

March 31, 2022

Sent via U.S. mail and email

Tennessee Comptroller of the Treasury
State Capitol
Nashville, TN 37243-9034

Dear Comptroller of the Treasury,

The NAACP Legal Defense and Educational Fund, (Inc.) (LDF)¹ writes to express our concern with the State of Tennessee’s unprecedented decision to usurp financial control from elected officials in Mason, Tennessee, a predominantly Black town, and to assume all economic decision-making for an indefinite period.

On March 3, 2022, the residents of Mason, Tennessee, where 68 percent of the population is Black, received a letter in their mailbox from the Comptroller of the Treasury.² The Comptroller announced: **“In my opinion, it’s time for Mason to relinquish its charter.”**³ When Mason officials refused to dissolve, the State Comptroller’s office declared that it would take over the town’s finances.

In both the letter to Mason residents, and in communications with town officials, the Comptroller has cited financial mismanagement as a justification for the State taking over Mason’s finances. But, while Mason experienced significant financial mismanagement by white elected officials prior to 2015, it has made great strides at improving its finances under the

¹ LDF is the country’s first civil and human rights law firm. Since its founding in 1940, it has been a pioneer in the struggle to achieve racial justice, equality, and an inclusive society. Through litigation, advocacy, and public education, we work to increase fairness and equal opportunity for Black people in all aspects of the economy. LDF has been a separate entity from the NAACP and its state and local branches since 1957.

² U.S. Census Bureau, Mason CCD, Tipton County, Tennessee Populations and People P1 Race - Table Results, <https://data.census.gov/cedsci/table?q=Mason%20CCD,%20Tipton%20County,%20Tennessee%20Populations%20and%20People&g=1600000US4746420&tid=DECENNIALPL2020.P1> (last visited Mar. 30, 2022) (Data shows that 914 out of the population of 1,337 in Mason, Tennessee are Black.).

³ Letter Jason E. Mumpower, Comptroller of the Treasury, to People of Mason (Mar. 3, 2022) [hereinafter “Mumpower Open Letter”], <https://comptroller.tn.gov/content/dam/cot/administration/documents/press-releases/2022/MasonPressandLetterCombo030722.pdf>.

governance of Black elected officials since then. The Comptroller’s decision comes just as Mason is on the verge of an economic transformation as a result of the Ford Motor Company’s plan to build a multi-billion-dollar electric car battery manufacturing plant within Mason’s boundaries.

There is no legitimate justification for state takeover of Mason’s finances under these circumstances. Indeed, the timing of the State’s decision—while the State did not take over the town’s finances when they were in much worse condition under previous white leadership—raises concerns about arbitrary and discriminatory application of state law in violation of the United States Constitution and the Tennessee Constitution. These concerns are amplified by how unusual the State’s decision is. State takeover of a town’s finances has occurred only three other times in the State’s history. In none of those other circumstances was a town already making significant strides to improve its finances or on the verge of major new economic development.

LDF respectfully urges the State to respect local government, and promptly return control of Mason’s finances to town officials.

A Brief History of Mason

Mason, Tennessee was established in 1858 and incorporated as a town in 1871.⁴ Following the Civil War, Mason served as the commercial hub for Tipton, County, and experienced economic prosperity, primarily through its agricultural economy.⁵ However, the town has not seen economic growth in some time. In 2019, 38 percent of the population lived below the poverty line.⁶ The current population in Mason is 1337 persons, 920 of whom are Black.⁷

For over a century, Mason was led by white elected officials.⁸ A dramatic shift occurred in 2015 when the town’s financial mismanagement reached its apex, and the majority Mason’s

⁴ Tipton County Gov’t & Tennessee Historical Comm’n, *Architectural and Historical Survey Tipton County, Tennessee* 13– 14 (Thomason and Associates 2010), https://cms4files1.revize.com/tiptontn/document_center/2010_Tipton_County_Historical_Survey.pdf.

⁵ *Id.* at 14; Mary Lynne Williams, *Old Trinity Episcopal Church*, Tipton County, Tennessee (Apr. 17, 2019), <https://www.tiptoncountyttn.com/churches/old-trinity-episcopal-church/>.

⁶ Data USA, Mason, TN, <https://datausa.io/profile/geo/mason-tn#:~:text=38%25%20of%20the%20population%20for,44%20and%20then%20Males%20%205> (last visited Mar. 25, 2022).

⁷ U.S. Census Bureau, P2 Hispanic or Latino, and Not Hispanic or Latino By Race - Table Results, <https://data.census.gov/cedsci/table?q=Mason%20CCD,%20Tipton%20County,%20Tennessee%20Populations%20and%20People&g=1600000US4746420&tid=DECENNIALPL2020.P1>.

⁸ Anita Wadhvani, ‘*This is akin to a hostile takeover*’, Tennessee Lookout (Mar. 14, 2022), <https://tennesseelookout.com/2022/03/14/this-is-akin-to-a-hostile-takeover/>.

elected officials, all of whom were white, resigned.⁹ A year later, following the Comptroller’s office audit of Mason’s finances, the public works superintendent was indicted for receiving over \$600,000 in unauthorized compensation.¹⁰ A 2016 investigative report by the Tennessee Comptroller of the Treasury and the Tennessee Bureau of Investigation determined, among other things, 1) “Deficiencies existed in the financial operations” and 2) the town board, composed of its mayor and alderpersons, did not provide adequate oversight.¹¹ State officials made no efforts to take control of Mason’s finances at that time, however.

After the mass resignation in Mason, newly elected officials were left to address a town crippled from years of financial mismanagement. Lifelong resident Gwendolyn Kilpatrick became the first woman mayor and first Black mayor of Mason, and indeed in any town in Tipton County, Tennessee.¹² Since then, the majority of the town’s elected officials have been Black and today, the current mayor, Mayor Emmitt Gooden, vice-Mayor, and five of its six alderpersons are Black. Despite the many hurdles, Mason’s audit reports, specifically its changes in long-term debt and overall assets, highlights steady progress since 2015. In 2015, Mason’s outstanding debt was \$1,237,373; this number has steadily decreased. By 2019, debt decreased 27 percent, to \$901,000.¹³ And from 2015 to 2019, Mason’s assets over liabilities increased from \$2.11 million to \$3.97 million.¹⁴ Notably, because of past financial mismanagement, when Mayor Gooden took office in 2018, audits from 2014 and 2015 were still incomplete.¹⁵ The town

⁹ *Id.*

¹⁰ Echo Day, *A look back: Political moves and missteps in the 2010s*, *The Leader* (Jan. 2, 2020), <https://covingtonleader.com/news/a-look-back-political-moves-and-missteps-in-the-2010s/>.

¹¹ Tennessee Comptroller of the Treasury, *Town of Mason – Investigative Report 6*, 8 (2016), <https://comptroller.tn.gov/content/dam/cot/ia/advanced-search/2016/other/masonfinal.pdf>; Wadhvani, *supra* note 8.

¹² Echo Day, *supra* note 10.

¹³ Emmitt P. Gooden, *Town of Mason, Tennessee, Letter of Rebuttal to Controller 2* (Mar. 10, 2022) https://www.townofmasontn.org/_files/ugd/72b22f_6797ec93372b4d2d9a60a9ef58ea263b.pdf; Tennessee Comptroller of the Treasury, “*Mason*” Advanced Search, <https://comptroller.tn.gov/advanced-search.html#%22q%22:%22mason%22,%22filters%22:%22%22%22,%22page%22:1%22> (last visited Mar. 28, 2022); Town of Mason, Tennessee, *Financial Statements and Supplementary Information For The Fiscal Year Ended June 30, 2015* 9 (2015) [hereinafter “*Mason Audit Report – 2015*”], <https://comptroller.tn.gov/content/dam/cot/ia/advanced-search/2015/city/1765-2015-c-mason-rpt-cpa6-1-30-17.pdf>; Town of Mason, Tennessee, *Financial Statements and Supplementary Information For The Fiscal Year Ended June 30, 2019* 9 (2019) [hereinafter “*Mason Audit Report – 2019*”], <https://comptroller.tn.gov/content/dam/cot/ia/advanced-search/2019/city/1765-2019-c-mason-rpt-cpa6-6-22-21.pdf>.

¹⁴ *Mason Audit Report – 2015* at 9; *Mason Audit Report – 2019* at 9.

¹⁵ Gooden, *supra* note 13, at 1.

has been playing catch up ever since. The most recent approved audit was completed in 2021 and reviewed Mason's 2019 financials.¹⁶

In September 2021, Ford Motor Company announced its plan to create Blue Oval City just 5 miles from Mason. Blue Oval City is a \$5.6 billion-dollar electric car battery manufacturing plant projected to create 6,000 jobs directly and 27,000 jobs, indirectly.¹⁷ Blue Oval City is set to open in 2025. To meet this deadline, construction will begin this year.¹⁸ Ford expects that it will require approximately 30,000 construction workers over the next three years to complete the project.¹⁹ The project will undoubtedly create exponential growth in the surrounding area and across all industries. Mason is set to become a prime location for commercial and residential real estate and new economic opportunities.

The State's Takeover of Mason's Finances

On February 8, 2022, the State Comptroller arrived at the Mason Town Hall meeting with an ultimatum.²⁰ If the town did not relinquish its charter, the State would take over its financials.²¹

Town officials recognized that if Mason became unincorporated, it would lose control over its economic development. Mayor Gooden warned: "Mason will not have any say so in its

¹⁶ Tennessee Comptroller of the Treasury, *supra* note 11.

¹⁷ Press Release, Ford Media Center, *Ford, Sk Innovation Add 6,000 Jobs In Tennessee; Will Work Together To Strengthen Local Communities As Ford Creates New Mega Campus* (Sept. 29, 2021), <https://media.ford.com/content/fordmedia/fna/us/en/news/2021/09/29/ford--sk-innovation-add-6-000-jobs-in-tennessee.html>; Press Release, Bill Lee, Governor, *Special Session on Historic Megasite Investment Comes to a Close* (Oct. 20, 2021), <https://www.tn.gov/governor/news/2021/10/20/special-session-on-historic-megasite-investment-comes-to-a-close.html>.

¹⁸ Kate Coil, *Megasite officials discuss role in Blue Oval City development*, Tennessee Town & City - Tennessee Municipal League (Feb. 10, 2022), <https://ttc.tml1.org/2022/02/10/megasite-officials-discuss-role-blue-oval-city-development>.

¹⁹ Sam Stockard, *Scramble to house Ford Megasite workers begins*, Tennessee Lookout (Feb. 22, 2022), <https://tennesseelookout.com/2022/02/22/scramble-to-house-ford-megasite-workers-begins/>.

²⁰ Echo Day, *After 20 years of financial issues, the state comptroller wants the Town of Mason to relinquish its charter*, Leader (Feb. 10, 2022), <https://covingtonleader.com/news/after-20-years-of-financial-issues-the-state-comptroller-wants-the-town-of-mason-to-relinquish-its-charter/>.

²¹ Press Release, Jason E. Mumpower, Comptroller of the Treasury, *Comptroller Mumpower Pens Open Letter to the People of Mason - Letter Urges Mason to Surrender its Charter* (Mar. 7, 2022) [hereinafter "Mumpower Press Release"], <https://comptroller.tn.gov/news/2022/3/7/comptroller-mumpower-pens-open-letter-to-the-people-of-mason.html>; Mumpower Open Letter, *supra* note 3. <https://comptroller.tn.gov/content/dam/cot/administration/documents/pressreleases/2022/MasonPressandLetterCombo030722.pdf>.

future. If Mason surrenders its Charter, it will not have a seat at the table, it will be on the ‘menu.’”²² He explained that the town had already been passed over for various economic development opportunities, which had allowed other counties and municipalities to repay outstanding debts and make infrastructure improvements, and State control would only worsen that problem. On March 10, Mayor Gooden presented a 12-point rebuttal at a town hall meeting to respond to the Comptroller’s claims that “government is not working.”²³ And on March 14, the Mayor and the town’s Alderpersons unanimously voted against relinquishing the town’s charter.²⁴

In response, the Comptroller confirmed that the State would indefinitely take over the town’s financials.²⁵ This means the Comptroller must review expenses and has the authority to veto any expense that exceeds \$100.²⁶ As outlined in the Comptroller’s letter, under the State’s financial control, the Comptroller will review and approve, among other things, all “new contracts or contract extensions,” “grant applications that require local matches,” “financial transfers between accounts prior to occurring,” and “all planned and new purchases . . . prior to spending.”²⁷

The State’s Takeover Raises Serious Concerns Under State and Federal Law

The Comptroller’s decision to take over Mason’s finances raises serious concerns under both state and federal law.

First, the Comptroller relies on Tennessee Code § 9-21-403(c) as the source of authority for this takeover. But, although that provision allows the Comptroller to review town budgets and to require municipalities to reduce expenditures or levy additional taxes, it does not appear to

²² Gooden, *supra* note 13 at 2.

²³ Echo Day, *Playing for Keeps: After suggesting it was ‘like a hostile takeover’, Mason votes to keep its charter*, Leader (Mar. 16, 2022), <https://covingtonleader.com/news/playing-for-keeps-after-suggesting-it-was-like-a-hostile-takeover-mason-votes-to-keep-its-charter/>.

²⁴ *Id.*

²⁵ See Wadhvani, *supra* note 8.

²⁶ Letter from Jason E. Mumpower, Comptroller of the Treasury, to Hon. Emmitt Gooden, Mayor et al. (Mar. 17, 2022) [hereinafter “Comptroller’s Letter to Mayor and Corrective Action Plan”]; Rya Wooten & Jackson Brown, *TN Comptroller taking financial control of a small town outside of Memphis | Here’s why it matters* ABC 24-WATN-TV (Mar. 17, 2022, updated March 23, 2022), <https://www.localmemphis.com/article/news/community/tennessee-comptroller-mason-charter-takeover-ford-blue-oval/522-6dbca81a-d7c7-4fff-a210-f22e548d1aa9>.

²⁷ *Id.*, Comptroller’s Letter to Mayor and Corrective Action Plan at 2.

contemplate day-to-day supervision by the State over a town’s financial transactions.²⁸ As such, the level of control that the State is seeking to exercise over Mason’s day-to-day operations appears to exceed its authority under state law.

Second, state laws must be applied neutrally. The Equal Protection Clause of the United States Constitution prohibits officials both from applying laws in irrational and arbitrary ways,²⁹ and from taking actions that are motivated, even in part, by racial discrimination.³⁰ The Tennessee Constitution likewise requires state laws to be applied neutrally.³¹ The circumstances described above, including the “historical background of the decision,” the “sequence of events” leading up to the Comptroller’s announcement, and procedural departures from ordinary decision-making, raise serious concerns that the State’s takeover of Mason’s finances runs afoul of these core constitutional principles.³²

Seven years ago, the Town’s finances were even more dire, and unauthorized financial actions by an elected official led to a criminal indictment.³³ Despite this, the Comptroller did not take over the Town’s financials. Fast forward to 2022, when Mason is run by a majority-Black government that has been improving the Town’s finances, and Mason is on the verge of an economic boom. These circumstances suggest that the timing of the State’s takeover is

²⁸ Tenn. Code Ann. § 9-21-403 (c), states in relevant part: “If the budget does not comply with this chapter, then the comptroller of the treasury or the comptroller’s designee shall have the power and the authority to direct the governing body of the local government to adjust its estimates, to reduce expenditures, or to make additional tax levies sufficient to comply with this chapter. Any budget adopted by the governing body of a local government must be submitted for approval by the comptroller of the treasury or the comptroller’s designee. The comptroller of the treasury or the comptroller’s designee shall approve the budget only when the comptroller of the treasury or the comptroller’s designee is satisfied that it complies with this chapter.”

²⁹ See *Village of Willowbrook v. Olech*, 528 U.S. 562, 565 (2000).

³⁰ See *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977); see also *Meriwether v. Hartop*, 992 F.3d 492, 514 fn. 9 (6th Cir. 2021) (noting “[t]he obligation to scrutinize irregularities is longstanding . . . The Equal Protection Clause does not tolerate irregular, discriminatory application of ‘neutral’ laws.”).

³¹ Tenn. Const. art. I; Tenn. Const. art. XI § 8.

³² *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267 (1977).

³³ Tennessee Comptroller of the Treasury, Town of Mason – Investigative Report 1 (2016), <https://comptroller.tn.gov/content/dam/cot/ia/advanced-search/2016/other/masonfinal.pdf>.

“irrational,”³⁴ its justification “implausible,”³⁵ and the State’s actions may be motivated, at least in part, by racial discrimination.³⁶

The Comptroller’s actions are also a clear departure from typical government procedure, which strengthens these concerns.³⁷ A 2016 Report from the PEW Charitable Trust reviewed Tennessee’s fiscal monitoring system and summarized some of intermediary steps the State can take before usurping a municipality’s financial control.³⁸ It listed the follow options: “direct local officials to come up with corrective action plans, issue funding bonds, appropriate money to pay [the town’s] debts, reduce expenditures, or even raise taxes.”³⁹ Here, however, the Comptroller took over management of Mason’s day-to-day operations without undertaking any of these steps. Indeed, as discussed above, it is not clear that State law even authorizes the level of control the Comptroller has asserted.

Finally, our concerns about the irrational and discriminatory treatment of Mason are underscored by how rarely the State Comptroller has taken such control over a municipality’s finances. We are aware of only three other instances where Tennessee stepped in to take over complete financial control from local elected officials—Van Buren County in 2020, Jellico between 2013 and 2018, and Polk County in the 1980s and 1990s.⁴⁰ Available records suggest that each time, the localities were in significantly more tenuous financial situations. At one point, prior to the Comptroller’s takeover, Van Buren County had only “\$1,395 in cash left in budget” at the end of its fiscal year and was forced to lay off seven employees in one month.⁴¹ Jellico lost its ability to control its finances after its city recorder was indicted for stealing nearly \$100,000

³⁴ *Village of Willowbrook v. Olech*, 528 U.S. 562, 565 (2000).

³⁵ *Miller-El v. Cockrell*, 537 U.S. 322, 339 (2003).

³⁶ *Cf. League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440, (2006) (explaining in a voting rights case that “the State took away the Latinos’ opportunity because Latinos were about to exercise it. This bears the mark of intentional discrimination that could give rise to an equal protection violation.”).

³⁷ *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267 (1977).

³⁸ Pew Charitable Trusts, *State Strategies to Detect Local Fiscal Distress: How states assess and monitor the financial health of local governments* 35 (2016) https://www.pewtrusts.org/~media/assets/2016/09/detecting_local_distress_report.pdf.

³⁹ *Id.*

⁴⁰ Anita Wadhvani, *Comptroller to take over majority-Black town of Mason, ahead of Ford investment in West Tennessee*, Tennessee Lookout (Mar. 15. 2022), <https://tennesseelookout.com/2022/03/15/comptroller-takes-financial-control-of-majority-black-town-of-mason-ahead-of-ford-investment-in-west-tennessee/>.

⁴¹ Emily R. West, *Van Buren County Teeters on Financial Takeover* Jackson Sun (July 22, 2020).

from public funds.⁴² As far as we are aware, in none of those other circumstances was there evidence that local officials had significantly improved the municipality’s finances before the takeover.

Conclusion

Last week the Comptroller’s office released an updated Corrective Action Plan that is set to take effect on April 4, 2022. According to the Comptroller, “if town officials’ financial presentations prove to be accurate—and if town leaders pass a balanced budget, complete their audited financials and stick to its repayment plan to pay down debt, financial oversight could be removed as soon as this July or August.”⁴³ But the plan remains unduly burdensome, strips elected officials from their ability to operate, and lacks a definitive end point.

LDF has serious concerns that the State’s unprecedented action in asserting complete financial control over Mason is inconsistent with state and federal law. We urge the Comptroller of Treasury to reconsider this extraordinary decision and to allow Black residents of Mason to have an equal opportunity—as required by the state and federal constitutions—as residents across the State to have decisions about local economic development made by their locally elected officials.

Sincerely,

/s/ Ashley Burrell

Janai Nelson, President and Director-Counsel
Samuel Spital, Director of Litigation
Ashley Burrell, Assistant Counsel
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street, 5th Fl.
New York, NY 10006
(212) 965-2200
aburrell@naacpldf.org

⁴² *Jellico recorder took nearly \$100K in town funds, comptroller finds*, Knoxville News-Sentinel (June 6 2014); Press Release, Justin P. Wilson, Comptroller, *City of Jellico Improves Financial Condition* (Mar. 27, 2018), <https://comptroller.tn.gov/news/2018/3/27/city-of-jellico-improves-financial-condition.html>.

⁴³ Anita Wadhvani, *Tennessee Comptroller scales back financial oversight for Town of Mason*, Tennessee Lookout (Mar. 23, 2022), <https://tennesseelookout.com/2022/03/23/tennessee-comptroller-scales-back-financial-oversight-plans-for-town-of-mason/>.

cc: President Gloria Sweet-Love
Tennessee State Conference of the NAACP
27 Brentshire Square
Jackson, TN 38305