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LDF
DEFEND EDUCATE EMPOWER

January 30, 2019

Senator Nancy J. King, Chair
Senator Bill Ferguson, Vice Chair
Senate Budget and Taxation Committee
General Assembly of Maryland
3 West Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Re: Written Testimony in Support of Water Tax Payer Protection Act of 2019 (SB 96)

Dear Chairwoman King and Vice Chairman Ferguson:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. ("LDF"), we appreciate the opportunity to submit written testimony in support of Senate Bill ("SB") 96, which would permanently repeal the authority of the Mayor and City Council of Baltimore City to sell certain properties to enforce a lien for unpaid water charges for water and sewer service. SB 96 will ensure that residents of Baltimore, who are predominantly African American, will not lose their homes to tax sale as a result of unpaid water or wastewater bills. 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 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

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

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]

More recently, LDF has advocated for water equality for African-American communities in Michigan. From 2014 to 2016, more than 50,000 households in Detroit lost water services due to unpaid bills.[3] With local counsel, LDF advocated for a moratorium on the water shut-offs and underscored our concern about the disproportionate racial impact of the shut-off policy.[4] Similarly, in 2017, LDF engaged in a successful effort to ensure that homeowners in Flint would not lose their homes due to unpaid water bills. In 2014, the city of Flint and the state of Michigan drew international scorn after it was revealed that residents of the city had been bathing in, cooking with, and drinking water that had dangerously high levels of lead.[5] In spite of a court judgment against the city regarding the contaminated water, LDF uncovered evidence that Flint was charging residents for this water and threatening to foreclose on homeowners who refused to pay for this dangerous water.[6] LDF, in collaboration with local counsel, persuaded the city to halt these foreclosures.[7] While Flint's Receivership Transition Advisory Board refused to approve the moratorium on the water bill liens, Genesee

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[2] *Hawkins v. Shaw*, 437 F.2d 1286, 1290 (5th Cir. 1971), *aff'd*, 461 F.2d 1171, 1173 (5th Cir. 1972).

[3] George Hunter, *Detroit To Start Water Shut-offs Monday*, THE DETROIT NEWS, Apr. 30, 2016, https://www.detroitnews.com/story/news/local/detroit-city/2016/04/30/hundreds-detroiters-line-avoid-water-shut-offs/83753926/.

[4] NAACP Legal Defense Fund, Detroit Water Shutoff Crisis, http://www.naacpldf.org/case-issue/detroit-water-shutoff-crisis.

[5] *See, e.g.*, The New York Times, Flint Water Crisis, https://www.nytimes.com/news-event/flint-water-crisis.

[6] Stephanie Parkinson, *Flint Puts 8,000 People on Notice for Tax Liens for Unpaid Water Bills*, 25 News (May 5, 2017), http://nbc25news.com/news/local/flint-puts-8000-people-on-notice-for-tax-liens-for-unpaid-water-bills; Avi Selk, *'I can't lose my house': Outrage After Flint Sends Foreclosure Warnings Over Tainted-Water Bills*, THE WASHINGTON POST, May 4, 2017, https://www.washingtonpost.com/news/energy-environment/wp/2017/05/04/the-latest-in-flints-water-crisis-pay-for-it-or-lose-your-home/?tid=sm_tw&utm_term=.889bc812400f.

[7] Brianna Sacks, *Flint Residents Win Battle Over Losing Their Homes Because of Unpaid Water Bills*, BUZZFEED NEWS, May 17, 2017, https://www.buzzfeed.com/briannasacks/flint-michigan-tax-liens?utm_term=.aylkEdQ0d#.uuzGgvMev; NAACP Legal Defense Fund & 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.

County's treasurer publicly stated that she will not proceed with any foreclosures based on unpaid water bills.[8] LDF continues to monitor the situation in Flint.

Senators Washington, Carter, Ferguson, Hayes, and McCray have introduced SB 96 at a pivotal time. The price of water has greatly increased in recent decades, and scores of communities across the nation that cannot afford to pay higher rates have been plagued by service terminations and lien sales, leading to home foreclosures and evictions. Indeed, Baltimore's water rates have risen more rapidly than the national average. When measured either from 2006 to 2016 or from 2010 to 2018, the cost of water service in Baltimore increased by 127 percent.[9] Annual bills for combined water and wastewater services for residential customers increased 37 percent between fiscal year 2014 and 2018 alone, from an average of $517.26 to $787.58.[10] Each year between 2016 and 2018, water rates rose 9.9 percent and sewer rates rose by nine percent.[11] Assuming similar annual rate increases, the typical annual residential water bill in Baltimore is expected to rise to $1,115 by 2022, more than triple the average bill of $350 in 2010.[12] Indeed, earlier this month, the city's Board of Estimates voted to approve a water rate increase of 30 percent over the next three years.[13]

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[8] Randy Conat, *Overdue Flint Water Bills Won't Result in Property Tax Liens*, abc12, June 29, 2017, http://www.abc12.com/content/news/Overdue-Flint-water-bills-wont-result-in-property-tax-liens-431629713.html.

[9] *See, e.g.*, 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.

[10] Colton, *supra* note 9 at ES-4.

[11] Jacobson, *supra* note 9 at 3; *see also* Balt. City Dep't of Public Works, *DPW Requests Hearing to Review Water/Sewer Adjustments, New Rate Structure* (Jul. 26, 2016), https://publicworks.baltimorecity.gov/news/press-releases/2016-07-26-dpw-requests-hearing-review-watersewer-rate-adjustments-new-rate. The rate increases had effective dates of October 11, 2016; July 1, 2017; and July 1, 2018. *Id.*

[12] Colton, *supra* note 9 at ES-4.

[13] Colin Campbell, *Baltimore Water Rates Will Increase 30 Percent in Next Three Years*, BALT. SUN, Jan. 9, 2019, https://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-water-rate-hike-20190109-story.html.

Given Baltimore's high and rising rates, it is no surprise that many residents are unable to afford their water bills. In 2016, 15 percent of residential customers in the city were in arrears, for a total debt of $20 million.[14] A November 2017 study of water affordability in Baltimore concluded that by 2019, water and wastewater bills will be unaffordable in *more than half* of the city households with median incomes.[15] According to the study, by this year, for households with income at or below 150 percent of the federal poverty level, *bills will not be affordable anywhere in the city*.[16] Given that 63 percent of Baltimore's population is Black,[17] these rising rates disproportionately affect people of color in the city.

In the last several years, Baltimore has been aggressive in handling delinquent water and wastewater accounts. The city may terminate water service to any customer who owes at least $250 over two months of billing.[18] In 2015, Baltimore sent shut-off notices to 25,000 residential and commercial customers (estimated to total 60,000 individuals[19]) in both the city and county who collectively owed more than $40 million in unpaid bills.[20] Ultimately, it terminated water service to 8,100 residential properties, with only half getting water restored after settling their accounts.[21] In 2016, the city terminated service to 1,385 customers for failure to pay their bills.[22]

In addition to service terminations, Baltimore residents have lost their homes for the failure to pay a water bill. Until recently, Baltimore has been able to place liens on

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[14] Jacobson, *supra* note 9 at 1.

[15] Colton, *supra* note 9 at ES-6.

[16] *Id.* at ES-7.

[17] U.S. Census Bureau, *QuickFacts: Baltimore City, Maryland* (Jul. 1, 2017), https://www.census.gov/quickfacts/fact/table/baltimorecitymaryland/PST045217.

[18] Balt. City Code, Art. 24, § 2-3; *see also* Jacobson, *supra* note 9 at 9.

[19] Food & Water Watch, *Baltimore Must Stop Household Water Shutoffs: An Analysis of Key Facts, Figures, and Trends* (Apr. 23, 2015), https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf.

[20] Luke Broadwater, *Baltimore to Send Water Turn-off Notices to 25,000 Delinquent Customers*, BALT. SUN, Mar. 26, 2015, http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-water-bills-20150326-story.html.

[21] Jacobson, *supra* note 9 at 9.

[22] *Id.*

homes for the failure to pay water or wastewater bills and has sold those liens in the city's annual property tax auctions.[23] Baltimore conducts its annual auction of liens each May.[24] While Baltimore is currently barred by state law from selling liens based only water or sewer debt through the end of 2019, unpaid water bills generally qualify as property for tax lien certificate sale in Baltimore.[25] Without the current moratorium on selling liens based solely on water debt, the city could sell a certificate for unpaid water and wastewater bills as low as $350 for non-owner-occupied properties and $750 for owner-occupied properties that missed at least three quarters of payments.[26] Prior to 2015, owner-occupied properties could be sold for unpaid water bills as low as $350.[27]

In 1999, Baltimore reduced the maximum interest rate that lien holders could charge on overdue bills from 24 percent to 18 percent.[28] On top of penalty interest rates, a lien holder could charge a 12 percent redemption interest rate for owner-occupied residences and 18 percent for non-owner-occupied properties.[29] Additionally, between four and six months after a tax sale, a lien holder could add fees for a title search, which are typically close to $350, as well as legal charges, which could total $1,500.[30]

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[23] Joan Jacobson, *The Steep Price of Paying to Stay: Baltimore City's Tax Sale, the Risks to Vulnerable Homeowners, and Strategies to Improve the Process*, Abell Foundation, at 9 (Oct. 2014), https://www.abell.org/sites/default/files/publications/ec-taxsale1014.pdf.

[24] *See generally* Baltimore Tax Certificate Auction, *Tax (Lien Certificate) Sale 2018 Frequently Asked Questions* (updated Jan. 4, 2019), https://www.bidbaltimore.com/main?unique_id=635DA7725F5E11E885255310CDE5C3E0&use_this=view_faqs; *see also* Jacobson, *supra* note 24 at 10.

[25] Balt. City Code, Art. 24, §1-2(c); *see also* Tax Lien FAQs, *supra* note 25; *see also* City of Balt., *Tax Sale Information: Other City Liens*, https://taxsale.baltimorecity.gov/other-city-liens (listing the debt that Baltimore includes in its tax sales).

[26] Md. Code Ann., Tax-Prop. § 14-849.1.

[27] Yvonne Wenger & Michael Dresser, *City Officials Welcome Passage of Bill to Limit Tax Sales*, BALT. SUN, Apr. 9, 2015, http://www.baltimoresun.com/news/maryland/politics/bs-md-city-tax-sales-20150409-story.html.

[28] Jacobson, *supra* note 23 at 16.

[29] Tax Liens FAQs, *supra* note 25.

[30] Jacobson, *supra* note 23 at 16; Fred Schulte & June Arney, *Small Unpaid Bills Put Residents at Risk*, BALT. SUN, Mar. 25, 2007, http://www.baltimoresun.com/business/real-estate/bal-taxsale-small-032507-story.html.

These additional charges made it impossible for most homeowners to redeem their homes after a lien certificate was sold at tax sale. And if the homeowner could not pay, the lien holder could initiate court proceedings to officially foreclose on the home and evict the owner. As reported by the *Huffington Post Investigative Fund*, one Baltimore resident was evicted from her home—which her family had owned for three decades—after a $362 unpaid water bill ballooned to $3,600 after interest, penalties, and fees were added to the redemption costs.[31] Another East Baltimore resident lost her two properties to an investor after a $272.22 unpaid water bill grew to $6,414.69, nearly $5,000 of which was legal fees.[32] In 2014, close to 3,000 open tax foreclosure cases were pending in Baltimore Circuit Court.[33]

While Baltimore has auctioned off properties for unpaid water bills for decades, it has become more problematic in recent years, particularly given the steep increases in water rates.[34] In 2006, approximately one-third, or 750, of the 8,000 liens offered for sale had no property taxes, and about 10 percent were for debts under $500.[35] In 2009, the city sold 666 tax liens based on unpaid water bills.[36] In 2013, Baltimore sold 5,935 tax sale certificates, 523 (nine percent) of which were for standalone water bills.[37] In May 2014, 671 homes were sold in 2014 for water liens only.[38] In 2015, that number increased to 902.[39] In 2016, Baltimore placed 9,984 properties in tax sale; 733 for water liens only.[40]

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[31] Fred Schulte, *et al.*, *The Other Foreclosure Menace*, HUFFINGTON POST, May 18, 2010, https://www.huffingtonpost.com/2010/05/18/the-other-foreclosure-men_n_579936.html.

[32] Schulte & Arney, *supra* note 30.

[33] Jacobson, *supra* note 23 at 3.

[34] *Id.* at 14.

[35] Schulte & Arney, *supra* note 30.

[36] Schulte, *supra* note 31.

[37] Jacobson, *supra* note 23 at 7.

[38] Senator Adelaide Eckardt, *et al.*, *Report of the Task Force to Study Tax Sales in Maryland*, at 5 (Jan. 18, 2018), https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/022600/022602/20180151e.pdf.

[39] *Id.*

[40] *Id.*

In 2017, Baltimore sent approximately 7,000 notices to utility customers with qualifying past-due balances that their water debt would be sold at tax sale.[41] These notices represented a total of $13.3 million in delinquent accounts.[42] Around 5,200 of those accounts, representing $9.3 million, were paid prior to tax sale.[43] Ultimately, about 1,000 customers faced tax sale for unpaid water bills in 2017, and the city recovered approximately $6.4 million by selling water-only liens.[44]

In the past, Baltimore attempted to justify the tax sale process by claiming that it is seeking new owners for its numerous abandoned or dilapidated properties.[45] According to one investor, "the benefit of the system is that property can be put back in the hands of people who will put it back on the tax rolls and redevelop it."[46] However, the vast majority of properties put up for sale were occupied.[47] Investors have also claimed that the practice relieves the government of the burden of collecting debts and managing long-neglected properties, entitling them to profit in exchange for taking on this risk.[48]

The sale of tax liens based on water debt disproportionately impacts Black communities in Baltimore. Data from the Tax Sale Prevention Project, a joint effort of the Pro Bono Resource Center of Maryland and the Maryland Volunteer Lawyers Service, sheds some light on the demographics of Baltimore homeowners with water liens. The Project holds four Tax Sale Prevention Clinics in Baltimore each year, serving

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[41] Brett Walton, *Water Debt Not on the Menu in Baltimore's Tax Sale Season*, CIRCLE OF BLUE, May 9, 2018, http://www.circleofblue.org/2018/world/water-debt-not-on-the-menu-in-baltimores-tax-sale-season/.

[42] Maryland General Assembly, Dep't of Legislative Services, *Senate Bill 1098 Fiscal and Policy Note* (2018 sess.), http://mgaleg.maryland.gov/2018RS/fnotes/bil_0008/sb1098.pdf.

[43] *Id.* at 3.

[44] *Id.*; Yvonne Wenger, *Coalition Calls for End to Tax Sales in Baltimore over Unpaid Water Bills*, BALT. SUN, June 1, 2017, http://www.baltimoresun.com/news/maryland/baltimore-city/politics/bs-md-ci-water-tax-sale-20170601-story.html.

[45] Schulte & Arney, *supra* note 30.

[46] *Id.*

[47] *Id.*

[48] *Id.*

120 clients in 2016 and 137 in 2017.[49] Both years, the vast majority of the Project's clients identified as Black (80 percent in 2016 and 73 percent in 2017) with a household income under $30,000 (67 percent in 2016 and 63 percent in 2017).[50] In 2016, 78 percent of clients had delinquent water bills; the percentage rose to 86 percent in 2017.[51]

Last year, the General Assembly took an important first step in protecting Baltimore's residents from losing their homes by passing SB 1098, which imposed a one-year moratorium on the practice of placing liens against homes because of water and wastewater debt and selling the liens at the annual tax sale. SB 96 permanently protects residents from losing their homes due to water debt and further extends these protections to places of worship. The inability to pay water and wastewater bills due to indigency should not subject Baltimore's most vulnerable residents to the loss of basic needs like water or their homes. We urge the General Assembly to pass the current version of SB 96.

Respectfully submitted,

Coty Montag
Project Manager, Thurgood Marshall Institute & Senior Counsel

Catherine Meza
Senior Counsel

cc: Senator Mary Washington

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[49] Pro Bono Resource Center of Maryland, Tax Sale Prevention Project, *Baltimore Clinic Statistics 2017*; Pro Bono Resource Center of Maryland, Tax Sale Prevention Project, *Baltimore Clinic Statistics 2016*.

[50] *Id.*

[51] *Id.*