

May 12, 2023

Sent via U.S. mail and Email

Butch Eley, Commissioner
Tennessee Department of Transportation
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Re: Support for Black Farmers in West Tennessee Facing Reported Eminent Domain Abuses and Civil Rights Violations Due to BlueOval City Construction

Dear Commissioner Eley:

The NAACP Legal Defense and Educational Fund, Inc. (LDF) writes to express our serious concern following reports that the Tennessee Department of Transportation (TDOT) is attempting to use eminent domain to seize farmland owned by Black farmers in West Tennessee without fair compensation.¹ As a nonprofit, nonpartisan civil rights organization, our goal is to ensure that Black people are afforded equal opportunity and fairness in all aspects of the economy so that they may work, live and thrive without racially imposed barriers.

Accordingly, we write to urge TDOT to respect the property rights of Black farmers and fairly compensate them for their land as required by the U.S. and Tennessee Constitutions. In addition, TDOT should ensure that its highway construction projects, including its proposed highway to BlueOval City, comply with applicable civil rights laws and regulations. As explained below, economic opportunities are opening in West Tennessee through business generated by the new Ford plant. Black individuals, families, and communities should share in that opportunity and certainly not be displaced or otherwise treated unfairly in this context.

Brief History of the BlueOval City Project

As you know, in September 2021, Ford Motor Company announced its decision to build a 3,600-acre mega campus called BlueOval City, in Stanton, Tennessee, for the

¹ This letter follows a letter sent to you by the Tennessee State Conference NAACP raising similar concerns. See Letter Gloria J. Sweet-Love, President of Tennessee State Conference NAACP to Commissioner Butch Eley, Tennessee Department of Transportation (Apr. 6, 2023).

purpose of manufacturing electric vehicles and batteries.² The next month, the Tennessee Legislature made the “single-largest investment in state history” when it approved a nearly \$900 million incentive package to clear the way for the mega campus, which included \$500 million in incentives for Ford to construct the mega campus.³ The legislation also earmarked \$200 million for the state to construct roads leading to BlueOval City.⁴ In addition, the law established an oversight authority, which was granted the power to use eminent domain to acquire the land needed for BlueOval City.⁵

Although the legislation passed with “overwhelming support” in the legislature, some lawmakers and local community groups expressed concerns about the “sweeping” list of powers granted to the state, including its right to condemn surrounding properties with eminent domain for private use.⁶ Those concerns proved to be well-founded, as recent reports indicate TDOT is using its eminent domain power to seize privately-owned land from Black farmers who reside near the planned Ford mega campus.⁷ To make matters worse, TDOT is reportedly offering the farmers a fraction of the true market value of their land.⁸

These recent actions follow other troubling efforts directed at Black communities in West Tennessee. Just last year, LDF raised serious concerns with the State’s unprecedented action in asserting complete financial control over Mason in neighboring

² *Ford to Invest \$5.6 Billion in Memphis-Area Megasite to Build Electric Vehicles and Batteries*, Fox 13 Memphis (Sept. 28, 2021), https://www.fox13memphis.com/news/ford-to-invest-5-6-billion-in-memphis-area-megasite-to-build-electric-vehicles-and/article_b60a7d9e-3099-54de-a45e-d7696d4b7457.html#:~:text=The%20company%20will%20bring%205%2C800,be%20located%20in%20Stanton%2C%20Tennessee.

³ Yue Stella Yu, *Tennessee Legislature Gives Final Nod to \$884M Ford Deal*, The Tennessean (Oct. 21, 2021), <https://www.tennessean.com/story/news/politics/2021/10/20/tennessee-legislature-gives-final-approval-884-m-ford-deal/8538425002/>.

⁴ Sam Stockard, *Legislature Approves Ford’s Blue Oval City, Largest Investment in State History*, Tennessee Lookout (Oct. 20, 2021), <https://tennesseelookout.com/2021/10/20/legislature-approves-fords-blue-oval-city-largest-investment-in-state-history/>.

⁵ Yu, *supra* note 2.

⁶ *Id.*

⁷ Joe Lancaster, *Tennessee Will Use Eminent Domain to Evict Black Farmers for Ford E.V. Factory*, Reason (Apr. 4, 2023), <https://reason.com/2023/04/04/tennessee-will-use-eminent-domain-to-evict-black-farmers-for-ford-e-v-factory/>.

⁸ *Id.*

Tipton County, which was inconsistent with state and federal law.⁹ LDF urged the Comptroller of Treasury to reconsider that extraordinary decision and allow Black residents of Mason to have an equal opportunity—as required by the state and federal constitutions—as residents across the state to have decisions about local economic development made by their locally elected officials. Mason officials and the Comptroller subsequently reached an agreement to return financial power to the town.¹⁰

The numbers of Black farmers have dwindled both nationally and in Tennessee in large part because of government-sanctioned discrimination. It is imperative that your agency correct course and fairly compensate Black farmers for their land as the law demands.

Black Land Loss Contributes to the Racial Wealth Gap

The need to ensure that Black farmers are fairly compensated is especially dire given that millions of Black farmers have been dispossessed of their land over the last century, stripping them of their ability to accumulate wealth. There were nearly a million Black farmers across America in 1920, which constituted almost 14 percent of all farmers.¹¹ It was no small feat for formerly enslaved people to own the land they once worked without compensation. Yet, today, the U.S. Department of Agriculture estimates there are roughly 40,000 Black farmers in America, owning less than one percent of our nation’s farmland as compared to roughly 95 percent of farmland owned by their white counterparts.¹²

The number of Black farmers in Tennessee has severely declined over the last century as well. In 1910, Tennessee was home to “nearly 11,000 Black farmers, 28 percent of Tennessee’s total, at a time when the state’s population was 21 percent Black.”¹³ However, these numbers diminished to less than 2,000 Black farmers in the state by 1980 due to a combination of factors including “violent racial animus, lynching,

⁹ Letter from the Legal Defense Fund to Tennessee Comptroller of the Treasury (Mar. 31, 2022), available at <https://www.naacpldf.org/wp-content/uploads/NAACP-Legal-Defense-Fund-LDF-Letter-to-the-Comptroller-re-MasonTN-3.31.22V2.pdf>.

¹⁰ *Predominately Black Tennessee Town Regains Financial Power After Surviving Hostile Takeover*, Atlanta Black Star (Dec. 9, 2022), <https://www.yahoo.com/video/predominately-black-tennessee-town-regains-233200608.html>.

¹¹ *Id.*

¹² Summer Sewell, *There Were Nearly a Million Black Farmers in 1920. Why Have They Disappeared?*, The Guardian (Apr. 29, 2019), <https://www.theguardian.com/environment/2019/apr/29/why-have-americas-black-farmers-disappeared>.

¹³ J.R. Lind, *The Rich History of Black Landowners and Farmers Here in the Upper South*, The Nashville Scene (Nov. 5, 2020), <https://www.nashvillescene.com/news/coverstory/the-rich-history-of-black-landowners-and-farmers-here-in-the-upper-south/article-5b40dd92-c18f-5e72-8203-c3bce1eab03f.html>.

Jim Crowism, underhanded land dealing and intimidation,” and a campaign of systemic discrimination by the U.S. Department of Agriculture.¹⁴ As a result, only one in every 100 Tennessee farmers was a Black person by 2020.¹⁵

The mass dispossession of farmland from Black people has greatly contributed to the racial wealth gap. A recent study estimates that Black farmers lost roughly 90 percent of their farmland between 1920 and 1997—a loss of approximately \$326 billion worth of acreage and lost income.¹⁶

TDOT’s Eminent Domain Abuses Raise Constitutional and Civil Rights Concerns

TDOT’s attempt to seize ownership of land from Black farmers raises serious concerns that the agency may be violating the U.S. and Tennessee constitutions, as well as established civil rights law.

A. The U.S. and Tennessee Constitutions Require TDOT to Provide Just Compensation to Black Farmers Prior to Taking Their Properties

Ensuring that Black farmers are adequately compensated for their land is a matter of constitutional import. The U.S. and Tennessee Constitutions prohibit the government from acquiring private property for “public use” through the power of eminent domain without payment of “just compensation.”¹⁷ Generally, the measure of compensation for property taken under eminent domain is the property’s fair market value.¹⁸ Fair market value is determined by considering the property’s “highest and best use,” which is the “highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.”¹⁹

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Leah Douglas, *U.S. Black Farmers Lost \$326 Billion Worth of Land in 20th Century Study*, Reuters (May 2, 2022), <https://www.reuters.com/world/us/us-black-farmers-lost-326-bln-worth-land-20th-century-study-2022-05-02/>.

¹⁷ U.S. Const. amend. V; Tenn. Const. art. 1, § 21. *See also* *U.S. ex rel. Tennessee Valley Auth. v. 1.72 Acres of Land In Tennessee*, 821 F.3d 742, 752 (6th Cir. 2016) (citing *United States ex rel. Tenn. Valley Auth. v. Powelson*, 319 U.S. 266, 278–80, 63 S.Ct. 1047, 87 L.Ed. 1390 (1943)).

¹⁸ *United States v. An Easement & Right-of-Way Over 3.74 Acres of Land, More or Less, in Montgomery Cnty., Tennessee*, 415 F. Supp. 3d 812, 821 (M.D. Tenn. 2019) (citing *United States v. Petty Motor Co.*, 327 U.S. 372, 377, 66 S.Ct. 596, 90 L.Ed. 729 (1946)).

¹⁹ *Id.* (citing *Olson v. United States*, 292 U.S. 246, 255, 54 S.Ct. 704, 78 L.Ed. 1236 (1934)).

Public reporting suggests that TDOT is severely undervaluing land owned by Black residents and farmers. For example, TDOT reportedly offered one Black farmer \$8,165 for an acre of his ancestral land, despite land in the area selling for \$200,000 or more per acre.²⁰ TDOT should correct course and uphold its constitutional obligation to justly compensate affected residents in exchange for their land.

B. TDOT Must Comply with Title VI

We are also concerned that TDOT's proposed highway to BlueOval City will disproportionately impact Black communities in violation of Title VI of the Civil Rights Act of 1964 and implementing regulations promulgated by the U.S. Department of Transportation.

It is well established that many of our nation's highways were historically shaped by racially discriminatory decision-making.²¹ Indeed, numerous highways across the country were specifically designed to run through and dismantle Black and Latinx communities.²² As U.S. Transportation Secretary Pete Buttigieg recently explained,

We can't ignore the basic truth: that some of the planners and politicians behind those projects built them directly through the heart of vibrant populated communities. Sometimes as an effort to reinforce segregation. Sometimes because the people there have less power to resist. And

²⁰ Anita Wadhvani, *Black Farming Community Fights to Get Fair Deal as State Takes Land for Ford Plant Roadways*, Tennessee Lookout (Apr. 3, 2023), <https://tennesseelookout.com/2023/04/03/black-farming-community-fights-to-get-fair-deal-as-state-takes-land-for-ford-plant-roadways/>; see also Lancaster, *supra* note 6.

²¹ Alexandra Kelley, *Transportation Secretary Pete Buttigieg Says 'There is Racism Physically Built' into America's Infrastructure*, The Hill (Apr. 7, 2021), <https://thehill.com/changing-america/respect/accessibility/546946-transportation-secretary-pete-buttigieg-says-there-is>.

²² For example, a once-thriving Black neighborhood on the southside of Syracuse, New York, was decimated in the 1950s to build Interstate 81. See Robert Samuels, *In Syracuse, A Road and Reparations*, The Wash. Post (Oct. 20, 2019), <https://www.washingtonpost.com/nation/2019/10/20/how-crumbing-bridge-syracuse-is-sparking-conversation-about-reparations/>. Likewise, the construction of Interstate 94 cut through the Rondo neighborhood in St. Paul, Minnesota, destroying a bustling community recalled as an "oasis" for Black families and a "haven for people of color and immigrants." See *How I-94 Ripped Apart the Rondo Neighborhood and One Group's Plan to Help Restore It*, Fox 9 Minneapolis-St. Paul (Feb. 15, 2021), <https://www.youtube.com/watch?v=lNprRpE97ng>; Ehsan Alam, *Before it was Cut in Half by I-94, St. Paul's Rondo was a Thriving African-American Cultural Center*, Minn. Post (June 19, 2017), <https://www.minnpost.com/mnopedia/2017/06/it-was-cut-half-i-94-st-paul-s-rondo-was-thriving-african-american-cultural-center/>.

sometimes as part of a direct effort to replace or eliminate Black neighborhoods.²³

Black communities in Tennessee have particularly been affected by discriminatory infrastructure projects. The most prominent example is the construction of Interstate 40 through Jefferson Street—a bustling, historic neighborhood in North Nashville that served as a business hub for the city’s Black community.²⁴ The construction of Interstate 40 displaced hundreds of Black families and caused numerous Black-owned businesses to experience significant financial hardship or otherwise cease operation.²⁵ Interstate 40 and other highways across the nation often formed physical barriers around those who remained, which served to further entrench patterns of racial and economic segregation for people of color that persist to this day.²⁶

The proposed highway to BlueOval City serves as another example of a transportation project that threatens to disproportionately impact Black communities. Indeed, the *Tennessee Lookout* reports that construction of the highway to BlueOval City will require TDOT to use eminent domain to acquire land predominately owned by Black farmers.²⁷ Moreover, members of the community have raised concerns that TDOT refuses to construct the roads to BlueOval City in a manner that would grant them equitable access to the mega campus.

These findings raise serious concerns that TDOT is failing in its obligation to ensure that its policies and practices comply with Title VI of the Civil Rights Act of 1964 (“Title VI”), which proscribes recipients of federal funds from disparately impacting communities based on race. Title VI specifically provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”²⁸ To effectuate Title VI, the

²³ Hope Yen, *Buttigieg Launches \$1B Pilot to Build Racial Equity in Roads*, Associated Press (June 30, 2022), <https://apnews.com/article/race-and-ethnicity-racial-injustice-transportation-pete-buttigieg-48e09f253781c89359d875f19fc70f9d>.

²⁴ Maranda Whittington, *How Interstate-40 Changed the Face of Jefferson Street*, WKRN-TV (Feb. 2, 2023), <https://www.wkrn.com/hidden-history/black-history-month/how-interstate-40-changed-the-face-of-jefferson-street/>.

²⁵ Linda T. Wynn, *Interstate 40 and the Decimation of Jefferson Street*, Nashville Conference on African American History and Culture (2019).

²⁶ See generally Deborah N. Archer, “White Men’s Roads Through Black Men’s Homes”: *Advancing Racial Equity Through Highway Reconstruction*, 73 Vand. L. Rev. 1259 (2020).

²⁷ Wadhvani, *supra* note 19.

²⁸ 42 U.S.C. § 2000d, et seq.

U.S. Department of Transportation has promulgated regulations that prohibit recipients of federal funds, either directly or through contractual arrangements, from utilizing criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.²⁹

Because TDOT is a recipient of federal funds from the U.S. Department of Transportation, your agency must comply with Title VI in “all of [its] operations,” including the BlueOval City highway project.³⁰ Accordingly, TDOT must make strides to ensure that Black people and other communities of color are not disproportionately impacted by the proposed BlueOval City highway project.

Conclusion

We recognize that BlueOval City holds the promise to provide significant financial opportunities for the region. However, any economic development should benefit all Tennesseans and must not come at the expense of disproportionately harming Black communities. We are concerned that the land taking without fair compensation and highway construction are poised to harm Black individuals and families. Accordingly, we strongly urge your agency to reconsider its previous actions and fairly compensate Black farmers for their land as required by the state and federal constitutions. In addition, we urge you to take the necessary steps to ensure that Black residents are not disproportionately impacted by infrastructure projects related to BlueOval City, as is your obligation under Title VI and its implementing regulations.

Please feel free to contact Jason Bailey at (646) 877-7083 or by email at jbailey@naacpldf.org with any questions or to discuss these matters further.

Sincerely,

/s/ Jason Bailey

Jason Bailey, Assistant Counsel

Amalea Smirniotopoulos, Senior Policy Counsel

²⁹ 49 C.F.R. § 21.5. The Federal Highway Administration’s Title VI regulations similarly proscribe disparate impact discrimination. *See* 23 C.F.R. § 200.

³⁰ 42 U.S.C. § 2000d-4a; see also Fed. Highway Admin. Legal Interpretation of Part 200 Provisions (Nov. 9, 2015), <https://www.fhwa.dot.gov/civilrights/programs/docs/FHWA%20Legal%20Interpretation%20of%20Part%20200%20Provisions.pdf> (instructing that Title VI applies to a “recipient’s activities regardless of whether the specific activity is funded by federal dollars. If a recipient department receives any federal financial assistance, Title VI applies to ‘all of the operations’ of that department.”).

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About the Legal Defense Fund

LDF is the country's first and foremost civil and human rights law firm. LDF was founded in 1940 under the leadership of Thurgood Marshall, the first Black member of the U.S. Supreme Court.³¹ Through litigation, advocacy, public education, and outreach, LDF strives to secure equal justice under the law for all Americans and to break down barriers that prevent Black people from realizing their basic civil and human rights.

Throughout its history, LDF has challenged racially discriminatory barriers that destabilize Black communities, strip them of their wealth and undermine access to opportunities. For example, LDF has been at the forefront of challenging policies and practices that deny housing opportunities to Black people.³² In addition, LDF has fought to protect Black people from the displacement and division of their communities caused by the construction of highways and roads that promote inequality.³³ LDF has also challenged discriminatory tax foreclosure and water lien policies that disproportionately impact Black communities by increasing the risk of losing their homes.³⁴

³¹ LDF has been an entirely separate organization from the NAACP since 1957.

³² See, e.g., *McGhee v. Sipes*, 334 U.S. 1 (1948) (companion case to *Shelley v. Kraemer*, 334 U.S. 1 (1948)) (racially restrictive covenants); *Cent. Ala. Fair Hous. Ctr. v. Lowder Realty Co.*, 236 F.3d 629 (11th Cir. 2000) (racial steering); *Comer v. Cisneros*, 37 F.3d 775 (2d Cir. 1994) (racial discrimination in public housing and assistance programs); *NAACP v. Am. Family Mut. Ins. Co.*, 978 F.2d 287 (7th Cir. 1992) (redlining); *Kennedy Park Homes Ass'n v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970) (exclusionary zoning); *Davis v. City of New York*, 902 F. Supp. 2d 405 (S.D.N.Y. 2012) (racial discrimination in policing public housing residences); *Thompson v. U.S. Dep't of Hous. & Urban Dev.*, No. 95-309, 2006 WL 581260 (D. Md. Jan. 10, 2006) (federal government's obligation to further fair housing affirmatively); *Brown v. Artery Org., Inc.*, 654 F. Supp. 1106 (D.D.C. 1987) (redevelopment plans that unfairly eliminate affordable housing); see also *Novick v. Levitt*, 108 N.Y.S. 2d 615 (1951) (challenging eviction motivated by tenants entertaining Black guests in their Levittown, New York home); *Dorsey v. Stuyvesant Town Corp.*, 299 N.Y. 512 (1949) (challenging Stuyvesant Town's racial exclusion policy).

³³ For example, LDF has filed administrative complaints and court challenges to prevent highway extensions that threatened communities of color. See e.g., *Mothers of East Los Angeles v. California Transportation Commission*; *Thomas v. City of Macon*; *Clean Air Alternative Coalition v. United States Department of Transportation* (N.D. Cal. C-93-0721).

³⁴ See *Pickett v. City of Cleveland*, No. 19-2911 (N.D. Ohio filed Dec. 18, 2019); *MorningSide Cmty. Org. v. Sabree*, No. 16-008807 (Mich. Cir. Ct. filed July 13, 2016).

cc: The Honorable Pete Buttigieg
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