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April 27, 2020

Via Electronic Mail

The Honorable Gretchen Whitmer
Governor
State of Michigan
P.O. Box 30013
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governorsoffice@michigan.gov
Gretchen.Whitmer@michigan.gov

Re: Enforcement of Executive Order 2020-28 (COVID-19)

Dear Governor Whitmer:

The NAACP Legal Defense and Educational Fund, Inc. (LDF) writes to urge you to take immediate and swift action to ensure that Michigan municipalities are in full compliance with Executive Order (EO) 2020-28, which you issued on March 29, 2020 to ensure that all state residents have access to clean water at their homes during the COVID-19 pandemic.¹ Water is a human right and a basic necessity, especially in a time of pandemic. Access to safe, affordable water is critical to stop the spread of COVID-19 through frequent handwashing and other recommended hygiene practices. Your order, requiring the restoration of water services to all occupied residences where water service has been shut off due to non-payment, addresses the critical need for households to have water services during this health crisis. However, LDF has serious concerns that municipalities within the state, particularly Detroit, are not in compliance with your order. In order to protect Michigan's vulnerable water customers who are facing extreme distress during the COVID-19 pandemic, we request that you take immediate action to ensure that Detroit and other municipalities fully comply with EO 2020-28.

LDF was founded in 1940 by Thurgood Marshall.² Our mission includes a commitment to ensuring that all communities have access to safe and affordable water. LDF has a long history of advocating for water equity in Michigan, including in Detroit, where we have urged local officials to end water shutoffs,³ and in Flint, where we successfully persuaded the mayor and county treasurer to refrain from placing liens on

¹ Mich. Exec. Order 2020-28 (COVID-19) (Mar. 29, 2020), https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523414--00.html.

² LDF has been an entirely separate organization from the NAACP since 1957.

³ NAACP Legal Def. & Educ. Fund, Inc., *LDF and ACLU Ask for Immediate Moratorium on Detroit's Water Shut-offs* (July 18, 2014), <http://www.naacpldf.org/case-issue/detroit-water-shutoff-crisis>.

homes due to unpaid water debt during the city's contamination crisis.⁴ In June 2019, LDF and its Thurgood Marshall Institute released a report entitled *Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities*.⁵ Our report discusses the link between racial discrimination and water affordability and explains the current water affordability crisis impacting Black communities across the nation. We have also recently pursued litigation against a municipality to end its discriminatory and unfair water practices.⁶

Given our commitment to ensuring that all communities have access to safe and affordable water, LDF has called on federal and state officials across the nation to take immediate steps to ensure that Americans do not experience further hardship as a result of the COVID-19 pandemic.⁷ The COVID-19 outbreak is an unprecedented public health crisis, and water—while always crucial for our survival—is especially necessary to prevent the virus from spreading further. As Sherrilyn Ifill, LDF's President and Director-Counsel, noted during a recent interview, water service shutoffs “should not be on the list of worries that people who are struggling financially have along with keeping themselves safe from this pandemic.”⁸ Families should be able to access water and other essential services regardless of their ability to pay.

Water shutoffs have posed a human rights crisis in Detroit for years. In 2014, the city disconnected water service to approximately 44,000 households for non-payment of bills.⁹ Despite international outcry,¹⁰ the city has continued to disconnect service to

⁴ Letter from Michael Steinberg, Legal Dir., ACLU of Michigan & Sherrilyn Ifill, President and Dir.-Counsel, NAACP Legal Def. & Educ. Fund, Inc., to Karen Weaver, Flint Mayor, Flint City Council & Deb Cherry, Genesee Cty. Treasurer (May 30, 2019), <https://www.naacpldf.org/wp-content/uploads/Flint-Letter-2019-05-29-Final.pdf>; NAACP Legal Def. & Educ. Fund, Inc. & ACLU of Michigan, *Moratorium on Placement of Liens on Homes for Unpaid Water Bills* (May 16, 2017), [http://www.naacpldf.org/files/about-us/Letter to Flint City Council RE Moratorium on Property Liens.pdf](http://www.naacpldf.org/files/about-us/Letter%20to%20Flint%20City%20Council%20RE%20Moratorium%20on%20Property%20Liens.pdf).

⁵ Coty Montag, NAACP Legal Def. & Educ. Fund, Inc., *Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities* (2019), <https://tminstituteldf.org/publications/2383/>.

⁶ Complaint, *Pickett v. City of Cleveland*, No. 19-cv-2911 (N.D. Ohio Dec. 18, 2019).

⁷ See, e.g., NAACP Legal Def. & Educ. Fund, Inc., *Letters to Governors Urging Moratoriums on Utility Shut-offs During the COVID-19 Pandemic* (Apr. 13, 2020), <https://www.naacpldf.org/news/letters-to-governors-urging-moratoriums-on-utility-shut-offs-during-the-covid-19-pandemic/>; NAACP Legal Def. & Educ. Fund, Inc., *LDF Sends Letter to National Governors Association Requesting a Moratorium on Foreclosures, Evictions, and Water and Utility Shut Offs* (Apr. 3, 2020), <https://www.naacpldf.org/press-release/ldf-sends-letter-to-national-governors-association-requesting-a-moratorium-on-foreclosures-evictions-and-water-and-utility-shut-offs/>.

⁸ David Brancaccio, et al., *Stop Utility Shut-Offs During COVID-19 Crisis*, NAACP Legal Defense Fund President Says, Marketplace (Mar. 27, 2020), <https://www.marketplace.org/2020/03/27/stop-utility-shut-offs-during-covid-19-crisis-naacp-legal-defense-fund-president-says/>.

⁹ Kat Stafford, *Controversial Water Shutoffs Could Hit 17,461 Detroit Households*, Det. Free Press (Mar. 26, 2018), <https://www.freep.com/story/news/local/michigan/detroit/2018/03/26/more-than-17-000-detroit-households-risk-water-shutoffs/452801002/>.

¹⁰ See, e.g., Press Release, U.N. Office of the High Comm'r on Human Rights, Detroit: Disconnecting Water From People Who Cannot Pay—An Affront to Human Rights, Say UN Experts (June 25, 2014), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777>.

residents for non-payment. In 2018, Detroit disconnected water service from more than 16,000 households.¹¹ In 2019, shutoffs rose again to a total of 23,473, according to data obtained by *Bridge Magazine* through a public records request.¹² The data produced by the city to the magazine also revealed that, as of January 2020, approximately 9,500 homes in Detroit were still without water service.¹³

As LDF's *Water/Color* report concluded, water shutoffs disproportionately impact Black communities, including in Detroit.¹⁴ Indeed, in 2016, We the People of Detroit Community Research Collective examined water shutoffs in the city and determined there was a widespread impact on Black neighborhoods.¹⁵ And in 2019, APM Reports found that water shutoff notices in several cities in the Great Lakes region, including Detroit, were disproportionately concentrated in majority Black (as well as Latinx and low-income) neighborhoods.¹⁶

As a result of these racial disparities in shutoffs, LDF is gravely concerned about the health and safety of Black Michiganders—particularly in Detroit—who lack water service during the current pandemic. National and state data have shown that Black people are dying of COVID-19 at a disproportionate rate. Nationwide, counties that are majority-Black have three times the rate of infections and almost six times the rate of deaths as counties where white residents are in the majority.¹⁷ As noted in another recent executive order you issued, EO 2020-55, Black Michiganders account for 40% of COVID-19 deaths despite making up less than 14% of the total population.¹⁸ In Detroit, which has a majority-Black population, the rates of infection and death from COVID-19 also disproportionately affect Black residents.¹⁹ Proper enforcement of EO 2020-28 will ensure that all state residents have access to the basic resource necessary to ensure safety and hygiene during this pandemic.

As you know, EO 2020-28 directs public water utilities to restore water service to occupied residences where water service was shut off due to non-payment, as long as the

¹¹ Joel Kurth & Mike Wilkinson, *I hate to complain, but I haven't had water in a year. A Detroit story.*, *Bridge Magazine* (Feb. 17, 2020), <https://www.bridgemi.com/michigan-health-watch/i-hate-complain-i-havent-had-water-year-detroit-story>.

¹² *Id.*

¹³ *Id.*

¹⁴ Montag, *supra* note 5, at 31.

¹⁵ We the People of Detroit Community Research Collective, *Mapping the Water Crisis*, <https://www.wethepeopleofdetroit.com/community-research> (last visited Apr. 24, 2020).

¹⁶ Maria Zamudio & Will Craft, APM Reports, *So Close, Yet So Costly* 7 (2019), <https://www.apmreports.org/story/2019/02/07/great-lakes-water-shutoffs>.

¹⁷ Reis Thebault et al., *The Coronavirus is Infecting and Killing Black Americans at an Alarming High Rate*, *Wash. Post*. (Apr. 7, 2020), <https://www.washingtonpost.com/nation/2020/04/07/coronavirus-is-infecting-killing-black-americans-an-alarmingly-high-rate-post-analysis-shows/?arc404=true>.

¹⁸ Mich. Exec. Order 2020-55 (Apr. 20, 2020), <https://www.michigan.gov/coronavirus/0,9753,7-406-98158-523415--,00.html>.

¹⁹ John C. Austin, *COVID-19 is Turning the Midwest's Long Legacy of Segregation Deadly*, *Brookings Inst.* (Apr. 17, 2020), <https://www.brookings.edu/blog/the-avenue/2020/04/17/covid-19-is-turning-the-midwests-long-legacy-of-segregation-deadly/>.

utility does not have reason to believe that reconnection would create a risk to public health.²⁰ It requires public water utilities to make best efforts to determine which occupied residences within their service areas do not have water service.²¹ The order also required public utilities to submit a report by April 12, 2020 to the State Emergency Operations Center regarding access to water in their service areas.²²

On April 10, Detroit submitted its report required under the EO.²³ In the report, the city notes that it began its Coronavirus COVID-19 Water Restart Plan (“Water Restart Plan”) in conjunction with your office on March 9, 20 days before you issued EO 2020-28.²⁴ But Detroit’s report demonstrates that the city’s implementation of your order has been woefully inadequate. While it is commendable that the mayor’s office announced the Water Restart Plan several weeks before the issuance of your order, it appears that the city has not taken steps to ensure its plan is consistent with your mandates. First, Detroit is placing the burden on customers to request a reconnection of service instead of proactively determining which accounts need service restored and safely restoring service, as required by your order. According to the city’s Water and Sewerage Department (DWSD) website, customers must call a hotline to have their water service restored.²⁵ We are also concerned that the city is unlawfully limiting the restoration of service to a small subset of customers, as DWSD’s website notes that the restart plan applies to customers who “[h]ad their water service *recently* interrupted due to non-payment.”²⁶ While *Bridge Magazine* recently reported that 9,500 households in Detroit currently lack water service, as noted above, the city reported on April 10 that it has restored service to a mere fraction—only 1,200—of its customers, about 13% of the overall total of households without service.²⁷ According to the city’s report, however, Detroit is currently aware of less than 10 homes that are still without water following its efforts to restore service²⁸—a stark discrepancy from the thousands of city homes that reportedly still lack service.

Detroit has also indicated that it may disconnect water service to additional customers during the pandemic. The city’s guidelines state that “[o]nce service is restored, customers must make a monthly minimum payment of \$25 during the time of the COVID-

²⁰ See Mich. Exec. Order 2020-28, *supra* note 1.

²¹ *Id.*

²² *Id.*

²³ Letter from Gary A. Brown, Director, Detroit Water & Sewerage Dep’t to Mich. Emergency Operations Ctr. (Apr. 10, 2020), <http://www.deq.state.mi.us/documents/waterinfo/DetroitCityof.pdf> [hereinafter *Brown Letter*].

²⁴ *Id.*

²⁵ City of Detroit Water & Sewerage Dep’t, *Coronavirus COVID-19 Water Restart Plan*, <https://detroitmi.gov/departments/customer-care/water-and-sewerage-department/coronavirus-covid-19-water-restart-plan> (last visited Apr. 23, 2020).

²⁶ *Id.* (emphasis added).

²⁷ *Brown Letter*, *supra* note 23.

²⁸ *Id.*

19 outbreak in Detroit to avoid service interruption.”²⁹ This required payment, which may be difficult for customers to make during this unprecedented health and economic crisis, is a clear contravention of EO 2020-28, which imposes no requirement of a minimum payment in order for water to be restored for the duration of the pandemic. As Mayor of the City of Detroit, Mayor Duggan is duty bound under the Michigan Constitution,³⁰ the Michigan Emergency Management Act,³¹ and the Emergency Powers of the Governor Act³² to fully comply with all executive orders issued by the Governor and we urge you to strictly enforce compliance with the orders of your office as a matter of public health and safety.

On April 7, representatives of the Civil Rights Legal Coalition, copied below, sent you a letter requesting that you implement EO 2020-28 in Detroit and restore water service to every customer in need. The coalition’s letter included a citizen’s proposal for a “Detroit Water Restoration Task Force,” which they urged you to consider and adopt. The task force would, among other duties, determine how many Detroit homes require the restoration of water and sanitation services, perform a needs assessment for each individual household restoration, and create a website to increase transparency for Detroit residents on ongoing service restorations and infrastructure repairs. The members of the task force would be appointed by you and would include community representatives, state and local officials, and experts in water quality and public health, among other specialties. While the coalition’s proposal pertains specifically to Detroit, they note that it can be used as a template for other Michigan jurisdictions that may not be in full compliance with EO 2020-28. Once the current State of Emergency has ended, the coalition also seeks a comprehensive water affordability plan and an end to shutoffs for non-payment to prepare for the resurgence of COVID-19 or future pandemics. LDF supports the work of the coalition and encourages you to implement its proposal.

LDF greatly appreciates that you have utilized your authority as a state governor to issue EO 2020-28. We urge you to use the full extent of your powers, including the remedies available under the Michigan Emergency Management Act,³³ to ensure that the order is meaningfully and fully implemented to ensure the provision of safe and affordable water to Michigan residents and protect those who are most vulnerable during this pandemic. We have sent a similar letter to Mayor Mike Duggan, a copy of which is

²⁹ City of Detroit Water & Sewerage Dep’t, *Program Update: COVID-19 Water Restart Plan* (Apr. 9, 2020), https://detroitmi.gov/sites/detroitmi.localhost/files/2020-04/DWSD%20Update%20-%20Coronavirus%20Water%20Restart%20Plan%20-%20004092020_0.pdf.

³⁰ Mich. Const. 1963, art. 5, § 1.

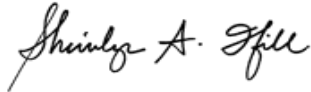
³¹ Mich. Comp. Laws Ann. § 30.401-.421.

³² Mich. Comp. Laws Ann. § 10.31-.33.

³³ The Michigan Emergency Management Act provides that a person shall not willfully disobey or interfere with the implementation of a rule, order, or directive issued by the governor under its provisions. Mich. Comp. Laws Ann. § 30.421(2). A person who violates the statute is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both. *Id.* Additionally, the attorney general or a prosecuting attorney may bring a civil action for damages or equitable relief to enforce the provisions of the Act and the orders, rules, or regulations made in conformity with it. *Id.* at (3).

attached to this letter. We request an opportunity to speak with you further about this critical issue as soon as possible. You can reach Senior Counsel Coty Montag at cmontag@naacpldf.org or (202) 216-5573.

Very truly yours,



Sherrilyn Ifill
President and Director-Counsel
Janai Nelson
Samuel Spital
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NAACP Legal Defense and Educational Fund, Inc.

cc:

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