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April 13, 2020

Via Electronic Mail

The Honorable Kay Ivey
Governor, State of Alabama
c/o Jo Bonner
Chief of Staff
Office of the Governor
600 Dexter Avenue
Montgomery, AL 36130
jo.bonner@governor.alabama.gov

**Re: Statewide Moratorium on Water Shutoffs and
Restoration of Service**

Dear Governor Ivey:

The NAACP Legal Defense and Educational Fund, Inc. (LDF) writes to urge you to take swift action to protect Alabama's vulnerable water customers who are facing extreme distress during the COVID-19 pandemic. Water is a human right and a basic necessity. Access to safe, affordable water is critical to stop the spread of the virus through handwashing and other recommended hygiene practices. Water shutoffs are a particularly egregious public safety issue in jurisdictions, like Alabama, where state officials have closed schools and have compelled school age children to remain at home. We ask that you to immediately issue a proclamation halting water shutoffs and restoring water service to previously disconnected customers for at least the full duration of the State of Emergency.

LDF was founded in 1940 by Thurgood Marshall.¹ Our mission includes a commitment to ensuring that all communities have access to safe and affordable water. 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*.² Our report makes an explicit link between race and water affordability and explains the current water affordability crisis impacting Black communities across the nation. We have also recently pursued litigation against municipalities to end discriminatory and unfair water practices.³

¹ It has been an entirely separate organization from the NAACP since 1957.

² 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/>.

³ Complaint, *Pickett v. City of Cleveland*, No. 19-cv-2911 (N.D. Ohio Dec. 18, 2019).

Given our commitment to ensuring that all communities have access to safe and affordable water, LDF has called on federal and state officials to take immediate steps to ensure that Americans do not experience further hardship as a result of the COVID-19 pandemic.⁴ 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 I 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.”⁵ Families should be able to access water and other essential services regardless of their ability to pay.

To that end, we request that you impose a statewide moratorium on all water shutoffs and order the restoration of service for customers previously disconnected for the duration of the pandemic. While a few cities in Alabama—including Birmingham⁶ and Mobile⁷—have suspended water shutoffs, these local measures do not go far enough in protecting the close to five million residents of the state. Indeed, while Alabama has 516 community water systems and 291 publicly owned treatment works facilities serving its residents,⁸ we are only aware of a total of four cities that have suspended shutoffs during this health crisis.⁹ None of these cities have committed to restoring water service for previously disconnected customers. While these local policies are an important step, they are insufficient to ensure the protection, health, and safety of vulnerable Alabamians during this unprecedented health crisis.

In particular, LDF is gravely concerned about the health and safety of Black Alabamians during this crisis. 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

⁴ See, e.g., 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/>.

⁵ 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/>.

⁶ Anna Beahm, *Birmingham Water Works Won't Shut Water Off During Coronavirus Outbreak*, al.com (updated Mar. 11, 2020), <https://www.al.com/news/2020/03/birmingham-water-works-wont-cut-your-water-off-during-coronavirus-outbreak.html>.

⁷ Fox 10, *MAWSS Suspends Disconnections for Nonpayment of Water Bills* (Mar. 17, 2020), https://www.fox10tv.com/news/coronavirus/mawss-suspends-disconnections-for-nonpayment-of-water-bills/article_cdaa4ef6-68b6-11ea-9b22-1fb68ae45069.html.

⁸ See UNC Envtl. Fin. Ctr., UNC Sch. of Gov't, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities* 21 (2017), https://efc.sog.unc.edu/sites/default/files/2018/FINAL_Pathways%20to%20Rate-Funded%20CAPs.pdf.

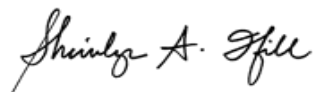
⁹ Food & Water Watch, *We Need a Country-Wide Moratorium on Water Shutoffs Amid Coronavirus* (Mar. 9, 2020), <https://www.foodandwaterwatch.org/news/we-need-country-wide-moratorium-water-shutoffs-amid-coronavirus> (includes link to live tracker of local and state moratoriums on water shutoffs).

counties where white residents are in the majority.¹⁰ In Alabama, data released by health officials shows that more than 40% of the people who have died from COVID-19 were Black even though about a fourth of the state's population is Black.¹¹ As LDF's 2019 report concluded, water shutoffs disproportionately impact Black populations.¹² A statewide proclamation halting water shutoffs and restoring water service will ensure that all state residents have access to the basic hygiene necessary during this period.

As the COVID-19 pandemic spreads in severity nationwide, state officials must create a unified and concerted response to ensure the continued health, economic stability, and wellbeing of all Americans. In particular, thousands of children are home because of school closures. Due to the current lack of a statewide moratorium on shutoffs, many of these children may lack water services, which poses a threat to public safety and human dignity. State governors have particular authority to mitigate the spread of COVID-19 and thwart potential catastrophes stemming from the national crisis. We were pleased to see you use your authority on April 3 to issue a proclamation directing law enforcement officers to cease enforcement of eviction orders.¹³ We urge you to use this authority to ensure the provision of safe and affordable water to Alabama residents and protect those who are most vulnerable during this pandemic.

We welcome the opportunity to talk with you about the critical importance of undertaking this measure.

Very truly yours,



Sherrilyn Ifill
President and Director-Counsel
NAACP Legal Defense and Educational Fund, Inc.

¹⁰ 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>.

¹¹ Kim Chandler, *COVID-19 Killing More African Americans in Alabama, Data Shows*, Assoc. Press (Apr. 8, 2020), <https://abc3340.com/news/coronavirus/alabama-numbers-show-race-disparity-in-covid-19-deaths>.

¹² Montag, *supra* note 2, at 31.

¹³ Elijah Baker, *Update: Gov. Kay Ivey Issues Ban on Evictions for the Entire State, but Rent is Still Due*, WHNT News 19 (updated Apr. 4, 2020), <https://whnt.com/news/rent-is-still-due-there-are-no-changes-in-state-law-right-now-except-federal-housing-laws/>.