

VIA EMAIL & US MAIL

July 1, 2016

The Honorable Jay Ross
Adams and Reese LLP
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RE: Chickasaw Ordinance No. 1504

Dear Judge Ross,

We have received several complaints from individuals who have been prosecuted under Chickasaw Ordinance No. 1504 after their water was turned off because of their inability to pay their water or other utility bills. We appreciate your willingness to discuss this matter with us as well as the efforts you have taken to dismiss the prosecutions of some individuals under Ordinance No. 1504. However, for the reasons discussed below, we believe that the Ordinance is unconstitutional and ask that the City of Chickasaw repeal it and cease issuing citations to those residents who live in a residence without water due to poverty. We also ask the City of Chickasaw to rethink the way it is using criminal prosecutions to address behavior like failure to pay for water or failure to cut the grass or otherwise maintain property, especially considering the added fines and fees attendant to these convictions.

The Ordinance violates the “cruel and unusual punishments” clause of the Eighth Amendment by criminalizing conduct that indigent persons are powerless to avoid. *See Ingraham v. Wright*, 430 U.S. 651, 667-68 (1977); *State v. Adams*, 91 So. 3d 724, 753 (Ala. Crim. App. 2010) (“[T]he Cruel and Unusual Punishments Clause of the Eighth Amendment forbids punishing criminally not only a person’s pure status, but also a person’s involuntary conduct that is inseparable from that person’s status.”). As you have noted, many people who are prosecuted under Ordinance No. 1504 simply cannot afford to pay their utility bills. It is a violation of the Eighth Amendment to prosecute those individuals who do not have the money to pay the fees necessary to re-connect their homes to water.

For similar reasons, the Ordinance also violates the Equal Protection Clause. *See Adams*, 91 So. 3d at 742 (finding that a state statute violated the Equal Protection Clause as applied to the defendant because he was not punished for any willful failure to comply with the statute, “but for his indigency and homelessness—matters established by the record to have been beyond his control.”). As in *Adams*, the Ordinance is discriminatory in its application, and creates a

discriminatory classification based on wealth because poor people are unable to avoid criminal charges when they cannot pay their bills.

Additionally, it is inappropriate for the City to use its criminal laws to coerce payment of a person's utility bills, a practice unlike anywhere else in the State. The Alabama Constitution prohibits using criminal laws to collect a civil debt. *See* Ala. Const. Art. I., § 20. "The criminal law was never designed to enforce the payment of a debt or to adjudicate civil disputes between parties." *Hurst v. State*, 108 So. 398, 399 (Ala. Ct. App. 1926). The mere failure to pay a debt, while furnishing a basis for a civil suit is not sufficient to constitute a crime. *Id.*; *see also* Ala. Code § 12-19-15(a) ("It is . . . declared to be the policy of the state that a creditor shall not use the criminal process in order to collect civil debts.").

Furthermore, some residents believe that their water was turned off for failure to pay other utility bills, such as trash and sewage, to the City of Chickasaw, and they were then unable to reconnect it because of the additional fees charged. This raises grave concerns about due process, as the City is completing all of the elements of the crime by forcing residents' water to be disconnected for unrelated unpaid debts, and then prosecuting them because of the City's own actions. *See United States v. Russell*, 411 U.S. 423, 432 (1973) (government conduct may bar prosecution if the conduct of law enforcement officers violates "that fundamental fairness, shocking to the universal sense of justice," mandated by the due process clause . . .").

Finally, we have received complaints from residents that the code enforcement officer is targeting poor people in investigating violations and issuing citations related to Ordinance No. 1504 and others, including failure to cut grass or having trash in their yards. These prosecutions raise concerns about whether the City is using the Court not to prosecute criminal offenses, but instead to generate revenue through the fines and costs imposed in Court. *See Whitner v. City of Pagedale*, No. 4:15 CV 1655 RWS, 2016 WL 915303, at *1 (E.D. Mo. Mar. 10, 2016). It is inappropriate to issue citations for minor ordinance violations for the purpose of generating revenue and to target enforcement activities at the City's most vulnerable residents.

We would be happy to meet in person to discuss these issues further. We can travel to Chickasaw at a time that is convenient for you and any others who may want to discuss these issues. If you would like to discuss this matter further over the phone, you may reach me at 334.956.8230 or by email at caren.short@splcenter.org.

We look forward to continuing to work with you on these important matters.

Sincerely,



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Staff Attorney

Micah West
Staff Attorney