

Southeastern Legal Foundation

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SLF STATEMENT ON GOV. SONNY PERDUE AND WOTUS LITIGATION

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Executive Director

“Southeastern Legal Foundation (SLF) represents a coalition of plaintiffs challenging the U.S. Environmental Protection Agency (EPA) and Army Corps of Engineers for its broadly overreaching “waters of the United States” (WOTUS) Rule – a Rule that has been challenged by dozens of states, industry groups, professional and trade associations, and companies as an unprecedented executive overreach well beyond the limits of the Clean Water Act. *Southeastern Legal Foundation, et al. v. EPA, et al.*

SLF’s coalition of plaintiffs includes AGrowStar; the Georgia Agribusiness Council, which represents more than 1,000 agribusiness member companies; and Greater Atlanta Homebuilders Association, which represents 1,200 builder companies. U.S. Secretary of Agriculture-nominee, former Georgia Gov. Sonny Perdue, has served on the Georgia Agribusiness Council Board and is a beneficiary of trusts which own AGrowStar’s parent company. The WOTUS litigation timeline is important: the plaintiffs filed suit in U.S. District Court in the Northern and Eleventh Circuit U.S. Court of Appeals on July 13, 2015, and AGrowStar joined in the suit on September 30, 2015.

Contrary to assertions by The Daily Beast (“[Trump Signs Rule Making His Agriculture Nominee Rich](#),” March 14, 2017), it bends credulity and utterly mischaracterizes the facts of the litigation to suggest that Gov. Perdue, by and through AGrowStar, joined the WOTUS litigation in order to gain financial benefit, particularly because the litigation began in 2015. **In order to have standing to sue, plaintiffs must show that they have been or will be harmed by the WOTUS Rule. AGrowStar, along with the other plaintiffs, have standing to sue precisely because they are able to show harm by the WOTUS Rule.** AGrowStar is certainly not unique nor alone in this challenge - more than 2,200 companies are represented by SLF in this litigation. The plaintiffs have demonstrated courage to challenge the full might of the EPA on behalf of millions of Americans who are directly and negatively affected by the overreaching and arguably unconstitutional WOTUS Rule.

The current posture of the case is that the WOTUS Rule has been stayed by the Sixth Circuit U.S. Court of Appeals, where the cases have been consolidated. The U.S. Supreme Court has agreed to hear arguments on jurisdiction questions in the WOTUS litigation, and SLF is preparing arguments for that hearing, which is expected this Fall. Based on President Trump’s Feb. 28, 2017 Executive Order, the EPA and Army Corps have been directed to review the WOTUS Rule based on Supreme Court precedent and

the letter of law under the Clean Water Act and to begin the process of recommending a modified Rule for administrative review.”

Founded in 1976, SLF is a national constitutional public interest law firm that appears regularly before the U.S. Supreme Court. Landmark Supreme Court victories include the 2014 *Utility Air Regulatory Group, et al. v. EPA*, 134 S. Ct. 2427 (2014), the so-called “climate change” case, which struck down the EPA’s greenhouse gas regulations as unconstitutional executive overreach beyond the Clean Air Act and without Congressional approval.

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