



May 2, 2023

Tina Lancaster
U.S. Department of the Treasury, Acting Director
Office of Civil Rights and Equal Employment Opportunity
1500 Pennsylvania Ave, N.W.
Washington, DC 20220
crcomplaints@treasury.gov

Dear Acting Director Lancaster,

On behalf of the Southern Poverty Law Center and residents of Jackson Mississippi, we submit this Complaint against the Mississippi Department of Environmental Quality (MDEQ) and the State of Mississippi for violating Title VI of the Civil Rights Act of 1964 and the Department of Treasury Title VI regulations at 31 CFR Part 22.

The majority Black residents of Jackson, Mississippi have been in dire need of improvements to their water infrastructure for decades. The State of Mississippi is currently sitting on millions of federal dollars from the American Rescue Plan Act (ARPA) which Jackson cannot access. By determining that municipalities may only receive the ARPA money via matching grants, the State calculated the amount of assistance it will provide based primarily on the amount of assistance municipalities can offer themselves, rather than the amount of need. Jackson has repeatedly advised the State of its inability to pay for the \$2 billion in estimated repairs to its water system. Not only is Jackson the city with the greatest need, but it is also the area with highest concentration of Black people by percentage. By subjecting Jackson and 1/3 of applicants to an application process that fails to consider Jackson's exigency, the State's grant program has a disparate impact on the Black residents who live in the drastically underfunded city of Jackson.

Mississippi's Governor has publicly insisted that Jackson has received all funds the City requested through the applicable State water funding programs;¹ however, this ignores the fact the programs are designed to limit the amount of funds the City can request.

A timely investigation by the U.S. Treasury may prevent the State from continuing its discriminatory practices with respect to the ARPA funds which are yet to be disbursed.

¹ Letter from Governor Tate Reeves to Representative Bennie G. Thompson and Representative Carolyn B. Maloney, (Oct. 31, 2022), https://mcusercontent.com/08cb3e52aa1308600f84d49ea/files/39812b8e-0b44-d84a-4653-eb3bb0d85d93/Rep_Thompson_itr_10_31_FINAL.pdf. Attached as Exhibit 1.



Title VI of the Civil Rights Act prohibits entities that receive federal funding from engaging in activities that subject individuals to discrimination based on race. MDEQ and the State of Mississippi receive federal financial assistance from U.S. Treasury and are bound by this prohibition against discrimination. We request that the Treasury’s Office of Civil Rights accept this Complaint, investigate these allegations, and ensure that MDEQ and the State of Mississippi eliminate the racially discriminatory effects which currently block much needed assistance to the Black residents of Jackson, Mississippi.

I. Parties

The Complainant is the Southern Poverty Law Center (SPLC). The SPLC is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. SPLC believes clean and safe water is a basic human right. With an office in Jackson, Mississippi, the SPLC has worked to provide on-the-ground support to communities impacted by the COVID-19 pandemic and the Jackson Water Crisis. In partnership with over 30 other Mississippi-based grassroots organizations, SPLC has helped provide short-term water relief in the form of water and water filters. From August 29, 2022 to November 4, 2022 alone, SPLC and its partners distributed over 4 million cases of water, 546,002 gallons of water and hundreds of water filters and tests. By the most conservative of estimates, the community-led response to Jackson’s water crisis has cost tens of millions of dollars. Although donated water and funds have waned, the demand for water and filters remains high in this City plagued by failing water infrastructure.

The recipients and subjects of this Complaint are the State of Mississippi and MDEQ. MDEQ is the state agency which the Mississippi Legislature charged with executing the State’s discriminatory program.

II. Legal framework

A. Coronavirus State and Local Fiscal Recovery Funds

The American Rescue Plan Act of 2021 (H. R. 1319) provided Mississippi with \$1.8 billion in Coronavirus State Fiscal Recovery Funds, of which the MS Legislature allocated \$450 Million of funding for water projects.² The plan also provided for separate funds, Coronavirus Local Fiscal Recovery Funds, to be paid directly to metropolitan cities using HUD/DHS calculations based on ratios of population size, poverty rates, and housing age and overcrowding.³ The U.S. Treasury

²Anne Summerhays, Mississippi Legislature allocates \$1.5 billion in ARPA Coronavirus State Fiscal Recovery Funds, MAGNOLIA TRIBUNE, Apr. 6, 2022, <https://magnoliatribune.com/2022/04/06/mississippi-Legislature-allocates-1-5-billion-in-arpa-coronavirus-state-fiscal-recovery-funds/>

³ 87 FR 4338; 42 USC 5306; American Rescue Plan Act of 2021, H.R. 1319, 117th Congress (2021)



has oversight of these funds, together called Coronavirus State and Local Fiscal Recovery Funds (SLFRF).⁴

B. Mississippi Municipality and County Water Infrastructure (MCWI) Grant Program

Mississippi Senate Bill 2822 (signed into law on April 26, 2022) established the MCWI Grant Program as one of two pathways to obtain the \$450 million of ARPA funding available for water projects.⁵ MDEQ is responsible for implementation of the Program.⁶ The MCWI program requires counties and municipalities to match the MCWI grant funds with local ARPA SLFRF monies.⁷

Mississippi Senate Bill 2444 (approved by Governor Reeves on April 14, 2023) amends the MCWI Grant Program.⁸ In relevant part, those amendments include 1) waiver of the required ranking system if the Legislature funds all eligible grant requests, 2) closure of MCWI grant applications after the second round of submissions, and 3) exclusion of all first-round funding recipients from receiving funds in the second round.

IV. Factual background

Jackson, Mississippi is the state's largest city—twice as large as any other city in Mississippi.⁹ In 2022, over 80% of Jackson's population was Black. According to the latest Census Data, Jackson has a population of 149,761 and accounts for approximately 5% of the total state population of 2,949,965.¹⁰ Mississippi has the highest poverty rate in the United States- 19.4%,¹¹ and Jackson has an even higher poverty rate than the State of Mississippi. The median family income is \$35,070 and 32.2% of Jackson's population lives in poverty.¹² The rate of poverty among Jackson residents is central to its challenges maintaining and improving Jackson's water system. Jackson

⁴ 87 FR 4338

⁵ *American Rescue Plan Act (ARPA): Rural Water Associations Infrastructure Grant Program*, Mississippi State Department of Health, <https://msdh.ms.gov/page/30.0.76.1000.html>; *Mississippi Municipality & County Water Infrastructure Grant Program*, Mississippi Department of Environmental Quality, <https://mswaterinfrastructure.com/>

⁶ *MDEQ Releases ARPA Funding Regulations for Grant Opportunities*, Mississippi Department of Environmental Quality, (July 5, 2022), <https://www.mdeq.ms.gov/mdeq-releases-arpa-funding-regulations-for-grant-opportunities/>

⁷ *Mississippi Municipality & County Water Infrastructure Grant Program*, Mississippi Department of Environmental Quality, <https://mswaterinfrastructure.com/>

⁸ ARPA programs, MS S.B. 2444, (2022)

⁹ Demographics by Cubit, Mississippi Cities by Population, https://www.mississippi-demographics.com/cities_by_population, (last visited April 24, 2023)

¹⁰ *Quick Facts: Jackson City, Mississippi*, United States Census Bureau, <https://census.gov/quickfacts/fact/table/jacksoncitymississippi,MS/PST045221>

¹¹ *Jackson city; Mississippi*, United States Census Bureau, https://data.census.gov/profile/Jackson_city,_Mississippi?g=160XX00US2836000

¹²Id.



owns and operates the public water system, PWS ID No. MS0250008, which provides water to a population of approximately 173,514.¹³

As far back as the mid-1990s, when Jackson’s first Black mayor, Harvey Johnson, Jr.¹⁴, was elected, many predominantly Black areas of Jackson “had poor water service and fire protection due to being served by undersized lines.”¹⁵ Mayor Johnson already faced the challenge of convincing the public that the equalization improvements should be targeted to certain areas of Jackson—small lines in underserved areas.¹⁶

Mayor Johnson repeatedly requested the State provide the City with a payment in lieu of taxes or make loans available to repair the city’s aging infrastructure, because Jackson, as Mississippi’s capital city, hosts state agencies on extensive tax-exempt properties.¹⁷ The State refused, and instead, diverted federal highway and bridge funds meant for majority-Black Hinds County (in which Jackson is the county seat) to the surrounding counties of Madison and Rankin, which remain majority white.¹⁸ Further, the Governor and Legislature have derailed Jackson’s attempts to fund water infrastructure for years by rejecting Jackson’s proposed sales taxes and by creating an unprecedented, state-run governance commission to control what nominal funds Jackson was allowed and to undermine Jackson’s elected officials.¹⁹

Jackson’s current Mayor wrote the MS Governor in March 2021 requesting \$47 million in emergency funding, supported by a list of needed improvements.²⁰ The Legislature awarded \$3 million.²¹

¹³ EPA, EPA and the City of Jackson, Mississippi Reach Agreement to Improve Drinking Water and Protect Public Health, (July 1, 2021), <https://www.epa.gov/newsreleases/epa-and-city-jackson-mississippi-reach-agreement-improve-drinking-water-and-protect>.

¹⁴ Mayor Johnson’s professional background was in urban planning. His expertise was in assisting under-resourced communities fund improvements to their water and sewer systems. (see Johnson, Jr., Harvey. “Challenges of an Aging Water System: The Jackson Water Crisis- A Research Commentary”, MISSISSIPPI URBAN RESEARCH CENTER ONLINE JOURNAL OF RURAL & URBAN RESEARCH, SPRING 2022 SPECIAL ISSUE, IMPLICATIONS OF THE 2021 JACKSON WATER CRISIS: PAST, PRESENT, AND FUTURE. P. 9. https://www.jsums.edu/education/files/2022/03/2022.OJRUR_JacksonWaterCrisis_Special.Issue_Final.pdf.)

¹⁵ Johnson, Jr., Harvey. “Challenges of an Aging Water System: The Jackson Water Crisis- A Research Commentary”, MISSISSIPPI URBAN RESEARCH CENTER ONLINE JOURNAL OF RURAL & URBAN RESEARCH, SPRING 2022 SPECIAL ISSUE, IMPLICATIONS OF THE 2021 JACKSON WATER CRISIS: PAST, PRESENT, AND FUTURE. P. 9. https://www.jsums.edu/education/files/2022/03/2022.OJRUR_JacksonWaterCrisis_Special.Issue_Final.pdf.

¹⁶ *Id.* at p. 10.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Letter from Mayor Chokwe A. Lumumba to Governor Tate Reeves, (Mar. 3, 2020), https://www.scribd.com/document/592399908/City-Letter-Water-Crisis#from_embed

²¹ Pender, Geoff. *Jackson wanted \$47million for water crisis. Lawmakers are providing \$3 million.* Mississippi Today, (March 30, 2021), <https://mississippitoday.org/2021/03/30/jackson-wanted-47-million-for-water-crisis-lawmakers-are-providing-3-million/>



In March 2021, the United States Congress passed ARPA (House Bill 1319), which established the Coronavirus State and Local Fiscal Recovery Fund. Via its administration of the Fund, the U. S. Department of the Treasury was to distribute \$350 billion to state, local and tribal governments to “respond to acute pandemic-response needs, fill revenue shortfalls among state and local governments, and support the communities and populations hardest hit by the COVID-19 crisis.”²² Among the potential uses enumerated by the Treasury was, “[i]nvest in water, sewer, and broadband infrastructure, improving access to clean drinking water, supporting vital wastewater and stormwater infrastructure, and expanding access to broadband internet.”²³ Additionally, funds were to be used to “aid the communities and populations hardest hit by the crisis, supporting an equitable recovery by addressing not only the immediate harms of the pandemic, but its exacerbation of longstanding public health, economic and educational disparities.”²⁴ Mississippi was to receive \$1.8 billion of the \$350 billion.²⁵ Separately, Jackson received \$42 million in ARPA Coronavirus Local Fiscal Recovery Funds directly from the federal government.²⁶

Mississippi received the first half of its total SLFRF allocation in May of 2021.²⁷ That money was not appropriated until 2022. Following a 2020 dispute between Mississippi’s Governor and Legislature over CARES Act funds, the Legislature passed Mississippi House Bill 109 requiring such federal assistance funds be appropriated or otherwise made available by the Legislature.²⁸ Thus, ARPA funds remained in the State Treasury fund for nearly a year, until the 2022 Legislature allocated \$1.5 billion of the funds for the Fiscal Years 2022 and 2023.²⁹ For Fiscal Year 2022 (July 1 through June 30), the Mississippi Legislature allocated \$450 million to MDEQ, with \$400 million going towards water and sewer projects in cities and counties and \$50 million to match assistance for cities that received under \$1 million Coronavirus Local Fiscal Recovery Funds.³⁰ It does not appear that MDEQ was to receive any additional SLFRF monies in Fiscal Year 2023.³¹

²² *Press Release, U.S. Dept. of the Treasury, Treasury Launches Coronavirus State and Local Fiscal Recovery Funds to Deliver \$350 Billion, (May 10, 2021), <https://home.treasury.gov/news/press-releases/jv0169>*

²³ *Id.*

²⁴ *Id.*

²⁵ *Supra* Note 2.

²⁶ *Supra* Note 2; Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022, S.B. 2822, (2022), <https://mswaterinfrastructure.com/wp-content/uploads/2022/06/Mississippi-Senate-Bill-2822.pdf>.

²⁷ *State and Local Fiscal Recovery Funds, 2021 Report*, State of Mississippi, https://home.treasury.gov/system/files/136/Mississippi_2021%20Recovery%20Plan_SLT-0976.pdf

²⁸ *Id.*; J.T. Mitchell, *Reeves, Hosemann disagree on the distribution of CARES Act Funding*, SUPERTALK MISS. MEDIA (May 1, 2020), <https://www.supertalk.fm/reeves-hosemann-disagree-on-the-distribution-of-cares-act-funding/>

²⁹ *Supra* Note 2; *Coronavirus State Fiscal Recovery Funds Appropriation FY 2022 and FY 2023*, https://www.scribd.com/document/568245727/Coronavirus-State-Fiscal-Recovery-Funds-Appropriations-FY-2022-and-FY-2023#from_embed

³⁰ *Id.*

³¹ *Id.*



Through Senate Bill 2822, the MS Legislature voted to allow cities like Jackson to apply for funding for water and sewer projects with a one-to-one match using their own direct ARPA funds, while smaller municipalities receiving less than \$1 million in ARPA funds could request two-to-one matching.³² S.B. 2822 established and funded the MCWI Grant Program, to be administered by MDEQ.³³ MDEQ produced Rules and Regulations as to the administration of the program, determined eligibility based on submission of applications for match funds, developed a scoring system,³⁴ ranked eligible applications, awarded funding, and monitored the funded programs to assure compliance with federal and state laws, rules and regulations.³⁵

S.B. 2822 also imposed state oversight of Jackson's SLFRF funds for water and sewer projects.³⁶ A final change to S.B. 2822 said that "any funds awarded to the City of Jackson under this section shall be deposited in the Capital City Water/Sewer Projects Fund of the State Treasury."³⁷ Even though the U.S. Congress intended to allow counties and cities the authority and flexibility to spend their portions of ARPA funds,³⁸ under S.B. 2822, the State's Department of Finance and Administration would monitor that fund, and Jackson alone would be required to deposit its ARPA funds into the fund. Notably, the 2022 Legislature did NOT vote on a bill which would have provided Jackson with an additional \$42 million in ARPA funds beyond what would be available via the state's matching funds.³⁹

On August 29, 2022, floodwaters from the Pearl River overwhelmed the City of Jackson's primary water treatment plant.⁴⁰ Approximately 153,000 residents were left without water for drinking, flushing toilets or fighting fires.⁴¹ President Biden issued an Emergency Declaration on August 30, 2022, allowing federal agencies to take temporary measures to begin restoring water to residents, schools, public services, and businesses.⁴² The federal government committed to pay 75% of all costs related to the emergency for the following 90 days, via the Department of Homeland Security and FEMA.⁴³

³² Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022, MS S.B. 2822, (2022)

³³ *Id.*

³⁴ MCWI Grant Program Scoring System (Dec. 13, 2022), <https://mswaterinfrastructure.com/wp-content/uploads/2022/12/MCWI-Scoring-Guide-Dec-13-2022.pdf>

³⁵ *Supra* Note 32.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Chris Bell, *Mississippi should build more equitable communities from American Rescue Plan Funds*, MISS. CLARION LEDGER (July 8, 2021), <https://www.clarionledger.com/story/opinion/2021/07/08/american-rescue-plan-mississippi-how-spend-funds-race-inequity-opinion-chris-bell/7873890002/>

³⁹ Le Coz, Emily; Connolly, Daniel; Hitson, Hadley and Mealins, Evan, *Jackson water crisis stems from century of poverty, neglect and racism*, MISS. TODAY, (Nov. 7, 2022), <https://mississippitoday.org/2022/11/07/jackson-water-crisis-poverty-neglect-racism/>

⁴⁰ Helsel, Phil and Gosk, Stephanie. *Jackson, Mississippi is without reliable running water after river rises to dangerous levels*, CNBC, (August 30, 2022) <https://www.cnbc.com/2022/08/30/jackson-mississippi-without-reliable-running-water.html>

⁴¹ *Id.*

⁴² *President Joseph R. Biden, Jr. Approves Mississippi Emergency Declaration*, The White House (August 30, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/08/30/president-joseph-r-biden-jr-approves-mississippi-emergency-declaration-2/>

⁴³ *Id.*



The people unable to use Jackson’s water while the State has denied the City’s requests for help are largely low-income Black people who cannot afford to purchase safe water. Individual residents of Jackson have reported spending most of their monthly federal SNAP funds on bottled water.⁴⁴ Those same residents have seen water bills reach thousands of dollars as pipes burst and flood their homes.⁴⁵ Black residents make up 96% of the residents of The Housing Authority of the City of Jackson (JHA).⁴⁶ JHA operates 34 single-family units of low-income Public Housing, 188 Project Based Vouchers, and 835 Housing Choice Vouchers.⁴⁷ On September 8, 2022, HUD’s Jackson, MS field office conducted site visits to Section 8 and multifamily public housing complexes, and reported their findings to HUD’s Multifamily Southeast Regional Office.⁴⁸ These complexes consisted of family, elderly, and disabled units.⁴⁹ Site visits demonstrated that there was a boil water notice for all 32 complexes visited and all of the residents relied on bottled water for drinking. Of those 32 complexes, 23 of them did not have potable tap water. Fifteen of the housing complexes surveyed required bottled water for both drinking and hygiene, 3 used bottled water and tap water for hygiene, and 14 complexes stated “yes” or “good water pressure” or water system for uses related to hygiene despite many of these same complexes’ tap water being designated as not potable.⁵⁰

On October 17, 2022, U. S. Representatives Carolyn Maloney (D-NY-12) and Bennie Thompson (D-MS-02) sent a 7-page letter to Mississippi Governor Tate Reeves citing the conditions of Jackson residents, as well as President Biden’s Emergency Declaration.⁵¹ The letter stated, “the Jackson Water Crisis was a disaster waiting to happen, and it will not be resolved unless we address generational disinvestment in majority Black cities.” The letter specifically requested the status of ARPA funding which could be used to assist the residents of Jackson. Representatives Maloney and Thompson directly questioned the impact of S.B. 2822:

We are also troubled by the Mississippi Legislature’s decision to allocate federal funding from the State and Local Fiscal Recovery Funds program on a matching basis with municipalities, which risks further perpetuating underinvestment in Jackson. The cost of necessary maintenance to Jackson’s water distribution systems is forecasted to be as high as \$1 billion. Under the matching formula

⁴⁴ Emmanuel Felton, *Living in a city with no water: “This is unbearable,”* WASHINGTON POST, Sep. 3, 2022, <https://www.washingtonpost.com/nation/2022/09/03/jackson-mississippi-water-crisis/>

⁴⁵ *Id.*

⁴⁶ *Picture of Subsidized Housing*, HUD User Office of Policy Development & Research, <https://www.huduser.gov/portal/datasets/assths.html>

⁴⁷ The Jackson Housing Authority, <https://jacksonhousing.org/>

⁴⁸ Letter from Adrenace V. Williams, Mississippi Field Office Director, to Thomas Jurgens, Staff Attorney (Jan. 12, 2023), p. 58-109 <https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:57799c91-e0f5-3dfa-b3a6-ccc23166062b>

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Letter from Representative Bennie G. Thompson and Representative Carolyn B. Maloney to Governor Tate Reeves, (Oct. 17, 2022); <https://www.documentcloud.org/documents/23165488-letter-to-gov-tate-reeves-on-jackson-water-spending>.



Mississippi adopted for American Rescue Plan Act funds, Jackson would directly receive, at most, \$84 million for water projects—assuming the city is able to use its entire allocation for these projects. Although the Legislature established a dedicated fund for capital area water and sewage projects, it chose to impose special burdens on Jackson’s ability to obtain funding for projects not shared by other municipalities. Further, as part of this formula, any funds left unused on January 1, 2027, revert to the State’s general fund, stripping Jackson of those funds.⁵²

The letter then concluded with a request for a breakdown of the localities who received state ARPA funds (including amount, racial demographics, and population size), as well as a detailed description of the additional layer of review for applications from the City of Jackson and the basis for it.

Governor Reeves responded on October 31, 2022, largely hiding behind the fact that awards of ARPA funds had not yet been announced.⁵³ He emphasized that no funds had been deposited into the Capital City Water/Sewer Projects Fund yet and, if Jackson wishes to utilize the funds, “it must establish a plan for the project or projects for which the governing authorities desire assistance and submit the plan and application for assistance to the Department of Finance and Administration.”⁵⁴ Despite the State’s insistence that Jackson need only request funds and provide a plan for same, Jackson has already prepared a Water Master Plan in 1985 which was updated in 1997 and 2012.⁵⁵ Governor Reeves highlighted roughly \$148 million in funding earmarked for Jackson (although that number is actually closer to \$100 million) without acknowledging Jackson’s need for \$2 billion to address its longstanding water infrastructure woes. Similarly, Governor Reeves emphasized that Jackson has only applied for funds from the Drinking Water State Revolving Fund (DWSRF)—which is currently the subject of an investigation by the Environmental Protection Agency⁵⁶—three 3 times, without acknowledging that Jackson’s limited revenue prevents it from requesting *and repaying* the significant amount of money needed.

On November 4, 2022, MDEQ awarded Jackson with \$35.6 million in SLFRF monies to match Jackson’s local SLFRF monies, for a total of \$71 million in SLFRF for water projects.⁵⁷ Subsequently, Mississippi’s Legislature removed from the MCWI program the scoring requirements under which Jackson’s request was evaluated.⁵⁸ The Legislature went on to provide

⁵² *Id.*

⁵³ *Supra* note 1.

⁵⁴ *Id.*

⁵⁵ *Supra* note 15

⁵⁶ Babinuea, Andi and Nilsen, Ella, *EPA launches federal civil rights investigation over Jackson water crisis*, CNN, (October 21, 2022), <https://www.cnn.com/2022/10/20/us/jackson-mississippi-water-crisis-epa-civil-rights-investigation-reaaj/index.html>

⁵⁷ Alex Rozier, *State awards \$180 million in ARPA water and sewer funds, includes \$36 million for Jackson*, MISS. TODAY, (Nov. 4, 2022), <https://mississippitoday.org/2022/11/04/arpa-funds-awarded-water-sewer/>

⁵⁸ *Supra* Note 8



an additional \$41 million to fully fund all 359 applications submitted during the second and final round of applications.⁵⁹ However, the 130 municipalities (like Jackson) who were awarded funding during the first round were precluded from applying for additional funds.⁶⁰ In the end, less than 24% of MCWI funded projects were scored as Jackson was scored.

On April 21, 2023, one year after the State passed S.B. 2822 requiring Jackson to deposit any funds it receives through MCWI in the Capital City Water/Sewer Projects Fund of the State Treasury, Governor Reeves signed into law H.B. 1020, which expands Jackson’s Capital Complex Improvement District.⁶¹ Instead of “turn[ing] over” the federal aid intended for poor, under-resourced Black residents of Jackson, state officials are using ARPA funds to effectuate an apartheid-style takeover of the City of Jackson. To wit, Mississippi’s Legislature appropriated \$32.5 million of its SLFRF monies to the MS Department of Public Safety, which, “through the Office of Capitol Police, shall have jurisdiction relative to the enforcement of all laws of the State of Mississippi on the properties” within the expanded Capitol Complex Improvement District authorized by H.B. 1020.⁶²

Mississippi State Representative Trey Lamar very plainly articulated what is going on in Mississippi’s Legislature:

We’re not going to turn over hundreds of millions of dollars to a city government over the last several years that’s theme is this: no water, no sewer, no garbage collection, no attempt to collect the necessary fees that operate those systems.⁶³

Given these facts, it seems the State of Mississippi has no intention of complying with U.S. Treasury’s directive that ARPA funds be used to “aid the communities and populations hardest hit by the crisis, supporting an equitable recovery by addressing not only the immediate harms of the pandemic, but its exacerbation of longstanding public health, economic and educational disparities.”⁶⁴ Jackson’s water crisis is exactly the exacerbation of longstanding disparity which SLFRF were intended to address. Black and low-income populations are more likely to live with aging, underdeveloped, and underfunded water infrastructure, which then drives adverse health

⁵⁹ MS H.B. 1716 (2023)

⁶⁰ Press Release, MS Department of Environmental Quality, All Eligible MCWI Project Applications Approved for Funding (April 18, 2023) <https://www.mdeq.ms.gov/all-eligible-mcwi-project-applications-approved-for-funding/>

⁶¹ Bobby Harrison, *Gov. Reeves signs racially divisive HB 1020; Legal challenge could loom*, MISS. TODAY, (Apr. 21, 2023), <https://mississippitoday.org/2023/04/21/gov-reeves-signs-racially-divisive-hb-1020-legal-challenge-could-loom/>

⁶² MS H.B. 1020 (2022)

STATE OF MISSISSIPPI Recovery Plan State and Local Fiscal Recovery Funds 2022 Report <https://www.dfa.ms.gov/sites/default/files/DFA%20Legislative%20Provisions/Mississippi%202022-SLFRF-Recovery-Plan-Performance-Report.pdf>

⁶³ Wiker Perlis, *Mississippi House passes controversial House Bill 1020, sends to Gov. as session nears end*, MISS. CLARION LEDGER, (Mar. 31, 2023), <https://www.clarionledger.com/story/news/politics/2023/03/31/mississippi-legislature-passes-controversial-hb-1020-jackson-ms-courts-bill/70063431007/>

⁶⁴ *Supra* Note 22



outcomes and health disparities.⁶⁵ The Black residents of Jackson regularly report allergic reactions, rashes, and skin irritation from showering in the water.⁶⁶ These residents remain at elevated risk of exposure to unsafe lead levels and to cancer causing contaminants.⁶⁷ The harm to Jackson's Black residents will be compounded by racial disparities in healthcare. That, of course, is if Jackson's residents can afford the necessary healthcare, given that 1 in 3 of Jackson's residents live below the poverty line.⁶⁸

Mississippi's discriminatory policies are brazen and unjustified. Likewise, the State's ongoing efforts to usurp Jackson's control over SLFRF monies makes clear that intervention from the U.S. Treasury is necessary to hold the State accountable.

IV. Jurisdiction

The Office of Civil Rights and Equal Employment Opportunity (OCRE) enforces various federal statutes and regulations that prohibit discrimination in Treasury financially assisted and conducted programs or activities.⁶⁹ The U. S. Treasury will accept a complaint for investigation under Title VI if the complaint: (1) is in writing; (2) alleges discriminatory acts that, if true, may violate Title VI regulations; (3) identifies a recipient of federal financial assistance that committed the alleged discriminatory acts; and (4) is either filed within 180 days of the alleged discriminatory acts or asserts a continuing discriminatory policy or practice.⁷⁰ Any person who believes that he or she, or any specific class of persons, has been subjected to discrimination prohibited by this part may by himself or herself, or by a representative, file with the designated Agency official a written complaint.⁷¹

A. Timeliness

⁶⁵ Pullen Fedinick, Kristi; Taylor, Steve and Roberts, Michele. *Watered Down Justice*. National Resources Defense Council, Coming Clean and Environmental Justice HealthAlliance, (September 2019), <https://www.nrdc.org/sites/default/files/watered-down-justice-report.pdf>

⁶⁶ Sarah Fowler, *A Water System So Broken That One Pipe Leaks 5 Million Gallons a Day*, NEW YORK TIMES, (Mar. 22, 2023), <https://www.nytimes.com/2023/03/22/us/jackson-mississippi-water-crisis.html?register=email&auth=register-email>; *Supra* note 2

⁶⁷ *Lead and Jackson Water: Recommendations for Homeowners, Schools and Facilities*, Mississippi Department of Health <https://msdh.ms.gov/msdhsite/handlers/printcontent.cfm?ContentID=17370&ThisPageURL=http%3A%2F%2Fmsdh%2Ems%2Egov%2Fmsdhsite%2Findex%2Ecfm%2Findex%2Ecfm&EntryCode=17370&GroupID=23> (last visited April 26, 2023)

⁶⁸ *Supra* Note 11

⁶⁹ *Federally Assisted Programs and Federally Conducted Programs*, U.S. Dept. Of the Treasury, (last visited April 26, 2023) <https://home.treasury.gov/about/offices/diversity-equity-inclusion-and-accessibility/civil-rights-and-equal-employment-opportunity/federally-assisted-programs-and-federally-conducted-programs>

⁷⁰ *Id.*

⁷¹ 31 CFR 22.7 (b)



This Complainant meets each of these requirements. The Complaint alleges discriminatory policies that cause disparate harm to Black residents of Jackson, MS, in violation of Title VI. This written Complaint is timely because it was filed within 180 days of MDEQ’s first award of SLFRF monies, on November 4, 2022, using the discriminatory criteria and policies outlined in this Complaint. However, this Complaint is also timely because of MDEQ’s continued violations of Title VI. As recently as April 14, 2013, Mississippi and MDEQ waived the discriminatory scoring policies for grant applications submitted after Jackson’s and announced forthcoming awards of SLFRF monies, perpetuating rather than remedying the discrimination against Jackson’s black residents.

B. Covered Recipient of Federal Financial Assistance

The Treasury’s implementing regulations define a covered “recipient” as

any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.⁷²

Mississippi is a recipient of \$1.8 billion in Coronavirus State Fiscal Recovery Funds, of which the MS Legislature allocated \$450 million of funding for water projects.⁷³⁷⁴ MDEQ is responsible for the implementation of MCWI Grant Program for disbursement of the \$450 million of ARPA funding available for water projects.⁷⁵ Thus, both MDEQ and the State of Mississippi are recipients of federal financial assistance.⁷⁶

Title VI and the Treasury’s implementing regulations apply to “any program or activity” that receives federal assistance. “Program or activity” includes all the operations of a state agency, “any part of which is extended Federal financial assistance.”⁷⁷ MDEQ’s implementation of Mississippi’s MCWI Grant Program is a program or activity, as is Mississippi’s enactment of MS

⁷² 31 CFR 22.3 (2016)

<https://www.ecfr.gov/current/title-31/subtitle-A/part-22>

81 Fed. Reg. 89,852 at p. 89,857 (12/13/2016)

<https://www.federalregister.gov/documents/2016/12/13/2016-29629/regulation-regarding-nondiscrimination-on-the-basis-of-race-color-or-national-origin-in-programs-or>

⁷³ *Supra* Note 2

⁷⁴ See *United States v. City of Yonkers*, 880 F. Supp. 212, 232 & n.25 (S.D.N.Y. 1995) (holding that “the State of New York itself,” not just state agencies, may be sued under Title VI), vacated and remanded on other grounds, 96 F.3d 600 (2d Cir. 1996)

⁷⁵ *Mississippi Municipality & County Water Infrastructure Grant Program*, Mississippi Department of Environmental Quality, <https://mswaterinfrastructure.com/>

⁷⁶ See *Rogers v. Board of Education*, 859 F. Supp. 2d 742, 752 (D. Md. 2012).

⁷⁷ *Supra* Note 72



Senate Bill 2822 (signed into law on April 26, 2022) establishing the Program as one of two pathways to obtain the \$450 million of ARPA funding available for water projects. MDEQ and Mississippi are therefore subject to Title VI and the Treasury’s implementing regulations.

C. Allegations of Discriminatory Acts in Violation of Title VI

Title VI prohibits recipients of federal funding from discriminating based on race. A recipient of federal funds must commit to and practice non-discrimination in all its activities. Per Congress’ directive that federal agencies publish rules to effectuate Title VI, the Treasury issued regulations stating:

A recipient of federal financial assistance authorized under a law administered by the U. S. Treasury “may not, directly or through contractual or other arrangements, on the grounds of race, color or national origin: (i) deny a person any service, financial aid, or other benefit provided under the program; (ii) provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program; (iii) subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, other benefit of the program; (iv) restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program.... 31 CFR § 22.4 (b)(1).

The MCWI program violates all the above prohibitions against discrimination in the U.S. Treasury’s regulations, through the application criterion which did not properly weigh the disproportionately high need of the City of Jackson. The MCWI program, like others this Administration has found to violate Title VI, discriminates against black residents of Jackson in its design and operation.⁷⁸ Where a State’s distribution of federal disaster recovery fund allocation is disproportionately allocated vis a vis the minorities and low-income with the greatest amount of damage, HUD has overseen and enforced the voluntary conciliation agreement to reallocate the funds.⁷⁹

⁷⁸ See *Letter Finding Noncompliance with Title VI and Section 109, Case Number 06-21-1483-6/9*, U.S. Department of Housing and Urban Development, (March 4, 2022), <https://texashousers.org/wp-content/uploads/2022/03/HUD-Letter-Finding-Noncompliance-with-Title-VI-and-Section-109-.pdf>

⁷⁹ *Voluntary Compliance Agreement and Conciliation Agreement between the United States of America Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity and Latino Action Network, New Jersey state Conference of the National Association for the Advancement of Colored People and Fair Share Housing Center (“Complainants”) and the State of New Jersey and New Jersey Department of Community Affairs (“Respondents”)*, (May 30, 2014), <https://www.hud.gov/sites/documents/NEWJERSEYAGREEMENTSIGNED.PDF>



A criterion has an unjustified discriminatory effect if it has a disparate impact based on race, color, or national origin,⁸⁰ and it lacks a legally sufficient justification.⁸¹ As outlined below, the State of Mississippi and MDEQ employed a criterion that disregards Jackson’s very real water infrastructure crisis. The lack of legal justification for the criterion is evidenced by the fact Mississippi’s Legislature waived the criterion for 76% of MCWI applicants, while prohibiting Jackson from seeking funding under the waiver. Finally, but perhaps most telling, MS Legislators have explicitly stated their intent: to avoid “turning over hundreds of millions of dollars” to Jackson.⁸² The unjustified discrimination has left the majority Black residents of Jackson without overdue relief and ultimately without safe water. Finally, in each violation alleged below, the state of Mississippi could have employed a less discriminatory program or policy—following the templates of neighboring states—in order to disburse the SLFRF monies.

The Department of the Treasury is required to review and investigate any complaint alleging violation of Title VI.⁸³ The Complaint satisfies the requirements for jurisdiction by timely alleging the ongoing use of federal funding in violation of Title VI.⁸⁴ To our knowledge, the same allegations are not pending before the Treasury or any other agency. In November 2022, the Office of Inspector General for the U.S. Environmental Protection Agency announced an investigation under Title VI into federal funding provided to the State of Mississippi under the Safe Drinking Water Act (SDWA). Although that investigation similarly concerns the State’s discriminatory disbursement of federal funds needed to address Jackson’s water crisis, it is limited to funds governed by the EPA. It does not concern MDEQ’s administration of ARPA funding under the purview of the U.S. Treasury.

⁸⁰ See *Villanueva v. Carere*, 85 F.3d 481 (10th Cir. 1996); *New York Urban League v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995); *Chicago v. Lindley*, 66 F.3d 819 (7th Cir. 1995); *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1405 n.11, 1407 n.14 (11th Cir.), reh’g denied, 7 F.3d 242 (11th Cir. 1993); *David K. v. Lane*, 839 F.2d 1265 (7th Cir. 1988); *Gomez v. Illinois State Bd. Of Educ.*, 811 F.2d 1030 (7th Cir. 1987); *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403 (11th Cir. 1985); *Larry P. v. Riles*, 793 F.2d 969 (9th Cir. 1984); see also 24 C.F.R. § 100.500(a).

⁸¹ A legally sufficient justification is one that (1) is substantial, legitimate, and nondiscriminatory, in other words a justification that demonstrates that the policy is “necessary to meeting a goal that [is] legitimate, important, and integral to the [recipient’s] institutional mission”; and (2) cannot be achieved through a less discriminatory alternative. See *Sandoval v. Hagan*, 7 F.Supp. 2d 1234, 1278 (M.D. Ala. 1998), aff’d, 197 F.3d 484 (11th Cir. 1999), aff’d, *Alexander v. Sandoval*, 532 U.S. 275 (2001) (quoting *Elston*, 997 F.2d at 1413). A justification must be “substantial,” meaning it reflects a core interest of the organization that has a direct relationship to the function of that organization; “legitimate,” meaning it is genuine and not false or fabricated; and not hypothetical or speculative, meaning the housing provider must be able to provide evidence showing both that the housing provider has a substantial, legitimate, nondiscriminatory interest supporting a preference and that the preference actually achieves that interest. See 78 Fed. Reg. 11,460 – 11,482 (Feb. 15, 2013)

⁸² Wiker Perlis, *Mississippi House passes controversial House Bill 1020, sends to Gov. as session nears end*, MISS. CLARION LEDGER (Mar. 31, 2023), <https://www.clarionledger.com/story/news/politics/2023/03/31/mississippi-legislature-passes-controversial-hb-1020-jackson-ms-courts-bill/70063431007/>

⁸³ *Civil Rights Toolkit*, U.S. Dept. of Treasury, May 2022.

https://home.treasury.gov/system/files/306/CR_TK_OCRE_508.pdf

⁸⁴ *Id.*



V. Violations

A. Mississippi's MCWI Grant Program disparately impacts poor, Black residents of Jackson in violation of Title VI by allowing Jackson to request no more SLFRF monies than the amount of funds the City can match

States have discretion in how they award funds and Mississippi has abused its discretion by creating a matching system which pre-emptively limits Jackson's access to much needed financial assistance. Other states have awarded all federal funds without requiring matching from local grant recipients. Specifically, Louisiana provided for a waiver of the matching requirement or decreased match where the local governing authority or water system is unable to provide a match.⁸⁵ Alabama allocated \$225 million of ARPA funds for water and sewer projects-- \$120 million of which would go to previously identified emergency or high need projects without a local match; \$100 million of which would require a local match based on ability to pay; and \$5 million of which would go to longstanding problems in the Black Belt region of the state.⁸⁶ An approach like Alabama's would have been helpful in Mississippi given the longstanding, previously identified need in Jackson and Jackson's inability to match its need.

There is no question that Jackson requires far more than it can match. Jackson's leadership has consistently outlined its need for \$2 billion to repair and update its infrastructure. Contrary to Mississippi's assertions, the City of Jackson has had a plan available for nearly 30 years.⁸⁷ That plan has been passed down from one mayoral administration to the next and updated as needed.⁸⁸ Simply, any assertions to the contrary are pretextual.

Indeed, Jackson is the only Mississippi city or municipality with such a significant need. No other Mississippi water system requires billions of dollars of repairs. Although applied to all applicants, Mississippi's matching requirement targeted Jackson and its 120,000 Black residents. At the time the requirement was created in the 2022 legislative session, the Mississippi Legislature knew exactly how much direct federal ARPA money Jackson received in 2021. The Legislature was aware Jackson received far more than the \$1 million dollar ceiling it created for eligibility for a two-to-one match.⁸⁹ The Legislature knowingly and intentionally voted to ensure that Jackson would receive MCWI funds to cover only 3.5% of its need. The same cannot be said of any other municipality that would apply for MCWI grant funds. Jackson's need is exponentially higher than the need in any other Mississippi city and the harm to Jackson's residents caused by the matching requirement is likewise disproportionately greater.

⁸⁵ LA H.B. 642, (2021),

⁸⁶ *Hundreds of Alabama systems apply for water, sewer grants*, ALABAMA DAILY NEWS (Apr. 5, 2022), <https://aldailynews.com/hundreds-of-alabama-systems-apply-for-water-sewer-grants/>

⁸⁷ *Supra* Note 15

⁸⁸ *Id.*

⁸⁹ *Supra* note 32



The remarks by State Representative Lamar leave no doubt as to the Legislature’s intent.⁹⁰ The Legislature explicitly does not want to provide the City of Jackson with hundreds of millions of dollars toward the City’s multibillion dollar crisis. The MCWI Grant Program and its matching cap have done exactly what was intended: ensure the State of Mississippi does not have to turn over hundreds of millions to a Black City in a water crisis.⁹¹

B. Mississippi’s MCWI Grant Program utilized a scoring system which disparately impacted poor, Black residents of Jackson in violation of Title VI

Refusing a clear opportunity to “aid the communities and populations hardest hit by the crisis, supporting an equitable recovery by addressing not only the immediate harms of the pandemic, but its exacerbation of longstanding public health, economic and educational disparities,” Mississippi’s State Legislature and MDEQ created a Grant Program and scoring system that inequitably measured financial need to the detriment of Jackson’s Black residents.⁹² Once Jackson had completed its application process, Mississippi and MDEQ waived the scoring system for subsequent MCWI applicants. The state did not correct its discrimination, but only compounded it.

1. The MCWI Grant Program’s scoring system prioritized factors that did not consider applicants’ need and thus had a disparate impact on Black residents in Jackson

The MCWI Grant Program has published three versions of its scoring system. The version in place at the time of Jackson’s application awarded nearly 1/4 of its points by considering the median income and unemployment rates of residents in an applicant’s service area.⁹³ As a result, MCWI’s scoring system may award projects in other parts of the state twice as many points under the “disadvantaged and overburdened communities” category if the area median income is slightly lower than that of Jackson’s, even if these other areas already have access to clean and reliable drinking water.⁹⁴ Jackson’s need is far more complex than a question of median income.

Of 100 points available in the MCWI scoring system, only 15 *at most* could be awarded based on the lack of clean water that complies with primary drinking water standards.⁹⁵ The dire, longstanding deficiency in Jackson’s water infrastructure would easily be outweighed by

⁹⁰ *Supra* note 63

⁹¹ *Id.*

⁹² *Supra* Note 22

⁹³ Exhibit 2. Mississippi Department of Environmental Quality, MCWI GRANT PROGRAM SCORING SYSTEM, Revised August 17, 2022

⁹⁴ *Supra* Note 52

⁹⁵ Exhibit 2. At pp. 3-4.



consideration of the project(s)'s timeline for completion. The scoring system awarded up to 24 points for projects which could be completed by December 31, 2026, and were already underway or ready to begin in 6 months.⁹⁶ Similarly, Jackson's water crisis could be outweighed by superficial considerations of median income, unemployment rates, and the number of political subdivisions served.⁹⁷ While appearing to consider the needs of disadvantaged and overburdened communities, MCWI's scoring system turned a blind eye to the well-documented water crisis brewing in Mississippi's Blackest city.

Other states have thoughtfully prioritized disadvantaged, underserved communities when creating programs for allocating SLFRF monies. Both Alabama and North Carolina established different allocations and requirements for "high-need" or "at-risk" systems. Importantly, these states considered both the economic need and the condition of the water systems, making special considerations for the most exigent of circumstances. North Carolina allocated a portion of its SLFRF monies for "at-risk" water and sewer systems. Systems were considered "at risk" if 75% or more of the project cost would connect residents in disadvantaged underserved areas, defined as follows: "the share of nonwhites and Hispanic or Latino (of any race) is over fifty percent or at least ten percent higher than the County or State share, and the share of population experiencing poverty is over twenty percent or at least five percent higher than the County or State share."⁹⁸ North Carolina's application further invited information explaining what factors would qualify the project area as disadvantaged and underserved (such as demographic, historical, cultural, linguistic, or low-wealth factors; existing contamination, or other considerations deemed relevant).

If adopted by the MS Legislature and MDEQ, these inquiries would more equitably tell Jackson's story: a city that is 80% Black, while the State is 38% Black, with a poverty rate of 32.2%, compared to the State's poverty rate of 19.4%⁹⁹ and an outdated infrastructure releasing contaminants until the pipes themselves fail and burst. Rather than placing significant weight on a statistic – median income—that does not tell the whole story, Mississippi's scoring system would be more equitable if it truly considered which systems are at risk of becoming distressed or are already distressed because of an amalgamation of factors including but not limited to poverty rates. As applied during the first round of MCWI grant applications and at the time of

⁹⁶ *Id.* At p 1.

⁹⁷ *Id.*

⁹⁸ *NC DEQ Division of Water Infrastructure's Plan to Administer American Rescue Plan Act's State Fiscal Recovery Fund Appropriated in the State Budget for Drinking Water, Wastewater and Stormwater Projects*, North Carolina Department of Environmental Equality, (February 3, 2022), <https://www.deq.nc.gov/water-infrastructure/dwi-arpa-administration-plan-feb-2022/download?attachment>

⁹⁹ *Supra* Note 11



Jackson's November 4, 2022, award, the MCWI scoring system's oversights had a disparate impact on the Black residents of Jackson and thus violated Title VI.

2. Removing the scoring system for future awards, while prohibiting Jackson from obtaining additional funds in the next round of awards, perpetuates the disparate impact on Black residents of Jackson

Enacted on April 14, 2023, MS Senate Bill 2444 amended the MCWI program to: 1) make the second round the final round of grant applications and 2) to waive the use of a scoring system if the Legislature funds all eligible grant requests.¹⁰⁰ The Legislature did indeed authorize funding of all MCWI grant requests via HB 1716.¹⁰¹ The Legislature's most recent move does not remedy the discrimination against Jackson in the first round of MCWI grant applications. Rather, the change allowed subsequent grant applicants to secure funding with far fewer hurdles to jump compared to Jackson. The MCWI funded 130 projects using the scoring system in round one of grant applications, and 359 projects are to be funded without the scoring system the final round.¹⁰² In the end, 76.4% of MCWI applicants were not scored as Jackson was scored.

After Jackson outlined its plan and timeline for completion of projects, and MCWI awarded the maximum amount Jackson could match, the Legislature decided there was no need for any other applicants' plans to be evaluated and scored. To further add insult, the Legislature offered an additional \$41 million—remarkably close to the \$42 million amount the Legislature declined to send directly to Jackson in 2022-- to fully fund all second-round applicants. The Black residents of Jackson continue to suffer because of Mississippi's determination to withhold funds from Jackson and micromanage Jackson's use of what limited resources the City obtains. The disparate impact on Jackson's residents is now only exacerbated as additional funding is authorized for non-Jackson residents who were not subject to any scoring process at all. As a result, Mississippi's violations of Title VI and the U.S. Treasury regulations are ongoing.

C. Mississippi's MCWI Grant Program disparately impacts poor, Black residents of Jackson in violation of Title VI by singling out Jackson for financial oversight and requiring Jackson's ARPA funds be remitted to the State

Senate Bill 2899 singled out Jackson, by name, ensuring additional hurdles and delay to Jackson's ability to obtain ARPA funds through the MCWI Grant Program. As a result, Black residents of

¹⁰⁰ *Supra* Note 8

¹⁰¹ *Supra* Note 59

¹⁰² *Supra* Note 60



Jackson cannot receive relief as soon as other Mississippians. This is a violation of Title VI and the U.S. Treasury’s regulations.

Pursuant to S.B. 2899, “[a]ny [MWCI] funds awarded to the City of Jackson under this section shall be deposited in the Capital City Water/Sewer Projects Fund of the State Treasury.”¹⁰³ The bill includes no provisions as to the terms under which Jackson is to receive funds from the State Treasury. However, Governor Reeves’ October 2022 letter to U.S. Representative Thompson asserted funds will be released upon receipt and approval of Jackson’s plan by the MS Department of Administration and Finance.¹⁰⁴ As stated above, Jackson’s plan has long been available to the State of Mississippi. Any posturing that Jackson has no plan only signals that the State is stalling, perhaps in order to prevent Jackson from ever receiving the funds. Moreover, Jackson had to submit a plan as part of the MCWI application process and scoring system. It is duplicative to require another plan submission before Jackson’s MCWI Grant can be released from the Capital City Water/Sewer Projects Fund of the State Treasury. No other municipality was required to submit a plan as part of its MCWI Grant application *and* a second plan in order to receive the MCWI funds from the State Treasury. Applicants in the second round of the MCWI Grant Program may not have to submit any plan at all now that the scoring system is to be waived.

The above simply adds insult to injury when considered in light of Mississippi’s significant delay in appropriating and awarding ARPA funds. After receiving ARPA funds in May 2021, Mississippi waited nearly one year to even create a grant program for local municipalities in April 2022. (Ironically, in-fighting between the Governor and Legislature over appropriations of ARPA monies caused this eleven-month delay,¹⁰⁵ while the State now argues that Jackson cannot be trusted with its own money because of disputes between its Mayor and City Council.¹⁰⁶) Mississippi did not award any funds until November 4, 2022, and it has not yet disbursed those funds to Jackson. Holding Jackson’s funds in a State Treasury fund until the State approves Jackson’s plan only further reduces the amount of time Jackson must obligate and expend those funds before December 31, 2026. The U.S. Treasury sent Mississippi’s relief funds in May 2021—allowing 5 ½ years for those funds to be expended. Two years later, Mississippi has not given the City of Jackson one dime of that money.

¹⁰³ *Id.*

¹⁰⁴ *Supra* Note 1.

¹⁰⁵ https://home.treasury.gov/system/files/136/Mississippi_2021_Recovery_Plan_SLT-0976.pdf STATE OF MISSISSIPPI Recovery Plan State and Local Fiscal Recovery Funds 2022 Report <https://www.dfa.ms.gov/sites/default/files/DFA%20Legislative%20Provisions/Mississippi%202022-SLFRF-Recovery-Plan-Performance-Report.pdf>

¹⁰⁶ Lamar, Trey, *Mississippi House is trying to help, not hurt Jackson*, MAGNOLIA TRIBUNE, (Feb 19, 2023), <https://magnoliatribune.com/2023/02/19/mississippi-house-is-trying-to-help-not-hurt-jackson/>



VI. Relief Requested

Jackson needs every bit of help it can get and Jackson needed that help a long time ago. Yet, Mississippi is resolved to ensure the Blackest city in the State does not have self-autonomous access to hundreds of millions of dollars in relief aid. Mississippi's Governor and Legislature have created unlawful, discriminatory policies to accomplish their goals. They knowingly and intentionally created an unnecessary matching requirement for the MCWI Grant Program, thereby ensuring that Jackson's federal relief would be capped at a number they deemed acceptable—a number that did not broach “hundreds of millions.” They singled out Jackson for financial oversight which, when combined with their scoring system, created redundancy and unconscionable delay in Jackson's ability to utilize funds. They then passed legislation to waive the scoring for subsequent applicants once their objectives were accomplished with respect to the City of Jackson. And when the federal government sent Jackson \$600 million in direct federal aid, the State Senate and State House both immediately drafted and passed legislation to take over control of Jackson's money via the water, education, and court systems. Rather than pass legislation providing financial assistance to Jackson—either via a direct payment of \$42 million or via a nondiscriminatory Grant Program-- the Mississippi Legislature voted to use its SLFRF monies to fund the oppression of Black Jackson residents through the expansion of a state-run police force.

State leaders' own words leave no question as to the paternalistic, discriminatory intent. They cannot pretend their animus toward Jackson is not racially motivated. The State's explicit intent to act as overseer of Jackson's relief funds has a disparate impact on the vast majority of Jackson's residents—Black people. As such, the State's actions to gatekeep Jackson's relief funds violate Title VI and the U.S. Treasury's regulations.

As outlined above, Jackson was prohibited from seeking additional funds, although the Mississippi Legislature approved full funding of all applications in this second and final round without utilizing the scoring system which was applied to Jackson in the first round. Meanwhile, Jackson requires billions of dollars to address its sewer and water infrastructure crisis over what may be 20 years.¹⁰⁷

SPLC requests the U.S. Treasury investigate the criterion under which the State of Mississippi is awarding SLFRF funds. SPLC further requests MDEQ and the State of Mississippi be required to comply with Title VI and U.S. Treasury regulations by:

¹⁰⁷ *Supra* Note 15



1. Disbursing Jackson's MCWI grant monies directly to the City immediately, without use of the Capital City Water/Sewer Projects Fund and without additional oversight requirements via the State Treasury or MS Department of Finance and Administration;
2. Allowing Jackson to seek additional funding from the MCWI Grant Program, to take advantage of the waived scoring system and additional funding from the State Legislature; and
3. Providing access to ARPA funds without a matching requirement, for Jackson and other communities with financial need.

The Treasury's prompt investigation and intervention may allow Jackson unfettered, self-directed and equitable access to much needed federal assistance funds. We appreciate your consideration of this Complaint.

Best Regards

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