

Via Email and Mail

September 11, 2024

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

Dear City Attorney Campbell:

The Southern Poverty Law Center (“SPLC”) writes to express our concern about the City of Chickasaw’s (“the City”) 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 garbage services that the City overcharged customers or did not render. Those notices also mislead customers into believing that the City will not accept partial payments and that the only option to avoid suspension is to pay the entire utility bill in full.

Second, the City’s utility fee collection and suspension policies violate the Fair Housing Act (“FHA”) and Title VI of the Civil Rights Act of 1964 (“Title VI”), which prohibit discrimination in the provision of utility services. The City has a policy of suspending garbage services until past due garbage *and* sewer bills are paid in full. The City’s policy violates the FHA and Title VI because it has a disproportionate adverse impact on access to garbage services on women and, specifically, Black women. It also violates state law, which does not authorize cities to suspend garbage services until a sewer bill is paid. *See* Ala. Op. Att’y Gen. No. 90-00301, 1990 WL 10709799 (May 31, 1990) (“A municipality may not [] penalize those who fail to pay their garbage fee by turning off their water.”).

Third, Chickasaw is unconstitutionally prosecuting people for nonpayment of their garbage and sewage bills. Chickasaw, Ala. Code § 2021-01UB¹—which criminalizes theft of utility services—violates the Alabama Constitution’s prohibition on imprisonment for debt and prohibition on enacting ordinances inconsistent with state law. *See* Ala. Const. §§ 20, 89. Under Alabama law, “[t]he mere failure to pay a debt, while furnishing a basis for a civil suit is not sufficient to constitute a crime.” *Piggly Wiggly No. 208, Inc. v. Dutton*, 601 So. 2d 907, 909 (Ala. 1992) (citation omitted).

In enacting the Ordinance, the City intended to incorporate Ala. Code § 13A-8-10—criminalizing theft of services—into its municipal code. However, the Ordinance is inconsistent with

¹ Available at https://cityofchickasaw.org/wp-content/uploads/2024/07/2021_01_ORDINANCE_Thef-of-Utility-Services.pdf.

Ala. Code § 13A-8-10 because it lacks essential elements of that statute—namely the intent to avoid payment through deception, threat, or fraud. As Alabama courts have explained, “[t]heft requires *the specific intention to deprive* which cannot be inferred from the mere naked fact of nonpayment of a debt.” *Bullen v. State*, 518 So. 2d 227, 233 (Ala. Crim. App. 1987) (emphasis in original).

To remedy these statutory and constitutional violations, the City should promptly:

- 1) Rescind Chickasaw, Ala. Code § 2021-01UB or amend the ordinance to authorize prosecutions only if there is evidence that a utility customer intentionally failed to pay through deception, threat, or fraud;
- 2) Dismiss all unadjudicated charges and recall any warrants for people charged with theft of utility services for “mere failure to pay” a utility bill, *see Piggly Wiggly*, 601 So. 2d at 909, because those charges and warrants are invalid under state and federal law;
- 3) Stop suspending garbage services until past due sewer bills are paid;
- 4) Amend the City’s billing statements to inform customers how they can dispute their utility bills and the options available to customers financially struggling to pay them; and
- 5) Pursuant to Ala. Code § 22-27-3(a)(3), pass an exemption for garbage fees for senior citizens and “households whose total income does not exceed 75 percent of the federal poverty level.”

SPLC’s Advocacy Around Utility Debt

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. Over the last decade, SPLC’s Economic Justice Advocacy and Litigation Team has filed litigation and supported policy reform focused on remedying the very constitutional violations that are occurring in Chickasaw today. Our litigation has ended modern-day debtors’ prisons, including in Montgomery, Alabama,² and largely drove private probation from municipal courts throughout the State.³ In 2017, we also settled a class action lawsuit against Alexander City for nearly \$700,000 for unconstitutionally jailing people unable to pay fines and costs.⁴

SPLC has long advocated for people unlawfully prosecuted because they cannot pay utility debt, including in the City of Chickasaw. In 2013, we secured the release of a man from custody in Baldwin County who spent two weeks in jail because he could not afford to pay an \$88 trash bill.⁵ In 2016, at our urging, the City of Chickasaw rescinded an ordinance that criminalized people who fell

² *SPLC lawsuit closes debtors’ prison in Alabama capital*, S. Poverty L. Ctr. (Aug. 26, 2014), <http://bit.ly/3SDvGLq> (last visited Sept. 6, 2024).

³ *SPLC: Private Probation Company’s Decision to Leave Alabama is Welcome News for Indigent*, S. Poverty L. Ctr. (Oct. 19, 2015), <https://shorturl.at/7pOaB> (last visited Sept. 6, 2024).

⁴ *Alabama town agrees in settlement to stop operating debtors’ prison*, S. Poverty L. Ctr. (March 14, 2017), <http://bit.ly/3EOZPBY> (last visited Sept. 6, 2024).

⁵ *SPLC secures release of Alabama man jailed after failing to pay \$88 trash bill*, S. Poverty L. Ctr. (July 25, 2013), <http://bit.ly/3IJqHo7> (last visited Sept. 6, 2024).

behind on their water bills and could not afford to connect to services.⁶ The former Chickasaw Municipal Court Judge entered an order that dismissed all pending charges and remitted all outstanding fines and costs.⁷ More recently, SPLC raised several constitutional concerns about the City of Valley’s practice of prosecuting people who fall behind on their garbage bills. After SPLC successfully represented several people in court, the elected District Attorney agreed to stop prosecuting people who fall behind on their garbage bills; to rescind all outstanding warrants; and to remit any outstanding court debt for people charged with nonpayment.⁸

We would welcome the opportunity to meet with the City to address our concerns and to discuss how the City should remedy the constitutional and statutory violations described below.

I. *Suspending garbage services and prosecuting people for falling behind on their garbage sewage bills threatens residents’ health and safety.*

The United States Supreme Court has recognized that “[u]tility service is a necessity of modern life” and suspending such “essential services for any appreciable time works a uniquely final deprivation.” *Memphis Light, Gas & Div. v. Craft*, 436 U.S. 1, 18, 20 (1978). “[I]ndeed, the discontinuance of [utility services] for even short periods of time may threaten health and safety.” *See id.* at 18. As numerous governments recognize, garbage and sewage services are “just as fundamental as the basic supply and availability of housing.” Alabama, too, recognizes this reality by describing garbage and sewage services as “essential” services under its landlord-tenant laws. *See, e.g.*, Ala. Code § 35-9A-404 (landlord liable for damages if landlord willfully or negligently fails to provide garbage or water services); *id.* § 35-9A-204(a)(5), (6) (requiring landlords to “provide and maintain appropriate receptacles and conveniences for the removal of garbage, rubbish, and other waste” and to “supply running water”).

Nevertheless, as a general policy and practice, the City of Chickasaw suspends residents’ garbage services, imposes late fees, and files criminal charges against residents who fall behind on their garbage and sewage bills even if they cannot afford to pay those bills. The City then refuses to restore services until after payment is made in full and residents pay a reconnection fee.

We have reviewed all 187 criminal cases filed for theft of utilities between March 2021 and January 2024. Those documents show that the City’s policies have a disproportionate impact on its residents who are experiencing poverty and, specifically, Black women. Below is a map of some of the

⁶ *Gulf Coast town repeals ordinance criminalizing the poor after SPLC action*, S. Poverty L. Ctr. (Sept. 14, 2016), <http://bit.ly/3J3HweR> (last visited Sept. 6, 2024).

⁷ *Id.*

⁸ Dwayne Fatherree, *After SPLC intervention, prosecutions over late trash bills end in Alabama City*, S. Poverty L. Ctr. (July 19, 2023), <https://shorturl.at/5386L> (last visited Sept. 6, 2024).

⁹ The Right to Adequate Housing, Off. of the U.N. High Comm’r for Human Rights 8 (2014), <https://www.ohchr.org/en/special-procedures/sr-housing/human-right-adequate-housing>.

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.¹⁰



The number of households impacted should not be surprising. Chickasaw has one of the highest poverty rates in the State of Alabama. 31.5 percent of the population lives below the federal poverty guidelines,¹¹ nearly double the State’s overall poverty rate (16.2 percent).¹² The median

¹⁰ The map represents only a fraction of the households impacted by the City’s policies to criminalize people who fall behind on their utility bills; SPLC is aware of an additional 60 or 70 households who have been prosecuted that are not reflected on the map.

¹¹ See U.S. Census Bureau, *QuickFacts, Chickasaw city, Alabama* (2023) <https://www.census.gov/quickfacts/fact/table/chickasawcityalabama/RHI225222>.

¹² See U.S. Census Bureau, *QuickFacts, Alabama* (2022) <https://www.census.gov/quickfacts/fact/table/AL/BZA110221>.

household income in the State of Alabama is over \$20,000 more than Chickasaw’s median yearly household income (\$59,609 versus \$38,985).¹³

The cost of housing and utilities are among the most pressing financial challenges Chickasaw residents face. Nationally, half of American renters are burdened by the cost of housing and utilities—meaning they spend more than 30 percent of their incomes on rent.¹⁴ This bears out locally, too. Based on recent U.S. Census Bureau data, the median Chickasaw household spends nearly 30 percent of their income on rent and utilities.¹⁵ Indeed, in a recent court filing, the receiver appointed over the Prichard Water Works and Sewer Board (“PWWSB”)—which services the City of Chickasaw—concluded that “system finances, water rate levels, and service area incomes of PWWSB’s customers result in one of the most severe water bill burdens in Alabama and nationally.”¹⁶ The cost of garbage and sewage in the City of Chickasaw only adds to that burden.

That burden is borne unevenly based on race and gender. The City brought about 61 percent of prosecutions for theft of utilities against women even though women comprise about half of the City’s population.¹⁷ And 37 percent of the criminal cases filed for theft of utilities were against Black women even though Black women make up only 25.5 percent of the City’s population.¹⁸

We spoke to dozens of residents ticketed, arrested, and prosecuted for failure to pay their utility bills who confirm these hardships. Suspending garbage pick-up, imposing harsh late penalties, and prosecuting people “who through no fault of [their] own [are] unable to” pay their garbage and sewage bills does not make payment “suddenly forthcoming.” *See Bearden v. Georgia*, 461 U.S. 660, 670 (1983). Those practices make the prospect of repayment that much harder.

For example, SPLC attorneys spoke with Shaquala Jackson, a 27-year-old Black woman with four young children, and Barbara Lowell, a 64-year-old white woman. Both rely on Social Security Disability as their sole source of income, earning about \$1,000 per month. Although both qualify for an exemption from their garbage bills under state law, *see* Ala. Code 22-27-3(a)(3), the City did not

¹³ *See supra* n.11, 12.

¹⁴ Joint Center for Housing Studies of Harvard University, *America’s Rental Housing* 34 (2024), available at <https://shorturl.at/sWcvR> (last visited Sept. 6, 2024).

¹⁵ As discussed *infra*, the median household income in Chickasaw is \$38,985 and the median gross rent is \$871—meaning the median household spends about 27 percent of their monthly income on rent. *See supra* n.11.

¹⁶ *See* Notice of Filing Receiver’s Report, *Synovus Corporate Trust v. Water Works and Sewer Board of City of Prichard*, No. 23-901332 (Cir. Ct. Mobile, Ala.), ECF 297.

¹⁷ *See supra* n.11.

¹⁸ *See* U.S. Census Bureau, *B01001: Sex by Age (filtered by Black or African American alone), 2021: American Community Survey 5-Year Estimates Selected Population Detailed Tables*, <https://data.census.gov/table?t=004&g=160XX00US0114392> (2021).

inform them about this exemption. Instead, the City suspended their garbage services and charged them with a crime after they each fell behind about \$2,000 on their utility bills.

Ms. Jackson did not know what to do. Initially, the garbage accumulated in the side of the yard. Rats soon arrived and ran throughout her house, jumping out from underneath her sink. She borrowed a relative's eight cats, but that did not solve the problem. After the City refused to accept partial payment and police threatened to arrest her, Ms. Jackson hired someone to haul away the garbage in his truck. Ms. Jackson paid the man \$100 every two weeks—or five times the amount of her monthly garbage bill. Fearing that she would be arrested and that her children would be left without their sole provider, Ms. Jackson moved out of the City altogether.

Ms. Lowell, too, did not know what to do with her garbage. She initially burned her garbage in her yard until her neighbors offered to let her use their garbage bins. When she went to court, she refused to plead guilty: *I did not steal anything*, she said. *I just fell behind on my bills*. Ms. Lowell is still trying to catch up on her garbage and sewage bills, even though she has not had a garbage can in nearly three years. *I am a humble person*, she said. *I do not want much. I just want my garbage can*.

SPLC attorneys also spoke with Phillip Byrd and Coral Cain, parents of four young children. The City charged Ms. Cain with theft of utility services after she fell behind more than \$1,300 on her garbage and sewage bills. After his wife received a court summons, Mr. Byrd called the Court: *what would happen to her if she could not pay the garbage and sewage bill?* The court clerk said that his wife could go to jail. Mr. Byrd panicked: he feared that his four young children would become homeless if his wife went to jail. Mr. Byrd and Mrs. Cain eventually pooled everything they earned to pay the outstanding balance and to have garbage services restored. *A garbage can is a blessing*, he told us. *You do not know how much trash four kids create until there is no place to put it*. Their family, too, recently moved out of Chickasaw altogether—a course of action SPLC heard about repeatedly from people afraid of being arrested and prosecuted for falling behind on their bills.

SPLC attorneys also spoke with Jose Young, a 51-year-old Black man who relies on Social Security Disability for his income. Mr. Young fell behind more than \$2,000 on his utility bills: his account was suspended after doctors amputated his leg following a car accident. Mr. Young feels humiliated. He relies on friends and family to take his garbage while he is being criminally prosecuted for falling behind on his utility bills. Other people that we interviewed engaged in mental and financial gymnastics to pay off their utility bills: one woman planned to overdraw her checking account to pay off her bills—knowing that her bank had a \$200 overdraft protection plan—after her trash can was taken and the City prosecuted her for falling behind on her payments.

As discussed below, our review of the City's billing practices, its theft of service ordinance, nearly 200 hundred criminal case files, and conversations with dozens of Chickasaw residents indicate that the City's practices violate multiple constitutional provisions and state and federal laws.

II. *The City's billing notices violate procedural due process.*

“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”

Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950). “The notice must be of such nature 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 failed to inform those customers “of the availability of an opportunity to present their objections to their bills.” 436 U.S. 1, 14 (1978) (internal quotation marks omitted). The city’s invoice to customers “stated that payment was overdue and that service would be discontinued if payment was not made by a certain date.” *Id.* at 13. While sufficient to notify customers that services could be terminated, the notice failed to “advise the customer of the availability of a procedure for protesting a proposed termination of utility service as unjustified.” *Id.* at 15. “In essence,” the Court explained, “recipients of a cutoff notice should be told where, during which hours of the day, and before whom disputed bills appropriately may be considered.” *Id.* at 14 n.15.

The billing statements that Chickasaw provides customers are indistinguishable from the shut-off notices that the Supreme Court found to violate due process in *Memphis Light*. As in *Memphis Light*, the Chickasaw billing notice does not inform customers about how they can dispute their bills. The notice simply informs utility customers that they are delinquent on their bills and that the balance is “DUE IMMEDIATELY or Services will be Disconnected.” And there appears to be no other statute, ordinance, or publicly available guidance that separately explains how a customer can dispute a bill.

As the U.S. Supreme Court recognized in *Memphis Light*, given these procedural deficiencies, the risk that the City is improperly shutting off utility services “is not insubstantial.” *Id.* at 18. SPLC attorneys reviewed records from several residents who were erroneously billed—and even criminally charged—for garbage services that the City did not render.

For example, the criminal complaint in Ms. Jackson’s case alleged that she had “ALLOWED UNPAID TRASH AND SEWER SERVICES AT [HER] RESIDENCE TO TOTAL \$71,500 BEFORE THE ACCOUNT WAS TERMINATED AND TRASH CART WAS PICKED UP.” But Ms. Jackson could not possibly have owed the city over \$70,000. Ms. Jackson is only 27 years old.¹⁹ To accumulate a bill that high, Ms. Jackson would have had to continuously reside at that residence without payment for more than 85 years.

And in Mr. Young’s case, the City continued to bill him for two years after suspending his garbage pick-up, charging him for services not rendered. His arrearages continued to accumulate each month unjustifiably until the City credited his account on March 13, 2024, for charging him for services Chickasaw had stopped providing years ago.²⁰

¹⁹ The City wrote off Ms. Jackson’s outstanding balance in February 2023 after she moved out of the City of Chickasaw because it had “no information to collect funds.” *See* Jackson Customer Inquiry – Transactions Report As of June 3, 2024.

²⁰ The City made two prior adjustments to Mr. Young’s account. In January 2024, it adjusted Mr. Young’s account by \$300 after noting that Mr. Young had “NO CAN SINCE SEPT 2022.” The City

Moreover, the notices that the City does provide are misleading, which also violates due process. *See Am. Druggists Inc. Co. v. Bogart*, 707 F.2d 1229, 1237 (11th Cir. 1983) (“misleading letter from the clerk of the court” “fails to comply with even [] minimum standards of due process”); *Interccontinental Indus. Inc. v. Am. Stock Exch.*, 452 F.2d 935, 941 (5th Cir. 1971) (“Where the notice given . . . is not misleading and apprises that party of the issues in controversy, the requirements of the law are met.”)²¹; *see also Brenster v. City of Los Angeles*, 672 F. Supp. 3d 872, 955 (C.D. Cal. 2023) (“A body of case law holds that the government violates due process when the notice it affords individuals misrepresents or misleads the individuals affected by it.”) (collecting cases).

For example, multiple residents told SPLC attorneys that they could not afford to pay their past due bills in one lump sum: they could only afford to make partial payments over time. However, those same residents noted that the City’s billing statements state in red that the City does not make partial “payment arrangements” and that the full balance is “DUE IMMEDIATELY.” The billing notices deterred these residents from trying to catch up on their utility bills or contacting the City to make partial payment arrangements, resulting in further debt and no payments being made at all.

City officials, however, represented to SPLC attorneys that their practices differ in meaningful ways from what the bills say. They stated that the City welcomes partial payments,²² understands residents face financial hardship, and will work with customers that have fallen on hard times.²³ The difference between what the City tells customers in writing and the flexibility the City assures us that it provides in practice raises serious constitutional concerns: the billing notices fail to “reasonably” “convey” to residents that the City will work with residents to avoid suspension or restore services if they contact them about their utility bills and explain their financial situation. *See Mullane*, 339 U.S. at 314; *Craft*, 436 U.S. at 13–14 (utility violated due process when it could not provide assurance that it provided customer with written notice about the availability of “a utility payment plan” or a process to dispute a utility bill).

III. Chickasaw’s practice of suspending trash services until a past-due garbage and sewer bill is paid violates the Fair Housing Act.

The federal Fair Housing Act (FHA) prohibits housing discrimination based on race, color, and sex, among other protected characteristics. 42 U.S.C. §§ 3601–3631. Congress designed the FHA “to provide . . . for fair housing throughout the United States,” *id.* § 3601, by eradicating discrimination

then continued to charge Mr. Young for garbage services for the next two months even though it did not resume garbage pick-up. On March 13, 2024, the City again adjusted Mr. Young’s account by \$654.22 after removing his past garbage and late fees.

²¹ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding all Fifth Circuit cases submitted or decided prior to October 1, 1981.

²² The City represented to SPLC attorneys that it will not agree to a formal payment plan with customers, but will accept any partial payment made on a past due account.

²³ Residents dispute many of the representations that City officials made to SPLC attorneys.

within the housing sector and fostering “a more integrated society,” *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 539, 547 (2015). The FHA applies to local governments, including municipalities like the City of Chickasaw. *See, e.g., United States v. Parma*, 661 F.2d 562, 572 (6th Cir. 1981), *cert. denied*, 456 U.S. 926, 926 (1982).

One form of housing discrimination outlawed by the FHA is discrimination “in the provision of services” connected with the sale or rental of housing. 42 U.S.C. § 3604(b). In other words, the FHA “requires that such things as garbage collection and other services of the kind usually provided by municipalities not be denied on a discriminatory basis.” *Jersey Heights Neighborhood Ass’n v. Glendenning*, 174 F.3d 180, 193 (4th Cir. 1999) (internal quotation marks and citation omitted); *see also Ga. State Conf. of the NAACP v. City of LaGrange*, 940 F.3d 627, 634 (11th Cir. 2019) (holding that water, gas, and electricity are “basic utility services” that fall within the scope of the FHA because they are “closely tied to the sale or rental of a dwelling” and “essential to the habitability of a dwelling”).

To establish a prima facie fair housing violation, a plaintiff need only show that a challenged practice has a discriminatory effect on members of a protected class, *i.e.*, a “disparate impact”; it is not necessary to show that the discrimination was intentional. *Tex. Dep’t of Hous. & Cmty. Affairs*, 576 U.S. 519 at 527. For instance, Chickasaw residents may prove a disparate impact by showing that the proportion of Black residents adversely impacted by the City’s utility suspension policies is higher than the proportion of Black residents in the City as a whole. *See Hallmark Devs., Inc. v. Fulton Cnty.*, 466 F.3d 1276, 1286 (11th Cir. 2006) (describing a variety of tests for measuring disparate impact).

The City of Chickasaw has a policy of suspending garbage services until past due garbage *and* sewer bills are paid in full. *See* Bill for Services (“If [garbage] services are disconnected, additional late fees and reconnection fees will apply and must be paid, in full, along with the balance on the [garbage *and* sewer] account before [garbage] services can be reconnected.”). At least one city has been sued in federal court for maintaining a similar utility suspension policy in violation of the Fair Housing Act. *See City of LaGrange*, 940 F.3d at 630 (reversing the district court’s grant of dismissal in a case in which plaintiffs alleged FHA violations for a city policy of terminating residents’ utility services until they paid all municipal debts, including fines and costs).

Chickasaw’s trash suspension policy violates the Fair Housing Act because the policy has a disproportionate impact on Black and female residents. 141 of the 187 casefiles that SPLC attorneys reviewed of prosecutions for nonpayment of garbage and sewage services included race and gender demographics. Those casefiles show a disparate impact based on gender and race:

- Women constitute about half of Chickasaw’s population, but account for 61 percent of prosecutions for overdue trash and sewage bills.²⁴

²⁴ U.S. Census Bureau, *B01001: Sex by Age (filtered by Age and Sex alone), 2021: American Community Survey 5-Year Estimates Selected Population Detailed Tables*, S0101: AGE AND SEX - Census Bureau Table (2021).

- 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 residents’ garbage service until overdue garbage *and* sewer bills are paid—and then prosecuting them for theft—disproportionately denies Black people and women access to a “basic utility service[]” in violation of the Fair Housing Act. *See City of LaGrange*, 940 F.3d at 634.

IV. Chickasaw’s policy of suspending garbage services until past due sewer bills are paid violates state law.

Chickasaw’s policy of suspending garbage services until past due sewer bills are paid violates state law, which does not authorize cities to suspend garbage services until a sewer bill is paid. *See* Ala. Op. Att’y Gen. No. 90-00301, 1990 WL 10709799 (May 31, 1990) (“A municipality may not [] penalize those who fail to pay their garbage fee by turning off their water.”). As one treatise explained,

the decisions are generally in accord in holding that a public utility corporation cannot refuse to render the service which it is authorized to furnish, because of some collateral matter not related to that service Thus, a city providing electrical power and telephone service to its inhabitants could not disconnect a resident’s telephone and electrical services for failure to pay a garbage collection fee, since garbage collection is a collateral matter to electrical and telephone service. Such action was held discriminatory and unlawful, and an ordinance which purported to allow such discrimination of public utility service was likewise unlawful and in excess of the city’s power to legislate.

Maurice T. Brunner, LL.B., *Right of municipality to refuse services provided by it to residents for failure of resident to pay for other unrelated services*, 60 A.L.R.3d 714 (Originally published in 1974).

V. Chickasaw Ordinance 2021-01 violates the Alabama Constitution.

- i. The Ordinance violates Alabama’s Constitutional prohibition on imprisonment for debt.***

²⁵ *See* U.S. Census Bureau, *B01001: Sex by Age (filtered by Black or African American alone)*, 2021: American Community Survey 5-Year Estimates Selected Population Detailed Tables, <https://data.census.gov/table?t=004&g=160XX00US0114392> (2021); *see also* U.S. Census Bureau, *S0101: Age and Sex*, 2021: American Community Survey 5-Year Estimates Subject Tables, <https://data.census.gov/table/ACSST5Y2021.S0101?g=160XX00US0114392> (2021).

²⁶ *See supra* n.18.

The Alabama Constitution provides “[t]hat no person shall be imprisoned for debt.” Ala. Const. § 20. “The difference between the improper use of a statute as a means of punishment for debt and the proper use of a statute as a means of punishment for a criminal act is intent.” *Bullen v. State*, 518 So. 2d 227, 223 (Ala. Crim. App. 1987). “A mere failure or inability to pay a debt does not necessarily constitute theft.” *Id.* “Theft requires *the specific intention to deprive* which cannot be inferred from the mere naked fact of nonpayment of a debt.” *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 criminalizing “willful neglect or refusal to comply” with ordinance requiring residents to pay for sewage services did not violate Ala. Const. § 20); Ala. Op. Att’y Gen. No. 84-00166, 1984 WL 1028538 (Feb. 17, 1984) (municipality may criminalize failing to pay garbage bills only if “the offending party is not indigent”); *see also Piggly Wiggly*, 601 So. 2d at 909 (“The mere failure to pay a debt, while furnishing a basis for a civil suit is not sufficient to constitute a crime.” (quoting *Bullen*, 518 So. 2d at 233)); *Carr v. State*, 17 So. 350, 351 (Ala. 1895) (constitutional prohibition against imprisonment for debt “is inimical alike to the incarceration of a debtor as a means of coercing payment, and to his punishment by imprisonment for a failure to pay, at least when such failure results from inability”).

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 a crime—mere nonpayment of a utility bill is criminalized. Chickasaw, Ala. Code § 2021-01UB (“Failure to pay the [utility] bill pursuant to billing terms will constitute theft of utility services.”); (“A person commits the crime of theft of utility services if [] [h]e obtains utility services from the Utilities Board of the City of Chickasaw . . . and fails to pay for said services[.]”).

ii. The Ordinance violates Ala. Const. § 89.

Chickasaw Ordinance 2021-01 violates Ala. Const. § 89, which prohibits the City from passing an ordinance inconsistent with Alabama law. *See Dothard v. Cook*, 333 So. 2d 576, 579 (Ala. 1976) (“Municipalities derive their right to existence from the legislature. It has long been the law that municipalities shall not pass ordinances contrary to the laws passed by the legislature.”). “An ordinance may be ‘inconsistent’ with State law if it prohibits conduct permitted under State law.” *Alabama Disposal Sols.-Landfill, L.L.C. v. Town of Lowndesboro*, 837 So. 2d 292, 301 (Ala. Civ. App. 2002) (finding unconstitutional ordinance that conflicted with the Alabama Solid Waste Disposal Act).

In *Town of Eclectic v. Mays*, 547 So. 2d 96 (Ala. 1989), the Alabama Supreme Court invalidated an ordinance because it was inconsistent with Alabama’s Solid Waste Disposal Act. The challenged ordinance—which purported to incorporate Ala. Code § 22-27-5 into the Town of Eclectic’s municipal code—authorized up to a \$500 fine and six months imprisonment for any person who failed to pay garbage-service fees. The Alabama Supreme Court found that the ordinance was unconstitutional because Ala. Code § 22-27-5 does not authorize criminal penalties if a person fails to pay a garbage bill: the statute only authorizes municipalities to “suspend” service or to file a “civil action” for nonpayment. *Id.* at 101 (quoting Ala. Code § 22-27-5(e)).

Here, too, Chickasaw Ordinance 2021-01 is unconstitutional because it is inconsistent with the state statute—Ala. Code § 13A-8-10—that Chickasaw purported to incorporate into its municipal code.²⁷ Under Ala. Code § 13A-8-10, a prosecution for nonpayment of utility fees is permissible only if a person intentionally obtains services through deception, threat, or fraud.²⁸ The Editor’s Notes to the statute emphasize that “negligent, inadvertent or accidental nonpayment is not criminal”; intent is an essential element of the offense. Editor’s Notes, Ala. Code § 13A-8-10.3. As the Alabama Court of Criminal Appeals explained,

[a] mere failure, refusal, or inability to pay does not constitute the offense contemplated by the statutes. Such a statute requires specific intention on the part of the wrongdoer, which cannot be inferred solely from the naked fact of nonpayment . . . A conviction cannot be had in the absence of fraud on the part of accused.

Cottonreeder v. State, 389 So. 2d 1169, 1174 (Ala. Crim. App. 1980).²⁹

Unlike Ala. Code § 13A-8-10, Chickasaw’s ordinance criminalizing theft of utilities does not limit prosecutions to individuals who intentionally fail to pay their garbage and sewage bills and avoided payment for those services through deception, threat, or fraud: the Ordinance makes mere nonpayment a crime. *See* Chickasaw, Ala. Code § 2021-01UB (criminalizing “theft of utility services” if a person “obtains utility services” from the City of Chickasaw and “fails to pay for said services”).

VI. *Criminalizing nonpayment of sewer bills may violate Title VI of the Civil Rights Act*

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., and its implementing regulations, 28 C.F.R. §§ 42.101–112; 45 C.F.R. §§ 80.1–80.13 (collectively, Title VI), prohibits entities that receive federal funding from engaging in activities that discriminate based on race, color and/or national origin. Chickasaw is bound by Title VI because it receives federal money for the operation of

²⁷ Every criminal complaint alleging a violation of Chickasaw, Ala. Code § 2021-01UB notes that the ordinances “embraces” Ala. Code § 13A-8-10.

²⁸ “A person commits the crime of theft of services if: (1) He intentionally obtains services known by him to be available only for compensation by deception, threat, false token or other means to avoid payment for the services; or (2) Having control over the disposition of services of others to which he is not entitled, he knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.” Ala. Code § 13A-8-10(a); *see also* Ala. Code § 13A-8-1(11) (deeming the supplying of a public utility “by means of wires, pipes, conduits, or other equipment” a “service”).

²⁹ The Court made these statements in the context of interpreting an analogous statute, Ala. Code § 34-15-18 (obtaining accommodations by fraud or misrepresentation), that has since been rescinded and incorporated into Ala. Code § 13A-8-10(b); *see also* Editor’s Notes, Ala. Ala. Code § 13A-8-10.3 (noting that Ala. Ala. Code § 13A-8-10 “continues” Ala. Code § 34-15-18).

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

SPLC’s review of 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 similar prosecutions for nonpayment of utility bills violated Title VI. 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 because of its practices of criminalizing people in Lowndes County, Alabama unable to pay for septic systems.³¹ The complainants had presented evidence that there was a racial disparity in those prosecutions. As part of that agreement, ADPH agreed to stop prosecuting people unable to pay for septic systems.³²

³⁰ Chickasaw was approved for Clean Water ARPA/State Revolving Fund grants in 2022 and 2024. See <https://adem.alabama.gov/programs/water/srfreports/CWProjectAnalysis.pdf>. Chickasaw also received funds from the Gulf of Mexico Energy Security Act of 2006 (GoMESA). <https://governor.alabama.gov/newsroom/2023/07/governor-ivey-announces-67-million-in-gomesa-funded-projects/>.

³¹ See *Interim Resolution Agreement Between The United States Department of Justice and the United States Department of Health and Human Services and the Alabama Department of Public Health 2* (2023) (“Through the course of the investigation, the United States has identified areas of ADPH’s operations that raise concerns about noncompliance with Title VI,” including “ADPH’s role in the enforcement of Alabama laws that threaten and/or impose criminal and monetary sanctions against residents who do not have the means to obtain a functioning ADPH-permitted onsite wastewater system”), available at <https://www.hhs.gov/sites/default/files/adph-doj-hhs-agreement.pdf>.

³² *Id.* at 3 (“ADPH will immediately implement a moratorium on referral for prosecution, which could result in fines and fees, against individual residents or property owners in Lowndes County with inadequate onsite wastewater systems who do not have the means to install or repair an ADPH-permitted onsite wastewater system designed to function at the residence. . .”).

To avoid being subjected to a similar inquiry by the Department of Justice as Lowndes County, SPLC urges Chickasaw to rescind its ordinance criminalizing theft of utilities and to stop prosecuting people who fall behind on their garbage and sewage bills.

As discussed below, the City has available alternatives to prosecution that would not disparately harm Black people and, specifically, Black women, who are struggling to make ends meet.

VII. *The City should stop criminalizing people for mere nonpayment of utility bills.*

The City should take the following five steps to remedy the constitutional and statutory violations discussed above. First, the City should rescind Chickasaw, Ala. Code § 2021-01UB and immediately stop prosecuting people for mere nonpayment of utility bills. Alabama law only authorizes the City to prosecute people for nonpayment if the City has evidence that a customer willfully failed to pay or avoided payment through deception, threat, or fraud.

Second, the City should recall any warrants and dismiss all unadjudicated charges for theft of utility services. Because the ordinance is unconstitutional, those charges and warrants are invalid.

Third, the City should stop suspending residents' garbage services until past due sewer bills are paid in full. State law does not authorize the City to suspend *garbage* services until a past due *sewer* bill is paid in full. Because the City's policy has a disproportionate impact on Black and female residents' access to garbage services, it also violates the FHA and Title VI.

Fourth, the City should amend the utility's billing statements to inform customers how they can dispute their utility bills and the options available to customers financially struggling to pay them. The current notices are insufficient to inform residents how, where, and before whom they can dispute their bills. They also mislead customers into believing that the City will not work with them if they are struggling financially and are unable to pay in full.

Fifth, the City should pass an exemption for garbage fees for elderly residents and households whose total income does not exceed 75 percent of the federal poverty level and provide notice to residents that there is an exemption under state law for people whose sole source of income is Social Security. The City should also offer formal payment plans to residents who have low or irregular incomes and connect them with agencies that provide utility assistance.

State law permits such accommodations. The Legislature may, by local law, authorize the county commission to exempt from any garbage fees "households whose total income does not exceed 75 percent of the federal poverty level." Ala. Code § 22-27-3(a)(3). The City could work with its elected representatives to pass such an exemption in Chickasaw. And the City could "establish a partial pay or installment plan for delinquent accounts," Ala. Op. Att'y Gen. No. 2010-106, 2010 WL 3840652, at *3 (Sept. 21, 2010), which the City does not offer currently.

Moreover, the City has discretion to "waive fees for older citizens that are on a fixed income or that lack income." Ala. Op. Att'y Gen. No. 2022-010, 2021 WL 6104689, at *2 (Nov. 19, 2021). As the Attorney General has opined in endorsing such waivers, "[o]ur laws are replete with provisions which grant special treatment for the elderly citizens in our society who have paid their dues but who

are now hit hardest by the inflation which has occurred and is occurring in our state and county.” Ala. Op. Att’y Gen. No. 79-00039, 1979 WL 465628, at *1 (Aug. 10, 1979) (advising that municipalities can waive garbage fees for senior citizens on a fixed income).

SPLC’s 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

Ellen Degnan
Senior Staff Attorney, ASB-3244-I12V
P: 334-313-0702
Ellen.Degnan@splcenter.org

Crystal McElrath
Senior Supervising Attorney, Ga. Bar 277151*
P: 470-501-0913
E: Crystal.McElrath@splcenter.org

Wesley Evans
Senior Supervising Attorney, MS Bar 9956*
P: 769-284-6692
E: Wesley.Evans@splcenter.org

Miriam Gutman
Senior Staff Attorney, Ga. Bar 170768*
P: 470-728-2920
E: miriam.gutman@splcenter.org

Southern Poverty Law Center
400 Washington Avenue
Montgomery, Alabama 36104

** not admitted to practice law in Alabama*

CC:
Mayor Barry Broadhead



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