

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

OPPORTUNITY FINANCE NETWORK

123 S. Broad Street Suite 1930
Philadelphia, PA 19109

Plaintiff,

v.

CITIBANK, N.A.,

5800 South Corporate Place
Sioux Falls, South Dakota 57108,

and

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460,

and

**LEE ZELDIN, in his official capacity as
ADMINISTRATOR, UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY**

1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Defendants.

No. 25-cv-1208-TSC

**JOINT MOTION TO CONSOLIDATE AND
STIPULATION REGARDING PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 42(a)(2), Plaintiff Opportunity Finance Network (“OFN”) and Defendants U.S. Environmental Protection Agency and Lee Zeldin, in his official capacity as Administrator of EPA (together, “EPA”), and Defendant Citibank, N.A. (“Citibank,” and together with OFN and EPA, the “Parties”) jointly move to consolidate this case

with materially similar cases that raise common questions of law and fact that are consolidated under *Climate United Fund v. Citibank et. al.*, No. 1:25-cv-00698-TSC (“GGRF Litigation”). Additionally, the Parties ask the Court to approve the Parties’ stipulation regarding the preliminary injunction entered in the GGRF Litigation.

1. Plaintiffs in the GGRF Litigation received grants from EPA under 42 U.S.C. § 7434, as part of the Greenhouse Gas Reduction fund (“GGRF”) created by Congress. Those grants, under the National Clean Investment Fund (“NCIF”) and Clean Communities Investment Accelerator fund (“CCIA”), were issued at similar times utilizing similar grant agreements with common terms. Those grants use a designated financial agent (Citibank) to hold the grant funds awarded to the plaintiffs in the GGRF Litigation and to administer program distributions.

2. In February and March 2025, EPA effectuated a freeze on the grant funds of the plaintiffs in the GGRF Litigation. EPA then sent materially identical notices to terminate those plaintiffs’ grants at similar times upon similar bases. In response, those plaintiffs sued EPA and Citibank asserting similar claims under the Administrative Procedure Act (APA), the Inflation Reduction Act, applicable regulations, and the Appropriations and Due Process clauses of the U.S. Constitution.

3. Recognizing that the claims advanced by the CCIA grantees and the NCIF grantees raised common factual and legal questions, including whether EPA’s termination was lawful and whether the Court had jurisdiction to adjudicate plaintiffs’ claims, the Court consolidated the cases brought by the CCIA and NCIF grantees. *See Climate United Fund v. Citibank, NA.*, No. 25-cv-698, at Minute Orders entered March 20 (consolidating cases brought by NCIF grantees), March

25 (consolidated case brought by NCIF subgrantees), April 15 (consolidating cases brought by CCIA grantees).¹

4. OFN’s claims and the factual allegations underlying them are substantially similar to the claims in the consolidated GGRF Litigation. OFN received a grant from EPA under the GGRF, as part of the CCIA program, like certain of the plaintiffs in the GGRF Litigation. OFN’s grant is subject to the same constitutional, statutory, and regulatory provisions as the grants at issue in the GGRF Litigation. OFN’s grant agreement and the grant agreements at issue in the GGRF Litigation feature common terms and conditions. OFN’s grant, like the grants at issue in the GGRF Litigation, use Citibank as the designated financial agent to hold each respective grantee’s grant funds and to administer program distributions. EPA sent OFN a notice to terminate OFN’s grant that is materially identical to the notice EPA sent to plaintiffs in the GGRF Litigation. OFN has sued EPA and Citibank asserting claims that are materially identical to the claims asserted by the Plaintiffs in the GGRF Litigation.

5. This Court has issued a preliminary injunction in the GGRF Litigation. *Climate United Fund v. Citibank, NA.*, No. 25-cv-698, ECF No. 89 at 10-11. The “preliminary injunction covers all Plaintiffs” in the consolidated GGRF Litigation, including NCIF grantees and subgrantees, and CCIA grantees.

6. OFN represents that, for many of the same reasons described by the NCIF and CCIA grantees and discussed in the Court’s preliminary injunction decision, *see id.* at 32-36, OFN

¹ The cases consolidated with *Climate United Fund v. Citibank, NA.*, No. 25-cv-698-TSC (filed Mar. 8, 2025) include: *Coalition for Green Capital v. Citibank, NA.*, No. 25-cv-735-TSC (filed Mar. 12, 2025); *Power Forward Communities, Inc. v. Citibank, NA.*, No. 25-cv-762-TSC (filed Mar. 14, 2025); *California Infrastructure and Economic Development Bank v. Citibank, NA.*, No. 25-cv-820 (filed March 19, 2025); *Justice Climate Fund v. Citibank, NA.*, No. 25-cv-938 (filed Mar. 31, 2025) and *Inclusiv, Inc. v. EPA*, No. 25-cv-948 (filed Mar. 31, 2025).

will suffer irreparable harm without release of its grant funds and without a preliminary injunction.² EPA contends that preliminary injunctive relief for OFN is not warranted for the reasons set forth in EPA's oppositions to the NCIF grantees' and subgrantees' motions for a preliminary injunction. ECF Nos. 49 and 56. Citibank contends that there is no likelihood of success on the merits against Citibank for the reasons set out in ECF No. 48.

7. Because this Court has entered a preliminary injunction in the GGRF Litigation, the Parties agree that litigating a motion for preliminary injunction by OFN would be duplicative and would not represent an efficient use of the Court's or the Parties' resources.

8. The Court's preliminary injunction in the GGRF Litigation has been appealed to the United States Court of Appeals for the District of Columbia Circuit. No. 25-5122. The D.C. Circuit administratively stayed the preliminary injunction on April 16, 2025, Document #2111459, and extended that stay pending further order of the circuit court on April 28, 2025, Document #2113330. Briefing is ongoing and the D.C. Circuit has set oral argument for May 19, 2025.

9. The Parties stipulate as follows:

- EPA and Citibank will apply the preliminary injunction entered in the GGRF Litigation, as modified by the D.C. Circuit's administrative stay, to OFN;
- Any decision by the D.C. Circuit in No. 25-5122 on the appeal of the preliminary injunction entered in the GGRF Litigation will apply to OFN as it does to the current GGRF Litigation plaintiffs;
- OFN will not file a brief or appear at argument in the D.C. Circuit in No. 25-5122.

² If the Court deems it necessary, OFN is prepared to file a declaration with evidence to substantiate that it will suffer irreparable harm without release of its grant funds and without a preliminary injunction.

10. For these reasons, and to avoid unnecessary litigation, the Parties respectfully move the Court to enter the attached proposed order to (1) consolidate OFN's case with the consolidated GGRF Litigation, (2) approve the Parties' stipulation.

Dated: May 9, 2025

Respectfully submitted

/s/ David B. Robbins

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* Application to Court pending.

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