

Via Email and Mail

February 9, 2026

Dale Lawrence
City Attorney
City of Fayette
203 Temple Avenue
North Fayette, AL 35555

Dear City Attorney Dale Lawrence:¹

The Southern Poverty Law Center (“SPLC”) represents Lisa Mozingo and Christopher Fowler, two current or former Fayette residents. Ms. Mozingo and Mr. Fowler had their garbage services suspended, faced criminal prosecution for failing behind on their garbage bills and were sentenced to jail or probationary sentences. The City’s debt collection tactics in these cases were unlawful under federal and state law. We ask the City to immediately terminate any active probationary sentences in their garbage cases, remit any fines and fees owed, and issue pardons for their prosecutions to remedy the statutory and constitutional violations below. Moreover, because these violations are part of a pattern and practice in the City of Fayette, we request an opportunity to meet City officials on or before March 9, 2026, to hear how City intends to remedy the systemic statutory and constitutional violations around the City’s collection practices.

I. *SPLC’s advocacy around utility debt*

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 the City of Fayette today. Our litigation has ended modern-day debtors’ prisons,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. In 2013, we secured the release of a man from custody in Baldwin County who spent two weeks

¹ Our understanding is that Mr. Lawrence is both the City Attorney and the Municipal Court prosecutor on the cases described in this letter.

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).

in jail because he could not afford to pay an \$88 trash bill.⁵ In 2016, the City of Chickasaw rescinded an ordinance that criminalized people who fell behind on their water bills and could not afford to connect to services.⁶ As a result of our advocacy, the former Chickasaw Municipal Court Judge entered an order dismissing all pending charges and remitting 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. SPLC successfully represented several residents in their criminal cases and the newly elected District Attorney, Mike Segrest, ultimately 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 And in 2024, the City of Chickasaw placed a moratorium on new prosecutions for unpaid garbage and sewage bills after SPLC again raised concerns that the City’s practices of prosecuting people for unpaid garbage and sewage bills violated state law and the U.S. and Alabama Constitutions.⁹

II. *Suspending garbage services threatens Fayette 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). “[T]he 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.”¹⁰ Alabama, too, recognizes this reality by classifying garbage 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”).

The cost of housing and utilities are among the most pressing financial challenges Fayette 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.¹¹ Although the percentage is lower

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).

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 Dwayne Fatherree, *Alabama town stops prosecutions for late garbage bills after SPLC Advocacy*, S. Poverty L. Ctr. (Sept. 27, 2024), <https://www.splcenter.org/news/2024/09/27/alabama-town-stops-prosecutions-late-garbage-bills> (last visited Oct. 30, 2024).

¹⁰ 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>.

¹¹ Joint Center for Housing Studies of Harvard University, *America’s Rental Housing* 34 (2024), <https://shorturl.at/sWcvR> (last visited Sept. 6, 2024).

in Fayette, the City’s poverty rate (32.4 percent) is more than double the State’s overall poverty rate (15.2 percent).¹² The median household income in the State of Alabama is nearly \$30,000 more than Fayette’s median yearly household income (\$66,549 versus \$38,009).¹³

Nevertheless, as a general policy and practice, the City of Fayette suspends residents’ garbage services¹⁴ and files criminal charges against them when they fall behind on their garbage bills. The City demands that residents in arrears pay in full—even when they cannot afford to—or else face arrest and prosecution for nonpayment. In fact, the bills themselves state in bold and capital letters that **“PARTIAL PAYMENTS ARE NO LONGER ACCEPTED AND WILL BE RETURNED TO YOU.”** Residents charged with nonpayment are then routinely denied their constitutional right to counsel in Fayette Municipal Court and sentenced to illegal jail and probationary terms.

SPLC attorneys spoke to, and reviewed case files for, nearly a dozen residents negatively impacted by these policies. For the reasons discussed below, those policies and practices violate Alabama law and the U.S. and Alabama Constitutions.

III. *Fayette’s policies and practices relating to prosecutions for unpaid garbage bills violate Alabama law and the U.S. and Alabama Constitutions.*

i. *Fayette’s billing notices violate procedural due process because they fail to notify customers how they can dispute their bills or that unpaid bills may result in suspension of garbage services.*

The Fayette Sanitation Department’s billing notices violate the Due Process Clause of the Fourteenth Amendment. “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.* (citations omitted).

¹² See U.S. Census Bureau (2023), *American Community Survey 5-year estimates, Fayette, Alabama*, https://data.census.gov/profile/Fayette_city,_Alabama?g=160XX00US0125840.

¹³ See *id.*

¹⁴ A City clerk erroneously represented to the media that the City does not suspend garbage service for nonpayment. See Cynthia Gould, *Fayette woman jailed for 10 days over unpaid garbage bills*, ABC 33/40 News (September 9, 2024), <https://abc3340.com/news/local/fayette-woman-jailed-for-10-days-over-unpaid-garbage-bills> (“A clerk explained when someone does not pay their garbage service, the city cannot cut off service.”). In fact, the City routinely suspends garbage services for nonpayment of garbage bills. For example, Lisa Mazingo, Christopher Fowler, and Ms. M., Case No. MC-23-000098, all had their garbage services suspended for nonpayment. (To preserve their privacy, this letter only provides the case number and the first initial of the last name of anyone—such as Ms. M—that SPLC does not formally represent. SPLC references these other individuals to make clear that what happened to Ms. Mazingo and Mr. Fowler is part of an unlawful pattern and practice in the City of Fayette).

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 customers “of the availability of an opportunity to present their objections to their bills.” 436 U.S. at 14 (citation and 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.

As in *Memphis Light*, the Fayette billing notices do not inform customers how they can dispute their bills.¹⁵ But the bills are even more deficient than the notices at issue in *Memphis Light* because they fail to notify customers that the City will suspend their garbage service if they do not pay. Instead, the bills state only that “[i]f the total amount is not paid within 75 days, civil and/or criminal action will commence.”¹⁶

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. In fact, SPLC attorneys reviewed records from several residents whose services were suspended—or who were erroneously told that they owed money—even though they had paid their garbage bills. For example, in 2022, the City suspended Mr. Fowler’s garbage service and removed his can even though he had already paid his past-due garbage bill. And because the City did not notify him before or after that seizure, Mr. Fowler did not know how to resolve the problem: he thought that someone had stolen his garbage can, not that the City had erroneously seized it.

ii. Fayette may not use criminal prosecutions as a collection mechanism.

The Alabama Supreme Court has held that it is “an unconstitutional exercise of power for district attorneys to” prosecute people “for the purpose of debt collection.” *Piggly Wiggly No. 208, Inc. v. Dutton*, 601 So. 2d 907, 911 (Ala. 1992); Ala. Op. Att’y Gen. No. 96-00166, 1996 WL 34908597, at *2 (Mar. 27, 1996) (“Alabama law clearly prohibits the use of criminal process to collect civil debt.”). This principle has been well-established for more than 100 years. In 1895, for example, the Alabama Supreme Court explained that the government may not threaten criminal prosecution “to coerce the payment of a debt by the duress [such a threat] authorizes.” *Carr v. State*, 17 So. 350, 351–52 (1895). More recently, the Alabama Court of Criminal Appeals reaffirmed that principle, explaining that “[t]he criminal law was not designed to enforce the payment of a debt or to adjudicate civil disputes between parties.” *Bullen v. State*, 518 So. 2d 227, 233 (Ala. Crim. App. 1987).

In a series of decisions, Alabama courts have vacated convictions or invalidated laws used to coerce the payment of debt. In *Piggly Wiggly*, for example, the Alabama Supreme Court denied a writ

¹⁵ Nor does there appear to be any other statute, ordinance, or publicly available guidance that separately explains how a customer can dispute a bill.

¹⁶ As discussed *infra*, the City’s notices threatening residents with criminal prosecution for nonpayment are unlawful for additional reasons: the City of Fayette may not threaten criminal prosecution to coerce payment of unpaid garbage bills, nor prosecute anyone who is indigent and unable to pay.

of mandamus to compel a district attorney to prosecute people for writing worthless checks after the merchant had turned the bad check over to a collection agency. The collection agency—like the Fayette Sanitation Department—“routinely use[d] the threat of criminal prosecution in an attempt to secure payment[.]” 601 So. 2d at 909. The company sent letters to writers of worthless checks that they must respond to the letter “to avoid initiation of criminal processing by the County District Court Clerk’s Office.” *Id.* at 909–10. If the worthless check writer failed to reimburse the merchant, the company sent a second letter outlining the available criminal penalties for nonpayment under Alabama law. The Court held that the district attorney acted within his discretion when he refused to prosecute worthless check cases because the recipients of those letters would likely have a valid constitutional defense to any prosecution.

Similarly, in *King v. State*, the Alabama Court of Criminal Appeals invalidated a criminal conviction after concluding that the prosecution had been improperly initiated for the collection of a civil debt. 401 So. 2d 226, 236 (Ala. Crim. App. 1981). The defendant purchased an automobile from an auction house using a check with insufficient funds. The Court noted that the auction house delayed prosecution “for more than a year because of the belief the check would be paid by defendant without the necessity for a criminal prosecution” and that “no prosecution would have ever been instituted” if the defendant paid in full before it had requested the warrant. *Id.* at 235–36. In invalidating the conviction, the Alabama Court of Criminal Appeals explained that the auction house improperly instituted the criminal prosecution for the collection of a civil debt. *Id.* at 236. “The conviction was wrong and unjust,” it concluded. *Id.* (citation and quotation marks omitted).

In *Harris v. State*, the Alabama Court of Criminal Appeals also invalidated a conviction under the Worthless Check Act secured to coerce the payment of a civil debt. 378 So. 2d 257 (Ala. Crim. App. 1979). The defendant purchased gasoline from an oil company using a \$2,000 check with insufficient funds. The company owner testified that he initiated the criminal prosecution to coerce payment and that he would drop the charges if the defendant paid his debt. In reversing the criminal conviction, the Alabama Court of Criminal Appeals explained that it has “repeatedly condemned the use of threat of prosecution as a means of collection” and that the government may not use the criminal process “for debt collection purposes.” *Id.* at 263 (citation and quotation marks omitted). “To allow this conviction to stand would be a travesty on justice.” *Id.*

As in *Piggly Wiggly*, *King*, and *Harris*, the Fayette Sanitation Department is unconstitutionally using the threat of criminal prosecution as a cudgel to coerce payment of past due garbage bills. If a customer falls behind on their garbage bills, the Sanitation Department mails the customer a notecard stating that if the past due bill “is not paid within 75 days, civil and/or criminal action will commence.” A customer can avoid prosecution if the past due garbage account is paid in full. By contrast, if the past due account remains unpaid, the Garbage Collections Department mails a second letter labeled “FINAL NOTICE.” The letter warns residents that “the City will begin criminal proceeds against you” if “the fees that you owe” are not paid by a date certain. These letters are materially indistinguishable from the debt collection letters in *Piggly Wiggly* and the debt collection practices in *King* and *Harris* that Alabama courts found to raise constitutional concerns.

The Fayette Municipal Court’s sentencing practices reinforce the City’s unconstitutionally coercive practices. The Fayette Municipal Court has one judge (Judge Steven Nolen), and he routinely sentences residents who fall behind on their garbage bills to probation or suspended jail sentences on

the condition that they become current on their bills. For example, Judge Nolen has sentenced Lisa Mozingo,¹⁷ Christopher Fowler,¹⁸ Ms. H.,¹⁹ Mr. F.,²⁰ Ms. G.,²¹ and Ms. M.²² to suspended jail or probationary sentences on the condition that they pay their garbage bills. But the Alabama Supreme Court condemned these very practices in 1895, when it invalidated a criminal statute used to collect civil debt. *See Carr*, 17 So. at 351. The Court denounced that law as effectively declaring that unless a debtor pays his debt, “he shall be arrested, held to trial, tried, convicted, fined, and imprisoned at hard labor, and this obviously not for any taint of criminality in the transaction out of which the debt arose, but purely and simply for the nonpayment of the debt.” *Id.*

What the Supreme Court condemned in 1895 continues unabated in Fayette 130 years later.

iii. Mere failure to pay a garbage bill is not a crime and cannot be prosecuted as such.

Even if the City could prosecute people to coerce payment (which it cannot), mere nonpayment of a garbage bill is not a crime. As the Court of Criminal Appeals explained, “[t]he mere failure to pay a debt, while furnishing a basis for a civil suit is not sufficient to constitute a crime.” *Bullen*, 518 So. 2d at 233. “[C]rime cannot be imputed to the breach of contract, non-performance, or non-payment, as the case may be.” *Davis v. State*, 185 So. 774, 776 (Ala. 1938). Thus, prosecuting residents for “mere failure to pay a debt” without evidence of fraudulent intent is unconstitutional. *See Cottonreeder v. State*, 39 So. 2d 1169, 1173 (Ala. Crim. App. 1980).

In a variety of contexts, Alabama courts have explained that a person may only be prosecuted for nonpayment if there is specific evidence that the debtor willfully failed to pay. For example, the Alabama Court of Criminal Appeals has reversed theft convictions because there was no evidence that the defendant willfully failed to pay for goods or services. “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,” the Alabama Court of Criminal Appeals explained, “which cannot be inferred from the mere naked fact of nonpayment of a debt.” *Bullen*, 518 So. 2d at 233.

These general observations are consistent with the Alabama Attorney General’s explicit guidance in the utility context. In 1984, for example, the Alabama Attorney General opined that a municipality may criminalize nonpayment of garbage bills only if there is evidence that “the offending party is not indigent.” *See Ala. Op. Att’y Gen. No. 84-00166*, 1984 WL 1028538 (Feb. 17, 1984); *see also Lavender v. City of Tuscaloosa*, 198 So. 459, 461 (Ala. Crim. App. 1940) (upholding ordinance criminalizing nonpayment of utility service charges for “willful neglect or refusal to” pay) (emphasis

¹⁷ *See* Case No. MC-21-000144, Jan. 18, 2022 Case Disposition (“must pay garbage bill”).

¹⁸ *See* Case No. MC-22-102, Dec. 6, 2022 Plea Agreement (“keep garbage bill current”).

¹⁹ *See* Case No. MC-23-000070, Sept. 5, 2023 Sentence (“pay \$100 tonight/pay balance by end of September”).

²⁰ *See* Case No. MC-24-000027, May 21, 2024 Sentence (ordering \$145.20 in restitution).

²¹ *See* Case No. MC-24-000018, April 16, 2024 Sentence (“condition of probation – pay garbage bill + ordered monies”).

²² *See* Case No. MC-23-000098, Nov. 21, 2023 Sentence (“must pay monthly garbage bill”).

added). Longstanding United States Supreme Court precedent, too, prohibits “punishing a person for his poverty.” *Bearden v. Georgia*, 461 U.S. 660, 671 (1983); *see also Williams v. Illinois*, 399 U.S. 235, 242 (1970); *Tate v. Short*, 401 U.S. 395, 397–98 (1971).

None of the criminal complaints that SPLC attorneys reviewed allege that residents are non-indigent and willfully failed to pay: the complaints state only that each resident failed to pay their garbage bill. But this “mere failure to pay a debt . . . is not sufficient to constitute a crime.” *Bullen*, 518 So. 2d at 233; *see also Carr*, 17 So. at 351 (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”); *Johnson v. State*, 17 So. 3d 261, 262 (Ala. Crim. App. 2009) (“Nowhere in our caselaw, statutes, or rules do we allow the imprisonment of a civil debtor because he or she is unable to pay the debt.” (citation and quotation marks omitted)).

The Alabama Constitution, in other words, requires case-specific evidence that the person being prosecuted can pay the past due bill and willfully refuses to do so. Such evidence is entirely absent from the Fayette Municipal Court’s casefiles.

iv. The Fayette Municipal Court’s issuance of jail and probationary sentences for unpaid garbage bills is illegal.

The Fayette Municipal Court’s sentencing practices in cases for unpaid garbage bills violate state law and raise serious ethical concerns about Judge Nolen’s sentencing practices under the Canons of Judicial Ethics.²³ Under Alabama law, “[t]he sentence imposed following conviction of a crime must conform to the statute and cannot exceed the term prescribed by law.” *Ferguson v. State*, 565 So. 2d 1172, 1773 (Ala. Crim. App. 1990). “When the court imposes [a] sentence in excess of that authorized by statute, it exceeds its jurisdiction, and the sentence is consequently void.” *Id.*

Neither state law nor Fayette’s Municipal Code authorizes Judge Nolen to impose a jail or probation sentence if a person falls behind on their garbage fees. Rather, under both state law and Fayette’s Municipal Code, the only criminal penalty that Judge Nolen may impose for nonpayment of garbage collection fees is a fine of “not less than \$50.00 nor more than \$200.00.” *See* Ala. Code § 22-27-7; *see also* Fayette, Ala. Code §§ 8-24, 8-25 (authorizing “a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00)” if a resident fails to pay a garbage collection fee).

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 authorized up to a \$500 fine and six months imprisonment for any person who failed to pay garbage collection fees. The Alabama Supreme Court found that the ordinance was unconstitutional because the Solid Waste Disposal Act does not authorize a \$500 fine or six months

²³ *See Matter of Sheffield*, 465 So. 2d 350, 358 (Ala. 1984) (“[M]ere errors of law or simple abuses of judicial discretion should not be subject to discipline by the [Judicial Inquiry] Commission, [but] where the law is clear on its face, a judge who repeatedly imposes punishment not provided by law is subject to discipline by the [Alabama Judicial Inquiry] Commission.” (citation and quotation marks omitted)).

imprisonment if a person fails to pay a garbage bill: the only criminal penalty that state law authorizes is a fine of up to \$200.00. *See* Ala. Code § 22-27-7.

Fayette’s Municipal Code is consistent with Alabama’s Solid Waste Disposal Act, but Judge Nolen’s sentencing practices are not: he routinely sentences residents who have fallen behind on their garbage fees to illegal jail and probationary sentences that exceed his authority under the City’s Municipal Code and state law. For example, since Judge Nolen was sworn into office in 2019, he has imposed illegal sentences on Lisa Mozingo three times after she fell behind on her garbage bills:

- In 2019, Judge Nolen sentenced Ms. Mozingo to a 60-day suspended jail sentence and 24 months of unsupervised probation after she fell behind on her garbage bills.
- In 2022, Judge Nolen imposed a 30-day suspended jail sentence and 12 months of unsupervised probation after the city criminally charged Ms. Mozingo with nonpayment.
- In 2024, Judge Nolen ordered Ms. Mozingo to serve 10 days in the County jail after she again fell behind on her garbage bills.

Each of these sentences is illegal. Although Fayette’s Municipal Code generally authorizes a municipal court judge to impose up to a \$500 fine or six months in jail, *see* Fayette, Ala. Code § 12-6(b), “[a] basic principle of statutory construction is that a general statute yields to a specific statute where there is a conflict between the two.” *Mack v. State*, 536 So. 2d 971, 972 (Ala. Crim. App. 1988) (specific statute making attempt to possess cocaine a felony governed over general statute making attempt to commit a crime a misdemeanor); *see also* *McDavid v. State*, 439 So. 2d 750, 751–52 (Ala. Crim. App. 1983) (“A particular statute will govern a general statute.”). Both state statute and Fayette’s Municipal Code specify that a person convicted of failing to pay a garbage fee may be fined up to \$200.00 only; neither state law nor the city’s municipal code authorize a jail or probationary sentence. *See* Ala. Code § 22-27-7; Fayette, Ala. Code §§ 8-24, 8-25 (authorizing a “fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00) if garbage services “remain unpaid for a period of seventy-five (75) days”); *see also* Fayette, Ala. Code § 12-14(a) (“In the event a defendant in municipal court is charged with one of the offenses listed below and elects to plead guilty before a magistrate . . . without contesting it, the following schedule of fines shall apply . . . Failure to participate in mandatory garbage collection system \$25.00.”). Given these specific statutes, Judge Nolen is limited to imposing a monetary fine upon people convicted of nonpayment of a garbage bill.

Judge Nolen’s practices of imposing illegal sentences on individuals who fall behind on their garbage bills are not limited to Ms. Mozingo. They are a pattern and practice in the City of Fayette:

- On May 21, 2024, Judge Nolen sentenced **Mr. F.** to a 1-month suspended jail sentence and 24 months of unsupervised probation after he fell behind \$145.20 on his garbage bills. *See* Case No. MC-24-000027. As a condition of probation, Judge Nolan ordered Mr. F. to receive no new charges; pay a \$195.20 in fines, court costs, and restitution; and to pay the cost of his incarceration should any part of his sentence be served. *Id.*
- On April 16, 2024, Judge Nolen sentenced **Ms. G.** to a 2-month suspended jail sentence and 12 months of unsupervised probation after she fell \$120.30 behind on her garbage bills. *See*

Case No. MC-24-000018. As a condition of her probation, Judge Nolen ordered her to pay her garbage bill and \$477.30 in fines, court costs, and restitution. *Id.*

- On November 21, 2023, Judge Nolen sentenced **Ms. M.** to a 10-day suspended jail sentence and 12 months of probation after she fell behind \$90.20 on her garbage bill. *See* Case No. MC-23-000098. As a condition of her probation, Judge Nolen ordered Ms. M. to receive no new charges; pay her monthly garbage bill; pay \$492.20 in fines, court costs, and restitution; and pay the cost of her incarceration should any part of her sentence be served. *Id.*
- On September 5, 2023, Judge Nolen sentenced **Ms. H.** to a 10-day suspended jail sentence and 6 months of unsupervised probation after she fell behind \$112.96 on her garbage bill. *See* Case No. MC-23-000070. As a condition of her probation, Judge Nolen ordered Ms. H. to receive no new charges; pay a \$25 fine, \$342 in court costs, and \$112.26 in restitution; pay the cost of her incarceration if any part of her sentence is served; and pay \$100 toward her garbage bill that night and the balance by the end of September. *Id.*
- On February 14, 2023, Judge Nolen sentenced **Mr. L.** to pay a \$25 fine and \$342 in court costs for falling behind \$90.20 on his garbage bill. *See* Case No. MC-23-000015. He also sentenced Mr. L. to “attend outpatient mental health [treatment] once a week”; “take medications as prescribed”; “be on color code through CRO”; and to “obtain full employment [within] 2 weeks.” *Id.*
- On December 6, 2022, Judge Nolen sentenced **Christopher Fowler** to a 6-month suspended jail sentence for falling behind \$90.20 on his garbage bill and to serve 24 months of unsupervised probation with the condition that he pay a \$25 fine, \$342 in court costs, \$90.20 in restitution, and “keep [his] garbage bill current.” *See* Case No. MC-22-102. As the first condition of probation, Judge Nolen ordered Mr. Fowler to serve a “reverse split sentence of 30 days at hard labor in the Fayette County jail” and to show cause on March 15, 2023, as to “why he should not have to serve the 30-day sentence.” *Id.* Judge Nolen also ordered Mr. Fowler to pay “\$360.00 tonight” and the balance of his fines, costs, and garbage bill by “Friday, December 16,” 2022. *Id.*

All these sentences are illegal. As discussed above, if criminal charges are brought for nonpayment, Judge Nolen is limited to imposing “a fine of not less than \$50.00 nor more than \$200.00.” *See* Ala. Code § 22-27-7; *see also* Fayette, Ala. Code §§ 8-24, 8-25 (authorizing “a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00)” for nonpayment of garbage bills). In fact, in more than a decade of advocacy around utility debt, SPLC attorneys are unaware of any other judge that routinely sentences residents to jail or probation for unpaid garbage bills. Judge Nolen’s sentences practices are extraordinary because state law and Fayette’s Municipal Code do not authorize jail and probationary sentences for nonpayment of garbage bills.

- v. **The Fayette Municipal Court may not sentence anyone to jail without first appointing counsel or finding that the person knowingly and voluntarily waived counsel.**

There is a fifth reason why Fayette’s prosecutions for past-due garbage bills are unconstitutional: the Fayette Municipal Court is imposing jail and suspended jail sentences on residents without first appointing counsel or ensuring that residents are knowingly and voluntarily waiving their right to counsel under the Sixth Amendment.

The Sixth Amendment guarantees the right to counsel in all criminal prosecutions. “Absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.” *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972). A court also may not impose a suspended jail sentence if a defendant does not have counsel. *Alabama v. Shelton*, 535 U.S. 654 (2002) (“We hold that a suspended sentence that may ‘end up in the actual deprivation of a person’s liberty’ may not be imposed unless the defendant was accorded ‘the guiding hand of counsel’ in the prosecution for the crime charged.” (quoting *Argersinger*, 407 U.S. at 40)). Alabama courts have held that, if a judge sentences an uncounseled defendant to a jail or probationary sentence anyway, “the resulting sentence is illegal.” *Shaw v. State*, 148 So. 3d 745, 761 (Ala. Crim. App. 2013).

Judge Nolen routinely sentences people to jail or suspended sentences for nonpayment of garbage bills without first appointing counsel in violation of the Sixth Amendment. For example, Judge Nolen sentenced Lisa Mazingo, Christopher Fowler, Mr. F., Ms. G., and Ms. M. to jail or suspended jail sentences without first appointing them counsel. The Fayette Municipal Court is not a court of record and there is no record evidence in their casefiles that Ms. Mazingo, Mr. Fowler, Mr. F., Ms. G., or Ms. M. intelligently and knowingly waived their right to counsel.

As the Alabama Supreme Court explained, “[i]f a defendant in a criminal proceeding is not represented by counsel, the state must prove an intentional relinquishment of that right.” *Ex parte Pritchett*, 117 So. 3d 356, 361 (Ala. 2012). “Presuming waiver from a silent record is impermissible.” *Id.* (citation and quotation marks omitted). “The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer.” *Id.* “Anything less is not waiver.” *Id.* “[C]ourts indulge every reasonable presumption against waiver of fundamental constitutional rights,” including under the Sixth Amendment. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (citation and quotation marks omitted).

Ms. Mazingo and Mr. Fowler were sentenced to jail and/or suspended jail sentences on November 30, 2023, and December 20, 2022, respectively, without counsel or a written waiver of counsel.²⁴ And while Mr. F., Ms. G., and Ms. M. signed written waivers of counsel, Judge Nolen did not make the required finding in the form order that Mr. F., Ms. G., and Ms. M. intelligently and knowingly waived their right to counsel. The only document in their records is a blank waiver of counsel form that Judge Nolen failed to complete aside from the Judge’s and defendants’ signatures.²⁵ That is insufficient to satisfy the state’s burden to demonstrate a knowing and intelligent waiver of the right to counsel.

²⁴ Mr. Fowler, in fact, told us that he thought the Court appointed Dale Lawrence to represent him in his criminal case. But Dale Lawrence is not a public defender: he is the City Prosecutor, adverse to Mr. Fowler’s interests in his criminal case.

²⁵ Judge Nolen did even not sign Ms. G.’s March 15, 2024, waiver of her right to counsel form or Ms. M.’s October 23, 2023, waiver of her right to counsel form.

Had these residents been appointed counsel, their attorneys may have pointed out the obvious: neither state law nor Fayette’s Municipal Court authorizes jail or suspended jail sentences for nonpayment or the use of the criminal process to coerce unpaid utility debt. And even if Alabama law authorized jail or suspended jail sentences (which it does not), the Court could not constitutionally impose those sentences on Fayette residents without first appointing them counsel or making an explicit finding that those residents had knowingly and intelligently waived their right to counsel. *See Ex parte Pritchett*, 117 So. 3d at 358 (“If the accused . . . is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment [to the United States Constitution] stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or liberty.” (quoting *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938))).

IV. *Fayette should stop criminalizing people for mere nonpayment of garbage bills.*

The City should take the following five steps to remedy the constitutional and statutory violations discussed above.

First, the City should amend the Fayette Sanitation Department’s billing notices 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. The billing and delinquency notices also fail to notify customers that garbage services may be suspended for non-payment and unlawfully threaten customers with criminal prosecution if they fall behind on their garbage bills.

Second, the City should immediately stop prosecuting people for mere nonpayment of utility bills. The Alabama Constitution does not allow the City to use the threat of criminal prosecution as a cudgel to coerce payment. Even under those limited circumstances where prosecution is permitted, the Alabama Constitution prohibits prosecuting people for mere nonpayment of a garbage bill without evidence that the customer is non-indigent and willfully failed to pay.

Third, the City should recall any unexecuted warrants and dismiss all unadjudicated charges for nonpayment of garbage bills. And it should remit any unpaid fines and costs and end probation for residents previously prosecuted and sentenced for failing to pay their garbage bills. Because the City’s use of the criminal process to collect unpaid utility debt violates state and federal law, those charges, warrants, and sentences are invalid.

Fourth—while the City cannot make residents whole who were prosecuted and sentenced to illegal jail and probationary sentences—the Mayor should use his pardon power to begin to make things right. *See* Ala. Code § 12-14-15 (“The mayor may remit fines and . . . grant pardons, after conviction, for violation of [municipal] ordinances . . .”). No one should be threatened with criminal prosecution, subject to unlawful jail or probationary sentences, or face a criminal record simply because they fall behind on a garbage bill.

Fifth, the City should permit partial payments and offer formal payment plans to residents who have low or irregular incomes and connect them with agencies that provide utility assistance. State law permits these and other accommodations for low-income residents. *See, e.g.,* Ala. Op. Att’y

Gen. No. 2010-106, 2010 WL 3840652, at *3 (Sept. 21, 2010) (state law authorizes the City to “establish a partial pay or installment plan for delinquent accounts”). For example, 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 should work with its elected representatives to pass such an exemption in Fayette.

The City also 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 explained, “[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).

SPLC’s goal is to ensure that no one is denied essential solid waste services or prosecuted simply because they cannot afford a garbage bill. We look forward to hearing from you on or before March 9, 2026, about the constitutional and statutory violations described above and how they will be remedied. We can be reached at (334) 314-8976 or the phone and email addresses below.

Sincerely,

/s/ Micah West

Micah West, Senior Supervising Attorney, ASB-1842-J82F
Ellen Degnan, Senior Staff Attorney, ASB-3244-I12V
Crystal McElrath, Senior Supervising Attorney, ASB- 4715-M00I
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
P: 334-314-8976
E: Micah.West@splcenter.org
E: Ellen.Degnan@splcenter.org
E: Crystal.McElrath@splcenter.org

CC:

Mayor Rod Northam
Municipal Court Judge Steven Nolen
City Councilmember Floyd Rodgers Jr.
City Councilmember Cedric Wilson
City Councilmember Tommy Williams
City Councilmember Joe Mogan
City Councilmember Steve Herring