

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JACQUELINE TAYLOR, LISA  
BROOKS, MICHELE COWAN, TUANA  
HENRY, MATTIE MCCORKLE, and  
RENEE WILSON, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

CITY OF DETROIT, a Municipal  
Corporation, through the Detroit Water and  
Sewerage Department, its Agent;  
GOVERNOR GRETCHEN WHITMER, in  
her official capacity; MAYOR MICHAEL  
DUGGAN, in his official capacity; and  
GARY BROWN, in his official capacity.

Defendants.

Case No. 2:20-cv-11860

Hon. Denise Page Hood

Mag. Anthony P. Patti

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

By this motion, Plaintiffs respectfully request that the Court enter a preliminary injunction prohibiting Defendants City of Detroit, Mayor Michael Duggan, and Gary Brown (hereinafter the “Detroit Defendants” or “Detroit”)<sup>1</sup> from terminating water service for purposes of debt collection or otherwise as a response to non-payment of water bills.

In support thereof, Plaintiffs state as follows:

1. Plaintiffs represent a putative class of residential customers of the Detroit Water and Sewerage Department (DWSD). Historically, when residential customers’ water bills have gone unpaid, DWSD has disconnected their service.
2. Between 2014 and 2019, more than 141,000 households in Detroit had their water service disconnected for non-payment. Some families lived for years without water service in their homes after a disconnection by DWSD. Others have been trapped in a cycle of water insecurity with repeated disconnections and reconnections. These water insecure families lived in fear of loss of service at any time because of their inability to pay DWSD’s rates. Black families in Detroit are disproportionately impacted by the City’s water shutoff policy.

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<sup>1</sup> At this time, Plaintiffs are not asking the Court to enter a preliminary injunction against Defendant Governor Whitmer.

3. Families without water service in their homes are susceptible to infection.

Through the years, Detroit's water shutoff policy has resulted in outbreaks of various forms of infectious diseases, including shigellosis (an acute dysentery); giardiasis (a protozoan infection); and campylobacter (an acute intestinal disease). Detroit's policy has also resulted in threats to the health of affected families resulting from such things as the inability of people with diabetes to prepare medically necessary meals, the inability of parents to prepare infant formula, dehydration, and various other health consequences.

4. In many cases, individuals who live without water service in their homes have become carriers of disease, infecting others within their physical proximity. Communities with a significant number of households without water service are particularly susceptible to COVID-19 infection, creating a public health emergency that prompted repeated, consistent demands for remedial action by affected communities and their advocates.
5. The pending litigation was filed for the specific purpose of permanently ending water shutoffs, and to bring that into effect in a specific way—namely by making water rates affordable for all residential water customers.

6. During the pendency of this action, Defendants have maintained a moratorium on water shutoffs in Detroit as a reaction to the COVID-19 pandemic. They have not, however, modified water rates or excused water customers from charges that continue to accrue during the moratorium. Water customers will be expected to pay the full amount of accrued water bills, which means that low-income customers are to likely yet again face the prospect of water shutoffs once the moratorium is lifted.
7. In or about December 2020, Defendant Michael Duggan announced that Detroit will refrain from engaging in water shutoffs until December 31, 2022. He was quoted as stating: “My goal now is stop water shutoffs to low-income Detroiters once and for all . . . We have secured the funding necessary to continue this effort through 2022 and we are building a coalition to make this permanent.”<sup>2</sup>
8. Notwithstanding the launch of what Defendants call the “Lifeline” program that purports to provide water service at affordable rates, and that has been presented to enrollees in the program as a guarantee against shutoffs, reasonable, legitimate and concerning questions have been raised

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<sup>2</sup> Press Release, Detroit Water & Sewerage Dep’t, *Mayor, DWSD extend moratorium on residential water shutoffs through 2022 and announce intention to permanently end shutoffs* (Dec. 8, 2020), available at <https://detroitmi.gov/news/mayor-dwsd-extend-moratorium-residential-water-shutoffs-through-2022-and-announce-intention>.



about, among other things, the efficacy of the program, the financial viability of the program, accessibility of the program, and the high probability, if not certainty, that large numbers of Detroit residents will, for various reasons, fail to enroll in the program and thereby render themselves susceptible to shutoffs.

9. This motion for a preliminary injunction requests that the Detroit Defendants be enjoined from changing the status quo until there has been an opportunity for a full adjudication of Plaintiffs' claims, or until such time as it has been satisfactorily established that Plaintiffs will not be at risk of irreparable harm during the pendency of this action.
10. Plaintiffs seek a preliminary injunction enjoining the Detroit Defendants from further water shutoffs and other actions harmful to Plaintiffs. In determining whether to grant the requested relief, a court must balance four factors: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of the injunction.
11. Plaintiffs assert claims against Defendants for violation of their substantive due process rights to be free from violation of their bodily

- integrity; racial discrimination in violation of the Fair Housing Act and the Elliott-Larsen Civil Rights Act; and violation of their rights to equal protection under the law.
12. There is substantial evidence supporting Plaintiffs' claims and they have a high likelihood of success on the merits.
13. In the absence of injunctive relief, Plaintiffs are at risk of substantial harm due to their heightened susceptibility to infectious diseases and other irreparable harm. Because of the potential for a public health emergency if injunctive relief is not granted, a preliminary injunction will best serve the public interest.
14. In support of this motion, Plaintiffs submit the appended brief and supporting declarations that address all elements necessary for the entry of an order granting the requested relief.
15. Plaintiffs seek leave to present oral argument in support of this Motion.
16. Pursuant to Local Rule 7.1(a), before filing this motion Plaintiffs' counsel attempted to ascertain whether this motion would be opposed. Plaintiffs' counsel conferred with Defendants' counsel, explained the nature of the motion and the relief sought, and requested but did not obtain concurrence.

Respectfully submitted,

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Date: December 12, 2022

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Case No. 2:20-cv-11860

Hon. Denise Page Hood

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**BRIEF IN SUPPORT OF PLAINTIFFS'  
MOTION FOR A PRELIMINARY INJUNCTION**

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## INTRODUCTION

To ensure the continuation of water service to all Detroit water customers after December 31, 2022, Plaintiffs file this brief in support of their motion for a preliminary injunction.

Plaintiffs have filed a civil rights class action against Defendants City of Detroit (“Detroit”), Governor Gretchen Whitmer, Mayor Michael Duggan, and Director of the Detroit Water and Sewerage Department (“DWSD”) Gary Brown under the U.S. and Michigan Constitutions, alleging that Defendants have breached the constitutionally protected bodily integrity of Plaintiffs through their deliberate indifference to the known risks of living without water service that has harmed and will harm Plaintiffs. Plaintiffs also allege that Defendant Detroit’s policy of disconnecting water service to customers for non-payment has violated the Fair Housing Act (“FHA”) and the Elliott-Larsen Civil Rights Act (“ELCRA”), because it has a disproportionate and unjustified impact on Black residents.

After March 2020, Defendant Detroit was barred from disconnecting water customers for non-payment because of a state of emergency, and Defendant Whitmer’s Executive Order (“EO”) 2020-28, all in response to the COVID-19 pandemic. Thereafter, a voluntary moratorium on water shutoffs was established by Defendant Duggan in the closing weeks of 2020. It is set to expire on December 31, 2022.

Defendants Detroit, Duggan, and Brown (the “City Defendants”) claim they have developed a water affordability plan, known as Lifeline, that will end water shutoffs and render the moratorium unnecessary. However, the effectiveness of the plan has not yet been established, and even if it is implemented according to the design, the plan expressly applies only to water customers who enroll in it and remain enrolled and in good standing.

There are significant numbers of individuals who will be unable to enroll in or benefit from the program. This includes persons who remain unaware of the program; persons who lack mobility or access to technology needed for enrollment, or who are otherwise unable to navigate the enrollment process; large families who exceed the Lifeline program’s three-member family water allotment; persons with insecure immigration status or persons concerned about privacy (the program requires enrollees to provide a Social Security number; and many other persons cannot enroll and will not benefit).

Many Detroit residents who will likely be unable to enroll in the new program, and who are also members of the putative Plaintiff class (which is predominantly and disproportionately Black) will lose access to water. Without water in their homes, those residents will be unable to practice handwashing, increasing their risk and their communities’ risk of contracting infectious diseases, including, but not limited to, COVID-19.

Plaintiffs seek a preliminary injunction prohibiting the City Defendants from resuming water service disconnections for non-payment. The injunction requested would not prevent Defendants from proceeding with their normal operations – including implementation of their water affordability plan – but it would preserve the status quo pending resolution of the sharply contested issues in this lawsuit.

### **STATEMENT OF THE ISSUE**

Whether the water service disconnections challenged by this lawsuit and that Defendants acknowledge are on track to resume in 2023 should be enjoined during the pendency of the litigation to prevent irreparable harm to members of the putative Plaintiff class who are likely to succeed in claims brought under the U.S. and Michigan Constitutions, the Fair Housing Act, and the Elliott-Larsen Civil Rights Act.

### **STATEMENT OF FACTS**

Detroit has had a water affordability crisis for decades. Class Action Complaint (“Compl.”), ¶2. Detroit residents pay an average of 10% of their household incomes on water (and some pay much more), even though water is generally considered “affordable” when families spend no more than 2% to 2.5% of their median household incomes for such service. *Id.* As a result, many families in Detroit struggle to pay their water bills. Compl., ¶s 2 and 45.

Historically, when customers' water bills have been unpaid, DWSD has disconnected their service. Compl., ¶3. It took the COVID-19 pandemic to interrupt this practice. Defendant Whitmer issued an emergency order on March 28, 2020 that required public water suppliers to restore water service to all occupied residences where such service had been terminated due to non-payment. Compl., ¶77.

At the time she declared: "Now more than ever, the provision of clean water to residences is essential to human health and hygiene and to the public health and safety of this state." (Emergency Order 2020-28). In December 2020, because of the COVID-19 pandemic and pressure brought by this lawsuit and community advocacy, Defendant Duggan imposed a voluntary moratorium on water shutoffs. That moratorium, however, will expire on December 31, 2022.<sup>3</sup>

### **Impending Harm from Renewal of Shutoffs**

If water shutoffs are allowed to resume in 2023, history portends the inevitability of crisis. Between 2014 and 2021, more than 141,000 households in Detroit had their water service disconnected for non-payment. Compl., ¶63. Some families lived for years without water service in their homes after a disconnection by DWSD. *Id.* Others are trapped in a cycle of water insecurity with repeated disconnections and reconnections. *Id.* During periods when Defendants engage in

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<sup>3</sup> Sarah Rahal and Christine Ferretti, Detroit Extends Water Shutoff Moratorium through 2022, The Detroit News, Dec. 8, 2020.

shutoffs, these families are perpetually at risk of losing water service at any time because of their inability to pay DWSD's rates for water services.

Families without water service in their homes are susceptible to infection. Compl., ¶94. (See Gaber Declaration, Exhibit 1). Through the years, Detroit's water shutoff policy has resulted in outbreaks of various forms of infectious diseases, as well as other threats to the health of affected families resulting from such things as the inability of people with diabetes to prepare medically necessary meals, the inability of parents to prepare infant formula, dehydration, and various other health consequences associated with the lack of water. Compl., ¶s 98 -100. (See Gaber Declaration, Exhibit 1).

In many cases, individuals who live without water service in their homes have become carriers of disease, infecting others within their physical proximity. In addition, there is substantial emotional and psychological injury that results from mass water shutoffs. (See Exhibit 1 – Declaration of Dr. Nadia Gaber.) This has created a public health emergency that has been deliberately ignored by Defendants, notwithstanding repeated, consistent demands for remedial action by affected communities and their advocates. Compl., ¶s 68-74.<sup>4</sup> As the end of the voluntary

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<sup>4</sup> The links below document ongoing advocacy from the early 2000s:  
[file:///C:/Users/mfancher/Downloads/MWRO\\_UPR22\\_USA\\_E\\_Main.pdf](file:///C:/Users/mfancher/Downloads/MWRO_UPR22_USA_E_Main.pdf)

moratorium on December 31, 2022 approaches, these severe harms caused by the water disconnections will reappear unless shutoffs are enjoined.

### **The Inadequacies in the Lifeline Program**

Within recent months, Defendants launched a water affordability program called “Lifeline.” Although it has encouraging features, the Lifeline Program is not adequate to address the risks of serious harm to Plaintiffs from water shutoffs. For example, in her declaration [Exhibit 2] Plaintiff Tuana Henry states:

Irreparable harm can be predicted to occur to my family and me, on December 31, 2022, if DWSD does not have a permanent plan in place to protect Detroiters from shutoffs. For my family and thousands of others, the DWSD Lifeline 4,500 [gallon] cap of water, under the \$18.00 tier will cause my bill to go up to unaffordable levels, causing my water to be cut off in the future.

Also, as a practical matter, there are water customers who wish to enroll in the program, but face challenges. Plaintiff Jacqueline Taylor is one such individual.

In her declaration [Exhibit 3], she states:

I have been trying for months to get enrolled in the Lifeline Plan, but I have not succeeded. I do not utilize a computer and when my son tried to assist me he could not enroll me either. I also tried to get an appointment with Wayne Metro, the non-profit enrolling residents. I could not get through the phone system to enroll in the Lifeline program, and would wait for long periods without getting an

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<https://www.fsconline.com/downloads/Papers/2005%2001%20Detroit%20Water.pdf>;[https://www.aclumich.org/sites/default/files/field\\_documents/mdhhs\\_declaratory\\_ruling\\_request-final.pdf](https://www.aclumich.org/sites/default/files/field_documents/mdhhs_declaratory_ruling_request-final.pdf)  
[https://www.aclumich.org/sites/default/files/field\\_documents/mdhhs\\_declaratory\\_ruling\\_request-final.pdf](https://www.aclumich.org/sites/default/files/field_documents/mdhhs_declaratory_ruling_request-final.pdf)

answer. Even though the DWSD Lifeline is supposed to apply to customers like me with low income, I can't get through. In April 2022 I had a stroke and was hospitalized for several days. I have problems now with my sight and movement. I cannot obtain acceptance.

With respect to Ms. Taylor's dilemma, Sylvia Orduño, whose declaration is attached [Exhibit 4], and who is directly engaged with families impacted by water shutoffs, points out that DWSD relies heavily on the use of social media when many vulnerable water customers do not receive or follow social media.

In fact, many people do not own a computer or other device that gives them adequate access to the internet. This impacts them in multiple ways, and Orduño explains that whenever such persons are required to complete online forms, many will attempt to use their phones. Often, because of the phone's limited capacity and interrupting telephone calls, there are data entry problems, particularly when there is a need to upload rental agreements, deeds, Social Security cards, DHHS benefits forms, etc. When such operations cause phones to crash, the person must begin the process again, assuming they don't become frustrated and give up.

Ms. Orduño is also concerned that persons whose immigration status is not secure will be unwilling to come forward and provide the personal information that is demanded for enrollment in the Lifeline program. This is particularly problematic when applicants are asked to provide a Social Security number. Ms. Orduño explained that she has encountered undocumented persons who do not have Social Security numbers, and others who use the names of their children.

In addition to the inadequacies of the Lifeline Program, even if fully implemented, Plaintiffs have questions and concerns about the sustainability of the program because of their understanding that the amount of available funding can sustain the program for only a year. If needed funding is not obtained and the program collapses, whatever continuing shutoffs problems there may already have been will be severely exacerbated.

### **STANDARD FOR GRANTING PRELIMINARY INJUNCTIVE RELIEF**

To determine whether to grant a preliminary injunction, a court must balance four factors: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of the injunction. *Stein v. Thomas*, 222 F. Supp. 3d 539, 542 (E.D. Mich. 2016); *Valenti v. Snyder*, 853 F. Supp. 2d 691, 694 (E.D. Mich. 2012).

### **ARGUMENT**

This Court should grant Plaintiffs' request for a preliminary injunction, as each factor weighs strongly in their favor.

#### **I. Plaintiffs Have a Strong Likelihood of Success on the Merits.**

##### **A. Plaintiffs Are Likely to Succeed on the Merits of Their Substantive Due Process Claim.**



Plaintiffs are likely to succeed on their claims under the U.S. and Michigan Constitutions that Defendants have violated their rights to substantive due process. In particular, Plaintiffs assert that Defendants deliberately and knowingly breached the constitutionally protected bodily integrity of Plaintiffs through their deliberate indifference to the known risks of living without water service that could, did, and will cause harm to Plaintiffs.

“The Substantive Due Process Clause protects against ‘government interference with certain fundamental rights and liberty interests.’” *Lieberman v. Husted*, 900 F. Supp. 2d 767, 776 (S.D. Ohio 2012). These interests include “the specific freedoms protected by the Bill of Rights” as well as other unenumerated rights, including the right to bodily integrity. *Id.*; *see also Mays v. Snyder*, 916 N.W.2d 227 (Mich. App. 2018) (finding that the Michigan Constitution’s due process clause encompasses a substantive right to bodily integrity).

Bodily integrity can be violated in different ways. “The central tenet of the Supreme Court’s bodily integrity jurisprudence is balancing the individual’s common law right to informed consent with tenable state interests, *regardless of the manner in which the government intrudes upon an individual’s body.*” *Guertin v. Michigan*, 912 F.3d 907, 919 (6th Cir. 2019) (emphasis added). For example, in *Love v. Johnson*, this Court found that Michigan’s policy requiring transgender individuals to carry identification that did not comport with their gender identity

placed them at risk of bodily harm, even though no actual physical intrusion was at issue. 146 F. Supp. 3d 848, 854 (E.D. Mich. 2015).

Courts have described the right to bodily integrity as “encompassing freedom from bodily restraint and punishment.” *Ingraham v. Wright*, 430 U.S. 651, 673-74 (1977). “This right is fundamental where ‘the magnitude of the liberty deprivation that the abuse inflicts upon the victim...strips the very essence of personhood.’” *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1063 (6th Cir. 1998). The right is implicated when an individual faces a “substantial risk of bodily harm . . . from a perceived likely threat[.]” *Love*, 146 F. Supp. 3d at 854.

To prove a bodily integrity substantive due process claim, Plaintiffs must (1) show a deprivation of a constitutionally protected liberty interest, and (2) demonstrate how the government’s discretionary conduct that deprived that interest was constitutionally repugnant. *See Am. Express Travel Related Servs. Co. v. Kentucky*, 641 F.3d 685, 688 (6th Cir. 2011). Courts use the “shocks the conscience” rubric to evaluate intrusions into a person’s right to bodily integrity. *Lillard v. Shelby Cty. Bd. Of Educ.*, 76 F.3d 716, 725 (6th Cir. 1996). Thus, a “plaintiff must show as a predicate the deprivation of<sup>a</sup> liberty or property interest” and conscience-shocking conduct. *EJS Props. v. City of Toledo*, 698 F.3d 845, 861 (6th Cir. 2012). There is no specific test to determine when conduct shocks the conscience, but courts generally look to the state actor’s intent as one factor. *County of Sacramento v.*

*Lewis*, 523 U.S. 833, 853 (1998). Generally, the actor must have demonstrated either “reckless indifference” or “deliberate indifference” to the harm. *Nishiyama v. Dickson Cty.*, 814 F.2d 277, 281 (6th Cir. 1987). Courts also weigh the amount of time for deliberate consideration, meaning whether the circumstances allowed the actor time to fully consider the potential consequences of their conduct. *Burgess v. Fischer*, 735 F.3d 462, 473 (6th Cir. 2013); *Ewolski v. City of Brunswick*, 287 F.3d 492, 510 (6th Cir. 2002).

Here, the threat of contracting COVID-19 and other diseases due to the almost certain deprivation of water service in their homes is a violation of Plaintiffs’ bodily integrity. Just as the Sixth Circuit in *Kallstrom* ruled that the release of private information created a “threat to . . . personal security and bodily integrity and possibly the lives” that implicated a fundamental liberty interest, Plaintiffs here suffer the same threat to their bodily integrity if they are returned to a situation where they cannot effectively protect themselves from the spread of diseases that may lead to sickness and, in some cases, death.

Additionally, there is ample support for a finding that Defendants have demonstrated “reckless indifference” or “deliberate indifference” to the harm. *See, e.g., Nishiyama*, 814 F.2d at 287. As the COVID-19 pandemic progressed, Defendants Whitmer and Duggan pointed to the substantial risk of serious illness or even death from the failure to wash hands. Compl., ¶75. But if Detroit’s self-imposed

voluntary moratorium on water shutoffs expires on December 31, 2022, and Detroit resumes its water shutoff policy, residents who are unable to pay Detroit's high water rates will lose service and be unable to comply with life-saving health practices.

Water shutoffs in Detroit have been the focus of local and state deliberation for two decades, and advocates have repeatedly petitioned Defendants to impose a moratorium on shutoffs due to the health risks. Compl., ¶¶ 68-74.<sup>5</sup> Accordingly, Plaintiffs can demonstrate a substantial likelihood of success on the merits of their constitutional claims.

**B. Plaintiffs Are Likely to Succeed on the Merits of their FHA and ELCRA Claims.**

**1. Plaintiffs Have Established a Prima Facie Case of Disparate Impact Discrimination Under the FHA and ELCRA.**

Plaintiffs are also likely to succeed on the merits of their claims under the FHA and ELCRA, because of the unjustified disparate impact that Detroit's policy of disconnecting residents' water service for non-payment has on Detroit's Black residents. Compl., ¶¶ 106-120. The FHA makes it unlawful to discriminate on the basis of race in the terms, conditions, or privileges of the provision of services or facilities of a dwelling. *See* 42 U.S.C. § 3604(b) ("Section 3604(b)"). ELCRA has a similar provision. Mich. Comp. Laws Ann. § 37.2502. Because the Sixth Circuit applies the same test in evaluating FHA and ELCRA claims, the analysis below

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<sup>5</sup> See links at footnote 4 *supra*.

pertains to both statutes. *Mencer v. Princeton Square Apartments*, 228 F.3d 631, 634 (6th Cir. 2000).

The FHA permits claims challenging government policies that have an unjustified disparate impact on Black people, without any showing of intentional discrimination. *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2525 (2015). Plaintiffs may establish a prima facie case of disparate impact by alleging facts demonstrating: (1) the specific policy that is being challenged; (2) a disparate impact on a protected class; and (3) a causal connection between the challenged policy and the disparity. *Inclusive Cmty.*, 135 S. Ct. at 2523-24; 24 C.F.R. § 100.500(c)(1); *see also Reyes v. Waples Mobile Home Park Ltd. P'ship*, 903 F.3d 415, 426, 428-30 (4th Cir. 2018).

Plaintiffs have conclusively established a prima facie disparate impact claim. First, Plaintiffs have identified a specific policy of the defendant that has a significant disparate effect on a protected group: they challenge Defendant Detroit's policy of disconnecting water service to customers for non-payment. Plaintiffs allege that Detroit's shutoff policy violates Section 3604(b) of the FHA, which prohibits discrimination in the provision of services or facilities (including water) in connection with the sale or rental of a dwelling. *See, e.g., Georgia State Conf. of the NAACP v. City of LaGrange*, 940 F.3d 627, 634 (11th Cir. 2019) (municipal water services are covered by section 3604(b)); *Kennedy v. City of Zanesville*, 505 F. Supp.

2d 456, 499 (S.D. Ohio 2007) (the FHA “clearly” covers discrimination in the “procurement of water, a vital resource”).

Second, Plaintiffs have sufficiently demonstrated the disparate impact of Detroit’s water shutoff policy on Black residents. Plaintiffs’ expert, Dr. Samuel Stolper, analyzed publicly available data on water shutoffs in Detroit from January 2017 to July 2018 and from January 2019 to January 2020. Declaration of Samuel Stolper, PhD (“Stolper Decl.”), [Exhibit 5]. For the 2017 to 2018 data, Dr. Stolper determined that 95% of residential water shutoffs occurred in Census tracts with a population that was greater than 50% Black. *Id.* Only 5% of shutoffs occurred in Census tracts with a population that was less than 50% Black. *Id.* This difference is statistically significant. *Id.* For the same time period, he also determined that Detroit Census tracts with a less than 50% Black population had, on average, 21.7 (or 64%) fewer shutoffs per 1,000 people than tracts with a greater than 50% Black population. *Id.* This difference is statistically significant and remained statistically significant even when accounting for differences in income and counts of unoccupied homes. *Id.* Dr. Stolper also found statistically significant results for this time period when comparing Census tracts with a population greater and less than 75% Black. *Id.*

For the 2019 to 2020 data, Dr. Stolper determined that 96% of residential water shutoffs occurred in zip codes with a population that was greater than 50% Black. *Id.* Only 4% of shutoffs occurred in zip codes with a less than 50% Black

population. *Id.* This difference is statistically significant. *Id.* During this same time period, Detroit zip codes with a less than 50% Black population had, on average, 30.6 (or 68%) fewer shutoffs per 1,000 people than tracts with a greater than 50% Black population. *Id.* This difference is statistically significant and remained statistically significant even when accounting for differences in income and counts of unoccupied homes. *Id.* Dr. Stolper also found statistically significant results for this time period when comparing zip codes with a population greater and less than 75% Black.<sup>6</sup> *Id.*

Third, Plaintiffs can show a causal nexus between the challenged practice or policy and the disparate impact on the protected class. Statistical evidence, including “sufficiently substantial” disparities, may be used to demonstrate causation. *See, e.g., Inclusive Cmty.*, 135 S. Ct. at 2523; *Reyes*, 903 F.3d at 425; *Graoch Assocs. # 33, L.P. v. Louisville/Jefferson Cty. Metro Human Relations Comm’n*, 508 F.3d 366, 374 (6th Cir. 2007). Plaintiffs allege that Defendant Detroit’s policy causes Black Detroit residents to disproportionately experience water shutoffs, forcing them to live without water service in their homes. Compl., ¶110. These allegations are supported by “sufficiently substantial” disparities, as described above. Plaintiffs have more than met their burden to establish a robust causal connection between

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<sup>6</sup> Notwithstanding the passage of time, Dr. Stolper’s declaration states his belief in the likelihood that: “...those shutoffs that continue to occur will exhibit similar patterns related to race as shown in this declaration for the years 2017-2019.”

Detroit's water shutoff policy and the resulting impact on Black residents. Accordingly, this Court should find that Plaintiffs have established a prima facie case of disparate impact discrimination under the FHA and ELCRA.

**2. Defendant Detroit Cannot Demonstrate Its Water Shutoff Policy Is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest.**

Because Plaintiffs can establish a prima facie case of disparate impact discrimination, the burden will shift to Defendant Detroit to demonstrate that its water shutoff policy is "necessary to achieve one or more substantial, legitimate, nondiscriminatory interests." 24 C.F.R. § 100.500(c)(2); *Inclusive Cmtys.*, 135 S. Ct. at 2514-15.

Defendant Detroit cannot satisfy this standard. Plaintiffs anticipate that Detroit will argue that it is entitled to collect payment for services provided, and that it is appropriate to disconnect the service of those customers who do not pay their bills. However, this argument is unavailing in light of the City's reported history of disconnecting service to residential water customers with relatively low unpaid bills while failing to disconnect service to commercial customers with much larger outstanding balances. In addition, there are compelling reasons to question whether water shutoffs are even effective as a collection strategy. See Exhibits 7 [Click on Detroit News Article and 8 [Circle of Blue Podcast].

**3. Defendant Detroit's Interests Can be Served by a Less Discriminatory Alternative.**



Even if the court finds that Defendant Detroit satisfies its burden of articulating a substantial, legitimate, nondiscriminatory interest, Plaintiffs may still prevail upon proving that the interests supporting the challenged practice can be served by another practice that has a less discriminatory effect. 24 C.F.R. § 100.500(c)(3); *Inclusive Cmty.*, 135 S. Ct. at 2515. Here, there are alternative collection measures the City could employ that would have a less discriminatory impact.

Of primary and greatest significance is the fact that Detroit itself has unveiled its “Lifeline” program that states explicitly that water customers enrolled in the program are exempt from shutoffs. (Exhibit 6 – Lifeline Policy Plan) Logically, if it is possible to exempt those in the program from shutoffs, it is possible to exempt those who are not enrolled – if the City is so inclined.

From the outset, Plaintiffs have insisted that the most responsible and effective alternative to water shutoffs is a water affordability program indexed to the actual income of the water customers. Studies have found that cities with affordability programs experience a dramatic improvement in bill coverage payment ratios (the percentage of billed revenue actually paid) of their low-income customers. Roger Colton, *Baltimore’s Conundrum: Charging for Water/Wastewater Services that Community Residents Cannot Afford to Pay*, Food & Water Watch, 45-46 (2018) [Exhibit 9 – Excerpt from Food & Water Watch].

For example, in Colorado, participants in a low-income affordability pilot program had an average payment ratio of 83% by the end of the pilot in 2011, while other low-income customers in the state had an average payment ratio of 55%. *Id.* at 46. This study found that affordability programs increased the total revenue collected by utilities and can decrease costs associated with collection efforts. *Id.* at 47-50.

Defendants, to their credit, have, with the initiation of the Lifeline program, taken steps toward an income-based affordability program, but at the same time they have failed to use it to accomplish what should be its primary objective – eliminating shutoffs. Instead, they have replicated aspects of a paradigm that prompted this lawsuit, to wit, requiring enrollment in a program to avoid shutoffs, and also creating barriers to full participation in that program. No household should be subject to discontinuation of water service, whether enrolled in a program or not.

To the extent that Defendants insist that shutoffs are an essential tool for collections, there are other approaches used in the industry. They include the following, among others:

1. Payment plans that allow customers to pay down debts without interruption of water service;
2. Establishment of a non-profit organization or other entity to serve as a guarantor for delinquent customers;

Accordingly, Plaintiffs can establish less discriminatory alternatives that could achieve any legitimate interest articulated by Detroit. In sum, Plaintiffs are likely to succeed on the merits of their claims. This factor strongly weighs in favor of granting Plaintiffs' request for a preliminary injunction.

## **II. Plaintiffs Will Suffer Irreparable Harm Without an Injunction.**

The court must next consider whether Plaintiffs will suffer irreparable harm in the absence of an injunction. As a matter of law, Plaintiffs' claims give rise to a presumption of irreparable harm because Plaintiffs' due process claim is based on a violation of their constitutional rights. *See Overstreet v. Lexington-Fayette Urban Cty. Gov't*, 305 F.3d 566, 578 (6th Cir. 2002) ("a plaintiff can demonstrate that a denial of an injunction will cause irreparable harm if the claim is based upon a violation of the plaintiff's constitutional rights.").

Irreparable harm may also be presumed upon a showing of likely success on the merits in housing discrimination cases. *See, e.g., Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984) ("a substantial likelihood that a defendant has violated specific fair housing statutes and regulations, that alone, if unrebutted, is sufficient to support an injunction").

Absent a presumption, to demonstrate irreparable harm in the Sixth Circuit, Plaintiffs must show that, unless injunctive relief is granted, they "will suffer actual

and imminent harm rather than harm that is speculative or unsubstantiated.” *Abney v. Amgen, Inc.*, 443 F.3d 540, 552 (6th Cir. 2006).

Plaintiffs will suffer “actual and imminent” harm absent the issuance of an injunction. Specifically, Jacqueline Taylor explains in her declaration [Exhibit 3]: “Because I was hospitalized with serious medical conditions, I am afraid of having my water cut off again because I owe arrearage in the hundreds of dollars, I know I am a candidate for cutoff in 2023. My need for water is very critical to my post-medical care and I will sustain irreparable physical and mental harm without a permanent solution.”

Plaintiff Lisa Brooks will also suffer irreparable harm. In her declaration [Exhibit 10] she states: “I have health problems, including Chronic Pulmonary Obstructive Disease (COPD), which requires a nebulizer. I have to be well hydrated at all times.” The circumstances of Plaintiff Tuana Henry are similar. In her declaration [Exhibit 2] she states: “I have a pulmonary medical condition that requires me to stay well hydrated. I receive ongoing treatment.”

While there are likely many members of the putative class whose illnesses implicate medical disaster if they lose water, the circumstances of the putative class representatives in this case are representative of their class if for no reason other than water is necessary to fight the spread of infectious disease. [See Gaber Declaration Exhibit 1]

This Court has previously found that irreparable harm is likely to occur without an injunction in circumstances where they face a heightened risk of contracting COVID-19. *See Cameron v. Bouchard*, No. 20-10949, 2020 WL 1929876, at \*2 (E.D. Mich. Apr. 17, 2020), *modified on reconsideration*, No. 20-10949, 2020 WL 1952836 (E.D. Mich. Apr. 23, 2020). Specifically, the Court in *Cameron* found that “COVID-19 poses a serious health risk” and, consequently, granted a temporary restraining order requiring the defendants to adopt appropriate measures to improve hygiene in a local jail, including by providing incarcerated persons with access to liquid hand soap and showers, as well as requiring jail staff to wash their hands with soap and water before and after touching persons and common area surfaces. *Id.* Therefore, it follows that Plaintiffs and other residents will similarly face a “serious health risk” if Detroit is not enjoined from its water service shutoff policy.

The potential for harm is real, and the harm is not limited to physical injury. In her declaration [Exhibit 1], Dr. Nadia Gaber explains what she and other researchers learned during a study:

During the course of our study, in August 2016, the Wayne County Population Health Authority issued a statement advocating a moratorium on water shutoffs against certain vulnerable populations. This included infants and children under the age of 18; seniors 62 and above; persons with mental illness; persons with disabilities; expectant and/or breastfeeding mothers; persons dealing with chronic diseases; and those otherwise in need of critical care. The moratorium was not actually implemented. Our study demonstrated that 82% of households

met one or more criteria to warrant protection under the recommended health moratorium. We used standardized questions from the CDC toolkit to evaluate whether anyone in those households that had been shutoff or received notice became symptomatic as a result. Among this sub-sample (n=24 households, representing 70 residents), the most prevalent symptoms reported as a result of their water shutoff or notice were: Trouble Sleeping/Nightmares (37.5%), Anxiety or stress (29%), Agitated behavior (25%), Loss of appetite (25%), Difficulty concentrating (21%), Severe headache with dizziness (16.7%), Cough (16.7%), Depressed Mood (16.7%), and Nausea/stomach ache/diarrhea (12.5%). These symptoms are components of the biomedical definitions of Major Depressive Disorder as well as Adjustment Disorder and its more enduring cousin, Post-Traumatic Stress Disorder.

Finally, the potential for irreparable harm that flows from ending the flow of water is obvious from the living circumstances of those who experience shutoffs. In her declaration [Exhibit 1], Dr. Gaber also recounts her personal observations:

As a qualitative researcher, I spoke with dozens of residents affected by the shutoffs, whose stories recounted these intersecting harms. One woman, a young mother, described the huge burdens of managing daily needs when their water was disconnected. She described to me the lengthy and cumbersome process of ‘recycling’ water. First, she took the bus across town, more than 40 minutes each way, to buy bottled water – a trip separate from groceries given the weight of carrying water. She would use water first for drinking and cooking food; she often chose pasta over rice, for example, because she could keep the drained water to wash clothes. After wringing them out, she would use that detergent-laden starch water to mop her floors. Whatever was left was used to flush the toilet. Hygiene was reduced to warm sponge baths of sensitive areas, especially difficult during menstruation. After the first few weeks she sent her youngest to school early to use the gym showers, fearing that teachers may report the family to Child Protective Services if they felt that living without water was tantamount to neglect. She had to separate her children: her two older children went to live with a sister and an aunt. The youngest missed several school days. Mom missed school, too, unenrolling from her higher education courses and picking up another job to try to pay off a bill whose

accuracy she contested from the start. She became increasingly embarrassed, depressed, and isolated. She was enrolled in the city's 10/30/50 plan but found her minimum payments soar whenever she fell short of a monthly bill, quickly exceeding her resources. Desperate, she took out credit cards that only deepened her debt. She herself ended up hospitalized for a severe asthma exacerbation, thought to be triggered by dust at home, and pushed further into debt and further from being able to afford her rising bill. These myriad effects are not captured in data and policy regarding water shutoffs and unaffordability.

Accordingly, Plaintiffs will suffer irreparable harm if a preliminary injunction is not granted.

### **III. The Prospective Harm to Plaintiffs in Losing Their Water Service Outweighs Any Fiscal Harm to Defendants.**

The third factor requires the court to consider “whether substantial harm to others will occur if the injunction is granted.” *Abney*, 443 F.3d at 552. If Plaintiffs’ request for relief is granted, the harm to the Defendants, if any, will be limited. In fact, it is possible that Detroit’s fiscal condition will improve because it will no longer bear the high costs of engaging contractors to disconnect water service.

In any case, a decrease in revenue is insufficient to justify a denial of Plaintiffs’ request. *See Cameron*, 2020 WL 1929876, at \*2 (finding the balance of equities weighed in favor of a temporary restraining order requiring certain remedial interventions to protect incarcerated people from COVID-19 despite defendants incurring costs to implement measures preventing further spread of COVID-19). Accordingly, the irreparable harm to Plaintiffs in the absence of injunctive relief

greatly outweighs any harm to the Defendants if the preliminary injunction is granted.

#### **IV. An Injunction to Maintain Plaintiffs' Water Service Is in the Public Interest.**

The last factor the court must consider is whether a preliminary injunction serves the public interest. *Abney*, 443 F.3d at 552. Enjoining Defendant Detroit from disconnecting Plaintiffs' water service would further the paramount public interests of safeguarding public health by suppressing community spread of disease; protecting Plaintiffs' constitutional rights; and eliminating a practice that disproportionately harms racial minorities through the enforcement of our nation's fair housing laws.

Further, granting such an injunction is in the public interest because it will prevent the violation of the rights afforded to Plaintiffs under the U.S. and Michigan Constitutions, the FHA, and the ELCRA. It is well established that "it is always in the public interest to prevent the violation of a party's constitutional rights." *Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998). Regarding the enforcement of fair housing laws, "there is a strong public interest in preventing race discrimination in housing." *Cousins v. Bray*, 297 F. Supp. 2d 1027, 1042 (S.D. Ohio 2003). To that end, Congress enacted the FHA, declaring that "it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601; *see also Inclusive Cmty.*, 135 S.



Ct. at 2521 (“The FHA, like Title VII and the ADEA, was enacted to eradicate discriminatory practices within a sector of our Nation’s economy.”). Consequently, “courts have emphatically declared the public interest is served by effective enforcement of the FHA.” *Diamond House of Se. Idaho, LLC v. City of Ammon*, 381 F. Supp. 3d 1262, 1279 (D. Idaho 2019) (collecting cases). Because a preliminary injunction in this case will further the public interest, this factor weighs in favor of granting such relief.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs satisfy the requirements for a preliminary injunction to enjoin Detroit from resuming its water shutoff policy. Accordingly, Plaintiffs respectfully request that this Court grant their motion.

Respectfully submitted,

/s/ Mark P. Fancher

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Date: December 12, 2022

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- Exhibit 2 Declaration of Tuana Henry
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**Exhibit 1**  
Declaration of Dr. Nadia Gaber

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JACQUELINE TAYLOR, LISA  
BROOKS, MICHELE COWAN, TUANA  
HENRY, MATTIE MCCORKLE, RENEE  
WILSON, and PEOPLE'S WATER  
BOARD COALITION, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

CITY OF DETROIT, a Municipal  
Corporation, through the Detroit Water and  
Sewerage Department, its Agent;  
GOVERNOR GRETCHEN WHITMER, in  
her official capacity; MAYOR MICHAEL  
DUGGAN, in his official capacity; and  
GARY BROWN, in his official capacity.

Defendants.

Case No.

Hon.

**DECLARATION OF NADIA AHMED OSAMA GABER, Ph.D.  
IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, Nadia Ahmed Osama Gaber, Ph.D., declare as follows:

1. I am a Medical Anthropologist.<sup>1</sup> I received a Bachelor of Arts *cum laude* in 2009 from Harvard University. I received a Masters of Science (MSc) in 2011 from University of Oxford in Medical Anthropology. In 2019, I received a Ph.D. from University of California, San Francisco (UCSF) and University of California, Berkley and was subsequently hired as a Postdoctoral Scholar with the UCSF Program on Reproductive Health and the Environment. In 2022, I completed my M.D. at University of California, San Francisco with the National Institute of Health (NIH)-funded Medical Scientist Training Program and am presently a Resident Physician in Emergency Medicine at Alameda Health System in Oakland, CA. (*See Exhibit 1, Curriculum Vitae, Nadia Ahmed Osama Gaber, M.D.-Ph.D.*).

2. I submit this Declaration in support of the Plaintiffs' Motion for a Preliminary Injunction in the above-titled putative class action lawsuit. In this case, the named Plaintiffs and putative class members are at immediate risk of having their water services disconnected upon the expiration of a voluntary moratorium on water shutoffs imposed by Detroit Mayor Michael Duggan. The moratorium is expected to expire on December 31, 2022..

3. On March 10, 2020, Governor Gretchen Whitmer issued EO 2020-04, which declared a state of emergency in Michigan due to COVID-19.

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<sup>1</sup> Medical Anthropology involves the study of how health and illness are shaped by and understood through cultural, historical, and political factors. My work examines the social determinants of disease in the U.S. landscape, researching the importance of geography and infrastructure in differentiating health outcomes.

4. On March 28, 2020, Governor Whitmer issued EO 2020-28 concerning water service restorations in Michigan. The order states in pertinent part:

**Restoring water service to occupied residences during the COVID-19 pandemic**

The novel coronavirus (COVID-19) is a respiratory disease that can result in a serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33.

To mitigate the spread of COVID-19, protect the public health, and avoid needless deaths, it is crucial that all Michiganders remain in their homes or residences to the greatest extent possible and **wash their hands thoroughly and regularly**. Now more than ever, the provision of clean water to residences is essential to human health and hygiene, and to the public health and safety of this state. Correspondingly, many water utilities have already suspended water shutoffs during this difficult time. Due to the vital need to ensure that Michigan residents have access to clean water at home during the COVID-19 pandemic, it is reasonable and necessary to require the restoration of clean water to residences across the State of Michigan throughout this state of emergency. And because it is also vitally important for state government to have up-to-date and accurate information regarding access to clean water, it is reasonable and necessary to require public water supplies to report on the status of water service within their respective service areas.



Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. A public water supply must restore water service to any occupied residence where water service has been shut off due to non- payment, so long as the public water supply does not have reason to believe that reconnection would create a risk to public health (e.g., due to cross-contamination). To facilitate the restoration of water service, a public water supply must immediately make best efforts to determine which occupied residences within their service areas do not have water service. For purposes of this order, a public water supply's "service area" means the area for which the public water supply collects payment for water service...
2. This order is effective immediately and continues until the termination of the state of emergency under section 3 of Executive Order 2020-4. (*See* Exhibit 2, EO 2020-28).

5. Governor Whitmer, after issuing EO 2020-04, subsequently issued extensions of the Michigan state of emergency in EOs 2020-67, 2020-68, 2020-99, and most recently EO 2020-127, which extended the state of emergency through July 16, 2020 at 11:59 p.m.

## **I. Background**

6. As a Ph.D. level scholar, I have reviewed the medical literature pertinent to the ongoing COVID-19 pandemic, as well as literature evaluating the impacts of water and sanitation access on public health and safety. My training in anthropology and medicine qualifies me to evaluate scholarship across both the natural and social sciences. This multidisciplinary perspective is important because

water insecurity impacts physical and mental health, as well as socioeconomic and cultural wellbeing. Below I offer a select review of relevant peer-reviewed research, while noting that the capacity to conduct outcomes research has been hampered by transparency issues with the Detroit Water and Sewerage Department (DWSD). Moreover, because the harms to health and wellbeing from lack of affordable water are often immeasurable, intersecting and complex—as a wealth of global scholarship attests—the literature should be viewed as an accurate, but necessarily partial, representation of the relationship between water and health.

7. I have been studying water insecurity in Michigan for six years, initially as part of my doctoral research in Medical Anthropology at the University of California Berkeley and UCSF. My work examines the restructuring of our most consequential public health infrastructure—urban water and wastewater systems—in cities under economic and environmental duress. Detroit became the focus of my research, starting in 2014, having engineered the most dramatic regression in water security of any major city in the world. Strikingly, it has done so while asserting there are no resulting public health damages—an untenable claim, given the evidence.

## **II. Water and Health: A Brief Review**

8. Water is an essential and non-substitutable resource upon which each of us depends. It plays a vital role not only in biological survival, but social inclusion,

spiritual wellbeing, and economic development. The universal provision of water and sanitation that is safe, sufficient, affordable, acceptable, and accessible is a fundamental human rights standard, as well as a key determinant of health.<sup>2</sup>

#### **A. The U.S. Water Access Experience**

9. Though the percentage of U.S. households that lack a plumbed connection to potable water or sewerage is small relative to the population (0.39%), together the residents of these households would make up the fifth largest city in the country, roughly equivalent to the population of Phoenix, Arizona. The magnitude of the problem remains relatively invisible due to lack of knowledge about who and where the water poor are. (*See Exhibit 3, Dietz & Meehan, “Plumbing Poverty: Mapping Hot Spots of Racial and Geographic Inequality in U.S. Household Water Insecurity,”* 2019).

10. Historical evidence attests to the dramatic gains in life expectancy made by the introduction of water treatment and sanitation to U.S. cities. These gains quickly inverted the “urban penalty” that accompanied the mass movement of laboring classes from the countryside into cities. A landmark 2005 study by two Harvard historians argues that the introduction of public water and sewerage treatment in the early 20th century accounts for the majority share of the largest

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<sup>2</sup> The human right to safe drinking water and sanitation. Resolution A/HRC/RES/16/2. Adopted by the United Nations Rights Council (Apr. 2011).

gains in life expectancy in U.S. history. Nearly all of the decline in mortality is attributable to reductions in infectious disease. Clean water technologies have provided greater public health benefit than improved nutrition, economic innovation, health-conscious behavior, or access to medical treatment. (*See Exhibit 4, Cutler & Miller, “The Role of Public Health Improvements in Health Advances: The Twentieth Century United States,” 2005*).

11. Clean water technologies have also been shown to narrow the racial mortality gap, benefitting Black Americans disproportionately, especially where access to other health-protective goods and services was limited. Even during the Jim Crow era, water and sanitation services were extended across racial lines because of their undeniable benefits to urban public health. This surprising historical finding underscores how vital universal access to water and sanitation are for public health, though it does not eliminate the fact of differences in timing and quality of services, which depended primarily on the degree of racial residential segregation in a city. (*See Exhibit 5, Troesken, “The Limits of Jim Crow: Race and the Provision of Water and Sewerage Services in American Cities, 1880-1925,” 2002*).

12. In the United States, affordability is becoming a major impediment to safe water and sanitation access, reversing many of the gains in access made by cities in the 20th century. A 2017 study from Michigan State University estimated that 35.6% of U.S. residents would be unable to afford their water and sewer bills by the

year 2022 if the rate of increase in water bills held—a threefold increase over just five years. (*See* Exhibit 6, Mack & Wrase, “A Burgeoning Crisis? A Nationwide Assessment of the Geography of Water Affordability in the United States,” 2017).

## **B. Consequences of Lack of Water, Sanitation & Hygiene**

13. The disease burden due to inadequate water, sanitation, and hygiene is largely preventable with proven, cost-effective interventions—particularly where built infrastructures exist. Primary prevention of these diseases includes universal safe water and sanitation provision, routine handwashing with soap, and vaccinations, if available. (*See* Exhibit 7, Bartram & Cairncross, “Hygiene, Sanitation and Water: Forgotten Foundations of Public Health,” 2010).

14. Estimates of the burden of inadequate water, sanitation, and hygiene (WASH) on global health vary widely, due to the range of impacts attributable at least in part, as well as the geographic scope and statistical assumptions. A 2016 estimate suggests 1.6 million deaths that year were directly attributable, representing 2.8% of all deaths, and 104.6 million Disability-Adjusted Life Years (DALYs). This includes only low- and middle-income countries, where such data is routinely collected. Another widely-recognized methodologic limitation is the reliance on measures of acute illness, particularly diarrheal diseases. Diarrhea remains the second leading cause of death in children worldwide. But even this sobering figure fails to consider chronic impacts of water-related illness among those who survive—

including susceptibility to repeat infection and complications, malnutrition, limited physical and cognitive development, and poor educational growth. It also cannot account for major categories of less-lethal infectious and chemical contaminants—Hepatitis A and E, lead poisoning, arsenic poisoning, Leptospirosis, Legionellosis, and more. With these, the real global burden of diarrheal diseases (and in turn, the health benefits of water and sanitation interventions) would be nearly twice the current estimates. (*See Exhibit 8, Prüss-Ustün et al., “Burden of disease from inadequate water, sanitation and hygiene for selected adverse health outcomes: An updated analysis with a focus on low- and middle-income countries,” 2016*).

15. Contemporary research has demonstrated that even short-term interruptions in water supply or treatment can undermine long-term health benefits of improved water and sanitation systems. In one study, the annual health benefits of drinking water from an improved source were all lost over the course of a few days’ consumption of untreated water. (*See Exhibit 9, Hunter, Zmirou-Navier & Hartemann, “Estimating the impact on health of poor reliability of drinking water interventions in developing countries,” 2009*).

16. There are also harms associated with traveling to get water or use latrines, particularly for women and girls, who may lose opportunities to work or study, or even be exposed to gender-based violence in the process. Moreover, there are increased risks of infectious disease, as demonstrated clearly in a study of a

meningococcus outbreak in Sudan, which followed the path women traveled to get water. (*See* Exhibit 10, Santaniello-Newton & Hunter, “Management of an outbreak of meningococcal meningitis in a Sudanese refugee camp in Northern Uganda,” 1999).

17. The lack or interruption of public water and sanitation access has been shown to increase risk of hospitalization for infectious disease in the United States. A 2009 study among Native Alaskans showed higher hospitalization rates for pneumonia and influenza (rate ratio = 2.5), as well as skin and soft tissue infections (rate ratio 1.9), and respiratory syncytial virus (rate ratio 3.4 in children under 5) among those without in-home water service. These findings have particular relevance for the COVID-19 pandemic. (*See* Exhibit 11, Hennessy et al., “The Relationship Between In-Home Water Service and the Risk of Respiratory Tract, Skin, and Gastrointestinal Tract Infections Among Rural Alaska Natives,” 2008).

18. A recent paper examining infection rates of SARS-CoV-2 among 287 American Indian Reservations and tribal homelands echoed the findings, showing COVID-19 cases were more likely among homes lacking indoor plumbing. The authors submit that “[f]ailure to account for the lack of complete indoor plumbing and access to potable water in a pandemic may be an important determinant of the increased incidence of COVID-19 cases.” (*See* Exhibit 12, Rodriguez-Lonebear et al., “American Indian Reservations and COVID-19: Correlates of Early Infection

Rates in the Pandemic,” 2020). Ongoing research by We the People of Detroit, yet to be published, suggests that neighborhoods in Detroit where water shutoffs were higher in prevalence experienced were the soonest and the hardest hit by COVID-19’s first wave.

19. Gaps in municipal water quality or quantity significantly affect public trust, in areas well beyond water provision. Regionally, the water crisis in Flint, Michigan made visible the “ripple effects” of destabilizing trust in water. This distrust is often marked in minority and immigrant communities. One area in which public trust in public health becomes critical is pandemic preparedness and response. Studies of viral pandemics and health disparities repeat observations that conditional vulnerabilities of socioeconomically disadvantaged and geographically isolated communities are exacerbated in crises by lack of faith in government and its recommendations. (See Exhibit 13, Paek et al., “Public Support for Government Actions During a Flu Pandemic: Lessons Learned From a Statewide Survey,” 2008).

### **C. Evaluation of Alternatives**

20. Bottled water is *not* an acceptable substitute for treated tap water. It is specifically excluded from the WHO/UNICEF Joint Monitoring Program’s standards for improved drinking water sources. This is due to issues of cost, reliability, quality, and safety.



21. Bottled water and tap water are not treated to the same standards in the United States. Several studies have demonstrated increased rates of contamination and illness associated with bottled water use. Recapping or refilling plastic water bottles is especially risky: a 2003 study found that 64.4% of 76 samples collected from personal water bottles of elementary school children were contaminated with fecal coliform (8.9% of 68) and heterotrophic plate counts (HPC) (64.4% of 76) that exceeded federal standards. (*See Exhibit 14, Oliphant et al., “Bacterial Water Quality in the Personal Water Bottles of Elementary Students,” 2002*).

22. Concerns have also been raised for the oral health of nonfluorinated bottled water users. (*See Exhibit 15, Gorelick et al., “Perceptions About Water and Increased Use of Bottled Water in Minority Children,” 2011*).

23. Bottled water is also not comparable to plumbed water for handwashing and infection prevention. A study in the West African Journal of Medicine examined methods of handwashing in situations with no running water supply. Using a single bowl, a two-bowl wash and rinse method, and a bucket-and-bowl system resulted in 100%, 67% and 88% re-contamination rates, respectively, while handwashing at a sink with running tap water resulted in zero percent recontamination. Only one other technique—requiring an elevated canteen with an elbow-operable twist faucet and soap dispenser compared favorably. (*See Exhibit 16, Ogunsola and Adesiji,*

“Comparison of four methods of hand washing in situations of inadequate water supply,” 2008).

24. Similarly, hand sanitizer is not an adequate substitute for running water and soap. In light of the novel coronavirus, the Centers for Disease Control and Prevention (CDC) have stressed the importance of frequent handwashing for at least 20 seconds with warm, soapy water as a mainstay of disease prevention.<sup>3</sup> This guidance is the evidence-based standard for hand hygiene across a range of viruses and bacteria, as alcohol-based sanitizers have little efficacy against particular virus types, whereas because “handwashing reduces the amounts of all types of germs and chemicals on hands,” per the CDC. Moreover, per the Food and Drug Administration, these products have not been shown to reduce infection rates or disease prevalence. (See Exhibit 17, Oughton et al., “Hand Hygiene With Soap and Water Is Superior to Alcohol Rub and Antiseptic Wipes for Removal of *Clostridium Difficile*,” 2009).

25. Guidance from the World Health Organization on preventing COVID-19 transmission reiterates the importance of running water to proper hand hygiene, stating “[w]ater services should not be cut off because of consumers’ inability to

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<sup>3</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Protect Yourself*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited July 8, 2020).

pay.” (See Exhibit 18, WHO, “Water, sanitation, hygiene, and waste management for the COVID-19 virus: Interim Guidance,” 2019.)

#### **D. Local Assessments and Limitations**

26. The focus on morbidity and mortality attributable to acute water-related illnesses, noted above with respect to the global health literature, also obscures comprehensive assessment of the health burden of the Detroit water shutoffs. We do not yet know the toll of chronic consequences of interrupted water and sanitation access, even from limited time periods. Without water, people are less likely to attend school or work; they may lose their housing and be forced to move; they may suffer socially and emotionally. In turn, society bears the costs of their dispossession: funding enforcement of terminations and evictions, funding social services, subsidizing health care costs, and absorbing indirect losses in productivity. Many other effects cannot be quantified. (See Exhibit 19, Murthy, “A New Constitutive Commitment to Water,” 2016).

27. As a qualitative researcher, I spoke with dozens of residents affected by the shutoffs, whose stories recounted these intersecting harms. One woman, a young mother, described the huge burdens of managing daily needs when their water was disconnected. She described to me the lengthy and cumbersome process of ‘recycling’ water. First, she took the bus across town, more than 40 minutes each way, to buy bottled water – a trip separate from groceries given the weight of

carrying water. She would use water first for drinking and cooking food; she often chose pasta over rice, for example, because she could keep the drained water to wash clothes. After wringing them out, she would use that detergent-laden starch water to mop her floors. Whatever was left was used to flush the toilet. Hygiene was reduced to warm sponge baths of sensitive areas, especially difficult during menstruation. After the first few weeks she sent her youngest to school early to use the gym showers, fearing that teachers may report the family to Child Protective Services if they felt that living without water was tantamount to neglect. She had to separate her children: her two older children went to live with a sister and an aunt. The youngest missed several school days. Mom missed school, too, unenrolling from her higher education courses and picking up another job to try to pay off a bill whose accuracy she contested from the start. She became increasingly embarrassed, depressed, and isolated. She was enrolled in the city's 10/30/50 plan but found her minimum payments soar whenever she fell short of a monthly bill, quickly exceeding her resources. Desperate, she took out credit cards that only deepened her debt. She herself ended up hospitalized for a severe asthma exacerbation, thought to be triggered by dust at home, and pushed further into debt and further from being able to afford her rising bill. These myriad effects are not captured in data and policy regarding water shutoffs and unaffordability.

28. Moreover, even acute effects are not well captured in Detroit. With distributed and irregular interruptions of water and sanitation not routinely monitored by public health agencies, the manifestations of acute water-related illness due to shutoffs are not attributed as such. (*See Exhibit 20, Gaber, “Mobilizing Health Metrics for the Human Right to Water in Flint and Detroit, Michigan,” 2019*).

29. Despite limited ability to identify residents who have experienced water service disconnections, there are two epidemiologic analyses that identify correlations to acute infectious disease outbreaks and argue plausibly for causation. Without a means of systematically identifying residents who have experienced shutoff notices or terminations, causation will remain elusive.

30. After Detroit began experiencing massive water shutoffs, a circulated white paper by former Deputy Director of the Detroit Health Department reviewed Michigan state morbidity data and found three outbreaks of relatively rare waterborne infectious diseases in 2016 and 2017: campylobacter, shigellosis, and giardiasis. Rates of these infections were on average three times higher in the study period than their endemic rate before the shutoffs were in place. Their epidemiologic curves corresponded with the escalation of shutoffs in Detroit, the city at the epicenter of each outbreak. The author concludes that it is “plausible” that the rise in outbreak cases are attributable to water shutoffs. (*See Exhibit 21, Gaines, “Three Waterborne Outbreaks in Detroit,” 2017*).

31. A second study in 2017 by researchers at Henry Ford Health System's Global Health Institute used records from local emergency departments to investigate the relationship between water shutoffs and rates of water-related soft tissue and gastrointestinal diseases. They found a significant, bi-directional correlation between prevalence of these illnesses and the geography of shutoffs, even after controlling for socioeconomic and demographic factors. From January 2015 to February 2016, patients who were diagnosed with a water-related illness were 1.42 times more likely to come from a block that has experienced water shutoffs. Those who lived on a block that had experienced water shutoffs were 1.55 times as likely to have been diagnosed with a water-related illness. (See Exhibit 22, Plum et al., "The Impact of Geographical Water Shutoffs on the Diagnosis of Potentially Water-associated Illness, with the Role of Social Vulnerability Examined," 2016).

32. These studies followed original analysis conducted by We the People of Detroit's Community Research Collective, of which I am a member, on the disparate impacts of the Detroit water shutoffs on the city's Black residents. Findings from the published work, *Mapping the Water Crisis*, include unequal cost sharing for sewerage between urban and suburban customers (a 83/17 split), and harsher policies for shutoff enforcement in majority-Black jurisdictions of the Great Lakes Water Authority. The book also documents the attribution of water bill debt as

property tax liens, precipitating foreclosures in the City's poorest zip codes. (*See* Exhibit 23, We the People of Detroit, "Mapping the Water Crisis," 2016).

### **III. Detroit Water Shutoff Original Research: 2016-2020**

33. Based upon the best available data on water shutoffs in Detroit, DWSD has reported over 141,000 water service shutoffs between 2014 and 2019.<sup>4</sup>

34. From 2016-2018, I co-organized a group of volunteers in conducting two community-based participatory research studies on the health impacts of the water shutoffs. Led by We the People of Detroit, we undertook this research precisely because public health agencies consistently proved unwilling or unable to do so.

35. The researchers used surveys and methods from the public health literature on food and water insecurity, infectious disease risk, community mental health, and disaster preparedness to design studies that complemented each other in scope and depth.

#### **A. City-wide Health Impact Assessment**

36. One study involved a random, city-wide survey of water shutoffs and health among Detroiters, conducted from November 2015-December 2016, using an approach designed by the CDC for disaster preparedness and response called the

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<sup>4</sup> Joel Kurth & Mike Wilkinson, *I hate to complain, but I haven't had water in a year. A Detroit story.*, Bridge Magazine (Feb. 17, 2020), <https://www.bridgemi.com/michigan-health-watch/i-hate-complain-i-havent-had-water-year-detroit-story>.

Community Assessment for Public Health Emergency and Response (CASPER). Because it is designed for use during disasters, the CASPER toolkit offered several methodologic advantages: it is rapid, reliable, and representative of a given area of study.<sup>5</sup> We sent volunteers door to door in 30 Census tracts and reached more than 700 randomly selected households. At the time of contact, 5% of households surveyed were living without water and an additional 12% had been shutoff and reconnected. Only 13.8% reported that they had seen information on how to protect their health in the event of a shutoff. The average length of time residents spent without water was 10.4 days—far outstripping the 24-hour figure publicly reported by DWSD in 2014.

37. Nearly 40% of the households surveyed regularly experience heavy flooding in the home after a heavy rain. This reflects serious water infrastructure problems across the city's older housing stock, driving up the cost of water to families and utilities alike, as well as posing further public health risk. In a state where severe storms and flooding account for nearly half of all major disaster declarations, this aspect of water insecurity also deserves to be considered among the causes of unaffordability and serious health risks.

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<sup>5</sup> Centers for Disease Control and Prevention, *Community Assessment for Public Health Emergency and Response Toolkit*, [https://www.cdc.gov/nceh/casper/docs/CASPER-toolkit-3\\_508.pdf](https://www.cdc.gov/nceh/casper/docs/CASPER-toolkit-3_508.pdf).



38. During the course of our study, in August 2016, the Wayne County Population Health Authority issued a statement advocating a moratorium on water shutoffs against certain vulnerable populations.<sup>6</sup> This included infants and children under the age of 18; seniors 62 and above; persons with mental illness; persons with disabilities; expectant and/or breastfeeding mothers; persons dealing with chronic diseases; and those otherwise in need of critical care. The moratorium was not actually implemented. Our study demonstrated that 82% of households met one or more criteria to warrant protection under the recommended health moratorium.

39. We used standardized questions from the CDC toolkit to evaluate whether anyone in those households that had been shutoff or received notice became symptomatic as a result. Among this sub-sample (n=24 households, representing 70 residents), the most prevalent symptoms reported as a result of their water shutoff or notice were: Trouble Sleeping/Nightmares (37.5%), Anxiety or stress (29%), Agitated behavior (25%), Loss of appetite (25%), Difficulty concentrating (21%), Severe headache with dizziness (16.7%), Cough (16.7%), Depressed Mood (16.7%), and Nausea/stomach ache/diarrhea (12.5%). These symptoms are components of the biomedical definitions of Major Depressive Disorder as well as Adjustment Disorder and its more enduring cousin, Post-Traumatic Stress Disorder.

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<sup>6</sup> Esperanza Cantu, *Community Health Blog*, Authority Health (Aug. 23, 2016), <https://www.authorityhealth.org/-/population-health-blog/uncategorized/access-to-water-service-in-detroit-continues-to-be-a-population-health-issue>.

40. As we reported, the study design was not intended to demonstrate causal relationships, but rather provide a snapshot of community health and health risks after a major disruptive event. The CDC questions are designed and validated to assess correlation and asks those surveyed to answer “yes” only for symptoms that have occurred since the disaster or event in question (here, a shutoff or shutoff notice). If anything, the findings suggest the likelihood of such a relationship, and point to the need for future research with community leadership—and the funding to support it. (*See* Exhibit 24, We the People of Detroit, “Assessing the Scale and Severity of the Detroit Water Shutoffs through a Community-Led CASPER,” 2018).

**B. Water Insecurity, Psychological Distress, and Water-Related Health Behaviors**

41. A second study took a more focused approach to explore causality in these mental health impacts. In 2020, myself and We the People of Detroit researchers published a survey of water insecurity among clients of one of the city’s largest food pantries. We partnered with Andrew Silva, a consultant statistician for the World Trade Organization working on gender equity and economic impacts to create a locally-relevant water insecurity scale that we used alongside the well-validated Kessler Psychological Distress Scale. We used an ordinary least squares regression model to investigate statistical associations between variables.

42. The pantry's clients are among the poorest in the city. Among them, 14% reported having their water shutoff, 38% reported having it reconnected after a shutoff, and 4% reported receiving a shutoff notice. Nearly all—96%—of residents said they had to shift money from essential expenses (food, housing, medicine) to pay their water bill. Only 24% felt their water bill was affordable all or most of the time. Across the sample of food insecure people, 68% report relying on bottled water as a primary water source.

43. We found a substantial, statistically significant relationship between water insecurity and psychological distress,<sup>7</sup> robust even after accounting for a number of socioeconomic and demographic controls. Three measures – receiving a shutoff notice, having water disconnected but reconnected, and reporting that your bill is unaffordable – all independently correlated with significant psychological harm. Additionally, financial stress in paying for unaffordable water and sanitation thus produces significant distress, independent of water supply status. (*See Exhibit 25, Gaber et al., “Water Insecurity and Psychosocial Distress: Lessons from Detroit,” 2020*).

44. Moreover, we report striking observations regarding the effects of water stress on health behaviors and hygiene practices among surveyed pantry

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<sup>7</sup> Statistical significance is a measure of probability that an observed outcome would not have occurred by chance. Generally, an outcome is statistically significant if the probability that it could have occurred by chance is less than 5%, known as the 95% confidence level. All results described herein are statistically significant at the 95% confidence level or higher.

clients since the onset of widespread shutoffs in 2014. Among a small sample, 33% said they had collected water from an undesirable or dirty source; 58% had reused water to do household tasks; 86% stated they had drank water they thought might be unsafe; and 80% had borrowed or shared water with a neighbor, friend, or relative.

45. Between one-eighth and one-third of those sampled reported having to reduce routine hygienic practices in response to water insecurity, including: bathing, laundering clothes, cleaning the house, and handwashing. These findings are particularly alarming in context of the COVID-19 pandemic, which has exposed the inherent danger of leaving thousands unable to handwash or safely shelter at home, basic forms of personal and public health protection.

46. Conclusions reached by the study include “curtailing water and sanitation access has complex intersecting effects, including implications for community mental health. Rapidly rising utility rates across the United States, in the context of increasing inequality, underscores the urgency of addressing this issue. The present study is the first we know of in the United States to examine the relationship between water insecurity and psychological distress.”

#### **IV. Intersectional Harms of Water Insecurity and COVID-19**

47. The COVID-19 crisis immediately highlighted the inability of the City’s poorest residents to secure safe water outside of the public system. Costs of bottled water initially soared in the setting of shortages in the private market, while

social distancing restrictions curtailed residents' ability to provide for each other locally.

48. Despite a state injunction that the City of Detroit reconnect those without water for the duration of the COVID-19 public health emergency, many remained without reliable access to water. The Metro Times estimated that 2500 households were still without water during the early part of the pandemic despite the 'restart' plan, for reasons including fear of re-enrollment into prohibitive water payment plans and the city's inability to reconnect the sheer number of disconnected households.<sup>8</sup>

49. Research is emerging worldwide about the compounding health effects of water insecurity on the coronavirus pandemic. A 2021 study from Cornell University and Food and Water Watch found that hundreds of localities and states instituted water shutoff moratoriums at the outset of the pandemic in spring 2020, "significantly lower[ing]" infection and death rates. However, they found, these "this patchwork of protections was never uniformly applied nationwide and left millions of people vulnerable." The researchers estimate that a nationwide water shutoff moratorium might have reduced COVID cases by 3.97 percent (480,715 people) and reduced COVID-related deaths by 5.51 percent (9,052 people) in the 41

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<sup>8</sup> Steve Nealing, "More than 2500 homes in Detroit still without water after city pledged to restore service amid coronavirus outbreak" (Mar. 20, 2020), <https://www.metrotimes.com/news/more-than-2500-homes-in-detroit-still-without-water-after-city-pledged-to-restore-service-amid-coronavirus-outbreak-24149850>.

states without full coverage moratoria. (See Exhibit 26, Zhang and Warner, “The Relationship between Water Shutoffs and COVID Infections and Deaths,” 2021).

50. Early in the pandemic, an academic article in Water International warned of the consequences of water insecurity exacerbated by the global pandemic. Among the conclusions of the paper are that: “Heightened anxiety about the spread of disease in areas already crowded and affected by water insecurity is also likely to lead to discrimination and the abuse of vulnerable people.” These unmeasurable social forces are experienced across the Global South as well as in cities like Detroit in the Global North. (See Exhibit 27, Staddon et al, “Water insecurity compounds the global coronavirus crisis,” 2020.)

#### **IV. Professional Opinion**

51. I opine, based upon my education, experience, professional involvement in conducting two studies with Detroit residents, and my review of the pertinent and current medical literature that upon the expiration of the City of Detroit’s voluntary moratorium on water shutoffs, the City should be enjoined from resumption of water shutoffs until the City of Detroit has either: (a) created a stable and sustainable water affordability plan, that allows households with incomes under 200% of the Federal Poverty Index to pay a set percentage of their income, or (b) restructured water and sanitation as a collectively-funded public service—like fire

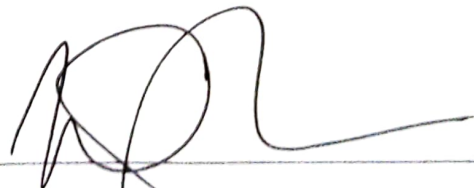
departments and libraries—whose benefit to the common good is protected by ensuring that everyone has access.

52. I further opine that a lifting of Detroit's moratorium on water shutoffs, allowing water shutoffs to resume, will cause irreparable harm to the residents of the City of Detroit, specifically its most vulnerable who already suffer disproportionately from medical and psychological conditions, by putting them at higher risk of contracting contagious diseases in the course of securing their own vital water supply.

53. I also opine that curtailing water service at any time imposes serious physical and psychological harm on the disconnected and puts the public at risk. In the setting of the ongoing coronavirus pandemic, now complicated by RSV and influenza, those risks are more apparent and even more grave. There is no acceptable substitute for universal access to treated running water to protect public health and prevent death and disease.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Executed on November 16, 2022.

  
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Nadia Ahmed Osama Gaber, Ph.D., M.D.

**Exhibit 2**  
Declaration of Tuana Henry



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JACQUELINE TAYLOR, LISA BROOKS,  
MICHELE COWAN, TUANA HENRY,  
MATTIE MCCORKLE, RENEE WILSON,  
and PEOPLE'S WATER BOARD  
COALITION, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

CITY OF DETROIT, a Municipal  
Corporation, through the Detroit Water and  
Sewerage Department, its Agent;  
GOVERNOR GRETCHEN WHITMER, in  
her official capacity; MAYOR MICHAEL  
DUGGAN, in his official capacity; and  
GARY BROWN, in his official capacity.

Defendants.

Case No. 4:20-cv-11860

Hon. Denise Page Hood

Mag. Judge Anthony P. Patti

**DECLARATION OF PLAINTIFF TUANA N. HENRY**

I, Tuana N. Henry, a Plaintiff in this matter, hereby declares as follows:

1. I am a homeowner and a resident of the City of Detroit, County of Wayne, State of Michigan. I have been a customer of the City of Detroit Water and Sewerage Department (DWSD) since approximately 2011.

2. I live in my home with four (4) minor children and two (2) adult children.

3. I have a pulmonary medical condition that requires me to stay well hydrated. I receive ongoing treatment.

4. In 2019, my DWSD water services was terminated because I could not afford to pay my bill.

5. My arrearage with DWSD, prior to Governor Whitmer and Mayor Duggan announcing a DWSD water service shutoff moratorium, was \$15,813.00. My water was shut off in 2019 at the time the moratorium began, but was restored sometime in March or April 2020 because of the moratorium.

6. Previous to March 2020, I was enrolled in DWSD's 10-30-50 program, with approval for a monthly payment plan. I was not able to afford that plan and there were months when I could not pay that amount and my water was terminated. After having my water restored with the plan, I could pay the bill for awhile but then the water services would be shut off again.

7. I have a pulmonary condition which affects my health. I must stay well hydrated.

8. My DWSD water services arrearage is very large. The bill shows my family used approximately 4,488 gallons of water per month. (**Ex. 1**, DWSD bill in 2022, Tuana Henry.)

9. In mid-2022, I heard that DWSD was offering an income based “Lifeline program”. When I heard what it was about I applied for it on DWSD’s website. To date, I have not received a response from DWSD about Lifeline enrolling me.


10. Because of my large family I am extremely concerned that if we are admitted into Lifeline we will use more than the 4,500 Lifeline allowed for the \$18.00 per month first tier or “block” to be in the program. All water used over 4,500 is charged at almost double the rate.

11. Irreparable harm can be predicted to occur to my family and me, on December 31, 2022, if DWSD does not have a permanent plan in place to protect Detroiters from shutoffs. For my family and thousands of others, the DWSD Lifeline 4,500 cap of water, under the \$18.00 tier will cause my bill to go up to unaffordable levels, causing my water to be cut off in the future.

Further deponent sayeth not.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 12-5-2022

  
\_\_\_\_\_  
/s/ Tuana N. Henry  
Tuana N. Henry, Declarant

# EXHIBIT 1

Tuana N. Henry

EXHIBIT 1

 [csportal.detroitmi.gov](https://csportal.detroitmi.gov)

**Exhibit 3**  
Declaration of Jacqueline Taylor

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JACQUELINE TAYLOR, LISA BROOKS,  
MICHELE COWAN, TUANA HENRY,  
MATTIE MCCORKLE, RENEE WILSON,  
and PEOPLE'S WATER BOARD  
COALITION, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

CITY OF DETROIT, a Municipal  
Corporation, through the Detroit Water and  
Sewerage Department, its Agent;  
GOVERNOR GRETCHEN WHITMER, in  
her official capacity; MAYOR MICHAEL  
DUGGAN, in his official capacity; and  
GARY BROWN, in his official capacity.

Defendants.

Case No. 4:20-cv-11860

Hon. Denise Page Hood

Mag. Judge Anthony P. Patti

**DECLARATION OF PLAINTIFF JACQUELINE TAYLOR**

I, Jacqueline Taylor, a Plaintiff in this matter, hereby declares as follows:

1. I am a resident of the City of Detroit, County of Wayne, State of Michigan. I am a senior citizen. I have been a customer of the City of Detroit Water and Sewerage Department (DWSD) since approximately 2007. Before I became the

designated party on our DWSD account, my father was the customer until he passed away and left me his home.

2. On a few occasions since I took over the account as the DWSD customer, my water has been terminated because I could not afford to pay for my water service and all of my other monthly expenses. In 2020, my outstanding arrearage was, and remains, \$5,959.24. (Ex. 1, DWSD bill for November 16, 2022.)

3. In early 2020, or late 2019, my water service was terminated at my home. I was living without tap water for several months in March 2020 when a moratorium on water shutoffs was announced by Governor Whitmer and Mayor Duggan.

4. In March, or April, of 2020, based upon Governor Whitmer's statewide moratorium which included turning water back on to DWSD customers, my water service in Detroit, at my home, was restored.

5. On and off over the years, I was placed on various DWSD assistance programs, but with one income and a total income of a little over \$900.00 per month, I could not always pay the DWSD WRAP (Water Residential Assistant Program) payment plan and keep my water running. My water shutoff in 2019 was not the first time I had been unable to pay on an "assistance" plan in 2019, or 2020, just before the DWSD service restoration.



6. During the periods I did not have water, I was given bottled water. I have obtained assistance from various community organizations including We The People and the Wayne Metro Agency. The “assistance” is not based on income and does not provide the type of “affordable water services” required. The loss of water services on and off over the years has caused disruption and mental anguish. A “Water Affordability Plan” is one that is based on the head of household’s income, annually. DWSD has never provided that type of income based program.

7. On June 28, 2022, the Mayor of Detroit and Director Gary Brown, announced that some Detroiters could pay 1.8% of their bill per month for their water bills under a “new affordability plan”. The program is DWSD’s “Lifeline Plan”, a fixed monthly rate for income eligible households.

8. I have been trying for months to get enrolled in the Lifeline Plan, but I have not succeeded. I do not utilize. I also tried to get an appointment with Wayne Metro, the non-profit enrolling residents. I could not get through the phone system to enroll in the Lifeline program, and would wait for long periods without getting an answer, would hang up then call back.

9. Even though the DWSD Lifeline is supposed to apply to customers like me with low income, I can’t get through. In April 2022 I had a stroke and was hospitalized for several days. I have problems now with my sight and movement

which prevents me from driving. I have to depend on my family to take me to Wayne Metro. I have been there before, but you have to have an appointment.

10. The DWSD should meet and discuss the positives and negatives of the Lifeline program with the Plaintiffs in this case. We can point out issues with Lifeline and major difficulties with the Lifelong Plan for many residents with lots of members in the house.

11. Even if the DWSD Lifeline program exists, if residents cannot access it and be enrolled, it is not helping.

12. While the Lifeline program is a step forward, especially waiving the arrearage, I am concerned that it is not permanent because the funding is temporary.

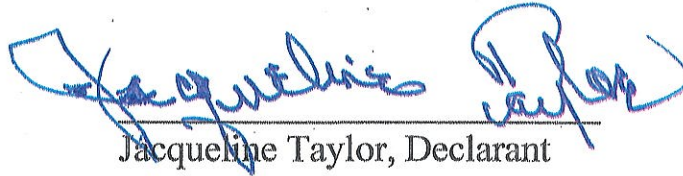
13. The Plaintiffs, and our community, need a really permanent solution to affordable water; not a temporary solution that we cannot obtain because of the difficulty getting through to apply, or one that is only going to be available for a very short term, once again without a permanent remedy.

14. Because I was hospitalized with serious medical conditions, I am afraid of having my water cut off again because I owe arrearage in the hundreds of dollars, I know I am a candidate for cutoff in 2023. My need for water is very critical to my post-medical care and I will sustain irreparable physical and mental harm without a permanent solution.

Further deponent sayeth not.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 12/5/22

  
Jacqueline Taylor, Declarant

**EXHIBIT 1**

**JACQUELINE TAYLOR**

**EXHIBIT 1**



# Information

JACQUELINE TAYLOR  
080-2951300  
17374 MARK ST  
CITY RESIDENTIAL  
10/09/22 - 11/09/22  
11/28/22

# Information

19800156  
3/4"  
\$8.88  
10/09/22  
1251  
11/09/22  
1253  
2 CCF  
31 Days

# Information

19800156  
0801/100/  
0.08  
0.02

## November Bill Details

Previous Balance	\$5,959.24
Payments Received - <i>Thank you!</i>	-\$100.00
Balance Forward	\$5,859.24

## Current Water Charges

Water Usage	2 CCF @ \$2.504	\$5.01
Water Service Charge	\$8.88 @ 1 month	\$8.88
Water Subtotal		\$13.89

## Current Sewer Charges

Sewerage Disposal	2 CCF @ \$15.54 CAP	\$31.08
Sewerage Service Charge	\$6.34 @ 1 month	\$6.34
Drainage Charge	0.02 IAW \$124.28	\$13.57
Green Credit	193.38 @ 1 month	-\$3.39
Sewer Subtotal		\$27.60

**Total Water & Sewer Charges** **\$41.49**

Total Amount Due by 12/19/22 for Water Restart Plan

**\$623.50**

If you pay after the due date, a 5% penalty will be added to your next bill.  
Payments after 11/16/22 are not included.

## Behind

**Lifeline Plan**  
For the DWSO Lifeline Plan, Your total monthly bill may be as low as \$18 per month! The new Detroit Water and Sewerage Department (DWSO) Lifeline Plan provides income-eligible enrolled Detroiters up to 4,500 gallons (6 CCF) of water for a very low fixed bill based on your household income. And once enrolled, your past due balance is waived. Visit [www.waynemetco.org/DWSOLifeline](http://www.waynemetco.org/DWSOLifeline) or call 313-388-6727.

Detroit Health Department vaccinations including flu, monkeypox, the new Shingles COVID-19  
Visit website: [www.detroitmi.gov/health](http://www.detroitmi.gov/health)

VISA

MasterCard

Discover

Online

Mail

Bill Payment Kiosk





# WATER AND SEWERAGE DEPARTMENT

Customer Care phone number: (313) 267-8000

Account Name JACQUELINE TAYLOR  
Account Number 080-2951-300

Total Amount due by 12/19/22 for Water Restart Plan

## \$623.50

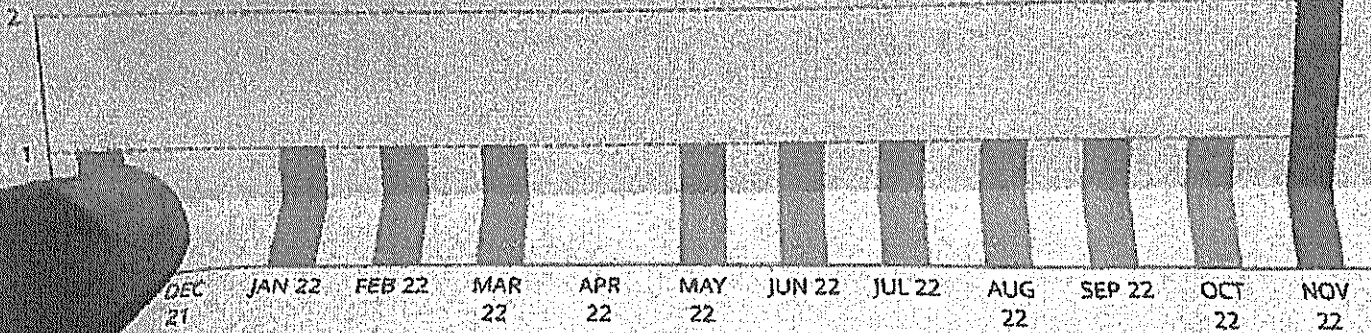
☒ Thank you, we received 2 payments totaling \$100.00, with the last payment received on 11/16/22.

## Usage History

● Previous Months

● Current Month

1 CCF = Approximately 748 Gallons



Usage This Month  
**1,496 Gallons**



Ending Read 1253 Actual  
Beginning Read 1251 Actual  
Usage 2 CCF

My Water Usage Same Month Last Year

**748 Gallons**



Additional bill information on back

Know? The average person uses the amounts of water shown below for everyday activities. Use less, save more!

• Dishwasher - 15 gallons per load	• Washing Machine - 45 gallons per load
• Shower - 40 gallons per 10 minutes	• Bath - 20 gallons

Payment order made payable to Board of Water Commissioners

Bill Date  
Account Number  
Service Address

11/28/22  
080-2951-300  
17700 WALKER ST

**\$623.50**

PAID BY CREDIT CARD

if paid after 12/10/22

**Exhibit 4**  
Declaration of Sylvia Orduño



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JACQUELINE TAYLOR, LISA  
BROOKS, MICHELE COWAN, TUANA  
HENRY, MATTIE MCCORKLE, and  
RENEE WILSON, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

CITY OF DETROIT, a Municipal  
Corporation, through the Detroit Water and  
Sewerage Department, its Agent;  
GOVERNOR GRETCHEN WHITMER, in  
her official capacity; MAYOR MICHAEL  
DUGGAN, in his official capacity; and  
GARY BROWN, in his official capacity.

Defendants.

Case No. 2:20-cv-11860

Hon. Denise Page Hood

Mag. Anthony P. Patti

**DECLARATION OF SYLVIA ORDUÑO**

Sylvia Orduño, of full age, hereby deposes and says:

1. I am an organizer for the Michigan Welfare Rights Organization (MWRO), which is a Plaintiff in this lawsuit. As a MWRO organizer, I regularly meet with low-income individuals and groups to hear their concerns and to work



with them as they face challenges that usually concern utility problems and housing. My engagement with these persons occurs both in person and by phone. I have served in this capacity since 1997. I am also an organizer with the People's Water Board Coalition; and the Water is Life Alliance. The work I do for those organizations involves advocacy for groups and also for individuals facing problems.

2. Through my work with various grassroots organizations, I have the opportunity to personally observe the living conditions of many Detroit residents who live in poverty. I also have the opportunity to speak with them and hear their stories and concerns. Examples of things that I have heard that are relevant to this case include many of the health and hygiene problems one might expect when water is not available. But there are also other problems that are less apparent to the casual observer. For example, the loss of water creates an urgent need by parents for the relocation of children, usually to the homes of relatives who may or may not be able to conveniently accommodate juvenile guests. A further byproduct of water insecurity is the physical and mental stress of acquiring water and hiding the problem from employers and mandatory-reporting authorities, along with the real potential for tragic separation of families which causes very high levels of anxiety and even trauma.

3. Because of what I observe in low-income communities, I, along with many others have long advocated for the adoption of a water affordability plan for Detroit that is indexed to income and household size. It is only logical that if a household lacks sufficient income to pay market rates for water, water bills will not be paid. Water is not a discretionary commodity, and it is both humane and logical to bill such households at rates they can afford.
4. While I welcome the Detroit Water and Sewerage Department's (DWSD) recent acknowledgment of the desirability of an income-based water affordability plan, I have real concerns about the adequacy, viability, and sustainability of DWSD's new "Lifeline" program.
5. Even if I believed on its merits the Lifeline program addresses the important needs of Detroit's poorest water customers, the current implementation of the program all but guarantees a water shutoff crisis for many large households.
6. I am specifically concerned that exemption from shutoffs will be limited to households enrolled in the Lifeline program, but yet the outreach to families is not calculated to reach many of those who are most vulnerable. For example, DWSD relies heavily on the use of social media. However, I know from my personal engagement with low-income communities that many vulnerable water customers do not receive or follow social media upon

which DWSD heavily relies. There are many people who do not own a computer or other device that gives them adequate access to the internet.

Whenever they are required to complete online forms, many will attempt to use their phones. Often, because of the phone's limited capacity and interrupting telephone calls this is ineffective because of data entry problems -- including required uploads of rental agreements, deeds, Social Security cards, DHHS benefits forms, asset documents, and more - and they are forced to begin the process again. Many run out of patience and never complete processes they begin. DWSD offers a phone option for customers without computers, but the phone lines are poorly staffed, and I have known persons who have waited on the line for more than an hour and then given up in frustration and because of minute limits in their phone plans.

7. DWSD has also enclosed information about the Lifeline program in water bills. However, I have personally engaged with several water customers who, in some cases, do not receive their mail directly, but instead have unreliable mail delivery through their landlords. Still others do not have water accounts in their names, but instead receive water service under accounts opened in the names of their landlords. This happens because tenants often begin their residency with leases that provide that water service is included in the rent. However, landlords will sometimes unilaterally

change the terms and demand that tenants become responsible for water bills. Although it is possible for tenants to open water accounts in their own names with the landlord's consent, many tenants fear both disclosure of information to DWSD and the prospect of eviction if they don't agree to the landlord's terms. In any case, DWSD is unlikely to reach significant numbers of water customers whose communications must go through a landlord or a third party who does not live at the residence.

8. I have also encountered persons whose immigration status is not secure, and they will be unwilling to come forward and provide the personal information that is demanded for enrollment in the Lifeline program. For example, on one occasion while participating in a demonstration outside of DWSD I was approached by an individual who explained the need to go inside and address issues concerning their water bill. This person's challenge was that there were undocumented persons in the residence and there was concern that to respond to anticipated questions might place these persons in jeopardy. I was asked to assist. Once inside we were faced with not only the anticipated challenges, but also gatekeeping by GLWA guards and a reluctance by DWSD staff to provide a much-needed Spanish language interpreter.

9. Among other things, the Lifeline program requires applicants to provide a Social Security number. I have encountered undocumented persons who do not have a Social Security number and who will presumably be ineligible for the program for that reason. In fact, I have known of persons who, because they lack Social Security numbers, enrolled in programs using the names of their children. Others lived without water until they could find a way to get a new Social Security card. Making disclosure of Social Security numbers a requirement for enrollment in the Lifeline program is a significant deterrent.

Furthermore, it is not an essential requirement because I was told by the

S.S. <sup>CAO</sup> DWSD ~~CFO~~ that it is required to facilitate collections efforts.

10. I have also worked with organizers in the far east side of Detroit who walk the neighborhoods and knock on doors regularly. They have reported to me that there is little information to be found in that area about the Lifeline program, including details about the program and where residents can enroll. If there are other areas of the city like this one, there are likely to be many people who will not enroll in the program even if their inclination is to do so.

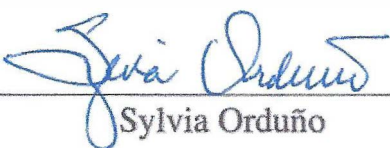
11. Finally, because the amount of water available to a household at reduced rates is capped under the Lifeline program, it is likely that large households and multigenerational families residing in the same household will require

amounts of water that exceed a cap calculated on the basis of water usage rates of small families. This will place large households in the position of either using the amount of water they need, and then becoming susceptible to shutoffs because they will receive market rate bills they cannot afford; or they will choose to ration water at the lower rate, but in the process create health hazards for themselves and the community because they will not engage in proper hygiene.

12. For these reasons and many others, I fully support the request that the court enjoin the City of Detroit and DWSD from resuming the practice of water shutoffs until concerns such as those I have described have been adequately addressed.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 11-4-2022 (Date)

  
\_\_\_\_\_  
Sylvia Orduño



**Exhibit 5**  
Declaration of Dr. Samuel Stolper

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JACQUELINE TAYLOR, LISA  
BROOKS, MICHELE COWAN, TUANA  
HENRY, MATTIE MCCORKLE, RENEE  
WILSON, and PEOPLE’S WATER  
BOARD COALITION, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

CITY OF DETROIT, a Municipal  
Corporation, through the Detroit Water and  
Sewerage Department, its Agent;  
GOVERNOR GRETCHEN WHITMER, in  
her official capacity; MAYOR MICHAEL  
DUGGAN, in his official capacity; and  
GARY BROWN, in his official capacity.

Defendants.

Case No. 2:20-cv-11860

Hon. Denise Page Hood

Mag. Anthony P. Patti

**DECLARATION OF SAMUEL STOLPER, PH.D. IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

I, Samuel Stolper, Ph.D., declare as follows:

**I. Introduction and Background**

1. I am an environmental and energy economist who serves as an Assistant Professor at the University of Michigan School for Environment and Sustainability,



Dana Building, Room 3006, 440 Church Street Ann Arbor, Michigan 48109. I have served as an Assistant Professor at the School for Environment and Sustainability since 2017. My research, teaching, and writing are aimed at the design of environmental policy that is both efficient and equitable. I teach courses on this subject to graduate students at School for Environment and Sustainability as well as undergraduates in the Program in the Environment.

2. Prior to joining the School for Environment and Sustainability, I was a postdoctoral associate at the Massachusetts Institute of Technology, jointly through the Department of Economics and the Center for Energy and Environmental Policy Research.

3. I earned a Ph.D. in public policy from Harvard University in 2016. I earned a Bachelor of Science in biomedical engineering from Brown University in 2006. I am the author or co-author of nine pieces of scholarly research, including articles in peer-reviewed publications. Attachment A provides my professional resume.

## **II. Assignment and Conclusions**

### **A. Methodology**

4. In *Taylor et al. v. City of Detroit et al.*, I was retained by Plaintiffs' counsel to analyze (1) whether the City of Detroit's water shutoff policy has a disproportionate impact on Black residents and (2) whether there is a higher

incidence of COVID-19 cases in Detroit zip codes with an above-average number of shutoffs.

5. To conduct the first analysis, I combined three datasets: (1) data on the timing and location of every individual non-commercial (i.e., residential) water shutoff carried out by Detroit Water and Sewerage Department between January 2017 and July 2018, as well as between January 2019 and January 2020 (shutoff data were unavailable for the period between August and December 2018); (2) demographic and socioeconomic characteristics of Detroit Census tracts and zip codes collected by the U.S. Census Bureau through its American Community Survey, years 2013 to 2017; and (3) counts of vacant (or unoccupied) residences in Detroit in each Census tract and quarter between 2017 and 2019.

6. I calculated the total number of shutoffs that occurred in each Census tract over the period between January 2017 to July 2018, and divided each total by the population of the relevant Census tract to yield “shutoffs per 1,000 residents” for each tract. I followed the same procedure for the period between January 2019 and January 2020, except I did so at the zip code level, because zip code is the highest-resolution geographic attribute available during this more recent period. In what follows, I describe the procedure I used with the 2017 to 2018 Census tract level data; I used an analogous procedure with 2019 to 2020 zip code level data.

7. I examined the distribution of “shutoffs per 1,000 people” and of “percent Black” by Census tract, independently and jointly, in order to understand the extent of variation in these measures across Detroit. I tabulated summary statistics for these variables—means, medians, minimums, and maximums. I also mapped these variables by Census tract to gain an understanding of the geographic variation in shutoffs and race.

8. I categorized every Census tract as either “greater than 75% Black” or “less than or equal to 75% Black.” I then compared the average “number of shutoffs per 1,000 people” in these two groups by regressing the shutoff variable on the binary indicator for being “greater than 75% Black,” and weighting observations by population in order to produce results that account for variation in population across Census tracts. The key result of this regression was an estimated difference in the average number of shutoffs per 1,000 people across the two groups. I tested the statistical significance of this difference using a t-test. I also replicated this comparison using a cutoff of “50% Black” instead of “75% Black.” I plotted the results using bar charts.

9. I then replicated the analysis while controlling for Census tract income distributions and residential vacancies. I used the following income-related variables: percent of households with annual income less than \$10,000, between \$10,000-\$15,000, between \$15,000-\$25,000, between \$25,000-\$35,000, between

\$35,000-\$50,000, between \$50,000-\$75,000, between \$75,000-\$100,000, between \$100,000-\$150,000, between \$150,000-\$200,000, and above \$200,000; percent of households with Social Security; percent of households with Supplemental Security Income; percent of households with cash public assistance; and percent of households with Food Stamp/SNAP benefits. To capture residential vacancies, I calculated the average number of vacancies per Census tract over the relevant time period.

10. To control for these variables, I used multivariate regressions, where the outcome variable was “shutoffs per 1,000 people” and the explanatory variables included the binary indicator for above/below 75% (or 50%) Black population and the aforementioned control variables. The estimated coefficient estimate for the binary “% Black” indicator and its standard error together gave both the estimated magnitude of the difference in shutoffs across the two groups and the statistical significance of the estimate (via a t-test again). I ran these regressions with (a) just the income control, (b) just the vacancy control, and (c) both the income and vacancy controls.

11. I calculated the share of all 2017-2018 shutoffs that occurred in Census tracts with greater than 75% Black population as well as the share that occurred in tracts with less than 75% Black population. To assess the statistical significance of the difference between the two, I tested (again via a t-test) whether the share

occurring in tracts that were greater than 75% Black is statistically different from the share that would be predicted if shutoffs were located randomly within the City of Detroit. I did the same for the 50% Black cutoff.

12. I replicated the steps described above, except instead of comparing tracts above and below a cutoff of X% ( $X=75, 50$ ), I compared majority-Black (i.e., above 50% Black) tracts to majority-white (i.e., above 50% white) tracts.

13. To conduct the second analysis—assessing the relationship between COVID-19 incidence and historical water shutoffs in Detroit—I collected cumulative counts of COVID-19 cases in each Detroit zip code as of June 25, 2020 from the City of Detroit’s website. I divided each of these zip code counts by 1,000 to yield “COVID-19 cases per 1,000 people.” To capture historical shutoff totals, I summed shutoffs within each zip code over the full 2010-2020 duration of the shutoffs data. I divided these totals by 1,000 to yield “Total shutoffs from 1/2010-1/2020, per 1,000 people.”

14. With the above frequency measures of COVID-19 cases and historical shutoffs, I carried out an analysis analogous to that described in Paragraph 10. I categorized every Census tract as either “above-average historical frequency of shutoffs” or its below-average counterpart. I then compared the average “number of COVID-19 cases per 1,000 people” in these two groups by regressing the COVID-19 variable on the binary indicator for having above-average historical shutoff

frequency. I weighted observations by population in order to produce results that account for variation in population across Census tracts. The key result of this regression was an estimated difference in the cumulative count of COVID-19 cases per 1,000 people across the two groups. I tested the statistical significance of this difference using a t-test. I plotted the result using a bar chart.

15. Statistical significance is a measure of probability that an observed outcome would not have occurred by chance. Generally, an outcome is statistically significant if the probability that it could have occurred by chance is less than 5%, known as the 95% confidence level. All results described herein are statistically significant at the 95% confidence level or higher.

## **B. Racial Impact Analysis**

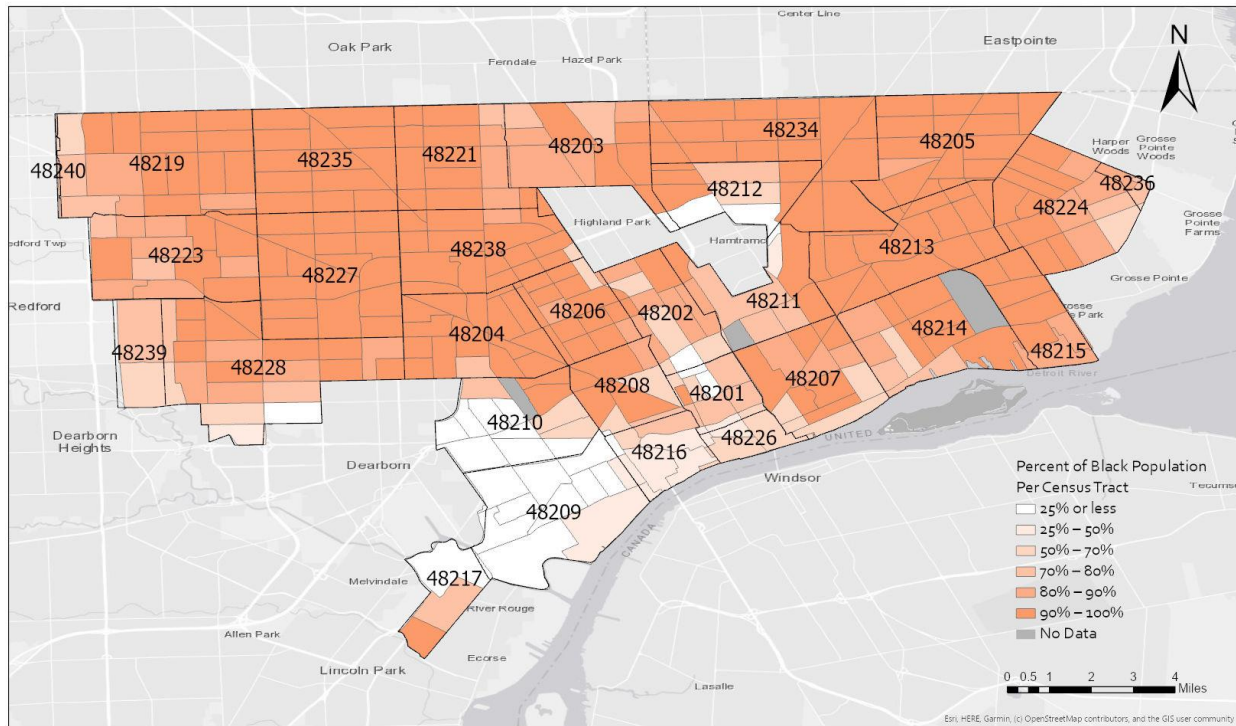
16. From 2013 to 2017, Detroit's population was 81% Black and 9.4% white. During this time period, 82% of Detroit's Census tracts had a population that was at least 75% Black and 89% of the city's Census tracts had a majority Black population.<sup>1</sup> Map 1 below shows the racial demographics in Detroit between 2013 and 2017.

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<sup>1</sup> U.S. Census Bureau, *2013-2017 American Community Survey 5-year estimates* (2019), [https://data.census.gov/cedsci/table?q=race&g=05000000US26163.140000&hidePreview=false&tid=ACSDT5Y2017.B02001&vintage=2017&layer=VT\\_2017\\_140\\_00\\_PY\\_D1&cid=B03002\\_001E&y=2017&t=Race%20and%20Ethnicity](https://data.census.gov/cedsci/table?q=race&g=05000000US26163.140000&hidePreview=false&tid=ACSDT5Y2017.B02001&vintage=2017&layer=VT_2017_140_00_PY_D1&cid=B03002_001E&y=2017&t=Race%20and%20Ethnicity).

## Map 1: Map of Detroit's Black Population, 2013-2017

Black population in Detroit, 2013-2017

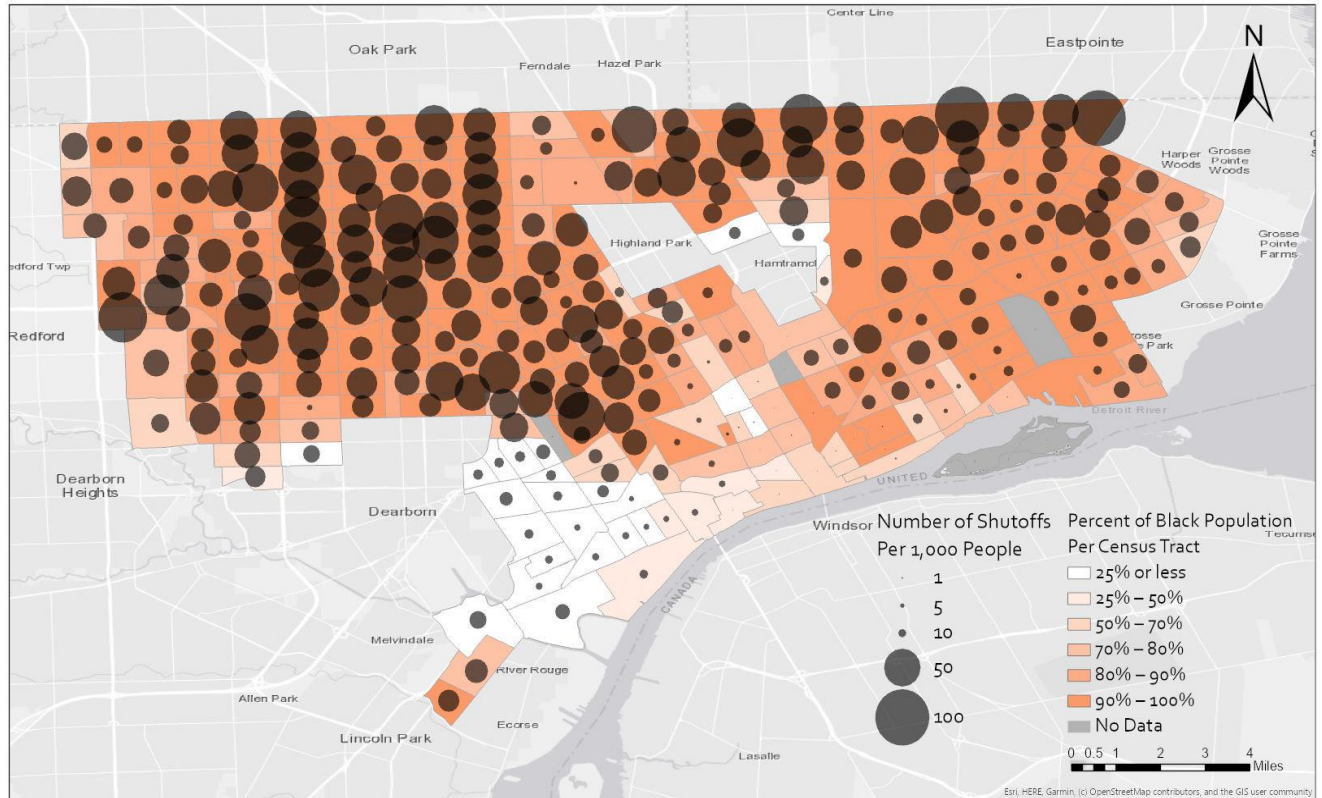


17. Map 2 below shows the location of water shutoffs per 1,000 people that occurred between January 2017 and July 2018 and the racial demographics in Detroit between 2013 and 2017. I determined that the greatest number of shutoffs occurred in areas of the city with the highest percentage of Black residents. By comparison, areas of the city with the lowest percentage of Black residents experienced fewer shutoffs.



**Map 2: Water Shutoffs and Race in Detroit by Census Tract, 2017-2018**

Shutoffs and race in Detroit, 2017-2018

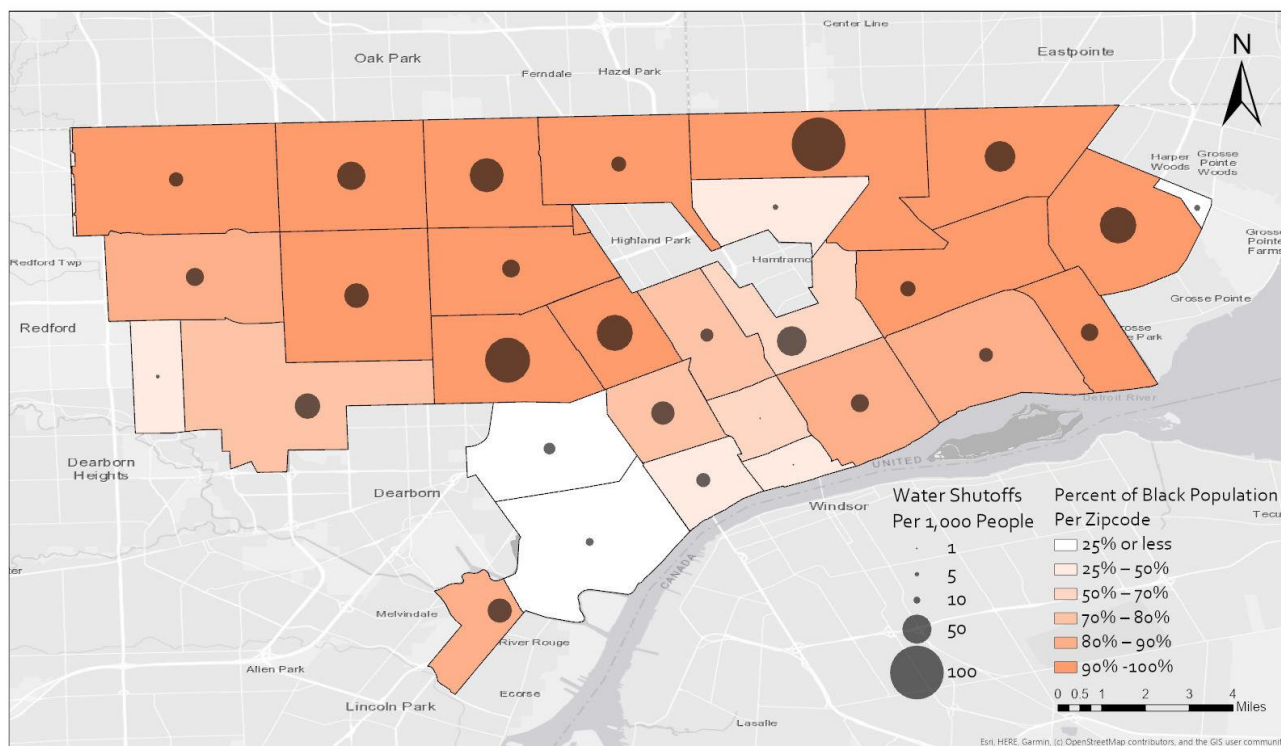


18. Map 3 below shows the location of water shutoffs per 1,000 people that occurred between January 2019 and January 2020 and the racial demographics in Detroit between 2013 and 2017. I determined that the greatest number of shutoffs occurred in areas of the city with the highest percentage of Black residents. By comparison, areas of the city with the lowest percentage of Black residents experienced fewer shutoffs.



### Map 3: Water Shutoffs and Race by Detroit Zip Code, 2019-2020

Shutoffs and race by Detroit zip code, 2019-2020

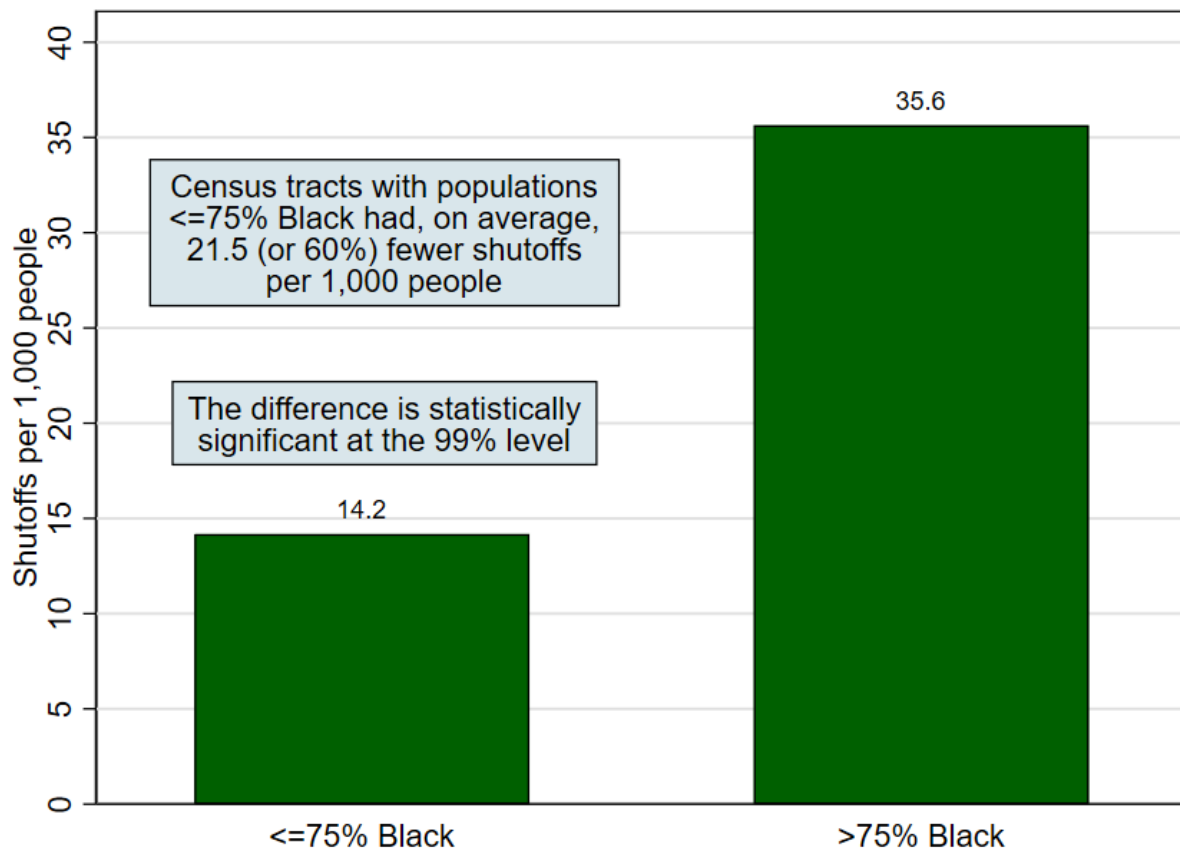


19. From January 2017 to July 2018, I determined that 91% of residential water shutoffs occurred in Census tracts with a population that was greater than 75% Black. During this same time period, 9% of shutoffs occurred in Census tracts that had a population that was less than 75% Black. These differences are statistically significant.

20. From January 2017 to July 2018, I determined that Detroit Census tracts with a less than 75% Black population had, on average, 21.5 (or 60%) fewer shutoffs per 1,000 people than tracts with a greater than 75% Black population. As shown below in Figure 1, tracts with a greater than 75% Black population had 35.6 shutoffs

per 1,000 people, while tracts with a less than 75% Black population had 14.2 shutoffs per 1,000 people. This difference is statistically significant. These results remained statistically significant even when accounting for differences in income and the number of unoccupied homes in Detroit.

**Figure 1: Analysis of Water Shutoffs in Census Tracts with Population Greater than 75% Black and Less than 75% Black, 2017-2018**

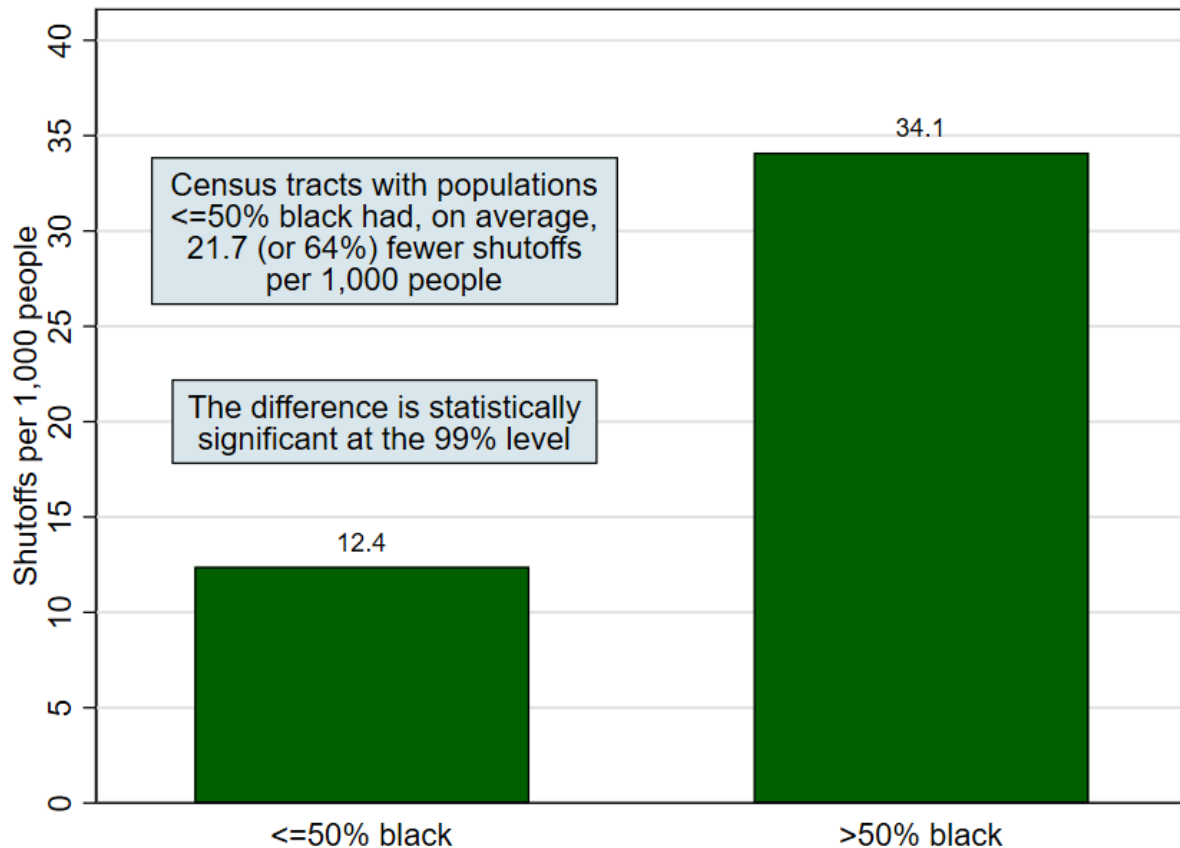


21. From January 2017 to July 2018, I determined that 95% of residential water shutoffs occurred in Census tracts with a population that was greater than 50% Black. During this same time period, 5% of shutoffs occurred in Census tracts with a population that was less than 50% Black. These differences are statistically

significant.

22. From January 2017 to July 2018, I determined that Detroit Census tracts with a less than 50% Black population had, on average, 21.7 (or 64%) fewer shutoffs per 1,000 people than tracts with a greater than 50% Black population. As shown below in Figure 2, tracts with a greater than 50% Black population had 34.1 shutoffs per 1,000 people, while tracts with a less than 50% Black population had 12.4 shutoffs per 1,000 people. This difference is statistically significant. These results remained statistically significant even when accounting for differences in income and the number of unoccupied homes.

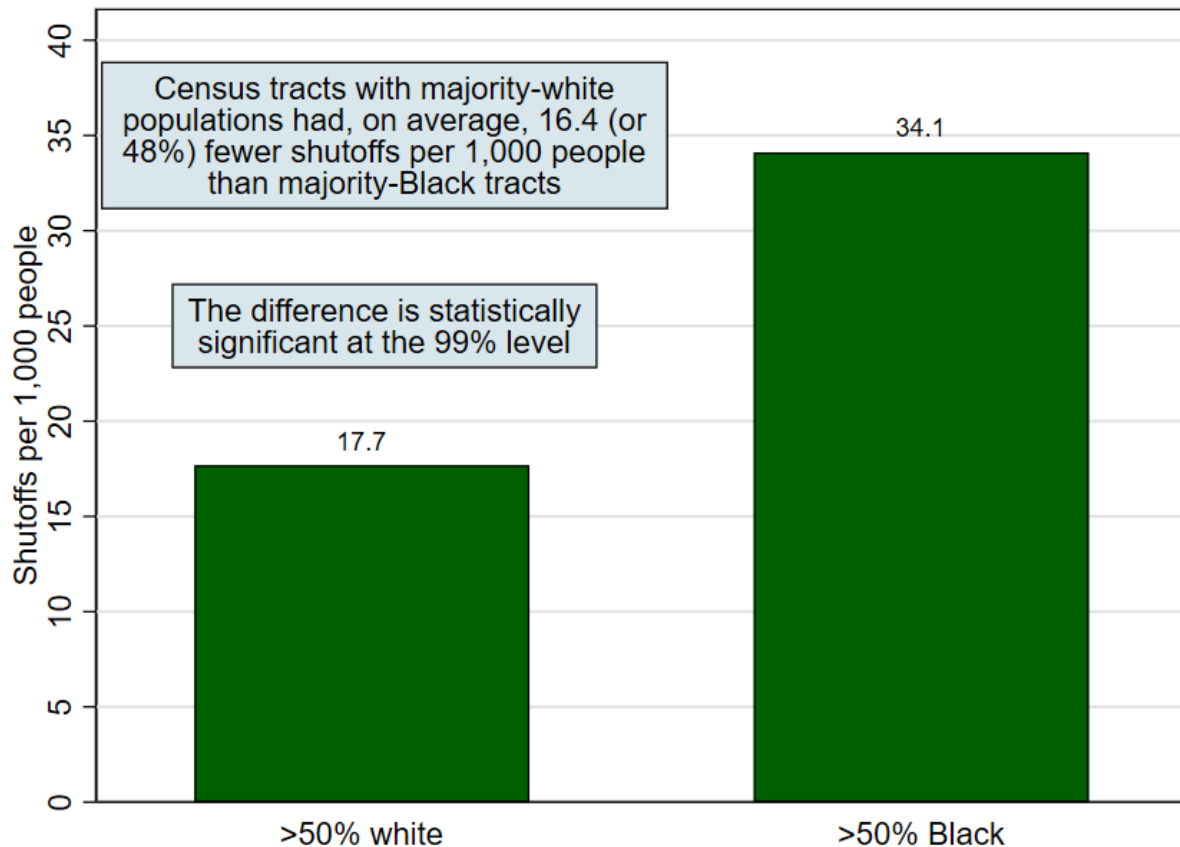
**Figure 2: Analysis of Water Shutoffs in Census Tracts with Population Greater than 50% Black and Less than 50% Black, 2017-2018**



23. I also compared shutoffs for the time period between January 2017 and July 2018 in Detroit Census tracts with a greater than 50% Black population and tracts with a greater than 50% white population. Between 2013 and 2017, there were 254 Detroit Census tracts with a majority-Black population and five Census tracts with a majority-white population. As shown in Figure 3 below, I determined that Census tracts with a majority-white population had, on average, 16.4 (or 48%) fewer shutoffs per 1,000 people than majority-Black tracts. Majority-Black tracts had 34.1 shutoffs per 1,000 people, while majority-white tracts had 17.7 shutoffs per 1,000

people. This difference is statistically significant. These results remained statistically significant even when accounting for differences in income and the number of unoccupied homes.

**Figure 3: Analysis of Water Shutoffs in Census Tracts with Population Greater than 50% Black and Greater than 50% White, 2017-2018**

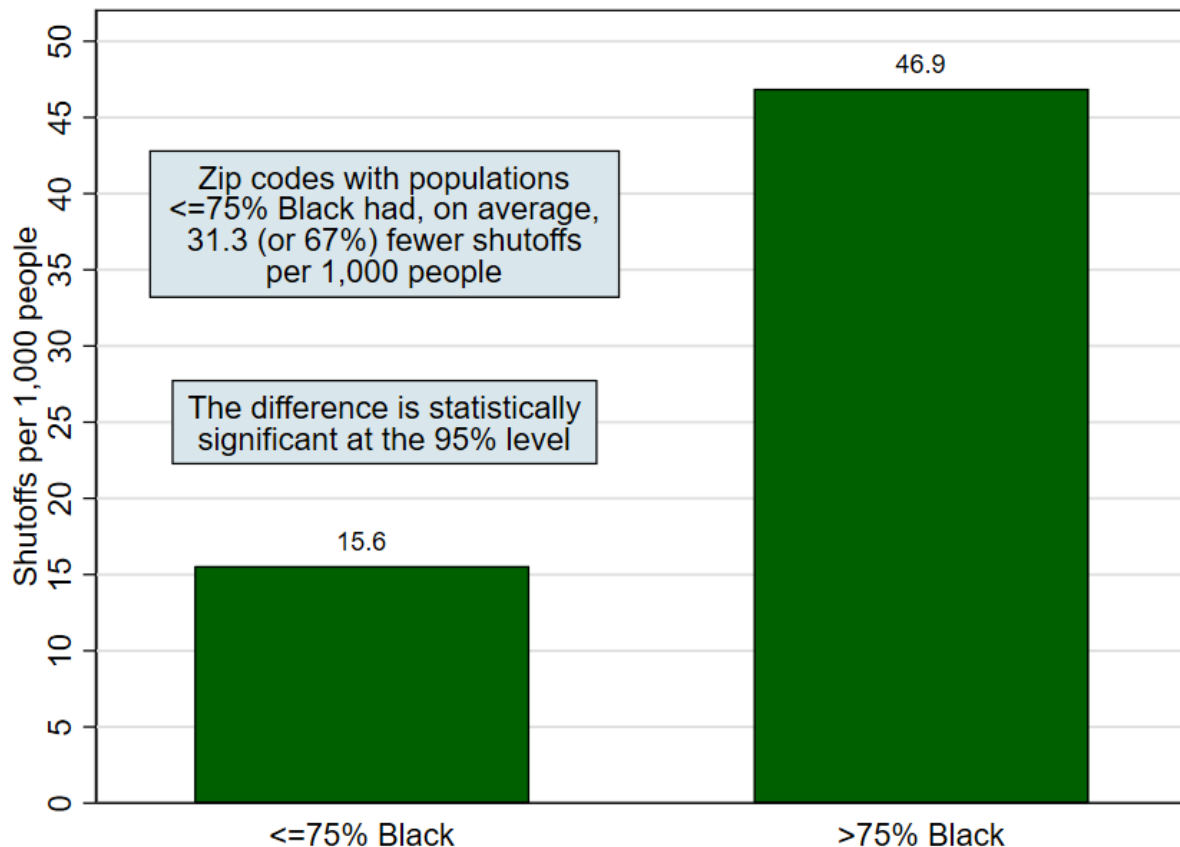


24. From January 2019 to January 2020, I determined that 93% of residential water shutoffs occurred in zip codes with a population greater than 75% Black. During this same time period, 7% of shutoffs occurred in zip codes with a less than 75% Black population. This difference is statistically significant.

25. From January 2019 to January 2020, I determined that Detroit zip codes

with a less than 75% Black population had, on average, 31.3 (or 67%) fewer shutoffs per 1,000 people than tracts with a greater than 75% Black population. As shown below in Figure 4, zip codes with a greater than 75% Black population had 46.9 shutoffs per 1,000 people, while zip codes with a less than 75% Black population had 15.6 shutoffs per 1,000 people. This difference is statistically significant.

**Figure 4: Analysis of Water Shutoffs in Census Tracts with Population Greater than 75% Black and Less than 75% Black, 2019-2020**

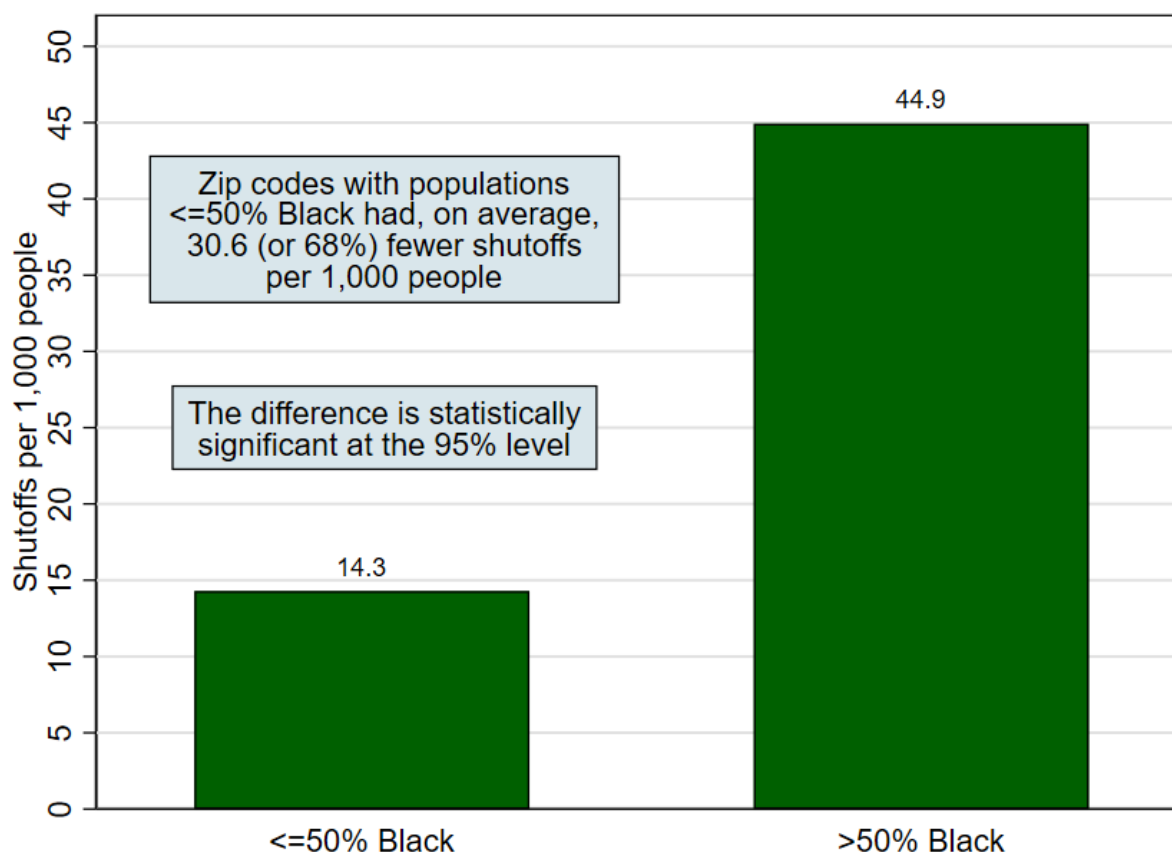


26. From January 2019 to January 2020, I determined that 96% of residential water shutoffs occurred in zip codes with a population that was greater than 50% Black. During this same time period, 4% of shutoffs occurred in zip codes

with a less than 50% Black population. This difference is statistically significant.

27. From January 2019 to January 2020, I determined that Detroit zip codes with a less than 50% Black population had, on average, 30.6 (or 68%) fewer shutoffs per 1,000 people than tracts with a greater than 50% Black population. As shown below in Figure 5, zip codes with a greater than 50% Black population had 44.9 shutoffs per 1,000 people, while zip codes with a less than 50% Black population had 14.3 shutoffs per 1,000 people. This difference is statistically significant. These results remained statistically significant even when accounting for differences in income and the number of unoccupied homes.

**Figure 5: Analysis of Water Shutoffs in Census Tracts with Population Greater than 50% Black and Less than 50% Black, 2019-2020**

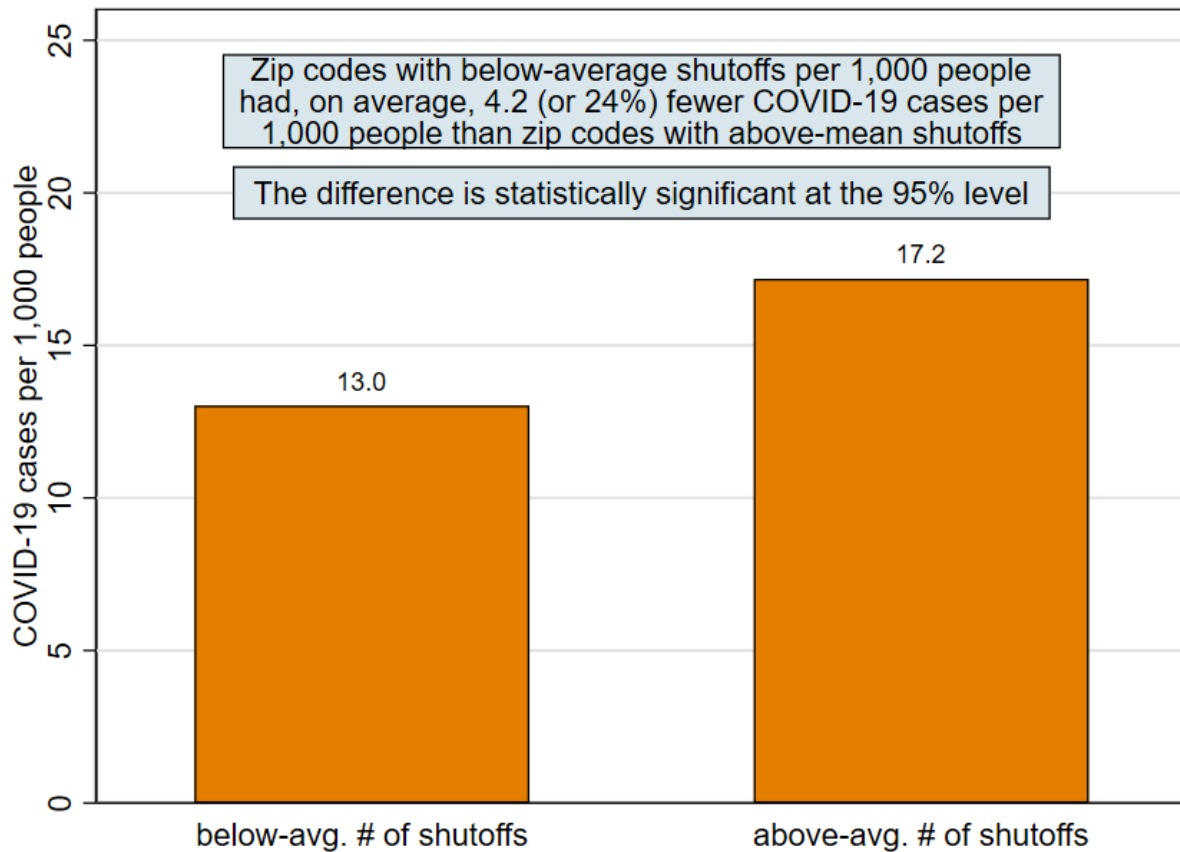


### C. COVID-19 Analysis

28. Figure 6 below reflects an analysis of Detroit zip codes where water shutoffs occurred between 2010 and 2020 and where COVID-19 cases have been reported. As shown in the figure, I determined that zip codes with below-average shutoffs per 1,000 people had, on average, 4.2 (or 24%) fewer COVID-19 cases per 1,000 than zip codes with above-mean shutoffs. Zip codes with below-average shutoffs had 13 COVID-19 cases per 1,000 people, while zip codes with above-average shutoffs had 17.2 COVID-19 cases per 1,000 people. This difference is statistically significant.



**Figure 6: Analysis of Detroit Zip Codes where Water Shutoffs Occurred from 2010-2020 and Reported COVID-19 Cases**



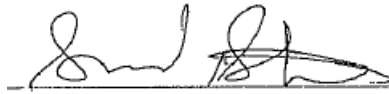
#### **D. Shutoffs and the Detroit Lifeline Plan**

29. The City of Detroit has created and begun enrolling citizens in a new water affordability program called the Detroit Lifeline Plan. The plan allows qualifying households to pay a fixed monthly fee equal to \$18, \$43, or \$56 (depending on poverty level) for water and sewerage services. Notwithstanding the current moratorium on shutoffs, the Lifeline Plan is likely to reduce the frequency of water shutoffs in Detroit. I do, however, believe it likely that those shutoffs that

continue to occur will exhibit similar patterns related to race as shown in this declaration for the years 2017-2019.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 7, 2022.

A handwritten signature in black ink, appearing to read 'Samuel Stolper', written over a horizontal line.

SAMUEL STOLPER, PH.D.

**Exhibit 6**  
Lifeline Policy Plan Overview and FAQs

# POLICY: Lifeline Pilot Plan



## Who is Eligible?

- Homeowner or tenant, living in the household, with a single-family residential account for Detroit Water and Sewerage Department (DWSD) services.
- Household income is at or below 200% of the federal poverty level (FPL), verified by Wayne Metropolitan Community Action Agency which determines the Lifeline Plan tier.

## How to Apply?

- Contact Wayne Metro at 313-386-9727 or [waynemetro.org/DWSDLifeline](http://waynemetro.org/DWSDLifeline).
- In order to apply, the applicant needs:
  - Photo ID
  - Social Security Number (federal funding requirement)
  - Proof of income eligibility
- Current Water Residential Assistance Program (WRAP) enrolled households will automatically transition into the Lifeline Plan.


## What are the Lifeline Plan Benefits?

- Arrearages forgiven from customer's account upon enrollment.
- No risk of water shut off while actively enrolled in the plan.
- If water usage is less than 4,500 gallons a month (6 CCF), the total bill is capped for water, sewer and drainage as follows:
  - Tier 1 = \$18/month if income is 135% or less of the federal poverty level (FPL)
  - Tier 2 = \$43/month if income is above 135% FPL but equal to or less than 150% FPL
  - Tier 3 = \$56/month if income is above 150% FPL but equal to or less than 200% FPL
- If customer uses more than 4,500 gallons a month – free water audit and plumbing repairs to lower water usage is provide by Wayne Metro.
- Real-time tracking of water usage; advance alerts if customer may exceed 4,500 gallons.
- Wraparound services from Wayne Metro.
- If there's an unpaid balance two months in a row, Wayne Metro will reach out to customer to offer other assistance.

## What are the Rules (the fine print)?

- Must have a working water meter and give DWSD access for meter repairs or updates.
- Must register the account at [csportal.detroitmi.gov](http://csportal.detroitmi.gov) to self-monitor actual usage throughout the billing cycle.
- Must allow DWSD and Wayne Metro to communicate via phone, email and text.
- Timely payments must be made.
- Customer is responsible for water and sewerage usage over 4,500 gallons:  
Example: Tier 1 customer uses 6,000 gallons of water in one month (8 CCF) for a total bill of \$107.69  
Customer owes \$18, plus \$20.06 (for additional 2 CCF water/sewer) = \$38.06

**TAKE PART: Tap Into the Lifeline Plan**  
[detroitmi.gov/water](http://detroitmi.gov/water)

Policy Title:		Pilot Lifeline Plan Administration	
	OFFICE OF THE CHIEF FINANCIAL OFFICER	Category	Lifeline Plan
		Administrative Policy #	500-CS-Lifeline Plan
		Revision #	N/A
		Review Frequency	Every six months as funding exists
Administrative Division	Billing & Collections	Reviewed By	Chief Administrative Officer, General Counsel, Chief Customer Service Officer; Finance Department
BOWC Approval	6/28/2022	Last Reviewed/Update Date	
Implementation Date	8/1/2022	Resolution #	22-0858

## 1. OBJECTIVES

- 1.1. To outline Detroit Water and Sewerage Department's (DWSD) Pilot Lifeline Plan.

## 2. PURPOSE

- 2.1. The DWSD acknowledges there are residents in our community who are unable to pay their full water, sewerage and drainage charge bill because their household income is below certain poverty indicators. Service interruptions are not a viable collection tool for these low-income customers; yet interruptions are an important collection tool for customers who have the ability to pay their bill and choose not to.
- 2.2. Water advocates and affordability experts have opined that the financial burden for water and sewerage services should not exceed 1.8% of household income for households falling under certain income thresholds, and that affordability programs should include plumbing repairs to promote conservation, as well as arrearage forgiveness. The DWSD endeavors to pilot a three-tier, income-based water affordability plan incorporating the above principles using currently available Low-Income Household Water Assistance Program (LIHWAP) funding from the federal and state government and DWSD's allocation of Water Residential Assistance Program (WRAP) funds, as well as other utility payment assistance and affordability programs.
- 2.3. DWSD will vigorously advocate for long term funding to continue the Lifeline Plan beyond the anticipated 18-month funding resources. DWSD also commits to receiving feedback on this pilot plan to assess refinements and improvements
- 2.4. This policy establishes roles and responsibilities for the Plan components.

## 3. DEFINITIONS

“Arrearages” for purposes of this policy means all unpaid past due amounts prior to enrollment in the DWSD Lifeline Plan, and also means unpaid past due amounts over and above the assigned Tier payment amount.

“Customer” for purposes of this policy means a property Owner or Tenant that establishes a single-family residential account for DWSD services and occupies the residence.

“Third Party Administrator” or “TPA” means the agency responsible for administering LIHWAP, WRAP or other funds and enrolling eligible customers into the DWSD Lifeline Plan.

“Tier 1” criteria means a customer/applicant’s household income at or below 135% of Federal Poverty Guideline. (SNAP/FAP Eligible<sup>1</sup>)

“Tier 2” criteria means a customer/applicant’s household income is greater than 135% of Federal Poverty Guideline (FPL) but at or below 150% of FPL (“Low Income”).

“Tier 3” criteria means a customer/applicant’s household income is greater than 150% of FPL but at or below 200% of FPL. (“Moderate Income”).

“Water Conservation Measures program” or “Conservation program” means a water audit to determine whether unnecessary, unconsumed water loss occurs in the household, the nature of plumbing repairs required to prevent such loss, and repair of plumbing fixtures necessary to prevent water loss.

#### **4. SCOPE**

4.1. This policy applies to all Customers who applied for or are enrolled in the Lifeline Plan with the Third-Party Administrator.

4.2. This pilot Lifeline Plan applies only to single family residences.

#### **5. RESPONSIBILITIES**

##### **5.1 Customer.**

5.1.1. Customer must abide by the DWSD Water and Sewerage Service Terms and Conditions Agreement.

5.1.1.1. Customer must have an active account on the DWSD Customer Portal at [CSPortal.detroitmi.gov](http://CSPortal.detroitmi.gov) during their enrollment in DWSD Lifeline Plan.

5.1.1.2. Customer must agree to allow DWSD and its affiliates to communicate with them using electronic means, including phone, voicemail, automated messages, email, text/SMS, and/or other electronic means as a method of communicating important account and water usage information on an as needed basis.

5.1.2. Customer must apply for the Lifeline Plan with the Third Party Administrator.

5.1.3. Customer must have a functioning water meter in their residence that can record actual usage.

5.1.4. Customer must agree to upgrades in metering system as they become available.

5.1.5. Customer must agree to participate in water conservation audits and plumbing repairs, if necessary.

5.1.6. Customer must agree to apply for other payment assistance programs in addition to LIHWAP or WRAP, as needed.

---

<sup>1</sup> Federal Supplemental Nutrition Assistance Program or Michigan Food Assistance Program

## **5.2. Third Party Administrator (Including Affiliates)**

- 5.2.1. Determines Customer eligibility and enrolls customers into the Lifeline Plan, determines which Tier applies to Customer, and provides DWSD with a report of Tiers by account.
- 5.2.2. For enrolled Customers whose monthly water consumption exceeds 6 CCF in any month, places Customer in the Water Conservation Measures program, and makes payment for qualified repairs.
- 5.2.3. Provides monthly enrollment reports to DWSD, which denotes enrolled Customers and Tiers to be applied during the billing cycle.
- 5.2.4. Assists Customer with application to other payment assistance programs, as needed, and provides case management services.

## **5.3. DWSD – Finance Department**

- 5.3.1. Flags enrollee accounts in the Customer Information System (CIS) to ensure accounts remain in the moratorium for water service interruptions.
- 5.3.2. Applies Third Party Administrator information to Customer accounts and Billing Unit issues billing statements.
- 5.3.3. Tracks statistical information for monthly reporting to Board of Water Commissioners.

## **5.4. DWSD - Public Affairs**

- 5.4.1. Executes a robust education and outreach campaign regarding Lifeline Plan, including, but not limited to, community meetings, door hangers, door-to-door outreach, mailings, social media, and robocalls.

# **6. POLICY**

## **6.1. No Adverse Action Against Customers Enrolled in Lifeline Plan**

- 6.1.1. DWSD exempts all applicants and enrolled Customers from any collection action for arrearages, including service interruption, while Customer remains in Lifeline Plan.

## **6.2. Application to Lifeline Plan**

- 6.2.1. Customers must apply to Third Party Administrator, who determines eligibility for Lifeline Plan and payment Tier.
- 6.2.2. To participate in the Lifeline Plan, Customers must allow DWSD to enter their home to inspect and/or install and/or upgrade their metering system to ensure accurate reads.
- 6.2.3. Currently enrolled WRAP customers will automatically transition to the Lifeline Plan.
  - 6.2.3.1. Third Party Administrator will evaluate household income and assign WRAP customer to the appropriate Tier.

- 6.2.3.2. WRAP Customers whose income falls within one of the three Tiers will remain in the Lifeline Plan as long as they remain income eligible and otherwise comply with all Plan requirements, and as long as funding exists to support the Plan.

### **6.3. Calculation of Lifeline Plan Payment.**

- 6.3.1. For the first 6 CCF (approximately 4,500 gallons) of usage, the Customer's monthly payment for water, sewer and drainage charges for each Tier will be calculated at 1.8% of the average household income in Detroit for "SNAP eligible," "Low-Income," or "Moderate-Income" households as reported in data gathered for the APPRISE Incorporated water affordability study<sup>2</sup>, at a set rate as follows:

- (a) Tier 1 = \$18.00/month
- (b) Tier 2 = \$43.00/month
- (c) Tier 3 = \$56.00/month

- 6.3.2. For water usage over 6 CCF, Customer's monthly payment will be calculated based on (i) the assigned Tier; (ii) plus a charge for water usage over 6 CCF; and (iii) sewer usage over 6 CCF but not to exceed 12 CCF at the standard published rates. Customer must pay the Tier amount plus the overage charge, plus any balance forwarded.

Example:

Tier 1 Customer uses 6,000 gallons of water in one month (8 CCF) for a total bill of \$107.69

Customer owes \$18, plus \$20.06 (for additional 2 CCF water/sewer) = \$38.06.

- 6.3.3. The Third Party Administrator will verify Customer's income eligibility for Lifeline Plan on an annual basis.

### **6.4. Water Conservation Measures to Reduce Monthly Bill**

- 6.4.1. DWSD will notify enrolled Customers by automated outreach reminder call when their usage exceeds 3 CCF in any month so that Customer can take action to try to prevent going over 6 CCF or to address any leaks inside the home.
- 6.4.2. Customers may monitor their usage using DWSD's Customer Portal at [www.csportal.detroitmi.gov](http://www.csportal.detroitmi.gov).
- 6.4.3. When usage exceeds 6 CCF in any month the Third Party Administrator or affiliate completes, and enrolled Customer agrees to participate in, water conservation audits and plumbing repairs.
- 6.4.4. Customers with high usage due to actual use for activities of daily living (rather than leaking plumbing fixtures) may apply for a hardship exemption to waive payment for some or all usage over 6 CCF.

- 6.4.4.1. Hardship exemptions may be granted on a case-by-case basis.

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<sup>2</sup> *Water Affordability Study Survey of Programs – In-Depth Analysis*, Prepared for Office of the People's Counsel (OPC) of the District of Columbia, Washington DC; Prepared by APPRISE Incorporated; June 2021, p. 27. OPC Contract OPC-K19-5. (Available online at DWSD website)



- 6.4.4.2. Customers may be required to document and submit details regarding the nature of their hardship, including, but not limited to, proof of job loss or change in pay, number of household members, financial hardship due to household member death, etc.

## 6.5. Arrearages

- 6.5.1. **Prior Arrearages.** Upon enrollment in the Lifeline Plan, the Third Party Administrator will remove Customer's arrearages accruing prior to enrollment.
  - 6.5.1.1. If Customer is a homeowner, the Third Party Administrator and Customer must apply for any and all other programs that assist with utility debt and apply funds to Customer's DWSD account.
  - 6.5.1.2. If Customer's arrearages prior to enrollment exceed funds available under existing funding program rules for utility debt, DWSD will notate Customer's account and handle the debt in the usual manner for uncollected residential accounts.
- 6.5.2. **Payment of Tier Amount.** For consumption at or below 6 CCF, all available assistance funds will be used to reduce the total amount owing (arrearage) above the capped, tiered amount.
  - 6.5.2.1. If Customer's arrearages during enrollment in Lifeline Plan exceed funds available, DWSD will notate Customer's account and handle the debt in the usual manner for uncollected residential accounts.
- 6.5.3. **Partial Payment.** If Customer does not pay the amount owed for their Tier payment, plus any overage for usage above 6 CCF, that amount will accrue on the next bill as an arrearage as a balance forward.
- 6.5.4. Penalties will not accrue unless Customer has two (2) consecutive months with a balance forward.

## 6.6. Failure to Comply With Lifeline Plan Requirements

- 6.6.1. If Third Party Administrator determines an enrolled Customer is not in compliance with plan requirements (i.e. failure to allow installation of functioning meter, a balance forward for two (2) consecutive months):
  - 6.6.1.1. Third Party Administrator will follow up with Customer to provide case management services.
  - 6.6.1.2. If after exhausting all case management services Customer remains in non-compliance, Customer may be unenrolled from Lifeline Plan, and Customer is subject to DWSD Water and Sewerage Service Terms and Conditions Agreement starting with the next billing cycle.
- 6.6.2. The unpaid account balance is an arrearage, and late penalties and collection efforts may resume.
  - 6.6.2.1. Customer may enter into a payment plan.

## **6.7. Re-Enrollment**

6.7.1. If Customer pays all arrearages owed or Customer makes consistent timely payments at full rates and enters into a payment plan for arrearages, Customer may be allowed to re-enroll in the Lifeline Plan.

6.7.1.1. Arrearages will not be forgiven or removed upon re-enrollment.

6.7.1.2. Customer will be entitled to pay applicable Tier payment amount.

## **6.8. Reasonable and Necessary Accommodations**

6.8.1. Management may take reasonable and necessary actions to accomplish the intent of this policy.

# **7. PROCEDURES**

## **7.1. Billing Process**

7.1.1. Finance Department receives monthly data file from Third Party Administrator by the 5<sup>th</sup> of each month indicating new and/or removed participants in Lifeline Plan and applicable Tier.

7.1.1.1. Finance Department calculates the amount of billing statement based on Tier and Customer usage and applies proper billing code to account.

7.1.1.2. Finance Department removes participants from Lifeline Plan as directed and changes billing code.

7.1.1.2.1. After removal from Lifeline Plan, arrearages will be handled pursuant to DWSD's Residential and Non-Residential Collection Policy

7.1.2. Billing Department removes pre-enrollment debt from Customer account.

7.1.3. Billing Department prepares statements indicating:

(a) Tier amount owed,

(b) Amount due for usage above 6 CCF, if any, and

(c) Arrearages.

7.1.4. Billing Department initiates separate billing cycle for Lifeline Plan Customers.

7.1.5. Billing Department removes prior month Lifeline Plan Arrearage if Customer pays Tier amount plus any overage for usage above 6 CCF, and applies funds available from LIHWAP, WRAP and/or other utility payment assistance programs.

7.1.5.1. When funds available have been exhausted, DWSD will notate Customer's account and handle the debt in the usual manner for uncollected residential accounts.

## **7.2. Missed Payments; Collection.**

7.2.1. If Customer misses a payment, the account will be referred to Third Party Administrator and Public Affairs for outreach.

7.2.2. If Customer misses a second consecutive payment, the account will be referred to the Third Party Administrator and Public Affairs for outreach and case management services.

- 7.2.3. Third Party Administrator notifies DWSD when Customer has not come into compliance after exhausting all case management services and that Customer should be unenrolled from the Lifeline Plan.
  - 7.2.3.1. Collections will proceed with usual process for collection of arrearages pursuant to DWSD policy.
- 7.2.4. If the Customer resolves their past due balance or enters into a payment plan after termination from Lifeline Plan, the Collections Analyst initiates a work order and updates the status of the customer in the CIS.
- 7.2.5. The Finance Department will notify the Third Party Administrator if unenrolled Customer makes consistent payments at full rate. Finance Department and Third Party Administrator will confer to determine if Customer is eligible for re-enrollment.
- 7.2.6. The Third Party Administrator will contact Customer if he/she is deemed eligible for re-enrollment.



# Detroit Water & Sewerage Department (DWSD)

## Lifeline Plan - FAQs

- **What's the difference between the Lifeline Plan and the Inclining Block Rate?**

The Detroit Water and Sewerage Department (DWSD) Lifeline Plan is Detroit's first water affordability plan that provides a fixed bill each month based on your income eligibility in one of three tiers. The Inclining Block Rate is the water usage rate based on volume, with a higher rate for water usage above the 4,500 gallons because it puts more burden on the city's water system. Customers using less than 4,500 gallons pay a lower water usage rate per gallon.

**\$18**

Your monthly water, sewer & drainage bill if household income is **at or below 135% of Federal Poverty Level (FPL)**

**\$43**

Your monthly water, sewer & drainage bill if household income is **above 135% of FPL but at or below 150% of FPL**

**\$56**

Your monthly water, sewer & drainage bill if household income is **above 150% of FPL but at or below 200% of FPL**

- **If income-eligible, when will I see the fixed rate and my past-due balance erased?**

Your residential water debt is wiped out when you are enrolled in the DWSD Lifeline Plan and will not be put back on your account in the future for any reason. However, you must make regular monthly payments at the fixed tier so you do not become subject to a service interruption. If you suffer a hardship that prevents you from making your fixed payment, Wayne Metropolitan Community Action Agency will guide you through wraparound services to get you back on track.

- **How did DWSD determine the average household size of three people?**

According to the U.S. Census, the average household size for Detroit is 2.6 people. In terms of average household size for low-income households only, DWSD is open to reviewing that data and taking it into consideration. We will continue to study census data to compare census tracts, household population, and household income.

- **How do you know the average household uses 2,300-3,000 gallons?**

According to a review of residential water usage data in Detroit, 72% of households use less than 4,500 gallons per month. For the remaining 28%, DWSD and Wayne Metro will work with them to provide plumbing repairs and other resources to reduce their monthly water usage and help get their bill to be as low as possible.

- **What if I go over 4,500 gallons?**

If you are enrolled in the DWSD Lifeline Plan and your water usage for a specific month is more than 4,500 gallons, you will be charged for the water usage at the higher rate of \$4.492 per each additional CCF (748 gallons) under the new Inclining Block Rate. For example, a household that has income at or below 135% of the poverty level is enrolled in the Lifeline Plan tier one (\$18). If they use 6,000 gallons of water in one month, the bill will be \$38.06 instead of \$18.00 (which is still substantially less than the \$100 the bill would be if not enrolled in the Lifeline Plan).

- **Why are there three tiers to the Lifeline Plan?**

DWSD created a tiered approach based on recommendations from an affordability study which is posted on the city website at [detroitmi.gov/water](http://detroitmi.gov/water). The tiered approach, versus income-based for each individual household, is the most cost effective way to manage the pilot program.

- **Why not an income-based rate structure in Detroit?**

This **is** an income-based rate structure. We assess household income and place the customer in one of three tiers.

- **What does SNAP/FAP mean?**

SNAP and FAP are the federally-funded food assistance programs, which used to be known as food stamps. SNAP/FAP enrollment is at or below 135% of the federal poverty level, though you do not need to be enrolled in SNAP/FAP in order to be eligible for the DWSD Lifeline Plan as long as you meet the income guidelines and are responsible for the water bill in your household.

- **Will Wayne Metro help me enroll in SNAP/FAP?**

Yes. As part of their wrap-around services, Wayne Metro will help you enroll through the Michigan Department of Health & Human Services (MDHHS) in SNAP/FAP, which will provide your household with added benefits. They will help customers enroll in other programs as well.

- **What does moderate income mean?**

The moderate income range is household income greater than 150% of Federal Poverty Level, but less than or equal to 200% of Federal Poverty Level. The capped payment for moderate-income customers (\$56) is based on the average of moderate household income in this range, per the water affordability study DWSD relied upon in crafting this pilot plan. For example, if your household has four people, annual income is \$56,400 or less and you are responsible for the water bill, you're eligible for one of the Lifeline Plan tiers.

- **What documents do I need to enroll in the Lifeline Plan?**

In order to start the enrollment process with Wayne Metro, you will need to provide the following:

- Photo ID — Detroit ID, State of Michigan ID or driver's license, federally-issued ID, or passport
- Social Security Card (required by federal programs)
- Current water bill
- Proof of most recent 30 days income
- Proof of income category eligibility (SNAP or FAP Food Assistance benefit letter)

- **How can I monitor my water usage so I don't go over 4,500 gallons?**

Register on the DWSD Customer Service Portal at [csportal.detroitmi.gov](https://csportal.detroitmi.gov) to access your account, view and print your bill, see real-time water usage, and pay your bill. We will also alert you when you have used 3,000 gallons of water.

- **Will residential water shutoffs resume?**

The water shutoff moratorium will end on December 31, 2022. **No Detroit resident** will face a water shutoff if enrolled in the Detroit Lifeline Plan or the 10/30/50 Plan. DWSD will continue working with Wayne Metro and coalition partners to ensure it offers eligible Detroiters the help they need. And, DWSD will provide extensive outreach for all households at risk. The moratorium can no longer continue in its current form – the unintended consequence is those who can afford to pay their water bill are choosing not to pay and therefore DWSD has seen the bill collections fall by \$40 million in 2022 which is not sustainable.

- **How long is enrollment available?**

We will continue to enroll customers until all funds have been exhausted for the program year. The Low Income Household Water Assistance Program (LIWHAP) funds must be used by September 2023. WRAP funds are replenished annually.

- **What is the long-term plan?**

The DWSD Lifeline Plan is a pilot program using currently available regional, state and federal funding. We need the support of elected officials, water advocates and community leaders to lobby the state legislature and congress for a permanent funding source, and also provide feedback on how the plan can be improved.

- **What is Wayne Metro?**

Wayne Metro is a community action agency that receives federal, state and local funding for housing, food, utility, head start and other assistance. It has been the administrator of the Water Residential Assistance Program (WRAP) since it began in March 2016.

**Apply now at**

**313-386-9727**

**[waynemetrolife.org/DWSDLifeline](https://waynemetrolife.org/DWSDLifeline)**



## **Exhibit 7**

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## DEFENDERS

# Defenders discover another Detroit riverfront business not paying bills to city

Detroit Marine Terminal has past-due bill of more than \$112,000

**Karen Drew**, Anchor/Reporter

**Derick Hutchinson**, Lead Digital Editor

Published: **March 5, 2020 at 6:28 PM**

Updated: **April 6, 2020 at 9:35 AM**

Tags: **Detroit, Wayne County, Detroit Marine Terminal, Defenders, Local 4 Defenders, Local, Paying Bills, Money, Detroit Riverfront, Karen Drew, DWSD, Detroit Water And Sewerage Department**



*The Local 4 Defenders have discovered another business along the Detroit riverfront isn't paying its bills to the city, raising serious questions about how the Detroit Water and Sewerage Department is being run.*



**DETROIT** – The Local 4 Defenders have discovered another business along the Detroit riverfront isn't paying its bills to the city, raising serious questions about how the Detroit Water and Sewerage Department is being run.

Local 4 Defender Karen Drew found an unpaid bill of more than \$112,000 for one address along the river. Residents are fuming, considering the city cracks down on them when they don't pay their bills.

The Detroit Marine Terminal is the company that owes the money to DWSD.



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**WATER AND SEWERAGE DEPARTMENT**  
Customer Care phone number: (313) 267-8000

Total Amount due by 03/02/20

**\$112,730.25**

 You have a past due balance of \$108,350.25

Account Name    DET MARINE TERM INC

Account Number    [REDACTED]



**Usage History**

The water usage history graph is not available for your account due to no water meter or no water consumption in the last 13 months

**Important Account Information**

[Download this PDF](#)

1 of 2



“It doesn’t seem right,” taxpayer Mike Noble said.

Karen showed up at the address along Jefferson Avenue to ask some questions. She was told she’s not allowed on the property at this time.

“No one here can talk about this bill?” Karen asked.

“There is no manager,” an employee said.

“Can you at least let them know we are here?” Karen asked.

“I already did,” the employee said.

How can a business run and not pay its bills? Doesn’t the city notice?

This isn’t the first time the Local 4 Defenders have uncovered unpaid DWSD bills from big businesses. **Revere Dock owed the city** more than \$35,000 in drainage fees.

“We certainly will ask to be paid if they owe us that amount,” said Gary Brown, director of the Detroit Water and Sewerage Department, back in January. “However, we found it is in dispute. We want to work with this company.”

“This company does not work with people,” Karen said. “They ignore all the citations and violations.”



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"we brought it to your attention, and at that time, no one knew this bill wasn't paid," Karen said. "How does that happen?"

"Well, we have 440,000 accounts in our billing system," Brown said.

After that sit-down interview with Brown, all interview requests with DWSD have been denied. The City Department will only issue statements to the Defenders.

In reference to the \$112,000 unpaid bill, DWSD issued the following statement:

*"While the accounts are in dispute and until a site assessment by our stormwater engineers occurs, DWSD will not pursue collection actions on the accounts though they are responsible for the bills until proven otherwise during the dispute process."*

"It's unfair to everyone in Detroit who pays their bill on time, and I think they should go ahead and pay it," taxpayer Crystal Pruiett said. "That's tax dollars we could be using."

Local 4 called Detroit Marine Terminal and hasn't heard back.

The Defenders also discovered a \$1,800 unpaid bill to DWSD from Waterfront Terminal Holdings.

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#### ABOUT THE AUTHORS:



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Karen Drew is the anchor of Local 4 News First at 4, weekdays at 4 p.m. and 5:30 p.m. She is also an award-winning investigative reporter.

[✉ email](#)



##### Derick Hutchinson

Derick is the Lead Digital Editor for ClickOnDetroit and has been with Local 4 News since April 2013. Derick specializes in breaking news, crime and local sports.

[✉ email](#)

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# Millions of Americans Are In Water Debt



Circle of Blue · A Circle of Blue Investigation: Water Debt

August 5, 2020

By Brett Walton  
Circle of Blue

Margurite McNeill, a Black woman who is 83, lives in a brick-sided, two-story house in Northwest Baltimore that her husband bought a half century ago.

Soft spoken and composed, McNeill recalled changes in the neighborhood. Older neighbors dying, younger people moving in. In the city as a whole, more gun violence and killings. Some of the early stability seemed to be slipping away. “It’s just, everything’s just, different everything,” she said.

Except her water bill until very recently. McNeill never thought much about the utility payment, which was typically about \$40 a month. She receives about \$1,000 a month from Social Security, and her grandson helps out with finances when needed.

Then two years ago McNeill, for unknown reasons, did

not receive a water bill. That lasted for about six months. Around the same time a pipe inside the house sprung a leak that eventually put a hole in the ceiling and rumbled the living room wall. Combined, the billing error and leak proved disastrous.



Margurite McNeill, right, stands with Robin Jacobs, the Maryland Legal Aid attorney who is helping her interact with the Baltimore Department of Public Works over a water bill debt. In the background is City Hall. © Brett Walton / Circle of Blue

Everything got different in a hurry. The next water bill that arrived was for \$4,000.

“I almost had a fit,” McNeill told Circle of Blue. “Where am I going to get \$4,000 from?”

Ayana Pope, who has lived in Detroit for all of her 44 years, had a similar experience. She moved into her current place on the east side of the city in 2019.

Twelve family members live in the house: her dad and her kids, plus her grandchildren.

Having so many people at home increases water use. A leak didn’t help. Pope soon found herself several hundred dollars behind on her water payments that year. The water was shut off twice since.

Pope received \$421 from  
The Human Utility, a





charity, to help with her debt. The water is on now after she paid off about \$700 in past-due balances in June, she said. The leak is under control but the external pressures remain. “They keep raising the prices, and people with low incomes, it puts them in a bad predicament,” Pope told Circle of Blue. “I know people who went one and a half years without water. That’s crazy.”

McNeill and Pope are two of the millions of Americans who are in debt to municipal water departments. More than 1.5 million households in a dozen major U.S. cities with publicly operated water utilities owe \$1.1 billion in past-due water bills, according to a Circle of Blue investigation. Businesses, industries, and other commercial operations in those cities owed another \$416 million.

Most Americans give little thought to water bills, paying them on time and in full. But for a subset of homeowners and renters, water debt is constant and menacing. The burden is an extension of two notable national trends: the [rising cost of water service](#) and the general precarity of those at the bottom of the economic pecking order. A missed bill or faulty plumbing can spell financial doom.

In Margurite McNeill’s case it was a pipe leak. In other instances deepening water debt amassed gradually, as part of the monthly grind to make ends meet on poverty wages.

However it accumulated, water debt has serious and potentially long-lasting consequences. It can result in

the water department shutting off water to the home. Utilities tack on fees for late payments. To make a claim on payment, some cities use tax liens on the property, a collection method that adds additional fees and can result in foreclosure or the inability to take out a loan for home repairs.

“It makes poor people poorer,” Maria Quiñones-Sánchez, a four-term member of the Philadelphia City Council, told Circle of Blue about the effect of water debt.

Water debt has become so pervasive that The Human Utility raises money to pay overdue bills for people in Baltimore and Detroit. Some utilities have bill assistance programs funded by ratepayer revenue, but others solicit private donations to fund the programs.

City councils and mayoral administrations in Baltimore, Chicago, and Philadelphia go a step further. They ordered their water departments to provide indebted, low-income residents with a path toward clearing out their arrears. The legislation in Philadelphia, which was sponsored by Quiñones-Sánchez, established a [novel water-billing system](#) for people near the poverty line. For those enrolled in the program, their water bill is set as a percentage of their income, between 2 and 4 percent. The goal is an affordable bill that prevents debt from accumulating in the first place. Baltimore will soon mimic that system on the orders of its Council.

Rosazlia Grillier, an activist in Chicago, helped spearhead a campaign in her hometown for debt relief and affordable bills. Other goals in this movement include customer service that does not look down upon people, less cumbersome paperwork in applying for assistance, and plumbing retrofits to fix leaks and reduce water use for low-income households. She said these steps are necessary to level the playing field for

those at the bottom, especially as the Covid-19 pandemic threatens to undo a decade of economic gains.

“You can’t get blood from a turnip and there’s only so much you can take from people who already don’t have,” said Grillier, co-chair emeritus with COFI POWER-PAC Illinois, an anti-poverty group. “We really need to look at creating systems where the city is sustaining itself and not causing harm to other human beings.”





Rosalia Grillier, co chair emeritus with COFI POWER-PAC Illinois, an anti-poverty group, helped spearhead a campaign in her hometown of Chicago for debt relief and affordable bills. Grillier says that expenses such as water bills all add up for people struggling to make ends meet, especially during the pandemic. The city's new assistance program will help to alleviate some of the crushing financial challenges that residents face by reducing bills and providing debt relief.

Photo © Alex Garcia / Circle of Blue

## Debt Burdens

Water shutoffs in the United States gained public notoriety in 2014 after a mass disconnection operation in Detroit that stemmed from the city's bankruptcy proceedings. City contractors turned off water to about 30,000 homes that year, prompting an outcry that reached the United Nations.

Less visible but no less important are the financial accounts that underpin the shutoffs. The debt that households accumulate puts them at risk of having their water turned off. Yet debt is a blind spot in the debate about water affordability.



Despite being a crucial component of household financial insecurity and water access, water debt is largely unexamined by researchers and policymakers.

Despite being a crucial component of household financial insecurity and water access, water debt is largely unexamined by researchers and policymakers.

“We know so little about this question,” Manny Teodoro, a public policy scholar at Texas A&M University who focuses on water utilities, told Circle of Blue. Teodoro could not recall any academic assessments of customer water debt and said there are no answers for basic questions. “We should know at a minimum what the scope is.”

To better understand the depth and breadth of the problem, Circle of Blue launched the most extensive investigation of water debt and its consequences ever conducted by a news organization in the United States. We spent eight months examining financial data related to customer debt that Circle of Blue requested from water departments in 12 large U.S. cities. The selections were not a random sample. The cities — Atlanta, Chicago, Cleveland, Denver, Detroit, Houston, Los Angeles, Philadelphia, San Antonio, San Francisco, Seattle, and Washington, D.C. — were chosen because they represent a cross-section of America, a mix of geographies, demographics, population sizes, and wealth.

Those data included unpaid bills owed by residential and nonresidential customers; the number of past-due residential and nonresidential accounts; the median past-due balance per account; how long those debts have been outstanding; and debt burdens by ZIP code.

Circle of Blue’s analysis was challenging for several reasons. First, data on debt reflected a point in time, but not the same point for all utilities. Five utilities reported their data from June 30, 2019, the end of their fiscal year. The most recent figures, from Houston, were from



May 1, 2020.

Second, some utilities bill for water only, others for water and sewer, and still others include charges for services like garbage collection and stormwater. The debt to the utility reflects all the services for which it bills, even though enforcement generally is the responsibility of the water department. Garbage collectors are not cutting off trash pickup.

Another complication: debt levels are always in flux as some people pay up and others fall behind. Data from Atlanta shows that the Department of Watershed Management collected 99.8 percent of billed revenue in fiscal year 2019, but just 96 percent of billed revenue in 2018. The year before, in 2017, the department pulled in 102.1 percent of billed revenue, meaning that people paid off debts that had accumulated in previous years. Collection rates nationwide are, on average, between 99.5 percent and 97 percent, according to several utility analysts.

Despite the formidable challenges Circle of Blue found striking results. Residential water debt ranged from \$341 million in Chicago to only \$568,427 in San Francisco. The median residential debt for the eight cities that reported that figure ranged from \$79.27 in Denver, to \$216.58 in Seattle, to \$415.13 in Detroit, to \$662.80 in Philadelphia.

Some household debts included in the totals are miniscule and unlikely to be problematic — about 7 percent of the 46,134 past-due residential accounts in Atlanta, for instance, owed \$20 or less. The same lack of concern is the perspective of



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“Once you get into a situation where your water bill skyrockets, it’s very hard to get out of that situation.”

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some utilities with low residential debt. The \$3.2 million in past-due residential balances in Denver, “have not been a significant issue” and are not factored into rate setting, Todd Hartman, a Denver Water spokesperson, told Circle of Blue.

But too many poor families have debts that reach into the thousands of dollars. Such sums represent crippling financial weights, according to Margaret Henn, director of program management at Maryland Volunteer Lawyers Service, which provides pro bono legal assistance to low-income residents and is frequently involved in housing and utility disputes. Debt can be a self-reinforcing cycle, she said.

“Once you get into a situation where your water bill skyrockets, it’s very hard to get out of that situation,” Henn told Circle of Blue.





Much of America's drinking water infrastructure is a result of investments made in the previous century. Jardine Water Purification Plant, which began operation in 1964, is the backbone of Chicago's drinking water system. Photo © Alex Garcia / Circle of Blue

## Times Change

When the McNeills moved into their home in Baltimore in the early 1970s the city and country were in different places than today. Baltimore's population was 45 percent larger, and it was one of the country's 10 most populous cities. The U.S. Environmental Protection Agency, then in its infancy, rolled out a grant program that ended up providing \$60 billion to modernize the country's wastewater treatment plants. Roughly the same amount of money each year in that decade went to operating and maintaining water systems as was spent on construction. Water was relatively cheap compared to electric power, heating oil, and gasoline,



which were inflated during the oil embargo. Customer water debt, by and large, was not a headline issue for utilities.

That dynamic is changing.

Water rates have soared in recent years as the bill for outdated infrastructure has come due.

Maintenance of existing assets has [grown more](#)

[costly](#) — now more than

2.5 times what is spent on construction. Federal support for water infrastructure, though, has declined steadily in the last four decades as Congress replaced the construction grants programs with low-interest loans.

Industry leaders are starting to recognize water affordability and customer debt as pervasive problems.

The American Water Works Association is the water sector's largest lobby group. Each year it publishes a report on the state of the industry based on survey responses from water managers and other professionals. For the [2019 report](#), AWWA posed a question for the first time about customer debt.

“In your opinion, is nonpayment of bills a problem for your utility?” the AWWA survey asked. Of the 761 respondents, about 6 percent said that nonpayment was a significant problem. Half, mostly in the Northeast and Southeast, said it was a moderate problem. Risk factors include declining populations, high poverty rates, leaky sewage systems, aging water distribution pipes, infrastructure that was built for a larger city, and expensive water.

City ratepayers are the ones picking up the tab for that expensive water. In Baltimore, which is under a \$1.6



Water rates have soared in recent years as the bill for outdated infrastructure has come due.

billion federal consent decree to fix its sewer system, water prices more than doubled in the last decade. In Las Vegas, Tucson, and San Francisco, prices have also more than doubled. In other cities, poor management of municipal finances has intruded into water bills. Chicago, which had already raised its rates to accelerate the replacement of water distribution pipes, added a bill surcharge in 2017 that goes toward plugging holes in its pension fund. Stories like these are repeated in city after city.

“We’ve seen more concerns expressed about trying to figure out ways to ensure that people have the service and can afford the service,” Doug Scott, a water utility analyst at Fitch Ratings, told Circle of Blue.

Utilities are caught in a bind because of an inherent tension in their operating model. They provide an essential public service —

delivering water, removing waste — yet they are expected to function as a business, generating enough revenue to cover costs and invest for the future.

It’s a group effort: utilities rely on customer payments to keep the system operating. The more people who fall behind on their bills, the greater the pressure on the others. If too many people do not pay, there can be a downward spiral in service and reliability. Utilities could see their credit rating downgraded, which increases the cost of borrowing.



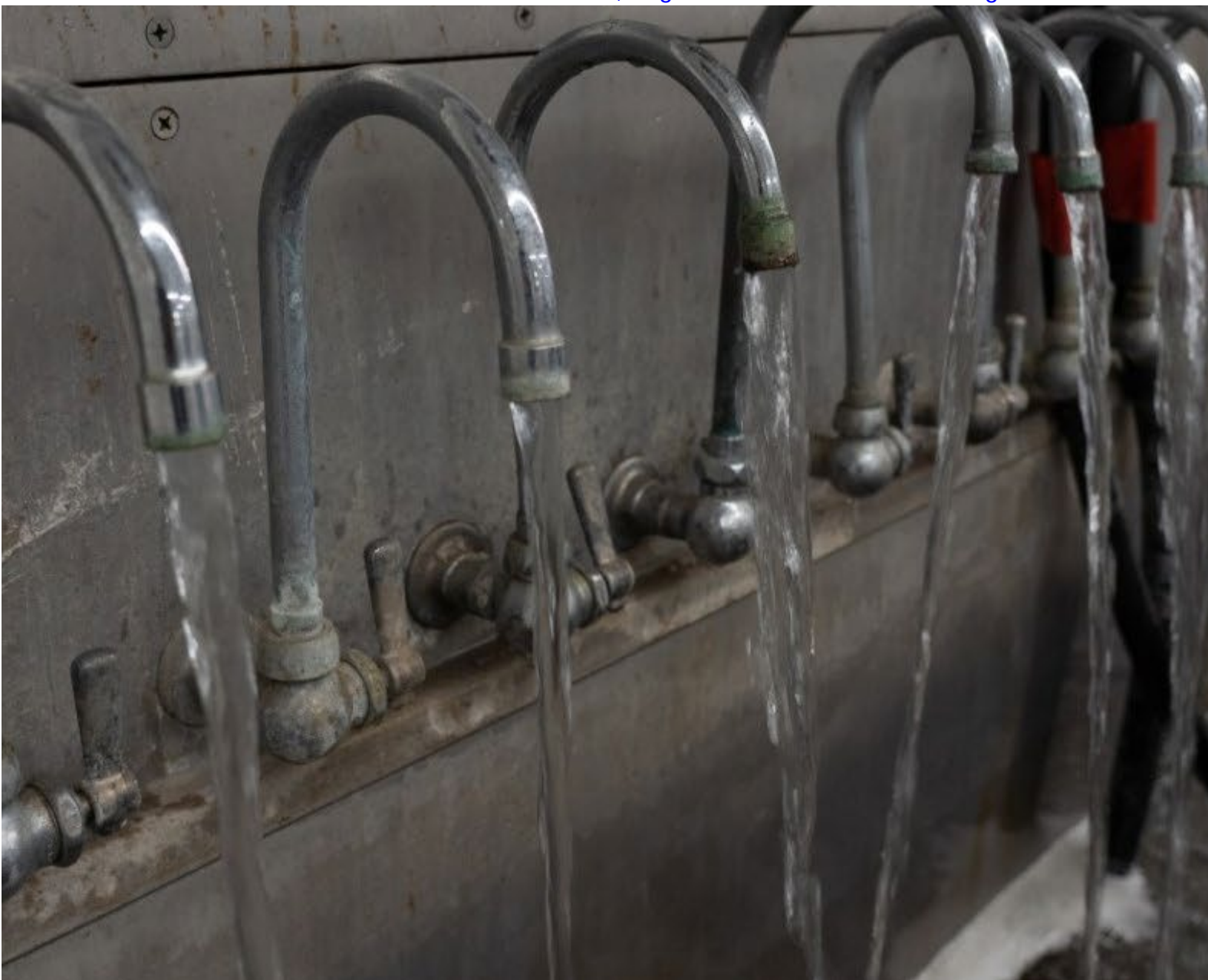
Poor management of municipal finances has intruded into water bills. Chicago, which had already raised its rates to accelerate the replacement of water distribution pipes, added a bill surcharge in 2017 that goes toward plugging holes in its pension fund.

“Once you have a high amount of customers not paying their bills it puts a burden on the entire system,” Mohamed Balla, deputy commissioner of finance at the Atlanta Department of Watershed Management, told Circle of Blue.

Utilities are also in a bind because of a data deficiency: few water providers know the financial circumstances of the people who are in debt. Are they poor people who cannot afford the service? Are they wealthier folks who are simply forgetful or negligent? Did they move away and fail to notify the department? When Philadelphia started its income-based billing system in 2017, water department officials said it was the first time they were getting detailed financial information about their customers.

A portion of Atlanta’s debts, as in other cities, are connected to wealthier home owners. ZIP code-level data from Detroit and Houston shows debt spread across poor, middle-income, and richer areas. Researchers from the Pacific Institute found a similar relationship in a different data set. They [looked at U.S. Census Bureau data](#) and found that wealthier households received utility shutoff notices at the same rate as low-income households, suggesting that people who are behind on bills are not all poor. Some are merely forgetful or oblivious, which is why utilities argue that the threat of a shutoff is a necessary tool to compel payment.





In Chicago's Jardine Water Purification Plant, a bank of faucets releases water from various points in the system. Photo © Alex Garcia / Circle of Blue

## Difficult Path Out of Water

# Debt

Within the data there are stories of chronic struggle and complex lives, of frustration and endurance. For people who live in poverty, water debt stories tend to be that way.

Near the Russell Woods neighborhood in Detroit, Rebecca Fritz is a single mother with four children at home under the age of 13. She came into her home seven years ago as a squatter, fleeing an abusive relationship.

When she moved into the empty home, the pipes were busted and water was running across the floor. Because the home had been vacant, she didn't receive a water bill for three years. She didn't want to notify the water department because she was broke.

The water department found out in 2015 when social services came to the house to check whether water was running and the bill was being paid. After that visit, the water department installed a meter. Initially, the bill was about \$100 a month, said Fritz, who eventually earned the title to the home. Then it rose to \$300, which was more than she could handle. "I went from getting it for free, which was based on my income because I didn't have any, to it being a decent amount that I could afford to pay. Then it just skyrocketed to the point where I went straight into shutoff," she told Circle of Blue.

Fritz's water was turned off once in 2018 and twice in 2019. At that point she had enough. Because she couldn't afford it, she decided to stop paying the water bill. When workers came during a blizzard in November 2019 to turn off the water again, she sat on the valve and refused them access. "I don't mess around," she said. "Water is life."

After they left, Fritz bought insulating foam from a hardware store and sprayed it into the valve. The foam blocks access to the valve for workers who would turn off water. Water remains on, but Fritz still refuses to pay.

“I don’t want to be held liable for any of that,” Fritz said, referring to her past-due balance, which is now about \$1,600. She is not against paying a little bit for water, but thinks the amount charged is unjust. “I would like to be on an affordable plan. I’m willing to pay \$100 a month or whatever but I’m

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“I would like to be on an affordable plan. I’m willing to pay \$100 a month or whatever but I’m on welfare, and there’s no way that I can afford to keep going on a vicious circle.”

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on welfare, and there’s no way that I can afford to keep going on a vicious circle.”

This willingness to pay something, even for those making little money, was a common refrain. Fritz in Detroit; McNeill in Baltimore; Grillier, the organizer in Chicago, all said the same thing. They will pay for water, but will not pay so much that it causes them financial distress. Legal advocates who help low-income clients navigate utility aid programs said this is what they hear, too.

“People want to pay their bills if you can just work with them on the affordability,” said Robin Jacobs, a staff attorney at Maryland Legal Aid who works with clients on housing and utility. “But if it’s not affordable and you’re not willing to work with them on making an arrangement that works for them. They don’t have the resources and the money’s not going to be paid.”





Rebecca Fritz's water was turned off once in 2018 and twice in 2019. Fritz has four children at home under the age of 13. When workers came during a blizzard in November 2019 to turn off the water again, she sat on the valve and refused them access. "I don't mess around," she said. "Water is life." Photo © Carl Ganter / Circle of Blue

# Covid Complications

More people might soon find themselves in that situation.

The data on customer debt were requested and collected, by and large, before the coronavirus pandemic. Since state-mandated lockdowns began in mid-March, financial circumstances for tens of millions of Americans have been upended. The unemployment rate was 11.1 percent in June, and at least 1 million people filed for unemployment insurance in each of the last 19 weeks.

Seeing the economic carnage unfolding, many water utilities, regulators, and governors moved in March and April to shield customers from immediate financial disaster. Most utilities stopped shutting off water for unpaid bills and they suspended the fees they charge for late payment. They offered extended repayment terms for people in debt, giving them more months to pay off their bills.

Congress, acting with unusual speed and decisiveness, boosted the earnings of laid-off workers by increasing unemployment benefits by \$600 per week and distributing \$1,200 per adult for individuals whose income was less than \$99,000, and \$500 per child under 17 years old — or up to \$3,400 for a family of four.

The assistance and payment moratoriums were designed to be temporary, meant to last for the duration of the public health emergency. Now that states are reopening, the repayment rules are under review.



Gretchen Whitmer, the governor of Michigan, extended the moratorium in her state through the end of 2020. But in other jurisdictions, prohibitions on shutoffs and late fees have started to be withdrawn. The \$600 increase in weekly unemployment insurance expired at the end of July. Water bills that went unpaid in April, May, and June [will eventually come due](#).

The upshot is that customer debt levels are likely worse now than they were before the pandemic, said Greg Pierce, who researches water access and affordability as the associate director of the UCLA Luskin Center for Innovation.

“Absolutely, yes,” Pierce told Circle of Blue. “There is no way to envision it not being a bigger problem than before.”

John Mastracchio, a vice president at the water consulting firm Raftelis, also sees it that way. Mastracchio led a [financial analysis](#) of the impact of the pandemic on water utilities. His conclusion is that more people will be unable to pay their bills.

“We’re expecting a significant uptick in write-offs,” Mastracchio told Circle of Blue. How much of an uptick? The report estimated that 6 percent of billed revenue will not be paid. That average figure is based on rising unemployment and the moral hazard of some people who can afford to pay taking advantage of prohibitions on shutoffs and fees. The figure is also informed by experience in Seattle, which saw a rise in nonpayment from 1.5 percent to 5 percent in 2016-17, when Seattle Public Utilities suspended shutoffs while it switched to a new billing system.

It’s clear that more people are struggling. The United Way of Greater Houston, which covers four counties in the metro area, told Circle of Blue that 6,096 people called its 211 helpline between March 1 and July 22

asking for water bill assistance, a 35 percent increase over the same time period in 2019.



Contractors for Houston Public Works work on a wastewater and drainage project in the Greater Eastwood neighborhood. Pipe repairs are a significant cost for water utilities and contribute to an increase in water and sewer rates. Photo © Elizabeth Conley / Circle of Blue



## Where Does Aid Come From?

The pandemic has resurfaced a debate that simmered in Congress for the last five years: what is the federal role for aiding individuals with their water bills?

Utility representatives, witnessing municipal and state budget shortfalls amid a cratering of tax revenue, are certainly in favor of federal support.

Sophia Skoda, the chief financial officer for East Bay Municipal Utility District, in California, said that Congress needs “to step up to its responsibility” to ensure that water and sewer service is affordable for all people.

“People are struggling to have a roof over their head,” Skoda said. “One more cost is pushing people into deeper debt and stress.”

House Democrats have shown the most consistent support in Congress for water bill assistance. They included \$1.5 billion for that purpose in the Heroes Act, which the House passed in May. Senate Republicans offered \$1.5 billion for energy bill assistance, but nothing for water.

Rep. Dan Kildee, a Democrat who represents Michigan’s Fifth District, told Circle of Blue that he supports a two-pronged approach. In the near-term, to

prevent water shutoffs during the pandemic he suggested using the State Revolving Funds — two low-interest loan funds for water and sewer infrastructure — to channel money to utilities. The money would replace revenue from customers who are late on their bills, to cover their debts. The benefit to using the revolving funds as the distribution mechanism, Kildee said, is that the administrative structure is already in place.

In the longer-term, Kildee wants federal aid for water bills akin to the federal program for energy bills that Congress established in 1981. The Low-Income Home Energy Assistance Program provided \$3.7 billion in 2020 for household heating and cooling costs and for energy-efficient repairs. Congress added \$900 million to the program in the CARES Act, which was signed into law on March 27, 2020.

“Congress needs to act to make water more affordable for people,” Kildee wrote in a statement. “Access to clean drinking is a human right. In the richest country in the world, too many people in America do not have access to affordable and clean drinking water. Since states are not stepping up to provide affordable clean drinking water, the federal government must act.”

Utilities, where they can, are filling some of that gap. The standard practice is through customer assistance programs that provide discounted rates for elderly and low-income residents.

Some go several steps farther. Houston Public Works has an alert system that notifies customers about spikes in water use that might be connected to a leak. The department also participated in a National League of Cities pilot program that provided financial coaching to low-income residents. Program participants were more likely to pay bills on time. Atlanta’s Care and Conserve Program provides not only financial

assistance but also plumbing repairs for low-income households. The idea is to “get the customer back in good payment standing with a bill that is predictable, manageable and is paid on time,” Balla said.

The problem is that many of these assistance programs reach only a small portion of the people who are eligible.

The Baltimore Department of Public Works is another utility that allows for senior discounts and bill adjustments if the customer can prove the leak and show evidence of repairs.

Robin Jacobs, the attorney with Maryland Legal Aid who is guiding Margurite McNeill through the paperwork gauntlet, described the process as “difficult to understand” because the department has changed it so frequently.

“Finding out exactly what is happening is even difficult for me as an attorney,” Jacobs said.

Jacobs’ intervention convinced the department to cut \$2,400 from the \$4,000 debt, and she arranged for a \$200 monthly payment plan, which will take care of the balance.

For now, McNeill is making do with payments that are stabilized, but higher than what she was used to. Unlike many in her situation, she had a lawyer to help sort out the mess. Her water debt is diminished, but remains a weight. Once Baltimore enacts its forgiveness plan, possibly by next summer, McNeill and others in the city like her will have a less financially arduous path to eliminating their debts.

Until then, McNeill is resolute, committed to squaring her accounts.

“I try to pay everything I’m supposed to pay,” she said.

*Editor's note: This story was updated on August 5, 2020, after receiving data from the Philadelphia Water Revenue Bureau.*



Rebecca Fritz opens her past-due bill from the City of Detroit Water and Sewerage Department.

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**Photography:**

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## Brett Walton

Brett writes about agriculture, energy, infrastructure, and the politics and economics of water in the United States. He also writes the [Federal Water Tap](#), Circle of Blue's weekly digest of U.S. government water news. He is the winner of two Society of Environmental Journalists reporting awards, one of the top honors in American environmental journalism: [first place for explanatory reporting for a series on septic system pollution in the United States](#) (2016) and third place for beat reporting in a small market (2014). He received the Sierra Club's Distinguished Service Award in 2018. Brett lives in Seattle, where he hikes the mountains and bakes pies. [Contact Brett Walton](#)

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## **Exhibit 9**

Excerpt from Food & Water Watch

States adopting bill affordability programs see a dramatic improvement in the bill payment coverage ratios of their low-income customers. For example, consider the Apprise, Inc. evaluation of the New Jersey Universal Service Fund. That Apprise report shows the following for gas or electric customers (target affordable bill burden of 3%):

Table 14. Distribution of Effective Coverage Rate by Net Energy Burden (gas or electric: 3%) New Jersey Universal Service Fund ("USF")				
Burden	Coverage Rate			
	< 50%	50% - <90%	90% - <100%	100% or more
<2%	0.0%	2.7%	5.3%	92.0%
2% - 3%	0.0%	6.0%	11.5%	82.5%
3% - 4%	0.0%	10.0%	13.2%	76.9%
4% - 6%	0.0%	11.6%	16.6%	71.6%
6% - 8%	0.4%	16.6%	17.4%	65.6%
More than 8%	1.0%	25.6%	16.1%	57.4%

As can be seen in the Table above, so long as the bill burden remained in the target range in New Jersey (3% or lower), from 94% ( $11.5\% + 82.5\% = 94\%$ ) to 97% ( $5.3\% + 92.0\% = 97.3\%$ ) of the low-income customers generated a bill payment coverage ratio over 90% (i.e., paid more than 90% of their bills). Indeed, between 83% and 92% of low-income program participants had a bill payment coverage ratio of 100% or more.

Similar results have arisen from the Pennsylvania low-income affordability programs. Each year, the Pennsylvania PUC's Bureau of Consumer Services ("BCS") collects and reports data on the performance of the state's "universal service" programs. The data collection allows policy-makers and utility service providers to compare the performance of low-income residential customers participating in the low-income bill affordability programs of Pennsylvania utilities (called Customer Assistance Programs, or "CAPs") to the performance of "confirmed low-income" customers in general. In 2013 (the most recent year for which data is available), Pennsylvania utilities had 1.046 million confirmed low-income customer accounts statewide.<sup>64</sup> The confirmed low-income accounts were heavily payment-troubled. Fifteen percent of these confirmed low-income customers had been disconnected for nonpayment in 2013, of which only 72% were reconnected. More than 22% of all confirmed low-income accounts were in debt, with those confirmed low-income customers having an average monthly arrears of \$656. Of those confirmed low-income accounts in arrears, fewer than half were on payment agreements.

<sup>64</sup> Pennsylvania utilities had an *estimated* 1,987,364 number of low-income customer accounts. Accordingly, the utilities had "confirmed" roughly 53% of their estimated number of low-income accounts. Given that these numbers include both gas and electric utilities, however, it cannot be concluded that these numbers reflect "households." Some accounts may be counted twice, once by the electric utility and again by the natural gas utility.

In contrast to these payment difficulties for confirmed low-income customers, the participants in the low-income CAP programs had an average payment coverage ratio of 86%. Through their affordability programs, in other words, Pennsylvania's utilities took extremely payment-troubled confirmed low-income customers and structured a response where the utilities were receiving nearly \$9 of every \$10 billed.

Public Service Company of Colorado ("PSCO") also experienced a dramatic increase in the payment coverage of its low-income program participants. The impact of the Colorado low-income program can be seen in the graph of payment coverage ratios (i.e., customer payments / billed revenue = payment coverage ratio) presented immediately below. PSCO's bill affordability program participants substantially out-performed those PSCO low-income customers who received LIHEAP –called "LEAP" in Colorado--<sup>65</sup> but who did not participate in the bill affordability program.

As can be seen in the Figure below, by the end of the program pilot, the payment coverage ratio of participants in PSCO's low-income bill affordability program (83%) was nearly 30% higher than the payment coverage ratio of low-income customers *not* participating in the program (55%). Moreover, the cumulative payment coverage ratio of program participants was increasing throughout the term of the pilot. PSCO has since expanded its program to a full-blown low-income affordability program.

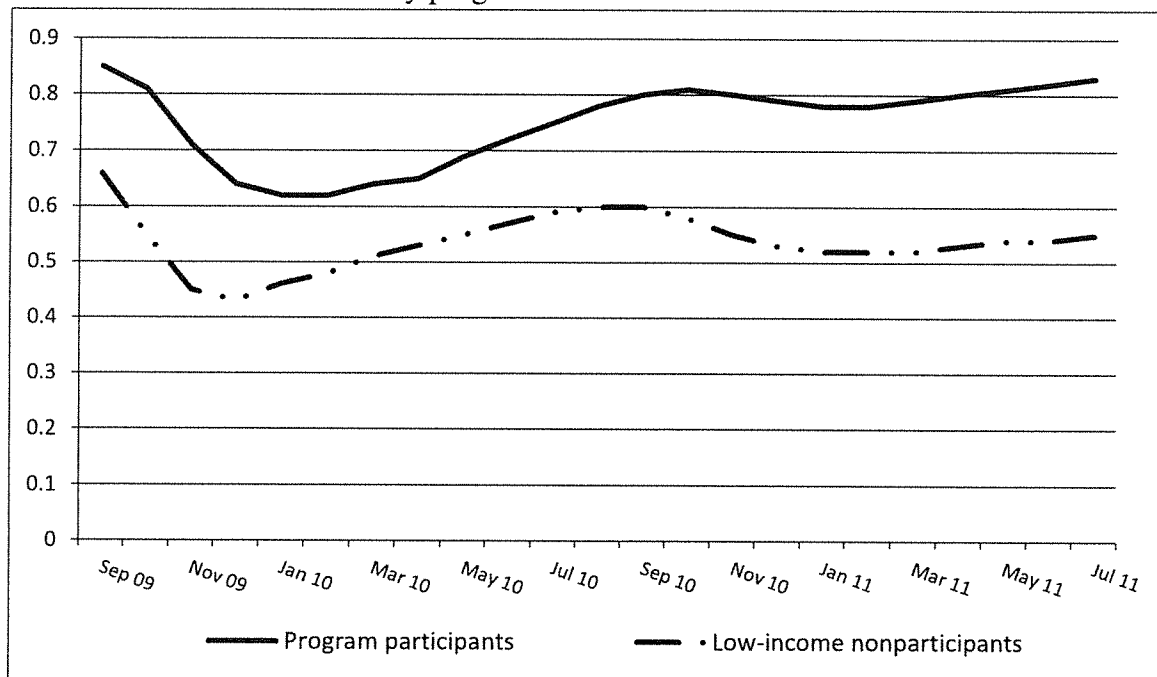


Figure 5. Cumulative Customer Payment Coverage Ratio for PSCO Low-Income Affordability Program Participants compared to Low-Income Non-Participants

<sup>65</sup> Both "LIHEAP" (Low-Income Home Energy Assistance Program) and "LEAP" (Low-income Energy Assistance Program) refer to the federal energy assistance program in the United States.

A universal finding of programs offering affordable bills has been that low-income customers increase their payment coverage ratios. In contrast to the ongoing and substantial nonpayment problems faced by Baltimore's water and wastewater utilities, rate affordability participants tend to pay their bills. While, as discussed above, Baltimore does not track the payments received from its residential customers, let alone the payment difficulties of individual customers, the payment outcomes discussed above stand in sharp contrast to the increasing receivables (whether grouped as active or inactive assets) for service billings from the Baltimore water and wastewater utilities in recent years.

### **B. Increased "Net Back."**

A not-surprising corollary to the increased bill payment coverage ratio of bill affordability program participants is an increase in the "net back" experienced by the utilities offering affordable low-income rates. Stated conceptually, it is better for a utility to collect 90% of a \$70 bill ( $\$70 \times 0.90 = \$63$ ) than it is for that utility to collect 60% of a \$100 bill ( $\$100 \times 0.60 = \$60$ ). Under an affordable bill plan, in other words, even though a portion of the bill is discounted, the extent to which payments increase is such that total revenue goes up. This increase in revenue is accompanied by a decrease in the cost of collecting that revenue.

"Net back" is a common metric in measuring the cost-effectiveness of collecting revenue. One collection professional described "net back" as follows:

The second and most important way to determine the true value of a collection agency is to calculate its Net Back figure and compare it with those of other collection agencies. Collection agencies charge for their services in different ways, but the end result is usually a single fixed rate or a variable contingency rate that is charged as a percentage of recoveries: a commission.

Because some collection agencies are more effective than others, the rate of recovery must also be considered in determining the true value. When you consider both an agency's commission rate and its recovery rate, you can arrive at a figure for comparison, the Net Back figure.<sup>66</sup>

The "net back" criterion focuses on whether a utility offering affordable bills experiences an increase in net revenues if customer bills are paid in a more complete fashion as a result of the affordable bill. While generally viewed as a measure of cost-effectiveness, in fact, "net back"

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<sup>66</sup> Statewide Credit Association, Inc. (January 12, 2012).

<http://www.statewidecredit.net/ProductsServices/TheNetBackConcept/tabid/87/Default.aspx>

combines "effectiveness" and "cost-effectiveness" into one comprehensive evaluation criterion. It provides not only a measurement of the effectiveness of the low-income programs (through the "payment coverage ratio" measure), it also provides a measurement of the cost of the program. By combining the two measurements into one criterion, "net back" provides for a balancing of both factors (effectiveness of the programs on the one hand and costs of the programs on the other hand).

An increased net back impact has been found for both the Colorado and Indiana low-income bill affordability programs. In assessing the impact of improved customer payment performance on total revenue, the Colorado evaluation reported that the PSCO program "generated a revenue neutrality when PEAP participants were compared to other low-income customers, but not when compared to the residential population as a whole." It went on to say:

The lesson learned from [the PSCO data] is that PEAP generates a sufficiently substantial improvement in payment coverage ratios relative to the low-income (nonparticipant) population to more than offset the discount provided. To the extent that the low-income customers have a prior history of non-payment, the revenue neutrality will be somewhat (but not substantially) greater. However, because the payment coverage ratios of the residential population as a whole are higher with which to begin, the revenue that is being "lost" to nonpayment in the absence of the discount is smaller, and the increase in payment coverage ratios is insufficiently large to offset the effects of the discount.<sup>67</sup>

The same results were found for Indiana's low-income programs. A 2007 evaluation of the Citizen Gas and Coke Utility ("CGCU") low-income program (called the Universal Service Program or "USP") found:<sup>68</sup>

Customers that participated in the Citizens Gas USP made substantively greater payments than did that company's nonparticipant population. Over the months of January through March 2007, USP participants paid 79% of their current utility bill. While billed \$273,627 during those winter months, the USP participants paid \$215,897. In contrast, the Citizen Gas *non*participants paid only 64% of their January through March billings. While billed \$304,072, these customers paid \$194,577. As can be seen, the USP was better than revenue neutral to Citizens

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<sup>67</sup> Colton (2012). *Public Service Company of Colorado's (PSCo) Pilot Energy Assistance Program (PEAP) and Electric Assistance Program (EAP): 2011 Final Evaluation Report*, prepared for Public Service Company of Colorado: Denver (CO).

<sup>68</sup> All dollar figures presented in this analysis, unless other explicitly noted to the contrary, are associated with the sample population and not the total population.

Gas. While USP participants were billed 90% of what nonparticipants were billed, they paid 111% what nonparticipants paid.

The revenue neutrality can be seen from a different perspective as well. Had USP nonparticipants paid at the same rate as USP participants did, they would have paid \$240,216, nearly \$46,000 more than they actually paid.<sup>69</sup>

As in the Colorado program, in other words, in Indiana, the increased payment performance was more than sufficient to offset the billing discount. As a result of the low-income discount, total revenues to the utility actually increased.

At the same time revenues were found to be increasing, the costs of collecting those revenues were found to be decreasing. Looking at the cost of PSCO's most common collection activity (issuing notices of disconnection for nonpayment), the company's cost of collection from program participants was more than 65% less than the company's cost of collection from program non-participants.<sup>70</sup> The benefits of the increase in revenue are even further enhanced when these decreased expenses are also taken into account.

The cost of collection decreases because of improvements in the relative efficiency and effectiveness of collection activities for the participant customer populations relative to the non-participant population. Stated quite simply, because of the affordability program, PSCO had to work less hard to collect revenue from program participants than it did to collect revenue from non-participants.

This assessment of expense savings could well be important in the event that the "revenue analysis" presented above determines that the low-income affordability program does not generate revenue neutrality for the utility. In circumstances where there is not revenue neutrality, in other words, the expense savings nonetheless might still make the "net back" positive even if the revenue neutrality is not.<sup>71</sup> For PSCO, however, since the program was revenue neutral with which to begin, the expense savings from DNP notices further expanded the overall financial benefit to the utility when program participants were compared to program non-participants.

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<sup>69</sup> Colton (2007). *An Outcome Evaluation of Indiana's Low-Income Bill affordability programs*, prepared for Citizens Gas and Coke Utility, Vectren Energy, and Northern Indiana Public Service Company.

<sup>70</sup> The PSCO evaluation found that under this analysis, the actual cost of each individual collection activity is less important. If, for example, only a \$0.50 "incremental" cost were used, while the absolute dollar savings would be less, the "percent savings" would remain identical.

<sup>71</sup> If for example, there is a \$20 loss of revenue, but a \$22 decrease in costs, the "net back" would still be a positive \$2.



Overall, as a result of an affordable bill program directed toward low-income customers, Baltimore's water and wastewater utilities could be expected not only to collect more money, but could be expected to spend less in the process of collection in so doing.

### **C. Increased Efficiency / Productivity of Collection Efforts.**

A bill affordability program offered by the City of Baltimore could be expected to increase the productivity of utility collection efforts directed toward low-income customers. Improvements in the productivity of collection activities can occur in either of two ways:

- The need for collection interventions can be reduced thus allowing an increased payment per each collection intervention performed. In this first instance, improvement can be seen even if total dollars collected remains the same (but the number of interventions needed to generate those dollars decreases); or
- The customer response to the collection activity can improve thus allowing an increased payment per each collection intervention performed. In this second instance, improvement can be seen if the total number of collections activities remains the same (but the amount of dollars generated by those activities increases).

The metrics used to measure collection efficiency and productivity are two-fold:

- The number of each collection activity per 1,000 customer payments (measured in number of payments without regard to the size of each individual payment); and
- The number of each collection activity per \$1,000 in customer payments (measured in dollars of payments made).

In both instances, a lower number is “better” than a higher number.<sup>72</sup> Efficiency is measured as the ratio of the effort expended to the outcomes generated. A “lower number is better” because the denominator (either the number of payments or the dollars of payments) increases while the numerator (the number of collection interventions) stays the same.

The evaluation of PSCO's affordable bill found that the collection activities that PSCO directed toward program participants were more productive at generating payments than the collection activities directed toward program non-participants. As shown in the Figure below, PSCO

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<sup>72</sup> Engaging in four collection actions per each \$1,000 in payments is “better” than engaging in seven collection activities per each \$1,000 in payments.

**Exhibit 10**  
Declaration of Lisa Brooks

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JACQUELINE TAYLOR, LISA BROOKS,  
MICHELE COWAN, TUANA HENRY,  
MATTIE MCCORKLE, RENEE WILSON,  
and PEOPLE'S WATER BOARD  
COALITION, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

CITY OF DETROIT, a Municipal  
Corporation, through the Detroit Water and  
Sewerage Department, its Agent;  
GOVERNOR GRETCHEN WHITMER, in  
her official capacity; MAYOR MICHAEL  
DUGGAN, in his official capacity; and  
GARY BROWN, in his official capacity.

Defendants.

Case No. 4:20-cv-11860

Hon. Denise Page Hood

Mag. Judge Anthony P. Patti

**DECLARATION OF PLAINTIFF LISA BROOKS**

I, Lisa Brooks, a Plaintiff in this matter, hereby declares as follows:

1. I am a resident living in a rental home. I live in Detroit, Michigan,  
County of Wayne, State of Michigan.
2. I live in my home with one minor child and two adult children. One of  
my children has epileptic seizures.

3. Since approximately 2003-2004, I have received my water service from Detroit Water and Sewerage Department (DWSD). I am on a fixed income, receiving Social Security Disability of a little more than \$1,000.00 per month.

4. Prior to 2020, I had difficulty paying my water bill at times. My water has been terminated on several occasions, even after I had an assistance program through DWSD. When the Mayor of Detroit announced the water shutoff moratorium in March 2020, because of the COVID-19 pandemic. I was on WRAP (Water Residential Assistance Program). I had \$4,251.00 in arrearage. (**Ex. 1**, water bill, Lisa Brooks.)

5. At the beginning of the moratorium, in 2020, I had DWSD arrearage of over \$4,000.00. My water usage is approximately 8,200 gallons per month because of the number of people who live in my home. (See **Ex. 1**, my bill from DWSD dated November 2022.)

6. In October 2022, I heard about DWSD's Lifeline program. I immediately attempted to get into the Lifeline program because, considering my amount of arrearage, I did not want to have my water services terminated as soon as the COVID-19 water moratorium ends. I had an appointment with Wayne Metro, over a month ago, and took all my papers to them.

7. I am mentally anxious because COVID-19, and other viruses, are still circulating at my child's school and around the Detroit community.

8. My family and I will suffer irreparable physical and emotional harm if we do not obtain a permanent solution to water affordability. I have health problems, including Chronic Pulmonary Obstructive Disease (COPD), which requires a nebulizer. I have to be well hydrated at all times. I also have diabetes and an arthritis condition.

9. Though the DWSD Lifeline program allows for water based on income, up to 4,500 gallons, we are much more over the 4,500 limit. Because there are so many people in my household, we utilize almost as much water allowed under the first tier, or block, of the Lifeline program and my bill will be much more for each gallon.


10. I have not received any response to any of my inquiries about the Lifeline program since I applied, in October 2022, with the Wayne Metro Agency.

12. My family and I will be irreparably harmed and subject to future harm when the end of the DWSD water shutoff moratorium occurs on December 31, 2022 because of my arrearage.

Further deponent sayeth not.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 12-5-22

/s/ Lisa Brooks   
Lisa Brooks, Declarant

# EXHIBIT 1

Lisa Brooks

EXHIBIT 1



