



**The Barbara McDowell and Gerald S. Hartman Foundation
National Center for Law and Economic Justice – Final Report
July 30, 2020**

Overview

The National Center for Law and Economic Justice (NCLEJ) works to advance the cause of economic justice for low-income families, individuals, and communities, using groundbreaking impact litigation, policy advocacy, and support for grassroots organizing. The Foundation’s \$40,000 grant in 2019 has enabled NCLEJ to play the lead role in a critical class action entitled *McCullough v. City of Montgomery*. This case challenges a series of interwoven policies and practices of the City of Montgomery, Alabama, designed to increase municipal budgets at the expense of low-income people of color by repeatedly ticketing them, subjecting them to coercive private “probation” schemes, jailing them when they lacked the ability to pay, and then forcing them to work while jailed in order to pay off their debt. The lawsuit also brings equal protection and due process claims against the City of Montgomery and a private probation company that extracted millions of dollars in probation fees from our clients

The case was originally filed by a retired law professor with support from a small, but well-regarded civil rights law firm. They survived motions to dismiss through the 11th Circuit, but they lacked the resources to pursue the surviving claims through discovery, summary judgment, and trial. Without the support from NCLEJ, and the additional pro bono resources we secured from Dentons, the litigation could not have survived.

We are pleased to report that, since we filed our interim report, we have survived summary judgment! Following summary judgment, the centerpiece of the litigation is a *Bearden* claim challenging the City’s practice of jailing our clients for nonpayment of traffic fines and fees without considering our clients’ ability to pay. We expect to move for class certification, and then if the City does not settle, to proceed to trial on behalf of thousands of aggrieved individuals.

We see this case as critical to challenging discriminatory policing and debt collection practices that have subjected communities of color in Alabama to both unreasonable intrusion and relentless revenue harvesting. Though previous lawsuits have challenged some of this same conduct, those lawsuits never succeeded in forcing the City to change its practices, and the City has never been held accountable to the thousands of people harmed by these unlawful and discriminatory practices.

Activities to Date

Over the last twelve months, NCLEJ has engaged in intensive litigation on a highly compressed schedule. In Fall 2019, the court placed the case on a rocket docket, giving the parties three months to complete discovery. By mid-December we had drafted and served document requests, responded to written discovery on behalf of seven named plaintiffs, defended the depositions of each of the named plaintiffs, reviewed and processed thousands of pages of electronic records, and took ten depositions of defendants.

Immediately following the close of discovery, we began summary judgment briefing. In mid-January, the parties filed cross-motions for summary judgment, with briefing continuing through March 9, 2020. This was a Herculean effort involving full-time effort from almost every member of NCLEJ's staff, as we needed to process a massive amount of evidentiary materials in a highly-compressed time frame, while at the same time researching and framing our legal theories.

On July 7, 2020, U.S. District Court Judge Royce Lamberth ruled that significant portions of the plaintiffs' lawsuits can proceed to trial on claims for damages for violations of federal constitutional due process, equal protection rights and state tort law prohibiting false imprisonment and abuse of process. This is a big win for our clients and our efforts to challenge debtors' prison practices of the City of Montgomery.

Concurrently with the decision in *McCullough*, the court reached a similar decision in the companion case of *Carter v. City of Montgomery*, which raises similar class claims and had been placed on the same briefing schedule. The judge directed the *McCullough* and *Carter* teams to confer about potential consolidations as the cases move forward to class certification and trial.

Progress Anticipated Over the Next Six Months

The *McCullough* and *Carter* teams have been discussing consolidation and will likely join forces to pursue class certification, settlement negotiations with Defendants, and trial. We expect to brief class certification over the next few months. We currently have no trial date.

Conclusion

The assistance from the Barbara McDowell and Gerald S. Hartman Foundation supports our efforts to fight for the fundamental civil rights of low-income people of color in Montgomery, Alabama. This work has been extremely resource intensive, and the Foundation's support has been critical. We could not be more grateful for the support – it is truly making a difference.

Links to media coverage, if any, of the case

- 1) Plaintiffs in the case were featured *McCullough v. City of Montgomery*, include Angela McCullough and Marquita Johnson, whose experiences with former Municipal Judge Les Hayes were recently featured in the first installment of a Reuters investigative series on judicial misconduct: <https://www.reuters.com/investigates/special-report/usa-judges-misconduct>

Photos, if any, of the case for which the Foundation has permission to use in its electronic and published materials, with descriptions and attributions

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