dis·cus·sion pa·per

/dəˈskəSH(ə)n ˈpāpər/ (n.)

A paper to present new ideas, to engage neoteric innovators, and to invite discussion on critical issues.

THE CENTER FOR WATER SECURITY AND COOPERATION

Ending Water Shutoffs: Deconstructing the law's punishment of poverty

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In the United States, economic access is a construct of law. While existing laws allow for access to water to be denied to households without the financial resources to pay for water, the law can just as easily protect that access instead. To protect economic access to water for low-income households, one step is needed: do not use the law to punish those who cannot pay their water bills.

STARTING THE DISCUSSION

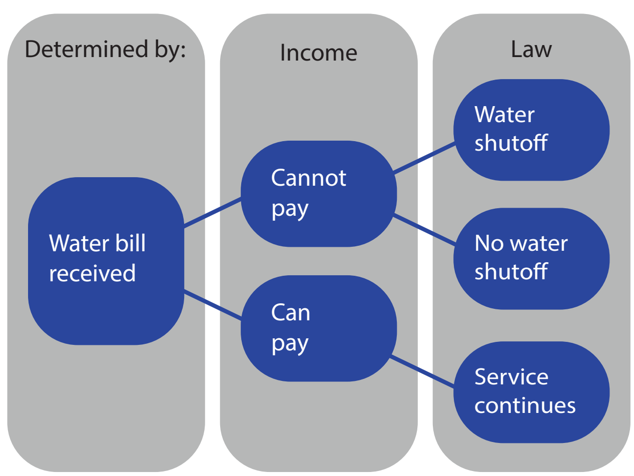
In the United States, households lose access to water because the law legalizes the denial of access to water to low-income households. State and local laws do not require the consideration of a household's ability to pay before water is disconnected for nonpayment. Utility policies do not require a household's ability to pay to be considered before water services are terminated for nonpayment. When a family does not have the financial resources to pay their water or sewer bill they are faced with fees, water disconnections, liens, and foreclosures.

INEQUITABLE ACCESS ORIGINATES IN LAW

Households lose access to water because economic access is denied under the law, not because water is unaffordable. The conversation about access to water often centers around the "affordability of water," distracting from the real threat to economic access: the law. Households do not lose economic access to water because the cost is unaffordable. Households lose water because the law makes it permissible to not just ignore their inability to pay, but to wield it as a weapon against them.

The "affordability" of water has become the misplaced marker of whether communities' economic access to water is under threat. Analyses of affordability center around the ability of households to pay for water and sewer. Water affordability is typically measured by calculating the community's average cost of water as a percentage of that community's median household income (MHI). Where the average cost of water exceeds 2.5% of the MHI, or the average cost of water and sewer exceeds 4.5% of the MHI, water or water and sewer is "unaffordable". This metric does not accurately reflect household-level affordability and there are ongoing efforts to develop a more accurate representation of household-level affordability. However, regardless of how affordability is defined, affordability is not a metric of whether low-income households are maintaining access to water. Just because a household cannot afford water does not mean that they have to lose access to water.

fig. This diagram highlights that payment is a function of income, while access is a function of law.



The law can protect economic access. The law determines whether low-income households will lose economic access to water because of their inability to pay. Economic access to water and wastewater services is defined by the CWSC as access to water and wastewater services despite an inability to pay.

The law can affect economic access in several ways. The law can recognize that certain households will be unable to afford their water bill and prohibit disconnection of services on the basis of an inability to pay. The law can require that utilities offer a deferred payment arrangement with reasonable installments. The law can require that qualifying low-income households be offered water at a subsidized rate. The law can even require that basic water services - the water necessary to meet drinking and hygiene needs - be offered to qualifying low-income households for free or at a subsidized rate. Or, conversely, the law can allow for disconnections of service for nonpayment without exception. The common denominator is that **the law** either protects economic access for all or justifies denial of access to low-income households.

Utilities can also adopt policies and practices that ensure an inability to pay does not lead to a denial of economic access to water. These policies or practices would be similar to the examples provided above. However, without the legal imperative, utilities are not required to put in place protections for low-income households and economic access to water can be denied to households unable to pay.

Some laws can unintentionally limit or prevent the utility from adopting policies and practices that would protect low-income households. For example, the law can require rates to be cost-based which would prevent a utility from funding a customer assistance program through rates. The laws can also prohibit discriminatory rates, which prevents the creation of a specialized rate structure for low-income households. Other laws can also explicitly prohibit free services. Therefore, even where a utility would want to provide protections for low-income households, they may not be able to because of the law.

By focusing on economic access and the law, the CWSC focuses on what actually results in the denial of access to water to low-income households. The inability to pay a water bill does not need to result in a termination of water resources. However, when neither the law nor utility policy require consideration of the household’s ability to pay, a household who does not have the financial means to pay their water bill will lose economic access to water. Only the law can ensure that the inability to pay does not result in a loss of economic access to water.

Existing laws do not guarantee economic access to water and must be changed. By examining the laws governing economic access we can determine how vulnerable low-income households are to losing economic access to water. To illustrate the power and effect of the law, we examined the local laws of the twelve cities studied by The Guardian in their June 2020 report on water affordability. None of the local laws governing the twelve cities prevent the denial of economic access to water to low-income households if they are unable to pay. All cities are allowed to execute water shutoffs. No city is required to offer a payment plan or provide rate assistance generally or to offer payment plans or rate assistance before disconnecting a service for inability to pay.

12 cities' laws governing economic access to water.

	Shutoffs for non-payment allowed?	Ability to pay considered before shut off?	Must a payment plan be offered (before disconnection)?	Must rate assistance be offered (before disconnection)?
Austin	Yes	No	No	No
Cleveland	Yes	No	No	No
San Diego	Yes	No	No	No
San Jose	Yes	No	No	No
Tucson	Yes	No	No	No
Santa Fe	Yes	No	No	No
Seattle	Yes	No	No	No
Philadelphia	Yes	No	No	No
Indianapolis	Yes	No	No	No
Charlotte	Yes	No	No	No
Fresno	Yes	No	No	No
New Orleans	Silent	No	No	No

In all of the twelve cities, where a bill becomes delinquent, the water services to the household can be terminated without consideration of ability to pay. In many cities, qualifying low-income households *may* be eligible to receive a deferred payment agreement or rate assistance. In cities where payment arrangements and rate assistance are permissible under the law, the discretion to offer them is left to the utilities. For example, in Cleveland the Director of Public Utilities *may*, after an investigation, grant a payment extension to indigent customers. Similar language is used in Austin, Santa Fe, and Fresno local laws. While payment arrangements and rate assistance may be offered, there is no guarantee that they must be offered where a household is unable to pay their bill.

There are some examples where once a customer is deemed eligible for a payment arrangement or rate assistance, such an arrangement or assistance must be offered. For example, customers in Santa Fe who file an affidavit stating that the household's annual income does not exceed 120% of the FPL, qualify for an exemption from monthly sewer assessments and charges as well as service charges for water if individually metered. In Indianapolis, the utility is prohibited from disconnecting water services if the customer "shows cause for his or her inability to pay the full amount due (financial hardship shall constitute cause)" and the customer pays a reasonable portion of the outstanding bill as well as agrees to pay the remainder within three months, agrees to pay future bills as they become due and has not violated a similar payment agreement within the last twelve months.[1] Therefore, there are instances where once a customer has been shown to qualify as low-income, and other conditions are met, they must be offered either a payment arrangement or rate assistance. However, without the requirement to inquire about financial circumstances and provide accommodations for an inability to pay *before* terminating water services for nonpayment, customers will continue to lose economic access.

Households are left without options when economic access is denied because water provision is a natural monopoly. It is difficult to understand why these protections are not in place. If water services cost any amount of money, it can be expected that not everyone will be able to pay. If it wasn't water, the household would simply seek out alternatives and find another, more affordable service provider or a service provider with more accommodating service terms and conditions. But water service provision is a natural monopoly. There are no alternative service providers within a service area. There is one option for receiving water services. Households do not get to choose who their water service provider is. They are stuck with that one option.

We can fix economic access. There is no simple fix to affordability. The affordability of water is based on a variety of system and household

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[1] Language that places limits on the negotiation and use of payment agreements can limit the effectiveness of such tools. For example, where the term of a payment agreement can only extend a limited number of months, the payment amounts may still be too large for a household to pay. This means the household is more likely to default on the agreement and that the payment arrangement will be less effective at ensuring households keep access to water.

factors. At the system level, several factors drive the rate structure and the ultimate cost and affordability of water. Such factors include the basic operational and maintenance costs of providing safe, legally compliant water services (e.g. chemical and energy costs to withdraw, treat and distribute water), system inefficiencies (e.g. water leakage), and capital improvements (including the impacts of delayed capital improvements). At the household level, there are two primary costs drivers: delivery inefficiencies (i.e. water leakage or water wastage) and consumption (i.e. intentional volume used by the customer). These costs drive the rates and tariffs. While inefficiencies can be eliminated through investment in capital improvements, and consumption can be reduced, costs may decrease, but there will still be households who cannot afford those rates. Even if the rates reflect the most efficient operations, there is no guarantee that the rates will be affordable for everyone. Universal affordability is not likely nor possible. Therefore, if the focus remains on affordability, many households will continue to not have or to lose economic access to water.

The rates and tariffs are not the root of the problem. Water bills reflect the direct and indirect cost of providing clean, safe water. For some, those bills result in financial strain and are unaffordable based on their level of income. If the rates and tariffs reflect the cost of providing safe water services, that is the cost of providing the water service. Pushing rates artificially low endangers access for everyone because it starves the utility of the revenue it needs to provide safe, reliable services. The only way to protect low-income households is to ensure that despite their ability to pay, they will maintain economic access to water. Only the law can provide this protection to households unable to pay their water bills.

CONCLUSION: ECONOMIC ACCESS MUST BE THE FOCUS

We must focus on economic access and ensure the laws guarantee economic access. State and local governments must adopt requirements that require inability to pay be a barrier to disconnection for nonpayment. Where a household is found to be unable to pay, it should be prohibited for a utility to disconnect water services unless opportunities are provided for the household to stay connected. These opportunities would provide pathways to paying bills over time, to receiving financial assistance, or to incurring reduced costs for water and sewer. In order for economic access to be guaranteed, the law should not allow for access to water to be denied to households too poor to pay.

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