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# Reimagining Traffic Fines and Fees

Jordan Blair Woods\*

*Traffic tickets can be big business for government. Every year, traffic tickets generate hundreds of millions, if not billions, of dollars in revenue for state and local governments nationwide. That revenue is then allocated to support a wide variety of government programs, some of which have nothing to do with traffic violations. The burdens of financial penalties in traffic cases (including base fines, court costs and fees, and surcharges) fall disproportionately on the most financially vulnerable individuals and communities, including low-income people and overpoliced communities of color.*

*The main contribution of this Article is that it sketches core elements of a more just and equitable legal framework to guide traffic penalty systems. As explained, current traffic penalty systems rest on a false choice between fines and incarceration—namely, that fines are a necessary and practical alternative to avoid the social costs of incarceration for violations of minor traffic regulations. The proposed framework in this Article moves beyond this false choice to provide a different normative vision of when and how governments may impose financial penalties for traffic violations and how governments may allocate and use traffic penalty revenue. The framework is organized along six dimensions: (1) the types of allowable financial penalties for traffic violations, (2) how to calculate financial penalties imposed, (3) when financial penalties for traffic violations may be imposed, (4) the proper allocation and use of traffic penalty revenue, (5) the treatment of individuals with limited financial means to pay, and (6) transparency and accountability measures.*

*This Article provides a comprehensive analysis of important criminal-justice-related and transportation-related benefits of reimagining traffic fine and fee systems in ways that align with the proposed framework. Those benefits include reducing the criminalization of poverty and the net-widening of the criminal justice system through traffic enforcement, aligning traffic penalties with the realities of overregulation and selective and discriminatory traffic enforcement, combating government incentives for revenue generation through traffic enforcement, complementing and strengthening traffic policing reforms, and improving*

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*considerations of racial and class equity in transportation law and policy. This Article concludes by addressing potential objections to the proposed framework.*

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## INTRODUCTION

Traffic tickets can be big business for government. Every year, police conduct tens of millions of traffic stops for minor traffic violations.<sup>1</sup> These stops generate hundreds of millions, if not billions, of dollars in revenue for state and local governments nationwide.<sup>2</sup> That revenue is then allocated to support a wide variety of government agencies and programs, some of which have nothing to do with traffic violations.<sup>3</sup> Examples include court funds, law enforcement funds, education and safety programs, library funds, legal information technology, victim assistance programs, and funds for appointed attorney and public defender services.<sup>4</sup>

Today, traffic ticket revenue is generated from a variety of sources that not only include base fines but also bail forfeitures,<sup>5</sup> various court costs and user fees (collectively referred to in this Article as “fees”), and surcharges.<sup>6</sup> Consider the

1. Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736, 736 (2020) (“More than 20 million Americans are stopped each year for traffic violations . . . .”); Jordan Blair Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 MICH. L. REV. 635, 637 (2019) (“Every year, police conduct tens of millions of traffic stops.”).

2. See *infra* Part I.A.

3. See generally ARAVIND BODDUPALLI & LIVIA MUCCILO, URBAN INST., FOLLOWING THE MONEY ON FINES AND FEES: THE MISALIGNED FISCAL INCENTIVES IN SPEEDING TICKETS 5–11 (2020) (hereinafter URBAN INSTITUTE REPORT), [https://www.urban.org/sites/default/files/publication/n/105331/following-the-money-on-fines-and-fees\\_final-pdf.pdf](https://www.urban.org/sites/default/files/publication/n/105331/following-the-money-on-fines-and-fees_final-pdf.pdf) [https://perma.cc/7RMZ-76PW] (discussing the various ways that state and local governments allocate fines and fees from speeding tickets); CAL. STATE AUDITOR, PENALTY ASSESSMENT FUNDS 23 (2018), <https://www.bsa.ca.gov/pdfs/reports/2017-126.pdf> [https://perma.cc/3KH4-4XDA] (“Many of the penalties [for traffic violations] pay for activities not directly related to the traffic violation.”).

4. URBAN INSTITUTE REPORT, *supra* note 3, at 5–11 (providing examples of various ways that state and local governments allocate revenue from speeding tickets). CAL. STATE AUDITOR, *supra* note 3, at 5 (listing how traffic fines, fees, and other penalties are distributed across various state and local programs); ROBIN R. RISK, HOUSE FISCAL AGENCY, FISCAL BRIEF: TRAFFIC CITATION REVENUE 1 (2021), [https://www.house.mi.gov/hfa/PDF/Alpha/Fiscal\\_Brief\\_Traffic\\_Citation\\_Revenue\\_Jan2021.pdf](https://www.house.mi.gov/hfa/PDF/Alpha/Fiscal_Brief_Traffic_Citation_Revenue_Jan2021.pdf) [https://perma.cc/XRE8-HARQ] (listing how traffic citation revenue is distributed across various state programs); State of Wisc. Dept. of Transp., *Distributing Traffic Citation Deposits and Fines*, <https://wisconsin.gov/Pages/safety/enforcement/citation/default.aspx> [https://perma.cc/7RU6-R2ER] (last visited Apr. 15, 2024) (listing how collected revenue is allocated from traffic citations issued by Wisconsin State Patrol).

5. In this Article and in many sources relied on throughout, “forfeiture” is used to refer to bail forfeitures, which occur when individuals who receive a traffic ticket pay the ticket without having to go to court and with assurance of no further action. This is different from civil asset or criminal asset forfeiture. See DICK M. CARPENTER II, LISA KNEPPER, ANGELA C. ERICKSON, JENNIFER McDONALD, WESLEY HOTTOT & KEITH DIGGS, INST. FOR JUSTICE, POLICING FOR PROFIT 8 (2d ed. Nov. 2015), <https://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf> [https://perma.cc/X4BT-JV6L] (“Civil forfeiture is a mechanism by which law enforcement agencies can seize and keep property on the mere suspicion that it is connected to a crime. In contrast to criminal forfeiture, where property is taken only after a criminal conviction.”). Asset forfeitures will be discussed in greater depth. See discussion *infra* Part IV.B.

6. See CAL. STATE AUDITOR, *supra* note 3, at 4 (“In addition to the base fine, state law imposes further penalties, surcharges, and fees on individuals cited for traffic violations.”); URBAN INSTITUTE REPORT, *supra* note 3, at 9 (noting that “many jurisdictions impose additional mandatory fees or surcharges” on top of base fines for speeding offenses). Financial penalties in some traffic cases might also include restitution ordered to be paid to a victim in cases that involve traffic accidents that cause

State of Michigan, which estimates under a conservative approximation that roughly \$125 million in revenue is generated each year from traffic citations alone in the state.<sup>7</sup> As of recently, a speeding ticket for driving eleven to fifteen miles per hour over the speed limit in Michigan carries a base fine between \$31 and \$59.<sup>8</sup> The state then imposes a mandatory surcharge of \$40 on all traffic violations and recommends that courts impose additional costs between \$35 and \$53 for the speeding offense.<sup>9</sup> That money is then distributed to various justice and non-justice-related agencies and programs in the state.<sup>10</sup>

Scholars and advocates have described how the kinds of financial penalties imposed in criminal and quasi-criminal cases (including traffic cases) have exploded in recent decades.<sup>11</sup> They have further documented how the use of financial penalties enables revenue-driven behaviors across various actors in the criminal justice system, including law enforcement (which enforces traffic laws), courts (which adjudicate traffic cases), and state and local governments (which allocate traffic penalty revenue for expenditure).<sup>12</sup> These revenue-motivated behaviors are

injury or death. As discussed later, this Article does not discuss traffic cases involving vehicle accidents and, therefore, does not discuss restitution. Restitution is usually not awarded in the bulk of traffic cases involving minor traffic violations. See Beth Colgan, *Beyond Graduation: Economic Sanctions and Structural Reform*, 69 DUKE L.J. 1529, 1559 (2020) (identifying traffic offenses as a situation “where restitution would never be awarded”); see also, e.g., OHIO REV. CODE ANN. § 2929.28(1) (West 2023) (stating that restitution may not be imposed for misdemeanors that “could be disposed of by the traffic violations bureau serving the court”); *In re: Order Amending Rules 408, 413, 423, 452, 455, and 1031 of the Pennsylvania Rules of Criminal Procedure*, 474 *Criminal Procedural Rules Docket*, (Pa. 2016), at 4, <https://www.pacourts.us/assets/opinions/Supreme/out/474crim-rpt.pdf> [<https://perma.cc/UMF2-QMHX>] (noting that restitution is not awarded in summary traffic cases in the Philadelphia Municipal Court Division).

7. RISKO, *supra* note 4, at 1.

8. *Id.*

9. *Id.*

10. *Id.* at 4.

11. Laura I. Appleman, *Nickel and Dimed into Incarceration: Cash-Register Justice in the Criminal Justice System*, 57 B.C. L. REV. 1483, 1485 (2016) (“As criminal justice costs have skyrocketed, the burden to fund the system has fallen largely on the system’s users, primarily the poor or indigent.”); Beth Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors’ Prison*, 65 UCLA L. REV. 2, 6–7 (2018) [hereinafter *The Excessive Fines Clause*] (“In recent years, the use of economic sanctions—statutory fines, surcharges, administrative fees, and restitution—has exploded across the country.”); Beth Colgan, *Reviving the Excessive Fines Clause*, 102 CALIF. L. REV. 277, 286 (2014) [hereinafter *Reviving*] (“The costs of administering the court system—from arrests to prosecution and sentencing—are increasingly borne by the indigent, who make up the vast majority of criminal defendants.”); Jessica M. Eaglin, *Improving Economic Sanctions in the States*, 99 MINN. L. REV. 1837, 1846 (2015) (“Fees emerged in the 1970s to supplement criminal justice systems, and since the 1990s have increased in scope.”); Alexes Harris et al., *Drawing Blood From Stones: Legal Debt and Social Inequality in Contemporary United States*, 115 AM. J. SOC. 1753, 1758 (2010) (discussing the proliferation of financial penalties in criminal justice since the 1980s); Ariel Jurow Kleiman, *Nonmarket Criminal Justice Fees*, 72 HASTINGS L.J. 517, 526 (2021) (noting that criminal justice fees “began to proliferate in the 1970s and 1980s, and since then have exploded in size and in scope”); MATTHEW MENENDEZ ET AL., BRENNAN CTR., *THE STEEP COSTS OF CRIMINAL JUSTICE FINES AND FEES 5* (2019) [hereinafter BRENNAN CENTER REPORT] (“The past decade has seen a troubling and well-documented increase in fees and fines imposed on defendants by criminal courts.”), [https://www.brennancenter.org/sites/default/files/2019-11/2019\\_10\\_Fees%26Fines\\_Final5.pdf](https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf) [<https://perma.cc/HL3Z-JZCA>].

12. See Appleman, *supra* note 11, at 1486 (noting the “inexorable rise of financial motives in

colloquially referred to as “taxation by citation” in the traffic ticketing context and function as tax-avoidance tools to fund various government programs.<sup>13</sup>

Although some localities rely much more heavily on financial penalty revenue than others, fines,<sup>14</sup> fees, and bail forfeitures make up a relatively small share of state and local government revenue in the aggregate nationwide.<sup>15</sup> Across jurisdictions, however, the burdens of financial penalties disproportionately fall on the most financially vulnerable individuals and communities, including low-income individuals and overpoliced communities of color.<sup>16</sup> In the traffic context, the inability to pay traffic tickets (even for seemingly small amounts) drives many financially vulnerable people into a vicious cycle of debt-based poverty and justice-system-involvement that threatens their livelihoods.<sup>17</sup> In many states, unpaid

the criminal justice system”); Beth A. Colgan, *Fines, Fees, and Forfeitures*, in REFORMING CRIMINAL JUSTICE: VOLUME 4 PUNISHMENT, INCARCERATION, AND RELEASE 209, 210 (Erik Luna ed. 2018), <https://www.courts.ca.gov/documents/BTB24-2A-1.pdf> [<https://perma.cc/R5YF-FADX>] (“[A]necdotal evidence [has] linked the use of fines, fees, and forfeitures to practices driven by the goal of revenue generation rather than public safety.”) (citation omitted); Shannon R. Graham & Michael D. Makowsky, *Local Government Dependence on Criminal Justice Revenue and Emerging Constraints*, 4 ANN. REV. CRIMINOLOGY 311, 326 (2021) (“Revenue generated through the criminal justice system has become a key component of municipal budgets for a growing number of local governments across the United States.”).

13. See, e.g., DICK M. CARPENTER II ET AL., INST. FOR JUST., TAXATION BY CITATION: CASE STUDIES OF THREE GEORGIA CITIES THAT RELY HEAVILY ON FINES AND FEES 4 (2019), <https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf> [<https://perma.cc/VL77-742T>] (noting that “taxation by citation” is when “local governments . . . use their code enforcement powers to raise revenue”); Min Su, *Taxation by Citation? Exploring Local Governments’ Revenue Motive for Traffic Fines*, 80 PUB. ADMIN. REV. 36, 43 (2020) (defining “taxation by citation” as “the excessive use of traffic fines for revenue purposes”).

14. For simplicity purposes, this Article uses the term “fines” to encompass both base fines and surcharges. When connected to fines, surcharges are either a flat amount or percentage of an imposed statutory fine. See *The Excessive Fines Clause*, *supra* note 11, at 33 (“Fine-based surcharges are directly connected to the imposition of a statutory fine, operating as a flat amount added to, or a percentage of, the statutory fine imposed.”).

15. See *infra* Part I.A.

16. *The Excessive Fines Clause*, *supra* note 11, at 30–31 (identifying “poor communities and communities of color who are heavily policed” as “people who are often subjected to economic sanctions”); ALEXES HARRIS, A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR 3 (2016) (“[C]riminal monetary sanctions trigger a long series of consequences and barriers to full societal integration for poor people that are very different from the effects of monetary sanctions on defendants with financial means.”); *Developments in the Law—Policing and Profit*, 128 HARV. L. REV. 1723, 1734 (2015) (“[A]ttempts to raise revenue through policing have been described as a regressive tax, turning the poorest segments of the population into an easy source of revenue . . . .”); U.S. COMM’N ON C.R., TARGETED FINES AND FEES AGAINST LOW-INCOME COMMUNITIES OF COLOR: CIVIL RIGHTS AND CONSTITUTIONAL IMPLICATIONS 4 (2017), [https://www.usccr.gov/files/pubs/2017/Statutory\\_Enforcement\\_Report2017.pdf](https://www.usccr.gov/files/pubs/2017/Statutory_Enforcement_Report2017.pdf) [<https://perma.cc/U89E-WAAP>] (“Municipalities target poor citizens and communities of color for fines and fees.”).

17. See FRANK R. BAUMGARTNER, DEREK A. EPP & KELSEY SHOUB, SUSPECT CITIZENS: WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE 13 (2018) (“[P]overty keeps many from paying the initial fine [for a traffic ticket], leading to accumulating court sanctions, fees, and penalties.”); Emily Reine Dindial & Ronald J. Lampard, Opinion, *When a Traffic Ticket Costs \$13,000*, N.Y. TIMES (May 27, 2019), <https://www.nytimes.com/2019/05/27/opinion/drivers-licen-se-suspension-fees.html> [<https://perma.cc/5Z4H-372W>]; LAWYERS’ COMM. FOR C.R. OF THE S.F.

traffic debt can result in the threat of, or actual, arrest and incarceration—even when the underlying traffic violation is an entirely noncriminal civil offense.<sup>18</sup> It can also result in loss of a driver’s license or fundamental rights (such as voting), hinder the ability to secure or maintain jobs or housing, and prevent people from meeting their basic needs.<sup>19</sup>

Much ink has been spilled on police injustices and the racialized harms of traffic stops, especially pretextual traffic stops.<sup>20</sup> Police reforms involving traffic stops have also gained political momentum in recent years.<sup>21</sup> For traffic law regimes to be fair and equitable, however, the law must not only address injustices that occur during traffic stops.<sup>22</sup> It must also address injustices that occur later in the justice

BAY AREA ET AL., NOT JUST A FERGUSON PROBLEM: HOW TRAFFIC COURTS DRIVE INEQUALITY IN CALIFORNIA 6 (n.d.), <https://lccrsf.org/wp-content/uploads/2021/05/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-2015.pdf> [<https://perma.cc/W2FQ-JZ5W>]; Melissa Sanchez & Sandhya Kambhampati, *Driven Into Debt: How Chicago Ticket Debt Sends Black Motorists Into Poverty*, PROPUBLICA (Feb. 27, 2018), <https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy/> [<https://perma.cc/2393-9D6B>].

18. Foster Kamanga, Virginia Smercina, Barbara G. Brents, Daniel Okamura & Vincent Fuentes, *Costs and Consequences of Traffic Fines and Fees: A Case Study of Open Warrants in Las Vegas, Nevada*, 10 SOC. SCI. 440, 443 (2021) (noting that because of monetary sanctions, “drivers risk arrest . . . and repeated incarceration and continued involvement with the criminal justice system”); Alexandra Natapoff, *Misdemeanor Decriminalization*, 68 VAND. L. REV. 1055, 1077–1101 (2015) (discussing the dark side of misdemeanor decriminalization, including arrest and incarceration for failure to pay); URBAN INSTITUTE REPORT, *supra* note 3, at 13 (“Based on rules that vary by state, outstanding justice debt can lead to . . . bench warrants . . . and even incarceration.”).

19. William E. Crozier & Brandon L. Garrett, 69 DUKE L.J. 1585, 1598 (2020), *Driven to Failure: An Empirical Analysis of Driver’s License Suspension in North Carolina* (“Court debt can make it difficult for individuals to secure employment, housing, public assistance, and reinstatement of driver’s licenses.”); Kamanga et al., *supra* note 18, at 443 (noting that because of monetary sanctions, “[d]rivers may have their licenses suspended . . . risk . . . loss of voting rights, job loss, [and] reduced housing and credit opportunities”).

20. See, e.g., BAUMGARTNER *supra* note 17, at 25–26; CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD HAIDER-MARKEL, PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP 2 (2014); Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 130 (2017) [hereinafter *From Stopping*]; Devon W. Carbado, *(E)Racing the Fourth Amendment*, 100 MICH. L. REV. 946, 1030–31 (2002); Angela J. Davis, *Race, Cops, and Traffic Stops*, 51 U. MIA. L. REV. 425, 427–32 (1997); David A. Harris, Essay, “*Driving While Black*” and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops, 87 J. CRIM. L. & CRIMINOLOGY 544, 546 (1997); Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 STAN. L. REV. 637, 644 (2021); David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 SUP. CT. REV. 271, 316–17.

21. See Jill Cowan, *Berkeley Moves Closer to Ending Police Traffic Stops*, N.Y. TIMES (Oct. 31, 2021), <https://www.nytimes.com/2021/02/24/us/berkeley-police.html> [<https://perma.cc/ETJ9-TG2H>]; David D. Kirkpatrick, Steve Eder & Kim Barker, *Cities Try to Turn the Tide on Police Traffic Stops*, N.Y. TIMES (Apr. 15, 2022), <https://www.nytimes.com/2022/04/15/us/police-traffic-stops.html> [<https://perma.cc/ZL5P-LR7F>]; Nick Sibila, Opinion, *New Virginia Law Bans Police Arrest and Ticket Quotas*, WASH. POST (May, 20, 2022, 10:00 AM EDT), <https://www.washingtonpost.com/opinions/2022/05/20/virginia-law-prevents-traffic-quotas/> [<https://perma.cc/SD3K-26FX>].

22. Beth A. Colgan, *Revenue, Race, and the Potential Unintended Consequences of Traffic Enforcement Reform*, 101 N.C. L. REV. 889, 897 (2023) (noting that an unintended consequence of traffic policing reform involves “new methods of traffic enforcement that continue to trap people in a web



process involving the administration of traffic penalties.<sup>23</sup> Given these normative commitments, much more must be done in the traffic space regarding the use of fines, fees, bail forfeitures, and other financial penalties imposed for traffic violations.<sup>24</sup>

The main contribution of this Article is that it sketches core elements of a more just and equitable legal framework to guide traffic penalty systems. As this Article will explain, current traffic penalty systems rest on a false choice between fines and incarceration to penalize minor traffic violations, which comprise the overwhelming majority of traffic violations enforced today.<sup>25</sup> Specifically, fines are viewed as a necessary and practical alternative to avoid the social costs of incarceration for violations of minor traffic regulations.<sup>26</sup> This false choice ignores the availability of alternative sanctions to fines and incarceration to address improper driving conduct, even though evidence of whether fines actually deter improper driving conduct, and trivial traffic violations in particular, is mixed at best.<sup>27</sup> The proposed framework moves beyond this false choice to provide a different normative vision of when and how governments may impose financial penalties for traffic violations and how governments may allocate and use traffic penalty revenue. The framework is organized along six dimensions: (1) the types of allowable financial penalties for traffic violations, (2) how to calculate financial penalties imposed, (3) when financial penalties for traffic violations may be imposed, (4) the proper allocation and use of traffic penalty revenue, (5) the treatment of individuals with limited financial means to pay, and (6) transparency and accountability measures.<sup>28</sup>

To summarize the framework, jurisdictions would only authorize base fines as a financial penalty for traffic violations.<sup>29</sup> Additional fees (including court costs and user fees), surcharges, and assessments on top of base fines would be

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of policing and punishment”); Jordan Blair Woods, *Traffic Without the Police*, 73 STAN. L. REV. 1471, 1508 (2021) (noting the need for additional reforms beyond policing to avoid “exacerbating racial and economic injustice in traffic enforcement and widening the net of the criminal-justice system through unpaid traffic debt”).

23. Woods, *supra* note 22, at 1508.

24. Cf. Colgan, *supra* note 12, at 212 (noting that reforms are needed to restrict the use of fines, fees, and forfeitures so that “criminal justice priorities are properly focused on public safety, rather than revenue generation”).

25. See *infra* Part I.B (discussing the false choice between fines and incarceration underlying current traffic penalty systems); see also Anthony J. Pinizzotto, Edward F. Davis & Charles E. Miller III, *Traffic Stops: Surviving Interactions with the Motoring Public*, 77 FBI L. ENFORCEMENT BULL. 1, 1 (2008) (“The vast majority of traffic stops involve ordinary citizens who have violated minor traffic regulations.”); Woods, *supra* note 22, at 1515 (“[T]he overwhelming majority of the tens of millions of traffic stops conducted each year involve minor traffic violations.”). Scholars have provided different estimates for the number of traffic stops that result in a citation. See, e.g., DAVID H. BAYLEY, POLICE FOR THE FUTURE 30 (1994) (estimating that one in every two traffic stops results in a citation); MICHAEL K. BROWN, WORKING THE STREET 227 (1981) (estimating that one in every three traffic stops results in a citation).

26. See *infra* Part I.B.

27. See *infra* Part IV.A.

28. See *infra* Part II.

29. See *infra* Part II.A.

eliminated.<sup>30</sup> The framework would provide flexibility for state and local governments to decide whether to impose a standard fine for traffic violations or to graduate those fines based on a driver's ability to pay.<sup>31</sup> Whether jurisdictions decide to graduate fines or not, any fine imposed for a minor traffic violation would be statutorily capped to stay within reasonably modest limits (ideally, not to exceed \$50).<sup>32</sup>

A key feature of the proposed framework is that it moves away from imposing fines as a matter of course for any traffic violation conviction, no matter how minor.<sup>33</sup> Rather, penalties would first start with traffic point assessments, not fines.<sup>34</sup> Rather than triggering automatic license suspensions, accumulated points for minor moving violation convictions would eventually trigger a fine set at a reasonable dollar amount (as noted above, not to exceed \$50).<sup>35</sup> Minor equipment violations and violations involving driver's licenses, registration, license plates, and insurance would be classified as "correctable offenses" that give drivers a reasonable amount of time to fix the violation without being subjected to fines, points assessments, or dismissal fees.<sup>36</sup>

The framework would also impose strict limitations on how governments may allocate and use traffic penalty revenue.<sup>37</sup> Specifically, the system would limit the allocation and use of traffic penalty revenue to transportation goals, not criminal justice or other government goals.<sup>38</sup> Key uses might include the construction, maintenance, repair, or removal of public highways and roads, and the installation, maintenance, or removal of traffic-control devices and signs.<sup>39</sup> To improve transportation equity along the lines of race and class, the framework would incorporate various equity-oriented criteria that give more weight to transportation projects that serve historically and currently marginalized populations in transportation law and policy.<sup>40</sup>

In addition, the framework would include robust protections so that a person's ability to pay is considered before the imposition of any financial penalty related to a traffic offense and allow individuals to request a hearing if they believe that they are unable to pay due to changed financial circumstances after a fine is imposed.<sup>41</sup> For individuals deemed unable to pay, judges would be authorized to either discharge traffic debt or consider alternative sanctions when feasible given a person's individual circumstances (for instance, community service or additional

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30. See *infra* Part II.A.

31. See *infra* Part II.B.

32. See *infra* Part II.B.

33. See *infra* Part II.C.

34. See *infra* Part II.C.

35. See *infra* Part II.C.1–2.

36. See *infra* Part II.C.3–4.

37. See *infra* Part II.D.

38. See *infra* Part II.D.

39. See *infra* Part II.D.

40. See *infra* Part II.D.

41. See *infra* Part II.E.

traffic school).<sup>42</sup> The framework would prohibit arrest, license suspension or revocation, imprisonment, or the stripping of fundamental rights (such as voting rights) for nonpayment due to lack of financial resources.<sup>43</sup> Finally, the framework would include various transparency and accountability measures that help track disparities surrounding the imposition of traffic fines and how traffic penalty revenue is allocated and used.<sup>44</sup> Those measures would also ensure that processes surrounding the payment of traffic debt are clear and accessible to the public and define a state official or employee's failure, refusal, or neglect to comply with the rules under the framework as misconduct and grounds for removal.<sup>45</sup>

As this Article will discuss, reimagining traffic fine and fee systems in ways that align with the proposed framework can promote several important criminal-justice-related and transportation-related benefits.<sup>46</sup> Those benefits include reducing the criminalization of poverty and the net-widening of the criminal justice system through traffic enforcement, aligning traffic penalties with the realities of overregulation and selective and discriminatory traffic enforcement, combating government incentives for revenue generation through traffic enforcement, complementing and strengthening traffic policing reforms, and improving considerations of racial and class equity in transportation law and policy.<sup>47</sup> The analysis also engages with several potential objections to the proposed framework.<sup>48</sup> Those objections include undermining deterrence and traffic safety, unintended consequences for other aspects of criminal enforcement and adjudication, financial harm to state and local governments, constitutional concerns, and administrative costs.<sup>49</sup>

This Article sits at the intersection of at least three bodies of literature. First, this Article joins scholars and social movements calling for structural reform regarding the use of fines, fees, and other economic sanctions in criminal and civil justice systems. As noted above, scholars and advocates have documented how, in recent decades, states and localities have increasingly come to rely on fines, fees, and other economic sanctions as tax-avoidance tools to fund justice and non-justice-related government programs.<sup>50</sup> These predatory practices are often constitutionally suspect, have devastating consequences for families and individuals, and disproportionately target financially vulnerable people and overpoliced communities of color.<sup>51</sup> As these issues have received increased attention, states and localities have considered a variety of reforms, many of which are fairly recent and

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42. See *infra* Part II.E.

43. See *infra* Part II.E.

44. See *infra* Part II.F.

45. See *infra* Part II.F.

46. See *infra* Part III.

47. See *infra* Part III.

48. See *infra* Part IV.

49. See *infra* Part IV.

50. See sources cited *supra* note 11.

51. See sources cited *supra* notes 16–19.

the products of bipartisan support.<sup>52</sup> The proposed framework is intended to complement these efforts.

Second, this Article joins scholars and social movements calling for new approaches to dismantle historical and ongoing race and class inequality and discrimination in transportation law and policy.<sup>53</sup> As this Article will discuss, the proposed framework can be galvanized to prioritize equity-oriented criteria in transportation planning in ways that strengthen investments within communities that have been historically overlooked and marginalized by prior transportation law and policy decisions.<sup>54</sup> As the Equity Action Plan recently released by the U.S. Department of Transportation stresses, “Disadvantaged communities have experienced decades of infrastructure injustice. Disinvestment and lack of infrastructure funding have compounded years of systemically racist transportation decisions which have been left unresolved.”<sup>55</sup>

Third, this Article joins scholars and social movements calling for an ideological reframing of traffic enforcement as a transportation issue and not a

52. See, e.g., Priya Sarathy Jones, *22 States in 5 Years: Bipartisan Lawmakers Coalesce Behind Curbing Debt-Based Driving Restrictions*, FINES & FEES JUST. CTR., (Aug. 13, 2021), <https://finesandfeesjusticecenter.org/2021/08/13/22-states-in-5-years-bipartisan-lawmakers-coalesce-behind-curbing-debt-based-driving-restrictions/> [<https://perma.cc/43A2-MSYJ>]; *2021: A Watershed Year for Fines and Fees Reform*, FINES & FEES JUST. CTR., (Dec. 14, 2021), <https://finesandfeesjusticecenter.org/2021/12/14/2021-a-watershed-year-for-fines-and-fees-reform/> [<https://perma.cc/ABZ6-JL7V>]; see also AM. BAR ASS'N, RESOLUTION 114 (2018), <https://www.americanbar.org/content/dam/aba/images/abanews/2018-AM-Resolutions/114.pdf> [<https://perma.cc/M9GJ-347M>] (articulating ten guidelines on court fines and fees).

53. See generally Deborah N. Archer, “White Men’s Roads Through Black Men’s Homes: Advancing Racial Equity Through Highway Reconstruction,” 73 VAND. L. REV. 1259 (2020); MIA BAY, TRAVELING BLACK: A STORY OF RACE AND RESISTANCE, 107–50 (2021); HIGHWAY ROBBERY: TRANSPORTATION RACISM & NEW ROUTES TO EQUITY (Robert D. Bullard, Glenn S. Johnson & Angel O. Torres eds., 2004); Agustina Krapp, Jesus M. Barajas & Audrey Wennink, *Equity-Oriented Criteria for Project Prioritization in Regional Transportation Planning*, 2675 TRANSP. RES. REC. 182 (2021); THOMAS W. SANCHEZ, RICH STOLZ & JACINTA S. MA, C.R. PROJECT AT HARVARD UNIV., MOVING TO EQUITY: ADDRESSING INEQUITABLE EFFECTS OF TRANSPORTATION POLICIES ON MINORITIES (2003), <https://civilrightsproject.ucla.edu/research/metro-and-regional-inequalities/transportation/moving-to-equity-addressing-inequitable-effects-of-transportation-policies-on-minorities/sanchez-moving-to-equity-transportation-policies.pdf> [<https://perma.cc/8GEA-GMED>]; see also Liam Dillon & Ben Poston, *The Racist History of America’s Interstate Highway Boom*, L.A. TIMES (Nov. 11, 2021, 3:00 AM PST), <https://www.latimes.com/homeless-housing/story/2021-11-11/the-racist-history-of-americas-interstate-highway-boom> [<https://perma.cc/U8GJ-JPQW>]; Noel King, *A Brief History of How Racism Shaped Interstate Highways*, NPR (Apr. 7, 2021, 5:02 AM), <https://www.npr.org/2021/04/07/984784455/a-brief-history-of-how-racism-shaped-interstate-highways> [<https://perma.cc/GZP2-RYAS>]; David Leonhardt, *Fixing What Highways Destroyed*, N.Y. TIMES (May 28, 2021), <https://www.nytimes.com/2021/05/28/briefing/us-highways-destruction-sugar-hill.html> [<https://perma.cc/H9W3-TZXU>].

54. See *infra* Part III.E; see also Audrey Wennink & Agustina Krapp, *Equity-Oriented Performance Measures in Transportation Planning*, AM. PLAN. ASS'N, Mar./Apr. 2020, at 1, 3, [https://planning-org-uploaded-media.s3.amazonaws.com/publication/download\\_pdf/PAS-MEMO-2020-03-04-rev.pdf](https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/PAS-MEMO-2020-03-04-rev.pdf) [<https://perma.cc/6M5D-HJ2E>] (noting the importance of considering equity in transportation investments to benefit historically marginalized populations).

55. See U.S. DEPT. OF TRANSP., EQUITY ACTION PLAN 9 (2022), [https://www.transportation.gov/sites/dot.gov/files/2022-04/Equity\\_Action\\_Plan.pdf](https://www.transportation.gov/sites/dot.gov/files/2022-04/Equity_Action_Plan.pdf) [<https://perma.cc/GEY2-TCBR>].

policing or criminal justice problem.<sup>56</sup> As this Article will discuss, the proposed framework promotes this effort by strictly aligning the collection and use of traffic penalty revenue with transportation projects and meeting the needs of marginalized communities that have been and still are disproportionately harmed and excluded from transportation law and policy decisions.<sup>57</sup> Moreover, unlike current traffic fine and fee systems, the proposed framework acknowledges the realities of over-criminalization and over-policing in the traffic space today and intervenes to scale back the net widening of people's entry into the criminal justice system through unpaid traffic debt.<sup>58</sup>

This Article proceeds as follows. Part I discusses problems with current traffic fine and fee systems today. Part II then sketches core principles of a more just and equitable legal framework for traffic violation penalties, including financial penalties. The Article then shifts gears to evaluate the proposed framework. Part III discusses its potential benefits. Part IV considers potential objections.

## I. PROBLEMS WITH CURRENT TRAFFIC PENALTY SYSTEMS

This Part briefly examines two areas of problems with current traffic penalty systems. Section A first discusses problems involving multiple and overlapping penalty schemes in the traffic space. Section B then discusses problems involving government revenue generation through traffic enforcement (colloquially referred to as “taxation by citation”).

### *A. Multiple and Overlapping Penalty Schemes*

Traffic penalty systems today typically consist of at least two overlapping penalty schemes that work simultaneously and in tandem to penalize drivers: traffic point assessments and financial penalties. Both schemes are heavily punitive and the stakes for drivers are high, especially for drivers with limited financial resources. As discussed below, the typical relationship between traffic point assessments and financial penalties illustrates that current traffic penalty systems rest on a false choice between fines and incarceration to address improper driving conduct and minor traffic violations in particular.

#### *1. Traffic Point Assessments*

State Departments of Motor Vehicles (DMVs) typically administer traffic point assessments.<sup>59</sup> Under existing traffic point schemes, points are assessed

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56. See, e.g., Woods, *supra* note 22, at 1544 (noting the benefits of “[r]eframing traffic enforcement as a transportation safety and not a policing problem”).

57. See *infra* Parts II.D, III.E.

58. See *infra* Part IV.A.

59. For a compilation of traffic point assessment systems in each state see *Driver's License Point Systems*, DRIVINGLAWS, <https://www.drivinglaws.org/topics/drivers-license-point-systems> [<https://perma.cc/4YCR-M9LB>] (last visited Apr. 15, 2024). Nine states do not have a traffic point system. *Id.*

against a person's permanent driving record for each traffic violation conviction.<sup>60</sup> The severity of the underlying traffic offense dictates the number of points that are assessed.<sup>61</sup> If drivers accumulate a certain number of points during a specific period of time, then they risk having their driver's license automatically suspended.<sup>62</sup> The lengths of that period of time and suspension vary by state, but in some states, the suspension can be as long as several months for only a few minor moving violation convictions during a two- or three-year period.<sup>63</sup>

In general, drivers can have a ticket dismissed and potentially avoid fines, points assessments, or driver's license suspensions by completing a state-approved defensive driving course.<sup>64</sup> States typically restrict the number of times that drivers are eligible within a defined period to take a defensive driving course for the purpose of having a ticket dismissed (for example, once every twelve months).<sup>65</sup> To access a defensive driving course, however, drivers must pay various fees and surcharges that are well above the means of many financially vulnerable drivers.<sup>66</sup> Some of those financial penalties are the same fees or surcharges that drivers would otherwise owe if they do not take a defensive driving course.<sup>67</sup>

60. *Id.*

61. *Id.*

62. *See, e.g., Points Assessment*, ARIZ. DEPT. OF TRANSP., <https://azdot.gov/motor-vehicles/driver-services/driver-improvement/points-assessment#:~:text=Each%20time%20you%20are%20convicted,suspended%20up%20to%2012%20months> [<https://perma.cc/EA43-ADCA>] (last visited Apr. 15, 2024) (“If you accumulate 8 or more points in any 12-month period . . . your driving privilege may be suspended up to 12 months.”); *Demerit Point System*, NEV. DEPT. OF MOTOR VEHICLES, <https://dmv.nv.gov/dlpoints.htm> [<https://perma.cc/P4RT-6WFK>] (last visited Apr. 15, 2024) (“When you receive 12 or more points in any 12-month period, your driver license is automatically suspended for 6 months.”); *Drivers License Points Schedule*, N.D. DEPT. OF TRANSP., <https://www.dot.nd.gov/divisions/driverslicense/dlpoints.htm> [<https://perma.cc/35RR-D5LH>] (last visited Apr. 15, 2024) (“Driving license or privileges shall be suspended upon accumulation of twelve (12) points for a period of seven (7) days for each point over eleven (11).”).

63. *See, e.g., STATE OF KENTUCKY, KENTUCKY DRIVER MANUAL 53–54* (2021), <http://kentuckystatepolice.org/wp-content/uploads/2022/03/Drivers-Manual-5-27-2021-Update.pdf> [<https://perma.cc/P3V3-IP45>] (noting that an adult driver “accumulates twelve points within a period of two years . . . the Cabinet may suspend the driving privilege for a period of six months”); *id.* (showing that three points are assessed for most minor traffic violation convictions in Kentucky).

64. *See, e.g., NEV. DEPT. OF MOTOR VEHICLES, supra* note 62 (“[Y]ou may have 3 points removed by completing a DMV-approved traffic safety course only if the course is not part of a plea-bargain agreement with a court of law.”); *Driver Improvement Courses*, N.H. DIV. MOTOR VEHICLES <https://www.dmv.nh.gov/tickets-accidents-or-restorations/driver-improvement-courses> [<https://perma.cc/V2BZ-SQ2U>] (last visited Apr. 15, 2024) (“[F]or any person that has accumulated at least three (3) demerit points, proof of the successful completion of . . . [driver improvement programs] shall, only for the purposes of suspension, reduce three (3) points from the most recent point assessment total”).

65. *Traffic School: How it Works*, DRIVINGLAWS (Jan. 5, 2023), <https://www.drivinglaws.org/legal-encyclopedia/traffic-school-works.html> [<https://perma.cc/YP48-TKNH>].

66. *See, e.g., Arizona Defensive Driving*, TRAFFIC SCH. ONLINE, <https://trafficschoolonline.com/state/arizona-defensive-driving-school> [<https://perma.cc/Y5FD-TM42>] (last visited Apr. 15, 2024) (listing various fees for defensive driving courses in Arizona).

67. *See, e.g., id.* (listing various fees for defensive driving courses in Arizona, including mandatory surcharges imposed for all traffic violations and court fees); *Traffic School*, SUPER. CT. OF CAL., CNTY. OF S.F., <https://www.sfsuperiorcourt.org/divisions/traffic/sign-up> [<https://perma.cc/6JX2-B5MY>]

Consider the costs of attending an online defensive driving school for the county justice court in Tucson, Arizona.<sup>68</sup> As of November 2023, the total cost of the course is \$258.97.<sup>69</sup> This amount includes a \$29.97 course fee, a mandatory \$24 state fee collected by the Arizona Supreme Court, a mandatory \$45 state surcharge that attaches to all traffic citations in Arizona, and a \$160 diversion fee paid to the county justice court.<sup>70</sup> Eligibility is restricted to drivers who have not taken a defensive driving course in the previous twelve months for the purpose of having a traffic ticket dismissed.<sup>71</sup>

## 2. Financial Penalties

The second penalty scheme consists of financial penalties. For every traffic violation conviction, even first-time convictions for minor traffic violations, the first impulse of governments is to impose fines and other financial penalties as a matter of course.<sup>72</sup> The use of fines to penalize traffic offenses is far from new, dating back to the first traffic laws regulating motor vehicles in the early twentieth century.<sup>73</sup> Back then fines were (and still are) viewed as a necessary and practical alternative to avoid the social costs of incarceration for illegal driving conduct and minor traffic violations in particular.<sup>74</sup> Even the authors of the first model traffic

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(last visited Apr. 15, 2024) (noting that to register for traffic school, drivers must pay “[t]he bail (fine),” “[a] state-mandated, non-refundable administrative fee of \$52,” and “[a] traffic school fee ranging from \$20-45”).

68. *Arizona Defensive Driving*, *supra* note 66 (click on “Yuma Justice Court” in field for “Check Price for your Court”).

69. *Id.*

70. *Id.*

71. *Id.*

72. *See, e.g.*, MICH. SEC’Y. OF STATE, WHAT EVERY DRIVER MUST KNOW 13 (2022) <https://www.michigan.gov/-/media/Project/Websites/sos/01piercej/wedmk.pdf?rev=212faa0cbfd4f949e6d7b444dc4ae11> [<https://perma.cc/46WU-PEYL>] (“Each time you are convicted of a traffic violation, you will have to pay certain court fines and costs.”).

73. *See, e.g.*, Acts of 1909, Ch. 534, § 18 (1909) *in* MASS. HIGHWAY COMM’N, LEGISLATION, RULES, AND REGULATIONS RELATING TO MOTOR VEHICLES 32–33 (1915) (providing for traffic violations to be punished by fines or incarceration); N.Y. HIGHWAY LAW art. 11, § 286 (1911) (outlining equipment rules and rules of the road); *id.* at § 290.9 (providing for violations of equipment rules and the rules of the road to be punished by fine or incarceration).

74. *See* Sally T. Hillsman, *Fines and Day Fines*, 12 CRIME & JUST. 49, 52 (1990) (“Questions about the use of fines in criminal cases tend to focus on their appropriateness in relation to other punitive sanctions, particularly incarceration . . . .”); Pat O’Malley, *Politicizing the Case for Fines*, 10 CRIMINOLOGY & PUB. POL’Y 547, 550 (2011) (“The use of fines in place of short terms of imprisonment is eminently defensible in penological terms on all manner of grounds.”); Anne Morrison Piehl & Geoffrey Williams, *Institutional Requirements for Effective Imposition of Fines*, *in* CONTROLLING CRIME: STRATEGIES AND TRADEOFFS 95, 109–10 (Philip J. Cook, Jens Ludwig & Justin McCrary eds., 2011) (discussing the various social costs of incarceration in comparison to fines); Alec Schierenbeck, *The Constitutionality of Income-Based Fines*, 85 U. CHI. L. REV. 1869, 1872 (2018) (“Today, fines are often the sole or primary form of punishment for low-level offenses . . . .”).

Of course, in many cases, fines are imposed along with incarceration or other sentences, such as probation. *See* Morrison Piehl & Williams, *supra* note 74, at 97 (“In practice, monetary penalties are frequently assigned along with probation or incarceration, so in some cases they may not serve as alternatives but as complements.”).

laws articulated in the 1920s viewed fines more as a practical legal response to minor traffic violations rather than as a strong deterrent to change the driving behavior underlying those minor offenses.<sup>75</sup>

The premise that fines are needed as an alternative sanction to incarceration for minor traffic violations sets up a false choice. Specifically, fines are imposed as a matter of course for every traffic violation conviction to avoid incarceration, while ignoring that point assessments are simultaneously penalizing drivers in the shadows. In this regard, traffic point assessments are not conceptualized as increasing possibilities for intermediate sanctions before the imposition of fines for improper driving conduct. Rather, both financial penalty and point assessment schemes work to penalize drivers simultaneously and in tandem, which, in turn, compounds the consequences and harms that drivers experience in traffic adjudication.

Further exacerbating these problems, financial penalties today for traffic violations not only involve base fines but also court and administrative fees and surcharges added onto base fines.<sup>76</sup> Some financial penalties in traffic cases are mandated by statute, whereas others are discretionary.<sup>77</sup> And even when discretionary, judges may treat certain financial penalties as mandatory.<sup>78</sup>

Consider the following examples. In Arizona the base fine for a civil traffic violation can range from approximately \$60 to hundreds of dollars, depending on the traffic violation.<sup>79</sup> Arizona courts then impose surcharges up to 78% of the total base fine and \$44 in mandatory flat fees.<sup>80</sup> In the City of Fishers, Indiana, the base fine for minor traffic violations (for instance, a speeding violation for driving one to fifteen miles per hour over the speed limit, equipment violations, or seat belt violations) ranges between \$24.50 and \$34.50.<sup>81</sup> On top of the base fine, courts impose a \$139.50 fee for costs, bringing the total financial obligation to between \$160 and \$170.<sup>82</sup> In the City of Shaker Heights, Ohio, the base fine for equipment

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75. NAT'L CONF. ON STREET AND HIGHWAY SAFETY, REPORT ON THE COMMITTEE ON ENFORCEMENT 9 (1926).

76. See sources cited *supra* note 6.

77. Cf. Neil L. Sobol, *Fighting Fines & Fees: Borrowing from Consumer Law to Combat Criminal Justice Debt Abuses*, 88 U. COLO. L. REV. 841, 855 (2017) (“As with fines, mandatory fees are set by legislation or court rule; however, judges often impose additional discretionary fees.”).

78. HARRIS, *supra* note 16, at 18 (noting that many financial penalties “are now viewed by judges as mandatory”).

79. See, e.g., AVONDALE CITY CT., BOND-FINE SCHEDULE, at 3, <https://www.avondalez.gov/home/showdocument?id=134> [<https://perma.cc/MB9M-B3G5>] (last visited Apr. 15, 2024); MAYER JUST. CT., BOND-FINE SCHEDULE, at 1, <https://www.ncourt.com/ncourtuniversal/Juris/AZ/AZMayerCi/CITATION/fees.pdf> [<https://perma.cc/LU45-K5H9>] (last visited Apr. 15, 2024); VERDE VALLEY JUST. CT., Bond-Fine Schedule, at 1, <https://courts.yavapaiaz.gov/files/shared/assets/courts/v/1/mayer-jc/documents/bond-fine-schedule.pdf> [<https://perma.cc/98BX-H9QW>] (last visited Apr. 15, 2024).

80. Andrew Oxford, *Court Collections Total \$76 Million: Legislative Report Details Where Fees, Surcharges, Are Spent*, ARIZ. REPUBLIC (Sept. 30, 2019), at A4.

81. *Pay a Traffic Ticket*, FISHERS, <https://www.fishers.in.us/1046/Traffic-Fines-Schedule> [<https://perma.cc/DF44-JHZ5>] (last visited Apr. 15, 2024).

82. *Id.*



violations and routine moving violations other than speeding is \$45.<sup>83</sup> On top of the base fine, courts impose a \$126 fee for court costs and a \$44 fee for state and city costs, bringing the total financial obligation to \$215.<sup>84</sup>

A key problem is that traffic codes are so expansive today that law enforcement officers have endless opportunities to observe minor traffic violations, which, in turn, creates vast opportunities for officers to issue citations to drivers.<sup>85</sup> Few drivers contest traffic citations, especially given that most traffic violations have a low threshold for conviction.<sup>86</sup> Many people simply pay the financial penalties without going to court or beg courts for leniency in light of their individual circumstances when they cannot pay or to avoid driver's license suspensions.<sup>87</sup> When certain penalties are mandatory, there is not much courts can do.

As a result, the primary way that drivers avoid traffic points or financial penalties under current traffic penalty systems is to hope that they never receive a traffic citation in the first place. This hope hinges on police officers exercising their discretion to ignore or only issue warnings for traffic violations.<sup>88</sup> Who bears the benefits and burdens of discretion surrounding the under-enforcement and selective enforcement of traffic laws, however, often falls along the lines of race and class.<sup>89</sup> Studies from different jurisdictions have found that people of color are more likely to be stopped and ticketed for minor traffic violations and receive multiple citations for minor traffic violations during a single stop.<sup>90</sup> These same

83. SHAKER HEIGHTS MUN. CT., *Waiver*, (2022), <https://www.shakerheightscourt.org/info/index/504> [<https://perma.cc/LK7F-CPRK>] (last visited Apr. 15, 2024).

84. *Id.*

85. Woods, *supra* note 22, at 1480–81.

86. Malcolm M. Feeley, *Private Alternatives to Criminal Courts: The Future is All Around Us*, 119 COLUM. L. REV. 38, 64 (2019) (“Few people contest traffic charges, and the vast majority of offenders pay a fine (often bail forfeiture with assurance of no further action.)”); *see also* Thomas A. Garrett & Gary A. Wagner, *Red Ink in the Rearview Mirror: Local Fiscal Conditions and the Issuance of Traffic Tickets*, 52 J.L. & ECON. 71, 73 (2009) (“[M]ost traffic offenses have a low strict-liability threshold to achieve a conviction . . .”).

87. Feeley, *supra* note 86, at 64.

88. Woods, *supra* note 22, at 1482 (“[O]fficers have vast discretion to decide both when to initiate a traffic stop and what actions to take during the stop.”).

89. *Id.* at 1480; Alexandra Natapoff, *Underenforcement*, 75 FORDHAM L. REV. 1715, 1717 (“Underenforcement can also be a form of deprivation, tracking familiar categories of race, gender, class, and political powerlessness.”).

90. *See, e.g.*, Mario L. Barnes & Robert S. Chang, *Analyzing Stops, Citations, and Searches in Washington and Beyond*, 35 SEATTLE U. L. REV. 673, 687 (2012) (noting “the most concerning racially disparate result has to do with multiple citations and citation seriousness” from evaluated data in three reports evaluating traffic stops conducted by Washington State Patrol); Pierson et al., *supra* note 1, at 737 (reporting findings of a study based on approximately ninety-five million traffic stops from twenty-one state patrol agencies and thirty-five municipal police departments that “[r]elative to their share of the residential population . . . black drivers were, on average, stopped more often than white drivers”); VA. DEP’T OF CRIM. JUST. SERVS., REPORT ON ANALYSIS OF TRAFFIC STOP DATA COLLECTED UNDER VIRGINIA’S COMMUNITY POLICING ACT 8 (2022) (“During the 2022 reporting period, Black drivers were stopped at higher rates than White drivers.”); Woods, *supra* note 1, at 676 (noting that studies have found that people of color are more likely to be cited for multiple traffic violations during a single stop).

lines also influence who is disproportionately targeted and burdened by the imposition of financial penalties in traffic cases, as the next Section discusses.

### B. “Taxation by Citation”

As noted above, traffic ticket revenue is generated from several sources that not only include base fines but also various fees, surcharges, and bail forfeitures.<sup>91</sup> The range of financial penalties imposed for traffic violations is not unique to traffic cases. During the second half of the twentieth century, state and local governments began to increasingly shift the costs of justice systems from taxpayers to individuals “using” those systems, including criminal defendants.<sup>92</sup> In light of this shift, financial penalties levied in criminal and quasi-criminal cases expanded in the 1970s and 1980s and, in more recent decades, have exploded.<sup>93</sup>

Scholars and advocates have stressed different views to explain the vast expansion of financial penalties in recent decades. Some attribute this growth to the declining revenue streams in the 1980s that made it difficult for state and local governments to keep up with surging criminal justice costs and expenditures.<sup>94</sup> Others explain this growth in terms of the same social and political forces that shaped overcriminalization, mass incarceration, and broken-windows policing in the 1980s and 1990s.<sup>95</sup>

Putting aside the complicated question of why financial penalties have exploded, revenue generated from financial penalties comprises only a small amount of state and local revenue in the aggregate nationwide. U.S. Census data provides some insight into this issue. According to recent U.S. Census data, state and local governments reported collecting approximately \$14.20 billion in revenue from “fines and forfeits”<sup>96</sup> during the 2020 fiscal year, which equated to 0.39% of

91. See sources cited *supra* note 6.

92. O'Malley, *supra* note 74, at 551 (“The timing of the introduction of criminal justice fees, from the 1970s on, suggests that the neoliberal ‘user-pays’ mentality has been at work.”); Dillon Wamsley, *Neoliberalism, Mass Incarceration, and the U.S. Debt-Criminal Justice Complex*, 39 CRITICAL SOC. POL’Y 248, 260 (2019) (“Within the past several decades, the financial architecture of the US criminal justice system has shifted, with legal financial obligations (LFOs) emerging at all levels of the criminal justice system.”).

93. See sources cited *supra* note 11.

94. Joshua Page & Joe Soss, *The Predatory Dimensions of Criminal Justice*, 374 SCI. 291, 292 (2021) (noting these perspectives); Emma Coleman, *How Fines and Fees Reform Became a Priority for Cities Across the Country*, ROUTE FIFTY (Feb. 6, 2020), <https://www.route-fifty.com/finance/2020/02/fines-and-fees-movement/162945/> [<https://perma.cc/J3Z8-LSWP>] (“The tax reforms of the 1980s and 1990s meant less revenue for states, and therefore, less revenue for cities.” (quoting Joanna Weiss, Co-Director of the Fines and Fees Justice Center)).

95. Jessica M. Eaglin, *Improving Economic Sanctions in the States*, 99 MINN. L. REV. 1837, 1842–50 (2015) (describing the expansion of economic sanctions); Page & Soss, *supra* note 94, at 293 (“Recent research . . . defin[es] fines and fees as supplemental forms of punishment produced by the same forces that expanded policing and imprisonment.”) (footnote omitted); Ilya Slavinski & Becky Pettit, *Proliferation of Punishment: The Centrality of Legal Fines and Fees in the Landscape of Contemporary Penology*, 69 Soc. Probs. 717, 717–18 (2021).

96. The U.S. Census defines “fines and forfeits” as “[p]enalties imposed for violation of law and forfeits of amounts on deposit as performance guarantees.” U.S. Census, *Annual Survey of State and Local Government Finances Glossary*, <https://www.census.gov/programs-surveys/gov-finances/a>

all reported state and local general revenue collected that year.<sup>97</sup> A more detailed look at the census data reveals that state governments reported collecting \$5.16 billion from fines and forfeits, which encompassed 0.22% of all reported state general revenue, and local governments reported collecting \$9.04 billion, which comprised 0.47% of all reported local general revenue.<sup>98</sup> These low percentages have held relatively constant over the past fifteen years, indicating that fines, fees, and bail forfeitures are a reliable source of revenue for state and local governments.<sup>99</sup>

Some local governments, however, rely much more heavily on revenue generated from financial penalties than others.<sup>100</sup> A 2021 *New York Times* report identified over 730 municipalities that rely on fines and fees for at least 10% of their total general revenue.<sup>101</sup> Traffic tickets, in particular, were a major source of the fines and fees revenue, and in some municipalities, the amounts of fines and fees

bout/glossary.html#par\_textimage\_1006625652 [https://perma.cc/PZR8-FCNT] (last visited Apr. 15, 2024). It is important to note that “fines and forfeits” does not capture all sources that might generate revenue for state and local government actors through the enforcement of criminal and traffic laws, such as asset forfeiture. In addition, although response rates are high in the U.S. Census survey, they are not perfect and vary across states. See U.S. Census, *2020 State & Local Government Finance Historical Datasets and Tables*, <https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html> [https://perma.cc/9Y5C-TW3W] (click on Local Government Response Rates and Local Total Quantity Response Rates databases).

97. U.S. Census, *2020 State & Local Government Finance Historical Datasets and Tables* (2020), <https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html> [https://perma.cc/9Y5C-TW3W] (click on “Public Use Files,” then document 20stateypepu, then search for “001 U30,” showing state and local government total for “fines and forfeits” as \$14,201,948,000). For codes see document titled “2020 S&L Public Use Files Technical Documentation” accessed similarly, *id.* The fiscal year covers the period of July 1, 2019, to June 30, 2020. U.S. Census Bureau, *About the Annual Survey of Local Government Finances* (June 28, 2022), at 5, [https://www2.census.gov/programs-surveys/gov-finances/tables/2020/2020\\_methodology.pdf](https://www2.census.gov/programs-surveys/gov-finances/tables/2020/2020_methodology.pdf) [https://perma.cc/79WD-C22F]. For total state and local revenue combined see U.S. Census, *2020 State & Local Government Finance Historical Datasets and Tables* (2020), <https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html> [https://perma.cc/9Y5C-TW3W] (click on “Preliminary Select 2020 State and Local Governments Data” dataset, which shows in cell D5 that state and local governments collected \$3,616,891,466,000 in general revenue).

98. U.S. Census, *2020 State & Local Government Finance Historical Datasets and Tables* (2020), <https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html> [https://perma.cc/9Y5C-TW3W] (click on “Public Use Files,” then document 20stateypepu, then search for “002 U30,” state government total for “fines and forfeits” as \$5,161,356,000 and local government total for “fines and forfeits” as \$9,040,592,000). For codes see document titled “2020 S&L Public Use Files Technical Documentation” accessed similarly, *id.* For separate totals of state and local revenue, see U.S. Census, *2020 State & Local Government Finance Historical Datasets and Tables* (2020), <https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html> [https://perma.cc/9Y5C-TW3W] (click on “Preliminary Select 2020 State and Local Governments Data” dataset, which shows in cell F5 that states collected \$2,306,872,379,000 in general revenue and local governments collected \$1,907,566,455,000 in general revenue).

99. See URBAN INSTITUTE REPORT, *supra* note 3, at 1 (“Fines, fees, and forfeitures are a small but relatively consistent source of revenue, ranging between 0.4 percent and 0.6 percent of general revenue since 2005.”).

100. Graham & Makowsky, *supra* note 12, at 326.

101. Mike McIntire & Michael H. Keller, *The Demand for Money Behind Many Police Traffic Stops*, N.Y. TIMES (Nov. 2, 2021), <https://www.nytimes.com/2021/10/31/us/police-ticket-quotas-money-fun-ding.html> [https://perma.cc/4XT7-K5ZK].

revenue were enough to fund their respective police forces.<sup>102</sup> In another report from 2019, *Governing Magazine* identified nearly 600 jurisdictions where revenue from fines comprised more than 10% of total general revenue and over 280 jurisdictions where revenue from fines comprised more than 20% of total general revenue.<sup>103</sup> Traffic tickets, again, were a major source of this revenue.<sup>104</sup> The local governments that relied heaviest on revenue from fines were located in rural areas with high concentrations of poverty and the South.<sup>105</sup> In some localities, revenue from fines comprised over 80% to 90% of general fund revenues.<sup>106</sup>

Data constraints and lack of transparency in reporting make it impossible to know how much revenue state and local governments collect nationwide from traffic tickets each year.<sup>107</sup> Available information indicates that this figure is at least hundreds of millions, and likely billions, of dollars.<sup>108</sup> It is widely accepted that many local governments view and rely on traffic ticketing as a means of revenue generation—a view that both reports discussed above support.<sup>109</sup> Studies have also found evidence that traffic ticketing practices increase when municipal tax revenues are lower or in times of municipal fiscal distress.<sup>110</sup>

102. *Id.*

103. Mike Maciag, *Addicted to Fines*, GOVERNING (Aug. 19, 2019), <https://www.governing.com/archive/gov-addicted-to-fines.html> [<https://perma.cc/N4QC-HEN9>].

104. *Id.*

105. *Id.*

106. *Id.*

107. *Cf.* Harris et al., *supra* note 11, at 1756 (noting data limitations on the imposition of monetary sanctions); Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964, 982 (2021) (noting the difficulties of obtaining data on collected fines and fees in a nationwide study of municipal courts).

108. *See, e.g.*, FISCAL POL'Y INST., NEW YORK STATE FINE AND FEE REVENUE LACKS TRANSPARENCY, OBSCURES ECONOMIC HARMS 2 (2021) (estimating that the State of New York generates “approximately \$100 million in surcharge revenue from traffic tickets alone”); Dana Hedgpeth, *Speed Cameras in Maryland Collect \$64 Million in Revenue*, WASH. POST (May 15, 2019), <https://www.washingtonpost.com/transportation/2019/05/15/speed-cameras-maryland-collect-million-revenue/> [<https://perma.cc/3M5M-E9ME>] (describing that the State of Maryland collected nearly \$64 million in ticket revenue during the 2018 fiscal year from speed cameras alone); RISK0, *supra* note 4, at 1 (estimating that traffic violations generated approximately \$125 million in state and local revenue in the State of Michigan alone during the 2019–20 fiscal year).

109. *See* Colgan, *supra* note 22, at 925 (“[W]e know that in many jurisdictions, lawmakers see traffic ticket revenue as an important budgeting tool.”); Garrett & Wagner, *supra* note 86, at 72 (noting from county-level data from North Carolina over a fourteen-year period that “our results support the view that traffic tickets are, at least to some extent, viewed as a revenue tool by local governments”); *see also* Alexa Corcoran, *A Handful of Colorado Towns Rely Heavily on Money from Traffic Tickets*, ROCKY MOUNTAIN PBS NEWS (Oct. 12, 2016, 10:04 PM), <https://www.rmpbs.org/blogs/news/a-handful-of-colorado-towns-rely-heavily-on-money-from-traffic-tickets/> [<https://perma.cc/9PRT-TYKY>] (discussing heavy reliance on traffic ticket revenue in several Colorado municipalities).

110. *See, e.g.*, Garrett & Wagner, *supra* note 86, at 86 (“[N]egative changes in local revenue from the previous fiscal year are significantly correlated with the change in the number of tickets issued.”); Michael D. Makowsky & Thomas Stratmann, *More Tickets, Fewer Accidents: How Cash-Strapped Towns Make for Safer Roads*, 54 J.L. & ECON. 863, 865 (2011) (“When towns are in fiscal distress, government officials have an incentive to seek extra revenues not only through an increase in property taxes but also by increasing fines. One potential source of fines is traffic tickets.”); Su, *supra* note 13, at 42 (presenting a study using California’s county-level data over a twelve-year period finding that “[h]olding

Where collected revenue from traffic tickets is then allocated and used may have nothing to do with traffic.<sup>111</sup> Rather, state and local governments allocate traffic penalty revenue to support a variety of justice- and non-justice-related government programs and special funds.<sup>112</sup> Examples include court funds, law enforcement funds, education and safety programs, library funds, legal information technology, victim assistance programs, and funds for appointed attorney and public defender services.<sup>113</sup>

Consider the State of Arizona. As noted previously, Arizona courts impose surcharges up to 78% of the total base fine and \$44 in mandatory flat fees for all traffic violations.<sup>114</sup> The surcharges include 42% for the Criminal Justice Enhancement Fund, which is used for various purposes including police training and forensics; 13% for the Medical Services Enhancement Fund, which goes in part to emergency medical services; 7% for county attorneys, indigent defense, courts, the attorney general, and forensic laboratories; 6% for the Forensics Fund Surcharge, which goes to various law enforcement agencies in the state; and 10% for the Clean Elections Fund.<sup>115</sup> The flat fees include a \$20 probation assessment to pay for probation officers and probation programs; \$13 for public safety equipment, county justice courts, and the law enforcement agency that issued the citation; \$9 for the Victims' Rights Fund and Victim Compensation and Assistance Fund; and \$2 for the Victims' Rights Enforcement Fund.<sup>116</sup>

Most traffic cases usually start with a law enforcement officer issuing a citation during a traffic stop.<sup>117</sup> Money collected upon payment is then directed from courts (or other collecting bodies) to state and local governments that later disburse the money for expenditure.<sup>118</sup> As a result, law enforcement agencies do not directly keep

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all other variables constant, a 10 percentage point tax revenue loss in the previous year is associated with a 40 to 42 cent increase in per capita traffic fines in the current year"). Moreover, a recent study found that municipal fiscal distress could result in officers issuing more traffic citations to white drivers as a means of generating revenue in the short-term when Black drivers are already being stopped and cited as much as possible. Allison Harris, Elliott Ash & Jeffrey Fagan, *Fiscal Pressures and Discriminatory Policing: Evidence from Traffic Stops in Missouri*, 5 J. RACE, ETHNICITY, & POL. 450, 453 (2020).

111. See, e.g., CAL. STATE AUDITOR, *supra* note 3, at 23 ("Many of the penalties [for traffic violations] pay for activities not directly related to the traffic violation.").

112. See sources cited *supra* note 3.

113. See sources cited *supra* note 4.

114. Oxford, *supra* note 80, at A4.

115. *Id.*

116. *Id.*

117. In many states and localities, drivers can also receive traffic tickets from automated red-light or speed cameras. *Speed and Red Light Cameras*, GOVERNOR'S HIGHWAY SAFETY ASS'N, <https://www.ghsa.org/state-laws/issues/speed%20and%20red%20light%20cameras> [<https://perma.cc/47BV-N7F8>] (last visited Apr. 15, 2024) (noting that eighteen states and the District of Columbia have laws allowing speed cameras, and twenty-two states and the District of Columbia have laws allowing red-light cameras).

118. See, e.g., *Pay Traffic Ticket in Arizona*, DMV.ORG, <https://www.dmv.org/az-arizona/paying-traffic-tickets.php> [<https://perma.cc/DFU3-96SL>] (last visited Apr. 15, 2024) ("Most commonly, you can pay your fines online using Arizona Courts Online Payment system. Also, some county courts and city courts allow drivers to pay traffic ticket fines directly through their own websites."); In some

money from traffic tickets.<sup>119</sup>

Scholars have acknowledged that this may, to some extent, weaken direct revenue incentives within law enforcement to aggressively ticket drivers.<sup>120</sup> At the same time, law enforcement budgets are funded by state and local governments whose revenue streams, to varying degrees, consist of revenue generated from traffic tickets.<sup>121</sup> Law enforcement agencies in some cities may face pressure to raise funds for local governments through traffic enforcement, especially in situations when law enforcement administrators are appointed by city leaders.<sup>122</sup> Reputational and professional motives might also come into play.<sup>123</sup> In addition, most states have not banned traffic-ticket quotas, and even in states with such bans, some law enforcement departments have unspoken directives to use quotas as indicators of officer performance.<sup>124</sup>

The burdens of revenue-driven traffic enforcement then fall disproportionately on the most financially and politically vulnerable individuals and communities, including low-income individuals and overpoliced communities of

states and localities, drivers can pay traffic tickets at Department of Motor Vehicles (DMV) offices. *See, e.g., Pay Tickets*, DC.GOV, <https://dmv.dc.gov/service/pay-tickets> [<https://perma.cc/Q56G-6MR9>] (last visited Apr. 15, 2024) (noting that individuals can pay traffic tickets online, by mail, using the DMV mobile app, by phone or in person at the Adjudication Service Center during business hours).

119. Min Su, *Discretion in Traffic Stops: The Influence of Budget Cuts on Traffic Citations*, 81 PUB. ADMIN. REV. 446, 454 (2021) (“Most governments do not allow local law enforcement agencies to retain money from traffic tickets.”). To reiterate, an important caveat here involves asset forfeiture practices in which officers seize property and cash from stopped drivers and passengers. Complaints suggest that these practices commonly occur without proper accounting for what property and cash officers seized. *See, e.g., Andrew Wimer, New Proof that Police Use Civil Forfeiture to Take From Those Who Can’t Fight Back*, FORBES (Oct. 25, 2021, 7:00 AM EDT), <https://www.forbes.com/sites/instituteforjustice/2021/10/25/new-proof-that-police-use-civil-forfeiture-to-take-from-those-who-cant-fight-back/?sh=658a677634e8> [<https://perma.cc/TG8V-E6E2>] (describing a traffic stop in which officers seized a driver’s car and \$580 in cash upon suspicion of drug activity without proper accounting). For a more in-depth discussion of forfeiture practices see Colgan, *supra* note 22, at 931–33.

120. Rebecca Goldstein, Michael W. Sances & Hye Young You, *Exploitative Revenues, Law Enforcement, and the Quality of Government Services*, 56 URB. AFFS. REV. 5, 6 (2020) (recognizing this possibility). An important exception on this point involves asset forfeitures, which will be discussed in greater depth *infra* Part IV.B.

121. Goldstein, Sances & You, *supra* note 120, at 6 (“[P]olice forces are also the agents of local governments.”); Stephen Rushin & Roger Michalski, *Police Funding*, 72 FLA. L. REV. 277, 287 (2020) (“[M]ost police departments receive the brunt of their funding from local taxpayers (primarily local sales and property taxes), with smaller additions from state grants and smaller additions still from federal programs.”).

122. Harris, Ash & Fagan, *supra* note 110, at 456 (noting pressures on law enforcement agencies to maintain revenues at expected levels); Goldstein, Sances & You, *supra* note 120, at 6 (noting pressures on law enforcement agencies from city authorities to raise funds).

123. Woods, *supra* note 22, at 1514 (discussing professional motives among police for writing traffic tickets).

124. Garrett & Wagner, *supra* note 86, at 74 (noting that even in jurisdictions that have banned ticket quotas “[t]here is evidence that some jurisdictions have linked police performance and pay to the number of tickets that officers issue”); Goldstein, Sances & You, *supra* note 120, at 11 (“[L]aw enforcement agencies also often have a reputational incentive to participate in policing for profit . . .”).

color.<sup>125</sup> The inability to pay traffic tickets, even for seemingly small amounts, drives many financially vulnerable people into a vicious cycle of debt-based poverty and justice-system involvement that threatens their livelihoods.<sup>126</sup> In many states, unpaid traffic debt can lead to the threat of, or actual, arrest and incarceration—even when the underlying traffic offense is an entirely noncriminal civil offense.<sup>127</sup> It can also result in loss of a driver’s license or fundamental rights (such as voting), hinder the ability to secure or maintain employment or housing, and prevent people from meeting their basic needs.<sup>128</sup> Studies from different jurisdictions have found considerable race and class disparities in driver’s license suspensions, including for reasons related to unpaid traffic debt.<sup>129</sup> These injustices leave financially vulnerable people who need their cars to go to work, obtain medical care, go to the grocery store, or meet other basic needs with little choice other than to drive with a suspended driver’s license, risking further justice-system involvement.<sup>130</sup>

Although some reforms have gained traction in recent years, statutory and constitutional protections for drivers who are most vulnerable to these harms are still lacking.<sup>131</sup> Most financial penalties for traffic offenses are specified in statutes

125. See sources cited *supra* notes 16–19; see also Harris, Ash & Fagan, *supra* note 110, at 457 (“Even if less well-off Black and Latino drivers have less ability to pay on average, targeting them consistently may maximize long-run revenues if their relative lack of political power and resources (compared to Whites) prevents them from effectively challenging discriminatory enforcement.”); see also Kelsey Shoub, Leah Christiani, Frank R. Baumgartner, Derek A. Epp, & Kevin Roach, *Fines, Fees, Forfeitures, and Disparities: A Link Between Municipal Reliance on Fines and Racial Disparities in Policing*, 49 POL’Y STUD. J. 835, 836 (2021) (noting that studies have shown that “more municipal revenue is raised through fines, fees, and forfeitures in communities where a greater proportion of the population is black and where there is no black representation in local elected offices”).

126. See sources cited *supra* note 17.

127. See sources cited *supra* note 18.

128. See sources cited *supra* note 19.

129. See, e.g., Crozier & Garrett *supra* note 19, at 1625 (finding that driver’s license suspension policies “disproportionately affect vulnerable and minority communities”); E. BAY CMTY. L. CTR., STOPPED, FINED, AND ARRESTED: RACIAL BIAS IN POLICING AND TRAFFIC COURTS IN CALIFORNIA 1 (2016), [http://ebclc.org/wp-content/uploads/2016/04/Stopped\\_Fined\\_Arrested\\_BOTRCA.pdf](http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf) [<https://perma.cc/4HEW-HC9S>] (noting “dramatic racial and socioeconomic disparities in driver’s license suspensions and arrests related to unpaid traffic fines and fees”); see also Melissa Toback Levin, *Driver’s License Suspension for Nonpayments: A Discriminatory and Counterproductive Policy*, 48 HASTINGS CONST. L.Q. 73, 73 (2020) (“Driver’s license suspensions for traffic debt disproportionately harm people of color . . .”).

130. Crozier & Garrett *supra* note 19, at 1625 (“People continue to drive without their license, suggesting that the risk of [driving while a license is revoked] is outweighed by the costs of losing mobility.”); Nazish Dholakia, *Driver’s License Suspensions for Unpaid Debt: Punishing Poverty*, VERA INST., (Jul. 19, 2022), <https://www.vera.org/news/drivers-license-suspensions-for-unpaid-debt> [<https://perma.cc/2J55-7RWK>] (“A license suspension makes it difficult and sometimes impossible to get to work, school, doctor’s appointments, even the grocery store.”); PETER EDELMAN, NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA 15 (2017) (noting that driver’s license suspensions “all too often means that the defendant simply drives without a license, because he has to get to work, or take his child to see a doctor, or buy groceries”).

131. See *infra* Part III.A. (discussing reforms that have gained traction involving the suspension of driver’s license for reasons related to unpaid debt).

or set schedules and are not graduated based on an individual's ability to pay.<sup>132</sup> Moreover, in spite of any applicable constitutional or statutory obligations in respective jurisdictions, many courts in practice do not meaningfully consider an individual's ability to pay at the time that financial penalties are imposed or when deciding whether to enter orders for willful nonpayment, including orders resulting in incarceration.<sup>133</sup> Although some states have recently enacted laws requiring courts to consider an individual's ability to pay during or immediately after sentencing, many courts that consider ability to pay do so later in the justice process when deciding whether to enter an order for willful nonpayment.<sup>134</sup>

Hence, much more needs to be done for traffic penalty systems to be just and equitable. Consistent with this view, the next Part shifts gears to articulate core principles of such an alternative system.

## II. CORE PRINCIPLES OF AN ALTERNATIVE TRAFFIC PENALTY SYSTEM

This Part sketches core principles of a more just and equitable traffic penalty system. The proposed legal framework is organized along six dimensions, each of which is discussed in turn below: (1) the types of allowable financial penalties for traffic violations, (2) how to calculate financial penalties imposed, (3) when financial penalties for traffic violations may be imposed, (4) the proper allocation and use of traffic penalty revenue, (5) the treatment of individuals with limited financial means to pay, and (6) transparency and accountability measures. The

132. Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 CRIMINOLOGY & PUB. POL'Y 509, 514–15 (2011) (“[F]ee and fine amounts generally are specified in statute and thus are not graduated to reflect defendants’ ability to pay.”); Beth A. Colgan, *Graduating Economic Sanctions According to Ability to Pay*, 103 IOWA L. REV. 53–60 (2017) (discussing the graduation of economic sanctions and failed day-fines experiments in the United States); Meghan M. O’Neil & J.J. Prescott, *Targeting Poverty in the Courts: Improving the Measurement of Ability to Pay*, 82 LAW & CONTEMP. PROBS. 199, 202 (2019) (“An individual’s ability to pay a fine is almost never substantively relevant under criminal statutes or ordinances.”).

133. BRENNAN CENTER REPORT, *supra* note 11, at 9 (finding based on a study of 1,000 case observations across sixteen different courts in seven counties that “judges rarely hold ability-to-pay hearings”); O’Neil & Prescott, *supra* note 132, at 208 (stressing “examples abound of judges using systematically unreliable rules of thumb in making their ability-to-pay determinations”); Neil L. Sobol, *Griffin v. Illinois: Justice Independent of Wealth?*, 49 STETSON L. REV. 399, 423 (2020) (“Despite the Supreme Court’s holding in *Bearden* in 1983, as well as subsequent legislation, rules, and case law, courts often do not hold meaningful ability to pay hearings before incarcerating individuals for failure to make payments.”). *Bearden v. Georgia*, 461 U.S. 660, 672 (1983), the U.S. Supreme Court held that the Fourteenth Amendment requires courts to inquire into whether a defendant’s failure to pay a fine or restitution is willful or not prior to using imprisonment as a form of punishment for nonpayment. 461 U.S. 660, 672 (1983).

134. O’Neil & Prescott, *supra* note 132, at 203 (“Ability-to-pay determinations . . . primarily arise when a court finds itself in the position of resolving whether it may permissibly enforce a prior order directing a litigant to pay a fine.”); *but see, e.g.*, OHIO REV. CODE ANN. § 2947.14(A) (West 2023) (requiring at the time of sentencing “that the offender is able, at that time, to pay the fine but refuses to do so”); OKLA. STAT. 22, § 983(A)-(B) (effective July 1, 2023) (requiring defendants to provide information regarding financial ability to pay at the time of sentencing and requiring courts to order the defendant to appear immediately after sentencing to the court clerk to determine eligibility for a monthly installment plan).



framework focuses on adult drivers and traffic violations that do not involve vehicle accidents. It could be implemented in states through legislation amending state traffic codes or in localities through ordinances amending local traffic laws, assuming that state preemption will not be an obstacle.<sup>135</sup>

A few preliminary points are in order before presenting the framework. It is first necessary to explain the purpose of the framework and, in turn, realistic expectations of what the framework might achieve. The framework is specifically designed to address injustices and harms that occur through the imposition of fines, fees, and other types of financial penalties for traffic violations. Admittedly, traffic is only a single context in which fines, fees, and other financial penalties are imposed. Traffic is a crucial context to consider, however, because driving is central to many people's everyday lives and traffic stops are the most common way that individuals come into contact with law enforcement officers today.<sup>136</sup> At the same time, the framework cannot address all harms and injustices that occur in the entire traffic space (for instance, those involving policing during traffic stops) or the harms and injustices of financial penalties imposed in nontraffic cases.<sup>137</sup> Additional reforms are needed to combat these problems. As discussed later in this Article, a key benefit of the proposed framework is that it can complement and bolster some of these reform efforts.<sup>138</sup>

Moreover, I recognize that some pieces of the framework align with ideas in scholarship and advocacy in broader fines/fees and transportation circles. Some noncentral pieces of the framework have also been implemented to a certain degree in particular jurisdictions. In the discussion below, I credit these perspectives and laws when applicable and view them as valuable support for embedding certain pieces of the framework into state and local traffic laws on a wider scale.

#### *A. Which Financial Penalties Are Allowed*

To begin, the proposed framework would only authorize base fines as a financial penalty for traffic violations. Additional fees (including court costs and user fees), surcharges and assessments on top of base fines, and other financial penalties would be strictly prohibited. This component of the framework aligns with calls among scholars and advocates in broader fines and fees circles to eliminate or restrict the use of fees, surcharges, and other financial penalties imposed on top of

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135. It is important to note that preemption is being more aggressively used as a tool to block various local police reforms. For a discussion of these issues see Rick Su, Marissa Roy, & Nestor Davidson, *Preemption of Police Reform: A Roadblock to Racial Justice*, 94 TEMP. L. REV. 663 (2022).

136. BAUMGARTNER ET AL., *supra* note 17, at 30 (“[T]raffic stops are the most common type of encounter that Americans have with the police . . . .”); David A. Harris, *Car Wars: The Fourth Amendment’s Death on the Highway*, 66 GEO. WASH. L. REV. 556, 577 (1998) (describing driving as “the most common and necessary activities of daily life. For many, driving is the way they get to work, obtain food, conduct personal business, and find opportunities for recreation.”); Woods, *supra* note 22, at 1475 (“Traffic stops are the most common interaction between police and civilians today . . . .”).

137. See *infra* Part IV.B.

138. See *infra* Part III.D.

base fines in justice systems.<sup>139</sup>

### B. How to Calculate Financial Penalties

The framework would provide flexibility for state and local governments to decide whether to impose a standard fine for traffic violations or to graduate those fines based on a driver's ability to pay (also called "day fines").<sup>140</sup> Financial penalties imposed for traffic offenses (and offenses more broadly) in U.S. justice systems are not typically graduated based on an individual's ability to pay, although some jurisdictions in the United States briefly experimented with day fines in the past and graduation ideas are receiving increased bipartisan support.<sup>141</sup> Scholars have documented the advantages of adjusting fines based on a person's ability to pay (including increased collection rates and amounts)<sup>142</sup> and have also advanced frameworks to implement graduation and defend its constitutionality.<sup>143</sup> Whether jurisdictions decided to graduate fines or not under the framework, any fine imposed for a minor traffic violation (for instance, lighting violations, speeding slightly over the speed limit, failing to maintain a lane, or failing to obey a traffic device) would be statutorily capped to stay within reasonably modest limits (ideally, not to exceed \$50).<sup>144</sup>

139. See, e.g., BRENNAN CENTER REPORT, *supra* note 11, at 5 ("States and localities should pass legislation to eliminate court-imposed fees."). Colgan, *supra* note 12, at 227 (recommending the elimination of certain poverty penalties in the criminal justice system); Courtney E. Lollar, *The Costs of the Punishment Clause*, 106 MINN. L. REV. 1827, 1895 (2022) (noting that the first step in eliminating revenue-generating financial penalties "is to eliminate any 'user fees' within the criminal justice system").

140. As discussed *infra* Part II.E, even if jurisdictions adopt a standard fine for traffic violations rather than graduating fines based on a driver's ability to pay, additional protections would apply under the framework for driver's with limited financial means.

141. See Colgan *supra* note 132, at 55 ("[A]n increasing and bipartisan array of constituents have called for . . . the graduation of economic sanctions according to a defendant's ability to pay."); *Id.* at 104–12 (providing overviews of day-fines projects in various U.S. jurisdictions); Terry Skolnik, *Rethinking Homeless People's Punishments*, 22 NEW CRIM. L. REV. 73, 90 (2019) ("Day-fines have been used in certain American jurisdictions . . .").

142. Colgan, *supra* note 6, at 1552 ("[E]ven though graduation reduces the amount imposed, collections . . . are likely to rise"); BRENNAN CENTER REPORT, *supra* note 11, at 12 (discussing increased collection rates and amounts from day fine experiments in Staten Island (NY) and Maricopa County (AZ) in the 1980s); THE SYCAMORE INSTITUTE (TN), HOW TENNESSEE JUDGES LOOK AT DEFENDANTS' ABILITY TO PAY FINES AND FEES 6 (2021), <https://www.sycamoreinstitutetn.org/wp-content/uploads/2021/12/2021.12.20-FINAL-How-Judges-Consider-Ability-to-Pay-Fees-and-Fines.pdf> [<https://perma.cc/XN5E-UTDK>] ("[J]urisdictions that have experimented with day fines in the U.S. generally found them to increase both collection rates and amounts.").

143. Providing a specific framework for graduation is beyond the bounds of this Article. For a discussion of potential frameworks see Colgan *supra* note 132, at 73–101 (discussing how jurisdictions might go about designing graduation systems); Schierenbeck, *supra* note 74, at 1876–79; 1885–1923 (discussing the benefits of income-based fines and their constitutionality).

144. In the context of graduation, these statutory caps may also persuade lawmakers that graduation will not punish drivers with resources to pay traffic tickets too harshly. See Colgan, *supra* note 132, at 97 (noting that statutory caps on economic sanctions may be necessary to address concerns about the balance of formal and substantive equality in the context of graduation).

### C. When Financial Penalties May Be Imposed

As noted above, the dominant view that fines are a necessary and practical alternative to avoid the social costs of incarceration for minor driving violations sets up a false choice that ignores the potential for traffic point assessments to serve as an intermediate sanction before the imposition of fines. The proposed framework would move beyond this false choice by reconfiguring financial penalty and traffic point assessment schemes so that they do not work simultaneously and in tandem. As explained below, this reconfiguration would alter the timing of when governments could impose fines for traffic violations and, in turn, prevent governments from imposing financial penalties on drivers as a matter of course for every single traffic violation conviction regardless of the severity of the underlying violation.

Penalties would first start with traffic point assessments, not fines. The point assessments would have some similarities to existing schemes today. For instance, State Departments of Motor Vehicles (DMVs) would still take the lead in administering point assessments. Points would only be assessed for moving violations, not minor equipment violations (for instance, defective lights).<sup>145</sup> An equally low number of points would attach to all minor moving violations (for instance, speeding slightly over the speed limit, failing to maintain a lane, running a red light, or failing to obey a traffic device). A higher number of points would attach to a small set of serious moving traffic violations (for instance, driving under the influence, leaving the scene of an accident with property damage or injuries, driving a stolen vehicle, or driving to endanger others). The state would send a notice to drivers each time that points are assessed against their driving records and explain the potential consequences of accumulating points for traffic convictions in the future.

#### 1. Interaction Between Traffic Points and Fines for Minor Moving Violations

Rather than triggering automatic license suspensions, accumulated points for minor moving violation convictions would eventually trigger a fine set at a reasonable dollar amount (as noted *supra*, not to exceed \$50). Unlike current traffic penalty systems, the framework would build in a reasonable window for drivers to receive multiple convictions for minor moving violations before a fine is potentially triggered (for instance, between six and ten convictions in a twelve-month window). That fine would then apply to every subsequent minor moving violation conviction within that defined window. Traffic points assessed after a minor moving violation conviction would expire and therefore no longer count against a person's driving record after that window passes. Rather than allowing for multiple minor moving

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145. Some states already take this approach. *See, e.g.*, FLA. HIGHWAY SAFETY & MOTOR VEHICLES, OFFICIAL FLORIDA DRIVER LICENSE HANDBOOK 62 (2020), <https://www.flhsmv.gov/pdf/handbooks/englishdriverhandbook.pdf> [<https://perma.cc/4GLS-QHG8>] (noting that in Florida “[y]ou receive points for moving violations”); VT. DEP’T OF MOTOR VEHICLES, VERMONT DRIVER’S MANUAL 64 (2023), [https://dmv.vermont.gov/sites/dmv/files/documents/VN-007-Drivers\\_Manual.pdf](https://dmv.vermont.gov/sites/dmv/files/documents/VN-007-Drivers_Manual.pdf) [<https://perma.cc/QG9H-C2KL>] (noting that in Vermont “[p]oints are not assessed for parking or defective equipment violations”).

violations enforced during a single traffic stop to accumulate points, the maximum number of points that could be assessed during a traffic stop involving only minor traffic violations would be for a single moving violation.<sup>146</sup>

Drivers who accumulate enough points from minor moving violation convictions to trigger a fine would be eligible to take a state-approved defensive driving course once in a specified period (for instance, once every six to twelve months). Successful completion of the course would dismiss a driver's last minor moving violation conviction, erase points assessed from that conviction, and cancel the fine previously imposed. Drivers would have a reasonable amount of time to complete the course (for instance, thirty to ninety days from the date of the citation).<sup>147</sup>

To reduce access barriers, the state would administer or approve an online, mobile-friendly, defensive driving course that drivers could access and complete on their own time.<sup>148</sup> Unlike current systems, drivers would not be charged legislative- or court-imposed fees, surcharges, or other financial penalties to access the course. The state would only be able to charge drivers a reasonable course fee (ideally, not to exceed \$50).<sup>149</sup> Fee waivers would also be readily available to drivers with limited financial resources. If drivers are convicted of another minor moving violation after completing a defensive driving course, then courts would impose the fine, assuming that any previously assessed points did not expire and push the drivers below the necessary threshold to impose a fine.

## 2. Interaction Between Fines and Driver's License Suspensions for Minor Moving

146. See, e.g., N.C. GEN. STAT. ANN. § 20-16(C) (West 2023) (following this approach); S.D. DEP'T OF PUB. SAFETY, *South Dakota Point System*, <https://dps.sd.gov/driver-licensing/south-dakota-a-licensing-information/south-dakota-point-system> [<https://perma.cc/FAJ4-Q2UW>] (last visited Apr. 15, 2024).

147. This is consistent with current practices in many states and localities. See, e.g., Fla. Highway Safety & Motor Vehicles, *Driver Improvement Courses FAQ*, (“Once the clerk is notified of a driver’s intent to attend a course, they have between 60 and 90 days from the date of the citation to complete the course and present proof of completion to the clerk of the court in the county where the citation was issued.”); Harris County Justice Courts, *Information about Traffic Cases*, <http://www.jp.hctx.net/traff/c/dsc.htm#gsc.tab=0> [<https://perma.cc/7TRQ-DNFY>] (last visited Apr. 15, 2024) (“If you are allowed to take a driving safety course . . . you have 90 days within which to complete the course and present to the court: (1) a uniform certificate of driving safety course completion . . . .”); The Superior Court of California, County of Los Angeles, *How Do I Request Traffic School?*, <https://www.lacourt.org/division/traffic/TR0042.aspx> [<https://perma.cc/JQ3X-99TJ>] (last visited Apr. 15, 2024) (“You will have 64 days to complete traffic school.”).

148. Many defensive driving courses are now available in online format. See, e.g., Arizona Judicial Branch, *Defensive Driving Schools*, <https://www.azcourts.gov/drive/defensive-driving-schools> [<https://perma.cc/H9DP-CNME>] (last visited Apr. 15, 2024) (noting that drivers may take a defensive driving course “in person or online”); Delaware Division of Motor Vehicles, *Driving Courses*, [https://www.dmv.de.gov/DriverServices/driving\\_courses/index.shtml?dc=defensive\\_driving](https://www.dmv.de.gov/DriverServices/driving_courses/index.shtml?dc=defensive_driving) [<https://perma.cc/5W-LW-Y389>] (last visited Apr. 15, 2024) (listing state-approved online defensive driving courses in Delaware).

149. See, e.g., IND. BUREAU OF MOTOR VEHICLES, INDIANA DRIVERS MANUAL 22 (2023), <https://www.in.gov/bmv/licenses-permits-ids/files/drivers-manual.pdf> [<https://perma.cc/FN9K-TX-SZ>] (noting that the maximum fee for any state-approved driver safety program in Indiana is \$55); see also SUPERIOR CT. OF CAL., CNTY. OF S.F., *supra* note 67 (noting that a traffic school fee ranges from \$20 to \$45).

### Violations

Although not technically a financial penalty, it is important to discuss how the proposed framework would approach driver's license suspensions given that the consequences of having a suspended license fall hardest on people with limited financial resources.<sup>150</sup> The framework would include a tiered approach to license suspensions that is triggered when drivers receive a third fine for a minor moving violation conviction during the allowable window described above.<sup>151</sup> Penalties would start with a suspension of only a few days and gradually increase upon subsequent minor moving violation convictions during the allowable window. For instance, a five-day suspension could apply at the third fine within the window, a ten-day suspension at the fourth fine, a twenty-day suspension at the fifth fine, a thirty-day suspension at the sixth fine, a sixty-day suspension at the seventh fine, a two-month suspension at the eighth fine, and a three-month suspension at the ninth fine.

Driver's license suspensions would not be statutorily mandated, and judges would still have discretion to decide whether to impose license suspensions after considering a person's individual circumstances. Drivers would also be entitled to a hearing before any driver's license suspension is imposed. Moreover, drivers with certain personal obligations (for instance, work, school, medical care, and buying groceries or household necessities) would be eligible to apply for restricted hardship licenses that grant them permission to drive to and from specific locations at certain times, arranged in advance with the court.<sup>152</sup>

### 3. Fines for Minor Equipment Violations

In many jurisdictions, exorbitant fees can attach to convictions for minor equipment violations in amounts that are several times greater than underlying base

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150. See E. BAY CMTY. L. CTR., *supra* note 129, at 1.

151. Several states already use a tiered approach to driver's license suspensions in their points assessment systems. See, e.g., FLA. HIGHWAY SAFETY & MOTOR VEHICLES, *supra* note 145, at 63 (noting that in Florida accumulating twelve points within a twelve-month period results in a thirty-day suspension, eighteen points within an eighteen-month period results in a three-month suspension, and twenty-four points within a thirty-six-month period results in a one-year suspension); STATE OF MISSOURI, DRIVER GUIDE 73 (2022), <https://dor.mo.gov/forms/Driver%20Guide.pdf> [<https://perma.cc/H3DM-37BE>] (noting that in Missouri accumulating eight or more points in eighteen months results in a suspension of thirty days for first suspension, sixty days for second suspension, and ninety days for third suspension; accumulating twelve or more points in twelve months, eighteen or more points in twenty-four months, or twenty-four or more points in thirty-six months results in a one-year suspension).

152. Several states allow drivers with suspended or revoked licenses to apply for a restricted or hardship license under certain circumstances. See, e.g., ALABAMA LAW ENFORCEMENT AGENCY, HARDSHIP DRIVER LICENSE RULE 760-X-1-.24, § (1)(a).4 (n.d.), <https://www.alea.gov/sites/default/files/inline-files/ALEA%20760-X-1-.24%20Certified%20revised.pdf> [<https://perma.cc/V4ZP-NW2K>] (noting when a person with a suspended driver's license in Alabama is eligible to apply for a hardship license); *id.* at § (1)(b)1.-7 (noting the eligible reasons to travel with a hardship license); Nevada Division of Motor Vehicles, *Restricted License Information*, at 1, <https://dmv.nv.gov/pdfforms/dmv21.pdf> [<https://perma.cc/8Y6N-R33B>] (noting when a person with a suspended driver's license in Nevada is eligible to apply for a hardship license and valid reasons for travel).

finer.<sup>153</sup> With fees, surcharges, and other financial penalties imposed on top of base fines eliminated, only a modest fine would potentially attach to minor equipment violations (ideally, \$40 or less) under the proposed framework. As noted above, equipment violations would not result in points assessments against a person's driving record. Rather, any citation for a minor equipment violation would automatically be classified as a correctable violation (colloquially referred to as a "fix-it" ticket).

Drivers would have a reasonable amount of time to fix any minor equipment violation (ideally, between thirty and sixty days). Moreover, law enforcement officers would not be authorized to pull drivers over for the equipment violation or issue another citation for the violation within that period. All minor equipment violations would be eligible for dismissal upon showing or sending in proof of repair (for instance, an invoice, proof of payment, receipt, or photographic evidence) to the court with jurisdictional authority that the driver fixed the violation.<sup>154</sup> Drivers would receive a warning letter for missing the initial deadline and be granted a reasonable extension (for instance, 30 days) to fix the equipment violation before any fine is imposed. If needed, drivers could also proactively request an extension before the initial deadline. Proof of repair would allow the driver to avoid conviction and any potential fine for the equipment violation. Drivers would also not be charged a dismissal fee upon submitting proof of repair.

#### 4. *Fines for Driver's License, Registration, License Plate, and Insurance Violations*

Fines for driver's license, registration, license plate, and insurance violations would blend the approaches listed above for minor moving violations and equipment violations as follows. Out of this group of violations, only driver's license offenses would receive traffic point assessment; these violations would result in the same equally low number of points as minor moving traffic violations.<sup>155</sup> The only exception would be if a driver's license was revoked, suspended, or restricted for reasons relating to a serious driving offense (for instance, vehicular homicide). With the same exception in mind, driver's license, registration, license plate, and insurance violations would be classified as correctable violations.<sup>156</sup> The same correction

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153. See *supra* Part I.A.2.

154. Dismissal upon proof of compliance for equipment violations is already available in many jurisdictions. See, e.g., City of Colorado Springs (CO), *Municipal Court, Limited Walk-in Services*, COLO. SPRINGS, <https://coloradosprings.gov/municipal-court/page/limited-walk-services> [https://perma.cc/6XGY-8JN3] (last visited Apr. 15, 2024); City of Scottsdale (AZ), *Civil Traffic Cases*, CITY OF SCOTTSDALE, <https://www.scottsdaleaz.gov/court/civil-traffic-cases> [https://perma.cc/WH4S-U9DH] (last visited Apr. 15, 2024).

155. Some jurisdictions already follow this approach to some degree. See, e.g., Oakland County, Michigan, *License & Registration Violations*, <https://www.oakgov.com/government/courts/district-courts/52nd-district-court-division-2/traffic/license-registration-violations> [https://perma.cc/ER2L-P7P6] (last visited Apr. 15, 2024) (listing two points for most driver's license offenses but zero points for registration and license plate violations).

156. Some jurisdictions already classify driver's license, registration, and license plate violations as correctable violations. See, e.g., City of Terre Haute, IN, *Violations That Require Correction*, <https://www.terrehaute.in.gov/departments/city-clerk/faq-information/traffic-costs-fines-fees.html> [https://pe

processes surrounding equipment violations described above would apply to these violations as well.<sup>157</sup>

### 5. Fines for Serious Traffic Violations

A key goal of the proposed framework is to scale back the punitiveness of existing traffic point assessment and financial penalty schemes for minor traffic violations, which comprise the bulk of enforced traffic violations.<sup>158</sup> More difficult judgments will have to be made involving serious traffic offenses, including which offenses should be considered “serious,” whether those offenses should automatically trigger fines and driver’s license suspensions, and whether drivers who are convicted of serious traffic offenses should be eligible to complete a defensive driving course to avoid traffic point assessments and fines.<sup>159</sup>

Although this is not an easy task, it is not an impossible one. Early model traffic laws first articulated in the 1920s imposed special and more severe penalties for three traffic violations that the authors considered “particularly serious.”<sup>160</sup> Those violations included “failing to stop in the event of an accident involving injury or death to a person, driving while under the influence of intoxicating liquor or narcotic drugs, and reckless driving.”<sup>161</sup> Although the authors recognized different theories as to what constitutes reckless driving, the model traffic laws adopted a definition requiring a higher mental state as “willful or wanton driving in a manner endangering life limb or property.”<sup>162</sup>

Traffic decriminalization during the 1970s and 1980s is another example in which lawmakers drew similar lines. During this period, over twenty states decriminalized minor traffic offenses by removing criminal sanctions from minor traffic offenses, reclassifying the offenses as noncriminal violations, and streamlining their adjudication to the administrative realm.<sup>163</sup> A small set of traffic violations viewed as more “serious” remained criminalized in these states.<sup>164</sup> Common examples included “(1) driving under the influence, (2) driving without, with a revoked, or with a suspended, driver’s license or vehicle registration, (3) reckless driving, (4) failure to stop at the direction of, or eluding, a police officer, (5) vehicle racing, and (6) excessive

rma.cc/3EHW-54M9] (last visited Apr. 15, 2024).

157. See *supra* Part II.C.3.

158. See Pinizzotto, Davis, & Miller, *supra* note 25, at 1; Woods, *supra* note 22, at 1515.

159. See, e.g., The Superior Court of California, County of Los Angeles, *supra* note 147 (noting that common violations that are not eligible for driving school include “[d]riving with a suspended license, . . . [f]ailing to stop at an accident scene, . . . [s]peeding in excess of 100 miles per hour, . . . [r]eckless driving, . . . [and] [e]ngaging in speed contests”).

160. *Explanatory Notes*, UNIFORM VEHICLE CODE, ACT IV 96 (1930).

161. *Id.*

162. The other theory of “reckless driving” that the authors rejected “broadly defined [reckless driving] to include simple negligence and practically every violation of any of the rules of the road”. *Id.* at 66.

163. Jordan Blair Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*, 62 UCLA L. REV. 672, 698–99 (2015) (providing an overview of traffic decriminalization across states).

164. *Id.* at 699.

speeding (over 30 mph above the speed limit).”<sup>165</sup>

To be clear, I am not arguing that these six examples are the exact violations that should be defined as “serious” under the proposed framework. In fact, legislative reforms are acknowledging the unjust circumstances in which driver’s licenses have been and continue to be suspended for reasons that have nothing to do with driving conduct, including unpaid traffic debt.<sup>166</sup> Some jurisdictions also consider driving without a valid license, registration, or insurance as correctable violations.<sup>167</sup> The key point here is to show that lawmakers have drawn lines to distinguish minor and serious traffic violations when instituting traffic reforms in the past. Thus, it would be possible for lawmakers to do so again when implementing the proposed framework.

#### *D. How Governments May Allocate and Use Traffic Penalty Revenue*

The proposed framework would strictly limit the allocation and use of traffic penalty revenue to a special government fund dedicated to projects that directly advance transportation goals, and not criminal justice or other governmental goals. Key uses might include the construction, maintenance, repair, or removal of public highways and roads, and the installation, maintenance, or removal of traffic-control devices and signs.

Moreover, the framework would incorporate equity-oriented criteria to guide how traffic penalty revenue is later allocated to fund specific transportation projects. Taking the lead from equity frameworks developed in recent transportation literature, the proposed framework would give greater weight to projects that satisfy as many of the following criteria as possible: (1) *location burdens-based*, which would award greater weight to projects that are not located in geographic areas with high concentrations of marginalized populations when the project would harm those populations; (2) *location benefits-based*, which would award greater weight if a project is located in geographic areas with high concentrations of marginalized populations and the project benefits those populations; (3) *impact-based benefits*, which would award greater weight to projects that have positive effects and less weight to projects that have negative effects for marginalized populations; (4) *access to destinations-based*, which would award greater weight to projects that increase access to key destinations within geographic areas that have high concentrations of marginalized populations; (5) *user-based*, which would award

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165. *Id.* at 699–700 (citations omitted).

166. *See, e.g.*, Fine & Fees Justice Center, *New York’s Driver’s License Suspension Reform Act Takes Full Effect* (June 28, 2021), <https://finesandfeesjusticecenter.org/2021/06/28/new-ny-drivers-license-reform-takes-effect-tuesday/> [<https://perma.cc/NW5Q-BJNX>] (discussing a new law in New York “ending the state’s widespread practice of suspending an individual’s driver’s license when they cannot afford to pay a traffic fine”).

167. *See, e.g.*, County of Mendocino, Super. Ct. of California, *Correctable Violations*, SUPER. CT. OF CAL. CNTY. OF MENDOCINO, <https://www.mendocino.courts.ca.gov/divisions/traffic/correctable-violations> [<https://perma.cc/RN9B-N8EG>] (last visited Apr. 15, 2024).



greater weight to projects that bring in more users from marginalized populations; and (6) *community-engagement based*, which would award greater weight to projects that seek participation or involvement from affected marginalized populations in development stages or decision-making processes surrounding the project.<sup>168</sup>

As discussed later in this Article, the primary goal of incorporating equity-oriented criteria to guide the allocation of traffic penalty revenue is to shape future transportation investments so that historically marginalized groups in transportation law and policy are better served.<sup>169</sup> Several major cities have recently decided to incorporate equity criteria in their transportation planning strategies.<sup>170</sup> The proposed framework brings the allocation and use of traffic penalty revenue in line with those broader strategies.

#### E. Protections for Drivers with Limited Financial Resources

The proposed framework would include robust protections so that a driver's ability to pay is considered before the imposition of any traffic fines or financial penalties for nonpayment of traffic fines or noncompliance with a nonfinancial penalty. Drivers would be allowed to request a hearing if they believe that they are unable to pay traffic fines due to changed financial circumstances. For drivers who are unable to pay, courts would be required to consider nonincarceration alternatives when feasible given a person's individual circumstances (for instance, additional traffic school or community service) and judges would be authorized to discharge all traffic debt. The framework would also strictly prohibit arrest, license suspension or revocation, incarceration, or the stripping of fundamental rights (such as voting rights) for nonpayment of traffic fines due to a driver's lack of financial resources. This component of the framework promotes the views of scholars and

168. See sources cited *infra* note 212.

169. See *infra* Part III.E; see also AGUSTINA KRAPP, TRANSPORTATION EQUITY PROJECT PRIORITIZATION 35 (2020), <https://hdl.handle.net/2142/108931> [<https://perma.cc/6XP4-XPA5>] (“The ultimate goal of evaluating projects for transportation equity is to influence future investment decisions and increase transportation benefits to historically marginalized populations.”).

170. See, e.g., CITY OF CHICAGO, STRATEGIC PLAN FOR TRANSPORTATION 15 (2021), [https://www.chicago.gov/content/dam/city/depts/cdot/CDOT%20Projects/Strategic\\_Plan/Strategic\\_Plan\\_for\\_Transportation21.pdf](https://www.chicago.gov/content/dam/city/depts/cdot/CDOT%20Projects/Strategic_Plan/Strategic_Plan_for_Transportation21.pdf) [<https://perma.cc/98C2-CYNR>] (“[R]ather than rely[ing] on a single metric . . . this new approach will be equity-focused, needs-based, and data-driven, assessing the transformative effect that a transportation project could have on a particular neighborhood.”); METRO. TRANSP. COMM’N & ASS’N OF BAY AREA GOV’TS, PLAN BAY AREA 2050: A VISION FOR THE FUTURE ix (2021), [https://www.planbayarea.org/sites/default/files/documents/2021-05/Draft\\_Plan\\_Bay\\_Area\\_2050\\_May2021\\_0.pdf](https://www.planbayarea.org/sites/default/files/documents/2021-05/Draft_Plan_Bay_Area_2050_May2021_0.pdf) [<https://perma.cc/6P9D-4X7R>] (noting \$8 billion in support for “community-led transportation enhancements in Equity Priority Communities”); PORTLAND BUREAU OF TRANSP., PORTLAND 2045 TRANSPORTATION SYSTEM PLAN 3, 5-11 (draft 2024), <https://www.portland.gov/transportation/planning/documents/2045-tsp-draft-public-and-agency-engagement-plan/download> (describing how Portland’s transportation plan includes equity criteria and seeks input from underserved populations); SEATTLE DEP’T OF TRANSP., TRANSPORTATION EQUITY FRAMEWORK: PART I: VALUES & STRATEGIES 14–23 (2022), [https://www.seattle.gov/documents/Departments/SDOT/TransportationEquity/TransportationEquity\\_Framework\\_Report\\_41422.pdf](https://www.seattle.gov/documents/Departments/SDOT/TransportationEquity/TransportationEquity_Framework_Report_41422.pdf) [<https://perma.cc/63VN-KZLZ>] (describing components of Seattle’s Transportation Equity Framework).

advocates in broader fines and fees circles who have underscored the need for greater legal protections for people with limited financial resources.<sup>171</sup>

#### *F. Transparency and Accountability Measures*

Finally, the proposed framework would include at least four measures to improve transparency and accountability in how state and local governments collect, allocate, and use traffic penalty revenue. First, taking the lead from state laws mandating data collection to combat racial profiling during traffic stops, states would be required to collect and distribute annual data to help monitor race and class disparities surrounding the imposition and collection of traffic fines.<sup>172</sup> Collected data should at least include information on the demographics of drivers receiving fines (for instance, race, gender, and age), the number and dollar amounts of fines imposed and paid, traffic violation types leading to imposed fines, alternatives offered for drivers with limited financial resources, and overall case outcomes. Second, a delegated state agency would be required to collect and distribute annual data from the state and local governments on how much traffic penalty revenue was collected by penalty type (for instance, fines versus bail forfeitures) and how that revenue is allocated and spent by project. Third, the framework would require jurisdictions to provide detailed and accurate online information that is easily accessible to the public on how to pay traffic fines and the processes to request a hearing or payment extension from the court.<sup>173</sup> Fourth, the framework would include provisions that define a state official or employee's failure, refusal, or neglect to comply with the rules under the framework involving traffic penalty revenue as misconduct and grounds for removal.

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Having sketched the core components of this alternative legal framework for traffic penalties, this Article now switches gears to evaluate the potential benefits of, and objections to, the framework.

### III. BENEFITS OF THE ALTERNATIVE SYSTEM

Reimagining traffic fine and fee systems in ways that align with the proposed framework can promote many important criminal-justice-related and

171. See sources cited *supra* notes 16–19.

172. See *It's Time to Start Collecting Stop Data: A Case for Comprehensive Statewide Legislation*, N.Y.U. SCH. L.: POLICING PROJECT (Sept. 30, 2019), <https://www.policingproject.org/news-main/2019/9/27/its-time-to-start-collecting-stop-data-a-case-for-comprehensive-statewide-legislation> [<https://perma.cc/9QGZ-UVBD>] (“Currently there are 19 states that (for the most part) mandate collection of data on every law enforcement initiated traffic stop . . .”).

173. Cf. Jonathan Lazar et al., *A Longitudinal Study of State Government Homepage Accessibility in Maryland and the Role of Web Page Templates for Improving Accessibility*, 30 GOV'T INFO. Q. 289, 290 (2013) (“[G]overnment web sites continue to have inaccessibility problems and violate laws . . .”); Andrew Potter, *Accessibility of Alabama Government Web Sites*, 29 J. GOV'T INFO. 303, 304 (2002) (“[T]he World Wide Web has assumed an increasingly important role in providing government information and services . . .”).

transportation-related benefits. This Part evaluates five areas of benefits, each discussed in turn below: (1) reducing the criminalization of poverty and the net-widening of the criminal justice system through traffic enforcement, (2) aligning traffic penalties with the realities of overregulation and selective and discriminatory traffic enforcement today, (3) combating government incentives for revenue generation through traffic enforcement, (4) complementing and strengthening traffic policing reforms, and (5) improving considerations of racial and class equity in transportation law and policy.

*A. Reducing the Criminalization of Poverty and the Net-Widening of the Criminal Justice System Through Traffic Enforcement*

By increasing protections for drivers with limited financial resources and scaling back the types of financial penalties that governments can impose for traffic violations, the proposed framework reduces the criminalization of poverty and the net widening of the criminal justice system through traffic enforcement. As noted previously, the harsh consequences of current traffic penalty systems disproportionately fall on the most financially vulnerable individuals and communities, including low-income individuals and overpoliced communities of color.<sup>174</sup> For many financially vulnerable people, a single traffic ticket for a seemingly small amount can trigger a debilitating cycle of debt-based poverty and justice-system involvement.<sup>175</sup>

A 2020 report from a government task force in Michigan exemplifies the extent of these problems.<sup>176</sup> In Michigan, most traffic violations are treated as civil offenses and a few serious traffic violations, including driving without a valid license, are considered criminal offenses.<sup>177</sup> In 2018, traffic violations accounted for approximately one-half of all criminal cases in Michigan, and driving without a valid license was the third most common offense that led to jail sentences.<sup>178</sup> The Michigan report further revealed that driving without a valid license “was a more common reason for jail admission among black people compared to white people.”<sup>179</sup> In 2018, failure to appear or pay fines and fees alone resulted in approximately 358,000 driver’s license suspensions in Michigan.<sup>180</sup>

In recent years, traffic debt reforms have gained momentum in many states.<sup>181</sup>

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174. See sources cited *supra* note 16.

175. See sources cited *supra* note 17.

176. MICH. JOINT TASK FORCE ON JAIL AND PRETRIAL INCARCERATION: REPORT AND RECOMMENDATIONS 10 (2020), <https://www.courts.michigan.gov/48e562/siteassets/committees-boards-special-initiatives/jails/jails-task-force-final-report-and-recommendations.pdf> [<https://perma.cc/PD6A-C9CH>].

177. *Id.*

178. *Id.*

179. *Id.* at 8.

180. *Id.* at 10.

181. Jones, *supra* note 52 (discussing state reforms curbing restrictions of driver’s licenses for unpaid traffic debt); MICH. JAIL REFORM ADVISORY COUNCIL, 2022 FINAL REPORT TO THE

For instance, twenty-two states (including Michigan) and the District of Columbia have passed reforms to curb restrictions on driver's licenses for reasons related to unpaid traffic debt.<sup>182</sup> Greater reforms, however, are needed to ensure that a single traffic ticket, especially when it only involves a minor traffic violation, does not trigger a debilitating cycle of debt-based poverty and justice-system involvement. The proposed framework offers deeper structural reforms to curb this debilitating cycle by making it more difficult for governments to impose financial penalties for every minor traffic conviction and bolstering legal protections for individuals with limited financial resources to pay traffic tickets.<sup>183</sup>

*B. Aligning Traffic Penalties with the Realities of Overregulation and Selective and Discriminatory Traffic Enforcement*

Although traffic fines might seem practical at first blush, current traffic penalty systems are not grounded in the realities of driving today. As noted previously, traffic laws are so expansive nowadays that drivers routinely and ubiquitously violate them through low-risk driving behaviors that are technically defined as violations.<sup>184</sup> In addition, law enforcement officers have vast discretion in deciding whether to pull drivers over and issue traffic tickets.<sup>185</sup> Communities of color most vulnerable to overpolicing and overcriminalization in the traffic space are often harmed most by this discretion.<sup>186</sup> These realities cast doubt over whether it is fair and socially desirable from a public safety perspective to impose fines (and other heavy financial penalties) for every traffic violation conviction, no matter how minor the violation.

These issues have animated scholarly calls for reevaluating the breadth of traffic codes so that traffic laws are narrowly tailored to specific circumstances that put motorists or pedestrians at risk of imminent danger.<sup>187</sup> To a limited extent, these issues are also animating recent law and policy reforms that change how minor traffic violations are policed. For instance, the State of Virginia and the City of

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GOVERNOR, LEGISLATURE, AND SUPREME COURT 11–12 (2022), <https://www.courts.michigan.gov/48cfb3/siteassets/reports/special-initiatives/jail-reform/jail-reform-advisory-council-final-report-final-version.pdf> [<https://perma.cc/8CUJ-AQHD>] (discussing reforms in Michigan).

182. Jones, *supra* note 52.

183. See *supra* Part I.

184. Chiraag Bains, “*A Few Bad Apples*”: *How the Narrative of Isolated Misconduct Distorts Civil Rights Doctrine*, 93 IND. L.J. 29, 33 (2018) (“[T]he traffic code is so expansive and so ubiquitously violated . . . .”); Carbado, *From Stopping*, *supra* note 20, at 153 (noting that “every driver routinely commits” traffic infractions); Woods, *supra* note 22, at 1480–81 (“[T]he expansive nature of traffic codes creates a system in which people are likely to violate at least one traffic law when driving from place to place.”).

185. Su, *supra* note 119, at 448 (noting that sheriff deputies “have the discretion to choose between issuing a citation and giving a warning”); Woods, *supra* note 22, at 1482 (“[O]fficers have vast discretion to decide both when to initiate a traffic stop and what actions to take during a stop.”).

186. See sources cited *supra* note 90.

187. See, e.g., Woods, *supra* note 22, at 1508 (discussing the need to reexamine traffic codes and providing suggestions for reform “to better achieve fairness and equality in traffic enforcement”).

Philadelphia, Pennsylvania, both recently enacted laws that prohibit law enforcement officers from conducting traffic stops based solely on certain minor nonmoving violations.<sup>188</sup> Several law enforcement agencies, including the Seattle and Minneapolis Police Departments, have also recently adopted new departmental policies scaling back traffic stops for minor nonmoving violations.<sup>189</sup>

Yet, at the back end of the justice process, traffic penalty systems continue to ignore issues of overregulation in the traffic space and the selective and discriminatory enforcement of traffic laws. The proposed framework offers an alternative approach that balances public safety needs with these realities of our current driving regime.

### *C. Combating Government Incentives for Revenue Generation Through Traffic Enforcement*

The proposed framework includes different mechanisms that reduce opportunities for state and local governments to use traffic enforcement as a tax-avoidance tool and means of revenue generation. At the individual level, the framework increases protections for drivers with limited financial resources to pay traffic tickets and the types of financial penalties that governments may impose on individuals for traffic violations.<sup>190</sup> At the institutional level, the framework places strict limitations on how state and local governments may allocate and use traffic penalty revenue so that such revenue is not a funding source for a wide variety of justice- and non-justice-related programs.<sup>191</sup>

Curbing government reliance on traffic enforcement as a means of revenue generation fosters two key benefits. First, it eases the distributional costs of these revenue-generating practices. As noted above, the burdens of revenue-driven traffic enforcement fall hardest on the most financially vulnerable individuals and communities, including low-

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188. In Virginia, those violations include lighting violations, tinting violations, defective equipment violations, dangling objects, and expired registration or inspection. *See* 2020 Virginia Laws 1st Sp. Sess. Ch. 51 (S.B. 5029), § 46.2-646 (registration); § 46.2-1003 (defective equipment); § 46.2-1013 (tail lights); § 46.2-1014 (brake lights); § 46.2-1052 (tinting); § 46.2-1054 (dangling objects); § 46.2-1157 (inspection) (2020), <https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+CHAP0051> [https://perma.cc/L8RR-NWJD]. In Philadelphia, those violations include lighting violations, improper display of license plates or temporary registration permits, dangling objects, minor bumper damage, and expired inspection. *See* City of Philadelphia, Office of the Mayor, Executive Order 6-21: Implementation of Driving Equality Policy (signed Nov. 3, 2021), <https://www.phila.gov/media/20211109145453/executive-order-2021-06.pdf> [https://perma.cc/LS7Q-J8D4].

189. *See* Libor Jany, *Minneapolis Police to Scale Back Low-Level Traffic Stops*, STAR TRIB. (MN), (Aug. 12, 2021, 8:29 PM), <https://www.startribune.com/minneapolis-police-to-scale-back-low-level-traffic-stops/600087423/> [https://perma.cc/D2TE-YR4J] (noting that the Minneapolis Police Department will no longer conduct traffic stops for “expired tabs, an item dangling from a mirror, or not having a working license plate light”); Letter of Adrian Z. Dias, Chief of Police of Seattle Police Department (Jan. 14, 2022), <https://publicola.com/wp-content/uploads/2022/01/Letter-to-Inspector-General-Lisa-Judge-Traffic5242-1.pdf> [https://perma.cc/F4YX-YGRM] (announcing that the Seattle Police Department would no longer conduct traffic stops for low-level traffic violations, including expired or missing vehicle registration, plate displays, and items hanging in the rear-view mirror and windshield cracks).

190. *See supra* Part II.A and Part II.E.

191. *See supra* Part II.D.

income individuals and overpoliced communities of color.<sup>192</sup>

Second, it promotes respect for law and the justice system. As scholars have argued, when police and courts are viewed as agents of revenue generation, the public is less likely to view the enforcement of laws and punishment administered in justice systems as legitimate or fair.<sup>193</sup> In the traffic context, revenue-driven motives for traffic enforcement undermine perceptions that traffic fines (and other financial penalties imposed) are grounded in values of justice or public safety.<sup>194</sup>

#### *D. Complementing and Strengthening Traffic Policing Reforms*

The proposed framework also complements and strengthens traffic policing reforms that have gained traction in many states and localities in recent years.<sup>195</sup> These reforms surged in the aftermath of community mobilization against police violence and the fatal police shootings of stopped drivers of color, and unarmed Black drivers in particular.<sup>196</sup> In general, reforms have fallen into three camps.<sup>197</sup> Some jurisdictions, like the State of Virginia and the City of Philadelphia, Pennsylvania, have restricted when police officers can pull drivers over for certain low-level traffic offenses.<sup>198</sup> Other jurisdictions, like the State of Colorado and Washington D.C., are exploring options to expand automated traffic enforcement, including speed and red-light cameras.<sup>199</sup> The City of Berkeley (CA) is exploring deeper reforms that remove

192. See sources cited *supra* note 16; see also *supra* Part I.B.

193. See Brandon L. Garrett, *Spiraling Criminal Debt*, 34 FED. SENT. REP. 92, 94 (2021) (noting that revenue generation “harms the legitimacy of government to be seen as revenue driven”); Goldstein, Sances & You, *supra* note 120, at 7 (“[A]ggressive collection of fines and fees by police officers could affect local residents’ trust in law enforcement officers.”); Graham & Makowsky, *supra* note 12, at 325 (“Increased perception of law enforcement as agents of revenue generation, less beholden to fair application of law, undermines the legitimacy of their authority . . . .”); cf. Tom Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 ANN. REV. PSYCHOL. 375, 376 (2006) (defining legitimacy as “the belief that authorities, institutions, and social arrangements are appropriate, proper, and justice,” which leads people “to feel personally obligated to defer to those authorities, institutions, and social arrangements”).

194. Joshua Wakenham, *Institutional Corruption in the Criminal Justice System: The Case of Ferguson*, 79 CRIME, L. & SOC. CHANGE 63, 70 (2022) (“Research . . . suggests that public perceptions of police departments in ‘speed trap towns’ . . . results in changes in perception of the legitimacy of the ticketing and the police department.”) (citation omitted).

195. See Kirkpatrick, Eder & Barker, *supra* note 21 (“Police chiefs and criminologists say the rule changes amount to the first major reconsideration of traffic policing since the 1980s . . . .”); Woods, *supra* note 22, at 1476 (noting “increasing momentum for rethinking police involvement in the traffic space”).

196. See Dana Searles & James Doyle Brown Jr., *Tragic Traffic Stops Have Led to Reforms Across the Country*, NEWS21 (Dec. 22, 2022), <https://nondoc.com/2022/12/22/tragic-traffic-stops-have-led-to-reforms/> [<https://perma.cc/3G53-YNF6>] (discussing how routine traffic stops resulting in the killings of drivers of color have led to traffic policing reforms across the country).

197. Colgan, *supra* note 22, at 894 (“[R]eform has centered on three primary modes.”).

198. See sources cited *supra* note 188.

199. Luz Lazo, *Reckless Driving Classes, Expanded Traffic Cameras Among D.C. Plans for Bad Drivers*, WASH. POST (Sept. 30, 2022, 6:00 AM EDT), <https://www.washingtonpost.com/transportation/2022/09/30/dc-reckless-driving-speed-cameras/> [<https://perma.cc/CBV4-D3XV>]; Keith Goble, *Colorado Proposal Would Revise State’s Speed Camera Rule*, LAND LINE (Sept. 21, 2022), <https://landline.media/colorado-proposal-would-revise-states-speed-camera-rule/> [<https://perma.cc/8LV4-GFFZ>].

police from routine traffic enforcement entirely and task nonpolice city employees with the responsibility of routine traffic enforcement instead.<sup>200</sup>

These policing reforms do important work in reducing police-civilian contact via traffic stops and, in turn, curb police discrimination, mistreatment, and violence that drivers and passengers of color experience during traffic stops.<sup>201</sup> Without additional reforms to traffic fine and fee systems, however, a potential unintended consequence of these policing reforms is that they could exacerbate opportunities and incentives for governments to use traffic ticketing as a means of revenue generation.<sup>202</sup> For instance, if police officers are prohibited from conducting traffic stops for certain low-level traffic violations, then they could simply ramp up citations for other low-level traffic violations. Automated traffic enforcement programs in major cities have already been critiqued as government revenue generators that disproportionately target predominately Black and Latinx neighborhoods.<sup>203</sup> Under deeper reforms that remove police from routine traffic enforcement, nonpolice government employees could potentially issue even more traffic citations and, as a result, convictions than police officers otherwise would have issued in their respective jurisdictions.<sup>204</sup> The proposed framework

200. Kellen Browning & Jill Cowan, *How Berkeley Could Remove the Police from Traffic Stops*, N.Y. TIMES (July 9, 2020, updated Oct. 31, 2021), <https://www.nytimes.com/2020/07/09/us/berkeley-ca-police-department-reform.html#:~:text=Robinson's%20proposal%2C%20which%20is%20co,sign%20or%20driving%20without%20headlights> [https://perma.cc/4QE4-7L7Z]; Rachel Sandler, *Berkeley Will Become 1st City to Remove Police from Traffic Stops*, FORBES (July 15, 2020, 8:22 PM EDT), <https://www.forbes.com/sites/rachelsandler/2020/07/14/berkeley-may-become-1st-us-city-to-remove-police-from-traffic-stops/?sh=50d1dbe370fa> [https://perma.cc/M2RV-BDL3].

201. See, e.g., *From Stopping*, *supra* note 20, at 151–62 (describing how officer discretion to engage in racial profiling heightens Black individuals' vulnerability to police violence during traffic stops); RACIAL IDENTITY PROFILING ADVISORY BOARD, ANNUAL REPORT 2023 12 (2023), <https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf> [https://perma.cc/MNW3-T4MP] (“Research shows Black Californians are more likely to have force used against them during a traffic stop and are about three times more likely to be injured, shot, or killed by police relative to their share of the state’s population.”).

202. Colgan, *supra* note 22, at 897 (noting that an unintended consequence of traffic policing reform involves “new methods of traffic enforcement that continue to extract wealth and trap people in a web of policing and punishment”).

203. See, e.g., *id.* at 942 (“A shift to automated enforcement . . . is more susceptible to budgetary and racial dynamics than may be apparent at first glance.”); William Farrell, *Predominantly Black Neighborhoods in D.C. Bear the Brunt of Automated Traffic Enforcement*, D.C. POL’Y CTR. (June 28, 2018) <https://www.dcpolicycenter.org/publications/predominately-black-neighborhoods-in-d-c-bear-the-brunt-of-automated-traffic-enforcement/> [https://perma.cc/MQ6K-TTQF] (discussing racial disparities in red-light-camera enforcement in Washington D.C.); Emily Hopkins & Melissa Sanchez, *Chicago’s “Race-Neutral” Traffic Cameras Ticket Black and Latino Drivers the Most*, PROPUBLICA (Jan. 11, 2022, 5 AM EST), <https://www.propublica.org/article/chicagos-race-neutral-traffic-cameras-ticket-black-and-latino-drivers-the-most> [https://perma.cc/7LC6-FFSN] (discussing how “traffic cameras in Chicago disproportionately ticket Black and Latino motorists”); see also Garrett & Wagner, *supra* note 86, at 73 (“[M]any observers have concluded that red-light cameras are revenue-generation devices rather than tools to improve public safety.”).

204. Colgan, *supra* note 22, at 942 (“Shifting traffic enforcement to civilian units does not preclude lawmakers from engaging in the same types of pressure to ticket . . . .”); Woods, *supra* note 22, at 1507 (“Redelegating traffic enforcement to traffic agencies might also worsen revenue-generating incentives for traffic monitors to issue tickets . . . .”).

complements these important police reforms to prevent these unintended consequences from taking place later on in the justice process.

*E. Improving Considerations of Racial and Class Equity in Transportation Law and Policy*

A final benefit of the proposed framework is that in institutionalizing equity-oriented criteria to guide the allocation and use of traffic penalty revenue, the framework improves considerations of race and class equity in transportation law and policy. Transportation inequalities are the products of decades of historical and ongoing discrimination based on race and class in transportation decision-making processes and project funding.<sup>205</sup> The marginalization of communities of color and low-income communities in transportation planning has not only harmed mobility and accessibility within those communities but also negatively shaped residential displacement and segregation, access to employment, housing, education, health, and environmental conditions.<sup>206</sup>

Scholars have underscored a need for greater inclusion of equity-oriented criteria to guide transportation investments at all levels of government.<sup>207</sup> Currently, transportation bodies are required under Title VI of the Civil Rights Act of 1964 and President Clinton's 1994 Executive Order 12898 (entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations") to conduct analyses that measure whether transportation projects are free from discrimination and disproportionately cause health and environmental harms in communities of color and low-income communities.<sup>208</sup> Scholars have critiqued the Title VI and Environmental Justice paradigms on the grounds that

205. See sources cited *supra* note 55.

206. Archer, *supra* note 53, at 1286 (describing how "[t]he interstate highway system changed the physical, social, and economic characteristics of urban communities" and that "communities of color around the country still bear the scars"); Robert D. Bullard, *Addressing Urban Transportation Equity in the United States*, 31 *FORDHAM URB. L.J.* 1183, 1205 (2004) ("Transportation is a basic ingredient for quality of life indicators such as health, education, employment, economic development, access to municipal services, residential mobility, and environmental quality."); Nancy Jakowitsch & Michelle Ernst, *Just Transportation*, in *HIGHWAY ROBBERY: TRANSPORTATION RACISM & NEW ROUTES TO EQUITY* 161, 166 (Robert D. Bullard, Glenn S. Johnson & Angel O. Torres eds. 2004) (describing the harms of transportation discrimination for low-income and communities of color involving mobility, accessibility, health, and employment).

207. See, e.g., Alex Karner & Deb Niemeier, *Civil Rights Guidance and Equity Analysis Methods for Regional Transportation Plans: A Critical Review of Literature and Practice*, 33 *J. TRANSP. GEO.* 126, 132 (2013) ("One of the most significant gaps in transportation planning is the lack of a coherent and rigorous framework within which equity analyses can be conducted."); KRAPP, *supra* note 169, at 1 ("[T]o effect change a much wider range of stakeholders will need to institutionalize equity-focused processes."); SANCHEZ, *supra* note 53, at 2 ("Historically, transportation equity has been largely ignored by the vast majority of transportation planners and researchers."); Richard A. Marcantonio, Aaron Golub, Alex Karner & Louise Nelson Dyble, *Confronting Inequality in Metropolitan Regions, Realizing the Promise of Civil Rights and Environmental Justice in Metropolitan Transportation Planning*, 44 *FORDHAM URB. L.J.* 1017, 2021 (2017) ("[S]tronger guidance requiring robust equity analyses for regional plans has the potential to result in better planning and outcomes for metropolitan regions.").

208. See KRAPP, *supra* note 169, at 12; SANCHEZ, *supra* note 53, at 32; Marcantonio et al., *supra* note 207, at 1055–56.



they do not adequately capture transportation inequality, are reactive rather than proactive in orientation, and are not structured to change transportation investment priorities.<sup>209</sup> Although local transportation bodies are increasingly incorporating equity-oriented criteria into their planning processes, scholars have stressed that those criteria are inconsistently applied and often do not give enough weight to equity measures to change priorities in transportation project funding.<sup>210</sup>

The equity-oriented criteria that are incorporated into the proposed traffic penalty framework are specifically designed to address these shortcomings.<sup>211</sup> Those criteria promote transportation equity along three main dimensions.<sup>212</sup> First is *procedural equity*, which considers the extent to which different stakeholders, including members of underserved and marginalized communities, are involved in transportation decisions that affect them.<sup>213</sup> Second is *geographic equity*, which considers how benefits and burdens of transportation decisions are distributed across specific geographic areas or spaces.<sup>214</sup> Third is *social equity*, which considers how benefits and burdens of transportation decisions are distributed across different social groups along the lines of race, class, mobility ability, etc.<sup>215</sup> By promoting transportation equity along each of these dimensions, the proposed framework would give priority to transportation investments that benefit historically marginalized communities in transportation planning (namely, communities of color and low-income communities) and mitigate the ramification of past discrimination based on race and class in transportation law and policy.

#### IV. POTENTIAL OBJECTIONS

The proposed framework also invites several potential objections. This Part evaluates five potential objections, each discussed in turn below: (1) undermining deterrence and traffic safety, (2) unintended consequences on other aspects of criminal enforcement and adjudication, (3) financial harm to state and local

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209. See, e.g., KRAPP, *supra* note 169, at 12–13, 42 (critiquing the Environmental Justice and Title VI paradigms).

210. Krapp, Barajas & Wennink, *supra* note 53, at 183 (noting that many local metropolitan planning organizations “have adopted transportation equity as a guiding goal”); *id.* at 184 (“How organizations incorporate equity into performance analysis or project utilization across planning organizations is inconsistent at best and absent at worse.”); Wennink & Krapp, *supra* note 54, at 3 (“[M]any regions are starting to incorporate equity into their project prioritization methods and are defining equity in their own terms.”); TODD LITMAN, EVALUATING TRANSPORTATION EQUITY, (VICTORIA TRANSP. POL’Y INST.) 3 (2018), [https://www.researchgate.net/profile/Todd-Litman-2/publication/284050013\\_Evaluating\\_transportation\\_equity/links/5c4f42bba6fdccd6b5d00a9d/Evaluating-transportation-equity.pdf](https://www.researchgate.net/profile/Todd-Litman-2/publication/284050013_Evaluating_transportation_equity/links/5c4f42bba6fdccd6b5d00a9d/Evaluating-transportation-equity.pdf) [<https://perma.cc/H278-ZRQ9>] (“[I]here is little guidance for comprehensive transport equity analysis.”).

211. See KRAPP, *supra* note 169, at 23–35 (discussing equity-oriented project prioritization criteria); Krapp, Barajas & Wennink, *supra* note 53, at 184, 187.

212. See Bullard, *supra* note 206, at 1188 (defining transportation equity in terms of procedural equity, geographic equity, and social equity); Wennink & Krapp, *supra* note 54, at 3.

213. See sources cited *supra* note 212.

214. *Id.*

215. *Id.*

governments, (4) constitutional concerns, and (5) administrative costs. Although many of these concerns are not baseless and future empirical research will be needed to evaluate them, I ultimately conclude that they do not outweigh the potential benefits of the proposed framework or the continued harms of existing financial penalty schemes in the traffic space.

#### *A. Undermining Deterrence and Traffic Safety*

The first potential objection to the proposed framework is that in making it more difficult to impose fines, especially for minor traffic violations, the framework might undermine deterrence and traffic safety. In theory, the main purposes of imposing fines in traffic cases are to penalize drivers for improper driving conduct and to deter those drivers and other motorists from violating traffic laws in the future.<sup>216</sup> Rational choice theory suggests that by increasing traffic tickets, the cost of breaking traffic laws would increase for drivers.<sup>217</sup> In turn, drivers would violate traffic laws less frequently, leading to fewer accidents.<sup>218</sup> These aims should ultimately promote public safety, but the extent to which they do is debatable.<sup>219</sup>

Surprisingly, few empirical studies have examined whether increased traffic enforcement improves traffic safety, and this remains an open question in the literature.<sup>220</sup> Two empirical studies drawing on data from Massachusetts provide some support for this hypothesis. The first empirical study published in 2011 evaluated monthly traffic ticket and accident data in over 300 municipalities in

216. Here, it is important to distinguish specific deterrence from general deterrence. *See* MIRKO BAGARIC, PUNISHMENT & SENTENCING: A RATIONAL APPROACH 138 (2001) (noting that specific deterrence “aims to discourage crime, by punishing offenders for their transgressions and thereby convincing them that the crime does not pay”); *id.* (noting that general deterrence “seeks to dissuade potential offenders, by threat of anticipated punishment, from engaging in unlawful conduct by illustrating the unsavoury consequences of offending.”); *see also* BRENNAN CENTER REPORT, *supra* note 11, at 5 (“The purpose of fines is to punish those who violate the law and deter those who might otherwise do so.”); Hillsman, *supra* note 74, at 50 (noting that one advantage of “the fine as a criminal sanction” is that “it is unmistakably punitive and deterrent in its aim”).

217. Makowsky & Stratmann, *supra* note 110, at 864.

218. *Id.* (noting that rational choice theory “predicts that ticketing leads to fewer motor vehicle accidents”).

219. *See, e.g.*, Martin Killias, Patrice Villettaz & Sophie Nunweiler-Hardegger, *Higher Fines—Fewer Traffic Offenses? A Multi-Site Observation Study*, 22 EUR. J. CRIM. POLY RES. 619, 621 (2016) (“[R]ecent studies on deterring traffic violations offer mixed support to the severity as well as to the certainty of punishment hypothesis.”); Renee Zahnnow, Sarah Bennett, Lyndel Bates, Emma Antrabus & Claire Irvine, *An Analysis of the Effect of Social Norms on Payment of Speeding Fines*, PSYCH., CRIME & L. (forthcoming), at \*2, <https://doi.org/10.1080/1068316X.2022.2104278> [<https://perma.cc/CB8R-8EVE>] (“[R]esearch on the deterrence effects of fines for speeding is mixed.”) (citation omitted).

220. Makowsky & Stratmann, *supra* note 110, at 864 (“[T]o date, there is little evidence on whether and by how much enforcement reduces the number of accidents.”); Dara Lee Luca, *Do Traffic Tickets Reduce Motor Vehicle Accidents? Evidence from a Natural Experiment*, 34 J. POLY ANALYSIS & MGMT. 85, 85 (2015) (noting that “there has been considerably less work on the effect of traffic law enforcement” on road accidents); *id.* (“[W]hether traffic tickets . . . are effective in decreasing road accidents remains an open question.”).

Massachusetts from April 2001 through January 2003.<sup>221</sup> The study found that increased traffic tickets reduced the number of vehicle accidents and related injuries, but the results involving traffic fatalities were inconclusive.<sup>222</sup> Using advanced statistical techniques,<sup>223</sup> the study reported that issuing 100 additional tickets led to between 12.7 and 16.2 fewer accidents and between 4.4 and 6.7 fewer injuries associated with traffic accidents.<sup>224</sup> The second empirical study published in 2015 also evaluated traffic ticket and accident data in Massachusetts from April 2001 through January 2003 in all 350 municipalities in Massachusetts.<sup>225</sup> The study found that increased traffic tickets reduce the number of vehicle accidents, but the results involving traffic injuries were less conclusive.<sup>226</sup> Using similar advanced statistical techniques, the study found that issuing 100 tickets led to between 4.8 and 5.2 fewer accidents and 1.4 fewer injuries (but only when including certain controls).<sup>227</sup>

Given how little we know about whether increased traffic enforcement reduces traffic accidents and related injuries, the findings from existing literature do not necessarily cut against the proposed framework.<sup>228</sup> Four points are important to consider. First, it is impossible to conclude from the existing literature that the financial penalties associated with receiving a ticket are specifically causing any reported traffic safety gains. Under rational choice models, those benefits could also stem from the act of enforcement itself or knowledge surrounding increased enforcement through publicity and advertising. Second, even if we accept that reducing traffic fines will lead to some costs for deterrence and traffic safety, it might be possible to offset all or some of those costs through increased investments in road infrastructure, signage, and advertising.<sup>229</sup> Third, the proposed framework

221. Makowsky & Stratmann, *supra* note 110, at 864.

222. *Id.* at 882.

223. Specifically, the study used instrumental variable (IV) estimations. See Francis L. Huang, *Using Instrumental Variable Estimation to Evaluate Randomized Experiments with Imperfect Compliance*, 23 PRAC. ASSESSMENT, RSCH., AND EVALUATION 1, 1 (Nov. 2019) <https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1366&context=pars> [<https://perma.cc/5TSL-G6MB>] (“Among econometricians, instrumental variable (IV) estimation is a commonly used technique to estimate the causal effect of a particular variable on a specified outcome.”).

224. Makowsky & Stratmann, *supra* note 110, at 878–80. The findings regarding traffic accidents were statistically significant at the 1% level and the findings regarding traffic injuries were statistically significant at the 5% level. *Id.* at 878, 880.

225. Luca, *supra* note 220, at 87.

226. *Id.* at 94–96.

227. *Id.* The findings regarding traffic accidents were statistically significant at the 1% level, but the finding regarding injuries was only significant at the 10% level when including municipality-specific time-varying controls. *Id.* at 94, 96. The findings regarding injury were not statistically significant in the IV estimate that did not include those controls. *Id.* at 95.

228. Luca, *supra* note 220, at 85 (“[W]hether traffic tickets . . . are effective in decreasing road accidents remains an open question.”).

229. See Robert B. Noland & Lyoong Oh, *The Effect of Infrastructure and Demographic Change on Traffic-Related Fatalities and Crashes: A Case Study of Illinois County-Level Data*, 36 ACCIDENT ANAL. & PREVENTION 525, 525 (2004) (identifying “efforts to build and design safer road infrastructure” as a focus in reducing traffic injuries and fatalities); Richard A. Retting, Helen B. Weinstein & Mark G. Solomon, *Analysis of Motor-Vehicle Crashes at Stop Signs in Four U.S. Cities*, 34

does not modify rules surrounding tort liability for traffic accidents in respective jurisdictions. The financial consequences of being deemed at fault and civilly liable for a traffic accident can be considerable in many jurisdictions and, as a result, provide some deterrent effect for careless drivers.<sup>230</sup>

Fourth and finally, assuming *arguendo* that decreasing traffic fines leads to losses in deterrence and traffic safety that cannot be offset by other means, there is a valid argument that the serious and disproportionate harms that financially vulnerable individuals and overpoliced communities bear from the imposition of financial penalties under current traffic fine and fee systems outweighs those losses. As noted above, many of these harms stem from revenue-focused motives in government that are distanced from public safety justifications, including traffic safety.<sup>231</sup>

#### B. Unintended Consequences for Other Aspects of Criminal Enforcement and Adjudication

The second potential objection involves unintended consequences of the proposed framework for other aspects of criminal enforcement and adjudication. These unintended consequences could unfold in three possible ways. First, governments might compensate for lost revenue by pressuring law enforcement officers to ramp up investigation and enforcement of nontraffic offenses in both traffic and nontraffic settings, such as drug offenses. Governments could then reap the benefits of financial penalties that attach to corresponding increases in convictions for nontraffic offenses. Second, revenue incentives among law enforcement actors could facilitate stronger abuses of civil and criminal asset forfeiture laws in both traffic and nontraffic stop settings.<sup>232</sup> Civil and criminal asset forfeiture laws allow law enforcement to keep the proceeds of assets they seize and abuses of these laws often occur under the radar.<sup>233</sup> Third, lawmakers might

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J. SAFETY RES. 485, 488 (2003) (“Where appropriate, changes in traffic control and intersection design can reduce stop sign-related crashes.”).

230. See Frank A. Sloan, Bridget A. Reilly & Christoph M. Schenzler, *Tort Liability versus Other Approaches for Deterring Careless Driving*, 14 INT’L REV. L. & ECON. 53, 68 (1994) (“Overall, it appears that imposing tort liability has a deterrent effect on careless driving.”); see also Alma Cohen & Rajeev Dehejia, *The Effect of Automobile Insurance and Accident Liability Laws on Traffic Fatalities*, 47 J.L. & ECON. 357, 382 (2004) (presenting study results finding that under a no-fault system, “insured drivers experience a reduction in their exposure to liability and would accordingly drive less carefully”). It is important to note that research from jurisdictions with pure no-fault systems have prompted debates over whether no-fault regimes lead to additional road accidents. See Nora Freeman Engstrom, *An Alternative Explanation for No-Fault’s “Demise”*, 61 DEPAUL L. REV. 303, 333 (2012) (“The proposition that no-fault may be associated with greater accidents thus lingers.”). Scholars have also critiqued the ability of tort law to deter behavior more generally. See, e.g., Stephen D. Sugarman, *Doing Away with Tort Law*, 73 CALIF. L. REV. 555, 559–91 (1985) (discussing the ineffectiveness of tort law as a deterrent).

231. See *supra* Part I.B and Part III.C.

232. See CARPENTER ET AL., *supra* note 5, at 8 (noting that civil asset forfeiture allows law enforcement agencies to “seize and keep property on the mere suspicion that it is connected to a crime” whereas criminal asset forfeiture requires a criminal conviction for property to be taken).

233. See Eric Blumenson & Eva Nilssen, *Policing for Profit: The Drug War’s Hidden Economic Agenda*, 65 U. CHI. L. REV. 35, 40 (1998) (“During the past decade, law enforcement agencies increasingly have turned to asset seizures and drug enforcement grants to compensate for budgetary

compensate for lost revenue by increasing financial penalties (for instance, base fines, court and administrative fees, or surcharges) that attach to nontraffic offenses. Depending on their strength, these unintended consequences could potentially offset any benefits that the proposed framework creates for financially vulnerable and overpoliced communities and perhaps result in even greater harm than under the status quo.

These hydraulic pressures on criminal enforcement and adjudication are possible, as they would be with any legal intervention that targets injustices and harms in a particular criminal justice context (in this case, traffic). At the same time, the proposed framework puts a considerable dent in a major pathway in which civilians are subjected to financial penalties. As noted above, traffic stops are the most common way that people come into contact with police, and traffic stops for minor traffic violations provide tens of millions of opportunities for police to issue citations to drivers.<sup>234</sup>

These possible unintended consequences also illustrate the importance of two other key points. First, they illustrate the need for data collection and transparency mandates in policing that assist in bringing these hydraulic pressures out in the open.<sup>235</sup> Such data can assist in identifying and monitoring patterns and trends involving the frequency of officer encounters and actions taken during those encounters, including asset forfeitures.<sup>236</sup> Second, these potential unintended consequences underscore the importance of connecting the proposed framework to broader scholarly perspectives, advocacy, and reforms involving fines and fees as well as asset forfeiture. As discussed previously, the proposed framework is not myopic in focus but rather is intended to align and connect with these broader perspectives and reform movements.<sup>237</sup>

### C. Financial Harm to State and Local Governments

Another potential objection to the proposed framework is that it will

shortfalls, at the expense of other criminal justice goals.”); Darryl K. Brown, *Decriminalization, Regulation, Privatization: A Response to Professor Natapoff*, 69 VAND. L. REV. EN BANC 1, 15 (2016) (“[I]nvestigative incentives are distorted by policies allowing police agencies to keep huge proceeds from civil asset forfeitures linked to drug offenses or other crimes.”); CARPENTER ET AL., *supra* note 5, at 31 (“[M]ost forfeiture activity is hidden from public view.”).

234. See BAUMGARTNER, *supra* note 17, at 30 (“[T]raffic stops are the most common type of encounter that Americans have with the police . . . .”); Pierson et al., *supra* note 1, at 736 (discussing the frequency of traffic stops); Woods, *supra* note 1, at 637.

235. For an example of a model data collection and transparency statute see *Data Collection and Transparency Statute*, N.Y.U. SCH. L.: POLICING PROJECT, [https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/62cdcc9f669e1b7afd48fa43/1657654431547/Data+Collection+and+Transparency+Statute\\_1.27.22+v2.pdf](https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/62cdcc9f669e1b7afd48fa43/1657654431547/Data+Collection+and+Transparency+Statute_1.27.22+v2.pdf) [<https://perma.cc/Z2Q7-A8AL>] (last visited Apr. 15, 2024).

236. See *id.* at 5 (stressing that officer encounter data is “essential for the public to have a complete picture of an agency’s stop and arrest practices”); Scott Bullock, *Foreword*, in CARPENTER ET AL., *supra* note 5, at 3 (“[M]ost civil forfeiture laws lack basic transparency requirements, keeping the public and law-makers in the dark about forfeiture activity and spending from forfeiture funds.”).

237. See *supra* Part II.

financially harm state and local governments, especially municipalities that rely heavily on traffic ticket revenue to fund their respective budgets.<sup>238</sup> On one hand, I concede that this is a potential cost of the proposed framework that will most heavily fall on municipalities deeply entrenched in “taxation by citation” practices. On the other hand, normative values of fairness and justice require that we eliminate, or at the very least do our best to minimize, these practices. If lost revenue from traffic tickets is truly needed to run government in those localities, then state and local governments must do more to create new or improve existing revenue streams in ways that do not hijack justice systems as a means of tax avoidance.<sup>239</sup>

Recent reforms in Alabama illustrate this point to a certain degree. In 2022, the State of Alabama passed a new law that took effect in 2023 that prohibits municipalities from retaining revenue from traffic fines and penalties in amounts that exceed ten percent of a municipality’s general operating budget.<sup>240</sup> The new law further requires municipalities to hand over excess revenue to the state so that it can be allocated in equal amounts to the state’s Crime Victims’ Compensation Fund and the Fair Trial Tax Fund.<sup>241</sup> State lawmakers introduced the law after a scathing report revealed that between 2018 and 2020 in Brookside, Alabama—a small town with approximately 1,250 residents—municipal revenue doubled from \$582,000 to \$1.2 million, and fines and bail forfeitures exploded by 640%.<sup>242</sup> The report further revealed that a new chief of police hired in 2018 grew the town’s police department to specifically patrol and conduct traffic stops on Brookside’s 6 miles of roads and 1.5-mile stretch of interstate highway.<sup>243</sup> During those years, several civilians had lodged complaints against the town’s officers for engaging in racist conduct and fabricating traffic violations.<sup>244</sup> Advocates in Alabama described Brookside as “a poster child for policing for profit.”<sup>245</sup>

In many state and local jurisdictions, the potential financial harms of the proposed framework might be negligible or not so severe. As discussed previously, U.S. Census data shows that fines, fees, and bail forfeitures have comprised less than 1% of both state and local revenue in the aggregate nationwide in each of the

238. See *infra* Part I.A (discussing how some local municipalities rely more heavily on traffic citation revenue than others).

239. See Todd J. Clark, Caleb Gregory Conrad, andré douglas pond cummings & Amy Dunn Johnson, *Trauma: Community of Color Exposure to the Criminal Justice System as an Adverse Childhood Experience*, 90 U. CIN. L. REV. 857, 920 (2022) (recommending that “states affirmatively work to restructure state budgets so that courts do not rely on revenue from fines, fees, and costs to fund their operations”).

240. ALA. CODE § 11-40-26(a) (West 2023).

241. *Id.*

242. John Archibald, *Police in This Tiny Alabama Town Suck Drivers into Legal “Black Hole”*, AL.COM (Jan. 19, 2022, 7:00 AM), <https://www.al.com/news/2022/01/police-in-this-tiny-alabama-town-suck-drivers-into-legal-black-hole.html> [<https://perma.cc/H3KK-YF2L>]; Erik Ortiz, *Alabama Town’s Traffic Ticketing Scandal Leads to Police Chief’s Resignation*, NBC (Jan. 28, 2022, 2:40 PM PST), <https://www.nbcnews.com/news/us-news/alabama-towns-traffic-ticketing-scandal-leads-police-chiefs-resignatio-rcna13801> [<https://perma.cc/E4QE-U5KN>].

243. Ortiz, *supra* note 242.

244. Archibald, *supra* note 242.

245. *Id.* (quoting Carla Crowder, Director of Alabama Appleseed Center for Law & Justice).

past fifteen years.<sup>246</sup> To reiterate, in spite of these low percentages, the harms of financial penalties in traffic cases for financially vulnerable individuals and overpoliced communities of color are often debilitating.<sup>247</sup>

#### D. Constitutional Concerns

The fourth potential objection to the proposed framework is that its equity-oriented criteria guiding the allocation and use of traffic penalty revenue could invite equal protection challenges. Race-conscious laws and policies have been under attack for quite some time, but laws seeking to address histories of discrimination in various sectors (for instance, education, agriculture, and small business administration) are under increasing constitutional attack in today's new judicial climate.<sup>248</sup> In many cases, race-conscious laws and policies have not survived or are at risk of being invalidated.<sup>249</sup> The U.S. Supreme Court's recent decision gutting race-conscious college and university admissions policies is the latest stark example.<sup>250</sup>

A recent case from the Sixth Circuit is instructive because it involves a law with some similarities to the equity criteria in the proposed framework. In *Vitolo v. Guzman*—a case brought by a white male restaurant owner—the Sixth Circuit enjoined the federal government from using race- and gender-conscious criteria to prioritize pandemic relief funding to aid small privately-owned restaurants under the American Rescue Plan Act (ARPA) of 2021.<sup>251</sup> The relief program gave priority to small, privately-owned restaurants that are majority owned and controlled by women, veterans, or the “socially and economically disadvantaged.”<sup>252</sup> By reference to another statute, “socially disadvantaged” is defined to mean “subjected to racial or ethnic prejudice” or “cultural bias,”<sup>253</sup> and pursuant to a prior regulation, groups that presumptively qualify as “socially disadvantaged” include “Black Americans,” “Hispanic Americans,” “Asian Pacific Americans,” “Native Americans,” and

246. See *supra* Part I.A.; URBAN INSTITUTE REPORT, *supra* note 3, at 1.

247. See *supra* Part I.A.

248. See Meera E. Deo, *The End of Affirmative Action*, 100 N.C. L. REV. 237, 239 (2021) (“The Supreme Court has signaled the end of affirmative action. . . . [W]ith a new composition of Justices on the Court and relevant cases winding their way through the lower courts, the end of affirmative action could come soon[.]”); Maia Foster & P.J. Austin, *Rattlesnakes, Debt, and ARPA § 1005: The Existential Crisis of American Black Farmers*, 71 DUKE L.J. ONLINE 159, 169–173 (2002) (discussing equal protection challenges brought by white farmers to a loan-forgiveness program for “socially disadvantaged” farmers under the American Rescue Plan Act (ARPA) of 2021); *Vitolo v. Guzman*, 999 F.3d 353, 356 (6th Cir. 2021) (holding prioritizing pandemic relief funds under the American Rescue Plan Act of 2021 to aid small privately owned restaurants that are majority-owned and controlled by women or racial and ethnic minorities violates the equal protection clause).

249. See Addie C. Rolnick, *Indigenous Subjects*, 131 YALE L.J. 2652, 2755 (2022) (“[R]ace-conscious remedies . . . largely have not [survived constitutional attack.]”).

250. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

251. *Vitolo*, 999 F.3d at 356.

252. Pub. L. 117-2, 135 Stat. 4, § 5003(c)(3)(A).

253. 15 U.S.C. § 637(a)(5); 13 C.F.R. § 124.103(a).

“Subcontinent Asian Americans.”<sup>254</sup>

The Sixth Circuit concluded that the program could not satisfy the strict scrutiny test required for race-based action under the Equal Protection Clause.<sup>255</sup> Relying on criteria articulated in the U.S. Supreme Court’s plurality opinion in *City of Richmond v. J.A. Croson Co.*, the Sixth Circuit first concluded that the federal government did not show a compelling interest in remedying past societal discrimination against minority business owners.<sup>256</sup> Specifically, the Sixth Circuit reasoned that the federal government failed to present evidence showing specific incidents of past discrimination against minority business owners, evidence of past intentional discrimination against minority business owners, or evidence that the government participated in the discrimination it sought to remedy.<sup>257</sup> The court further stressed that statistics showing a history of discrimination against minority business owners were insufficient to show a compelling interest in remedying past discrimination.<sup>258</sup> In concluding that the law was not narrowly tailored, the Sixth Circuit concluded that the government did not seriously pursue race-neutral alternatives, such as considering the needs of all restaurant owners who were unable to obtain capital or credit during the pandemic regardless of race.<sup>259</sup>

Although I recognize the risk of constitutional challenges, there is a key distinction between how equity-oriented criteria are used in the proposed framework and many other race-conscious laws that have been recently challenged on equal protection grounds, including in the transportation domain. Specifically, the equity-oriented criteria in the proposed framework are disconnected from the identity characteristics of individuals who own or control business entities that would ultimately receive funds for transportation projects. This is a key difference from the Disadvantaged Business Enterprise (DBE) programs administered by the

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254. 13 C.F.R. § 124.103.

255. 999 F.3d at 362–63. The Sixth Circuit also enjoined the program for using gender-based criteria after concluding that those criteria did not satisfy intermediate scrutiny for gender-based action. *See id.* at 365.

256. 488 U.S. 469, 492, 498, 503 (1989) (plurality). In citing *City of Richmond v. J.A. Croson Co.*, the Sixth Circuit stressed, “[f]irst, the policy must target a specific episode of past discrimination. . . . Second, there must be evidence of *intentional* discrimination in the past . . . . Third, the government must have had a hand in the past discrimination it now seeks to remedy.” *Vitolo v. Guzman*, 999 F.3d 353, 361 (6th Cir. 2021).

257. 999 F.3d at 361–62.

258. *Id.* at 361.

259. *Id.* at 362–63. Providing another example, in cases brought by a dozen white farmers in nine different states, multiple federal district courts have used similar logic to the Sixth Circuit’s decision in *Vitolo v. Guzman* to enjoin the federal government from forgiving loans under a loan-forgiveness program for “socially disadvantaged” farmers and ranchers under Section 1005 of ARPA. In those cases, the federal district courts have concluded that the loan-forgiveness program fails strict scrutiny because the federal government did not have a compelling interest to remedy past discrimination against “socially disadvantaged farmers,” and the loan-forgiveness program was not narrowly tailored, even assuming there was a compelling interest. *See, e.g.*, *Faust v. Vilsack*, 519 F. Supp. 3d 470, 478 (E.D. Wisc. 2021); *Holman v. Vilsack*, 2021 WL 2877915, No. 21-1085-STA-jay (W.D. Tenn. July 8, 2021), at \*14; *Wynn v. Vilsack*, 545 F. Supp. 3d 1271, 1295 (M.D. Fla. 2021).



U.S. Department of Transportation, which requires state and local recipients of federal transportation and other funds to ensure that businesses owned and controlled by “socially and economically disadvantaged individuals” receive a certain percentage of those funds.<sup>260</sup> The U.S. Department of Transportation’s DBE programs have been challenged in several federal circuits on equal protection grounds based on race, and federal circuit courts to date have generally upheld those programs even after applying strict scrutiny.<sup>261</sup> The equity-oriented criteria in the proposed framework, however, incentivize all business entities to place primacy on meeting the transportation needs of marginalized communities in ways that consider the input of those communities and how the projects will benefit or harm those communities and the neighborhoods they live. In theory, this distinction should make it more difficult for litigants challenging the proposed framework to establish that they were intentionally discriminated against based on race and, in turn, increase the likelihood that the equity-oriented criteria would survive equal protection challenges.<sup>262</sup>

#### *E. Administrative Costs*

The final potential objection to the proposed framework concerns administrative costs in implementing the equity-oriented criteria. Increased administrative costs are certainly possible, but they are likely not an insurmountable obstacle for three reasons. First, since 2012 federal laws and regulations have required state and local transportation agencies to conduct data-driven performance analyses that link transportation priorities to performance outcomes in key areas such as “safety, infrastructure condition, congestion, system reliability, emissions, and freight movement.”<sup>263</sup> Although these performance measures are not equity-oriented, they do require a baseline level of personnel and resources to implement

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260. See 49 C.F.R. § 26.5 (West 2023) (defining “disadvantaged business enterprise” and “socially and economically disadvantaged”).

261. See, e.g., *Dunnet Bay Const. Co. v. Borggren*, 799 F.3d 676, 679 (7th Cir. 2015); *Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal. Dep’t of Transp.*, 713 F.3d 1187, 1190 (9th Cir. 2013); *N. Contracting, Inc. v. Ill. Dep’t of Transp.*, 473 F.3d 715 (7th Cir. 2007) (upholding the U.S. Department of Transportation’s Disadvantage Business Enterprise Program after applying strict scrutiny); *Gross Seeds v. Neb. Dep’t of Roads*, 345 F.3d 964 (8th Cir. 2003); *Adarand Constructors, Inc. v. Slater*, 228 F.3d 1147, 1187 (2000) (10th Cir. 2000); *W. States Paving Co. v. Wash. Dep’t of Transp.*, 407 F.3d 983, 1002–03 (8th Cir. 2005) (upholding the program after applying strict scrutiny, but deciding in favor of an as-applied challenge to the State of Washington for not establishing evidence of discrimination within its own market).

262. See, e.g., *Dunnet Bay*, 799 F.3d at 693 (reasoning that a white-owned business did not have standing to bring an equal protection challenge on the basis of race to the U.S. Department of Transportation’s DBE program because it did not establish that “denial of equal treatment resulted from the imposition of a racial barrier”).

263. See *Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning*, 81 Fed. Reg. 34,050 (May 27, 2016) (to be codified at 49 C.F.R. pt. 613) (discussing the 2021 Moving Ahead for Progress in the 21st Century Act (MAP-21)); see also Wennink & Krapp, *supra* note 54, at 2 (noting that since 2012 “federal transportation funding authorizations have required a transition to performance-based planning”).

data-driven decision-making in transportation planning.<sup>264</sup> Second, as noted above, several major cities have recently decided to incorporate equity criteria in their transportation planning strategies.<sup>265</sup> The proposed framework brings the allocation and use of traffic penalty revenue in line with those broader strategies. Third and finally, the U.S. Department of Transportation is placing a stronger emphasis on transportation equity in its strategic priorities and funding.<sup>266</sup> If the federal government is serious about this commitment, then it could incentivize state and local governments to adopt equity-oriented criteria in their transportation planning strategies by helping them offset administrative costs associated with implementing those criteria.<sup>267</sup>

#### CONCLUSION

This Article underscores a need to reimagine traffic fine and fee systems today. To achieve this goal, it presented an alternative legal framework that provides a different normative vision for when and how governments may impose financial penalties for traffic violations and how governments may allocate and use traffic penalty revenue. As this Article explained, the benefits of embedding this framework into law promote wider fairness and equity in traffic law regimes. To be truly equitable and just, the law must not only address the harms and injustices that occur at the front end of the justice process involving how traffic violations are policed. It must also address the harms and injustices that occur later in the justice process involving the administration of traffic penalties. Although more work must be done in the traffic space to achieve this result, the proposed framework moves traffic law regimes in the right direction.

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264. Wennink & Krapp, *supra* note 54, at 3 (“[D]ata-driven methods are now being integrated into MPO [metropolitan planning organization] processes, and agencies are more commonly using performance measures to prioritize transportation projects.”).

265. Those cities include Chicago, IL; Portland, OR; San Francisco, CA; and Seattle, WA. *See* sources cited in *supra* 170.

266. *See generally* U.S. DEP’T. OF TRANSP., *supra* note 55 (detailing the U.S. Department of Transportation’s Equity Action Plan).

267. For instance, in December 2022, the U.S. Department of Transportation announced a Notice of Funding Opportunity for \$1.5 billion in grant funding through the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) discretionary grant program for 2023. *See* U.S. Department of Transportation, *Biden-Harris Administration Announces \$1.5 Billion Available Through the 2023 RAISE Grant Program*, (Dec. 15, 2022), <https://www.transportation.gov/briefing-room/biden-harris-administration-announces-15-billion-available-through-2023-raise-grant#:~:text=WASHINGTON%20%2D%2D%20The%20U.S.%20Department,discretionary%20grant%20program%20for%202023> [https://perma.cc/2CE4-VA2F].

