IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Ohio Environmental Council, et al.	)	
	)	Case No. 25-CV-9387
Plaintiffs,	)	
-vs-	)	JUDGE: JULIE LYNCH
THE STATE OF OHIO, et al.	)	**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND REQUEST FOR IMMEDIATE STATUS CONFERENCE**
Defendants.	)	

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND REQUEST FOR IMMEDIATE STATUS CONFERENCE

Plaintiffs, Ohio Environmental Council ("OEC"), SOBE Concerned Citizens ("SOBE CC"), Freshwater Accountability Project ("Freshwater Accountability"), Donna Ballinger, and Sierra Club hereby move, pursuant to Ohio Civ. R. 65, for a Preliminary Injunction immediately enjoining the Defendants State of Ohio (the "State") and John Logue, Director of the Ohio Environmental Protection Agency ("OEPA"), and their respective agents, representatives, and employees from implementing or enforcing the sections of Ohio House Bill 96 ("H.B. 96") that amend Chapter 3704 of the Ohio Revised Code to strip important environmental and public health safeguards from Plaintiffs and all Ohio residents. These constitutionally defective sections effectively eliminate Plaintiffs' ability to protect themselves and their communities from dangerous air pollution.

Ohio Revised Code 3704.0310 ("the ANR Rescission") orders removal of the Air Nuisance Rule ("ANR") from Ohio's State Implementation Plan ("SIP")[1] under Section 110 of the Clean Air Act ("CAA") (42 U.S.C. § 7410). The ANR prohibits emissions or releases of smoke, ashes, dust, dirt, grime, acids, fumes, gases, or vapors into the open air in a manner or amount that endangers public health, safety, or welfare, or causes unreasonable damage to property. The ANR Rescission also forbids the director of OEPA from including the ANR in the SIP or using such a rule to implement or enforce ambient air quality standards in the future. As a result, Plaintiffs can no longer bring federal citizen suits to enforce the ANR and protect their local air quality, as they are currently able to do. Citizen enforcement of the ANR has been an integral part of Ohio's SIP for over fifty years, except for the four-year period during which it was illegally removed. The ANR was restored to the Ohio SIP in February 2025.

To compound the injury caused by the ANR Rescission, Ohio Revised Code 3704.01(H), R.C. 3704.03(I) and (J), R.C. 3704.031(B), and R.C. 3704.09(B) and (C) ("the Community Air Monitoring Prohibition, define community air monitoring and restrict the permissible uses of such monitoring, irreparably harming Plaintiffs by prohibiting use of Plaintiffs' collected data, or data they intend to collect, in enforcement and other similar administrative, regulatory, or litigation actions, as well as banning certain actions by the director of OEPA.[2]

Packaged together, the Community Air Monitoring Prohibition and the ANR Rescission (hereinafter collectively referred to as the "Air Pollution Amendment" or the "Amendment") effectively terminate Ohioans' ability to protect themselves from noxious air pollution. As fully

[1] SIPs are composed of the various laws and regulations a state uses to comply with national air quality standards set by USEPA. All laws and regulations that are part of a federally-approved SIP are enforceable by citizens against polluters in federal court under the Clean Air Act's "citizen suit" provision, 42 U.S.C. Section 7604. The ANR has been used by Ohio citizens for decades to obtain reductions in harmful air pollution.

[2] The Amendments can be found on pages 1432 to 1449 of H.B. 96.

stated in Plaintiffs' Complaint and the attached Memorandum in Support of this Motion, the State enacted the Air Pollution Amendment, effective September 30, 2025, in violation of the one-subject rule, Article II, Section 15(D) of the Ohio Constitution.

A preliminary injunction will enjoin further harm by restoring Plaintiffs' ability to protect themselves from noxious air pollution, ensuring collected air monitoring data is potentially usable in necessary enforcement actions and restoring a critical legal mechanism to the SIP—the ANR. Because a preliminary injunction will not harm Defendants and is in the public interest, Plaintiffs request a preliminary injunction be granted without bond. If a bond is required, Plaintiffs request that bond be set at $1.00.

Consistent with Ohio Civ. R. 65(E), a copy of this Motion and Memorandum, Complaint, and all accompanying exhibits are contemporaneously being served on counsel for the Defendants as reflected in the attached Certificate of Service. Plaintiffs respectfully move this Court to set a status conference as soon as possible to schedule the hearing(s) for this motion.

Respectfully submitted,

/s/ Miranda Leppla
MIRANDA LEPPLA (0086351)
Director, Environmental Law Clinic
KENDALL MCPHERSON (0105377)
Environmental Law Clinic Attorney Fellow
DOUGLAS SMITS
Certified Legal Intern
HELY PATEL
Certified Legal Intern
Case Western Reserve University
School of Law, Environmental Law Clinic
11075 East Blvd.
Cleveland, OH 44106
Tel: 216–368–2766

miranda.leppla@case.edu
kendall.mcpherson@case.edu
dsmits-lawclinic@case.edu
hpatel-lawclinic@case.edu

Counsel for Plaintiff
Ohio Environmental Council and Sierra Club

/s/ Christopher Tavenor
CHRISTOPHER TAVENOR (0096642)
General Counsel
Ohio Environmental Council
556 E Town Street
Columbus, OH 43215
(614) 487-7506 - Telephone
ctavenor@theOEC.org

Counsel for Plaintiff
Ohio Environmental Council

/s/ Addison Caruso
ADDISON CARUSO (101690)
Staff Attorney
MICHELLE BROWNING (100696)
Staff Attorney
Fair Shake Environmental Legal Services
2000 Auburn Drive, Suite 200
Beachwood, OH 44122
Tel: (234) 901-2438
Acaruso@fairshake-els.org
Mbrowning@fairshake-els.org

Counsel for Plaintiffs
SOBE Concerned Citizens and
Freshwater Accountability Project

/s/ David Altman
D. DAVID ALTMAN (0021457)
JUSTIN D. NEWMAN (0080968)
ROBIN A. BURGESS (0096442)
AltmanNewman Co. LPA
15 East 8th Street, Suite 200W
Cincinnati, Ohio 45202

Tel: (513) 721-2180
daltman@environlaw.com
jnewman@environlaw.com
rburgess@environlaw.com

Counsel for Plaintiff Donna Ballinger

(all Counsel willing to accept service by e-mail)

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Ohio Environmental Council, et al.	)	
	)	Case No. 25-CV-9387
Plaintiffs,	)	
-vs-	)	JUDGE: JULIE LYNCH
	)	
THE STATE OF OHIO, et al.	)	**MEMORANDUM IN SUPPORT**
	)	**OF PLAINTIFFS' MOTION FOR**
	)	**PRELIMINARY INJUNCTION**
Defendants.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

The unconstitutional stealth employed by the State of Ohio in depriving all Ohioans of the tools they need to protect themselves from noxious air pollution compels the issuance of a preliminary injunction enjoining Ohio and OEPA from implementing the illicit Air Pollution Amendment in H.B. 96. The Amendment violates the One Subject Rule and pries from the hands of Ohio's people the anti-air pollution instruments of self-protection they have had at their disposal for over fifty years. Accordingly, this Motion should be promptly granted.

The One Subject Rule is a guarantee to the people of Ohio that the title to legislation reflects what is in the legislation. It is a guarantee that there will be no hidden new subject stuck into legislation at the last minute. Yet, H.B. 96, the 2026-27 Ohio appropriations package, contained last-minute changes that have nothing to do with the avowed purpose of the bill. The Ohio General Assembly plainly violated the One Subject Rule.

The Air Pollution Amendment blocks Ohioans from protecting themselves from air nuisance conditions by: (1) preventing those suffering from nearby air pollution from enforcing the ANR by requiring OEPA to remove the ANR from the Ohio SIP, which is the plan that

authorizes people harmed by pollution to enforce the law if their government does not; (2) forbidding OEPA from even considering the data generated by air monitoring technology widely available and being used by those same injured people; and (3) preventing the injured from using such data as evidence in court and enforcement actions.

Specifically, under H.B. 96, the Community Air Monitoring Prohibition defines "community air monitoring" in a way that bans the use of data from non-EPA grade air monitors, prohibiting the use of data from community air monitors to support fines, penalties, violations, lawsuits, and judicial, regulatory, or administrative enforcement actions to protect the public. The Community Air Monitoring Prohibition also disallows OEPA from requiring community air monitoring as part of permitting and from contracting for the establishment, operation, or maintenance of community air monitoring when the data would be used for enforcement purposes.

Under the same Chapter, the ANR Rescission orders OEPA to undertake removal of the ANR from Ohio's State Implementation Plan ("SIP") under Section 110 of the CAA (42 U.S.C. § 7410). Once the ANR is removed from the SIP, each citizen's ability to enforce the ANR against polluters in federal court will be taken away. The ANR Rescission also prevents OEPA from including an ANR in any future SIP and from relying on the ANR to implement or enforce ambient air quality standards under the CAA. The ANR Rescission hampers Plaintiffs' ability to protect their members from emissions, leaving air nuisances unchecked and endangering public health.

In short, the Air Pollution Amendment irreparably harms Plaintiffs by eliminating their ability to stop the property and health threats emanating from polluting entities; preventing Plaintiffs from using data to invoke the protection of regulatory bodies, including courts; and otherwise prevents Plaintiffs from protecting themselves. The Air Pollution Amendment took effect September 30, 2025.

BACKGROUND

A. H.B. 96: Ohio's State Appropriations Bill

The purpose of H.B. 96, as evidenced by its short title, is to "make state operating appropriations for fiscal years 2026-27." H.B. 96 contains more than 3,000 pages covering the subject of funding. *See* H.B. 96, 136th Gen. Assemb. Contrary to its short title, the Air Pollution Amendment is entirely unrelated to state operating appropriations, violating the one-subject rule of Article II, Section 15(D) of the Ohio Constitution.

B. The Air Pollution Amendment

The Air Pollution Amendment revises R.C. 3704.01(H) to define "community air monitoring" as "any measurement or quantification of ambient air concentrations of an air contaminant, including both one-time monitoring events and multi-sampling events." *See* Ex. 13, H.B. 96, 136th Gen. Assemb. (Ohio 2025). This broad definition captures virtually all citizen-conducted air quality measurements, but specifically excludes (very costly) monitoring devices approved by the U.S. EPA, measurements designated for use by a particular contaminant source under either the CAA, permits, variances, orders, or implementation plans effective prior to the effective date of the Air Pollution Amendment, and systems installed by EPA or local air pollution control authorities under delegation agreements. *See* R.C. 3704.01(H).

The Air Pollution Amendment then bans the use of "community air monitoring" in a variety of legal and enforcement actions. *See* R.C. 3704.09(B)-(C). This categorical prohibition creates an evidentiary barrier for Plaintiffs, as the only monitors now permitted to be used in air pollution enforcement cases would cost tens of thousands of dollars and require significant infrastructure and trained personnel to operate, making them inaccessible to everyday persons, including

Plaintiffs.[3] Further, R.C. 3704.03(I)-(J) and R.C. 3704.031(B) prohibit the director of OEPA from imposing a monitoring requirement in a permit that requires community air monitoring and from contracting with a private agency for the establishment, operation, or maintenance of community air monitoring when the data would be used for enforcement purposes.

Ohio's ANR, approved in 1974 as part of Ohio's SIP under Section 110 of the CAA (42 U.S.C. § 7410), prohibits "the emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety, or welfare of the public, or cause unreasonable injury or damage to property" and makes it unlawful for any person to cause, permit, or maintain any such nuisance emissions. Ohio Administrative Code 3745-15-07.

For decades, the ANR has functioned as a vital enforcement tool, allowing Plaintiffs and other Ohio residents to bring citizen suits under the ANR for threats to public health and safety. The ANR's place in the SIP went undisturbed for nearly 50 years until November 19, 2020, when there was an effort at the federal level to remove it. A lawsuit challenging the removal was brought by several of the Plaintiffs to this action, and ultimately, after a lengthy lawsuit and process, the ANR was reinstated in February 2025. *See Sierra Club v. United States EPA*, 60 F.4th 1008 (6th Cir. 2023); Ex. 14, Joint Comments on Draft SIP Removal of OAC 3745-15-07 (Oct. 6, 2025).

[3] Clements, A.L. et al. Low-cost air quality monitoring tools: From research to practice (a workshop summary) (2017), MDPI. (Accessed: 27 September 2025). The US EPA itself recognizes the limitations and prohibitive cost of its own monitors and has supported community air monitoring through grants and trainings for the public on these lower-cost monitors. *See* EPA Air Sensor Toolbox, *available at* https://www.epa.gov/air-sensor-toolbox (last visited Oct. 10, 2025); *see e.g.*, ARP Enhanced Air Quality Monitoring for Communities - Competitive Grant, *available at* https://www.epa.gov/arp/arp-enhanced-air-quality-monitoring-communities-competitive-grant (last visited Oct. 10, 2025).https://doi.org/10.3390/s17112478.

On June 10, 2025, however, Ohio senators inserted the ANR Rescission into H.B. 96, requiring OEPA to undertake removal of the ANR from the SIP, It was then approved by both chambers, and signed into law shortly after. The Air Pollution Amendment revises R.C. 3704.0310 to read, in part, "if the state implementation plan includes an air nuisance rule, the director of environmental protection shall remove the air nuisance rule from the plan and take such steps as are necessary to do so." *See* Ex. 13, H.B. 96, 136th Gen. Assemb. (Ohio 2025). On August 5, 2025, OEPA started the process to remove the ANR from Ohio's SIP. As a result of the Air Pollution Amendment, the ANR will likely be removed from the SIP again, eliminating Plaintiffs' right to bring federal citizen suits against industrial polluters for public nuisance, endangering public health and safety.

II. ARGUMENT

In determining whether to grant a preliminary injunction, a court must consider four factors: "(1) whether there is a substantial likelihood that plaintiff will prevail on the merits; (2) whether plaintiff will suffer irreparable injury if the injunction is not granted; (3) whether third parties will be unjustifiably harmed if the injunction is granted; and (4) whether the public interest will be served by the injunction." *Vanguard Transp. Sys., Inc. v. Storage Co.,* 109 Ohio App.3d 786, 790 (10th Dist. 1996), citing *Valco Cincinnati, Inc. v. N&D Machining Serv., Inc.,* 24 Ohio St.3d 41 (1986). The primary goal of preliminary injunctive relief "is to preserve the status quo pending final determination of the matter." *Ohio Urology, Inc. v. Poll,* 72 Ohio App.3d 446, 454 (10th Dist. 1991). The Court should grant a preliminary injunction because Plaintiffs demonstrate by clear and convincing evidence that they meet each of the criteria. *See Vanguard Transp. Sys., Inc. v. Storage Co.,* 109 Ohio App.3d 786, 790 (10th Dist. 1996), citing *Mead Corp., Diconix, Inc., Successor v. Lane* (1988), 54 Ohio App.3d 59, 560 N.E.2d 1319.

A. Plaintiffs Have a Strong Likelihood of Succeeding on the Merits.

Plaintiffs are likely to succeed on the merits of their claim because the Air Pollution Amendment "beyond a reasonable doubt" violates the one-subject rule of Article II, Section 15(D) of the Ohio Constitution. *See State v. Williams,* 88 Ohio St.3d 513, 521, 728 N.E.2d 342 (2000).

1. The Air Pollution Amendment Violates the One-Subject Rule.

The Ohio Constitution mandates that a bill's single subject be clearly expressed in its title. Ohio Constitution, Article II, Section 15(D). The short title of H.B.96, "Make state operating appropriations for FY 2026-27," does not mention the ANR Rescission, the Community Air Monitoring Prohibition, or anything related to air pollution and the environment. This omission of the general subject matter from the title, along with H.B. 96's drastically different purpose as a budgetary bill than environmental and air quality legislation, violates the one-subject constitutional requirement. Further, the "universally recognized purpose" of one-subject provisions is to prevent "logrolling," the practice of combining unrelated proposals to secure the support of different groups by appealing to desires to pass a portion of the legislation, despite their disapproval of other sections. *State ex rel. Ohio Civ. Serv. Emps. Assn., AFSCME, Loc. 11, AFL-CIO v. State Emp. Rels. Bd.*, 2004-Ohio-6363, 104 Ohio St. 3d 122, 129, 818 N.E.2d 688.

Importantly, "the one-subject provision does not require evidence of fraud or logrolling beyond the unnatural combinations themselves . . . . thus 'an act which contains such unrelated provisions must necessarily be held to be invalid in order to effectuate the purposes of the rule.'" *In re Nowak,* 2004-Ohio-6777, 104 Ohio St. 3d 466, 481, 820 N.E.2d 335 (quoting *State ex rel. Dix v. Celeste*, 11 Ohio St. 3d 141, 145, 464 N.E.2d 153 (1984)). For example, the Supreme Court of Ohio held legislation grouping together "blatantly unrelated" provisions such as seat belt requirements and employment discrimination claims under the broad title of "laws pertaining to tort and other civil actions" violated the one-subject rule. *State ex rel. Ohio Acad. of Trial Lawyers*

v. Sheward, 86 Ohio St.3d 451, 498, 715 N.E.2d 1062 (1999) (overruled on standing grounds). *See also In re Nowak* 2004-Ohio-6777, 104 Ohio St. 3d 466, 478, 820 N.E.2d 335 (where an appropriations bill's provisions concerning food-stamp trafficking, liquor control, and regulations for the Department of Transportation did not bear any relation to a mortgage law being challenged, the court held the provision unconstitutional on one-subject grounds).

In such instances, courts have found it appropriate to strike provisions of legislation that violate the one-subject rule while leaving unoffending provisions intact. The Tenth District Court of Appeals severed an amendment to an appropriations bill, which exempted Ohio School Facilities Commission employees from the Public Employees Collective Bargaining Act, unconstitutional under the one-subject rule because it had no discernible, practical or rational relationship to the bill's other provisions. *State ex rel. Ohio Civ. Serv. Emp. Assn. v. State Emp. Relations Bd.*, 152 Ohio App. 3d 551, 559, 2003-Ohio-2021 (10th Dist.) In *Gallipolis Care, L.L.C.*, a provision was added into a budget bill allowing the Director of the Ohio Department of Health to accept for review applications for the relocation of nursing home beds from one county to another in Ohio. The court held that, because the provision was buried among pages of provisions related to government spending with no relation to the utilization of governmental resources or disbursement of budgetary funds, it should be severed. *Gallipolis Care, L.L.C. v. Ohio Dept. of Health* (In re Holzer Consol. Health Sys.), 2004-Ohio-5533, ¶ 37 (10th Dist.).

Similarly, the Air Pollution Amendment has no discernable relationship to state operating appropriations. The Air Pollution Amendment affects Plaintiffs', other residents', and OEPA's ability to utilize data from personally owned air monitors to substantiate complaints, lawsuits, or other enforcement actions, and blocks Plaintiffs' from seeking to enforce the ANR in federal court. It has no impact on, or relationship to, state operating appropriations.

Though evidence beyond the existence of unrelated provisions is not necessary to prove "logrolling" or a violation of the one-subject rule, the Supreme Court of Ohio has still found it notable to identify instances when short, yet significant, provisions appear "cryptically" in sizable bills. *In re Nowak,* 2004-Ohio-6777, 104 Ohio St. 3d 466, 478, 820 N.E.2d 335 (where the court highlighted that the provision being challenged on one-subject grounds was only 24 lines and "appeared cryptically" among 172 pages of unrelated subjects). It is worth noting here that the Amendment occupies just 18 pages of a 3,156-page otherwise unrelated bill. Because the Amendment consists of blatantly unrelated revisions, covertly placed in the middle of over 3,000 pages of a state appropriations bill, Plaintiffs have a high likelihood of succeeding on the merits, and the Amendment must be severed from the bill.

B. Plaintiffs Will Suffer Irreparable Harm Absent a Preliminary Injunction.

"'Irreparable harm' is an injury for which, after its occurrence, there could be no plain, adequate, and complete remedy at law, and for which money damages would be impossible, difficult, or incomplete." *Columbus v. State,* 2023-Ohio-2858, 223 N.E.3d 540, 549. Further, "[a] threat of harm is a sufficient basis on which to grant injunctive relief." *Proctor & Gamble Co. v. Stoneham,* 140 Ohio App.3d 260, 274, 747 N.E.2d 268, 278 (1st Dist. 2000), cause dismissed, 91 Ohio St.3d 1478, 744 N.E.2d 775 (2001). Absent a preliminary injunction, Plaintiffs will suffer irreparable harm due to the loss of use of their community air monitoring data for its intended purpose and the loss of a legal right and remedy in the ANR. The Air Pollution Amendment significantly hinders Plaintiffs' ability to ameliorate harmful air pollution in their communities. Neither financial compensation nor a complete remedy at law can redress these injuries.

1. The Air Pollution Amendment Causes Irreparable Injury to the Plaintiffs.

The Air Pollution Amendment irreparably harms Plaintiffs as it frustrates the purpose of the air quality protections afforded to them for decades under Ohio law. All air quality data

Plaintiffs have already collected, and the ban on its usage, invalidates their ongoing monitoring efforts. And even if they could still use that data, they are prevented from protecting themselves by bringing a citizen suit for air nuisances due to the removal of the ANR from the SIP. Plaintiffs not only are deprived of these self-protections—the Amendment also prohibits the director of OEPA from requiring community air monitoring in permits or contracting with private agencies for the establishment and operation of community air monitoring. Meaning, Plaintiffs are essentially left without evidence, beyond in the limited locations where data is collected by U.S. EPA, to substantiate allegations of air pollution violations. Neither financial damages nor an adequate remedy at law can redress the loss of Plaintiffs' air monitoring data as evidence and the inability to now bring citizen suits for air nuisances under the CAA.

This court has identified that an injury is irreparable "where the injury affects property either physically in the character in which it has been used, held and enjoyed; or *when it has some peculiar quality or use, so that its pecuniary value may not fairly recompense the owner for the loss*." *Olpp v. Hocking Val. Ry. Co.*, 31 Ohio Dec. 453, 472 (Ohio Com. Pl. 1920) (emphasis added, citing *Dunker v. Field & Tule Club*, 6 Cal. App., 524 [92 Pac. 502]). Here too, while monetary relief may serve to compensate Plaintiffs for the cost of their monitors, it cannot recompense Plaintiffs for the loss of *use* of data collected by their monitors, and the ability to bring air quality enforcement actions supported by that data to protect their health.

Similarly, while the ANR is, at the time of filing of this Motion, still in the process of being removed, the previous timeline of its removal indicates that rescission proceedings will likely be complete before Plaintiffs would conclude any adjudication using the ANR. During the federal effort to remove the ANR in 2020, public comments to the U.S. EPA were due May 22, 2020. The final rule removing the ANR was issued on November 19, 2020. Then, it took nearly five years to

reinstate the ANR after an appeal was filed. OEPA's draft proposal to remove the ANR indicated that OEPA will use the same arguments/bases that were rejected during the 2020 effort to remove the ANR. Ex. 14 at 5-7, 12-13. The risk of Plaintiffs' claims under the ANR becoming moot mid-proceedings renders the ANR effectively null.

The Air Pollution Amendment represents irreparable harm to Plaintiffs in innumerable ways. Plaintiffs' members operate air quality monitors (and have for years in some instances) specifically to document levels of pollution for use in enforcement proceedings. SOBE CC members Lynn Anderson, Valeria Goncalves, and Kayshia Washington utilize PurpleAir monitors to document air pollution from local industrial facilities in Youngstown (Anderson Decl. ¶ 8; Goncalves Decl. ¶¶ 10,11; Washington Decl. ¶ 10). Their members collect data to notify air pollution authorities of readings indicating potentially injurious pollution exposure and also intend to use the ANR as an enforcement mechanism. (Anderson Decl. ¶¶ 8-9; Washington Decl. ¶¶ 10-12). Ms. Goncalves learned of the ANR through SOBE CC and has already used her data to report violations of nearby facilities to OEPA at least twice, and her neighbors have also used her data to report offensive odors (Goncalves Decl. ¶¶ 5, 10-11). The Air Pollution Amendment eliminates the data and enforcement tools these communities can use for the protection of human and environmental health. (Anderson Decl. ¶ 9; Goncalves Decl. ¶ 13; and Washington Decl. ¶ 13).

In Bowling Green, Ohio, Freshwater Accountability Project member and Director Leatra Harper applied for, and received, a grant from the U.S. EPA to install S-pod air quality monitors to use for future lawsuits if harmful effects are detected and to report readings to the relevant enforcement agency (Harper Decl. ¶ 9). By eliminating the use of community monitoring in enforcement, it renders the grant she received, from the U.S. EPA itself, practically meaningless. In Granville, OEC members Kenneth Apacki and Dr. Tracee Laing obtained air quality monitors

specifically to establish baseline air quality data to use in future lawsuits if harmful effects are later detected and to advocate for more EPA-grade air quality measurements (Apacki Decl. ¶¶ 7-10; Laing Decl. ¶¶ 8-10). Mr. Apacki and Dr. Laing began monitoring when a number of new industrial facilities, including data centers and an Intel chip manufacturing facility, were approved or proposed for construction within a few miles of their homes (Apacki Decl. ¶ 8; Laing Decl. ¶ 8). The prohibition on using community air monitoring data for enforcement renders any air pollution monitoring data and their investment meaningless and eliminates their ability to protect their community through the legal mechanisms they relied upon when establishing their monitoring program, an intangible loss (Apacki Decl. ¶ 16; Laing Decl. ¶ 14).

Plaintiff Donna Ballinger, also a Sierra Club member, and Sierra Club member Marilyn Wall have been using portable air monitoring technology to measure and collect data on the levels of air pollution near Ms. Ballinger's home and in her community for years (Wall Decl. ¶ 15-16; Ballinger Decl. ¶ 12). They have also participated in other projects to document air quality in Middletown, including one that will start later this year. *Id.* They have measured levels of PM2.5 that scientific studies show to be harmful to health (Wall Decl. ¶ 15). The data corroborates Ms. Ballinger's and other community members' air nuisance reports to Ohio EPA. *Id.*

Plaintiffs have demonstrated a history of using the ANR as an enforcement mechanism to protect communities from air pollution nuisances and they intend to continue to pursue enforcement (Waggoner Decl. ¶¶ 4-6; Wall Decl. ¶¶ 11-16, 23, 30; Ballinger Decl. ¶¶ 11-17, 23, 26). Plaintiff Donna Ballinger and Sierra Club member Marilyn Wall have been working since 2017 to enforce the ANR against the Middletown Works plant as a result of air pollution nuisance (Ballinger Decl. ¶ 11, 23; Wall Decl. ¶ 13-14, 23), and have spent hundreds of hours documenting nuisance conditions to support a citizen suit (Ballinger Decl. ¶ 12). Ms. Ballinger and Sierra Club

sent two Notices of Intent to Sue Middletown Works for CAA violations, including ANR violations, and OEPA required modifications to the plant (Waggoner Decl. ¶ 6; Ballinger Decl. ¶ 11-17). Despite OEPA's intervention, the air nuisance in Middletown has not abated (Ballinger Decl. ¶ 15-17). Taking the ANR away eliminates one of the only effective tools available to Ms. Ballinger to prevent harmful exposure to nuisance air pollution. Sierra Club has also sent another Notice of Intent to Sue the owner and operator of the Gavin Power Plant based on sulfur dioxide violations of the ANR and commissioned updated modeling in 2020 showing continuing violations (Waggoner Decl. ¶ 5).

Further, Plaintiffs actively secured the ANR's reinstatement through litigation before the United States Court of Appeals for the Sixth Circuit. *Sierra Club v. United States EPA,* 60 F.4th 1008 (6th Cir. 2023); (Waggoner Decl. ¶¶ 7-10; Ballinger Decl. ¶¶ 19, 22; Wall Decl. ¶¶ 21, 24; Kauffman Decl. ¶¶ 5-6). And now these same individuals and groups have successfully intervened to defend the U.S. EPA's ANR reinstatement against industry challenges. With the ANR's removal, Plaintiffs would lose the tool impacted communities rely on to protect themselves from air pollution (Waggoner Decl. ¶¶ 13, 15; Kauffman Decl. ¶¶ 9-10).

The Air Pollution Amendment frustrates the intended use of the Plaintiffs' air quality monitors, prohibiting the use of this data in enforcement actions. The moment H.B. 96 took effect, Plaintiffs' data, which was expressly collected to identify air pollution issues and to use that data to support legal action, permit challenges, or even informal complaints to regulators, became unusable. EPA-approved monitors mandated by H.B. 96 are not an alternative, as those monitors are prohibitively expensive and require specialized knowledge to operate, making them inaccessible to Plaintiffs. Plaintiffs' inability to use community air monitoring data through citizen suits using the ANR creates a serious risk of worsened air quality and unchecked CAA violations,

threatening Plaintiffs' respiratory health and safety. Other Ohio courts have held that threats to health and safety constitute irreparable harm, where there is clear and convincing evidence of threats. For example, in *Miami Twp. Bd. Of Trs.,* the plaintiffs showed that they were likely to suffer irreparable injury to their health, safety, and property as a result of a proposed dirt racetrack. *See Miami Twp. Bd. of Trs. v. Weinle*, 2021-Ohio-2284, 174 N.E.3d 1270, 1280.

Here, absent the use of community air monitoring data to alert enforcement authorities of violations, the resulting unchecked elevated concentrations of harmful air pollutants pose an actual threat to Plaintiffs' health and safety. Gases, dust containing noxious materials, debris, fumes, vapors, and particulate matter all can exacerbate pre-existing health conditions, such as asthma, from which SOBE CC member Lynn Anderson suffers (Anderson Decl. ¶ 2). Ms. Washington also suffers from fibroids, which has been linked to air pollution (Washington Decl. ¶ 3).

As no adequate remedy at law or amount of financial damages can redress the frustration of purpose of Plaintiffs' air monitors or the negative health impacts Plaintiffs will experience during instances of non-compliance, and Plaintiffs will no longer be able to bring a citizen suit for air nuisance under the ANR to protect their health and the environment, the Air Pollution Amendment causes irreparable harm to Plaintiffs.

C. The Irreparable Harm to Plaintiffs Outweighs Any Potential Harm to Third Parties

"The purpose of a preliminary injunction is to preserve the status quo pending a resolution of the case on the merits." *Franks v. Rankin*, 2012-Ohio-1920 at ¶ 46 (citing *Thomson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP–782, 2010–Ohio–416, ¶ 24; *Davis v. Widman,* 184 Ohio App.3d 705, 922 N.E.2d 272, 2009–Ohio–5430, ¶ 29 (3d Dist.)). The status quo is "the last, actual, peaceable, uncontested status which preceded the pending controversy." *Columbus v. State,* 2023-Ohio-195, ¶ 13 (citing *Obringer v. Wheeling & Lake Erie Ry.*, 3d Dist. No. 3-09-08, 2010-Ohio-601, ¶ 19). In this case, the status quo is the ability to use community air monitoring data in

enforcement actions and the existence of Ohio's ANR as part of the SIP for use in citizen suits for air nuisances.

Without an injunction, H.B. 96's instructions to the director of OEPA will prevent Plaintiffs from using community air monitoring data to protect their communities through enforcement and strip Plaintiffs of their statutory right to pursue legal action against air nuisance violators under the CAA. If there is a gap in protection, industrial emissions may cause permanent environmental and health damage. Importantly, a preliminary injunction will not prevent industrial facilities from operating under their existing CAA permits; rather, it will preserve the preexisting legal framework that governed air quality enforcement in Ohio for decades. Facilities already in compliance will change nothing if this Court grants a preliminary injunction. The injunction will preserve one method to collect and use data to supplement enforcement, community air monitoring, and one legal remedy, federal citizen suits to enforce the ANR.

Finally, "the state cannot be harmed when an unconstitutional law does not go into effect." *Newburgh Hts v. State,* 8th Dist. No. 109106, 2021-Ohio-61, 166 N.E.3d 632, ¶ 76, rev'd on other grounds, 168 Ohio St.3d 513, 2022-Ohio-1642, 200 N.E.3d 189, ¶ 76. As explained *supra,* the Air Pollution Amendment bears no discernible, practical or rational relationship to H.B. 96's budgetary subject or the appropriations provisions contained therein.

The balance of equities strongly favors preserving the status quo that existed prior to the passage of H.B. 96, as the irreparable harm to Plaintiffs outweighs the burden, if any, placed on the State and other parties. The ANR has been part of Ohio's State Implementation Plan for nearly 50 years, and OEPA has administered it without difficulty. Enjoining enforcement of the Community Air Monitoring Prohibition and ANR Rescissions imposes no administrative burden on the State, as the State would simply be functioning as it was prior to the Amendment.

D. Preliminary Relief Would Serve the Public Interest.

It is always in the public interest to prevent a constitutional violation. *Connection Distributing Co. v. Reno,* 154 F.3d 281, 288 (6th Cir. 1998). As the Air Pollution Amendment is unrelated to H.B. 96's budgetary purpose, therefore violating the one-subject rule of the Ohio Constitution, enjoining the Air Pollution Amendment's enactment serves the public interest. Ohioans will be protected from avoidable harm while litigation proceeds.

E. Preliminary Relief Should Issue Without Bond.

Plaintiffs request this Court grant a preliminary injunction either without requiring a bond, or alternatively with a nominal $1 bond. Plaintiffs will suffer considerable harm absent relief, and the requested injunction will maintain the status quo without impacting the remainder of H.B. 96, which relate to the state's operating appropriations. Allowing the Air Pollution Amendment to remain in effect will impose irreparable harm on Plaintiffs by stripping them of longstanding air quality protections. A preliminary injunction without bond is warranted.

III. CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court grant a preliminary injunction enjoining Defendants from implementing or enforcing the provisions of H.B. 96 that (1) remove the ANR from Ohio's State Implementation Plan pursuant to R.C. 3704.0310 as amended, and (2) restrict community air monitoring pursuant to R.C. 3704.01(H), R.C. 3704.03(I) and (J), R.C. 3704.031(B), and R.C. 3704.09(B) and (C) as amended.

[SIGNATURE BLOCKS ON NEXT PAGE]

Respectfully submitted,

/s/ Miranda Leppla
MIRANDA LEPPLA (0086351)
Director, Environmental Law Clinic
KENDALL MCPHERSON (0105377)
Environmental Law Clinic Attorney Fellow
DOUGLAS SMITS
Certified Legal Intern
HELY PATEL
Certified Legal Intern
Case Western Reserve University
School of Law, Environmental Law Clinic
11075 East Blvd.
Cleveland, OH 44106
Tel: 216–368–2766
miranda.leppla@case.edu
kendall.mcpherson@case.edu
dsmits-lawclinic@case.edu
hpatel-lawclinic@case.edu

Counsel for Plaintiff
Ohio Environmental Council and Sierra Club

/s/ Christopher Tavenor
CHRISTOPHER TAVENOR (0096642)
General Counsel
Ohio Environmental Council
556 E Town Street
Columbus, OH 43215
(614) 487-7506 - Telephone
ctavenor@theOEC.org

Counsel for Plaintiff
Ohio Environmental Council

/s/ Addison Caruso
ADDISON CARUSO (101690)
Staff Attorney
MICHELLE BROWNING (100696)
Staff Attorney
Fair Shake Environmental Legal Services

2000 Auburn Drive, Suite 200
Beachwood, OH 44122
Tel: (234) 901-2438
Acaruso@fairshake-els.org
Mbrowning@fairshake-els.org

Counsel for Plaintiffs
SOBE Concerned Citizens and
Freshwater Accountability Project

/s/ David Altman
D. DAVID ALTMAN (0021457)
JUSTIN D. NEWMAN (0080968)
ROBIN A. BURGESS (0096442)
AltmanNewman Co. LPA
15 East 8th Street, Suite 200W
Cincinnati, Ohio 45202
Tel: (513) 721-2180
daltman@environlaw.com
jnewman@environlaw.com
rburgess@environlaw.com

Counsel for Plaintiff Donna Ballinger

(all Counsel willing to accept service by e-mail)

INDEX OF EXHIBITS

to Plaintiff's Motion for Preliminary Injunction and Request for Immediate Status Conference

Exhibit No.	Title
1	Declaration of Lynn Anderson, SOBE Concerned Citizens
2	Declaration of Valeria Goncalves, SOBE Concerned Citizens
3	Declaration of Kayshia Washington, SOBE Concerned Citizens
4	Declaration of Donna Ballinger, Sierra Club Member
5	Declaration of Marilyn Wall, Sierra Club Member
6	Declaration of Neil Waggoner, Sierra Club Campaign Manager
7	Declaration of Leatra Harper, Freshwater Accountability Project
8	Declaration of Carol Kauffman, OEC CEO
9	Declaration of Kenneth Apacki, OEC Member
10	Declaration of Tracee Laing, OEC Member
11	H.B. 96, April 9, 2025 Version
12	H.B. 96, June 11, 2025 Version
13	H.B. 96
14	Joint Comments on Draft SIP Removal of OAC 3745-15-07 (Oct. 6, 2025)
15	H.B. 96, as Introduced

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion and Memorandum in Support along with the all attached Exhibits were served on this 30th day of October 2025 via electronic mail on the following Counsel for the Defendants:

Julie M. Pfeiffer
Section Chief, Constitutional Offices
Office of Ohio Attorney General
Email: julie.pfeiffer@OhioAGO.gov

/s/ Miranda Leppla
Miranda Leppla