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May 26, 2021

The Hon. Michael L. Thurmond
Chief Executive Officer, DeKalb County, Georgia
1300 Commerce Drive
Decatur, Georgia 30030
CEOMichaelThurmond@dekalbcountyga.gov

Re: Opposition to Lifting DeKalb County Water Disconnection Moratorium

Dear Mr. Thurmond:

The NAACP Legal Defense and Educational Fund, Inc. (LDF) and the National Consumer Law Center (NCLC) are writing in response to DeKalb County's recent announcement of its plans to lift its five-year-old water disconnection moratorium on July 1, 2021.¹

Water is a human right and a basic necessity. Lack of access to safe, affordable water poses a threat to public health and human dignity. Indeed, water is necessary to cook and maintain basic hygiene. Access to water is especially important amid the ongoing global pandemic, which necessitates frequent handwashing and maintaining sanitary conditions to prevent the spread of disease.

DeKalb County has a history of problems with water billing errors. This includes the overuse of estimated bills; an inadequate billing dispute process; exponential increases in water rates; and the installation of thousands of faulty water meters—all of which led the County to implement the current water disconnection moratorium.² Despite the County's claims to have addressed these problems, we have

¹ DeKalb Cty., Ga., *Lifting the Disconnection Moratorium*, <https://www.dekalbcountyga.gov/watershed-management/water-disconnection-moratorium> (last visited May 6, 2021).

² See Mark Niesse & Jennifer Peebles, *AJC Analysis: Water Bills Triple for 1 in 8 DeKalb Customers*, Atl. J.-Const. (Feb. 5, 2017), <https://www.ajc.com/news/local-govt--politics/ajc-analysis-dekalb-water-bills-triple/1ObgTBfdpo7HyLchBFKXbl/>; Mark Niesse, *Internal Report Details DeKalb's Mistakes with High Water Bills*, Atl. J.-Const. (June 9, 2017), <https://www.ajc.com/news/local-govt--politics/internal-report-details-dekalb-mistakes-with-high-water-bills/fz6lBJS76MZeVZc9u7ejbN/>; Mark Niesse, *DeKalb County Won't Turn Off Water While*

heard from a number of DeKalb County residents that their billing dispute was closed without being truly resolved. The information we have reviewed suggests that the County does not provide residents clear information about their dispute rights, including the availability of additional layers of review if a customer does not agree with the initial response. And DeKalb County lacks any formal arrearage management or affordability relief for customers who cannot afford their ongoing water service. Moreover, resuming water disconnections would likely disproportionately harm Black people and other communities of color. In light of all of these issues, we request that you maintain DeKalb County's water disconnection moratorium and consider the adoption of more equitable collection measures.

LDF was founded in 1940 by Thurgood Marshall, the first Black member of the United States Supreme Court.³ LDF's 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*.⁴ LDF's report demonstrates an explicit link between race and water affordability and explains how the current water affordability crisis disproportionately impacts Black communities across the nation.

LDF has also recently pursued litigation against municipalities to end discriminatory and unfair water practices. In 2019, LDF and its co-counsel filed a federal class action lawsuit against the City of Cleveland, Ohio, challenging the city's policy of placing liens on residents' homes for unpaid water debt, which plaintiffs allege has a disproportionate impact on Black communities in violation of federal and state fair housing laws; as well as the city's failure to provide its customers with a meaningful opportunity to contest their bills in violation of the Due Process Clauses of the 14th Amendment and the Ohio Constitution.⁵ Additionally, in 2020, LDF and a coalition of civil rights organizations filed a federal class action lawsuit against the City of Detroit alleging that Detroit's water disconnection policy has a disparate impact on Black residents in violation of federal and state fair housing laws; as well as violates its residents' due process and equal protection rights.⁶

NCLC has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people since 1969, through policy analysis and advocacy, litigation, publications, expert witness services, and trainings. NCLC's advocacy includes promoting affordable water and other utility services for low-income households throughout the

Residents Fight High Bills, Atl. J-Const. (Sept. 20, 2016), <https://www.ajc.com/news/local-govt-politics/dekalb-won-turn-off-water-while-residents-fight-high-bills/mf38BK5xTEUvkra9Xda6TK/>.

³ LDF has been an entirely separate organization from the NAACP since 1957.

⁴ 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/>.

⁵ Complaint, *Pickett v. City of Cleveland*, No. 19-cv-2911 (N.D. Ohio Dec. 18, 2019).

⁶ Complaint, *Taylor v. City of Detroit*, No. 20-cv-11860 (E.D. Mich. July 9, 2020).

United States. NCLC publishes treatises on debt collection, credit discrimination, and access to utility service, and has issued reports on the policies needed to ensure adequate access to utilities for low-income consumers.⁷

Based upon our collective experience, we have serious concerns about DeKalb County lifting its water disconnection moratorium without first establishing proper safeguards to mitigate the significant health and financial harms that will disproportionately impact the County's Black and low-income residents, who continue to struggle with the economic effects of the pandemic.

DeKalb County Residents Must Be Afforded Notice and a Meaningful Opportunity to Dispute Their Water Bills Prior to Disconnection.

To be clear, we strongly oppose service disconnections as a collection method for unpaid water debt, as such policies often have a disproportionate impact on Black people and other communities of color in violation of federal and state civil rights laws.⁸ We therefore encourage you to implement less punitive, more cooperative measures to recover payment from customers, such as water affordability and arrearage forgiveness programs. However, if your administration insists upon resuming water service disconnections, the County must do so in a nondiscriminatory manner that, at minimum, conforms with constitutional due process standards. This includes providing residents with notice reasonably calculated to apprise them of the impending disconnection of their water service, as well as a meaningful opportunity to dispute their water charges prior to disconnection.⁹

DeKalb County has stated that the disconnection moratorium should be lifted, in part, because monthly billing disputes have been reduced from over 4,000 to less than 200.¹⁰ However, numerous customers have expressed frustration with the dispute process in the past and remain “dissatisfied and overcharged” despite

⁷ See, e.g., *What States Can Do to Save Lives and Protect Seriously Ill Residents from Utility Shutoffs*, National Consumer Law Center (Feb. 2021), <https://www.nclc.org/issues/energy-utilities-a-communications/protecting-seriously-ill-consumers-from-utility-disconnections.html>.

⁸ See, e.g., Maria Zamudio & Will Craft, *So Close, Yet So Costly*, APM Reports (Feb. 7, 2019), <https://www.apmreports.org/story/2019/02/07/great-lakes-water-shutoffs> (finding that water shutoffs in cities in the Great Lakes region have been concentrated in Black and Latinx neighborhoods over the last decade); see generally Coty Montag, *Lien In: Challenging Municipalities' Discriminatory Water Practices Under the Fair Housing Act*, 55 Harv. C.R.-C.L. L. Rev. 199 (2020) (discussing how discriminatory municipal water practices may implicate federal and state fair housing laws).

⁹ See *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1978).

¹⁰ DeKalb Cty., Ga., *Lifting the Disconnection Moratorium*, <https://www.dekalbcountyga.gov/watershed-management/water-disconnection-moratorium> (last visited May 6, 2021).

attempts to resolve their bills.¹¹ And many residents have been unable to obtain a meaningful resolution of their dispute through your dispute escalation process.

DeKalb County's process purportedly includes the right to arbitrate if customers are dissatisfied with the outcome of a review by DeKalb County's Senior Leadership. However, none of the written communications in the dispute process notify consumers of the availability of arbitration. Since it began tracking disputes through a formal system in the fall of 2016, DeKalb County has received over 30,000 disputes. Only 48 of these tens of thousands of disputes were referred to a second level of review, referred to as "special circumstances," in which Senior Leadership reviews the account. Only two customers have apparently requested arbitration – and those arbitrations have not yet been conducted.

A significant number of the disputes were marked with the outcome, "actual consumption." This appears to reflect the County's determination that there was no mistake on the bill. Numerous customers whose disputes were closed due to "actual consumption" do not believe their dispute has been resolved to their satisfaction because they still do not agree with the amount being billed. Yet, the County does not appear to provide these customers with any information about how to elevate their dispute to the next layer of review. Notably, over half of the dispute outcomes marked as "actual consumption" were located in Census tracts with populations that were 80 to 100 percent African American.

Regardless of any improvements in DeKalb County's dispute processes and procedures, there are still gaps that need to be addressed. The County provided us with two documents that seemingly provide the procedures for handling customer disputes. These documents were developed in January and February 2021, and we have been informed that there was no prior version of the policies. Nothing in these documents directs the Utilities Customer Operations Contact Center staff to inform the consumer of further appeal rights, including the right to have Senior Leadership review the dispute or the right to pursue arbitration, if the customer disagrees with the outcome of their dispute. In addition, the template letter that DeKalb County sends to customers when a dispute is resolved does not contain any information about customers' ability to further appeal the outcome of a dispute. We have grave concerns that a significant number of the disputes that were presumably "resolved," in actuality, simply have been "closed" without an adequate resolution.

Based on the foregoing, we strongly encourage the County to improve the billing dispute process and make it more transparent so that all customers are afforded notice and a meaningful opportunity to dispute their charges prior to any

¹¹ See Beryl Lipton, *MuckRock Readers Tell of Water Service Horrors in Georgia*, MuckRock (July 17, 2019), <https://www.muckrock.com/news/archives/2019/jul/17/water-assignment-dekalb-county-georgia-ii/>.

potential disconnection of their water service. Adequate systems must be in place, with sufficient check points for quality control, before disconnections of a critical utility begin.

DeKalb County Should Use Federal Funds to Provide Relief for Residents and Adopt an Income-Based Water Affordability Program.

In lieu of resuming water service disconnections as a collection method for unpaid water debt, we urge you to consider measures that are less punitive to Black people and other communities of color, as well as low-income households. We understand that you are currently encouraging DeKalb County residents to enter into installment arrangements to pay off their account balance and avoid service disconnections after July 1. However, we are concerned that many customers will be unable to afford these plans, as the County proposes to require customers to make a down payment of ten percent of their arrearages to enter into an installment agreement and intends to demand immediate payment of the entire balance if a customer fails to make a payment by the agreed upon due date.¹² It is our understanding that DeKalb County does not offer any other assistance programs to help low-income residents who are struggling to afford their water bills. For many people, the current plan will create an impossible financial burden and cause incredible stress for some of the County's most vulnerable residents. This is particularly troubling in light of the inadequate dispute procedures, discussed above.

Moreover, the letter sent to residents regarding the lifting of the moratorium (dated May 14, 2021) contained an invalid web address to seek assistance for COVID-related hardships. Several residents have reported attempting to apply for COVID-related assistance from the county and receiving an error message stating that the form could not be submitted.

The economic hardships resulting from DeKalb County's inadequate financial assistance for low-income residents are exacerbated by the COVID-19 crisis, which as you know, has disproportionately impacted people of color.¹³ It is particularly concerning that DeKalb County's only recommendation to residents who have been financially impacted by COVID-19 is to enter into an installment plan with a ten percent minimum up-front payment.¹⁴ Funds are presently available to the State of Georgia and DeKalb County from COVID relief packages passed by Congress that could be used to assist with utility arrearages, and the failure to use these funds to

¹² See DeKalb Cty., Ga., Application for Installment Agreement, <https://www.dekalbcountyga.gov/form/application-for-installment-agre> (last visited May 6, 2021).

¹³ Steven Brown, *The COVID-19 Crisis Continues to Have Uneven Economic Impact by Race and Ethnicity*, Urban Inst. (July 1, 2020), <https://www.urban.org/urban-wire/covid-19-crisis-continues-have-uneven-economic-impact-race-and-ethnicity>.

¹⁴ See DeKalb Cty., Ga., COVID-19 Disconnection Moratorium, <https://www.dekalbcountyga.gov/form/covid-19-disconnection-moratoriu> (last visited May 6, 2021).

assist struggling residents with arrearages caused, in part, by economic hardship stemming from the pandemic is inexcusable. Georgia received \$4.85 billion and DeKalb County received \$147.5 million in fiscal recovery funds from the American Rescue Plan. These funds could be used to provide across-the-board relief for County residents with utility arrearages.¹⁵ It is difficult to imagine a more critical need than continued water service, especially as we enter the hottest time of the year for the County.

We believe that the County's current plan in connection with lifting the water disconnection moratorium, both during the pandemic and beyond, is woefully inadequate and will result in thousands of DeKalb County's most economically vulnerable residents being disconnected from water service altogether or being trapped in a cycle of water insecurity with repeated disconnections and reconnections. We encourage you to instead consider adopting a water affordability program that ties water bills to a percentage of actual household income and considers a customer's ability to pay prior to disconnection. Implementing a water affordability program will ensure that all DeKalb County residents are able to afford their water bills; similar programs have been adopted by numerous cities, including Philadelphia¹⁶ and Baltimore.¹⁷ These alternative measures truly would allow DeKalb County to usher in a "new day," as they would provide much needed financial relief to vulnerable residents and ensure that water remains affordable for everyone.

Given the serious concerns raised in this letter, we respectfully request an opportunity to discuss this matter with you within the next two weeks. Please contact us at your earliest convenience by emailing Jason Bailey at jbailey@naacpldf.org. We appreciate your time and attention to this matter and look forward to discussing this critical issue with you as soon as possible.

Sincerely,



Jason Bailey

¹⁵ See Olivia Wein and Larry Levine, *Federal COVID-19 Relief for Water & Sewer Bills*, National Consumer Law Center, <https://www.nclc.org/issues/energy-utilities-a-communications/nclc-energy-utilities-telecom-blog/federal-covid-19-relief-for-water-sewer-bills.html>.

¹⁶ Press Release, *Philadelphia Launches New, Income-Based, Tiered Assistance Program*, City of Philadelphia (June 20, 2017), <https://www.phila.gov/press-releases/mayor/philadelphia-launches-new-income-based-tiered-assistance-program/>.

¹⁷ Brett Walton, *Baltimore Council Approves Income-Based Water Bills*, Circle of Blue (Nov. 21, 2019), <https://www.circleofblue.org/2019/world/baltimore-council-approves-income-based-water-bills/>.

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