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April 27, 2020

Via Electronic Mail

The Honorable Roy Cooper
Governor
State of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301
govrequests@nc.gov

Re: Enforcement of Executive Order No. 124

Dear Governor Cooper:

The NAACP Legal Defense and Educational Fund, Inc. (LDF) writes to urge you to take immediate action to ensure that North Carolina utility service providers are in full compliance with Executive Order (EO) No. 124, which you issued on March 31, 2020 so that all state residents have access to clean water and other utility services at their homes during the COVID-19 pandemic.¹ Water is a human right and a basic necessity, especially in a time of pandemic. Access to safe, affordable water is critical to stop the spread of COVID-19 through frequent handwashing and other recommended hygiene practices. Your order, prohibiting the disconnection of water services for non-payment and encouraging the restoration of water services to all previously disconnected residences, addresses the critical need for households to have water services during this health crisis. However, LDF has serious concerns that utility service providers within the state are not in compliance with your order. To protect North Carolina's vulnerable water customers who are facing extreme distress during the COVID-19 pandemic, we request that you take immediate action to ensure that all utility service providers fully comply with EO 124.

LDF was founded in 1940 by Thurgood Marshall.² 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*.³ Our report discusses the link between racial discrimination and water affordability and explains the current water affordability crisis impacting Black communities across the

¹ N.C. Exec. Order No. 124 (Mar. 31, 2020), <https://files.nc.gov/governor/documents/files/EO124-Utilities-Evictions-Financial-Services.pdf>.

² LDF has been an entirely separate organization from the NAACP since 1957.

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/>.

nation. We have also recently pursued litigation against a municipality to end its discriminatory and unfair water practices.⁴

Given our commitment to fighting for access to safe and affordable water for all communities, LDF has called on federal and state officials across the nation to take immediate steps to ensure that Americans do not experience further hardship as a result of the COVID-19 pandemic.⁵ 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 Sherrilyn Ifill, LDF’s President and Director-Counsel, 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.”⁶ Families should be able to access water and other essential services regardless of their ability to pay.

LDF’s *Water/Color* report demonstrates that water shutoffs disproportionately impact Black communities.⁷ As a result of these racial disparities in shutoffs, LDF is gravely concerned about the health and safety of Black North Carolinians who lack water service during the current pandemic. 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 counties where white residents are in the majority.⁸ In North Carolina, Black people represent 39% of the total coronavirus cases and account for 37% of related deaths, despite making up only 22% of the total population, according to data from the North Carolina Department of Health and Human Services.⁹ Proper enforcement of EO 124 will ensure that all state residents have access to the basic resource necessary to ensure safety and hygiene necessary during this pandemic.

As you know, EO 124 prohibits utility service providers from terminating the service of residential customers for non-payment unless the termination is necessary as a

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

⁵ See, e.g., NAACP Legal Def. & Educ. Fund, Inc., *Letters to Governors Urging Moratoriums on Utility Shut-offs During the COVID-19 Pandemic* (Apr. 13, 2020), <https://www.naacpldf.org/news/letters-to-governors-urging-moratoriums-on-utility-shut-offs-during-the-covid-19-pandemic/>; 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/>.

⁶ 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/>.

⁷ Montag, *supra* note 3, at 31.

⁸ 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>.

⁹ Annette Weston & Sydney Basden, *NC Coronavirus Cases Approach 7,000; 2,000 of Those in Nursing Homes, Prisons*, ABC News Channel 12 (Apr. 21, 2020), <https://wcti12.com/news/state-news/nc-coronavirus-cases-approach-7000-2000-of-those-in-nursing-homes-prisons>.

matter of safety or requested by a customer.¹⁰ The order also prohibits utility service providers from billing or collecting any late fees, charges, penalties, or interest for late or otherwise untimely payments.¹¹ It requires utility service providers to afford customers an opportunity to make reasonable payment arrangements to pay off any arrearages accumulated during the effective period of the order.¹² The order also encourages utility service providers to reconnect previously disconnected service to the extent practicable and waive any penalties or reconnection fees.¹³ It further directs utility service providers to “reasonably inform” their customers of the order’s provisions.¹⁴

In addition, utility service providers are required to report certain implementation information weekly to the North Carolina Utilities Commission (the Commission) and, in turn, the Commission is directed to provide a weekly report to your office regarding the implementation of EO 124.¹⁵ The EO was preceded by an order from the Commission requiring Commission-regulated electric, natural gas, water and wastewater utilities to cease service disconnections for nonpayment and waive the application of late fees incurred during the State of Emergency.¹⁶

On April 13, the Commission submitted its report as required under the EO.¹⁷ In the report, the Commission indicates that 2,839 residential customer accounts for electric, gas, and water service had been disconnected for non-payment throughout the state as of March 31.¹⁸ Regarding water service, data provided by the Commission reveals that approximately 1,766 residential water and/or wastewater customer accounts were disconnected as of March 31. The report further reveals that only 239 residential customer accounts were reconnected from April 1 through April 4, which includes approximately 197 water and/or wastewater accounts. The Commission’s April 20 report stated that 139 residential accounts were reconnected from April 5 through April 11, including only 133 service reconnections for water and/or wastewater accounts.¹⁹

The Commission’s reporting demonstrates that the implementation of your order by utility service providers has been woefully inadequate. The limited number of utility service reconnections runs counter to the spirit of your order, which encourages utility

¹⁰ See N.C. Exec. Order No. 124, *supra* note 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ N.C. Utilities Comm’n, Doc. No. M-100, Sub 158, Order Suspending Utility Disconnections for Non-Payment, Allowing Reconnection, and Waiving Certain Fees (Mar. 19, 2020), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=99807398-6abd-412f-b94c-6c23eb2427b0>.

¹⁷ Letter, Charlotte A. Mitchell, Chair, North Carolina Utilities Comm’n to Roy Cooper, Governor, State of North Carolina (Apr. 13, 2020), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=a9372a7f-0f75-45b7-be2b-1295f94b852c>.

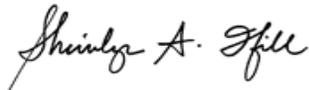
¹⁸ *Id.*

¹⁹ Letter, Charlotte A. Mitchell, Chair, North Carolina Utilities Comm’n to Roy Cooper, Governor, State of North Carolina (Apr. 20, 2020), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=011cod42-4046-443c-8e6c-bc922b4844f7>.

service providers to reconnect previously disconnected customers and acknowledges that access to water and other utilities is “essential to the continued health and safety of residential utility customers” as such services are necessary to mitigate further community spread of COVID-19.²⁰ In addition, some providers have not taken adequate steps to ensure that their efforts are consistent with your mandates. For instance, as stressed in both of the Commission’s reports, some utility service providers have not provided data as required by the EO, and many of the providers that reported data for the April 1 through April 4 reporting period failed to report data for the April 5 through April 11 reporting period. Moreover, some utility service providers failed to make the required efforts to inform their customers of the applicable provisions in EO 124. Thus, some utility customers may not be aware of the relief they may be entitled to under your order.

LDF greatly appreciates that you have utilized your authority as a state governor to issue EO 124. We urge you to use the full extent of your powers to ensure that the order is meaningfully and fully implemented to ensure the provision of safe and affordable water to North Carolina residents and protect those who are most vulnerable during this pandemic. We request an opportunity to speak with you further about this critical issue as soon as possible. You can reach Senior Counsel Coty Montag at cmontag@naacpldf.org or (202) 216-5573.

Very truly yours,



Sherrilyn Ifill
President and Director-Counsel
Janai Nelson
Samuel Spital
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NAACP Legal Defense and Educational Fund, Inc.

²⁰ N.C. Exec. Order No. 124, *supra* note 1.