

Testimony of Lisa Foster
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Before the House Subcommittee on Crime,
Terrorism and Homeland Security

A Fine Scheme: How Court-Imposed Fees
and Fines Unjustly Burden Vulnerable
Communities

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Chairman Nadler, Ranking Member Jordan, Chairwoman Bass, Ranking Member Biggs:
Good morning.

My name is Lisa Foster, I'm the Co-Director and Co-Founder of the Fines and Fees Justice Center, and I am the former Director of the Office for Access to Justice in the US Dept of Justice. I am also a retired California Superior Court Judge.

Fines & Fees Justice Center (FFJC) is a national hub for advocacy, information and collaboration committed to eliminating fees in the criminal legal system and making fines proportionate to the offense and the individual. FFJC engages in intensive advocacy in 4 states -- Florida, Nevada, New Mexico and New York -- and provides strategic and technical assistance nationwide. FFJC also works with and builds the capacity of community organizations to advance fines and fees reform. FFJC's online Clearinghouse has provided easily accessible information relevant to fines and fees reform to over 80,000 discrete users. In three years, FFJC has grown from a staff of 2 to a team of 18 with an annual budget of over \$3 million.

Thank you for holding this important hearing today, and thank you for providing the opportunity for me to testify.

Right now, as we speak, fines and fees are devastating the lives of millions of Americans. Across the country, people – including children – who are convicted of minor traffic and municipal code violations, misdemeanors, and felonies are assessed fines and fees. Those who can't afford to pay the full amount imposed are punished with aggressive - and often unconstitutional - collection practices. The result is a deeply flawed system of monetary sanctions that exacerbates poverty, widens racial disparities and diminishes trust in our justice system.

Though fines and fees are charged together, it is important to note that they are not the same nor do they serve the same purpose. A fine is a punishment for violating the law. A fee has nothing to do with punishment or accountability. Its sole purpose is to generate revenue to fund government. A "fee", in other words, is a clever rebrand for a "tax"— and taxes have no place in our justice system. The justice system is a core government function. It is supposed to serve everyone, and it should be paid for by everyone. The Justice system is meant to protect public safety and everyone's rights and responsibilities. It can not do that if police are used as tax assessors and debt collectors, and our courts are used to impose regressive taxes on marginalized communities.

Today in California, the fine for a simple traffic violation is often \$100, but the Legislature has mandated an additional \$390 in fees that fund everything from the Fish and Game Service to the Office of Emergency Management.

The impact of a nearly \$500 ticket on the average American is catastrophic. According to the Federal Reserve, in 2019, 40% of Americans didn't have access to even \$400 dollars in an emergency. With the economic crisis caused by the pandemic, even more Americans can not afford to pay for basic necessities, let alone pay off a ticket.

And if a person cannot afford to immediately pay these fines and fees — jurisdictions use a host of abusive practices to coerce payment including:

- Incarcerating people who cannot afford to pay - despite explicit Supreme Court precedent to the contrary;
- Suspending driver's licenses, vocational licenses and vehicle registrations for those who cannot pay, making it impossible for millions of Americans to legally access the very jobs they need to pay off their debt;
- Adding late fees and interest and allowing private debt collection agencies to add up to 40% to the amount owed;
- Refusing to restore voting rights until all fines and fees are fully paid, disenfranchising millions of Americans solely because they are poor;
- Keeping individuals on supervision until their fines and fees are fully paid; and charging them with additional fees for remaining on supervision and,
- Misusing police and courts to focus on revenue generation rather than public safety -- undermining their legitimacy and endangering our communities.

Fines and fees do not burden all Americans equally. Over policing in communities of color coupled with the demographics of poverty in the United States means that state and local governments are attempting to wring fines and fees principally out of our most vulnerable communities - the communities hardest hit by the economic and health impacts of the covid pandemic.

Without question, fees and fines are a state and local issue. But they are a national problem, and there are federal solutions. Traditionally, when we think of the ways Congress can influence state policies, we think of carrots and sticks. Those can be used to great effect in this arena. The Driving for Opportunity Act, introduced in the Senate by Senators Coon and Wicker and in the House by Representatives Scanlon, Fitzpatrick, Moore and Reschenthaler, is a great example. This bipartisan bill incentivizes states to end debt-based driver's license suspensions.

Similarly, in 2016, the Justice Department provided grants to five states willing to pilot fines and fees reform. Congress could create a specific grant program to fund state innovation and encourage additional reform. Congress could also mandate that the National Institute for Justice study state reforms to determine best practices.

A particular problem with respect to reform is the dearth of data. In consultation with the Bureau of Justice Statistics, Congress could mandate that states that receive federal funding for their justice systems collect the data that we need to fully understand the scope of the problem and then direct BJS analyze that data.

Another important role for Congress is in regulating debt collection practices. The Fair Debt Collection Practices Act, which governs private debt collection practices does not apply to debt owed to a state. Criminal justice debt collection practices are both aggressive and excessively punitive. We should not allow government to engage in conduct we have barred in the private sector.

Finally, local governments are cash-strapped and revenue-constrained. Congress needs to help communities develop innovative strategies for funding essential government services - solutions that are fair and equitable. Without addressing the revenue and funding of state and local

governments, fines and fees will always be a tempting solution to what is a funding and revenue problem.

I urge you to take action. We in the advocacy community stand ready to help.

Thank you, and I would be delighted to answer your questions.