



TESTIMONY OF:

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and the New York State Senate Standing Committee on Crime Victims, Crime, and Corrections

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The Fiscal Policy Institute would like to thank the chairs and members of the respective committees for the opportunity to testify on S.3979C (Salazar)/A.2348B (Niou), the End Predatory Court Fees Act. The Fiscal Policy Institute is an independent, nonpartisan, nonprofit research and education organization committed to improving public policies and private practices to better the economic and social conditions of all New Yorkers. FPI's Immigration Research Initiative looks at immigration issues in New York State, and around the country. Founded in 1991, FPI works to create a strong economy in which prosperity is broadly shared. FPI is part of two consortia of state-level organizations throughout the U.S. – the State Priorities Partnership (SPP), coordinated by the Center on Budget and Policy Priorities, and the Economic Analysis and Research Network (EARN), coordinated by the Economic Policy Institute. FPI conducts extensive analysis of New York's budgets and tax policy across all levels of government. As a member of FPI's senior leadership team, I head the institute's research work on budget analysis and economic policy. Although we have long focused on the impact of court-related revenue, over the last few years, our research team investigated the implementation and collection of fines and fees in state and local governments and published several papers on this issue.

New York's Opaque and Potentially Regressive Method of Raising Revenue

FPI's research in New York demonstrates that the use of legal fees and surcharges are an ineffective and unaccountable fiscal policy design. Their implementation across the state, with little government transparency regarding their collection and use as a revenue source, obscures the economic harms of legal debt in low-income communities and reinforces skewed incentives in our justice system. For FPI, this raises concerns regarding the fairness and efficacy of the current

system and directly contradicts the state's commitment to the Regional Economic Development Council initiative which seeks to empower communities to generate economic opportunity.¹

Before discussing FPI's recent research, it is important to note that from a historical perspective the fees discussed today did not always exist in our state. FPI's review of legislative histories and fiscal policy discussions reveals that many of these fees were designed as revenue raisers in the 1980s and 1990s. Over the last few decades, the dollar amounts associated with the mandatory surcharge and Crime Victims Assistance fee have increased significantly and far outpaced inflation. To us, this indicates that these fees and surcharges do not serve to ensure individual accountability through a recuperation of cost, but rather solely focus on covering budget gaps and legislative priorities.

Over the last couple years, FPI has documented how fees and surcharges create economic harm throughout New York communities and may perversely incentivize law enforcement and government officials. The US Department of Justice's analysis of Ferguson, Missouri's legal system demonstrated clearly that fees acting as revenue generators lead to biased and inappropriate enforcement. We see localities across New York that may easily face a situation like Ferguson. For example, our Fiscal Year 2019 analysis of municipal revenue data found 23 towns and eight villages that made ten percent or more of their total local revenue through fines and fees.²

These types of numbers are concerning from a fiscal policy perspective, especially given that many New Yorkers may struggle to pay these fees. Household economic data from a commonly cited US Federal Reserve report shows that more than one-fourth of adults in 2020 were unable to pay their monthly bills or only one \$400 financial setback away from being unable to pay.³ For a wealthy person, a \$175 surcharge for a misdemeanor conviction may be an inconvenience, however, an indigent person might lose nearly half of their available emergency savings. Additional research shows that fines and fees may leave someone in debt to the state for several years⁴ putting them at risk of facing an arrest warrant or even incarceration. For those that do pay, costs are often covered by family members and friends, demonstrating how fines and fees extract wealth from communities.⁵

Despite the regressive and ethical issues of using fees to generate revenue, many continue to argue that fees do serve a purpose in contributing to budgeting in the legal system. Although there has

¹ Long Corra, Cara, "Brief Look: New York State Fine and Fee Revenue Lacks Transparency, Obscures Economic Harms" Fiscal Policy Institute (2021), <https://fiscalpolicy.org/wp-content/uploads/2021/05/New-York-State-Fine-and-Fee-Revenue-Lacks-Transparency-1.pdf>

² Fiscal Policy Institute, "Local Governments Across New York Must Re-Examine Fines and Fees Revenue" (2021), https://fiscalpolicy.org/wp-content/uploads/2021/08/Local-Govt-Fact-Sheet-Fines-and-Fees_20210831.pdf

³ See also, Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2020," The Federal Reserve (May 2021), <https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-executive-summary.htm>

⁴ Ward et al., "Imposition and Collection of Fines, Costs, and Restitution in Pennsylvania Criminal Courts," (2021), https://www.aclupa.org/sites/default/files/field_documents/fines_and_costs_report_updated_march_2021.pdf

⁵ Alabama Appleseed et al., "Under Pressure: How Fines and Fees Hurt People, Undermine Public Safety, and Drive Alabama's Racial Wealth Divide," *Alabama Appleseed* (2018), <https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf>

not been a systematic cost-benefit analysis of fees in New York, a growing body of research shows that the cost of collecting fines and fees may be exorbitant compared to other more progressive revenue sources. For example, a rigorous study conducted by the Brennan Center for Justice at New York University examined a selection of New Mexico and Texas counties and found that localities spend more than 41 cents for every dollar they collect in fines and fees revenue. This is 121 times what the Internal Revenue Service spends to collect taxes.⁶

Beyond these concerns regarding the regressive use of these fees and the economic burden it places on New York families and communities, our investigation of fines and fees demonstrates a severe lack of government accountability and transparency. Fees are charged via a complex set of state statutes, including penal, vehicle and traffic, environmental conservation, judiciary, and finance laws and spent through the General Fund and a bevy of State Special Revenue Funds. No one state government entity or agency comprehensively reports on the imposition, collection, and distribution of fees and surcharges. Despite many years working in this space and conversations with government partners, our team was unable to obtain data that could disaggregate data by type of fine or fee making it difficult to understand which fees funded which government agencies and grant programs.

Despite the lack of fiscal data transparency, it is known that besides going into the state's General Fund, the proceeds are used to support fully or in part multiple other functions. The Fiscal Policy Institute documents in its recent report:

While the General Fund is the primary operating fund for New York, operating costs for state programs are routinely supported by Special Revenue Funds, including expenses related to personal and non-personal service and employee fringe benefit costs. Special Revenue Funds receive monies from specific sources, and disbursements are legally restricted to support programs that conform with the purpose of the fund. For FY 2021, New York State estimates spending from 48 such funds, 39 of which support personal and nonpersonal service and fringe benefit costs. Of these, 19 have some combination of fines, fees, penalties, and surcharges listed as a revenue source. Of those 19 Funds, 3 - Environmental Conservation, Indigent Legal Services, and Dedicated Mass Transportation Trust Fund – explicitly list fines and fees generated from vehicle and traffic law violations as revenue sources. Though subject to the state's 2 percent spending cap, reliance on State Special Revenue Funds to cover the costs of programs and state operations is a budget maneuver that creates structural dependence on this revenue.⁷

Furthermore, FPI finds that program spending on grants and payments—the very purpose for the existence of these funds—often lags by several years, while spending for government operations routinely occurs within the same year.⁸ Again, this raises concerns regarding the fairness of framing these fees and surcharges as simple mechanisms for recuperating costs.

⁶ Matthew Menendez et al., “The Steep Costs of Criminal Justice Fees,” *Brennan Center for Justice* (November 2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

⁷ Long Corra, Cara, “Brief Look: New York State Fine and Fee Revenue Lacks Transparency, Obscures Economic Harms” Fiscal Policy Institute (2021), <https://fiscalpolicy.org/wp-content/uploads/2021/05/New-York-State-Fine-and-Fee-Revenue-Lacks-Transparency-1.pdf>

⁸ Fiscal Policy Institute, “Local Governments Across New York Must Re-Examine Fines and Fees Revenue” (2021), https://fiscalpolicy.org/wp-content/uploads/2021/08/Local-Govt-Fact-Sheet-Fines-and-Fees_20210831.pdf

To close, it is important to note that New York has never done a comprehensive cost-benefit analyses of these fees. However, data from other states indicate this may be an inefficient and unreliable form of revenue. For these reasons, we see fees and surcharges as an ineffective and unaccountable fiscal policy design. They ultimately undermine the fiscal integrity of our local governments and economic health of New York communities.

Reliance on the Criminal Legal System

The U.S. Justice Department’s (USDOJ) Ferguson Report uncovered a pattern of racially discriminatory policing practices incentivized by the city’s dependence on the criminal legal system to raise revenue.⁹ The report cites the use of warrants and jail time to coerce fine and fee payments and stark racial disparities in traffic stops, citations, and arrests. It also draws attention to the pattern of discrimination that arises due to skewed incentives.¹⁰ Recent research shows many localities in New York are similarly reliant on fine and fee revenue.¹¹ The COVID-19 pandemic and resulting financial crisis can only intensify the negative racial, economic, and health impacts of policing in pursuit of revenue.

New York does not keep records on how the government assesses, collects, and distributes revenue from individual fees, including the mandatory surcharge. New York also fails to maintain data reporting infrastructure to track the amounts imposed and collected for specific fees, including the mandatory surcharge and associated revenue spending. Thus, the practice functions as an obviously regressive and opaque fiscal policy; responsible reform might be considered.¹²

New York’s Mandatory Surcharge Functions as a Tax Scheme

Fees (or surcharges) are extra costs that the government attaches to every conviction — even traffic tickets and minor infractions. They can total hundreds of dollars (not including the amount of any

⁹ United States Department of Justice Civil Rights Division, *The Ferguson Report: Department of Justice investigation of the Ferguson Police Department* (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

¹⁰ “Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional character of Ferguson’s police department, contributing to a pattern of unconstitutional policing...Over time, Ferguson’s police and municipal court practices have sown deep mistrust between parts of the community and the police department, undermining law enforcement legitimacy among African Americans in particular.” (U.S. DOJ, *The Ferguson Report* (2015): 2)

¹¹ 34 localities raise 10 percent or more of their revenue through fines and fees; 12 localities raise 20 percent or more of their revenue through fines and fees. Mike Maciag, “Local Government Fine Revenues By State,” *Governing*, September, 2019, <https://www.governing.com/gov-data/other/local-governments-high-fine-revenues-by-state.html>.

¹² The lead researchers for the No Price on Justice coalition along with the Fiscal Policy Institute, contacted the New York State Division of Criminal Justice Services (DCJS), the Office of Court Administration - New York Unified Court (OCA), the New York Office of the State Comptroller (OSC), the New York State Department of Taxation and Finance (DTF), and the New York State Division of Budget (DOB) in attempts to obtain data and reporting relating to the state’s mandatory surcharge, other fees, and fines. The lack of complete and transparent reporting of all imposition, collection, and disposition of the mandatory surcharge and other fee revenue suggests that government decision-making about these fees suffers from persistent data gaps, which makes the individual and community impact of fees challenging to assess and simultaneously raises questions about fiscal policy intentions. It is also in violation of New York reporting requirements. NY Crim Pro L § 420.35 (2012)

fine a court may impose). Individuals are often required to pay fees on top of a fine, or even when the judge decides not to impose a fine at all. These court fees are explicitly intended as revenue raisers; they function as a form of regressive taxation on New Yorkers who are often the least able to afford them.

New York's top predatory fee is the mandatory surcharge. The mandatory surcharge is a fee attached to every conviction in New York, from minor violations to felonies.¹³ Courts cannot waive or reduce these fees or surcharges, or even consider your ability to pay them, and ending this practice across the state calls for legislative reform.¹⁴ Depending on the type of conviction, a single mandatory surcharge can amount to hundreds of dollars. In addition to mandatory fees, many charges come with a mandatory minimum fine, meaning that judges cannot consider someone's ability to pay.

New York's Court Fees Place an Undue Burden on the Poor

Fines and fees punish people living in poverty. When governments use predatory fines and fees to raise money, the result is a hidden, disproportionate tax on those who can least afford it. Fees may have significant consequences, and they impact everything from housing stability to emotional well-being to relationships with friends and family. Paying just one traffic ticket and its mandatory surcharge could mean missing rent, going without healthcare, or living without basic necessities. These fines and fees often force an indigent defendant, or their family, to choose between paying a fine that if unpaid would land a family member in jail, or the ability to afford rent, food, and other daily essentials.

Data shows, New York has not only increased fees over time, but also made certain fees *less affordable* and a much greater financial burden. Since the creation of the mandatory surcharge in the 1980s, the surcharge for violations has increased *178 percent more* than the expected inflation-adjusted amount. For misdemeanors and felonies, the surcharge increased 92 percent and 75 percent, respectively, relative to the inflation-adjusted amount.¹⁵

It is Time to End New York's Predatory Court Fees

The End Predatory Court Fees Act, (S.3979C/A.2348B), would address these injustices by first and foremost eliminating mandatory court surcharges, which is New York's most predatory fee. Probation and parole fees would be eliminated so a person's ability to re-enter the community and the workplace isn't unnecessarily burdened by further financial obligations. Additionally, the practice of garnishing the commissary accounts to pay for fines and fees would be eliminated. These accounts are held by individuals who are incarcerated, and family members contribute their

¹³ See New York State Penal Law, §60.35, New York State Finance Law, §97-BB, and New York State Vehicle and Traffic Law, §1809.

¹⁴ C.P.L. 420.35(2) bars courts from waiving the surcharge, and ending this practice across the state calls for legislative reform.

¹⁵ Data obtained through William Donnino, Practice Commentary, McKinney's NY Penal Law § 60.35.

hard earned money to these accounts so that incarcerated individuals can purchase things they need while in prison. This legislation would also eliminate mandatory minimum fines and create a mechanism for judges to consider a person's ability to pay before imposing a fine. And most significantly, this legislation would put a long overdue end to the draconian practice of incarceration for failure to pay a fine or a fee.

New York must start funding government equitably, not on the backs of those least able to afford it. New York must also regularly and transparently report any revenue imposed and collected within the legal system, including geographic and demographic data, as well as how that revenue is spent. This inefficient, extractive, and predatory practice of imposing predatory fees has far-reaching consequences that endanger individuals' attempts to secure stable housing and employment. In addition to systematically punishing people living in poverty, fines and fees disproportionately exposes black and brown New Yorkers to more, potentially deadly, interactions with law enforcement.

Amidst an ongoing pandemic and economic setback it caused, both local governments and millions of Americans are struggling to pay for the essentials. In other times of financial crisis, local governments have typically increased their reliance on mandatory fines and fees, to the detriment of their poorest citizens. New York has an opportunity to advance toward a more just society and the End Predatory Court Fees Act is an important part of that effort.