UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

TENNESSEE RIVERKEEPER, INC., Plaintiff, v. CITY OF LUTTRELL, Defendant.	))))))))))	No. 3:25-cv-00541-KAC-JEM

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant, City of Luttrell, moves this Court to dismiss Plaintiff Tennessee Riverkeeper, Inc.'s case in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6) on the basis that Plaintiff's Complaint fails to state a claim upon which relief can be granted because 33 U.S.C. § 1365 is unconstitutional. The Motion is based on the Memorandum in Support of Plaintiff's Motion to Dismiss filed herewith, and on all records and papers filed in this action. Additionally, Defendant hereby moves this Honorable Court to dismiss Plaintiff's Complaint for the following reasons:

1. Plaintiff's pursuit of this Clean Water Act ("CWA") citizen suit under § 1365 is an exercise of the executive power. U.S. Const. art. II, § 1, cl. 1.

2. CWA citizen suits violate the Executive Vesting and Take Care Clauses, *id.*; *id.* art. II, § 3, by preventing the Executive Branch from employing prosecutorial discretion.

3. Plaintiff's exercise of executive power violates the private nondelegation doctrine. *FCC v. Consumers' Rsch.*, 606 U.S. 656, 692-95 (2025).

4. Congress violated the Appointments Clause, U.S. Const. art. II, § 2, cl. 2, by creating CWA citizen suits.

CERTIFICATE OF CONFERENCE PURSUANT TO ORDER [DKT. NO. 5]

Counsel for Defendant City of Luttrell conferred with counsel for Plaintiff Tennessee Riverkeeper, Inc. via video conference on December 5, 2025, regarding the above-referenced issues to determine whether an amendment could cure a deficient pleading and the parties were unable to agree that the pleading is curable by permissible amendment.

DATED: December 5, 2025.

Respectfully submitted,

/s/ Jonathan Swann Taylor
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**Pro hac vice application filed*

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2025, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which is understood to have sent notification of such filing electronically to all counsel of record.

/s/Jonathan Swann Taylor
Jonathan Swann Taylor
Attorney for Defendant