

Via Email and Mail

September 11, 2024

Nash Campbell
City Attorney
City of Chickasaw
PO Box 1348
Mobile, AL 36633

Dear City Attorney Campbell:

Hi, I am writing to you regarding the City of Chickasaw's practice of suspending garbage services, imposing harsh late fees, and criminally prosecuting residents that fall behind on their garbage and sewage bills. As explained below, these debt collection tactics are unlawful under federal and state law.

First, the City's billing statements violate the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution because they fail to notify residents about the process for disputing bills for

Ala. Code § 13A-8-10 because it lacks essential elements of that statute namely the intent to avoid

households criminally prosecuted for falling behind on their garbage and sewage bills, which are concentrated in tracts of the city with a higher concentration of Black residents:

Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950). It is as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance. *Id.* (internal citations omitted).

In *Memphis Light, Gas & Div. v. Craft*, the U.S. Supreme Court held that a city utility violated due process because the billing notice

Moreover, the notices that the City does provide are misleading, which also violates due process.

Black people make up 47 percent of the Chickasaw population, but account for 53 percent of prosecutions.²⁵

And Black women, who represent only 25.5 percent of the population in Chickasaw, account for 37 percent of prosecutions.²⁶

These disparities establish that the City's policy of suspending

H\Y' 5`UWa U 7cbg]i hcb`dfcj JXyg` [t]\Lhbc`dYfgcb`g\U`VY`ja df]gcbYX`Zcf`XYWhi`5`U` Const. § 20`I H\Y`X]ZYfYbW`VYrk Yb`h`Y`ja dfcdYf`i g`cZUgthi h`Ug`Ua YUbgcZ`di b]g\`a YbhZcf`XYWhi UbX`h`Y`dfcdYf`i g`cZUgthi h`Ug`Ua YUbgcZ`di b]g\`a YbhZcf`UW]a]bU`UW]g`]bhYbhi` *Bullen v. State*, 518 So. 2d 227, 28`f5`U`7f]a "5dd"%, +E`I 5`a YfY`ZU]i fY`cf`]bUW`]hmc`dUmU XYWhi XcYg bch bYWgUf`mVbgh]i h`h`YZhi` *Id.* I H\YZhi`fYei]fYg *the specific intention to deprive* which cannot be inferred from the mere naked ZUhcZ`bcdbUha YbhicZU`XYWhi` *Id.* (emphasis in original).

Alabama courts have applied Ala. Const. § 20 to invalidate laws that do not include willful nonpayment as an element of the offense. In fact, courts have only upheld statutes authorizing prosecution for nonpayment of utility bills if the ordinance makes willful nonpayment an element of the offense. *See, e.g., Lavender v. City of Tuscaloosa*, 198 So. 459, 460] 61 (Ala. Crim. App. 1940) (ordinance W]a]bU]n]b[`I k]`Z `bY[`YWh`cf`fYZ`gU`hc`Vta`d`m`k`]h`cfX]bUbW`fYei]f]b[`fYg]XYbng`hc`dUmZcf` sewage services did not violate Ala. Const. § 20); 5`U`C`d`5`h`h` Yb`"B`c"; (-00166, 1984 WL 1028538 (Feb. 17, 1984) (municipality may criminalize failing to pay garbage bills only]Z`I`h`Y`c`ZZYbX]b[`dUfm`]g`bch`]bX][`Yb]E` *see also Piggly Wiggly*, 601 So. 2d at 909 (I H\Y`a YfY`ZU]i fY`hc`dUmU XYWhi`k`\]Y` Z`fb]g\]b[`UVUg]g`Zcf`UV]]`g`]h]g`bch]g`ZU]Ybhic`Vebgh]i h`UW]a Y`I` (quoting *Bullen*, 518 So. 2d at 233)); *Carr v. State*, 17 So. 350, 351 (Ala. 1895) (constitutional prohibition against imprisonment for XYWhi` is inimical alike to the incarceration of a debtor as a means of coercing payment, and to his di b]g\`a YbhVm]a df]gcb`a YbhZcf`U`ZU]i fY`hc`dUhz`U`YUghk`Yb`g`W`ZU]i fY`fYg`hg`Zfca`]bUW`]hmi`E`

Chickasaw, Ala. Code § 2021-01UB facially violates Ala. Const. § 20 because it makes mere nonpayment of garbage and sewage bills a crime and authorizes up to 10 days in jail for each violation. There is no requirement for the City to establish willful nonpayment before charging residents with @ 4

its water and sewage system in the form of American Rescue Plan Act (ARPA) funds, as well as other federal funds including from the Gulf of Mexico Energy Security Act of 2006 (GoMESA).³⁰

GD@7 10:17 AM 11/17/23 187 casefiles reveal a racial disparity in prosecutions for nonpayment of trash and sewage bills in violation of Title VI. 141 of the 187 casefiles that SPLC attorneys reviewed of prosecutions for nonpayment of garbage and sewage services included race and gender demographics. As described above, those casefiles show a disparate impact based on race.

Even more troubling is that the proportion of Black people being prosecuted for nonpayment is increasing:

- In 2021, 49% of the residents prosecuted were Black.
- In 2022, 55% of the residents prosecuted were Black.
- In 2023, 57% of the residents prosecuted were Black.

The United States Department of Justice (DOJ) and the United States Department of Health and Human Services (HHS) have found that ADPH violated Title VI of the Civil Rights Act of 1964 by failing to ensure equal access to its services. In 2023, for example, DOJ and HHS reached an interim agreement with the Alabama Department of Public Health (ADPH) to resolve allegations that ADPH violated Title VI

To avoid being subjected to a similar inquiry by the Department of Justice as Lowndes County,

UFY'bck '\jh\UFXYghVmh\Y]bZUh]cb'k \jW\UgcWffY'UbX]gcWff]b[]b'ci f'gU'UbX'Vzi bml'i '5`U'
C d''5 h'n; Yb''B c''+- -00039, 1979 WL 465628, at *1 (Aug. 10, 1979) (advising that municipalities
can waive garbage fees for senior citizens on a fixed income).

GD@7] goal is to ensure that that no one is denied essential solid waste services or prosecuted
simply because they cannot afford a trash or sewer bill. We would appreciate the opportunity to meet
with you to discuss in more detail the constitutional and statutory violations described above and how
to remedy them. We can be reached at (334) 314-8976 or the phone and email addresses below.

Sincerely,

/s/ Micah West

Micah West
Senior Staff Attorney, ASB-1842-J82F
P: 334-314-8976

Micah.West@splcenter.org 701 BT [(J82F)] The W* org BT / G [(.) W] TJ ET Q q 0.00000

W12 0 612 792 reW* nBT/F1 12 Tf1 0 0 1 443.95 518.71 Tm0 G[(J82



Southern Poverty Law Center
400 Washington Ave
Montgomery, AL 36104
splcenter.org

City Councilmember Jim Trout
City Councilmember James Hanson
City Councilmember Jason Rawls
City Councilmember Kendall Sterrett
City Councilmember Jennifer White