IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2008-CP-00477

STEVE LACROIX — **APPELLANT**

VERSUS

MARSHALL COUNTY BOARD OF SUPERVISORS; EDDIE DIXON; KEITH TAYLOR; WILLIE FLEMON; GEORGE ZINN; RONNIE JOE BENNETT; MARSHALL COUNTY PLANNING COMMISSION; CONWAY MOORE; STEVE WILSON; LARRY HALL; KAY BROWNLEE; C. W. "CHUCK" THOMAS; SUSIE HILL AND JOHN DOE 1 THRU 10 — **APPELLEES**

ON APPEAL FROM MARSHALL COUNTY CHANCERY COURT

BRIEF OF APPELLEES

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Mississippi Supreme Court and/or Judges of the Mississippi Court of Appeals may evaluate possible disqualification or recusal.

1. The Honorable John A. Hatcher

For Appellant:

1. Steve LaCroix, Appellant appearing *Pro Se*

For Appellees:

1. Marshall County Board of Supervisors, Willie Flemon Jr., Eddie Dixon, Keith Taylor, George Zinn III, Ronnie Joe Bennett, Marshall County Planning Commision, Conway Moore, Steve Wilson, Larry Hall, Kay Brownlee, C.W. "Chuck" Thomas, Susie Hill and John Doe 1-10 Appellees; and

2. Kent E. Smith, Esq. and Catherine M. Williams, Esq., Attorneys of Record for the Appellees

Marshall County Board of Supervisors, et al

By: _____
Kent E. Smith, (MBA [redacted]
Attorney of Record for Appellees

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STATEMENT OF THE CASE

I. COURSE OF PROCEEDINGS AND DISPOSITION BELOW

On or about August 20, 2007, the Appellant, Steve LaCroix, hereinafter referred to as "LaCroix", filed a Complaint against the Appellees, Marshall County Board of Supervisors, Eddie Dixon, Keith Taylor, Willie Flemon, George Zinn, Ronnie Joe Bennett, Marshall County Planning Commission, Conway Moore, Steve Wilson, Larry Hall, Kay Brownlee, C.W. "Chuck" Thomas, Susie Hill and John Doe 1 thru 10, hereinafter collectively referred to as "Marshall County", asking the Chancery Court to order Marshall County Board of Supervisors to comply with the provisions of the Open Meetings Act and to order the Marshall County Board of Supervisors to institute some type of training procedures regarding the Open Meetings Act. He also requested a Judgment against the individually named Defendants, punitive damages in the amount of $10,000.00 per violation, statutory fines and penalties, and a Judgment in the sum of $100,000.00 for Marshall County's alleged violations of 42 U.S.C. § 1983. (R.13)[1]. Service of Process was completed, and Marshall County filed an Answer on September 20, 2007, by and through Kent E. Smith, Esq. The Answer denied the allegations set out in LaCroix's Complaint and asserted affirmative defenses. (R.43).

LaCroix filed a Motion for Summary Judgment on December 3, 2007 (R.59), to which Marshall County responded in Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment on December 21, 2008 (R. 61). On January 10, 2008, Chancellor Hatcher issued an Opinion and Partial Summary Judgment regarding the numerous pleadings filed in this cause (R. 127).

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[1] Throughout the Appelle's brief, the following abbreviations are used when making a citation to the record:
R- Reference to the court record
Tr – Reference to the March 14, 2008, trial transcripts
R.E. – Reference to the Record Excerpt

The Chancellor ruled on four of Marshall County's Motions to Dismiss and found as follows; (1) the Motion to Dismiss for failure to exhaust administrative remedies was denied; (2) the Motion to Dismiss for failure to comply with the Mississippi Tort Claims Act was denied; (3) the Motion to Dismiss for naming individuals outside of their official capacity was denied; and (4) Marshall County Planning Commission's Motion to Dismiss because they are not a proper party to the suit was denied. The Chancellor then addressed the Motion for Summary Judgment filed by LaCroix as well as the Cross-Motion for Summary Judgment filed by Marshall County.

The Chancellor granted partial summary judgment regarding the denial of public records to LaCroix, awarded a mandatory civil penalty in the amount of $100.00 and ordered that the requested records be produced. However, the Chancellor noted that the denial of public records to LaCroix by Marshall County Planning Commission was not a willful and knowing denial and therefore a civil penalty was not awarded, but the records were ordered to be produced. The Chancellor dismissed LaCroix's claim against the County Administrator due to insufficient proof. Also, the Chancellor found insufficient evidence to show a violation of the Open Meetings Act. Finally, the Chancellor found that no Constitutional right was violated when Marshall County collected garbage fees from LaCroix's tenant and that LaCroix did not present evidence sufficient to establish a prima facie 42 U.S.C. §1983 violation. The Chancellor also granted Marshall County's Cross-Motion for Summary Judgment with the exception of the Public Records issues. The Chancellor remanded for hearing the issues of whether Marshall County Planning Commission's acts were willful and knowing and whether LaCroix was entitled to be reimbursed for his expenses (R. 127).

On January 14, 2008 the Chancellor issued a Corrected Opinion and Partial Summary Judgment and Other Relief. This opinion was issued in only to remove reference to an attendant federal court action which had by Lacroix, but which was later dismissed in favor of Marshall

County. (R.136). The Chancellor set the hearing regarding the remaining issues for February 2, 2008.

On January 24, 2008, LaCroix filed a Motion to Reconsider Opinion and Partial Summary Judgment and Other Relief (R.145), to which Marshall County responded on January 30, 2008 (R.E. 1). The hearing on the remaining issues addressed in the Opinion of the Chancellor on January 10, 2008, was held on February 1, 2008. The Chancellor made a ruling from the bench on February 1, 2008, which was memorialized in a Judgment dated, February 20, 2008. The Chancellor denied LaCroix's claim of violation of the Open Meetings Act and the alleged Due Process violations. However, the Chancellor found a willful and knowing violation of the Public Records Act by the County Administrator's Office and also found, that the Public Records Act issue regarding Marshall County Zoning Office was nothing more than a mere oversight. The Chancellor ordered Marshall County, through its Board of Supervisors, to produce the requested records. He went on to order that LaCroix pay the bill for the services and costs of copying, ordered Marshall County to pay to LaCroix $200.00 for violations of the Public Records Act, ordered Marshall County to pay to LaCroix $512.46 for the costs and expenses incurred in pursuing the action and finally that LaCroix pay $206.00 to Marshall County for its costs incurred. The Judgment directed the parties to comply with the Court's ruling, within two weeks from the date of the hearing, February 1, 2008.

On February 25, 2008 LaCroix filed a Rule 52 Motion to Alter or Amend the Judgment (R.E. 2), to which Marshall County responded on February 29, 2008 (R.E. 3). On February 22, 2008, Marshall County filed a Motion for Contempt due to LaCroix's failure to remit payment as ordered by the court. (R.E. 4). On March 4, 2008, the Chancellor issued a Supplemental Order setting the post trial motions to be heard on March 14, 2008. He also directed that LaCroix pay the $206.00 due to Marshall County before the March 14, 2008 hearing date and that Marshall

County produce for an *in camera* inspection all records they deemed to be excluded from the Public Records Act. (R.E. 5). Finally, on March 6, 2008 LaCroix filed a Motion for Sanctions Pursuant to Rule 11 in regard to the Motion for Contempt filed by Marshall County arising from Lacroix's failure to timely remit payment as ordered by the Chancellor. (R. 179).

On March 14, 2008 a hearing was held in the Marshall County Chancery Courtroom in Holly Springs. After both sides rested, the trial court made a ruling from the bench, which was memorialized in its Order dated March 18, 2008 and filed, March 24, 2008 (R. 185). The Chancellor found that Marshall County withdrew their Motion for Contempt as filed on February 22, 2008, due to LaCroix's reluctant compliance with the Supplemental Order issued March 4, 2008, and therefore the issue was moot. He further found that LaCroix agreed to Marshall County's Motion for Protective Order as filed on February 14, 2008 (R.E. 6), and therefore that Motion was also moot. LaCroix waived the *in camera* inspection of electronic records maintained by R.E.S.(the private garbage collection company which was the custodian of the requested records). Due to the fact that no due process order was sent to LaCroix or his tenant regarding the withholding of a vehicle tag for unpaid garbage fees, LaCroix's Rule 52 Motion to Alter or Amend the Judgment was also found to be moot and dismissed with prejudice. The Chancellor went on to dismiss with prejudice, LaCroix's Motion for Contempt and Motion for Sanctions as well as Marshall County's Motion for Contempt. Finally, the Chancellor ordered Marshall County to refund LaCroix $126.50 due to the fact that a document produced was not one that was ordered by the Court.

Lacroix then filed a Notice of Appeal, which only appealed the order entered by the Chancellor on February 20, 2008, which addressed the trial held on the factual issues not disposed of by the Chancellor's previous ruling on each parties' respective motions for summary

judgment. Lacroix did not appeal the March 18, 2008, order of the lower court, or any other order entered by the Chancellor.

II. STATEMENT OF FACTS

The Marshall County Board of Supervisors sent a letter to LaCroix and his wife requesting that they appear before the Board on July 2, 2007, to answer a complaint about their property being in a state of uncleanliness. The Board also mailed a letter to LaCroix's mortgage holder informing them of the possible lien that may be placed on LaCroix's property, associated with the cost of cleaning. On July 2, 2007, LaCroix appeared before Marshall County Board of Supervisors and responded to Marshall County's letter. The Board was satisfied with LaCroix's response and resolved the issue in his favor, while also notifying the mortgage holder of the favorable outcome.

Before the hearing at the Board meeting, one of LaCroix's tenants at his property in Byhalia, had been billed for garbage collection services from September 19, 2006 through July 31, 2007, but had not submitted payment. This account was set up when, Charles Braddock, the former President of Resourceful Environmental Services, Inc (RES), (the company who is contracted for garbage pickup), discovered an RES garbage can at 372 River Ridge Road, Byhalia, Mississippi. He knew that his company did not have an account established with this address and he stopped to speak with the resident. The resident, Francisco Leal informed Mr. Braddock that he had been living at the address for three months and that RES had been picking up his garbage. At that point, Mr. Braddock took the necessary information from Mr. Leal and opened a garbage account in his name (R.E.8). However, Mr. Leal did not submit payment for the garbage services. This caused a lien to be placed on his automobile tag, which prohibited him from renewing the tag without first paying the past due amount. Mr. Leal then paid the delinquent account and obtained his automobile tag. On July 25, 2007, LaCroix was informed by his tenant that a lien was placed on the tenant's automobile tag for failure to pay the garbage bill.

LaCroix then inquired about the lien with the County Administrator's Office and requested that the fees be returned to the tenant. On August 2, 2007, LaCroix made a written request to inspect the garbage bills associated with his tenant's account. LaCroix also wrote letters to Marshall County Zoning Office dated August 2, 2007 requesting that he be permitted to inspect certain public records on August 6, 2007, but did not identify which records he intended to inspect.

On August 6, 2007, LaCroix appeared at Marshall County Zoning Office to copy the public records, but Marshall County did not have the records available because the specific records were never identified in the request. On the same day LaCroix sent a letter to Marshall County Chancery Clerk, Chuck Thomas, informing him of his intention to copy and inspect certain public records. LaCroix indicated that he would appear in Mr. Thomas' office on August 9, 2007, and this request outlined the exact records LaCroix wanted to copy and inspect. Also on August 6, 2007, LaCroix received a letter from the Board Attorney, Kent Smith informing him that due to the impending elections, Marshall County Zoning Office would not be able to comply with the request to copy and inspect records from August 6, 2007 through August 10, 2007. The letter also stated that the zoning office would be happy to comply with LaCroix's request after August 10, 2007, but within fourteen (14) days from the date of LaCroix's inspection request.

On August 7, 2007 LaCroix appeared at Marshall County, County Administrator's Office and requested to copy and inspect public records regarding garbage fees. He was notified that the records he was requesting were not available at their office. He was then informed by Marshall County that there was an electronic copy of the records, but due to the size of the file and the limitations in technology, the entire file could not be sent to the printer as LaCroix requested. LaCroix was further informed that RES was the custodian of these records and that he could obtain that information directly from RES.

The following day, August 9, 2007, LaCroix appeared in the Chancery Clerk's office and requested to copy and inspect public records. He was told that due to the pending elections it was not feasible to make all the records available in such a short time. The Chancery Clerk offered to make the records available at a later date, but LaCroix balked at this offer.

Finally, on August 14, 2007, LaCroix notified Marshall County, Thomas and the Board, as well as Board Attorney Kent Smith, that he would like to copy the records requested in his earlier writing of August 6, 2007 as well as audio recordings of the Board of Supervisor's meetings on August 6 and 13. In his correspondence he incorrectly stated that he had once been denied access when in fact he was simply asked to return at a later, more convenient date. He stated that he would return to the Chancery Clerk's office on August 21, 2007 in order to copy the requested records. LaCroix did return to the office of the Chancery Clerk on August 15, 2007 and was provided with all records requested with the exception of the handwritten notes of the Board, which were later made available to LaCroix for copying and inspection.

III. SUMMARY OF THE ARGUMENT

The Trial Court was correct in dismissing LaCroix's claims under 42 U.S. §1983 and Mississippi Code Annotated § 19-5-22. LaCroix lacked standing to bring such claims as the injured party was his tenant (R.E. 8). Also, as noted by the Trial Court, LaCroix failed to set forth an articulable Constitutional right and failed to demonstrate that he suffered any actual damages. (R.136).

The Trial Court was correct in determining that the proper action to be taken by LaCroix, with regard to the collection of garbage fees, was to pursue an appeal pursuant to Mississippi Code Annotated §11-51-75. While the Chancellor indicated in his Corrected Opinion and Partial Summary Judgment and Other Relief, that collection of the garbage fee from LaCroix's tenant is not inconsistent with Mississippi Code Annotated §19-5-22, he did not base his decision to render summary judgment relying solely on Mississippi Code Annotated §19-5-22. (R.136)

The Trial Court was correct in denying LaCroix's claim of a violation of the Open Meetings Act. The Trial Court made it's determination after being presented with evidence by both parties. The Chancellor received a copy of LaCroix's Motion to Reconsider on the morning of trial, counsel for Marshall County also did not receive a copy of LaCroix's Motion to Reconsider until the morning of trial. During the final phases of litigation LaCroix often failed to provide copies of his filed pleadings to counsel for Marshall County, although he signed a certificate of service with all the pleadings he filed in this matter, certifying they had been delivered to counsel opposite. Therefore, the Trial Court correctly denied LaCroix the ability to argue this Motion as it was untimely provided to counsel opposite.

The Trial Court was correct in denying LaCroix's Motion for Rule 11 Sanctions, as Marshall County Motion for Contempt was not frivolous and was withdrawn by Marshall

County at the time of trial after Lacroix had finally complied with the Chancellor's order. (R.185).

The Trial Court was correct in ruling that Marshall County Planning Commission did not willfully or knowingly deny LaCroix access to public records. The Chancellor noted that the actions of Marshall County Planning Commission, while inconsistent with the Public Records Act, were not willful and knowing and therefore did not warrant sanctions (R.E.2). This ruling did not create an exception to the Public Records Act, as the Act only permits sanctions to be imposed upon a finding of willful and knowing denial.

ARGUMENT

I. STANDARD OF REVIEW

The Court's scope of review of factual issues is set forth and explained in Myers v. Blair, 611 So. 2d 969, 971 (Miss. 1992):

> Our scope of review of a chancellor's findings of fact is that "the findings of fact as there determined shall not be reversed unless clearly shown to be erroneous. It has therefore been the uniform rule that the [c]hancellor's findings on the facts is reviewable on appeal on when manifestly wrong" Griffith, *Mississippi Chancery Practice*, § 674 (2nd ed. 1950). The rationale for this rule is based upon the firsthand knowledge the chancellor acquired from seeing the witnesses and hearing their sworn testimony. It is argued that the chancellor is thus better qualified to arrive at correct factual findings and conclusions than an appellate court reviewing only a dry record of the proceedings.

II. THE TRIAL COURT DID NOT COMMITT ERROR IN DISMISSING LACROIX'S CLAIMS UNDER 42 U.S. § 1983 AND MISSISSIPPI CODE ANNOTATED § 19-5-22.

A. LaCroix lacks standing to bring this claim.

'Standing' is a jurisdictional issue which may be raised by any party or the Court at any time City of Madison vs. Bryan 763 So.2d 162, 166 (Miss.2000) citing: Williams v. Stevens, 390 So.2d 1012, 1014 (Miss.1980).

LaCroix herein lacks the standing to pursue a claim against Marshall County for a violation of 42 U.S. § 1983 and Mississippi Code Annotated § 19-5-22. The Fourteenth Amendment bars the state from depriving any person of "life, liberty or property, without due process of law." See U.S. Const., Amend. 14. Procedural due process is violated when the violation takes the form of a denial of fundamental fairness in the procedures used to enact any such deprivation, while substantive due process is violated when the state does so without any reasonable justification in the service of a legitimate governmental objective. County of Sacramento v. Lewis, 523 U.S. 833, 846, 118 S.Ct. 1708, 1716, 140 L.Ed.2d 1043 (1998).

In order to state a viable substantive due process claim, LaCroix must demonstrate that Marshall County acted "with culpability beyond mere negligence." McClendon v. City of Columbia, 305 F.3d 314, 326 (5th Cir. 2002). Only the most egregious official conduct, that which can be said to "shock the conscience," can be considered arbitrary in the context of a substantive due process claim. McClendon, 305 F.3d at 325-26.

In order to establish a viable procedural due process claim, LaCroix must show that before any of his rights may be affected by the state, he is entitled to notice and an opportunity to be heard at a meaningful time and in a meaningful manner. Fuentes v. Shevin, 407 U.S. 67, 80, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972). In other words, a procedural due process claim only concerns itself with "the adequacy of the procedures that the state provides to a property owner

before it takes away the property." Marco Outdoor Advertising, Inc. v. Regional Transit Authority, 489 F.3d 669, 672-73 (5th Cir. 2007).

LaCroix alleges that he was deprived of a protected interest without the benefit of the procedural due process protections of the Fourteenth Amendment. The alleged protected interest was the ability to purchases a car tag and being required to pay for a garbage bill for which he were not legally obligated to pay. However, before the sufficiency of the process is reviewed, LaCroix must first satisfy the requirement that he were deprived of a constitutionally protected interest.

LaCroix's due process allegations can be broken down into two claims. First he claims that he was afforded no hearing before he was deprived of the right to purchase a car tag. A similar issue has previously been litigated in the Northern District of Mississippi. In Laudermilk v. Fordice, this Court found that citizens of the State of Mississippi do have a protected interest in purchasing a car tag. Laudermilk v. Fordice, 948 F. Supp. 596, 601 (N.D. Miss. 1996). However, the facts of Laudermilk, are distinguishable from the case *sub judice*. In Laudermilk, a lien was placed on the Plaintiffs' car tags for failure to pay an overdue garbage bill. Id. at 597. This prevented Plaintiffs from purchasing a new car tag until they paid the past due garbage bill. Id. Although the Plaintiffs requested a hearing to dispute the bill, no such hearing was provided for by state statute. Id. at 598-600. The Court found that the Plaintiffs had been deprived of the right to purchase a car tag, which was a constitutionally protected right and that the state statute which did not provide for a pre-deprivation hearing, was unconstitutional. Id. at 599-600.

At first glance, the case at bar seems to be completely analogous to Laudermilk, save one glaring difference: No lien was ever placed on LaCroix's car tags by Marshall County and he was never prohibited from tagging any vehicle which was titled in his name. The only person who ever had a lien placed on their car tag was his tenant, who is not a party to the suit. Because

LaCroix was never deprived of any constitutional right, as were the Laudermilk Plaintiffs, he have no standing to bring suit. As the Court held in Laudermilk, "in order to trigger the procedural due process protections of the Fourteenth Amendment, the claimant must suffer a deprivation of a protected interest; life, liberty or property." Id. at 599-600. Accordingly, LaCroix's claims must be dismissed because he has no constitutionally protected interest in personal property (his tenant's motor vehicle) which does not belong to him, and thus was not deprived of any due process rights.

LaCroix argues that regardless of whether a lien was placed on his automobile or their tenant's automobile, Marshall County was still required to mail a copy of the lien notice to Lacroix, as owner of the property, and not to the tenant, pursuant to M.C.A. § 19-5-22(2). Lacroix may also argue that the owner of the property, and not the tenant should be assessed the garbage fees pursuant to M.C.A. § 19-5-22(1). Although Marshall County concedes that the statute does require that such notice be mailed to the owner, and that the tenant is not responsible for payment of the fees, Lacroix's tenant is the only party who has standing to bring this claim and not Lacroix.

B. The Trial Court was correct in dismissing LaCroix's claims under 42 U.S. § 1983 and Mississippi Code Annotated § 19-5-22.

The Trial Court dismissed LaCroix's claims under 42 U.S. §1983 for his failure to "articulate a Constitutional right that was impinged by the alleged violations or that he suffered any actual damage" (R.136). In his brief LaCroix argues that his due process rights were violated due to the fact that he was not afforded a hearing regarding the delinquent account. The Trial Court was correct in it's finding that an appeal from a decision of the board of supervisors under Mississippi Code Annotated § 19-5-22, regarding the payment of delinquent garbage fees may be taken as provided in said section. However, what is not noted by the Trial Court is that LaCroix

never requested a hearing from Marshall County Board of Supervisors regarding the delinquent account.

LaCroix also argues that he was not given notice as required under Mississippi Code Annotated § 19-5-22. However, the statute is unclear in who is to receive notice of the delinquent amount. Mississippi Code Annotated § 19-5-22(1) states in pertinent part

> Every generator assessed the fees authorized by Section 19-5-21 and the owner of the property occupied by that generator shall be jointly and severally liable for the fees. The fees shall be a lien upon the real property offered garbage or rubbish collection or disposal service.
>
> * * *
>
> The county shall mail a notice of the lien, including the amount of unpaid fees and a description of the property subject to the lien, to the owner of the property.

Mississippi Code Annotated § 19-5-22(4)(a) states in pertinent part follows:

> The board of supervisors may notify the tax collector of any unpaid fees assessed under Section 19-5-21 within ninety (90) days after the fees are due. Before notifying the tax collector, the board of supervisors shall provide notice of the delinquency to the person who owes the delinquent fees and shall afford an opportunity for a hearing that complies with the due process protections the board deems necessary, consistent with the Constitutions of the United States and the State of Mississippi. The board of supervisors shall establish procedures for the manner in which notice shall be given and the contents of the notice; however, each notice shall include the amount of fees and shall prescribe the procedure required for payment of the delinquent fees. The board of supervisors may designate a disinterested individual to serve as hearing officer.

A reading of Mississippi Code Annotated § 19-5-22(2) would imply that the notice of the delinquent account should be sent to the property owner's attention. However, a reading of § 19-5-22(4)(a) indicates that notice is to be sent to the person who owes the delinquent fees. In this matter the garbage account was set up in the name of LaCroix's tenant and that tenant was sent numerous bills evidencing the amount delinquent and where the delinquent amount was to be

paid, as required by the statute (R.E. 7). No fee was ever assessed to LaCroix, and only upon a fee being assessed, would LaCroix's due process rights be triggered.

Further, Mississippi Code Annotated § 19-5-22 does not require that a hearing date be assigned to individuals wishing to dispute the amount owed. It simply states that the board "shall afford an opportunity for a hearing." Marshall County Board of Supervisors would have gladly complied with LaCroix's tenant's request to have a hearing regarding the delinquent amount of the garbage bill. However, no such hearing was ever requested and therefore LaCroix's claim that his due process rights were violated is without merit.

LaCroix argues that his tenant should not have been made to pay the overdue amount because he pays for garbage collection as a part of his rental agreement. However, the tenant set up the account in his own name (R.E.8). Prior to the tenant establishing this account, no such account existed, LaCroix simply provided a garbage can to the tenant without establishing an account for that address. LaCroix's claim that his tenant paid, as a part of his rental agreement, for the collection of garbage implies that LaCroix had established an account and was paying out of his rental proceeds for the garbage service. However, he did not inform RES of their services being used at the address and therefore when the account was established in his tenant's name, the County acted based on a knowledge and belief that the tenant was to pay the bill for garbage collection. Further, LaCroix did not inform the County of his rental agreement. The Trial Court reviewed affidavits filed by Marshall County and the pleadings filed by both Marshall County and LaCroix. LaCroix did not offer any counter-affidavits or evidence that the garbage account was established in any other way than that asserted by Marshall County. Based on the information in front of the Chancellor, he was corrected when ruling that LaCroix failed to articulate a constitutional right which was violated.

Moreover, U.S. Const. Amend. XIV, states in pertinent part, "nor shall any State deprive any person of life, liberty or property, without due process of law." LaCroix did not state any deprivation of his life, liberty or property. He did allege that Marshall County withheld his tenant's automobile tag until the garbage lien was paid. However, as noted by the Chancellor in his Judgment, the tenant was not made a party to the suit (R.E.9). As such, LaCroix only identified a possible constitutional right of the tenant that may have been violated, and failed to articulate any constitutional right of his own. The Court in Suddith v. University of Southern Mississippi, 977 So.2d 1158, 1170 (Miss.App. 2007), held as follows:

> The initial requirement for either a procedural or substantive due process claim is proving that the plaintiff has been deprived by the government of a liberty or property interest; otherwise 'no right to due process can accrue.'*Pruett*, 914 F.Supp. at 137 (citing Moore v. Miss Valley State Univ., 871 F.2d 545, 548(5th Cir. 1985))."

In the instant matter LaCroix never articulated any deprivation of his liberty nor any deprivation of his property interest. LaCroix claims that since he has a business relationship with his tenant that he has established a constitutionally protected property interest. However, LaCroix never put on evidence that the business relationship was damaged as a result of the collection of garbage fees. Also, LaCroix fails to note that in order for this Court to extend constitutional protection to this type of property interest, first LaCroix must establish that his claimed property interest, "rises to the level of a constitutionally protected interest." University of Miss. Med. Ctr. v. Hughes, 765 So.2d 528, 535 (Miss.2000). Also, the United States Supreme Court has required that one claiming a constitutionally protected property interest must show a "legitimate claim of entitlement." Bd. of Regents v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548, 561 (1972). At no point has LaCroix established that his is a constitutionally protected property interest. As such, the Chancellor was correct in ruling that LaCroix "failed to articulate a Constitutional right which was impinged by the alleged violations or that he suffered any actual damage." (R.136)

LaCroix also cites, Cook v. Bd. of Supervisors of Lowndes County, 571 So.2d 932, 934 (Miss.1990) stating "that where no hearing is held, the action does not necessarily proceed under §11-51-75 at all." LaCroix never requested a hearing regarding this matter. Mississippi Code §19-5-22 simply states, "the board of supervisors shall provide notice of the delinquency to the person who owes the delinquent fees and shall afford an opportunity for a hearing." Due to the failure of LaCroix to request a hearing Marshall County did not enter a decision from which LaCroix could appeal. LaCroix's argument that the Court was wrong to dismiss his § 1983 due process claim for failure to comply with state administrative remedies is also without merit.

LaCroix relies on the opinion issued by the U.S. Supreme Court in Felder v. Casey, 487 U.S. 131, 108 S.Ct. 2302, 101 L.Ed.2d 123, 56 USLW 4689 (1988). The Court in Felder, found that the Wisconsin notice of claim statute was preempted by federal law when dealing with a federal act. However, LaCroix's claims were not dismissed as a result of the Mississippi Tort Claims Act. The Trial Court in this matter denied Marshall County's Motion to Dismiss for Failure to Give Notice Pursuant to the Mississippi Tort Claims Act (R.136). The Court in Felder found,

> [T]he notice of claim statute at issue here conflicts in both its purpose and effects with the remedial objectives of §1983, and because its enforcement in such actions will frequently and predictably produce different outcomes in §1983 litigation based solely on whether the claim is asserted in state or federal court, we conclude that the state law is pre-empted when the §1983 action is brought in state court.

Id.at 138. LaCroix herein is attempting to argue that the due process procedures in Mississippi Code § 19-5-22 are analogous to the Mississippi Tort Claims Act and therefore are irrelevant and trumped by the U.S. Constitution. The findings by the Felder Court were specific in referencing only the notice of claim statute. LaCroix's argument is circular and fails in every way.

LaCroix had the opportunity to request a hearing and failed to do so. He now asserts that his failure to request a hearing pursuant to Mississippi Code § 19-5-22 is a violation of his due

process. However, the Chancellor's dismissal of Lacroix's claims for failure to obtain due process in accordance with the statute is correct. LaCroix's argument that requiring him to exhaust all remedies available to him "conflicts with both the purpose and effects of §1983's remedial objectives" is incorrect. 42 U.S.C.A. § 1983, states as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

LaCroix cannot therefore argue that he was deprived of his rights when he failed to exhaust all remedies made available to him under the statute. LaCroix further cites, Combined Util. Sys. Revenue Bond v. Gautier Util. Dist. Of Jackson County, 465 So.2d at 1019, to support his statement that "[N]otice of claim rules are not in any sense essential prerequisites to litigation of a Section 1983 claim in State court." However, LaCroix fails to articulate when the Trial Court placed the burden of notice upon him in an effort to bar his §1983 claim. The Chancellor's order that LaCroix first exhaust all remedies available to him under the statute, is not equivalent to requiring Lacroix to provide notice of a claim.

LaCroix also argues that the Trial Court's finding that the proper procedure for him to follow would be to file a Bill of Exceptions, would be contrary the case law established in Lenoir v. Madison County, 641 So.2d 1124, 1132 (Miss.1994), which provided that *ad valorem* tax matters were to be heard *de novo*. However, this case is distinguishable from the case at bar. Under Mississippi Code Annotated, § 19-5-22, a lien is placed on real property for failure to pay delinquent garbage fees. In Lenoir, the Plaintiff was assessed taxes by the board of supervisors

and appealed directly to the Circuit Court. In the case at bar, LaCroix was never assessed taxes for failure to pay delinquent garbage bills. Likewise, neither was LaCroix's tenant assessed taxes for failure to pay delinquent garbage bills. LaCroix also failed to further understand the crux of the Court's holding in Lenoir, which stated, "[T]his Court has recognized that a specific statute will control over a general one." Id. at 1129 citing Benoit v. United Companies Mortg. of Miss., 504 So.2d 196 (Miss.1987)." Mississippi Code Annotated § 19-5-22 specifically provides for all appeals to be taken pursuant to Mississippi Code § 11-51-75. However, Marshall County must further reiterate that LaCroix never requested a hearing pursuant to Mississippi Code Annotated § 19-5-22 and therefore no decision was rendered by the board from which he could appeal.

LaCroix also asserts in his appeal ***for the first time***, that the person made to pay the delinquent garbage account was not the resident of the subject address. This argument was never made at trial or in any pleadings or counter-affidavits filed by LaCroix. Therefore this point is waived as it was not raised at trial.

The final argument raised by LaCroix is that Marshall County acts without having a written policy and therefore does not operate by any particular guidelines in regards to the collection of unpaid garbage bills. Although this claim is not supported by the record, Marshall County avers that LaCroix failed to establish a garbage account for the subject property, and therefore did not receive bills for that property. As such, would not have received any notices regarding the delinquency of that property's account.

III. MARSHALL COUNTY DID NOT VIOLATE THE OPEN MEETINGS ACT.

Mississippi Code Annotated § 25-41-11 states in pertinent part as follows:

> "(1) Minutes shall be kept of all meetings of a public body, whether in open or executive session, showing the members present and absent; the date, time and place of the meeting; an accurate recording of any final actions taken at such meeting; and a record, by individual member, of any votes taken; and any other information that the public body requests be included or reflected in the minutes. The minutes shall be recorded within a reasonable time not to exceed thirty (30) days after recess or adjournment and shall be open to public inspection during regular business hours.
>
> (2) Minutes of a meeting conducted by teleconference or video means shall comply with the requirements of Section 25-41-5."

LaCroix incorrectly states that the Open Meetings Act, "requires the board of supervisors to record and keep minutes of executive sessions." The Act does not require minutes to be taken unless an action is taken during executive session, and in order to ensure that the public is fully aware of all actions taken by the Board of Supervisors, take action in open session so that the public can listen and comment. If no actions are taken in executive session, no minutes are recorded.

LaCroix further states that the Trial Court erred in denying his Motion to Reconsider Opinion and Partial Summary Judgment and Other Relief (R. 145). However, Rule 60 of the Mississippi Rules of Civil Procedure states in pertinent part as follows, "A motion to alter or amend the judgment shall be filed not later than ten days after the entry of the judgment." LaCroix, in his Motion to Reconsider, asks that the Trial Court reconsider the Opinion and Partial Summary Judgment and Other Relief entered on January 10, 2008, but LaCroix did not file his Motion to Reconsider until January 25, 2008 (R.145). Therefore, the Chancellor in this matter could not entertain the Motion due to the untimely filing. LaCroix attempts to claim that this Court's ruling in Owens v. Nasco Intern., Inc., 744 So.2d 772, 773 (Miss.1999), would dictate that his Motion to Reconsider be heard. However, the issue in that cause was the ability to

appeal an order to the Supreme Court, and did not address Rule 60 of the Mississippi Rules of Civil Procedure.

LaCroix further states that the Mississippi Code Annotated §25-41-15 does not require notice to be filed pursuant to the Tort Claims Act. However, LaCroix fails to note that Mississippi Code Annotated §25-41-15 also does not permit suit to be filed against elected representatives in their individual capacity, only in their official capacity. §25-41-15 states as follows:

> "The chancery courts of this state shall have the authority to enforce the provisions of this chapter upon application of any citizen of the state, and shall have the authority to issue injunctions or writs of mandamus to accomplish that purpose. If the court finds that a public body has willfully and knowingly violated the provisions of this chapter, the court may impose a civil penalty upon the public body in a sum not to exceed One Hundred Dollars ($100.00), plus all reasonable expenses incurred by the person or persons in bringing suit to enforce this chapter."

The remedy offered by §25-41-15 is against the public body and not the individuals who comprise said public body. Also, the penalty is in a sum not to exceed one hundred dollars ($100.00). LaCroix, in his Complaint, sought damages against the individually named Marshall County and the public entities as follows; "Judgment against each Defendant for those damages authorized by Mississippi statute for which each Defendant is found liable" as well as, "punitive damages in the amount of $10,000.00 per violation ...to be assessed against each Defendant personally and individually to punish the Defendants for their wrongful conduct" and "statutory fines and penalties as may be imposed in accordance with all regulatory statutes be imposed upon each defendant personally and individually so as not to place the burden upon the public." (R.13). The Mississippi Tort Claims Act provides in pertinent part as follows: "the MTCA provides public employees with absolute, rather than qualified, immunity for most torts, so long as they are committed in the course and scope of employment....." When LaCroix named the members of the public body in their individual capacity (and not in their official capacity), he

became subject to the immunity defenses of the Mississippi Tort Claims Act. LaCroix failed to give the proper notice as required by the act and therefore this Court as well as the lower Court lacks jurisdiction to hear these claims as they apply to the individually named Marshall County defendants.

LaCroix's further assertion that Marshall County failed to adequately respond to his Motion for Summary Judgment is also without merit. The party moving for summary judgment has burden of demonstrating that no genuine issue of fact exists, while nonmoving party is given benefit of every reasonable doubt. Newell v. Hinton 556 So.2d 1037, 1041 (Miss.1990). LaCroix's two page Motion for Summary Judgment presented to the Chancellor failed to establish that no issue of genuine material fact existed (R.59). Given the complete lack of evidentiary support provided by LaCroix, he could not meet his burden of proof. "[O]n a motion for summary judgment, the non-moving party's burden of rebuttal arises only after the moving party has satisfied its burden of proving that no genuine issue of material fact exists." Foster v. Noel, 715 So.2d 174, 180 (Miss.1998). Accordingly, the Trial Court correctly denied LaCroix's Motion.

LaCroix also argues that the Chancellor could not have reviewed the file prior to the February 1, 2008 trial date. However, this allegation is not supported by the record and relies on assumption by LaCroix. LaCroix further argues that items furnished by Marshall County indicate that executive sessions are not comprised of the same people each time. This allegation is also not supported by the record. LaCroix also puts forth instances he claims occurred, such as Defendant Taylor changing his vote after entering executive session, that are not a part of the record and therefore should not be considered. LaCroix also claims that FedEx hand delivered his Motion to Reconsider to the Chancellor. The record does not reflect any attempt made by FedEx to deliver said motion and this point is moot.

LaCroix next argues that Marshall County violated the Open Meetings Act by failing to take roll. Marshall County takes note of all present at the beginning of a meeting. This is updated if for some reason a Board Member excuses himself early for other business. It is the assertion of Marshall County that these members present in the beginning of the meeting are the same members present during executive session. Also, the statute does not require that minutes be taken unless action is taken. As such, failing to take minutes of an executive session wherein no action was taken is not a violation of the statute.

LaCroix also argues that his Motion to Reconsider should have been heard by the trial court and that in failing to entertain his motion the Chancellor committed error. However, LaCroix himself noted that the Motion to Reconsider was not given to the Chancellor until the morning of the final hearing. The Motion was not properly filed or noticed in a manner that gave notice to the Chancellor or permitted Marshall County ten days to file a response.

In addition, LaCroix cites, Baldwin County Welcome Center v. Brown, 466 U.S. 147, 104 S.Ct. 1723 (U.S. 1984), as a case which calls for the liberal reading of a *pro se* pleading. However, LaCroix fails to cite the full quote and also fails to credit it from the dissent in the above cited cause. The Full quote from Baldwin County Welcome Center is as follows:

> '[a]ll pleadings shall be so construed as to do substantial justice.' We frequently have stated that pro se pleadings are to be given a liberal construction. E.g., Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). If these pronouncements have any meaning, they must protect the pro se litigant who simply does not properly denominate her motion or pleading in the terms used in the Federal Rules.

Id at 164. The full quote shows that the dissent in Baldwin County Welcome Center was referring to improperly titled pleadings. LaCroix also cites, Moore v. Ruth, 556 So.2d 1059, 1061 (Miss.1990) as grounds for his Motion to be read liberally. However, in both Moore and Baldwin County Welcome Center, the Court was referencing the Complaint. Also, had LaCroix

properly noticed the Chancellor and Marshall County, then the Motion would have been reviewed and he could have set his Motion for hearing.

LaCroix also argues that the Trial Court committed error when it denied LaCroix's Motion for Protective Order. First, it should be noted that Lacroix only appealed the February 20, 2008, order and all other arguments regarding issues which were not appealed should be summarily stricken. This is also an inaccurate reading of the Order entered on March 24, 2008 (R. 185), wherein the Chancellor acknowledged the agreed upon protective order and ordered that the "Plaintiff shall not disclose or disseminate the computer printouts maintained by the County Administrator's Office for Marshall County, Mississippi....which show taxpayer payment or status or social security numbers or personal information." (R.185).The Chancellor did note that he did not feel that the case law cited by Marshall County was applicable and indicated he might have denied the motion. However, LaCroix agreed to the Protective Order making this finding by the Chancellor a moot point. LaCroix further mentions his subsequent request and denial of these documents. However, this request and denial is not a part of the record for this proceeding.

All allegations of LaCroix regarding Marshall County's motives are simple conjecture and are not relevant to these proceedings. Marshall County conducts all business in open sessions as to give the public a right to listen and comment on the actions taken by the Board. This is not indicative of a Board attempting to operate in the dark. It has also been established that Marshall County was not attempting to keep records from LaCroix, but on the contrary were attempting to make the records available on a day in which he could be adequately assisted.

IV. MARSHALL COUNTY ZONING COMMISSION DID NOT WILLFULLY OR KNOWINGLY DENY LACROIX ACCESS TO PUBLIC RECORDS.

Marshall County does not deny that at the time this litigation commenced there was not a policy in place regarding public records requests. However, the denial by Marshall County employee Steve Wilson amounts to an incorrect interpretation of the Public Records Act. It is obvious that he did not have an understanding of the Act and therefore did not know he was required to produce the records at that time. He admitted to LaCroix that this type of request was "over his head" (See Appellant's Brief in Chief, p.37). and requested that LaCroix seek permission from the Board of Supervisors. While LaCroix would aver that Appellee Conway Moore was present, this is not supported by the record and it is the assertion of Appellee Moore that she was not present for this exchange.

Also, the letter sent by Board Attorney, Kent Smith was also not a complete denial and instead a request that LaCroix return on a later date so that the Marshall County Planning Commission could adequately assist him in retrieving the records he was seeking. This was not an attempt to hinder LaCroix, it was an attempt to accommodate LaCroix and Marshall County. It is simply a request to comply at a later date based on an erroneous reading of the statute.

The Public Records Act does not require the Chancellor to fine a public body unless the denial is willful and knowing. Miss. Code Ann. §25-61-5. The Chancellor, after listening to testimony and reading all pleadings found that the denial was not willful, as the Planning Commission made an attempt to accommodate LaCroix and did not fully understand the statute regarding LaCroix's rights to inspect.

LaCroix defines willful for this Court, however, the Chancellor after hearing the evidence and reading the pleadings did not find the actions of Marshall County Planning Commission

willful. LaCroix states that the violation was "intended to delay or prevent an inspection." (See App. Br. in Ch. p.38). The office in which the inspection was to take place was busy with impending elections. However, at no point did Marshall County deny him the right to review these records. They simply asked him to accommodate their busy schedules by returning at a later date. The Chancellor did not view this request as a willful denial as LaCroix was not out right denied access.

LaCroix also refers to comments made by Board Attorney, Kent Smith as being testimony, however, Mr. Smith was never called as a witness and he gave only argument of counsel, not testimony. Also, LaCroix argues that the by denying him the right to inspect the records on the day he appeared was a direct violation of the statute. LaCroix also seems to think that in finding that the violation was not willful, the Chancellor has somehow created an exception to the Public Records Act. This, of course, is not the case. The Chancellor did find that the act was violated, he simply decided that the violation was not willful. Therefore LaCroix's argument that the Chancellor erroneously created an exception is without merit.

LaCroix argues that the Planning Commission knew their actions were prohibited by the Mississippi Public Records Act. However, based on the pleadings and testimony the Chancellor disagreed. LaCroix had an opportunity to put on proof indicating a knowing and willful denial and he failed to do so. This is not an error on the Chancellor's part as he was presented evidence by both LaCroix and Marshall County and found no proof of a knowing denial. Marshall County would argue that it is obvious this denial was not a knowing denial, in reading the letter sent by the Board Attorney, which indicated they Planning Commission had fourteen (14) days within which to comply. This is likely evidence of a misreading of the statute and not deliberate misinformation relayed by the Planning Commission.

V. THE TRIAL COURT DID NOT ERR IN FINDING LACROIX WAS NOT ENTITLED TO SANCTIONS PURSUANT TO RULE 11.

At the conclusion of the trial of this matter the Chancellor ordered Marshall County to Provide LaCroix with certain public records. However, the Chancellor also ordered LaCroix to pay for the fee associated with the production of the public records. Marshall County provided the ordered records to LaCroix on February 15, 2008, in compliance with the Chancellor's order from the bench. LaCroix failed to remit payment as ordered from the bench and Marshall County proceeded to file their Motion for Contempt (R.E. 4).

LaCroix claims that the Motion for Contempt filed by Marshall County was frivolous and without merit. He bases his argument on the fact that the Final Judgment outlined how he was to pay the fees associated with his public records request. However, Lacroix only appealed the February 20, 2008, and not the March 18, 2008, order addressing sanctions. Accordingly, this argument should be not be addressed by this Court on appeal.

Despite the fact that this issue was not appealed, Marshall County would show that the Chancellor, from the bench, informed LaCroix that he was to pay the fees associated with the production of public records. The Public Records Act provides that payment is due prior to the production of the records. Marshall County, in the spirit of the Chancellor's direction, provided the records as ordered and were not compensated. By failing to submit payment, Lacroix was in violation of the Chancellor's order.

It is also noted by Marshall County that the Chancellor ordered Mr. LaCroix to "pay the bill for the services and cost of copying if it's a reasonable bill within compliance of the open records Public Records Act." Later in his Judgment the Chancellor stated, "the Plaintiff shall pay unto the Defendant within two (2) weeks the sum of $206.00 for satisfaction of the Defendant's bill for $353.00 representing 4.2 hours research at $15.00 per hour, not at $50.00 per hour." The

Court expressly stated he was to follow the payment structure of the Public Records Act. Lacroix ignored the Chancellor's direct order causing Marshall County to file their Motion for Contempt.

In no way was this Motion frivolous and upon receipt of payment Marshall County dismissed their motion. LaCroix states "Defendant's attorney was rewarded for filing the frivolous motion against LaCroix through his billable hours." However, this speculation on behalf of LaCroix is not supported by the record. Counsel for Marshall County was doing what was in the best interest of his client in his attempts to secure payment for the records produced to LaCroix. LaCroix was in contempt of the Judgment and the motion was brought accordingly.

The Chancellor did not find that counsel brought this action without substantial justification. It is the duty of the Chancellor to view the facts and apply the law accordingly. LaCroix cites, Chaudhry v. Gallerizzo, 174 F.3d 394, 410-11 (4th Cir. 1999) and Derechin v. State Univ. of N.Y. 963 F.2d 513, 517 (2d Cir. 1992), neither of which are Mississippi case law and are not binding on this Court. However, LaCroix fails to articulate where in the record it is evidenced counsel for Marshall County acted in bad faith. He simply offers conjecture regarding the legal fees that he assumed were collected by counsel for his filing of the motion.

CONCLUSION

For the foregoing reasons, the Appellees respectfully request that this Honorable Court affirm the Chancellor's Order.

RESPECTFULLY SUBMITTED,

KENT E. SMITH, MSB[redacted]
ATTORNEY FOR MARSHALL COUNTY
MARSHALL COUNTY, MISSISSIPPI

CERTIFICATE OF SERVICE

I, Kent E. Smith, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing Brief of Appellee by U. S. Mail, postage prepaid, to:

Steve LaCroix, *Pro Se*
384 River Ridge Circle
Byhalia, MS 38611

The Honorable John A. Hatcher
Post Office Box 118
Booneville, Mississippi 38829

This, the 5 day of November, 2008.

KENT E. SMITH