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April 23, 2015

**VIA U.S. MAIL AND ELECTRONIC MAIL**

Honorable Chief Justice Barbara Madsen  
Justices of Washington State Supreme Court  
P.O. Box 40929  
Olympia, WA 98502-0929

Re: **IRLJ 6.2: Increasing Infraction Penalties**

Dear Justices of the Washington State Supreme Court,

The American Civil Liberties Union of Washington (ACLU-WA) urges the Washington State Supreme Court to reject the proposal to increase the monetary penalty schedule for infractions, which is listed in IRLJ 6.2. The ACLU-WA is a statewide, non-partisan, non-profit organization with over 20,000 members, dedicated to the preservation and defense of constitutional and civil liberties. We oppose this change because increasing the infraction penalties means that the cost of providing constitutionally required court service will land on the backs of the very people who are most in need of assistance.

In most infraction proceedings, there is no determination of a driver's ability to pay the fine. While there are procedural rules that govern how courts of limited jurisdiction must handle infractions, hearings are not required. IRLJ 2.4 gives drivers four choices: agree that the infraction occurred and pay the fine; ask for a hearing to contest the whether the infraction occurred; agree that the infraction occurred but request a mitigation hearing so that the driver can explain the circumstances that led to the infraction; or send a letter explaining any mitigating circumstances but also including a promise to pay if the court rejects the mitigation request.

While the court can waive or reduce the penalty for drivers who request a mitigation hearing, IRLJ 3.4, most drivers do not appear in court. Given the choice between a day of work and a day without pay spent at court, most simply agree that they committed the infraction and agree to pay the fine set out in IRLJ 6.2. If the driver fails to pay the fine, the case will be sent to collections and can result in suspension of the driver's license.

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Increased infraction penalties will have a significant negative impact on poor people. It will increase the financial burden imposed on the very people who may require court services, including public defense representation.

Further, the proposal will disproportionately impact people of color in our state. In a number of jurisdictions throughout the state, local studies have shown that police disproportionately stop people of color. For example, a report released just last month regarding the Spokane Police Department found significant racial disproportionately in rate of contacts.<sup>1</sup> While African Americans are just 2.5 percent of the city's population, they were 6.1 percent of contacts.<sup>2</sup> Furthermore, an overwhelming majority of these contacts were motor vehicle stops, and 37 percent of contacts resulted in a citation for a hazardous moving violation.<sup>3</sup> A study of Seattle citations also found that African-Americans are stopped far more frequently than White drivers.<sup>4</sup>

Once stopped, people of color are more likely to receive a citation. In Seattle, African Americans receive more tickets per stop and are disproportionately cited for certain minor infractions like defective headlights or blocking traffic.<sup>5</sup> For example, when the study was conducted, African Americans represented 9 percent of the driving population, but received 47.3 percent of tickets for not having an illuminated license plate.<sup>6</sup>

In its recent decision in *State v. Blazina*, this court noted the terrible impact caused by criminal LFOs in the lives of poor people in this state and across the country. Infraction penalties create similar impacts. The base infraction penalties are, at the outset, doubled due to the Public Safety and Education Assessment, RCW 3.62.090. If a defendant is unable to pay the penalty immediately, many courts refer the debt to collections agencies, who, in addition to 12% interest, charge collections fees often totaling 50% of the underlying debt. A simple traffic ticket can quickly grow beyond the ability of the individual to satisfy the debt, leading to potential suspension of

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<sup>1</sup> EDWARD BYRNES & BRAD ARLETH, OFFICER CONTACTS WITH CIVILIANS AND RACE IN THE CITY OF SPOKANE: A QUANTITATIVE ANALYSIS, 2, 8-11 (MAR. 17, 2015), *available at* <https://static.spokanecity.org/documents/news/2015/03/19/ewu-spd-release-report-on-officer-contacts-with-civilians-race/civilian-police-encounter-analysis-spokane-police-department-eastern-washington-university-march-17-2015.pdf>.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 8-9.

<sup>4</sup> TASK FORCE ON RACE AND THE CRIMINAL JUSTICE SYSTEM, PRELIMINARY REPORT ON RACE AND WASHINGTON'S CRIMINAL JUSTICE SYSTEM 17 (2011), *available at* <http://www.law.seattleu.edu/Documents/korematsu/race%20and%20criminal%20justice/preliminary%20report%20-%20final%20release%20march%201%202011%20for%20printer%202.pdf> (citing Andrew Garber, *Seattle Blacks Twice as Likely to Get Tickets*, SEATTLE TIMES, Jun. 14, 2000 (corrected August 3, 2001))

<sup>5</sup> Andrew Garber, *Seattle Blacks Twice as Likely to Get Tickets*, SEATTLE TIMES, Jun. 14, 2000 (corrected August 3, 2001).

<sup>6</sup> *Id.*

drivers' licenses, loss of employment and involvement in the criminal justice system.<sup>7</sup> Increased fines may also lead to increased incentives to use infractions as a revenue source, as evidenced in Ferguson, Missouri.<sup>8</sup>

Providing constitutionally required court services can be expensive. However, courts and cities have alternatives. Rather than focusing on remedies that increase the financial burden on the poor, courts should look at remedies that decrease it. Relicensing programs, increasing community service options, and other collection reforms are good first steps. Cities should also implement programs that reduce overloaded court dockets such as pre-trial diversions and restorative practices.

While the ACLU-WA understands that the Court is considering this proposal as a way to secure funding for various court services, including public defense, the cost of this change to poor people and people of color will be too great. We urge you to reject the proposed infraction increases to IRLJ 6.2.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanessa T. Hernandez", with a stylized flourish at the end.

VANESSA HERNANDEZ  
Staff Attorney

Cc: Chief Justice Barbara Madsen  
Associate Chief Justice Charles Johnson  
Justice Sheryl Gordon McCloud  
Justice Charles Wiggins  
Justice Steven González  
Justice Mary Yu  
Justice Mary Fairhurst  
Justice Susan Owens  
Justice Debra Stephens

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<sup>7</sup> Lawyers Committee for Civil Rights, *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California* (2015), available at <http://www.lccr.com/not-just-ferguson-problem-how-traffic-courts-drive-inequality-in-california>.

<sup>8</sup> Investigation of the Ferguson Police Dept., US Dept. of Justice Civil Rights Div. (Mar. 4, 2015), available at [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).