

No. 18-10053-AA

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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GEORGIA STATE CONFERENCE OF THE NAACP, *et al.*,

*Plaintiffs-Appellants,*

v.

CITY OF LAGRANGE, GEORGIA

*Defendant-Appellee.*

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On Appeal from the United States District Court  
for the Northern District of Georgia, Newman Division  
Case No. 3:17-CV-00067

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**BRIEF OF AMICUS CURIAE THE SOUTHERN POVERTY LAW  
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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and related Eleventh Circuit Local Rules, *amici curiae* hereby certify that in addition to the Certificates of Interested Persons and Corporate Disclosure Statements submitted by Plaintiffs-Appellants Greater Birmingham Ministries and Defendant-Appellee John Merrill, in his official capacity as the Alabama Secretary of State, the following is a complete list of all trial judges, attorneys, associates, persons, firms, partnership, or corporations that have an interest in the outcome of this case or appeal:

**A. Interested Parties**

1. Emily C.R. Early (Attorney for *Amici Curiae*)
2. Ivy Wang (Attorney for *Amici Curiae*)
3. Justice in Aging (*Amicus Curiae*)
4. Regan Bailey (Attorney for *Amici Curiae*)
5. Samuel J. Brooke (Attorney for *Amici Curiae*)
6. The Southern Poverty Law Center (*Amicus Curiae*)
7. Trinh Phan (Attorney for *Amici Curiae*)

**B. Corporate Disclosure Statement**

Counsel for *Amici* further certify that no publicly traded company or corporation has an interest in the outcome of this case or appeal.

/s/ Samuel Brooke

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## INTERESTS OF AMICI CURIAE<sup>1</sup>

The Southern Poverty Law Center (“SPLC”) has provided pro bono civil rights representation to low-income persons in the Southeast since 1971, with a particular focus on combating unlawful discrimination and ending poverty. The SPLC provides educational materials, engages in policy reform, and develops litigation to minimize the burdens placed on the poor, to ensure meaningful access to social safety nets, and to enable upward mobility. The Economic Justice Project of the SPLC has particularly focused on the proliferation of court debt and the related injustices it has created.

Justice in Aging (formerly the National Senior Citizens Law Center) is a nonprofit legal advocacy organization whose principle mission is to protect the rights of low-income older adults. Since its founding in 1972, Justice in Aging has worked to promote the independence and well-being of low-income elderly and persons with disabilities, especially women, people of color, and other disadvantaged populations. Justice in Aging has advocated across the country to protect and advance economic security and access to health care for low-income older people. Specifically, Justice in Aging works to preserve and strengthen Medicaid, Medicare, Social Security and SSI benefits programs that allow low-

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<sup>1</sup> All parties have consented to the filing of this brief. *Amici* affirm that no counsel for any party authored this brief in whole or in part and that no person or entity made a monetary contribution specifically for the preparation or submission of this brief.



income older adults to live with dignity and independence. In addition, it seeks to ensure their access to the courts and to keep the courts open for justice.

The SPLC and Justice in Aging as *amici curiae* are concerned that local jurisdictions pursue criminal fines, fees and forfeitures at alarmingly high rates. As towns and cities increasingly rely on courts to generate revenue through fines and fees, the cost of even minor legal violations has skyrocketed while creating a perverse incentive for law enforcement to cast its net ever more broadly. The explosion in court fines and fees has fallen hardest on poor people of color, who are often targeted by law enforcement at disproportionate rates. The Court Debt Policy at issue in this litigation exacerbates this problem by cutting off the most vulnerable from utilities and thus from stable housing.

## **SUMMARY OF ARGUMENT**

This brief proceeds in three parts. First, it details the unprecedented increase in civil and criminal fines and fees in the last few decades.

Second, it explains the disproportionate harm that such fines and fees wreak on the poor and on communities of color, exacerbating and entrenching poverty and racial inequality, and the distortion of criminal justice that results from such governmental self-dealing. Allowing unchecked fines and fees undermines governmental aims of reducing poverty, crime, and mass incarceration.

Third, this brief examines how LaGrange's Court Debt Policy creates an end run around federal and state statutory protections for civil debt that would otherwise be collected through the garnishment process. When the LaGrange Municipal Court converts owed fines to a civil judgment, the City may collect on that debt it is owed. But it may do so only in the manner set forth by state law, which creates protections to ensure that civil debtors are not deprived of the most basic sustenance used to provide for their care and well-being.

## ARGUMENT AND CITATIONS OF AUTHORITY

### **I. The Use of Courts as Revenue Generators Has Expanded Across the Country and Particularly in Georgia, Perverting Law Enforcement Incentives and Placing an Undue Burden on Defendants.**

#### **A. The amount of debt owed to courts has risen dramatically.**

In the last three decades, there has been an unprecedented rise in the imposition of fines and fees by state and federal criminal justice systems, including in Georgia. Ten million people now owe debt in fines and fees to courts (hereinafter “court debt”), amounting to over \$50 billion across the United States.<sup>2</sup> Indeed, since 1983, the Georgia legislature has expanded the number and scope of fees and surcharges applied in criminal cases. Courts throughout the State of Georgia have increased the amount of reportable and remittable funds from collected fees and surcharges by 20% from 2005 to 2014.<sup>3</sup> This proliferation of court debt takes a number of forms, including fines and fees imposed at all stages of criminal proceedings, payment of restitution to victims,<sup>4</sup> and the use of “civil

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<sup>2</sup> Katherine D. Martin et al., *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-entry They Create*, HARVARD KENNEDY SCHOOL & NAT’L INST. OF JUSTICE 5 (Jan. 2017), <https://www.ncjrs.gov/pdffiles1/nij/249976.pdf>; see also Joseph Shapiro, *Supreme Court Ruling Not Enough to Prevent Debtors Prisons*, NATIONAL PUBLIC RADIO, May 21, 2014; see also Alexes Harris & Beth Hubener et al., *Monetary Sanctions in the Criminal Justice System: A review of law and policy in California, Georgia, Illinois, Minnesota, Missouri, New York, North Carolina, Texas and Washington* 51-52 (Apr. 2017) (hereinafter “*Monetary Sanctions Review*”), <http://www.monetarysanctions.org/wp-content/uploads/2017/04/Monetary-Sanctions-Legal-Review-Final.pdf> (enumerating fines, costs, fees, and other surcharges chargeable to defendants by Georgia statutes).

<sup>3</sup> Harris & Hubener, *Monetary Sanctions Review*, *supra* note 2, at 51-52.

<sup>4</sup> Martin et al., *Shackled to Debt*, *supra* note 2, at 4.

forfeitures,” where the government seizes property even without a criminal conviction.<sup>5</sup>

The imposition of court fines, court costs, fees, and forfeitures has become an increasingly popular method for local governments to raise funds for government services while avoiding the unpopular step of raising taxes.<sup>6</sup> For example, in cities across the country, ticketing revenue demonstrably upticks when city revenues decline, indicating targeted ticketing to generate needed revenue.<sup>7</sup>

The U.S. Department of Justice’s 2014 investigation into Ferguson, Missouri, following the shooting of Michael Brown, brought public awareness to the depth of this problem.<sup>8</sup> The report detailed Ferguson’s long-standing objective to prioritize revenue generation in its justice system by imposing more municipal

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<sup>5</sup> Civil forfeiture is distinct from criminal forfeiture, which is imposed as part of criminal sentencing. *See Alexander v. United States*, 509 U.S. 544, 548 (1993).

<sup>6</sup> *See generally* Casey Quinlan, *Court fees and fines target the poor, leaving them in a “never-ending cycle of debt,”* THINKPROGRESS (Sept. 22, 2017), <https://thinkprogress.org/court-fees-collections-companies-58ece19be258/>; *see also* Emily Shaw, *Where local governments are paying the bills with police fines*, SUNLIGHT FOUNDATION (Sept. 26, 2016), <https://sunlightfoundation.com/2016/09/26/where-local-governments-are-paying-the-bills-with-police-fines/>.

<sup>7</sup> Beth A. Colgan, *Fines, Fees, and Forfeitures*, in *ACADEMY FOR JUSTICE: A REPORT ON SCHOLARSHIP AND CRIMINAL JUSTICE REFORM 209-10* (Erik Luna ed., 2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3019435](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3019435); *see also* Thomas A. Garrett & Gary A. Wagner, *Red Ink in the Rearview Mirror: Local Fiscal Conditions and the Issuance of Traffic Tickets*, 52 J.L. & ECON. 71 (2009); Beth A. Colgan, *Lessons from Ferguson on Individual Defense Representation as a Tool for Systemic Reform*, 58 WM & MARY L. REV. 1179, Part I.A. (2017).

<sup>8</sup> *See* U.S. Dep’t of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department* (Mar. 4, 2015) (hereinafter “Ferguson Report”), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

fines, evaluating police officers based on their volume of traffic citations, and raising fines for high volume offenses.<sup>9</sup> As a result, in Ferguson fines, fees, and forfeitures constituted more than 20% of the city's 2013 general revenue fund.<sup>10</sup>

Ferguson, however, is no outlier. In 2010, the Brennan Center for Law and Justice identified Georgia among 15 states with a remarkably harsh approach to assessment and collection of fees and fines against indigent defendants.<sup>11</sup> In another study, Georgia, along with four other states, topped the list of states where city governments relied heavily on fines and forfeitures for funding.<sup>12</sup> As these findings show, Georgia is at the epicenter of the proliferation of court debt as a means of revenue generation.<sup>13</sup>

**B. Revenue generation distorts law enforcement and judicial goals at the expense of those who can least afford it.**

In a multitude of ways, unchecked revenue generation through court debt corrupts judicial and other local government systems—all at the expense of individuals' legal rights. First, by shifting the law enforcement and court focus to revenue generation, “governmental actors may fail to consider, or even implement

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<sup>9</sup> *Id.* at 9-14.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> See Ga. Appleseed Ctr. for Law & Justice, *The Imposition of Court Fees and Costs on Indigent Defendants*, <https://gaappleseed.org/initiatives/imposition-of-court-fees-and-costs-on-indigent-defendants> (last visited Feb. 21, 2018).

<sup>12</sup> Shaw, *Where local governments are paying the bills with police fines*, *supra* note 6.

<sup>13</sup> See, e.g., Harris & Hubener, *Monetary Sanctions Review*, *supra* note 2, at 51-52.

policies that directly conflict with, public-safety needs.”<sup>14</sup> As the Department of Justice’s Ferguson Report demonstrates, when law enforcement becomes focused on revenue at the expense of public safety, devastating results occur, including unconstitutional and racially-motivated behavior by law enforcement and municipal employees, financial hardship for Ferguson’s most vulnerable populations, and an erosion of public trust in municipal institutions and leadership.<sup>15</sup>

Court debt results in real and tangible hardship for defendants and their families and communities. According to one study, 80% of those interviewed found their court debt obligations to be “unduly burdensome.”<sup>16</sup> Studies have shown—ironically—that people may commit crimes to pay off excessive court debt.<sup>17</sup> Court debt often prevents access to public-sector employment and government-related private occupations.<sup>18</sup> “Criminal justice debt can also prompt additional warrants, liens, wage garnishments and tax rebate interception.”<sup>19</sup>

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<sup>14</sup> Colgan, *Fines, Fees, and Forfeitures*, *supra* note 7, at 209.

<sup>15</sup> *See generally* Ferguson Report.

<sup>16</sup> *See* Alexes Harris et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in Contemporary United States*, 115 AM. J. SOCIOLOGY 1753, 1785-86 (2010), <http://faculty.washington.edu/kbeckett/articles/AJS.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> Martin et al., *Shackled to Debt*, *supra* note 2, at 1.

<sup>19</sup> *Id.* at 9.

Thus, court-related debt has affected the lives and financial well-being of countless individuals, including thousands of Georgia's poorest residents.<sup>20</sup> Fees and costs imposed by Georgia courts for utilizing court services or related functions can add greatly to the financial liability of defendants in minor criminal or civil code violation cases and can lead to a spiral of default, probation, and incarceration.<sup>21</sup>

Moreover, as discussed in detail below, court debt obligations decrease financial security for low-income people and perpetuate income inequality. They further widen the racial wealth gap because low-income people are the least likely to be able to pay and communities of color and low-income populations are often targeted by unfair policing practices.<sup>22</sup>

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<sup>20</sup> Ga. Appleseed Ctr. for Law & Justice, *Imposition of Court Fees & Costs on Indigent Defs.*, *supra* note 11.

<sup>21</sup> *Id.* Georgia courts and penal systems are also authorized to charge offenders with fees related to a myriad of administrative costs and services separate and apart from fines levied for punishment. For instance, defendants can be required to reimburse a court for electronic monitoring, which can cost a defendant as much as \$400 per month. *Id.* Georgia cities are allowed to collect a 10% fee in addition to any fine to support jail costs and construction. *Id.* Courts are authorized to collect up to 20% of the total amount of fines and bond payments to support peace officers, prosecutor training, and indigent criminal defense efforts. *Id.* Even the public defender fee is collected through probation if the defendant fails to pay it. *Id.*; *see also* Harris & Hubener, *Monetary Sanctions Review*, *supra* note 2, at 51-59.

<sup>22</sup> *See* Quinlan, *Court fees and fines target the poor*, *supra* note 6. A 2017 U.S. Commission of Civil Rights study, for example, also cited research demonstrating that individuals living in the poorest parts of cities—who are disproportionately black and Latino—account for the vast majority of traffic citations. U.S. Comm'n on Civil Rights, *Targeted Fines and Fees Against Low-Income Communities of Color: Civil Rights and Constitutional Implications* 3 (Sept. 2017), [http://www.usccr.gov/pubs/Statutory\\_Enforcement\\_Report2017.pdf](http://www.usccr.gov/pubs/Statutory_Enforcement_Report2017.pdf).

In sum, punishing individuals for their inability to pay court debt is ineffective and expensive. Indeed, only a fraction of this nation's court debt is collected—for instance, of the \$100 billion owed to the federal government in court debt, only about \$4 billion per year is collected.<sup>23</sup> Thus, the proliferation of court debt not only costs the justice system much more than the revenue generated, but it produces harmful societal costs.<sup>24</sup>

## **II. The Court Debt Policy Disproportionately Harms the Poor and African Americans.**

### **A. The poor suffer disproportionately from the consequences of court debt.**

The trend towards rising court debt especially harms vulnerable populations who are living at or below the poverty line, and can in fact increase poverty and crime. For those without the ability to pay, the court debt imposed means even the most casual encounter with the criminal justice system can have catastrophic results, as demonstrated by this case before the Court.

Those facing court debt must often choose between paying their debts and providing for basic needs like food and shelter.<sup>25</sup> Studies have linked increased

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<sup>23</sup> Martin et al., *Shackled to Debt*, *supra* note 2, at 5.

<sup>24</sup> Colgan, *Fines, Fees, and Forfeitures*, *supra* note 7, at 212 (“By entrenching or exacerbating the financial vulnerability of people and their families, fines, fees, and forfeitures can create long-term instability and familial disruption, increase criminal justice involvement, . . . and—perhaps ironically—decrease net revenue.”).

<sup>25</sup> Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 J. CRIMINOLOGY & PUB. POL’Y 509, 517 (2011).



finances to inability to pay child support or restrictions from public housing, profoundly eroding the basic pillars of home and family.<sup>26</sup> Court debt can harm in other ways by damaging a debtor's credit rating, preventing a debtor from expunging criminal records, or costing a debtor professional or driver's licenses.<sup>27</sup>

The problem is particularly salient in Georgia, where the poverty rate is 18.2% statewide—significantly higher than the national average of 15.4%.<sup>28</sup> In the City of LaGrange, the poverty rate is 29.4%, nearly twice the national average.<sup>29</sup> Particularities of the Georgia legal system worsen the problem. In Georgia, traffic offenses are treated as criminal offenses and can result in not only financial penalties, but also misdemeanor probation which carries additional monthly supervision fees.<sup>30</sup> Indeed, those who are too poor to pay their fines and fees on the day of sentencing are frequently required to submit to “pay only probation,” which allows them to pay off these costs over time, but requires additional monthly supervision fees to their bills.<sup>31</sup>

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<sup>26</sup> Rachel L. McLean & Michael D. Thompson, Council of State Gov'ts Justice Ctr., *Repaying Debts* 7-8 (2007), [https://csgjusticecenter.org/wp-content/uploads/2012/12/repaying\\_debts\\_summary.pdf](https://csgjusticecenter.org/wp-content/uploads/2012/12/repaying_debts_summary.pdf).

<sup>27</sup> Colgan, *Fines, Fees, and Forfeitures*, *supra* note 2, at 212.

<sup>28</sup> M.S.L.J., *Paying For Poverty*, *The Economist*, (April 24, 2015 at 17:08), <https://www.economist.com/blogs/democracyinamerica/2015/04/private-probation-firms>.

<sup>29</sup> U.S. Census Bureau, *QuickFacts: LaGrange city, Georgia*, <https://www.census.gov/quickfacts/fact/table/lagrangecitygeorgia/PST120216> (last visited Mar. 5, 2018).

<sup>30</sup> Harris & Hubener, *Monetary Sanctions Review*, *supra* note 2, at 48.

<sup>31</sup> *Id.*

There is also evidence of police departments designating disadvantaged neighborhoods for harsher enforcement, widening the net of the criminal justice system and trapping those who are least able to afford the resulting court debt. For example, in Milwaukee in 2014, the police department wrote one traffic citation for every four people in a zip code where half the residents lived in poverty, whereas they wrote one ticket for every 11 people in a more affluent zip code.<sup>32</sup>

The cumulative result of such law enforcement policies is that the poor are more likely to be prosecuted and punished simply for living in a certain neighborhood, and to have their basic livelihoods threatened by the burden of court debt.

**B. Court debt disproportionately burdens African Americans.**

Court debt takes a particularly harsh toll on African-American communities. First, to the extent law enforcement emphasizes enforcement in poor communities, this falls heavily on African Americans, who are more likely to experience poverty. For instance, 39.4% of those living in shelters in 2012 were Black or African American, though they comprise about 13.3% of the total U.S. population.<sup>33</sup> Also in 2012, 27% of African-American households paid over 50%

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<sup>32</sup> Brendan O'Brien, *Poor People Get Far More Municipal Fines*, Urban Milwaukee (Nov. 12, 2015), <https://urbanmilwaukee.com/2015/11/12/special-report-poor-people-get-far-more-municipal-fines/>.

<sup>33</sup> U.S. Dep't of Housing and Urban Dev., *The 2012 Annual Homeless Assessment Report (AHAR) To Congress Volume II: Estimates Of Homelessness In The United States* 1–8 (Sept. 2013), <https://www.hudexchange.info/resources/documents/2012-AHAR-Volume-2.pdf>; U.S.

of their incomes in rent, while this was true for only 14% of White households.<sup>34</sup> In 2016, white households had ten times more median wealth than African American households,<sup>35</sup> and one in five African-American families has no net worth or is in debt.<sup>36</sup>

Compounding this concentration of poverty is African Americans' higher likelihood of coming into contact with the criminal justice system, particularly for minor offenses. In at least 70 police departments across the country, African Americans were arrested at a rate ten times higher than the rest of the population.<sup>37</sup> In Georgia in 2009, two-thirds of the male prison population was African American.<sup>38</sup>

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Census Bureau, *Quick Facts: United States*, <https://www.census.gov/quickfacts/fact/table/US/PST045217>.

<sup>34</sup> Nat'l Law Center on Homelessness and Poverty, *Homelessness in America: Overview of Data and Causes* 1 (January 2015), [https://www.nlchp.org/documents/Homeless\\_Stats\\_Fact\\_Sheet](https://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet).

<sup>35</sup> Rakesh Kocchar & Anthony Cilluffo, *How wealth inequality has changed in the U.S. since the Great Recession, by race, ethnicity and income*, Pew Research Center (Nov. 1, 2017), <http://www.pewresearch.org/fact-tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income/>.

<sup>36</sup> Lisa J. Dettling et al., *Recent Trends in Wealth-Holding by Race and Ethnicity: Evidence from the Survey of Consumer Finances*, Bd. of Govs.' of the Fed. Reserve Sys. (Sept. 27, 2017), <https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-and-ethnicity-evidence-from-the-survey-of-consumer-finances-20170927.htm>.

<sup>37</sup> Brad Heath, *Racial gap in U.S. arrest rates: 'Staggering disparity,'* USA Today (updated Nov. 19, 2014), <https://www.usatoday.com/story/news/nation/2014/11/18/ferguson-black-arrest-rates/19043207/>.

<sup>38</sup> Michael P. Boggs & W. Thomas Worthy, *Report of the Georgia Council on Criminal Justice Reform* 15 (Feb. 2016), [https://gov.georgia.gov/sites/gov.georgia.gov/files/related\\_files/document/GA\\_Council\\_on\\_Criminal\\_Justice\\_Reform\\_2016\\_Report\\_Final.pdf](https://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/document/GA_Council_on_Criminal_Justice_Reform_2016_Report_Final.pdf).

Arrest rates for marijuana possession—the charge for which one of this case’s plaintiffs, Ms. April Walton, incurred \$1,145 in court debt—are particularly illuminating. According to a report by the American Civil Liberties Union, marijuana use is roughly equal among African Americans and Caucasian Americans, yet across the country African Americans are 3.73 times as likely to be arrested for marijuana possession.<sup>39</sup> The same is true in Georgia, where in some cities the disparity is even more pronounced. For instance, in Gordon, Georgia, for every one white person arrested for marijuana possession there are 14.1 arrests of a Black person.<sup>40</sup>

A similar pattern holds for arrests and citations for traffic violations. A 2015 study showed that in Las Vegas, residents who lived in the poorest zip codes—which are also predominantly African-American and Hispanic—accounted for nearly two-thirds of traffic citations.<sup>41</sup> In Ferguson, Missouri, African Americans accounted for 85% of vehicle stops, 90% of citations, and 93% of arrests, though they comprise just 67% of the total population.<sup>42</sup> In Chicago, of the ten zip codes

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<sup>39</sup> American Civil Liberties Union, *The War On Marijuana In Black And White* 9 (June 2013), [https://www.aclu.org/sites/default/files/field\\_document/1114413-mj-report-rfs-re11.pdf](https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-re11.pdf).

<sup>40</sup> *Id.* at 19.

<sup>41</sup> U.S. Comm’n on Civil Rights, *Targeted Fines and Fees Against Low-Income Communities of Color*, *supra* note 22.

<sup>42</sup> *See* Ferguson Report, *supra* note 8, at 6.

with the most accumulated traffic ticket debt per adult, eight were majority black.<sup>43</sup> Indeed, a 2017 study found that the cities that rely most on court debt to generate revenue are also those with higher percentages of African American residents.<sup>44</sup>

These disproportionate arrest and conviction rates make it harder for African Americans to overcome poverty. For example, the likelihood of receiving a call back for a job interview for entry level positions falls by 50% when someone has a record of arrest or conviction.<sup>45</sup> Thus, many low-income African Americans face traffic charges or criminal charges associated with poverty, while also being unable to absorb the financial shock of court debt associated with these crimes.<sup>46</sup>

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<sup>43</sup> Melissa Sanchez & Sandhya Kambhampati, *How Does Chicago Make \$200 Million A Year On Parking Tickets? By Bankrupting Thousands of Drivers*, Mother Jones (Feb. 27, 2018), <https://www.motherjones.com/crime-justice/2018/02/how-does-chicago-make-200-million-a-year-on-parking-tickets-by-bankrupting-thousands-of-drivers/#a>.

<sup>44</sup> Michael W. Sances & Hye Young You, *Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources*, 79 *The Journal of Politics* 3 (July 2017), <https://www.journals.uchicago.edu/doi/full/10.1086/691354>.

<sup>45</sup> Karen Dolan et al., *The Poor Get Prison: The Alarming Spread of the Criminalization of Poverty*, Institute for Policy Studies 13, <https://www.ips-dc.org/wp-content/uploads/2015/03/IPS-The-Poor-Get-Prison-Final.pdf>.

<sup>46</sup> For example, until 2016 Georgia was one of a handful of states that placed a lifetime ban on Supplemental Nutrition Assistance Program participation for those who had been convicted of drug-related felonies, leaving many African-American households without a critical means of support. Eli Hager, *Six States Where Felons Can't Get Food Stamps*, The Marshall Project (Feb. 4, 2016), <https://www.themarshallproject.org/2016/02/04/six-states-where-felons-can-t-get-food-stamps>.

**III. LaGrange’s Court Debt Policy Creates an End Run Around the State and Federal Protections Provided to Those Who Owe Civil Debt.**

One mechanism employed by courts in Georgia to address unpaid fines is to convert them to a civil judgment. *See, e.g.*, O.C.G.A. § 17-10-20. This is a mechanism the LaGrange Municipal Court typically utilizes after a period of attempted collection through a probation process, which gives rise to the Court Debt Policy challenged in this litigation. *See* Joint Appendix (J.A.) 32 (Compl. ¶¶ 56-59).

Section 17-10-20 specifically states that such civil judgements “may be enforced by instituting any procedure for execution . . . through levy, foreclosure, garnishment, and all other actions provided for the enforcement of judgments in the State of Georgia . . . .” O.C.G.A. § 17-10-20(c). In the garnishment context specifically—the only of the three identified remedies that would permit seizure of disposable income—the State of Georgia has provisions to protect the basic livelihoods of those facing garnishment. For example, Georgia limits the amount of disposable earnings that may be garnished, O.C.G.A. § 18-4-5 (capped at the lesser of 25% of disposable weekly earnings or the amount that exceeds \$217), and outright exempts various other sources of sustenance such as unemployment

benefits, O.C.G.A. § 34-8-252.<sup>47</sup> These protections help ensure that individuals are not forced to forego the most basic of human necessities notwithstanding their indebtedness.

Federal law also exempts certain sources of sustenance from garnishment, which Georgia explicitly incorporates.<sup>48</sup> For example, Supplemental Security Income (“SSI”) is a federal program of last resort that guarantees a minimum level of income to meet the basic needs of more than 8 million people with little income and few resources—including 2,370 in Troup County, Georgia (where LaGrange is located). Federal law exempts Social Security old-age, survivors, and disability benefits from “execution, levy, attachment, garnishment, or other legal process,” 42 U.S.C. § 407(a), and applies that protection to SSI benefits, 42 U.S.C. § 1383(d)(1). “Thus, section 407(a) is violated when the state places itself in the position of a preferred creditor or coerces payment from protected benefits.” *See Fetterusso v. New York*, 898 F.2d 322, 328 (2d Cir. 1990).

The public policy behind these protections reflects that “[t]he purpose of social security benefits for the disabled is to provide for their care and

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<sup>47</sup> The Attorney General has created a list of garnishment exemptions. *See* State of Georgia, Dep’t of Law, *Georgia Garnishment Exemptions*, [https://law.georgia.gov/sites/law.georgia.gov/files/related\\_files/site\\_page/Georgia\\_GAnirhsment\\_Exemptions.pdf](https://law.georgia.gov/sites/law.georgia.gov/files/related_files/site_page/Georgia_GAnirhsment_Exemptions.pdf) (hereinafter “AG Exemptions List”); O.C.G.A. § 18-4-6 (ordering creation of list).

<sup>48</sup> *See id.* This includes Social Security disability, retirement, and SSI benefits, 42 U.S.C. § 407; as well as veterans benefits, 38 U.S.C. § 5301, among others.

maintenance” and “[t]he purpose of the social security exemption is to protect social security beneficiaries from creditors’ claims.” *Dep’t of Health & Rehab. Servs. v. Davis*, 616 F. 2d 828, 831 (5th Cir. 1980). The exemption from collection evinces a clear legislative purpose of precluding the diversion of social security payments away from the statute’s seminal goal of furnishing financial, medical, rehabilitative and other services to needy individuals. *See id.* Garnishment, therefore, is only appropriate where it will not force beneficiaries to choose between their ability to live and the payment of debt. *See, e.g., United States v. Devall*, 704 F.2d 1513, 1516–17 (11th Cir. 1983) (holding that assignment of social security funds to bankruptcy Trustee was permissible because it would not affect recipient’s ability to secure basic care and maintenance). Consistent with these federal purposes of programs such as SSI, Section 17-10-20 does not discriminate between court debt that has been converted to a civil judgment and other civil debt, resulting in the full panoply of garnishment protections applying to court debt.

The Court Debt Ordinance attempts an end run around the protections enshrined in Section 17-10-20 and the related state and federal rules related to garnishment. Were the City of LaGrange to follow the requirements of Section 17-10-20 and attempt to collect the civil judgment through the garnishment process, it would not be able to demand payment from individuals like Plaintiff Charles



Brewer, whose sole source of support is Social Security. *See* J.A. 35–36, 54 (Compl. ¶¶ 67, 128).

Mr. Brewer was assessed a \$600 fine and \$227 in court costs after pleading *nolo contendere* to driving without a license in LaGrange Municipal Court. *Id.* at 54 (Compl. ¶¶ 129–30). He was placed on probation for 12 months, and was required to pay a \$44 monthly supervision fee in addition to the aforesaid amounts. *Id.* After 12 months he still owed \$210.25 in outstanding court debt, which was supplemented by \$22.52 in interest and then converted to a civil judgment. *Id.* at 55 (Compl. ¶¶ 131–32). Because Mr. Brewer’s sole source of income is social security, *id.* at 54 (Compl. ¶ 128), he is presently exempt from garnishment proceedings. 42 U.S.C. § 407.<sup>49</sup> Mr. Brewer’s circumstances are likely representative of others who owe court debt, and who are most likely low-income, especially given the high rate of poverty in LaGrange.<sup>50</sup> While not all sources of support for low-income individuals would be exempt from garnishment, there is also a certainty that *some* basic level of protections would be provided. *See* O.C.G.A. § 18-4-5 (capping garnishment of disposable income).

The City instead employed its Court Debt Policy and added the civil judgment amount to Mr. Brewer’s utility bill. J.A. 56 (Compl. ¶ 136). By doing so,

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<sup>49</sup> *See also* AG Exemptions List, *supra* note 47.

<sup>50</sup> *See supra* note 29 and accompanying text (noting poverty rate of 29.4%).

it bypassed all of the procedural safeguards Congress and the State sought to provide individuals like Mr. Brewer, forcing him between Scylla and Charybdis: he could either pay the amount due, giving up the limited sustenance provided him through the Social Security Administration, or he could spend that money to provide for his care and maintenance as envisioned by federal law and risk having his electricity turned off—an especially ominous threat given Mr. Brewer’s medical conditions that require uninterrupted electricity access to power his oxygen tank and CPAP machine. *See* J.A. 54 (Compl. ¶ 128).

Thus, the City’s extreme practice of cutting off access to utilities contradicts the protections envisioned for civil judgments enforced through Section 17-10-20 and federal law. It also undermines a core doctrine of judicial fairness—that the judicial function should not be subjugated into a source of revenue. By eliminating any possibility that the obligation to pay court debt may be calibrated to the person’s ability to pay, which would otherwise be imperfectly achieved through the garnishment exemption process, the City has unduly prioritized revenue collection from the court, even where such collection would violate the most basic tenets of justice.

### **CONCLUSION**

For the foregoing reasons, *amici curiae* respectfully request this Court consider the broader context in which the City of LaGrange employs its Court Debt

Policy, and ensure that the City is not permitted to utilize this process to punish the poor in ways that conflict with state and federal law, and which have a disparate impact on communities of color. *Amici curiae* respectfully request that this Court reverse the district court's dismissal and remand for further proceedings.

DATED this March 6, 2018.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(a)(7)(C), I hereby certify that:

1. the foregoing brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,543 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and 11th Cir. Local Rule 32-4; and
2. the foregoing brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief is in 14-point proportionally spaced Times New Roman typeface.

Dated: March 6, 2018

/s/ Samuel Brooke

Samuel Brooke

**CERTIFICATE OF SERVICE**

I certify that on March 6, 2018, the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send notification of filing to all counsel of record.

I also certify that on this same date, pursuant to 11th Cir. R. 31-3, seven copies of the foregoing document were sent to the Clerk of the Court by first-class mail, postage prepaid.

/s/ Samuel Brooke

Samuel Brooke