



November 11, 2020

Councilwoman Sharon Green Middleton, Chair
Councilwoman Danielle McCray, Vice Chair
Taxation, Finance, and Economic Development Committee
Baltimore City Council
100 N. Holliday Street, Suite 400
Baltimore, MD 21202

**Re: Testimony in Support of Water Accountability and Equity
Act Modifications Bill (CB 20-0626)**

Dear Chairwoman Middleton, Vice Chairwoman McCray, and Members of the Taxation, Finance, and Economic Development Committee:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), I appreciate the opportunity to submit written testimony in support of Council Bill (“CB”) 20-0626, which would modify the Water Accountability and Equity Act (“WAEA”) to provide strong, realistic deadlines for the implementation of the WAEA and ensure that all Baltimore residents are treated fairly with respect to their water bills. CB 20-0626 will help alleviate the water affordability crisis in Baltimore, which has disproportionately impacted Black residents. We urge you to pass this bill.

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of economic justice, education, political participation, and criminal justice. Throughout its history, LDF has consistently worked to address inequities in the provision of water services. In the late 1960s, LDF litigated *Hawkins v. Shaw*, the first lawsuit seeking to redress racial disparities in the provision of certain municipal services, including water and sewer services, under the 14th Amendment to the U.S. Constitution.¹ In *Hawkins*, the Fifth Circuit Court of Appeals determined that the town of Shaw, Mississippi, violated the constitutional guarantee of equal protection by failing to provide the same level of water, sewer, and other municipal services in its Black neighborhoods as were provided in Shaw’s white neighborhoods.²

LDF continues to advocate for water equity in Black communities across the nation. In June 2019, LDF and its Thurgood Marshall Institute released a report that I

¹ *Hawkins v. Shaw*, 303 F. Supp. 1162 (N.D. Miss. 1969).

² *Hawkins v. Shaw*, 437 F.2d 1286, 1290 (5th Cir. 1971), affirmed by *Hawkins v. Shaw*, 461 F.2d 1171, 1173 (5th Cir. 1972).



authored, entitled *Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities*.³ Our report discusses the link between racial discrimination and water affordability and explains the current water affordability crisis impacting Black communities across the nation, including in Baltimore, as described further below.

LDF has also recently pursued court action to ensure that Black communities will not face discrimination from municipalities' policies and practices with respect to water services. In December 2019, LDF filed the first-ever lawsuit challenging water liens as discriminatory against Black residents under the Fair Housing Act.⁴ In that case, *Pickett v. City of Cleveland*, LDF also challenges Cleveland's shutoff and overbilling practices as violative of Plaintiffs' procedural due process rights.⁵ Plaintiffs allege, for example, that Cleveland has violated their due process rights by failing to provide them with an opportunity for a hearing before disconnecting their water service or to contest erroneously high bills.⁶ The court in *Pickett* recently ruled that Plaintiffs' claims may proceed to discovery.⁷ More recently, in July 2020, LDF and its co-counsel filed a lawsuit against the City of Detroit challenging its water shutoff practices, alleging that they discriminate against Black residents in violation of the Fair Housing Act and the U.S. and Michigan Constitutions.⁸ LDF will continue to advocate for water equity for Black communities throughout the country, including through litigation, as necessary.

As noted above, LDF's 2019 *Water/Color* report explored the water affordability crisis in Baltimore. Baltimore's water rates have risen more rapidly than the national average.⁹ When measured either from 2006 to 2016 or from 2010 to 2018, the cost of water service in Baltimore increased by 127 percent.¹⁰ In October 2020, Baltimore's water rates increased by another 10%—the 20th rate increase in the last 21 years.¹¹ Our report determined that Baltimore's ever-increasing water rates have a disproportionate and detrimental impact on Black families in the city.¹² While water is generally considered "affordable" if it does not exceed 2-2.5% of a household's median income, we found that some Black families in Baltimore pay close to 9% of their incomes on their water bills.¹³ LDF's report also discussed the Department of Public Works' decision in 2016 to

³ 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/>.

⁴ Complaint, *Pickett v. City of Cleveland*, No. 19-cv-2911 (N.D. Ohio Dec. 18, 2019).

⁵ *Id.*

⁶ *Id.*

⁷ Order, *Pickett* (N.D. Ohio Sept. 29, 2020).

⁸ Complaint, *Taylor v. City of Detroit*, No. 20-11860 (E.D. Mich. July 9, 2020).

⁹ Montag, *supra* note 3, at 33.

¹⁰ *Id.* (citing Joan Jacobson, *Keeping the Water On: Strategies for Addressing High Increases in Water and Sewer Rates for Baltimore's Most Vulnerable Customers*, 29 *The Abell Report* 1, 4 (Nov. 2016), <https://www.abell.org/sites/default/files/publications/Keeping%20the%20Water%20On.pdf>; Roger Colton, *Baltimore's Conundrum: Charging for Water/Wastewater Services that Community Residents Cannot Afford to Pay*, *Food & Water Watch*, at ES-4 (Nov. 2017), https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_study-final_report-2017.pdf).

¹¹ Mark Reutter, *Today Your Water Bill Goes Up – Again*, *Balt. Brew* (Oct. 1, 2020), <https://baltimorebrew.com/2020/10/01/today-your-water-bill-goes-up-again/>.

¹² Montag, *supra* note 3, at 35-36.

¹³ *Id.*



eliminate a hearing process for Baltimore residents to dispute their bills and expressed concern that customers have been left without critical due process protections.¹⁴ The issues raised in LDF's report have undoubtedly only been heightened during the COVID-19 pandemic, which has reinforced the importance of affordable, accessible, and clean water to ensure the health and safety of all.

Given the impact of Baltimore's water affordability crisis on its Black residents, LDF supported the passage of the WAEA, which provides for income-based water billing and other essential customer-protection measures, including establishing the Office of Water-Customer Advocacy and Appeals. In particular, the WAEA's income-based billing provisions will ensure that low-income Baltimore residents will be able to afford their water bills at a rate they are able to pay. Further, the WAEA will ensure that customers are afforded their due process rights guaranteed under the U.S. and Maryland Constitutions and have a meaningful mechanism to contest or challenge incorrect or unfair bills. We have been dismayed that implementation of the WAEA has been delayed over the last several months. Now more than ever, Baltimore must ensure that its residents have access to affordable water. CB 20-0626 provides for strong, realistic timelines for implementation of the WAEA and will ensure that all Baltimore residents are treated fairly with respect to their water bills. We urge the Committee to pass CB 20-0626.

Sincerely,

A handwritten signature in black ink, appearing to read "Coty Montag". The signature is fluid and cursive, with the first name "Coty" being larger and more prominent than the last name "Montag".

Coty Montag
Senior Counsel and Thurgood Marshall Institute
Researcher
NAACP Legal Defense and Educational Fund, Inc.

¹⁴ *Id.* at 34.