



May 24, 2019

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Chairman Keane, Vice Chair Kazy, and Members of the Utilities Committee:

On May 22, 2019, the NAACP Legal Defense and Educational Fund, Inc. and its Thurgood Marshall Institute, recently released a summary report containing the key findings of *Water/Color*, our study of the race and water affordability crisis in America's cities. Cleveland is one of the cities highlighted in our study. We have serious concerns about the ways in which the burdens of water billing and enforcement practices in Cleveland disproportionately fall on communities of color, especially Black communities. We are writing to request the opportunity to present our findings to the City Council's Utilities Committee at the next available opportunity.

We are particularly concerned with issues concerning the operation of Cleveland's Water Review Board and the enforcement of water debt through tax liens.

Water Review Board

As you likely know, certain residents of Cleveland can contest their water bills through a hearing with the Water Review Board, which was created by the consent decree in *Colegrove v. City of Cleveland*, a class action filed in 1974.¹ Pursuant to the decree, the city has the duty and

¹ Amended Consent Decree, *Colegrove v. City of Cleveland, et al.*, No. 74-1007 (N.D. Ohio Jun. 25, 1987).

responsibility to provide water and sewer customers with notice and an opportunity to be heard prior to a service disconnection.² It has long been reported that Cleveland Water does not sufficiently inform residents with billing complaints about their right to contest their bills before the board. Our study found that despite tens of thousands of billing complaints, Cleveland Water only receives a few hundred hearing requests each year, and annually holds **only a few dozen hearings**. For the few customers who receive a hearing, **more than half get no adjustment to their bill**, instead receiving only a payment plan or no resolution at all.

We heard from one resident, Karen,³ who was charged for more than thirty times her normal water use one quarter. She only learned about her right to a hearing from the news; Cleveland Water did not tell her when she called to complain about her bill. She came to her hearing armed with a certification from a plumber that she had no leaks. Still, Cleveland Water refused to correct its obvious mistake, and Karen had to pay her erroneous bill on a payment plan over the next year. Karen's story is only one example of what we have heard time and again: when customers have legitimate billing disputes, even amid massive and well-reported epidemics of billing errors, their complaints fall on deaf ears at Cleveland Water.

Tax Lien Burdens

Our report contains a detailed analysis of Cleveland Water's practice of converting delinquent water bills into tax liens, which then can lead residents to tax foreclosure and eventual eviction. This process is particularly disturbing in light of Cleveland Water's erroneous billing issues, and in light of the inadequacy of the hearing process as a forum for residents to challenge their bills.

Our analysis found that Cleveland Water's practice of converting delinquent water debt to tax liens has a **significant and disproportionate impact on Black residents**. Specifically, we found that Black residents comprise 61.1% of those who live in Census blocks with at least one water lien placed between 2014 and 2018, despite comprising only approximately 30% of the county population. In comparison, white residents comprise approximately 60% of the county's population, but make up only 29.5% of those living in Census blocks with water liens. Further, 66-69% of water liens were placed in majority-Black census tracts in 2017-18, while only 18-22% were placed in majority-white tracts. Even more disturbing: **these disparities cannot be explained by income alone**. Even between blocks with comparable levels of income, we found

² *Id.* at 2.

³ We use only Karen's first name at her request to protect her privacy.

tax liens significantly more likely to be placed in predominantly Black areas and less likely to be placed in predominantly white areas.

Cleveland Water’s tax lien practices lead to a number of significant consequences:

- Black residents are at increased risk losing their homes to tax foreclosure simply because they couldn’t afford their water bill;
- Black residents have less equity in their homes, decreasing their options for moving, for mortgage refinance, and for mortgage modification;
- Older Black residents are at increased risk of default on reverse mortgages, which require timely payment of property taxes including water liens;
- More tax-foreclosed properties are located in Black neighborhoods, driving down values for the surrounding properties; and
- Black neighborhoods have more vacant homes, further driving down values for surrounding properties.⁴

Cleveland Water’s Response

We are particularly concerned given Cleveland Water’s response to our findings. Cleveland Water’s response to our lien data analysis includes four points that are incorrect or misleading:

1. Cleveland Water has repeatedly stated that it does not foreclose on homes.⁵ This is technically true, but very misleading. While Cleveland Water itself does not foreclose on homes, **the tax liens it chooses to place on its customers’ homes can and do lead to foreclosure by the county and by private investors.**
2. Cleveland Water claimed that “[l]iens are always a last resort.”⁶ However, we found that **Cleveland Water placed liens on more than 11,000 properties**

⁴ See Frank Ford, *Housing Market Recovery in Cuyahoga County: Race and Geography Still Matter*, Western Reserve Land Conservancy (July 30, 2018), <https://www.wrlandconservancy.org/wp-content/uploads/2018/07/Cuyahoga-Housing-Trends-Study-2018.pdf>.

⁵ See Robert Higgs, NAACP LDF says African-American water customers disproportionately hurt by Cleveland’s use of liens and shutoffs; city disputes findings, Cleveland.com (May 23, 2019), <https://www.cleveland.com/cityhall/2019/05/naACP-says-african-american-water-customers-disproportionately-hurt-by-clevelands-use-of-liens-and-shutoffs-city-disputes-findings.html>; Ron Regan, Councilman wants answers after NAACP-Legal Defense Fund report on Cleveland water discrimination, News 5 Cleveland (May 22, 2019), <https://www.news5cleveland.com/news/local-news/investigations/councilman-wants-answers-after-naACP-legal-defense-fund-report-on-cleveland-water-discrimination>.

⁶ See Higgs, *supra* note 4.



between 2014 and 2018.

3. Cleveland Water claimed that “[m]ost commonly, the tax lien process is usually when property owners . . . have walked away from their property.”⁷ But Cleveland Water’s policies regarding tax liens make no distinction between vacant and occupied property, and **Cleveland Water has placed liens on properties it knows to be occupied by struggling homeowners**, including those who are retired and on a fixed income.

4. Cleveland Water characterizes liens as a last resort method to recover much-needed revenue where it has “no other collections recourse.”⁸ But between 2012 and 2016, **Cleveland Water collected only 0.59% of its operating revenue through tax liens.**

Please find enclosed an overview of our findings. Our full, in-depth report will be released in the coming weeks, and we will provide copies to the Committee when it is available. We would appreciate the opportunity to present our findings to the Committee and to answer any questions you may have.

Sincerely,

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cc: Mayor Frank Jackson; Council President Kevin Kelley

⁷ See Regan, *supra* note 4.

⁸ *Id.*