the appellate court over matters involved in that appeal, it does not automatically halt all district court proceedings. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). This is distinct from an arbitration appeal; the sole question is whether litigation may proceed at all, whereas a preliminary injunction appeal allows immediate review of a temporary order that may cause severe consequences if uncorrected before final judgment. *See Coinbase, Inc. v. Bielski*, 599 U.S. 736, 741–43 (2023). Extending *Coinbase* to mandate stays in the preliminary injunction context—as the district court felt compelled to do here—would depart from settled divestiture principles, undermine judicial efficiency, and disregard the equitable function of preliminary injunctions. *See id.*

A. Established divestiture jurisprudence permits district courts to proceed during appeals from preliminary injunctions.

Filing a notice of appeal is an event of "jurisdictional significance" that confers jurisdiction on the appellate court and divests the district court of control only over "those aspects of the case involved in the appeal." *Griggs*, 459 U.S. at 58. The district court retains jurisdiction over matters not involved in the appeal. *Pueblo of Pojoaque v. State*, 233 F. Supp. 3d 1021, 1107 (D.N.M. 2017). This divestiture rule is pragmatic—designed to prevent the situation "in which district courts and courts of appeals would both have had the power to *modify the same judgment*." *Coinbase*, 599 U.S. at 755 (Jackson, J., dissenting) (citing *Griggs*, 459 U.S. at 60).

Courts have long recognized that preliminary injunction appeals do not automatically strip

district courts of authority to continue managing a case. *See* 28 U.S.C. § 1292(a)(1); *see also Coinbase*, 599 U.S. at 748 (Jackson, J., dissenting). While *Griggs* prohibits district courts from taking actions that alter the order on appeal in a way that interferes with appellate review, Congress and the Federal Rules of Civil Procedure expressly contemplate ongoing district court authority in the injunction context. *See* FED. R. CIV. P. 62(c)(1), (d); *see Griggs*, 459 U.S. at 60. As courts have explained, "the desirability of prompt trial-court action in injunction cases justifies trial-court consideration of issues that may be open in the court of appeals;" because the risk of interference with appellate deliberations is "more abstract than real," district courts may proceed where doing so promotes efficiency and preserves the status quo. *Pueblo of Pojoaque*, 233 F. Supp. 3d at 1108. Thus, resolution of divestiture questions in the injunction context must turn on "practical judgment, not abstract theory." *See* 13 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3921.2 (3d ed. 2008). If an appeal from a preliminary injunction automatically divested the district court of authority to proceed on the merits, § 1292(a)(1) would operate as a de facto stay of all litigation—a result unsupported by the statute and inconsistent with settled divestiture principles. *See* FED. R. CIV. P. 62(c)(1), (d); *see Griggs*, 459 U.S. at 60.

A motion to stay does not alter this analysis because it is not a matter of right. *Nken v. Holder*, 556 U.S. 418, 433 (2009). As the Supreme Court explains, courts should make a discretionary ruling based on the specific facts of the case, as it requires balancing of all the relevant interests. *Coinbase*, 599 U.S. at 748 (Jackson, J., dissenting) (citing *Nken*, 556 U.S. at 434); *Landis v. North American Co*., 299 U.S. 248, 254 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket."). Although stays and injunctions may overlap, a stay operates by suspending the legal

force of an order, not by regulating conduct directly. *See Nken*, 556 U.S. at 428 (2009). Allowing preliminary injunction appeals to trigger mandatory stays of all trial court proceedings would not only collapse these distinct doctrines and conflict with longstanding precedent—permitting district courts to continue managing and advancing cases while injunction appeals are pending—but defeat the very right being asserted. *See Coinbase*, 599 U.S. at 760 (Jackson, J., dissenting); *see* WRIGHT & MILLER § 3921.2 ("Interlocutory injunction appeals would come at high cost if the trial court were required to suspend proceedings . . . [t]he delay and disruption alone would be costly... [and] cases involving injunctive relief are apt to present an urgent need for action."). A preliminary injunction is appealable precisely because it is provisional and interlocutory—not because it resolves standing, the merits, or the ultimate viability of a plaintiff's claims. See 28 U.S.C. § 1292(a)(1); *see* FED. R. CIV. P. 62(c)(1), (d). Accordingly, to extend *Coinbase* and its reasoning would run afoul of the Supreme Court's jurisprudence rejecting the stay of trial court proceedings when preliminary injunctions are on appeal. *See Nken*, 556 U.S. at 434 (2009); *see Landis*, 299 U.S. at 254.

B. *Coinbase* established a narrow, arbitration-specific exception that does not apply to appeals from preliminary injunction.

In *Coinbase*, the Supreme Court held that a stay is mandatory when a defendant appeals the denial of a motion to compel arbitration. *Coinbase*, 599 U.S. at 741. This holding rested on the unique nature of arbitration appeals, specifically that arbitration implicates a statutory right to avoid litigation altogether. *See id.* In this context, "the entire case is essentially involved in the appeal," because the question is whether litigation may proceed at all. *Id.* The Court specifically stayed silent on the application to other forms of interlocutory appeals, including preliminary injunctions. *See id.* at 760–61 (Jackson, J., dissenting). The Court grounded its reasoning in

common sense and logic that reflect larger underlying principles such as judicial economy, efficiency, and party resources. *See id.* at 742–43.

As several courts have grappled with the *Coinbase* reasoning, they have declined to extend mandatory stays beyond arbitration—clearly holding that litigation-based appeals should be left to the discretion of the trial court when deciding if a motion to stay is appropriate. *See California by & through Harrison v. Express Scripts, Inc.*, 139 F.4th 763 (9th Cir. 2025); *see also Proto Gage, Inc. v. Fed. Ins. Co.*, No. 21-12286, 2023 WL 9112923, at *2 (E.D. Mich. Dec. 28, 2023) ("A litigant who had been enjoined from performing an imminent wrongful act would be freed from that restraint through the litigant's simple act of filing a notice of appeal."). Interlocutory appeals focus on the "narrow issue" of a litigant's "current safety and whether preliminary relief [is] warranted." *Forester-Hoare v. Kind*, No. 23-CV-537-JPS, 2025 WL 101660, at *1 (E.D. Wis. Jan. 15, 2025).

Preliminary injunctions function differently than arbitration, as they are an extraordinary relief that considers the likelihood of success on the merits. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Unlike arbitration appeals, preliminary injunction appeals do not involve a right to avoid litigation. *See Coinbase*, 599 U.S. at 758 (Jackson, J., dissenting). And while this Court has applied the *Coinbase* reasoning to federal officer removal, preliminary injunctions do not dispose the merits of the case, as removal and arbitration do. R. at 11; *see City of Martinsville, Virginia v. Express Scripts, Inc.*, 128 F.4th 265 (4th Cir. 2025). Preliminary injunctions involve the timing and scope of equitable relief in the face of ongoing harm. *See Winter*, 555 U.S. at 20. The dissent in *Coinbase* goes further to explain that the mandatory-general-stay rule "would upend federal litigation as we know it . . . Aware that any interlocutory appeal on a dispositive issue grinds the plaintiff's case to a halt, defendants would presumably pursue that tactic at every

opportunity." *Coinbase*, 599 U.S. at 760 (Jackson, J., dissenting). When a plaintiff's request for injunctive protection against imminent harm goes unanswered, justice is delayed while the case is on hold. *Id.* at 758 (Jackson, J., dissenting). Thus, parties "could be forced to settle," because "they do not wish—or cannot afford—to leave their claims in limbo." *Id.* Following this logic, a plaintiff's preliminary injunction motion "becomes a trap" as the "defendant can take that opportunity to stop the trial court proceedings in their tracks." *Id.* at 761 (Jackson, J., dissenting). To be sure, while issues such as standing or irreparable harm may overlap with the merits, the overlap has never been sufficient to halt district court proceedings entirely. *See id.* (Jackson, J., dissenting). Interlocutory injunction appeals focus on a narrow, provisional determination—whether immediate relief was warranted from a limited record—not whether the case itself may proceed. *Kind*, 2025 WL 101660, at *1. If an appeal from a preliminary injunction automatically halts all progress toward final adjudication, defendants gain a perverse incentive to appeal simply to delay resolution—especially in environmental cases, where delay itself allows harm to accumulate. *See Coinbase*, 599 U.S. at 761 (Jackson, J., dissenting).

That concern is not abstract here. R. at 9. The district court expressly stated that it would not have exercised its discretion to stay proceedings absent its belief that *Coinbase* compelled that result. R. at 16. Thus, the stay did not reflect a case-specific assessment of judicial efficiency or fairness. R. at 16; *see Coinbase*, 599 U.S. at 748 (Jackson, J., dissenting). The issues in this case are intertwined within the preliminary injunction, as the Court is looking at standing, irreparable harm, and viability of an RCRA claim. R. at 15. However, injunctions are fundamentally different than arbitration. *See Coinbase*, 599 U.S. at 760 (Jackson, J., dissenting). To halt discovery and pretrial matters from a practical perspective would run afoul of the very purpose underscoring *Coinbase*—to promote judicial efficiency. *Id.* at 758, 761 (Jackson, J., dissenting). Thus, this Court

should reverse the district courts mandatory stay and clarify that *Coinbase* does not mandate a halt to the district court proceedings pending appeal of a preliminary injunction. R. at 16.

II. The VEA has a Special Injury Sufficient to Give it Standing to Bring its Public Nuisance Claim.

Public nuisance actions are typically brought by state or local governments; however, it is well settled that private parties may maintain such actions when they can demonstrate a "special injury." *See Warth v. Seldin*, 422 U.S. 490, 501 (1975); *see also* RESTATEMENT (SECOND) OF TORTS § 821C (A.L.I. 1979). A limited group of private plaintiffs may satisfy this requirement when they suffer harm that is different in kind—not merely degree—from that suffered by the general public. *Ileto v. Glock Inc.*, 349 F.3d 1191, 1211 (9th Cir. 2003). Courts assessing special injury begin by identifying the relevant comparative population and asking whether the plaintiff's injury differs in kind from the injury suffered by that population. *Rhodes v. E.I. du Pont de Nemours & Co*., 657 F. Supp. 2d 751, 767 (S.D.W. Va. 2009). Under this assessment, the district court correctly concluded that the VEA suffered a special injury where PFOA air deposition caused direct harm to the VEA's property, a concrete injury distinct from the generalized public harm underlying its nuisance claim. R. at 15.

A. The Mammoth community is the relevant comparative population for assessing a special injury.

The relevant comparative population is the entire community that seeks to exercise the same public right as the plaintiff. *Rhodes*, 657 F. Supp. 2d at 769. To determine the relevant comparative population, courts will look to the pleadings and the facts alleged. *Warth*, 422 U.S. at 500 (explaining how standing "often turns on the nature and source of the claim asserted"); *see Ileto*, 349 F.3d at 1212; *see also Rhodes v. E.I. du Pont de Nemours & Co*., 636 F.3d 88, 98 (4th Cir. 2011).

Furthermore, courts routinely recognize that the same facts may give rise to both public and private nuisance claims where a considerable number of people suffer interference with the use and enjoyment of land. *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Ariz.*, 712 P.2d 914, 917 (Ariz. 1985). The torts are not mutually exclusive. *Id.* To be sure, the existence of widespread harm does not preclude a subset of plaintiffs from suffering a legally cognizable special injury. *Warth*, 422 U.S. at 501 (stating that a plaintiff "must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants . . . so long as this requirement is satisfied, [this class has] standing to seek relief on the basis of the legal rights and interests of others."). This limitation is only to prevent widespread litigation for minor injuries suffered by various members of the public. *Rhodes*, 636 F.3d at 97.

As the district court explained in *Rhodes* determined that the relevant comparative population was the customers attempting to exercise their public right to a clean municipal water supply. *Rhodes*, 657 F. Supp. 2d at 769. Similarly, in *Armory Park Neighborhood*, the court held that a neighborhood association had standing to bring a public nuisance action to enjoin the operation of a free food distribution program at a neighborhood center. *Armory Park Neighborhood*, 712 P.2d at 917. The court reasoned that the neighborhood association suffered an injury "special in nature and different in kind from that experienced by the residents of the city in general." *Id.* at 918.

In this case, the entire community of Mammoth is the relevant comparative population seeking to exercise their public right to a clean municipal water supply. R. at 11–12. The VEA specifically alleges that the air emissions have contaminated the water supply which is then routed to the entire city of Mammoth. R. at 11–12. The VEA has also claimed that not only the surrounding farms and their members face irreparable harm, but that the entire town of Mammoth

faces dangerous health risks by drinking the contaminated water supply. R. at 11–12. The VEA has specifically alleged their farm is now unable to operate due to soil and crop contamination, disabling their mission to donate locally grown food and educate the community on sustainable farming practices. R. at 9.

While the subset of people that have standing under this special injury requirement must be limited, BlueSky mischaracterizes that only the plaintiff may have this injury. R. at 12. This inquiry does not demand exclusivity. *Armory Park Neighborhood*, 712 P.2d at 917. Rather, it asks whether the plaintiff has experienced a distinct type of harm that implicates a legally protected interest beyond the generalized injury shared by the public. *Id.* Here, the generalized injury is the contaminated drinking water that is harming the entire community. R. at 11. The surrounding farms are a limited subset of the population that has been harmed different in kind and degree by SkyLoop's air emissions; thus, they are not a relevant comparative population. R. at 9.

Supported by case law from multiple circuits and the Supreme Court, the special injury can apply to a subset of plaintiffs; it is a mischaracterization of law and an unreasonable expectation to require the VEA to show harm only they suffer. *See* R. at 9 (explaining the effects on the agricultural community near the SkyLoop Plant); *see Warth*, 422 U.S. at 500. In line with public policy, the special injury requirement is to prevent the entire community from suing for the same widespread harm—here, the VEA is alleging a special injury only to the farms near the factory that receive a disproportionate amount of PFOA deposits as compared to the rest of the community. R. at 9; *Armory Park Neighborhood*, 712 P.2d at 918. Proximity to the source does not by itself satisfy the requirements needed to establish standing; however, it is an important consideration when looking at the comparative population that is harmed. *Armory Park Neighborhood*, 712 P.2d at 917. Ultimately, the VEA has not only suffered in greater degree than the comparative

population but also greater in kind by undermining their core mission on the farm. R. at 9.

B. The VEA suffered a special injury different in kind and degree that has resulted in damage to its property and functionality as an environmental organization.

When a public nuisance causes harm to a plaintiff's property interests, the harm is normally different in kind from that suffered by other members of the public. *Ariz. Copper Co. v. Gillespie*, 230 US 46, 57 (1913); RESTATEMENT (SECOND) OF TORTS § 821C (A.L.I 1965). In pollution cases, plaintiffs have often established special injuries by showing harm to multiple interests. *See Karpisek v. Cather & Sons Const., Inc*., 117 N.W.2d 322, 326–27 (Neb. 1962). Multiple interests include, but are not limited to, an injury to the plaintiff's health, diminution in the value of the property, and most relevant here, damage to the plaintiff's personal or pecuniary interests. *See Town of Rome City v. King*, 450 N.E.2d 72, 79 (Ind. Ct. App. 1983).

As enumerated throughout case law, when a public nuisance substantially interferes with the use or enjoyment of the plaintiff's rights in land, there is a particular kind of damage. *Frady v. Portland Gen. Elec. Co.*, 637 P.2d 1345, 1349 (Or. App. 1981). Especially regarding a class of landowners harmed in greater degree by the nuisance, every plot of land is "traditionally unique in the eyes of the law;" therefore, landowners' interests will necessarily be limited in scope and are "obviously different from that of the general public." *Armory Park Neighborhood*, 712 P.2d at 917 (citing Prosser, *Private Action for Public Nuisance*, 52 VA. L. REV. 997, 1018 (1966)).

SkyLoop's air emissions affect multiple interests held by the VEA. R. at 9. Not only have SkyLoop's air emissions interfered with the public right to drink clean water and grow chemical-free crops, but the company has specifically interfered with the VEA farm's personal interest in using their property as an educational outreach program—harming the VEA farm's reputation and goodwill within the community. R. at 9. The VEA has produced evidence in their pleadings, motions, and hearings in tandem that shows their farm has suffered harm that is different in kind

and degree from the comparative population—the entire community within Mammoth. R. at 9. To be sure, the VEA farm suffers similar harm to other farms within the agriculture community that grow food for local and regional consumption. R. at 9. However, the VEA's unique use of the land for educational and community outreach purposes has been substantially harmed to the point where the farm is now precluded from using and enjoying their land. R. at 9, 14, 15.

The public purpose ingrained in the special injury rule seeks to limit minor injuries held by the general population while also ensuring that environmentalists have "broad-based avenues" to address pollution control. *See In re Lead Paint Litig.*, 924 A.2d 484, 496 (N.J. 2007). The Restatement (second) was specifically reformed with these policies in mind, and to reverse the districts court's findings would ignore the very reason public nuisance actions can be pursued by private parties. *See* RESTATEMENT (SECOND) OF TORTS § 821B (A.L.I. 1979); *see also Taylor v. Culloden Pub. Serv. Dist.*, 591 S.E.2d 197, 206 (W. Va. 2003) ("Were it not for the availability of nuisance actions as a remedy, it seems certain an inestimable number of business and private actions that have deleterious health and environmental results as a byproduct of their operations would have continued unabated.").

Where a nuisance materially restricts the use and enjoyment of specific properties, the landowners suffer an injury different in kind from that of the public at large—even if many are similarly affected. *See Karpisek*, 117 N.W.2d at 326–27. Holding otherwise would deny injunctive relief whenever a nuisance impacts more than a few properties, leaving materially injured landowners without recourse, absent government action. *See id.* The harm to the VEA is not simply a "greater inconvenience," but one with communal impacts that would leave the VEA without recourse. R. at 9. Therefore, the district court correctly concluded that the VEA has a special injury to establish standing. R. at 15.

III. The District Court Correctly Applied the Definition of "Disposal," Accurately Concluding That the VEA Is Likely to Succeed on the Merits of its RCRA ISE Claim.

RCRA is an environmental statute that "governs the treatment, storage, and disposal of solid and hazardous waste." *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 483 (1996). Congress intended this statutory scheme to be comprehensive—providing "cradle-to-grave oversight of solid and hazardous waste." *United States v. Power Eng'g Co.*, 191 F.3d 1224, 1227 (10th Cir. 1999). The primary purpose is to reduce the generation of hazardous waste and to ensure the proper "treatment storage and disposal" of that waste "to minimize the present and future threat to human health and the environment." 42 U.S.C. § 6902(b).

RCRA specifically permits private citizens to bring suit against "any person . . . 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." *Id.* § 6972(a)(1)(b) (commonly referred to as an RCRA ISE claim). In "conferring standing to the fullest extent permitted by Article III, Congress sought to maximize the number of potential enforcers of environmental regulations." *Fresh Air for the Eastside, Inc. v. Waste Mgmt. of N. Y., L.L.C.,* 405 F. Supp. 3d 408, 426 (W.D.N.Y. 2019). The district court correctly concluded that the VEA is likely to succeed on the merits of its RCRA claim, first by analyzing the meaning of "disposal" under its plain and ordinary meaning, and second by not confining the statutory language to a particular order, both of which align with congressional intent. R. at 15.

A. The word "disposal" should take on its plain and ordinary meaning in accordance with its statutory definition.

The statutory definition of "disposal" is broad. *See* 42 U.S.C. § 6903(3). It includes "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste . . . into or

on any land or water so that such solid waste . . . or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." *Id.* Under statutory construction canons, to analyze the definition of words in a statute, courts begin with the language of the text itself. *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450 (2002). Courts interpret statutes as a whole, "giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." *Mitchell v. Chapman*, 343 F.3d 811, 825 (6th Cir. 2003). Where a statute as a whole is unambiguous, courts must enforce the words according to their plain meaning. *Barnhart*, 534 U.S. at 450. When specific words are not defined in a statute, courts generally give them their "ordinary or natural meaning." *United States v. Alvarez–Sanchez*, 511 U.S. 350, 357 (1994). Some courts look to whether the alleged conduct was active or passive when analyzing the meaning of "disposal," rather than looking at the words in the statute itself. *See, e.g.*, *Pakootas v. Teck Cominco Metals*, *LTD.*, 830 F.3d 975 (9th Cir. 2016); *United States v. 150 Acres of Land*, 204 F.3d 698, 706 (6th Cir. 2000). However, this is not the proper way to analyze the meaning of "disposal." *See generally Carson Harbor Vill., Ltd. v. Unocal Corp.*, 270 F.3d 863 (9th Cir. 2001) (applying the plain language of the statute to define "disposal"). Furthermore, because the RCRA is a remedial measure, courts tend to construe it in a liberal, but not illogical, manner. *See Davis v. Sun Oil Co.*, 148 F.3d 606, 609 (6th Cir.1998).

The Ninth Circuit analyzed whether emissions of solid waste fell within the scope of an RCRA claim. *Ctr. for Cmty. Action & Envtl. Justice v. BNSF R. Co.*, 764 F.3d 1019, 1023 (9th Cir. 2014). In its analysis, the court noted that the term "emitting" was absent from the definition of "disposal," despite the fact that the term is present in other portions of the statute. *Id.* at 1024. In doing so, the Ninth Circuit ignored the plain meaning, failed to give effect to all the words in

the statute, and construed the statute inconsistently. *Id.; but see Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d 940, 962 (S.D. Ohio 2015) (applying the plain meaning analysis).

To correctly interpret RCRA, courts should apply the plain meaning of all words Congress did include in the statute. *See* 42 U.S.C. § 6903(3). Several of the listed terms encompass "emission" by their plain meaning. *See id.* For example, "discharge" is commonly defined as "to give outlet or vent to," or to "emit," as in a vehicle discharging exhaust fumes. *Discharge,* MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/discharge (last visited Feb. 4, 2026). Likewise, "emit" itself is defined as "to throw or give off or out," and one of its listed synonyms is "discharge." *Emit,* MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/thesaurus/emit (last visited Feb. 4, 2026). Other statutory terms are similarly capacious. *See* 42 U.S.C. § 6903(3). "Leak" means to escape through an opening—often unintentionally—such as when fumes leak into the environment. *Leak,* Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/leak (last visited Feb. 4, 2026). In its statutory analysis, the Ninth Circuit in *BNSF* wholly failed to consider that "emit" is not the only verb that can be used to describe air pollution. *See BNSF*, 764 F.3d at 1024. Confining air pollution to only the word "emit" runs counter to the legislative intent behind the statute. *See Conn. Coastal Fishermen's Ass'n v. Remington Arms Co., Inc.*, 989 F.2d 1305, 1314 (2d Cir. 1993). Construing "disposal" to exclude airborne waste therefore requires courts to ignore the ordinary meaning of the statute's operative verbs, and to treat "emit" as categorically distinct from the terms Congress deliberately chose to include. *See* Kurt Wohlers, *The Particle Problem: Using RCRA Citizen Suits to Fill Gaps in the Clean Air Act*, 121 MICH. L. REV. 325, 346 (2022).

Furthermore, this interpretation would render other portions of the statute inconsistent, meaningless, and superfluous; the word "emission" is mentioned not only in the same statute, but within the same sentence. *See* 42 U.S.C. § 6903(3). Thus, the court in *BNSF* arbitrarily concluded that its interpretation was consistent with legislative intent. *BNSF*, 764 F.3d at 1024. The Ninth Circuit's analysis in *BNSF* runs directly counter to other courts, which have consistently looked to the statute's "endangerment" provision as one of the "most important enforcement tools." *See* 42 U.S.C. § 6972(a)(1)(b) (referring to an RCRA ISE claim). The endangerment provision gives "broad authority to the courts to grant all relief necessary to ensure complete protection of the public health and the environment." *See id.*; *see Little Hocking*, 91 F. Supp. 3d at 952; *see United States v. Aceto Agric. Chems. Corp.*, 872 F.2d 1373, 1383; *see also United States v. Waste Indus., Inc.,* 734 F.2d 159, 167 (4th Cir. 1984).

In line with congressional intent, and in order to give meaning to the entire statute, airborne waste should not be confined to the word "emit." *See* 42 U.S.C. § 6903(3). Even if this court were to follow the assumption that airborne waste may only be "emitted," one must see "emit" as synonymous with the enumerated verbs to fully effectuate the meaning of the entire statute. *See* 42 U.S.C. § 6903(3). To hold otherwise would be to render Congress's later use of the word "emitted" meaningless. *See Waste Indus., Inc.,* 734 F.2d at 167. To be sure, an elemental canon of construction explains that where a statute expressly provides a cause of action, a court must be "chary" of broadening the scope. *See Meghrig*, 516 U.S. at 488. However, when the definition of "disposal" uses the term "solid waste"—which Congress has explicitly defined to include airborne emissions—integrating the two terms is not contrary to legislative intent but rather gives meaning to the entire statute. *See* 42 U.S.C. §§ 6903(3), (27). Thus, it is reasonable to conclude that Congress intended for emissions of airborne waste to give rise to a cause of action under RCRA.

See 42 U.S.C. § 6972(a)(1)(b). Keeping in mind Congress's intent to "grant all relief necessary to ensure complete protection of the public health and the environment," one would be hard pressed to argue that BlueSky's airborne waste does not constitute "disposal" under the plain and ordinary meaning of the statute. R. at 6, 8; *see also Little Hocking*, 91 F. Supp. 3d at 952. If Bluesky is not disposing of waste, it is difficult to imagine what they are actually doing. R. at 8.

B. The statutory text does not confine "disposal" to a particular order, as doing so would subvert the legislative intent and purpose of an RCRA private citizen claim.

The RCRA defines "disposal" as solid waste that goes "into or on any land or water so that such solid waste . . . 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 court in *BNSF*, upon which BlueSky primarily relies, held that disposal has only occurred when solid waste is "first placed into or on any land or water and is thereafter emitted into the air." *BNSF*, 764 F.3d at 1024 (internal citations omitted). This interpretation of the statute is illogical, and, followed to its practical conclusion, would not only render the statutory language "emitted into the air" completely meaningless and superfluous, but would subvert congressional purpose in enacting RCRA. *See* 42 U.S.C. § 6903(3).

The court in *Little Hocking* understood that groundwater contaminations were a "distinction without a difference," regardless of whether they were caused by air emissions or dumping waste. *Little Hocking*, 91 F. Supp. 3d at 965. Following that logic, "emitted into the air" was meant to be construed to its fullest extent, as Congress specifically said RCRA claims were designed to "eliminate[ ] the last remaining loophole in environmental law" by regulating the "disposal of discarded materials and hazardous wastes." H.R.Rep. No. 1491, 94th Cong., 2d Sess. 4 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6238, 6241. Implying a sequential order to the mechanism of disposal would necessarily allow one to discard waste by simply throwing it into the air first, leaving a loophole in the statute that Congress intended to avoid. *Conn. Coastal*, 989

F.2d at 1314. The Ninth Circuit reasoned that Congress intended RCRA claims to cover only "land disposal," whereas the Clean Air Act (CAA) governs "air emissions." *BNSF*, 764 F.3d at 1025. Following the Ninth Circuit's reasoning would subvert the entire portion of RCRA that is not only a supplement to common law nuisance, but closes the last remaining loophole in environmental law left by the CAA. *Cox v. City of Dall., Tex.*, 256 F.3d 281, 294 (5th Cir. 2001); *Little Hocking*, 91 F. Supp. 3d at 964–65. Following the age-old axiom "what goes up must come down," it is an absurd conclusion to say that airborne waste which does not touch the ground first does not constitute "disposal." *See BNSF.*, 764 F.3d at 1025. The definition thus focuses on where the waste ends up, not the pathway it takes to get there. *See* H.R.Rep. No. 1491, 94th Cong., 2d Sess. 4 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6238, 6241. To hold otherwise would be counterintuitive to the legislative intent and purpose in enacting a private citizen RCRA claim. *Id.*

PFOA is a "forever chemical" that does not break down in the environment and has been linked to "long-term health risks," including liver problems, birth defects, and even cancer. R. at 7. BlueSky disposes of PFOA into the air, soil, and drinking water through the SkyLoop plant stacks. R. at 8–9. SkyLoop operates under a Title V air permit that regulates emissions and requires continuous monitoring of specific pollutants. R. at 5, 8. The biggest concern is that under this permit, SkyLoop is not required to remove, treat, or even monitor these dangerous forever chemicals. R. at 8. Applying the correct definition of "disposal" under RCRA, here, SkyLoop is clearly disposing of waste that is poisoning the VEA's land, its members, and all those living in the nearby community of Mammoth. R. at 8–9. To that end, any other statutory construction would leave a loophole that Congress did not intend when it passed RCRA. R. at 8. Furthermore, even if this Court reads a requirement of a specific sequential order into the definition of "disposal," in line with *Little Hocking*, the VEA still prevails because it is not alleging that the community of

Mammoth is inhaling airborne waste. *See Little Hocking*, 91 F. Supp. 3d at 965. The VEA contends that the airborne waste was discharged through SkyLoop's stacks, entered the environment, and settled onto the wellfield and surrounding farms, thus contaminating the soil and ground water. R. at 8–9. It is this contamination that the VEA alleges is disposal, and it is this contamination that the correct definition of "disposal" encompasses. R. at 8–9.

IV. The District Court Did Not Abuse Its Discretion When It Found That the Irreparable Harm Prong of the *Winter* Test Was Satisfied.

A plaintiff seeking a preliminary injunction must establish (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Winter*, 555 U.S. at 20. It is well established that "[i]rreparable harm occurs when a party has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages." *Grasso Enter., LLC v. Express Scripts, Inc.*, 809 F.3d 1033, 1040 (8th Cir. 2016). Preliminary injunctions are never a matter of right, and each court employs its own discretionary powers when granting this extraordinary remedy, which is only to be disturbed if the court abused its discretion. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982); *State of Alabama v. United States*, 279 U.S. 229, 230–31 (1929).

Courts do not narrowly construe the word "he" in the second prong of the *Winter* factors, as they routinely consider harm to the public. *See Winter*, 555 U.S. at 20. To construe the language of *Winter* narrowly would require an elemental reading of a factors-based test, wherein courts are afforded the discretion to weigh all factors on a case-by-case basis. *See id.* In line with this discretion, many courts employ a "sliding-scale" approach, which looks at all of the *Winter* factors as a whole. *See Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d 342, 347 (4th Cir. 2009). To be sure, this interpretation of *Winter* would adhere to the congressional intent in

enacting legislation providing an avenue for public citizen suits. *Virginia Rivers Coal., Inc. v. Chemours Co. FC, LLC*, 793 F. Supp. 3d 790, 813–14 (S.D.W. Va. 2025). Thus, while it is uncontested that *Winter* factors one, three, and four are satisfied by the VEA in this issue, it is clear that factor two is met as well. *See* R. at 12–13.

First, the public can be considered in the irreparable harm prong, as the Court in *Winter* itself does so by applying that factor not only to a third party but to marine mammals. *Winter*, 555 U.S. at 20 (declining to address whether the harm must be done only to the plaintiff). Other courts similarly do not assess only the plaintiff's harm in determining the second factor. *See generally Chemours*, 793 F. Supp. 3d (considering irreparable harm to the public); *see Consol. Delta Smelt Cases*, 717 F. Supp. 2d 1021, 1052 (E.D. Cal. 2010) (considering harms "to humans and the human environment," such as "irretrievable resource losses," "social disruption and dislocation," and "environmental harms"). In fact, similar to the Court in *Winter*, the Ninth Circuit in *Flathead* applied the irreparable harm factor not only to a third party, but to grizzly bears. *See generally Flathead-Lolo-Bitterroot Citizen Task Force v. Mont.*, 98 F.4th 1180 (9th Cir. 2024) Thus, preliminary injunction analyses consider public harms in a variety of ways. *Sierra Club v. U.S. Army Corps of Eng'rs*, 645 F.3d 978, 995 (8th Cir. 2011) (holding that "irreparable harm to the environment necessarily means harm to the plaintiffs' specific aesthetic, educational and ecological interests.").

Second, even if this Court is unpersuaded by a broad construction of the word "he" in the second factor, the *Winter* test as a whole is still satisfied. *See generally Winter*, 555 U.S. (providing general guidelines for granting preliminary injunctions). Prior to the Supreme Court's ruling in *Winter*, many courts applied a "sliding-scale" test to determine whether a preliminary injunction should be granted. *See generally Real Truth About Obama*, 575 F.3d at 347 (weighing all factors

of the *Winter* test together). This approach allows courts to consider all relevant factors as a whole to decide the reasonableness of an injunction, rather than requiring that each factor outlined in *Winter* be met independently. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Some courts have construed the ruling in *Winter* to mean that each factor must be completely satisfied for a preliminary injunction to be appropriately granted. *See Dine Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276 (10th Cir. 2016). This interpretation of the Supreme Court's ruling in *Winter* is inaccurate. *See Winter*, 555 U.S. at 51 (Ginsburg, J., dissenting).

Justice Ginsburg, in her dissenting opinion in *Winter*, explicitly pointed out that the majority did not disavow the sliding-scale test in its holding. *Id.* (Ginsburg, J., dissenting). Furthermore, many circuit courts continue to apply the sliding-scale approach, finding that *Winter* did not preclude the balancing of its factors to determine an equitable outcome. *See Hoosier Energy Rural Elec. Co-op., Inc. v. John Hancock Life Ins. Co.*, 582 F.3d 721, 725 (7th Cir. 2009); *see Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010); *see Corp. Techs., Inc. v. Harnett*, 731 F.3d 6, 9-10 (1st Cir. 2013); *see Mock v. Garland*, 75 F.4th 563, 587 (5th Cir. 2023); *see Kansas v. United States*, 124 F.4th 529, 533 (8th Cir. 2024). Applying the sliding-scale approach here, even if the second prong of the *Winter* test is construed narrowly, assessing that factor in conjunction with the other three—which are uncontested—the scale of equity still weighs heavily in favor of the plaintiff. *See Winter*, 555 U.S. at 51 (Ginsburg, J., dissenting) (assessing all four factors generally).

Third, this interpretation is aligned with Congress's intent in providing a mechanism to sue for public harms. *See* 42 U.S.C. § 6972(a)(1)(b). The *Winter* factors cannot be construed by courts in such a way that nullifies congressional intent. *Chemours*, 793 F. Supp. 3d at 813–14. Reading

a plaintiff-only requirement into the irreparable harm factor precludes plaintiffs suing under a citizen suit provision to obtain any meaningful injunctive relief. *See* 42 U.S.C. § 6972(a)(1)(b). This interpretation would undermine Congress's intent in enacting claims such as RCRA, where injunctive relief is often sought. *See Little Hocking*, 91 F. Supp. 3d at 952. Moreover, considering harm to third parties does not expand the class of plaintiffs before the court, because standing requirements and the statutory elements of a citizen suit remain independent procedural hurdles that must still be satisfied. *Chemours*, 793 F. Supp. 3d at 813–14. As the Supreme Court has expressly stated, where "Congress has granted a right of action, either expressly or by clear implication, [plaintiffs] . . . may invoke the general public interest in support of their claim." *Warth*, 422 U.S. at 501. Thus, reading the word "he" to mean that only the plaintiff may show irreparable harm would have "[j]udicial formalism turn[] the citizen suit into a paper right." *Chemours*, 793 F. Supp. 3d at 809.

Here, the VEA can show a clear likelihood of irreparable harm in the absence of injunctive relief as that factor applies to third parties. *See* R. at 12–13. The community of Mammoth continues to drink dangerous water containing forever chemicals, and no judicial remedy can change that fact. R. at 14. Specifically, the district court found that the VEA "presented unrebutted evidence that the Mammoth residents who are still drinking the contaminated water will suffer irreparable harm without an injunction and that this satisfies the irreparable harm prong of *Winter*." R. at 15. In line with the district court's findings and Congress's intent to provide private citizens with an avenue for immediate public relief, the VEA has satisfied the second factor. *See* R. at 15. Even if this Court declines to consider harm to third parties, the *Winter* factors should be looked at as a whole. *See Winter*, 555 U.S. at 51 (Ginsburg, J., dissenting). When applying the sliding-scale test to the facts of this case, it is clear that the uncontested showing of factors one, three, and four far

outweighs any doubt as to the strength of the evidence proffered for the second factor. R. at 14. Ultimately, because the district court did not abuse its discretion, its findings should not be disturbed. R. at 14–15.

CONCLUSION

The VEA prevails on all four issues because the facts show ongoing harm that the district court properly addressed. First, this appeal involves a temporary injunction addressing ongoing harm, not a right to avoid litigation. Halting district court proceedings would only delay resolution while contamination continues unchecked. Second, the VEA has standing because PFOA air deposition directly contaminated its farm's soil and crops, shutting down food production and educational outreach which caused a special injury. Third, the record shows that SkyLoop releases PFOA through its stacks, which settle onto surrounding land and the municipal wellfield, contaminating the soil and groundwater, establishing ongoing disposal. Finally, the district court found unrebutted evidence that Mammoth residents continue to consume contaminated water and face irreversible health risks, demonstrating irreparable harm that demands immediate equitable relief.

It is for these reasons that this Court should reverse the district court's order imposing a mandatory stay of proceedings pending appeal, affirm the preliminary injunction, and remand for further proceedings consistent with this Court's opinion.

Respectfully submitted,

Team No. 6

Attorneys for Appellant

CERTIFICATE OF SERVICE

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

Respectfully submitted,

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