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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

On Writ from Spartanburg County Court of Common Pleas
J. Derham Cole Jr., Circuit Court Judge
Civil Action No. 2026CP4203416

Concerned Citizens of Spartanburg County, Petitioner,

v.

Valara Holdings, LLC, Spartanburg County,
and Spartanburg County Administrator, Respondents.

PETITION FOR EXTRAORDINARY WRIT
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

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INTRODUCTION

Pursuant to Rule 245(b) of the South Carolina Appellate Court Rules, Petitioner Concerned Citizens of Spartanburg County respectfully moves this Court to exercise its original jurisdiction and issue a writ preserving the status quo and the jurisdiction of the appellate courts, and preventing further irreversible damage, while Petitioner appeals the erroneous order of the Circuit Court dismissing this case and denying a preliminary injunction. *See* App’x at 484. As set forth below, this case involves significant matters of public interest, and Petitioner’s members will suffer material prejudice if this case proceeds along the standard appellate track. *See* Rule 245(a), SCACR.

This Petition implicates significant issues of statewide public importance—namely, the rights of citizens to access the courts when their government acts unlawfully. The issue in this appeal is whether injured property owners have standing to challenge the government’s approval of heavy industrial development ***right next door to their homes***—or whether the courts may deprive the neighbors of a judicial forum to challenge the project (no matter how unlawful the project’s approval). This Court has already resolved the question, holding that the neighbors have standing because “[t]hose living near the project are most likely to be impacted in ways that are distinguishable from the impacts generally falling upon the public at large.” *Preservation Soc’y of Charleston v. S.C. Dep’t of Health & Env’t Control*, 430 S.C. 200, 216, 845 S.E.2d 481, 489 (2020). To vindicate these critical rights of neighboring property owners, a writ from this Court is necessary.

At issue in this case is Respondent Valara Holdings, LLC’s (“Valara”) massive data center and gas-fired private power plant, which would be more than powerful enough to fuel every home in Spartanburg County. Valara is rapidly building these industrial facilities at a site near downtown Spartanburg in the middle of multiple residential neighborhoods where

Petitioner’s members and their families have lived for decades. Despite the massive scale and impacts of Valara’s project, Respondent Spartanburg County has shut out the public and Petitioner’s members from its review process—all based on the fiction that this project is a “Minor Land Development” that County staffers can review and approve behind closed doors. To the contrary, the County’s own ordinance requires major industrial projects such as Valara’s to undergo a public review process before the County’s Planning Commission and obtain a “Major Land Development Permit” before construction can begin. *See* App’x at 40 (the “Ordinance”). Petitioner brought this suit on behalf of families living next to the project to ensure that the County holds the public process, and Valara seeks the Major Permit, required by law for a project of this magnitude.

In dismissing the case, the Circuit Court issued an indefensible—indeed, dangerous—ruling that conflicts with multiple precedents of this Court. The court held that neighbors living right next door to Valara’s industrial project do not have standing to sue because they ***do not suffer real injuries***. App’x at 488. Yet Petitioner’s members are suffering the exact harms one would expect living next door to a heavy industrial project—harms long recognized by this Court as sufficient to support standing, and even tort claims, including “loud noises” at all hours of the day, “dust and dirt [being thrown] onto [their] property,” *Babb v. Lee Cnty. Landfill, SC, LLC*, 405 S.C. 129, 140, 747 S.E.2d 468, 474 (2013), and dust “covering their homes that has to be cleaned regularly and [forces them] to retreat indoors because of breathing problems,” *Preservation Soc’y of Charleston*, 430 S.C. at 207, 845 S.E.2d at 484. *Compare* App’x at 257–314 (affidavits of Petitioner’s members, attesting to the same harms and more). In holding that these are mere “[g]eneralized grievances suffered by the public as a whole,” App’x at 488

(emphasis added), the Circuit Court ignored common sense and a remarkable amount of evidence and precedent.

Having already been denied a public process by the County, injured neighbors now face closed courthouse doors as well. If allowed to stand, the Circuit Court’s ruling would leave property owners harmed by industrial projects in their backyards and violations of law by their local governments without judicial recourse—no matter how large or impactful the project, how grave the nuisance, or how unlawful the government’s action. In addition to violating this Court’s precedents, the Circuit Court’s ruling flouts the State Legislature, which has granted “adjacent or neighboring property owner[s]” who are injured by ordinance violations the right to sue for injunctive relief to stop unlawful projects being built next door. S.C. Code Ann. § 6-29-950(A).

Aside from the troubling precedent set by the Circuit Court, this case is the poster child for another statewide problem that will have statewide consequences. Across South Carolina, data centers are being approved and built with little transparency or public process, just like the Valara project, which is the largest—and likely the most secretive¹—of them all. The lack of transparency around data centers has sparked broad public opposition across the State. The overwhelming majority of South Carolinians support greater oversight of data centers;² localities

¹ E.g., Kathleen Parker, *A \$2.8 Billion Data Center Was Kept Secret. Now Residents Are Furious*, WASHINGTON POST (July 3, 2026), <https://perma.cc/L2HT-E3ZP>; Christian Boschult, *Covert Docs and Council Members in the Dark: How the NorthMark Data Center Was Recruited in Secret*, POST & COURIER (Sept. 11, 2026), <https://perma.cc/BD4B-D29V>; Alexa Erbach, *Spartanburg Co. Residents Say They Were Misled About Data Center Project*, FOX CAROLINA (May 4, 2026, 10:00 PM), <https://perma.cc/V8SC-RF3K>; Christian Boschult, *After SC Data Center’s Projected Water Use Ballooned to 1.4M Gallons, It Took Months to Tell Public*, POST & COURIER (Sept. 23, 2026), <https://perma.cc/D5YF-CMWT>.

² Nick Reynolds, *Polling Shows Most South Carolinians Oppose Data Centers Without Guardrails for Development*, POST & COURIER (Oct. 6, 2026), <https://perma.cc/4GB5-UNXG>.

across the State are considering and adopting moratoriums on data center development;³ and a host of recent legislative proposals at the Statehouse have been designed to increase public transparency.⁴ One way or the other, this case will set a precedent and send a message to citizens, local governments, data centers, and legislators across South Carolina: either data centers, private power plants, and localities can get away with skirting transparency, public process, and the law—or they cannot.

To ensure that the appellate courts are able to review these important issues, a writ from this Court preserving the status quo is imperative. While Petitioner has noticed an appeal of the Circuit Court’s decision, the standard appellate process will not redress Petitioner’s injuries. *See* Rule 245(a), SCACR. Because of the rapid pace of construction and the ongoing irreparable harms to Petitioner’s members, there is a significant risk that Valara’s data center and power plant will be built and operational by the time the appeals process concludes, which risks mooted the case, depriving the courts of jurisdiction to review the issues, and foreclosing Petitioner’s rights to seek any relief for their injuries. *See* App’x at 501–06. Action from this Court is thus critical to preserve access to the courts for property owners injured by their government.

Petitioner does not ask this Court to decide the appeal on its merits—but simply to issue a writ preserving the status quo and the jurisdiction of the courts to reach the merits of Petitioner’s appeal. Specifically, Petitioner requests a writ preventing Respondents Valara, Spartanburg County, and the Spartanburg County Administrator, during the pendency of the appeal, from

³ SAVRN, *South Carolina Data Center Moratorium Tracker* (last updated Oct. 2026), <https://perma.cc/7HQJ-H52L>.

⁴ *See, e.g.,* Michelle Alfini, *Advocate addresses proposed legislation on data center growth in SC*, WSOC-TV (Mar. 19, 2026), <https://perma.cc/NF7G-89BJ>.

unlawfully processing, reviewing, permitting, approving, constructing, and/or operating the Valara data center and power plant without the “Major Land Development Permit” and public process required by the County’s Ordinance. For these reasons, as set forth more fully below, Petitioner satisfies the requirements for a writ in the Supreme Court’s original jurisdiction under Rule 245, SCACR.

BACKGROUND

I. The Valara Data Center and Power Plant.

Valara proposes to build, and is rapidly building, the largest data center in South Carolina,⁵ together with a 457-megawatt private power plant on site powerful enough to fuel every home in Spartanburg County. *See* App’x at 161. Critically, Respondents did not inform the public that Valara was building a utility-scale power plant minutes from downtown Spartanburg. A reporter broke that story in April 2026⁶—nearly *eight months after* the County issued a development permit for the project and Valara had begun large-scale construction.

From the outset, Valara and County officials have not been transparent about the scope and nature of this project. This secrecy has garnered extensive state and national media coverage. *E.g., supra* note 1.

In February 2025, the *Post and Courier* reported that Spartanburg County Council planned to grant large tax breaks for a development by an “undisclosed company” going by “the code name ‘Project Moc-1’” at an undisclosed site in Spartanburg. *Supra* note 5. The article quoted a County Councilman’s statement that the project was “not a data center” and would “not

⁵ *See* Max White, *Spartanburg County Could See a \$2.8 Billion Investment, One of the Largest Ever in SC. What to Know*, POST & COURIER (Feb. 18, 2025), <https://perma.cc/462Q-QQQD>.

⁶ Christian Boschult, *Spartanburg Data Center That Got Tax Breaks Wants 400 Megawatt Energy Production Increase*, POST & COURIER (Apr. 22, 2026), <https://perma.cc/5N4H-3H7B>.

use more power than the [unspecified] site’s existing facility.” *Id.* Another Councilman has admitted that even he did not know basic details about the project when he voted, twice, to approve tax breaks; the one Councilman with basic details about the project may have signed a nondisclosure agreement. *See App’x at 498–99.*

During the permitting process, Respondents continued to obscure the project from the public. On July 11, 2025, Valara applied to the County for a “Minor Land Development Permit.” *App’x at 215.* Valara’s application stated its plans to “repurpose” a former Kohler facility near downtown Spartanburg to provide “data center services,” which would entail “interior demolition and remodeling” and “associated exterior equipment.” *Id.* The application made no mention of building beyond the Kohler facility’s footprint—much less constructing a power plant on the site.

On August 27, 2025, County staffers determined that the project was “minor” and issued the requested permit. For context, the County’s Ordinance reserves Minor Land Development Permits for smaller-scale projects such as a “single-family dwelling,” a “manufactured home,” and “signs.” *See Ordinance § 1.02 (App’x at 40).* “Major Land Development Permits,” by contrast, cover larger-scale industrial and commercial projects, like “commercial or industrial parks” and “similar developments.” *Id.* Whereas Major Land Developments must undergo a public review process before the County Planning Commission, Minor Land Developments are reviewed and approved behind closed doors by County staffers. *See id. at 3, § 5.01; App’x at 148–53.*

In late April 2026, a *Post and Courier* article revealed for the first time to the public that Valara planned to build a 457-megawatt power plant on site to fuel its data center. *Supra* note 6. This reflected more than an eight-fold power increase from what Valara had disclosed the

previous summer, yet it did not reflect a change of plans. Valara has confirmed that it planned a 457-megawatt power plant from the beginning;⁷ Respondents simply withheld those plans from the public until *eight months after* the County had issued a development permit and months after Valara had commenced major construction activities. With these belated disclosures, the public was also informed that Valara’s power plant will emit hundreds of tons of toxic air pollution each year in the middle of multiple residential neighborhoods where Petitioner’s members and their families live. App’x at 164.

Also in April 2026, Valara applied to the County for a second Minor Land Development Permit. App’x at 255. Valara’s application for the second Minor Permit revealed that the company would not merely “repurpose” and do “interior remodeling” of the former Kohler facility, as the company had first disclosed. *Id.* at 215. Instead, Valara would drastically expand the former Kohler facility, adding four new industrial buildings totaling approximately 500,000 square feet, a “power yard”—which, apparently, means a utility-scale private power plant—and a number of other heavy industrial facilities. *Id.* at 255. The second Minor Permit is still pending before the County.

In September 2026, the public was first informed—again by reporters, not by Respondents—that Valara’s data center and power plant would use between 1.4 and 1.6 million gallons of water *per day* once operational. This reflected a three-fold increase from Valara’s initial disclosures.⁸

⁷ Christian Boschult, *After Requesting Large Power Increase, Spartanburg Data Center Says That’s Been the Plan All Along*, POST & COURIER (Apr. 27, 2026), <https://perma.cc/DGJ5-PWBU>.

⁸ Christian Boschult, *After SC Data Center’s Projected Water Use Ballooned to 1.4M Gallons, It Took Months to Tell Public*, POST & COURIER (Sept. 23, 2026), <https://perma.cc/D5YF-CMWT>.

In summary, the public was first told that this project was a minor “repurposing” of an existing facility—permits were issued, and construction began. Many months later, the public was told what the project really is: a total transformation of the previous facility, including a utility-scale power plant with massive toxic pollution and water use. The County’s approval process has occurred behind closed doors, under the guise that this is all a “Minor” Land Development. Valara has never sought the Major Development Permit required for this major project, and the County has never held the public review process required by its Ordinance for major developments. By chopping the project into pieces, Respondents have evaded public review of the whole project.

II. Ongoing Irreparable Harms from Valara’s Data Center and Power Plant.

For decades, Petitioner’s members have owned and lived on properties in southeast Spartanburg, enjoying the peace, solitude, and wildlife in this forested part of town near Croft State Park together with their families. App’x at 259, 267, 276–78, 285–86, 293–94, 300, 309–10. The ongoing construction of the Valara data center and power plant next door to their homes has greatly—and concretely—harmed members’ use of and enjoyment of their properties and neighborhood. For the neighbors, Valara’s project has turned their once-peaceful lives into a “living nightmare,” with the County’s denial of a public process where they could make their voices heard only adding insult to injury. *Id.* at 260–61, 269–70, 286, 277–78, 293–95, 310–13.

Building these facilities involves a large amount of heavy machinery, creates loud and intrusive noises, kicks up a “terrible” amount of dust, causes traffic congestion, and emits “incredibly” bright light at night—all of which harm members’ use and enjoyment of their properties and the neighborhood. *Id.* at 270, 278–79, 286, 311. Construction dust from the Valara site has coated the homes, porches, and vehicles of several members, filling the air with dust that

they do not wish to breathe, aggravating respiratory issues, and forcing members to spend more time indoors. *Id.* at 260–262, 294, 311. Valara has also been clear-cutting large, forested areas that contributed to the neighborhood’s character, served as sound-barriers, and sheltered wildlife; these activities have ruined the character of the neighborhood and the views from neighbors’ properties, worsened the noise pollution, and harmed local wildlife that members so enjoy. *Id.* at 261, 271, 277, 286, 294, 310.

Once they are built and operational, Valara’s data center and power plant will cause harms of a graver magnitude for the neighbors. By Valara’s own estimates, the proposed power plant will spew hundreds of tons of toxic and carcinogenic pollution into the air each year next door to their homes. App’x at 166, 270, 279, 287, 295. In addition to fouling the air that members and their families breathe, the project will likely have a myriad of other impacts, including loud noise and vibrations around-the-clock, visual blight, and potential water pollution. These impacts will substantially lessen members’ use and enjoyment of their properties and neighborhood. *Id.* at 295, 262, 278–79, 270–71, 287, 313. The outlook is so dire that some long-time residents who had planned to stay forever are seriously considering packing up and moving. *Id.* at 263.

III. Procedural Background

On July 6, 2026, shortly after Valara’s plans to build a utility-scale power plant were revealed, Petitioner Concerned Citizens of Spartanburg County filed a complaint in the Spartanburg County Court of Common Pleas against Valara, the County, and the County Administrator. The complaint challenged the permitting and construction of the data center and power plant as a “Minor” Land Development with no public process, seeking declaratory and injunctive relief requiring a public process and a Major Land Development Permit, per the County’s Ordinance. On August 12, Petitioner filed an amended complaint adding claims

regarding Valara’s improper segmentation of this project into multiple “minor” permits, claims under the South Carolina Local Government Comprehensive Planning and Enabling Act, and a claim alleging that Valara had developed beyond the permitted boundary under its first Minor Land Development Permit. App’x at 3, 26–29.

On August 20, Petitioner filed a motion for preliminary injunction. App’x at 177–212. The motion sought to enjoin Valara and the County from further processing, reviewing, permitting, approving, constructing, and/or operating the Valara data center and power plant as a “Minor” Land Development during the pendency of the litigation. *Id.* On September 4 and September 9, 2026, the County and Valara, respectively, filed motions to dismiss the case. App’x at 403, 406.

On September 17, the Circuit Court held a hearing on Petitioner’s motion for preliminary injunction and Respondents’ motions to dismiss. On October 6, the Circuit Court issued an order dismissing the case for lack of standing and failure to exhaust and denying the preliminary injunction. App’x at 484.

LEGAL STANDARD

The South Carolina Constitution and statutes empower this Court to issue writs of injunction in its original jurisdiction. S.C. Const. art. V, § 5; S.C. Code Ann. § 14-3-310. Writs in the Court’s original jurisdiction are for cases involving “the public interest” or “special grounds of emergency or other good reasons,” for matters that cannot “be determined in a lower court in the first instance, without material prejudice.” Rule 245(a), SCACR. “[T]he sole purpose of a temporary injunction is to preserve the status quo, and thus avoid possible irreparable injury to plaintiff, pending the litigation.” *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973); *accord Cnty. Council of Charleston v. Felkel*, 244 S.C. 480, 483–84, 137

S.E.2d 577, 578 (1964); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (S.C. Ct. App. 2009).

ARGUMENT

This case involves significant matters of public interest and ongoing irreparable injuries that will be greatly prolonged—if not made permanent—by resort to the standard appellate process. If allowed to proceed during the appeal, Valara may well finish construction on its data center and power plant, potentially mooted this case and depriving Petitioner of its rights to seek redress for its injuries. To preserve the status quo, protect Petitioner’s right to seek redress, and maintain the courts’ jurisdiction to review the issues, this Court should issue a writ of injunction pending appeal. Petitioner respectfully requests an injunction barring Respondents from further constructing or permitting the Valara data center and power plant as a “Minor” Land Development (without the public process or Major Permit required by law) pending resolution of Petitioner’s appeal.

I. Without a Writ from this Court, Petitioner’s Members will Suffer Irreparable Injuries That Cannot be Redressed through the Standard Appellate Process.

The ongoing construction of the Valara data center and power plant has caused, and will continue to cause, irreparable injuries to Petitioner’s members. The harms to Petitioner’s members are precisely of the sort one would expect living next door to a massive industrial project—harms that have long been recognized as irreparable by South Carolina courts.

For example, dust from Valara’s construction has coated members’ homes and vehicles and prevented asthmatic and ill neighbors from enjoying the outdoors on their own properties. App’x at 260–262, 294–95, 310–11. The bright lights and loud noises from construction have harmed their quiet enjoyment of their homes. *Id.* at 261, 278, 295. Traffic congestion has snarled the neighborhood. *Id.* at 270, 286, 295–96. And the clear-cutting of acres of trees has harmed

local wildlife and impaired the natural beauty, peace, and quiet of members' properties and the neighborhood. *Id.* at 293–94; *see also id.* at 261, 270, 277, 289. Members' harms will only worsen after the data center and power plant become operational. By Valara's own estimates, the power plant will emit hundreds of tons of toxic pollution each year into the neighbors' immediate vicinity. *See id.* at 164; *see also id.* at 270, 279, 287, 295. The harms are so dire that extended family will no longer visit some members' homes due to health concerns, *id.* at 262, 303, and long-time residents who had planned to stay forever are considering packing up and moving. *Id.* at 263.

These harms are textbook irreparable injuries that South Carolina and federal courts have long recognized as grounds for injunctive relief. *E.g.*, *Dill v. Dance Freight Lines*, 247 S.C. 159, 164, 146 S.E.2d 574, 576 (1966) (enjoining “defendant from operating its terminal in such a manner as to continually and frequently cause the dust complained of to be cast upon the property of the plaintiff”); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 52, 674 S.E.2d 505, 509 (S.C. Ct. App. 2009) (holding that “noise and traffic in the neighborhood” from a commercial project “interfered with [the neighbors'] right to the use and enjoyment of their property and is sufficient to prove [the neighbors] suffered an irreparable harm”); *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) (“Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable.”).

Members will continue to suffer these irreparable injuries every day that relief is delayed. Yet the standard appeals process often takes months or years to secure relief. *See State ex rel. Zimmerman v. Gibbes*, 171 S.C. 209, 209, 172 S.E.2d 130, 132–33 (1933) (the Supreme Court “may properly consider the delay and inconvenience incident to appeal” in issuing a writ in its

original jurisdiction). Under the standard appeals process, the harms to Petitioner’s members will be greatly prolonged—if not made permanent. Indeed, there is a significant risk that Valara will finish construction while the appeal is pending. This would risk mooted Petitioner’s claims, depriving the courts of jurisdiction, *see* App’x at 501–06, and denying Petitioner its rights to seek judicial redress for its members’ injuries.

This Court has long used extraordinary writs to evaluate challenges to development projects where the construction work makes time of the essence. *E.g.*, *Woodworth v. Gallman*, 195 S.C. 157, 157, 10 S.E.2d 316, 319 (1940).⁹ Just so here. Because of the rapid pace of construction and Petitioner’s ongoing irreparable injuries, coupled with the lengthy nature of the normal appellate process during which time this case may become moot, this matter cannot “be determined in a lower court in the first instance without material prejudice to the [Petitioner’s] rights.” Rule 245(a), SCACR.

II. Petitioner is Likely to Succeed on Appeal because the Circuit Court’s Order is Patently Erroneous—as Long as Valara is not Allowed to Finish Construction and Moot the Case During the Appeal.

The decision of the Circuit Court to dismiss this case relies on two grounds: Petitioner’s purported lack of standing and failure to exhaust administrative remedies. App’x at 487–93. On these points, the Circuit Court simply ignored controlling precedent, clear statutory language, and the operative facts and allegations. For these reasons, Petitioner is likely to succeed on the merits of its appeal. But time is of the essence—Petitioner cannot succeed on its appeal if Valara is allowed to finish construction and moot the case while the appeal remains pending.

⁹ The Court generally issues the writs as unpublished, nonbinding opinions. *Cf.* The Honorable Boyce F. Martin, Jr., *In Defense of Unpublished Opinions*, 60 Ohio St. L.J. 177, 197 (1999) (“Unpublished opinions give us the flexibility to inform parties of our decision without adding to the clutter, and sometimes confusion, of our multitudinous array of published decisions.”).

a. The Circuit Court’s decision on standing flouts controlling Supreme Court precedent.

As to standing, the Circuit Court first acknowledged that Petitioner’s members are “‘adjacent or neighboring property owner[s]’” of the data center and power plant. App’x at 487 (quoting S.C. Code Ann. § 6-29-950(A)). Yet it held that neighbors of this massive industrial site do not suffer “particularized injuries” different from those “*suffered by the public as a whole.*” App’x at 488 (emphasis added). This ruling ignores the facts, common sense, and multiple Supreme Court precedents.

To state the obvious, the general public does not live next door to Valara’s data center and power plant—only the neighbors do. The general public has not had their homes and cars coated in construction dust from Valara’s project—only the neighbors have. App’x at 10–12, 260–262, 270, 294–95, 310–11. The general public has not been forced to retreat indoors on their own private property because they do not wish to inhale Valara’s construction dust—only the neighbors have. *Id.* The general public is not being subjected to loud construction noises and bright lights in their homes at all hours of the day—only the neighbors are. *Id.* at 10–12, 261, 278, 295, 311. The general public has not had dozens of acres of trees clear cut next to their homes—only the neighbors have. *Id.* at 10–12, 261, 270, 277, 289, 293–94. And the general public will not be subjected to air pollution from Valara’s power plant when standing outside on their own property—only the neighbors will. *Id.* at 164; *see also id.* at 10–12, 262–63, 270, 279, 287, 295, 303. It is, frankly, absurd to claim that Petitioner’s members who live right next door to Valara’s project are not impacted in a particularized way different from public as a whole.

In ruling that the neighbors’ harms were too “generalized” to confer standing, the Circuit Court relied solely on *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 753 S.E.2d 846 (2014). *See* App’x at 488. That decision is clearly inapplicable. As the Court

there made clear and reaffirmed in a later decision, the plaintiff in *Carnival* “***did not allege that any of their members were adjacent or neighboring property owners.***” *Preservation Soc’y of Charleston v. S.C. Dep’t of Health & Env’t Control*, 430 S.C. 200, 214, 845 S.E.2d 481, 488 (2020) (emphasis added). The Circuit Court ignored this Court’s more recent holding in *Preservation Society* that “[t]hose living near the project are most likely to be impacted in ways that are distinguishable from the impacts generally falling upon the public at large.” *Id.* at 216, 845 S.E.2d at 488 (emphasis added).

Even further afield from the present case, *Carnival* did not involve “allegations that any of the organizations’ members had personally and individually suffered any of the asserted harms.” *Id.* at 214, 845 S.E.2d at 488. By contrast, Petitioner here has alleged and proven, in affidavits that were ignored by the Circuit Court, that Valara has caused its members numerous individual harms to their personal use and enjoyment of their private property; to their health; and to their enjoyment of trees and wildlife around their own property and neighborhood. These harms include massive amounts of dust coating their homes and cars and often forcing them indoors; loud and intrusive noises; bright lights at all hours of the day; and the clear-cutting of trees and harms to wildlife next to their homes and in their neighborhoods. App’x at 257–314 (affidavits of Petitioner’s members). These are precisely the sorts of harms recognized as sufficient in *Preservation Society*, 430 S.C. at 214, 845 S.E.2d at 488 (affidavits “expressing concern over their reduced quality of life arising from the effects upon them *individually*, such as pollution and health effects, traffic congestion, property values,” and “soot on and in their homes,” were not “merely generalized grievances equally affecting the public as a whole.”).

Beyond flouting *Preservation Society*, the Circuit Court’s ruling would effectively abolish nuisance claims by neighbors of industrial projects. In holding that “noise, dust, tree-

clearing, and traffic concerns” by neighbors are not cognizable injuries, App’x at 488, the court shut the courthouse doors to the exact injuries long recognized as grounds for nuisance claims—without acknowledging any of these precedents. *E.g.*, *Babb v. Lee Cnty. Landfill, SC, LLC*, 405 S.C. 129, 139–40, 747 S.E.2d 468, 473–74 (2013) (“A nuisance is an interference with the interest in the private use and enjoyment of land,” such as when “work at a nearby quarry . . . threw dust and dirt onto [plaintiff’s] property, and subjected the home’s inhabitants to loud noises.” (citing *Davis v. Palmetto Quarries Co.*, 212 S.C. 496, 48 S.E.2d 329 (1948))); *AJG Holdings*, 382 S.C. at 52, 674 S.E.2d at 509 (“noise and traffic in the neighborhood . . . interfered with [neighbors’] right to the use and enjoyment of their property,” supporting nuisance claim).¹⁰

Last, the fact that Valara’s project is large and causes widespread injuries does not immunize the project from suit or convert the neighbors’ harms into “[g]eneralized grievances.” *See* App’x at 488. “[W]here a harm is concrete, though widely shared, the Court has found ‘injury in fact.’” *Federal Election Comm’n v. Akins*, 524 U.S. 11, 24 (1998); *accord Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 n.7 (2016) (“The fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance.”).

¹⁰ The Circuit Court’s holding also overlooks environmental standing. *See Friends of the Earth, Inc. v. Laidlaw Env’tl Services, Inc.*, 528 U.S. 167, 183 (2000) (“[E]nvironmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity.” (citation and quotations omitted)). Petitioner thoroughly alleged—and proved—its environmental standing, with members attesting that their aesthetic and recreational use and enjoyment of their properties and neighborhood have been severely harmed by Valara’s project, including its dust, loud noises, clear-cutting of trees, and harms to local wildlife. App’x at 257–314 (affidavits of Petitioner’s members).

b. The Circuit Court’s Ruling on Exhaustion Ignores the Plain Text of the Planning Enabling Act

Next, the Circuit Court ruled that the complaint must be dismissed because Petitioner purportedly failed to exhaust its administrative remedies through the County’s Board of Zoning Appeals process. *See* App’x at 489. That holding is plainly erroneous for at least two reasons.¹¹

First, the Circuit Court ignored that Petitioner asserted claims under Section 6-29-950(A) of the South Carolina Local Government Comprehensive Planning Enabling Act. App’x at 27–30. The plain text of the Act disclaims an administrative exhaustion requirement for Petitioner’s claims. Section 6-29-950(A) creates a cause of action for “adjacent or neighboring property owner[s]” who are injured by ordinance violations to bring suit for injunctive relief “*in addition to other remedies.*” (emphasis added). Without engaging with the text of the statute, the Circuit Court cited “other remedies” that Petitioner supposedly should have pursued with the County. App’x at 490–92. However, the Court ignored the Act’s statement that neighboring property owners injured by ordinance violations may, “in addition to other remedies,” sue directly in state court. S.C. Code Ann. § 6-29-950(A). The Legislature did not leave neighbors injured by ordinance violations to the whims of local administrators; it empowered them to go directly to court to stop the conduct. The Circuit Court’s ruling contradicts the plain language of the Act and is clear error.

Second, the Court faulted Petitioner for not having challenged the first Minor Land Development Permit before the County’s Board of Zoning Appeals. App’x at 491. Yet at the time that Permit issued in August 2025, neither Petitioner’s members nor the public could have possibly known that Valara planned to build a utility-scale power plant—the permit only stated

¹¹ The Circuit Court’s ruling on exhaustion is erroneous for even more than two reasons, which Petitioner will fully brief on appeal.

Valara was doing “interior remodeling” of the existing facility with “associated exterior equipment.” *Id.* at 216. Valara concealed its plans from the public until nearly eight months later, well after the County’s 10-day permit appeal deadline, when a reporter exposed Valara’s plans to build a 457-megawatt power plant to the public in April of 2026. *Supra* note 6. Thus, Petitioner could not possibly have asserted the central issue in this case in the administrative appeals process for the first Minor Permit: that a data center and a **utility-scale power plant** are a “Major,” not a “Minor,” Land Development. *See, e.g., Storm M.H. ex rel. McSwain v. Charleston Cnty. Bd. of Trs.*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012) (exhaustion may be excused for matters of public importance or when the agency process is vain, futile, or inadequate).

In short, the Circuit Court’s order is erroneous from top to bottom and is likely to be overturned on appeal. However, as noted, the appellate process will take time to correct these errors by the Circuit Court that are in direct conflict with multiple precedents and a statute. With Valara continuing to build at a rapid pace, a writ from this Court is needed to preserve the status quo and the jurisdiction of the courts to correct these errors.

III. This Petition Involves Significant Matters of Local and Statewide Public Interest.

As explained above, this Petition involves multiple issues of statewide importance—first and foremost, the rights of citizens to access the courts when their government acts unlawfully. The issue in this appeal is whether injured property owners have standing to challenge the government’s approval of heavy industrial development **right next door to their homes**—or whether the courts may deprive the neighbors of a judicial forum. This Court’s intervention is warranted on this basis alone.

Additionally, this case involves the lack of transparency and public process to safely manage the surge of data center developments in South Carolina. *Supra* at 3–4. Statewide, data

centers are being proposed and developed with little transparency, sparking broad public opposition¹² and overwhelming support among South Carolinians for greater oversight. *Supra* note 2. Data centers carry a host of public health and environmental risks, necessitating a transparent and public process to manage this explosive growth while securing the health, safety, and well-being of communities.

The Valara data center and power plant are at the center of these statewide issues. This is one of the largest projects in South Carolina history, *supra* note 5, yet the project’s neighbors and the public have been denied timely and critical information and shut out of the County’s review process at every step. *Id.* at 269, 272, 279–80, 285. For example, the public was not informed until *eight months after* the County issued a “minor” development permit and construction began that Valara intended to build a utility-scale power plant on site. *Id.* at 185.

The denial of judicial review to neighbors of this project—or future similar industrial projects—is an issue of major public interest in and of itself. Combined with the County’s denial of a public process, and the legitimate public debate over transparency around data centers, “the public interest is involved” and the exercise of the Court’s original jurisdiction is warranted. Rule 245(a), SCACR.

¹² See, e.g., Jill Schumacher, *Marion County community members seek transparency on proposed data center*, WMBF NEWS (Feb. 5, 2025), <https://perma.cc/ME3F-YZBB>; Sammy Fretwell, *Massive data center plan dropped in SC after latest public outcry against projects*, THE STATE (June 12, 2026), <https://perma.cc/LKW4-UBXF>; Jason Ma, *Proposal for \$3bn data center faces opposition in Spartanburg County, South Carolina*, DATA CENTER DYNAMICS (Jan.. 13, 2026), <https://perma.cc/D6QJ-CVFR>. John Marks, *York County residents wary over secrecy behind plans for old Panthers HQ in Rock Hill*, The Herald (May 6, 2025), <https://perma.cc/LKB5-CPE8>.

CONCLUSION

This case involves significant matters of public interest: the rights of citizens to petition the courts for redress when their government acts unlawfully, and transparency and public process around major industrial developments impacting communities. To preserve the status quo, prevent further irreparable injury, and allow the appellate courts to carefully consider these important issues, Petitioner respectfully requests a writ from this Court enjoining Valara and the County from further processing, reviewing, permitting, approving, constructing, and/or operating the Valara data center and power plant as a “Minor” Land Development during the pendency of this appeal.

Respectfully submitted this 23rd day of October 2026.

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