BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

JIMMIE E. SMALL,	)	
	)	
Complainant,	)	
	)	
v.	)	**Case File No. EC-2015-0058**
	)	
UNION ELECTRIC CO. d/b/a, AMEREN MISSOURI, a Utility,	)	
Respondent.	)	

COMPLAINANT'S Mo. R. Civ. Proc. RULE 55.33 (b), (d), SUPPLEMENTAL PEADING TO CONFORM TO ON COMMISSION FILE RECORD EVIDENCE

COMES NOW the Complainant, pro se, Out-Of-State party in a contested case proceeding [No. EC-2015-0058] and for his Out-Of-State - Supplemental Pleading, states unto the Hon. MISSOURI Commission [MPSC] the following particulars;

1. Complainant herein has not previously filed an amended complaint or Supplemental Pleading [No. EC-2015-0058] under Missouri law, rule, or tariff document. Small respectfully request the Commission take Judicial Notice under Mo. Rule 55.21 (b) of a prior Commission Order to the effect that Commission Staff Report and Recommendations once filed, come to violate the privacy rights of this Out-Of-State Party.

2. This Supplemental Pleading also incorporates Staff's Report & Recommendation which shows evidence of Privacy Act Violations, [State Action] and Unlawful Commission conduct. See Mo. R. Civ. Proc. See Rule 55.22 Pleading Written Instrument.

3. Commission Order denying CP Small a full and fair opportunity to file a requested amended Complaint ,[EFIS No. 54, (April 03, 2015)] fails to state with specificity or particularity any legitimate state interest sought to be protected in denying the Out-Of-State party's liberty interest in due process. U.S.C.A. Const Amend. 14, and U.S.C.A. Const Art. 1 sect 8, cl .3 See Hernandez v. Texas, 347 U.S. 475. See also Ferens v. John Deere Co., 494 U.S. 516, 108 L. Ed 2d 443, 110 S. Ct. 1274 (1990).

4. Commission officials have previously denied Small's request to transfer violations of Federal law to the appropriate federal court system. Small's diversity jurisdiction claims involving this Out-Of-State resident appears relevant under Mo. state and federal laws. See State ex rel Bloomquist v. Schneider 244 S.W. 3d 139 (Mo. banc 2008).

5. 4 CSR 240-13.010 subpart (2) provides, [" A utility shall not discriminate against a customer or applicant for services for exercising any right granted by this chapter"].

6. Respondent Utility breached its duty under 4 CSR 240-13.010 by acting in concert with Commission Staff agent Axtel, [Staff Report] and engaged in unlawful and unreasonable publication, distribution, circulation [EIFS] involving [Small's] account specific data, thus making a mockery of 4 CSR 240-13.010 (2) after Small filed his "original Pleading". Thus the "**Supplemental Pleading**" as offered in Cause No. EC-2015-0058 should be permitted filed and go forward as to claims of discrimination against the

privacy rights of this Iowa resident and under Federal Question protection laws. U.S.C.A. Const Art 1, sect 8 cl. 3. Retaliation under Missouri law is also prohibited under V.A.M.S. Section 213; 42 U.S.C.S. sect 2000e-3.

7. CP Small received the Commission order confirming that STAFF COUNSEL of the Commission engaged illegal and unreasonable conduct by violating the HC Commission standard. Staff Counsel did act toward and against the protected interest of CP Small to the benefit of Respondent Union Electric Company, thus the Supplemental Pleading is factually and legally grounded in Cause No. EC-2015-0058. See Union Electric Company v. Puiblic Service Commission of Missouri, 591 S. W. 2d 134. The cardinal test of the presence or absence of due process in an administrative proceeding is . . . . 'the presence or absence of rudiments of fair play long known to the law, ' " It was held this required a fair and impartial hearing officer. 42 U.S.C.S. sect 2000e-3 prohibits retaliation against CP Small. See also Logan v. Zimmerman Brush Co., 455 U.S. 422, 428, 102 S. Ct. 1148, 71 L. Ed. 2d 265(1982). Mo. R. Civ. Proc. RULE 55.33 (b),(d).

See Prior Commission Order stating that STAFF REPORTS were in violation of Privacy Act [HC] laws. See federal standard, Celotex Corp. v. Catrell, 477 U.S.317, 322-23(1986).

8. This Supplemental Pleading charges STAFF COUNSEL AXTEL, with conspiring with Respondent Utility to violate Small's civil rights, his Civil liberty interest in a fair and impartial proceeding while the Commission goes forward with a scheduled April 20, 2015 hearing on the merits and without subject matter jurisdiction over an alleged debt barred by the applicable statute of limitations. Small does not elect to waive his federal rights under

the Federal Debt Collection Practices Act as an Out-Of-State Party venturing into Missouri jurisdiction to defend.

9. In the event the Commission Officials fail or deny Small's SUPPLEMENTAL PLEADING [filing] Secretary Woodruff stated that CP Small would be permitted to file a fourth NEW COMPLAINT against the Utility Company, raising violations of Small's rights to HC records protection after pursuing his Original Pleading No. EC-2015-0058.

10. That because Respondent's alleged account records go back to 07/2006 time period and because Respondent Utility did not provide NOTICE that the Out-Of-State applicant for electric in 2014 could take an appeal to any agency of jurisdiction or in Respondents ANSWER< CP Small's due process rights were violated, and continuing as with this Supplemental Pleading. Mathew v. Eldridge, 424 U.S. 319. P p. 16-19. , See Also U.S. Supreme Court decision MEMPHIS LIGHT, GAS & WATER DIV.. v. CRAFT, 436 U.S. 1, MEMPHIS LIGHT, GAS & WATER DIVISION ET AL v. CRAFT, ET AL CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT. No. 76-39 Decided May 01, 1978.

11. The United States District Court, Davenport Iowa, Hon. Magistrate ADAMS, entered her Order granting SMALL until May 31, 2015 to file his FIRST Amended Complaint adding parties to Small v. City of Milton, Iowa. Essentially presenting 42 U.S.C. sect. 1983 claims against Respondent Union Electric Company similar to Claims filed against the City of Milton, Iowa. Small fully intends to exercise his Federal Rights under 42 U.S.C. sect 1983, on or before the May 31, 2015 scheduled filing deadline.

12. That because MEMPHIS LIGHTR v. CRAFT covers a span of geographical territory nationwide this Supreme Court decision would appear to apply to Respondent AMEREN MISSOURI UTILITY 2015 time period and continuing unresolved, to and including matters falling under 15 U.S.C. sect. 1601 et seq.

WHEREFORE, this Out-Of-State Iowa resident prays the Full Commission enter its order **(a)** granting the filing and service of Small's Supplemental Pleading, **(b)** enter an appropriate order for Staff and Utility Co file its ANSWER **(c)** enter its Order stating the Commission takes Judicial Notice of its prior order confirming unlawful Staff circulation, publication and distribution of CP Small's Account specific data, to the benefit of Union Electric Company in violation of V.A.M.S. Ch. 213 retaliation after Small filed a prior Complaint[s] against UE.AM.MO. Utility Case No: EC-2011-0247; No. EC-2012-0050; Case No. EC-2015-0058.(d) Take judicial Notice of MEMPHIS LIGHTR v. CRAFT Federal decisional law, prior to the scheduled April 20, 2015 hearing on the merits.

RESPECTFULLY FILED

Jimmie E. Small

JIMMIE E. SMALL
606 West Hwy # 2,
Milton, Iowa, 52570

MO. R. Civ. Proc. RULE 43.01(d) CERTIFICATE OF SERVICE

The undersigned certifies that true and complete copies of the above and foregoing Supplemental Pleading, was duly filed with the Data Center, Missouri Public Service Commission and with Ms. Sarah Givoney, counsel for Respondent Utility, and with the Office of Public Counsel, Jefferson City, Mo, all done this Monday April 13, 2015.

Jimmie E. Small

JIMMIE E. SMALL

U.S. Supreme Court

MEMPHIS LIGHT, GAS & WATER DIV. v. CRAFT, 436 U.S. 1 (1978)

436 U.S. 1
MEMPHIS LIGHT, GAS & WATER DIVISION ET AL. v. CRAFT ET AL.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 76-39.

Argued November 2, 1977
Decided May 1, 1978

Because of two separate sets of gas and electric meters in their newly purchased house, respondents, for about a year after moving in, received separate monthly bills for each set of meters from a municipal utility. During this period respondents' utility service was terminated five times for nonpayment of bills. Despite respondent wife's good-faith efforts to determine the cause of the "double billing," she was unable to obtain a satisfactory explanation or any suggestion for further recourse from the utility's employees. Each bill contained a "final notice" stating that payment was overdue and that service would be discontinued if payment was not made by a certain date but did not apprise respondents of the availability of a procedure for discussing their dispute with designated personnel who were authorized to review disputed bills and to correct any errors. Respondents brought a class action in Federal District Court under 42 U.S.C. 1983, seeking declaratory and injunctive relief and damages against the utility and several of its officers and employees for terminations of utility service allegedly without due process of law. After refusing to certify the action as a class action, the District Court determined that respondents' claim of entitlement to continued [436 U.S. 1, 2] utility service did not implicate a "property" interest protected by the Fourteenth Amendment, and that, in any event, the utility's termination procedures comported with due process. While affirming the District Court's refusal to certify a class action, the Court of Appeals held that the procedures accorded to respondents did not comport with due process. Held:

1. Although respondents as the only remaining plaintiffs apparently no longer desire a hearing to resolve a continuing dispute over their bills, the double-billing problem having been clarified during this litigation, and do not aver that there is a present threat of termination of service, their claim for actual and punitive damages arising from the terminations of service saves their cause from the bar of mootness. Pp. 7-9.

2. Under applicable Tennessee decisional law, which draws a line between utility bills that are the subject of a bona fide dispute and those that are not, a utility may not terminate service "at will" but only "for cause," and hence respondents assert a "legitimate claim of entitlement" within the protection of the Due Process Clause of the Fourteenth Amendment. Pp. 9-12.

3. Petitioners deprived respondents of an interest in property without due process of law. Pp. 12-22.

(a) Notice in a case of this kind does not comport with constitutional requirements when it does not advise the customer of the availability of an administrative procedure for protesting a threatened termination of utility services as unjustified, and since no such notice was given respondents, despite "good faith efforts" on their part, they were not accorded due notice. Pp. 13-15.

(b) Due process requires, at a minimum, the provision of an opportunity for presenting to designated personnel empowered to rectify error a customer's complaint that he is being overcharged or charged for services not rendered, and here such a procedure was not made available to respondents. The customer's interest in not having services terminated is self-evident, the risk of erroneous deprivation of services is not insubstantial, and the utility's interests are not incompatible with affording the notice and procedure described above. Mathews v. Eldridge, 424 U.S. 319 . Pp. 16-19.

(c) The available common-law remedies of a pretermination injunction, a post-termination suit for damages, and a post-payment action for a refund do not suffice to cure the inadequacy in petitioner utility's procedures. The cessation of essential utility services for any appreciable time works a uniquely final deprivation, and judicial remedies are [436 U.S. 1, 3] particularly unsuited to resolve factual disputes typically involving sums too small to justify engaging counsel or bringing a lawsuit. Pp. 19-22.

534 F.2d 684, affirmed.
POWELL, J., delivered the opinion of the Court, in which BRENNAN, STEWART, WHITE, MARSHALL, and BLACKMUN, JJ., joined. STEVENS, J., filed a dissenting opinion, in which BURGER, C. J., and REHNQUIST, J., joined, post, p. 22.

Frierson M. Graves, Jr., argued the cause and filed a brief for petitioners.

Thomas M. Daniel argued the cause for respondents. With him on the brief were Elliot Taubman and Bruce Mayor. *

[Footnote *] David Sive filed a brief for the National Council of the Churches of Christ as amicus curiae.

MR. JUSTICE POWELL delivered the opinion of the Court.

This is an action brought under 42 U.S.C. 1983 by homeowners in Memphis, Tenn., seeking declaratory and injunctive relief and damages against a municipal utility and several of its officers and employees for termination of utility service allegedly without due process of law. The District Court determined that respondents' claim of entitlement to continued utility service did not implicate a "property" interest protected by the Fourteenth Amendment, and that, in any event, the utility's termination procedures comported with due process. The Court of Appeals reversed in part. We granted certiorari to consider this constitutional question of importance in the operation of municipal utilities throughout the Nation.

I

Memphis Light, Gas and Water Division (MLG&W) 1 is a division of the city of Memphis which provides utility service. [436 U.S. 1, 4] It is directed by a Board of Commissioners appointed by the City Council, and is subject to the ultimate control of the municipal government. As a municipal utility, MLG&W enjoys a statutory exemption from regulation by the state public service commission. Tenn. Code Ann. 6-1306, 6-1317 (1971).

Willie S. and Mary Craft, respondents here, 2 reside at 1019 Alaska Street in Memphis. When the Crafts moved into their residence in October 1972, they noticed that there were two separate gas and electric meters and only one water meter serving the premises. The residence had been used previously as a duplex. The Crafts assumed, on the basis of information from the seller, that the second set of meters was inoperative.

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In 1973, the Crafts began receiving two bills: their regular bill, and a second bill with an account number in the name of Willie C. Craft, as opposed to Willie S. Craft. Separate monthly bills were received for each set of meters, with a city service fee 3 appearing on each bill. In October 1973, after learning from a MLG&W meter reader that both sets of meters were running in their home, the Crafts hired a private plumber and electrical contractor to combine the meters into one gas and one electric meter. Because the contractor did not consolidate the meters properly, a condition of which the Crafts were not aware, they continued to receive two bills until January [436 U.S. 1, 5] 1974. During this period, the Crafts' utility service was terminated five times for nonpayment.

On several occasions, Mrs. Craft missed work and went to the MLG&W offices in order to resolve the "double billing" problem. As found by the District Court, Mrs. Craft sought in good faith to determine the cause of the "double billing," but was unable to obtain a satisfactory explanation or any suggestion for further recourse from MLG&W employees. The court noted:

"On one occasion when Mrs. Craft was attempting to avert a utilities termination, after final notice, she called the defendant's offices and explained that she had paid a bill, but was given no satisfaction. The procedure for an opportunity to talk with management was not adequately explained to Mrs. Craft, although she repeatedly tried to get some explanation for the problems of two bills and possible duplicate charges." Pet. for Cert. 38-39.

In February 1974, the Crafts and other MLG&W customers filed this action in the District Court for the Western District of Tennessee. After trial, the District Court refused to certify the plaintiffs' class and rendered judgment for the defendants. Although the court apparently was of the view that plaintiffs had no property interest in continued utility service while a disputed bill remained unpaid, it nevertheless addressed the procedural due process issue. It acknowledged that respondents had not been given adequate notice of a procedure for discussing the disputed bills with management, but concluded that "[n]one of the individual plaintiffs [was] deprived of [a] due process opportunity to be heard, nor did the circumstances indicate any substantial deprivation except in the possible instance of Mr. and Mrs. Craft." Id., at 45. 4 The court [436 U.S. 1, 6] expressed "hope," "whether on the principles of [pendent] jurisdiction, or on the basis of a very limited possible denial of due process to Mr. and Mrs. Craft," that credit in the amount of $35 be issued to reimburse the Crafts for "duplicate and unnecessary charges made and expenses [436 U.S. 1, 7] incurred by [them] with respect to terminations which should have been unnecessary had effectual relief been afforded them as requested." The court also recommended "that MLG&W in the future send a certified or registered mail notice of termination at least four days prior to termination," and that such notice "provide more specific information about customer service locations and personnel available to work out extended payment plans or adjustments of accounts in genuine hardships or appropriate situations." Id., at 46-47. 5
On appeal, the Court of Appeals for the Sixth Circuit affirmed the District Court's refusal to certify a class action, but held that the procedures accorded to the Crafts did not comport with due process. 534 F.2d 684 (1976).

On July 12, 1976, petitioners sought a writ of certiorari in this Court to determine (i) whether the termination policies of a municipal utility constitute "state action" under the Fourteenth Amendment; (ii) if so, whether a municipal utility's termination of service for nonpayment deprives a customer of "property" within the meaning of the Due Process Clause; and (iii) assuming "state action" and a "property" interest, whether MLG&W's procedures afforded due process of law in this case. 6 On February 22, 1977, we granted certiorari. 429 U.S. 1090 . We now affirm.

II

There is, at the outset, a question of mootness. Although the parties have not addressed this question in their briefs, "they may not by stipulation invoke the judicial power of the United States in litigation which does not present an actual [436 U.S. 1, 8] `case or controversy,' Richardson v. Ramirez, 418 U.S. 24

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(1974) . . . ." Sosna v. Iowa, 419 U.S. 393, 398 (1975).

As the case comes to us, the only remaining plaintiffs are respondents Willie S. and Mary Craft. Since the Court of Appeals affirmed the District Court's refusal to certify a class, the existence of a continuing "case or controversy" depends entirely on the claims of respondents. Cf. Sosna v. Iowa, supra, at 399, 402. It appears that respondents no longer desire a hearing to resolve a continuing dispute over their bills, as the double-meter problem has been clarified during this litigation. 7 Nor do respondents aver that there is a present threat of termination of service. "An injunction can issue only after the plaintiff has established that the conduct sought to be enjoined is illegal and that the defendant, if not enjoined, will engage in such conduct." United Transportation Union v. Michigan Bar, 401 U.S. 576, 584 (1971). Respondents insist, however, that the case is not moot because they seek damages and declaratory relief, and because the dispute that occasioned this suit is "capable of repetition, yet evading review." Tr. of Oral Arg. 45-46.

We need not decide whether this case falls within the special rule developed in Southern Pacific Terminal Co. v. ICC, 219 U.S. 498 (1911); see Moore v. Ogilvie, 394 U.S. 814, 816 (1969); Roe v. Wade, 410 U.S. 113, 125 (1973), to permit consideration of questions which, by their very nature, are not likely to survive the course of a normal litigation. Respondents' claim for actual and punitive damages arising from MLG&W's terminations of service saves this cause from the bar of mootness. Cf. Powell v. McCormack, 395 U.S. 486, 496 -500 (1969). Although we express no opinion as to the [436 U.S. 1, 9] validity of respondents' claim for damages, 8 that claim is not so insubstantial or so clearly foreclosed by prior decisions that this case may not proceed.

III

The Fourteenth Amendment places procedural constraints on the actions of government that work a deprivation of interests enjoying the stature of "property" within the meaning of the Due Process Clause. Although the underlying substantive interest is created by "an independent source such as state law," federal constitutional law determines whether that interest rises to the level of a "legitimate claim of entitlement" protected by the Due Process Clause. Board of Regents v. Roth, 408 U.S. 564, 577 (1972); Perry v. Sindermann, 408 U.S. 593, 602 (1972).

The outcome of that inquiry is clear in this case. In defining a public utility's privilege to terminate for nonpayment of proper charges, Tennessee decisional law draws a line between utility bills that are the subject of a bona fide dispute and those that are not.

"A company supplying electricity to the public has a right to cut off service to a customer for nonpayment of a just service bill and the company may adopt a rule to that effect. Annot., 112 A. L. R. 237 (1938). An exception [436 U.S. 1, 10] to the general rule exists when the customer has a bona fide dispute concerning the correctness of the bill. Steele v. Clinton Electric Light & Power Co., 123 Conn. 180, 193 A. 613, 615 (1937); Annot., 112 A. L. R. 237, 241 (1938); see also 43 Am. Jur., Public Utilities and Services, Sec. 65; Annot., 28 A. L. R. 475 (1924). If the public utility discontinues service for nonpayment of a disputed amount it does so at its peril and if the public utility was wrong (e. g., customer overcharged), it is liable for damages. Sims v. Alabama Water Co., 205 Ala. 378, 87 So. 688, 690, 28 A. L. R. 461 (1920)." Trigg v. Middle Tennessee Electric Membership Corp., 533 S. W. 2d 730, 733 (Tenn. App. 1975), cert. denied (Tenn. Sup. Ct. Mar. 15, 1976). 9

The Trigg court also rejected the utility's argument that plaintiffs had agreed to be bound by the utility's rules and regulations, which required payment whether or not a bill is received. "A public utility should not be able to coerce a customer to pay a disputed claim." Ibid. 10 [436 U.S. 1, 11]
State law does not permit a public utility to terminate service "at will." Cf. Bishop v. Wood, 426 U.S. 341, 345 -347 (1976). MLG&W and other public utilities in Tennessee are obligated to provide service "to all of the inhabitants of the city of its location alike, without discrimination, and without denial, except for good and sufficient cause," Farmer v. Nashville, 127 Tenn. 509, 515, 156 S. W. 189, 190 (1913), and may not

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terminate service except "for nonpayment of a just service bill," Trigg, 533 S. W. 2d, at 733. An aggrieved customer may be able to enjoin a wrongful threat to terminate, or to bring a subsequent action for damages or a refund. Ibid. The availability of such local-law remedies is evidence of the State's recognition of a protected interest. Although the customer's right to continued service is conditioned upon payment of the charges properly due, "[t]he Fourteenth Amendment's protection of `property' . . . has never been interpreted to safeguard only the rights of undisputed ownership." Fuentes v. Shevin, 407 U.S. 67, 86 (1972). Because petitioners may terminate service only "for cause," 11 respondents [436 U.S. 1, 12] assert a "legitimate claim of entitlement" within the protection of the Due Process Clause.

IV

In determining what process is "due" in this case, the extent of our inquiry is shaped by the ruling of the Court of Appeals. We need go no further in deciding this case than to ascertain whether the Court of Appeals properly read the Due Process Clause to require (i) notice informing the customer not only of the possibility of termination but also of a procedure for challenging a disputed bill, 534 F.2d, at 688, and (ii) "`[an] established [procedure] for resolution of disputes'" or some specified avenue of relief for customers who "dispute the existence of the liability," id., at 689. 12 [436 U.S. 1, 13]

A

"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. Central Hanover Trust Co., 339 U.S. 306, 314 (1950) (citations omitted). The issue here is whether due process requires that a municipal utility notify the customer of the availability of an avenue of redress within the organization should he wish to contest a particular charge.

The "final notice" contained in MLG&W's bills simply stated that payment was overdue and that service would be discontinued if payment was not made by a certain date. As the Court of Appeals determined, "the MLG&W notice only warn[ed] the customer to pay or face termination." 534 F.2d, at 688-689. MLG&W also enclosed a "flyer" with the "final notice." One "flyer" was distributed to about 40% of the utility's customers, who resided in areas serviced by "credit counseling stations." It stated in part: "If you are having difficulty paying your utility bill, bring your bill to our neighborhood credit counselors for assistance. Your utility bills may be paid here also." No mention was made of a procedure for the disposition of a disputed claim. A different "flyer" went to customers in the remaining areas. It stated: "If you are having difficulty paying your utility bill and would like to discuss a utility payment plan, or if there is any dispute concerning the amount due, bring your bill to the office at . . ., or phone . . . ." Id., at 688 n. 4.

The Court of Appeals noted that "there is no assurance that the Crafts were mailed the just mentioned flyer," ibid., and implicitly affirmed the District Court's finding that Mrs. Craft was never apprised of the availability of a [436 U.S. 1, 14] procedure for discussing her dispute "with management." 13 The District Court's description of Mrs. Craft's repeated efforts to obtain information about what appeared to be unjustified double billing - "good faith efforts to pay for [the Crafts'] utilities as well as to straighten out the problem" - makes clear that she was not adequately notified of the procedures asserted to have been available at the time. 14

Petitioners' notification procedure, while adequate to apprise the Crafts of the threat of termination of service, was not "reasonably calculated" to inform them of the availability of "an opportunity to present their objections" to their bills. Mullane v. Central Hanover Trust Co., supra, at 314. The purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending "hearing." 15 Notice in a case of this kind [436 U.S. 1, 15] does not comport with constitutional requirements when it does not advise the customer of the availability of a procedure for protesting a proposed termination of utility service as unjustified. As no such notice was given

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respondents - despite "good faith efforts" on their part - they were deprived of the notice which was their due. 16 [436 U.S. 1, 16]

B

This Court consistently has held that "some kind of hearing is required at some time before a person is finally deprived of his property interests." Wolff v. McDonnell, 418 U.S. 539, 557 -558 (1974). We agree with the Court of Appeals that due process requires the provision of an opportunity for the presentation to a designated employee of a customer's complaint that he is being overcharged or charged for services not rendered. 17 Whether or not such a procedure may be available to other MLG&W customers, both courts below found that it was not made available to Mrs. Craft. 18 Petitioners have not made the requisite showing for overturning these "concurrent findings of fact by two courts below . . . ." Graver Tank & Mfg. Co. v. Linde Air Products Co., 336 U.S. 271, 275 (1949). 19 [436 U.S. 1, 17]

Our decision in Mathews v. Eldridge, 424 U.S. 319 (1976), provides a framework of analysis for determining the "specific dictates of due process" in this case.

"[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional [436 U.S. 1, 18] or substitute procedural requirement would entail." Id., at 334-335.

Under the balancing approach outlined in Mathews, some administrative procedure for entertaining customer complaints prior to termination is required to afford reasonable assurance against erroneous or arbitrary withholding of essential services. The customer's interest is self-evident. Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety. And the risk of an erroneous deprivation, given the necessary reliance on computers, 20 is not insubstantial. 21

The utility's interests are not incompatible with affording the notice and procedure described above. Quite apart from its duty as a public service company, a utility - in its own business interests - may be expected to make all reasonable efforts to minimize billing errors and the resulting customer dissatisfaction and possible injury. Cf. Goss v. Lopez, 419 U.S. 565, 583 (1975). Nor should "some kind of hearing" prove burdensome. The opportunity for a meeting with a responsible employee empowered to resolve the dispute could be afforded well in advance of the scheduled date of termination. 22 And petitioners would retain the option to terminate [436 U.S. 1, 19] service after affording this opportunity and concluding that the amount billed was justly due.

C

Petitioners contend that the available common-law remedies of a pretermination injunction, a post-termination suit for damages, and post-payment action for a refund are sufficient to cure any perceived inadequacy in MLG&W's procedures. 23

Ordinarily, due process of law requires an opportunity for "some kind of hearing" prior to the deprivation of a significant property interest. See Boddie v. Connecticut, 401 U.S. 371, 379 (1971). On occasion, this Court has recognized that where the potential length or severity of the deprivation does not indicate a likelihood of serious loss and where the procedures underlying the decision to act are sufficiently reliable to minimize the risk of erroneous determination, government may act without providing additional "advance procedural safeguards," Ingraham v. Wright, 430 U.S. 651, 680 (1977); see Mathews v. Eldridge, supra, at 339-349. 24 [436 U.S. 1, 20]

The factors that have justified exceptions to the requirement of some prior process are not present here.

(12)

Although utility service may be restored ultimately, the cessation of essential services for any appreciable time works a uniquely final deprivation. Cf. Stanley v. Illinois, 405 U.S. 645, 647-648 (1972). Moreover, the probability of error in utility cutoff decisions is not so insubstantial as to warrant dispensing with all process prior to termination. 25

The injunction remedy referred to by petitioners would not be an adequate substitute for a pretermination review of the disputed bill with a designated employee. Many of the Court's decisions in this area have required additional procedures to further due process, notwithstanding the apparent availability of injunctive relief or recovery provisions. It was thought that such remedies were likely to be too bounded by procedural constraints and too susceptible of delay to provide an effective safeguard against an erroneous deprivation. 26 These considerations are applicable in the utility termination context. [436 U.S. 1, 21]

Equitable remedies are particularly unsuited to the resolution of factual disputes typically involving sums of money too small to justify engaging counsel or bringing a lawsuit. 27 An action in equity to halt an improper termination, because it is less likely to be pursued 28 and less likely to be effective, even if pursued, will not provide the same assurance of accurate decisionmaking as would an adequate administrative procedure. In these circumstances, an informal administrative [436 U.S. 1, 22] remedy, along the lines suggested above, constitutes the process that is "due."

V

Because of the failure to provide notice reasonably calculated to apprise respondents of the availability of an administrative procedure to consider their complaint of erroneous billing, and the failure to afford them an opportunity to present their complaint to a designated employee empowered to review disputed bills and rectify error, petitioners deprived respondents of an interest in property without due process of law.

The judgment of the Court of Appeals is

Affirmed.

Footnotes

[Footnote 1] Although MLG&W is listed as one of the petitioners, the District Court dismissed the action as to the utility itself because "a municipality or governmental unit standing in that capacity is not a `person' within the meaning" of 1983. Pet. for Cert. 43. The Court of Appeals did not [436 U.S. 1, 4] disturb that determination, and respondents have not sought review of the point in this Court. The individual petitioners, who are sued in both their official and personal capacities, are the utility's president and general manager, vice president, members of the Board of Commissioners, and two employees who have had responsibility for terminating utility services. They will be referred to throughout as either "MLG&W" or "petitioners."

[Footnote 2] Of those who brought the original action, only the Crafts remain. The parties have not sought review in this Court of the rulings made below with respect to the other plaintiffs.

[Footnote 3] The city service fee is a separate item on the regular utility bill, as required by municipal ordinance.

[Footnote 4] The District Court's conclusion was advanced with little explanation, other than a reference to MLG&W's credit extension program. In an earlier discussion, the opinion offered a description of the utility's [436 U.S. 1, 6] procedures. First, the court listed the steps involved in a termination: (i) Approximately four days after a meter reading date, a bill is mailed to the service location or other address designated by the customer. The last day to pay the net amount would be approximately 20 days after the meter reading date. (ii) Approximately 24 days after the meters are read, a "final notice" is mailed stating

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that services will be disconnected within four days if no payment is received or other provision for payment is made. (iii) Electric service is then terminated by the meter reader, unless the customer assures him that payment is in the mail, shows a paid receipt, or explains that nonpayment was due to illness. If there is no communication prior to termination, the meter reader or serviceman is instructed to leave a cutoff notice giving information about restoration of service. (iv) Approximately five days after the electric service cutoff, the remaining services are terminated if the customer has not paid the bill or made other arrangements for payment. Pet. for Cert. 34-35.

The court also noted that on or about March 1, 1973, MLG&W instituted an "extended payment plan." This generous program allows customers able to demonstrate financial hardship to pay only one-half of a past due bill with the balance to be paid in equal installments over the next three bills. The plaintiffs in this action were participants in the plan. Id., at 36.

Finally, the court observed that MLG&W provided a procedure for resolution of disputed bills:

"Credit counselors assist customers who have difficulty with payments or disputes concerning their bills with MLG&W. If those counselors cannot satisfy the customer, then the customer is referred to management personnel; generally the chief clerk in the department; then the supervisor in credit and collection. In addition, a dissatisfied customer may appeal to the Board of Commissioners of MLG&W as to complaints regarding bills, service, termination of service or any other matter relating to the operation of the Division. A customer may, if he so desires, be accompanied by an appropriate representative. The billing of customers, the determination as to when a final notice is sent, and the termination of service [are] governed by policies, rules and regulations adopted and approved by the Board of Commissioners of MLG&W." Id., at 36-37.

[Footnote 5] In its order filed on December 30, 1974, the court acknowledged that defendants had issued the recommended credit and "instituted some new procedures which will give more definitive and adequate notice to customers of possible or impending cut-off of services." Id., at 49. See n. 16, infra.

[Footnote 6] Petitioners have abandoned their contention that "state action" is not present in this case. Brief for Petitioners 44.

[Footnote 7] "Not until after the action was filed were the Crafts able to discover that they continued to receive double computer billings because MLG&W failed to combine the two accounts properly (A. 146-150), or that, as a result of the double computer billings, MLG&W had overcharged them for gas service and city service fees." Brief for Respondents 5.

[Footnote 8] The District Court found that "[o]f the balance claimed by MLG&W in March, 1974, some involved possible gas overcharges and double or duplicate billings with respect to city service fees." Pet. for Cert. 39. Presumably, respondents also seek recovery for the loss of pay occasioned by Mrs. Craft's several visits to the offices of MLG&W "which should have been unnecessary had effectual relief been afforded them as requested." Id., at 46.

While not urging mootness, petitioners assert that their compliance with the District Court's recommendation that a $35 credit be issued to the Crafts removes any claim for damages from this case. We do not understand the District Court's suggestion to have been an award of damages. The validity of the damages claim is a matter for initial determination by the courts below.

[Footnote 9] Tennessee's formulation of a public utility's privilege to terminate service for nonpayment of an undisputed charge is in accord with the common-law rule. See generally 64 Am. Jur. 2d, Public Utilities 63-64 (1972); Annot., 112 A. L. R. 237, 241 (1938); Note, The Duty of a Public Utility to Render Adequate Service: Its Scope and Enforcement, 62 Colum. L. Rev. 312, 326 (1962).

[Footnote 10] Petitioners attempt to avoid the force of Trigg by referring to several Tennessee decisions

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which state the general rule that a utility may terminate service for nonpayment of undisputed charges or noncompliance with reasonable rules and regulations. These authorities, however, do not cast doubt upon the exception recognized in Trigg for a customer who tenders the undisputed amount, but withholds complete payment because of a bona fide dispute. See Patterson v. Chattanooga, 192 Tenn. 267, 241 S. W. 2d 291 (1951); Farmer v. Nashville, 127 Tenn. 509, 156 S. W. 189 (1913); Jones v. Nashville, 109 Tenn. 550, 72 S. W. 985 (1903); Crumley v. Watauga Water Co., 99 Tenn. 420, 41 S. W. 1058 (1897); Watauga Water Co. v. Wolfe, 99 Tenn. 429, 41 S. W. 1060 (1897).

Petitioners also rely on Lindsey v. Normet, 405 U.S. 56 (1972). There, [436 U.S. 1, 11] the Court upheld an Oregon statute that required a tenant seeking a continuance of an eviction hearing to post security for accruing rent during the continuance, and limited the issues triable in an eviction proceeding to the questions of physical possession, forcible withholding, and legal right to possession. This reliance is misplaced. First, the Court merely held that the Oregon procedures comported with due process, without intimating that a tenant's claim to continued possession during a rent dispute failed to implicate a "property" interest. Second, "[t]he tenant did not have to post security in order to remain in possession before a hearing; rather, he had to post security only in order to obtain a continuance of the hearing. . . . [T]he tenant was not deprived of his possessory interest even for one day without opportunity for a hearing." Fuentes v. Shevin, 407 U.S. 67, 85 n. 15 (1972) (emphasis in original).

[Footnote 11] In Arnett v. Kennedy, 416 U.S. 134 (1974), "the Court concluded that because the employee could only be discharged for cause, he had a property interest which was entitled to constitutional protection." Bishop v. Wood, 426 U.S. 341, 345 n. 8 (1976). See Arnett v. Kennedy, supra, at 166 (POWELL, J., concurring in part); cf. Board of Regents v. Roth, 408 U.S. 564, 578 (1972).

[Footnote 12] The Court of Appeals did refer to its earlier decision in Palmer v. Columbia Gas of Ohio, Inc., 479 F.2d 153 (1973), which approved a comprehensive remedy for a due process violation, including investigation of every communicated protest by a management official, provision of a hearing before such an official, and an opportunity to stay the termination upon the posting of an appropriate bond. Id., at 159-160, 168-169. These procedures were fashioned in response to findings, based on uncontradicted evidence, of hostility and arrogance on the part of the collection-oriented clerical employees, id., at 168. No such findings were made here, and the Court of Appeals' ruling did not purport to require a similar remedy in this case.

Respondents do request certain additional procedures: "an impartial decision maker," who may be a responsible company official; "the opportunity to present information and rebut the records presented"; and "a written decision," which apparently can be rendered after termination or payment. Tr. of Oral Arg. 28, 31; Brief for Respondents 31. As respondents have not cross-petitioned, cf. Strunk v. United States, 412 U.S. 434, 437 (1973), we do not decide whether - or under what circumstances - any of these additional procedures may be appropriate. We do note that the magnitude of the numbers of complaints of overcharge would be a relevant factor in determining the appropriateness of more formal procedures than we approve in this case. The resolution of a disputed bill normally presents a limited factual issue susceptible of informal resolution.

[Footnote 13] We do not understand the District Court's reference to "an opportunity to talk with management" as implying necessarily that Mrs. Craft should have been given an opportunity to discuss her bills with corporate officers of MLG&W. Rather, the point was that Mrs. Craft was not informed of the opportunity to meet with designated personnel who were duly authorized to review disputed bills with complaining customers and to correct any errors.

[Footnote 14] Pet. for Cert. 39. William T. Mullen, secretary-treasurer of MLG&W, testified that the utility processed 33,000 "high bill" complaints in 1973. App. 130. He conceded, however, that no description of a dispute resolution process was ever distributed to the utility's customers, id., at 162-163, 176, and there is no indication in the record that a written account of such a procedure was accessible to

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customers who had complaints about their bills. Mrs. Craft's case reveals that the opportunity to invoke that procedure, if it existed at all, depended on the vagaries of "word of mouth referral," id., at 163.

[Footnote 15] See, e. g., Wolff v. McDonnell, 418 U.S. 539, 564 (1974); Morrissey v. Brewer, 408 U.S. 471, 486 -487 (1972); In re Gault, 387 U.S. 1, 33 (1967); Anti-Fascist Committee v. McGrath, 341 U.S. 123, 171 -172 (1951) (Frankfurter, J., concurring).

The dissenting opinion of MR. JUSTICE STEVENS asserts that the Court's decision "trivializes" procedural due process. Post, at 22. While recognizing that other information would be "helpful," the dissent would [436 U.S. 1, 15] hold that "a homeowner surely need not be told how to complain about an error in a utility bill . . . ." Post, at 26. In a different context a person threatened with the deprivation of a protected interest need not be told "how to complain." But the prior decisions of this Court make clear that "[d]ue process is flexible and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, supra, at 481; Mathews v. Eldridge, 424 U.S. 319, 334 (1976). In the particular circumstances of a threat to discontinue utility service, the homeowner should not be left in the plight described by the District Court in this case. Indeed, the dissent's view identifies the constitutional flaw in petitioners' notice procedure. The Crafts were told that unless the double bills were paid by a certain date their electricity would be cut off. But - as the Court of Appeals held - this skeletal notice did not advise them of a procedure for challenging the disputed bills. Such notice may well have been adequate under different circumstances. Here, however, the notice is given to thousands of customers of various levels of education, experience, and resources. Lay consumers of electric service, the uninterrupted continuity of which is essential to health and safety, should be informed clearly of the availability of an opportunity to present their complaint. In essence, recipients of a cutoff notice should be told where, during which hours of the day, and before whom disputed bills appropriately may be considered. The dissent's restrictive view of the process due in the context of this case would erect an artificial barrier between the notice and hearing components of the constitutional guarantee of due process.

[Footnote 16] Petitioners have moved to clarify and regularize their notice procedure, and it is possible that the revised notice presently afforded may be entirely adequate. Developed in response to a suggestion made by the District Court, it lists "methods of contact" and states in part that trained "Credit Counselors are available to clear up any questions, discuss disputed bills or to make any needed adjustments. There are supervisors and other management personnel available if you are not satisfied with the answers or solutions given by the Credit Counselors." App. 193.

We also note that Tennessee law requires that the board of supervisors of each independent utility district, as opposed to a utility division of a [436 U.S. 1, 16] municipality, "maintain a set of rules and regulations regarding the adjustment of all complaints which may be made to the district concerning . . . the adjustment of bills," and that such rules "be posted or otherwise available for convenient inspection by customers and members of the public in the offices of the district . . . ." Tenn. Code Ann. 6-2618 (b) (Supp. 1977).

[Footnote 17] "[A] hearing in its very essence demands that he who is entitled to it shall have the right to support his allegations by argument however brief, and, if need be, by proof, however informal." Londoner v. Denver, 210 U.S. 373, 386 (1908). The opportunity for informal consultation with designated personnel empowered to correct a mistaken determination constitutes a "due process hearing" in appropriate circumstances. See, e. g., Goss v. Lopez, 419 U.S. 565, 581 -584 (1975). See generally Friendly, "Some Kind of Hearing," 123 U. Pa. L. Rev. 1267 (1975).

[Footnote 18] In Goss v. Lopez, supra, at 568 n. 2, and 583, the Court noted that an informal disciplinary procedure obtaining at the particular high school "was not followed in this case."

[Footnote 19] The dissent advances its own reading of the record in this case, but offers no justification for sidestepping the determinations made below. There is no dispute that the District Court found that the

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"procedure for an opportunity to talk with management was not adequately explained to Mrs. Craft." See post, at 24 n. 6. The trial court also expressed a measure of disquietude over the treatment accorded Mrs. Craft when it suggested [436 U.S. 1, 17] a credit to reimburse respondents for "duplicate and unnecessary charges made and expenses incurred by [them] with respect to terminations which should have been unnecessary had effectual relief been afforded them as requested." The Court of Appeals was even more explicit in its criticism of MLG&W's procedures. The very notices relied upon by the dissent, post, at 23, were found inadequate: "[T]he MLG&W notice fails to mention `that a dispute concerning the amount due might be resolved through discussion with representatives of the company,'" 534 F.2d 684, 688 (1976), and "only warns the customer to pay or face termination." Id., at 688-689, and n. 4. And that the Court of Appeals found an absence of a constitutional hearing is the only sound way to read its statement that the utility "provides no avenue for customers who . . . dispute the existence of the liability (Crafts)." Id., at 689.

These findings are not undermined, as the dissent suggests, by Mrs. Craft's ability ultimately to glean some understanding of her billing problem after several, time-consuming trips to MLG&W's office - in the District Court's words, after "she repeatedly tried to get some explanation for the problems of two bills and possible duplicate charges." Nor are they placed in question by the fact that an employee of uncertain authority told Mrs. Craft, apparently without explanation or attempt at investigation, "[w]ell, you have to pay on the other" bill. App. 91. Fundamental fairness, not simply considerations of "courteous" treatment of customers, post, at 25 n. 7, informs the constitutional requirement of notice and the actual provision of a timely opportunity to meet with designated personnel who are duly authorized to review disputed bills and to correct any errors.

[Footnote 20] In recent years Congress has been concerned by the problems of computer error. See, e. g., S. Rep. No. 93-278, p. 5 (1973) (billing errors in consumer credit transactions); Senate Committee on Government Operations, Problems Associated with Computer Technology in Federal Programs and Private Industry: Computer Abuses, 94th Cong., 2d Sess. (Comm. Print 1976).

[Footnote 21] See, e. g., Palmer v. Columbia Gas of Ohio, Inc., 479 F.2d, at 158; Davis v. Weir, 497 F.2d 139, 142 (CA5 1974); Bronson v. Consolidated Edison Co. of New York, 350 F. Supp. 443, 448 n. 11 (SDNY 1972) (16% of the complaints investigated by New York Public Service Commission resulted in adjustments in favor of the customer).

[Footnote 22] Because petitioners provide for at least a 30-day period between the mailing of the bill and the actual termination of service, Brief for Petitioners 28, it is unlikely that the informal procedure required in this [436 U.S. 1, 19] case will occasion material delay in payment. The public utility enjoys a broad discretion in the scheduling and structuring of this "hearing," provided that the customer is afforded adequate time for effective presentation of his complaint prior to termination.

[Footnote 23] This contention was advanced only obliquely in the Court of Appeals. Brief for Appellees in No. 75-1350 (CA6), p. 27.

[Footnote 24] In Ingraham, the Court held that "advance procedural safeguards" were not constitutionally required in the context of disciplinary paddling in the schools because the ability of the teacher to observe directly the infraction in question, the openness of the school environment, the visibility of the confrontation to other students and faculty, and the likelihood of parental reaction to unreasonable punishment, gave assurance that "the risk that a child will be paddled without cause is typically insignificant." 430 U.S., at 677 -678. Similarly, in Dixon v. Love, 431 U.S. 105, 113 (1977), we held that an evidentiary hearing need not precede revocation of a driver's license based on repeated traffic offenses within the previous 10-year period, for "appellee had the opportunity for a full judicial hearing [436 U.S. 1, 20] in connection with each of the traffic convictions on which the . . . decision was based."

[Footnote 25] Petitioners assert that they are under an obligation to provide nondiscriminatory service to

their customers, and that continued provision of service to a delinquent customer pending an informal hearing would involve "discriminating against the ratepayer . . . ." Tr. of Oral Arg. 5.

It is far from clear that any material delay in payment will occur from an informal conference that can be scheduled well in advance of the date of termination, see n. 22, supra. In any event, as is demonstrated by MLG&W's credit plan, see n. 4, supra, delayed payment is not nonpayment, and there are means available to MLG&W to recover at least some of the costs of a hearing, see, e. g., App. 114, 117 (imposition of gross, rather than net, charges for late payment).

[Footnote 26] See, e. g., Goss v. Lopez, 419 U.S., at 581 -582, n. 10; North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 603 , 607 (1975); Fuentes v. Shevin, 407 U.S., at 85 , and n. 15; Sniadach v. Family [436 U.S. 1, 21] Finance Corp., 395 U.S. 337, 343 (1969) (Harlan, J., concurring); Bell v. Burson, 402 U.S. 535, 536 (1971).

The dissent intimates that due process was satisfied in this case because "a customer can always avoid termination by the simple expedient of paying the disputed bill and claiming a refund . . . ." Post, at 28. This point ignores the predicament confronting many individuals who lack the means to pay additional, unanticipated utility expenses. Even under MLG&W's admirable credit procedures, the customer must make immediate payment of one-half of a disputed past due bill, with the balance to be paid in three equal installments, in addition to current charges. Contrary to the dissent's suggestion, this Court's decision in Lindsey v. Normet, 405 U.S. 56 (1972), did not uphold a procedure that conditioned a tenant's continued possession on payment of "the back rent, an obligation which he disputed." Post, at 29 n. 11. Under the procedure upheld in Lindsey, certain tenant defenses were excluded, but the landlord still had to prove nonpayment of rent due or a holding contrary to some covenant in the lease before the tenant could be deprived of possession. See 405 U.S., at 65 ; n. 10, supra.

[Footnote 27] This understanding informs the common-law privilege of the utility to terminate service for nonpayment of just charges. "An obvious reason [for the privilege] is that to limit the remedy of collection of compensation for the service to actions at law would be impracticable, as leading to an infinite number of actions to collect very small bills against scattered consumers, many of them mere renters and financially irresponsible." Steele v. Clinton Electric Light & Power Co., 123 Conn. 180, 184, 193 A. 613, 615 (1937); see Jones v. Nashville, 109 Tenn., at 560, 72 S. W., at 987.

[Footnote 28] As early as 1874, the Wisconsin Supreme Court held that the State Attorney General could obtain an injunction against a public utility threatening a wrongful termination because private persons would be unlikely to take action themselves to correct "the little wrongs which go so far to make up the measure of average prosperity of life." Attorney General v. Chicago & N. W. R. Co., 35 Wis. 425, 530-531.

MR. JUSTICE STEVENS, with whom THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join, dissenting.

In my judgment, the Court's holding confuses and trivializes the principle that the State may not deprive any person of life, liberty, or property without due process of law. I have no quarrel with the Court's conclusion that as a matter of Tennessee law a customer has a legitimate claim of entitlement to continued utility services as long as the undisputed portions of his utility bills are paid. For that reason, a municipality may not terminate utility service without giving the customer a fair opportunity to avoid termination either by paying the bill or questioning its accuracy. I do not agree, however, that this record discloses any constitutional defect in the termination procedures employed by the Light, Gas and Water Division of the city of Memphis (Division).

The Court focuses on two aspects of the Division's collection procedures. First, according to the Court, the Division's standard form of termination notice did not adequately inform the customer of the availability of a procedure for protesting a proposed termination of service as unjustified. Ante, at 15. Second, the

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Division did not afford its customers an adequate [436 U.S. 1, 23] opportunity to meet with an employee who had the authority to settle billing disputes. Ante, at 18. Whether we consider the evidence describing the unusual dispute between the Crafts and the Division, or the evidence concerning the general operation of the Division's collection procedures, I find no basis for concluding that either of the Court's criticisms is justified; its conclusion that a constitutional violation has been proved is truly extraordinary.

Although the details of the dispute between the Crafts and the Division are obscure, the record describes the Division's customary practices in some detail. Each month the Division terminates the service of about 2,000 customers. 1 Terminations are preceded by a written notice advising the customer of the date by which payment must be made to avoid a cutoff and requesting the customer to contact the credit and collections department if he is having difficulty paying the bill. 2 The notices contain a prominent legend: 3

"PHONE 523-0711

INFORMATION CENTER"

Calls to the listed phone number are answered by 30 or 40 Division employees, all of whom are empowered to delay cutoffs for three days based on representations made by customers over the phone. These employees also direct callers to credit counselors who are authorized to resolve disputes on a more permanent basis and who can set up extended payment plans for customers in financial difficulty. 4 [436 U.S. 1, 24]

The District Court did not find that the Division's notice was defective in any respect or that its regular practices were not adequate to handle the Crafts unusual problems. The Crafts' dispute with the Division stemmed from the use of two sets of meters to measure utility consumption in different parts of the Crafts' home. Ante, at 4. The Crafts, believing they were being billed twice for the same utilities, did not pay on the second account. In fact, the two accounts were independent; because the Crafts refused to pay the balance on the second account, the Division terminated their service on several occasions. 5 The District Court expressly found that the Division sent a final notice before each termination.

The District Court did not find that Mrs. Craft was unable to meet with credit department personnel possessing adequate authority to make an adjustment in her bill. 6 She was successful in working out a deferred-payment arrangement but apparently was unable to have the amount of the bills reduced. The record therefore indicates that Mrs. Craft did meet with [436 U.S. 1, 25] Division employees having adequate authority but simply failed to persuade any of them that there was any error in her bills. 7

I

The Court's constitutional objection to the Division's notice rests entirely on the classic statement from Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 :

"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."

That statement identifies the two essential characteristics of adequate notice: It must inform the recipient of the impending loss; and it must be given in time to afford the recipient an opportunity to defend. These essentials must, of course, be expressed in terms which the layman can understand. The Division's notice unquestionably satisfied these two basic requirements. 8

No doubt there may be situations in which these two essentials [436 U.S. 1, 26] would not be sufficient to constitute fair notice. For example, if the notice describes a threatened loss which can only follow a prescheduled hearing, it must also inform the recipient of the time and place of the hearing. But I do not understand the Court to require municipal utilities to schedule a hearing before each termination notice is mailed. The Court seems to assume, as I do, that no hearing of any kind is necessary unless the customer

has reason to believe he has been overcharged. Such a customer may protest his bill in either of two ways: He may communicate directly with the utility, or he may seek relief in court. In this case the Court finds the Division's notice constitutionally defective because it does not describe the former alternative.

The Division must "advise the customer of the availability of a procedure for protesting a proposed termination of utility service as unjustified." Ante, at 15. That advice is much less valuable to the customer than an explanation of the legal remedies that are available if a wrongful termination should occur. Yet the Court wisely avoids holding that the customer must be given that sort of legal advice. The advice the Court does require is wholly unnecessary in all but the most unusual situations. For a homeowner surely need not be told how to complain about an error in a utility bill; it is, of course, helpful to include the telephone number and office address in the termination notice, but our democratic government would cease to function if, as the Court seems to assume, our citizenry were unable to find such information on their own initiative. The Court's holding that the Division's notice was constitutionally defective rests on a paternalistic predicate that I cannot accept.

Even accepting the Court's predicate, a notice which advises customers to call the "information center" should be adequate; if not, it seems clear that advising customers to call, during normal business hours a "dispute resolution center" manned by the same personnel would cure the constitutional [436 U.S. 1, 27] objection. Distinctions of this small magnitude are the appropriate concern of administrative rulemaking; they are too trivial to identify constitutional error.

II

The Court's pronouncement "that due process requires the provision of an opportunity for the presentation to a designated employee of a customer's complaint that he is being overcharged or charged for services not rendered," ante, at 16, is equally divorced from the facts of this case. The Division processes more than 30,000 complaints of excess charges each year, and it has designated scores of employees to hear and investigate those complaints. Except for the Crafts' troubles, there is nothing in the record to suggest that the Division's customers are denied access to these employees, or that the employees lack the power to deal appropriately with meritorious complaints. Indeed, as already noted, there is no finding by either of the courts below that the Crafts themselves did not meet with responsible officials empowered to resolve their dispute. 9

Although the Court's pronouncement in this case is therefore gratuitous, it cannot be dismissed as harmless. For it warns municipal utilities that unless they provide "some kind of hearing," ibid., they may be acting unconstitutionally. Just what, or why, additional procedural safeguards are constitutionally required is most difficult to discern. 10 [436 U.S. 1, 28]

In deciding that more process is due, the Court relies on two quite different hypothetical considerations. First, the Court stresses the fact that disconnection of water or heating "may threaten health and safety." Ante, at 18. Second, the Court discounts the value of the protection afforded by the available judicial remedies because the "factual disputes typically [involve] sums of money too small to justify engaging counsel or bringing a lawsuit." Ante, at 21. Neither of these examples is disclosed by this record. The Crafts' dispute involved only a relatively small amount, but they did obtain counsel and thereafter they encountered no billing problems.

Although the Division's terminations number about 2,000 each month, the record does not reveal any actual case of harm to health or safety. The District Court found that the Division does not discontinue service when there is illness in a home. Since a customer can always avoid termination by the simple expedient of paying the disputed bill and claiming a refund, 11 it is not surprising that the real emergency case is [436 U.S. 1, 29] rare, if indeed it exists at all. 12 When a true emergency does present a serious threat to health or safety, the customer will have ample motivation to take the important step of consulting counsel or filing suit even if the amount of his disputed bill is small. A potential loss of utility

service sufficiently grievous to qualify as a constitutional deprivation can hardly be too petty to justify invoking the aid of counsel or the judiciary. Conversely, routine billing disputes too petty for the bench or the bar can hardly merit extraordinary constitutional protection.

Even if the customer does not consult counsel in a specific case, the potential damages remedy nevertheless provides far more significant protection against an unjustified termination than does the vague requirement of "some kind of hearing." Without the threat of damages liability for mistakes, the informal procedures required today would neither qualify the utility's ultimate power to enforce collection by terminating service nor deter the exercise of that power. On the other hand, even without specific informal procedures, the danger of substantial liability will by itself ensure careful attention to genuine customer disputes. The utility's potential liability therefore provides customers with real pretermination protection even though damages may not be recovered until later.

The need for a procedural innovation is not demonstrated [436 U.S. 1, 30] by the record in this judicial proceeding, but rather is justified on the basis of hypothetical examples, information gleaned from cases not before us, and legislative reports. See ante, at 18 nn. 20 and 21. These justifications suggest that the Court's new rule is the product of a policy determination rather than a traditional construction of the Constitution. As judges we have experience in appraising the fairness of legal remedies and judicial proceedings, but we have no similar ability to balance the cost of scheduling thousands of billing conferences against the benefit of providing additional protection to the occasional customer who may be unable to forestall an unjustified termination.

It is an unfortunate fact that when the State assesses taxes or operates a utility, it occasionally overcharges the citizen. It is also unfortunate that effective collection procedures sometimes require the citizen to pay an unjust charge in order to forestall a serious deprivation of property. But if the State has given the citizen fair notice and afforded him procedural redress which is entirely adequate when invoked by his lawyer, the demands of the Due Process Clause are satisfied. I do not believe the Constitution requires the State to employ procedures that are so simple that every lay person can always act effectively without the assistance of counsel.

I respectfully dissent.

[Footnote 1] During the six months from September 1973 through February 1974, there were 11,216 so-called delinquent cutoffs. App. 74.

[Footnote 2] The request to contact the credit department is contained in an enclosed "flyer" which also identifies the appropriate neighborhood location to be visited for credit assistance.

[Footnote 3] See 534 F.2d 684, 688 (CA6 1976).

[Footnote 4] App. 126 and 161. Information center employees may also refer customers who complain about a high bill to a special unit that sends investigators to check for possible leaks or defects in the meter. Id., at 178.

[Footnote 5] The trial judge evidently accepted the Division's claim that it was engaged in "split billing" rather than "double billing." The judge did express the "hope," as a matter of "simple equity," that the Division would issue a credit of $35 to cover duplicate and unnecessary charges and expenses incurred with respect to termination, but the amounts challenged by the Crafts as the result of "double billing" were considerably larger than $35. The reference to duplicate charges apparently concerns the $2.50 per month city service fee which was charged on each set of meters in the duplex until after they were consolidated. The unnecessary expense reference apparently covers both the time lost from work while Mrs. Craft was trying to straighten out their billing and the cost attributable to the termination. The District Court appears to have been persuaded that those costs could have been avoided if the Crafts had been given

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more help in the early stages of their dispute.

[Footnote 6] The District Court stated that the "procedure for an opportunity to talk with the management was not adequately explained to Mrs. Craft." The District Court was evaluating the Division's explanation of its procedures; the court's statement does not mean that Mrs. Craft never met with a responsible official able to resolve her dispute.

[Footnote 7] It is worth remembering that the Crafts' double-billing problem was eventually solved, and that the solution could only have been effected by a Division employee empowered to do so. Moreover, Mrs. Craft testified on direct examination that after being cut off she went to the Division's office with the record of her payments on one account. She was told that she had to pay on the other account as well. Id., at 91. In other words, an official of the Division did resolve the Crafts' dispute, correctly as it turned out. See n. 5, supra. The Division's procedures would not be unconstitutional even if we assumed that Division employees, like federal judges, are occasionally discourteous and occasionally make mistakes. The Due Process Clause does not guarantee a correct or a courteous resolution of every dispute.

[Footnote 8] It tells the customer that a cutoff is imminent and it allows the customer enough time to avoid a cutoff by paying under protest, by contacting the information center, or by beginning a legal action.

[Footnote 9] See nn. 6 and 7, supra.

[Footnote 10] A careful reading of the decision below and this Court's decision indicates that the Court has modified as well as affirmed the Sixth Circuit's view of procedural due process in a utility context. The Court of Appeals thought that this case was controlled by its earlier decision in Palmer v. Columbia Gas of Ohio, Inc., 479 F.2d 153 (1973). Palmer ordered that cutoff notices be delivered personally by utility servicemen or sent by certified mail, return receipt requested. Id., at 159 and 166-167. The notice had to tell customers about available credit programs as well as possible dispute-resolving procedures. Ibid. The Palmer court also specified that [436 U.S. 1, 28] the utility's hearing officer had to send - by certified mail - a written, individual response to every complaining customer before authorizing a cutoff. Id., at 159-160, n. 9, and 167-169. Although the Division's failure to observe these procedures was the foundation of the Court of Appeals' ruling below, the Court quite clearly does not approve the lower court's view that these procedures are constitutionally mandated.

[Footnote 11] If there is no constitutional objection to requiring a tenant to pay a disputed charge in order to retain possession of his home, I do not understand why there should be a more serious objection to requiring payment of a lesser charge in order to retain utility service. In Lindsey v. Normet, 405 U.S. 56 , a tenant sought to defend a possessory action brought by his landlord for nonpayment of rent on the ground that the premises were uninhabitable and therefore there was no obligation to pay the rent. State law did not permit such a defense in a possessory action. In order to litigate that particular dispute, the tenant had to bring his own action against the landlord. If the tenant had not in fact paid the disputed rent, the landlord would prevail in the possessory action. Thus, in order to retain possession while litigating the dispute, the tenant not only had to pay the accruing rent (a requirement upheld in Lindsey, supra, at 65), [436 U.S. 1, 29] but also had to pay the back rent, an obligation which he disputed. If he did not pay the back rent, he would lose in the possessory action and therefore would lose possession while he was prosecuting his own suit against the landlord. Thus, the Court sustained a procedure which required the payment of a disputed charge in order to maintain the status quo while litigating the dispute.

[Footnote 12] Even the customer who is unable to pay his bill in full may forestall termination by a partial payment. Ante, at 5-6, n. 4. Perhaps this Court fashions its rule for the benefit of those customers who are unable to make even a partial payment. But if such persons cannot pay current, undisputed bills, their service may be terminated despite a bona fide dispute over a past bill; for no one has a constitutional right to free utility service. [436 U.S. 1, 31]

22

Fair Debt Collection Practices Act

Fair Debt Collection Practices Act

As amended by Public Law 104-208, 110 Stat. 3009 (Sept. 30, 1996)

To amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new title:

TITLE VIII - DEBT COLLECTION PRACTICES [Fair Debt Collection Practices Act]

Sec.

§ 801. Short Title [15 USC 1601 note]

This title may be cited as the "Fair Debt Collection Practices Act."

§ 802. Congressional findings and declarations of purpose [15 USC 1692]

(a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

§ 803. Definitions [15 USC 1692a]

As used in this title --

(1) The term "Commission" means the Federal Trade Commission.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include --

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 804. Acquisition of location information [15 USC 1692b]

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall --

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

§ 805. Communication in connection with debt collection [15 USC 1692c]

(a) COMMUNICATION WITH THE CONSUMER GENERALLY. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) COMMUNICATION WITH THIRD PARTIES. Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) CEASING COMMUNICATION. If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except --

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 806. Harassment or abuse [15 USC 1692d]

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or

property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3)1 of this Act.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.

§ 807. False or misleading representations [15 USC 1692e]

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of --

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to --

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this title.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act.

§ 808. Unfair practices [15 USC 1692f]

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if --

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

§ 809. Validation of debts [15 USC 1692g]

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

§ 810. Multiple debts [15 USC 1692h]

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 811. Legal actions by debt collectors [15 USC 1692i]

(a) Any debt collector who brings any legal action on a debt against any consumer shall --

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such

action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity --

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

§ 812. Furnishing certain deceptive forms [15 USC 1692j]

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.

§ 813. Civil liability [15 USC 1692k]

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of --

(1) any actual damage sustained by such person as a result of such failure;

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors --

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a

preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§ 814. Administrative enforcement [15 USC 1692l]

(a) Compliance with this title shall be enforced by the Commission, except to the extend that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Compliance with any requirements imposed under this title shall be enforced under --

(1) section 8 of the Federal Deposit Insurance Act, in the case of --

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directing or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) subtitle IV of Title 49, by the Interstate Commerce Commission with respect to any common carrier subject to such subtitle;

(5) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of

Agriculture with respect to any activities subject to that Act.

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law, except as provided in subsection (d).

(d) Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this title.

§ 815. Reports to Congress by the Commission [15 USC 1692m]

(a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this title is being achieved and a summary of the enforcement actions taken by the Commission under section 814 of this title.

(b) In the exercise of its functions under this title, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

§ 816. Relation to State laws [15 USC 1692n]

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

§ 817. Exemption for State regulation [15 USC 1692o]

The Commission shall by regulation exempt from the requirements of this title any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

§ 818. Effective date [15 USC 1692 note]

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

Approved September 20, 1977

ENDNOTES

1. So in original; however, should read "604(a)(3)."

LEGISLATIVE HISTORY:

Public Law 95-109 [H.R. 5294]

HOUSE REPORT No. 95-131 (Comm. on Banking, Finance, and Urban Affairs).

SENATE REPORT No. 95-382 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 123 (1977):

Apr. 4, considered and passed House.

Aug. 5, considered and passed Senate, amended.

Sept. 8, House agreed to Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 39:

Sept. 20, Presidential statement.

AMENDMENTS:

SECTION 621, SUBSECTIONS (b)(3), (b)(4) and (b)(5) were amended to transfer certain administrative enforcement responsibilities, pursuant to Pub. L. 95-473, § 3(b), Oct. 17, 1978. 92 Stat. 166; Pub. L. 95-630, Title V. § 501, November 10, 1978, 92 Stat. 3680; Pub. L. 98-443, § 9(h), Oct. 4, 1984, 98 Stat. 708.

SECTION 803, SUBSECTION (6), defining "debt collector," was amended to repeal the attorney at law exemption at former Section (6)(F) and to redesignate Section 803(6)(G) pursuant to Pub. L. 99-361, July 9, 1986, 100 Stat. 768. For legislative history, see H.R. 237, HOUSE REPORT No. 99-405 (Comm. on Banking, Finance and Urban Affairs). CONGRESSIONAL RECORD: Vol. 131 (1985): Dec. 2, considered and passed House. Vol. 132 (1986): June 26, considered and passed Senate.

SECTION 807, SUBSECTION (11), was amended to affect when debt collectors must state (a) that they are attempting to collect a debt and (b) that information obtained will be used for that purpose, pursuant to Pub. L. 104-208 § 2305, 110 Stat. 3009 (Sept. 30, 1996).