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Clerk of Court
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Avenue, NW
Washington, D.C. 20001

Re: *Climate United Fund v. Citibank, N.A.*, No. 25-5122 (oral argument held May 19, 2025)

Dear Mr. Cislak:

We write in response to the government's letter dated July 3, 2025.

Section 60002 does not support the government's position. EPA's action must be set aside because it violated the Constitution, the IRA, federal regulations, and the APA. Section 60002 does not change that.

First, EPA's actions were illegal when they occurred, and Section 60002 does not retroactively validate them. "[C]ourts read laws as prospective in application unless Congress has unambiguously instructed retroactivity." *Vartelas v. Holder*, 566 U.S. 257, 266 (2012). Here, Congress did not unambiguously instruct retroactivity.

Second, Section 60002 does not prospectively empower EPA to dismantle the grant program. The statute recites that "the *unobligated* balances of amounts made available to carry out that section (as in effect on the day before the date of enactment of this Act) are rescinded" (emphasis added). Section 60002 does not purport to rescind already *obligated* funds—which were, in fact, *required* to be obligated by September 30, 2024. Indeed, a contrary reading would raise serious constitutional concerns under the Takings Clause.

Finally, as to Senator Capito, she herself explained that money like Plaintiffs' "that's already been obligated and out the door, that's a decision that's final."

Q&A: Sen. Capito, incoming EPW chair (Nov. 20, 2024).¹ Indeed, she said of the suggestion that legislation might “claw back money”: “That’s a ridiculous thought.” *Id.* Consistent with that statement and the statutory text, the Congressional Budget Office estimated that Section 60002 would lead to only a \$19 million cost savings.²

In sum, Section 60002 does not affect Plaintiffs’ claims, given that all their funds were and are obligated. *See Amoco Prod. Co. v. Fry*, 118 F.3d 812, 815-16 (D.C. Cir. 1997) (repeal of provision relating to oil and gas royalties did not affect lessors’ rights because repeal applied only to new oil and gas production).

Respectfully submitted,

/s/ Vincent Levy

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¹<https://www.capito.senate.gov/news/in-the-news/qanda-sen-shelley-moore-capito-incoming-epw-chair>.

² <https://www.cbo.gov/publication/61534> (Section 60002, “Title VI” tab).

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