



**WASHINGTON LAWYERS' COMMITTEE**  
**FOR CIVIL RIGHTS AND URBAN AFFAIRS**

**Committee on Transportation and the Environment**  
**Roundtable on Traffic Enforcement in the District**

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Vision Zero is a matter of saving Black lives. People of color in the District of Columbia are more likely to die or be injured in a traffic incident than their white counterparts.<sup>1</sup> Neighborhoods where communities of color live can be particularly dangerous. From 2017 – 2022, a person was nine to ten times more likely to die in a traffic incident in Wards Seven or Eight than in Ward Three.<sup>2</sup> Since the 1960s when whiter parts of the District avoided the expansion of the interstate system, the Black communities of Southeast DC faced the construction of I-295 and I-395, creating more congestion on surface roads, which combined with decades of neglect has created an infrastructure that is dangerous for Black lives.<sup>3</sup>

At the same time, traffic enforcement in the District also puts Black lives at risk. Black motorists are more likely to be stopped by police,<sup>4</sup> and as recent high profile incidents have shown time and time again, police encounters may be deadly for these Black drivers.<sup>5</sup> Further, Black motorists are disproportionately more likely to be given traffic fines, but also disproportionately less likely to have the financial means to pay those fines.<sup>6</sup>

District leaders and the DC Council need to come up with solutions that will balance keeping Black lives safe from traffic injuries and deaths while not endangering those same Black lives through traffic enforcement mechanisms.

The Washington Lawyers' Committee for Civil Rights and Urban Affairs (the "WLC")'s mission is to promote race equity and end race discrimination in the District and region.<sup>ii</sup> Because Vision Zero is an important race equity initiative in the District, the WLC is grateful for the invitation to submit this testimony and proud to support the Council in coming up with effective solutions. The WLC urges the Council to center race equity and a holistic view of public safety in its considerations. Below we have suggested policy ideas and principles that

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<sup>i</sup> Chairman Charles Allen invited the Washington Lawyers' Committee for Civil Rights and Urban Affairs (the "WLC") to testify before the DC Council Committee on Transportation and the Environment's Roundtable on Traffic Enforcement in the District. Chairman Allen asked that the testimony focus on MPD's involvement in traffic stops, reinstating restrictions on drivers' licenses based on unpaid traffic and parking fines, and more equitable considerations for fines. This written testimony is a supplement to the testimony that Dennis A. Corkery provided on behalf of the WLC on May 23, 2023.

<sup>ii</sup> The Washington Lawyers' Committee for Civil Rights and Urban Affairs works to create legal, economic and social equity through litigation, client and public education and public policy advocacy. While we fight discrimination against all people, we recognize the central role that current and historic race discrimination plays in sustaining inequity and recognize the critical importance of identifying, exposing, combating and dismantling the systems that sustain racial oppression. We partner with individuals and communities facing discrimination and with the legal community to achieve justice.

would save Black lives and focus traffic enforcement on what should be its only goal and concern: safety.

**I. The Council Should Adopt the DC Police Reform Commission’s Recommendations on Pretext Stops and Traffic Enforcement**

Removing the Metropolitan Police Department (“MPD”) from most traffic enforcement in DC would save Black lives. From July 2019 to December 2022, ninety percent of MPD’s traffic stops were of Black motorists.<sup>7</sup> That is a staggering figure and nearly double the percentage of DC residents who are Black.<sup>8</sup> Not only do Black drivers face the brunt of police enforced traffic stops, they can also face pain and danger from them. Our nation has witnessed how these stops can turn deadly for people of color, as tragic examples such as Philando Castille, Daunte Wright, and Tyrie Nichols have illustrated.<sup>9</sup> Further, the prevalence of media reporting on these and other instances of police violence against Black people, combined with Black individuals’ own lived experiences with the police, can lead to an instinctual fear of law enforcement and a flight response.<sup>10</sup> MPD officers bring to any stop a threat to life and liberty because they are armed with guns and arrest authority. Both threats raise the temperature of any traffic stop and have nothing to do with traffic safety. Indeed, our own Court of Appeals has recognized that although all people may feel nervous during a police encounter “an African-American man facing armed policemen would reasonably be especially apprehensive.”<sup>11</sup> A recent study examining police stops of Black men for minor traffic violations found that when Black men heard recordings of officers giving commands to drivers during a stop, eighty-one percent of those listening worried that excessive force would follow, even though none of the stops in that study lead to that result.<sup>12</sup> A traffic stop can therefore traumatize Black motorist even if they are able to drive away without a ticket.

MPD is armed with the constitutional authority and incentive to use traffic stops as “pretext” for a criminal investigation that has nothing to do with the reason for the initial stop.<sup>13</sup> In other words, the Constitution and DC law permit an MPD officer to pull over a motorist for something such as a broken taillight even if the officer’s actual motivation was to look for criminal activity or just because the motorist was Black. These pretext stops give cover for racial bias, create a more dangerous situation for drivers, further erode trust between MPD and the community, and distract from the safety purpose of traffic enforcement.<sup>14</sup> To be sure, it is unconstitutional for a police officer to take an enforcement action based on race,<sup>15</sup> but proving that an officer pulled over a driver because he is Black when the officer had an otherwise valid justification is an extraordinarily high burden to meet.<sup>16</sup> Recent evidence suggests that when a stop is devoid of pretext and focused only on the traffic violation at hand, it is less intrusive, demeaning, or threatening to a Black driver: when an officer starts a traffic stop of a Black man by telling him the reason he is pulled over, the stop is much less likely to escalate to a search, handcuffing, or arrest than if the officer starts by giving the motorist a command.<sup>17</sup> Pretext stops are another dangerous tool that MPD uses that do not make the roads safer.

Accordingly, the WLC recommends that the Council adopt the DC Police Reform Commission’s recommendations to transfer most traffic enforcement to the District Department of Transportation (“DDOT”) and forbid the use of pretext stops because doing so will save Black

lives and improve traffic safety.<sup>18</sup> Allowing DDOT to take over enforcement of most traffic violations such as vehicle equipment issues will allow traffic enforcement to be done with a focus on safety without the fear of a gun, an arrest, or a traumatic fishing expedition through a pretext stop. DDOT officers could do much of the enforcement without making a stop at all by writing a ticket and sending it to the owner of the vehicle. Further, MPD would retain the authority and the responsibility of stopping drivers that are demonstrating objectively dangerous behavior immediately threatening public safety such as drivers who are driving recklessly or under the influence.<sup>19</sup> Therefore, the District could spend appropriate resources on road safety while limiting the risks and trauma that police stops can have on Black motorists.

The District would not be alone in enacting these measures. Our neighbors in Virginia have limited the ability of police to stop motorists for vehicle equipment issues.<sup>20</sup> The Cities of Philadelphia,<sup>21</sup> Oakland,<sup>22</sup> and Minneapolis<sup>23</sup> have put in place similar restrictions. Going even further, the States of Washington and New Mexico and the City of Los Angeles<sup>24</sup> have ended the use of pretext stops with no measurable negative effect on public safety.<sup>25</sup>

## **II. The Council Should Keep Intact Its Reforms to the Clean Hands Law Because it Will Keep DC Safer**

The WLC lauds the Council's recent amendment to the Clean Hands Law to no longer condition the renewal of a driver's license on having paid off any debt to the District.<sup>26</sup> The new law advances race equity in DC because barring people from getting a license who cannot pay their debt, as the previous restrictions did, disproportionately injures Black people. Black people are far more likely to receive traffic tickets than other races in DC.<sup>27</sup> Black people are also disproportionately less likely to have the means to have pay those tickets than white DC residents.<sup>28</sup> Indeed, household income for white families in DC is three times as that for Black families.<sup>29</sup> When ninety-seven percent of the fines and fees that District collects are from traffic and parking tickets,<sup>30</sup> Clean Hands restrictions for driver's licenses would disproportionately harm Black DC residents.

Reinstating restrictions on renewing a license because of unpaid traffic tickets could be devastating for low-income families, who in the District are disproportionately Black and non-white Hispanic.<sup>31</sup> Driving is a type of economic lifeline. Because jobs in the region are concentrated away from neighborhoods that are affordable for low-income individuals, and public transportation is insufficient to get people to these jobs effectively, many low income people must rely on a car to get to work.<sup>32</sup> One unpaid ticket when doubled for non-payment could turn into a one hundred and fifty dollar debt, and would trigger the Clean Hands Law's one hundred dollar threshold.<sup>33</sup> Without access to a license, an individual could lose their job or have trouble keeping one.<sup>34</sup> Without a job, it can make it impossible to pay off the ticket.<sup>35</sup> The economic instability from a lost job can lead to food and housing insecurity for not just the motorist, but their children. That insecurity can have devastating outcomes on education and health, which can only create a further cycle of poverty for that family and their community. Accordingly, a rollback to the reforms would make DC less safe by increasing the risks of entrenched poverty.

Reinstating restrictions would not address public safety. The difference between a driver with multiple speeding tickets who pays their fines (and keeps driving) and one who has multiple speeding tickets and has not paid those fines (and is barred from driving) is one of ability or willingness to pay, not road safety. In both scenarios, the driver is guilty of multiple instances of speeding – yet only one driver is barred from the road.<sup>iii</sup>

The previous restrictions are a mismatch for Vision Zero’s goals in other ways as well. While hurting the most vulnerable of DC’s residents, a license restriction has limited impact on those who do not live in DC and hold the majority of unpaid tickets.<sup>36</sup> Further, the original impetus of the restrictions — revenue collection, not public safety<sup>37</sup> — has hampered the public’s trust in the system and lead to more unsafe driving.<sup>38</sup> The District’s stated reliance on traffic enforcement as a revenue source has inspired drivers to ignore safety rules because they can see them merely as a cash grab,<sup>39</sup> especially automated traffic enforcement cameras that are already heavily concentrated in poor and Black neighborhoods.<sup>40</sup> Accordingly, a rollback of reforms may inspire little compliance with traffic laws while making lives worse for low-income DC residents.

Any rollbacks in reforms would also likely be unconstitutional. United States District Court Judge Kollar-Kotelly has enjoined<sup>iv</sup> the District from not renewing licenses without a Clean Hands Certificate because it likely violated guarantees of procedural due process.<sup>41</sup> A driver was given only the option to pay the debt as listed or forgo the ability to drive.<sup>42</sup> Those same defects will exist unless the District puts into place adequate processes and procedures ensuring fair notice, a hearing, and the motorist’s ability to pay the fine.<sup>43</sup> The law could face other Constitutional challenges based on equal protection and substantive due process concerns because it does not take into account ability to pay and discriminates against people with low incomes.<sup>44</sup>

**III. The Council Should Focus on Safety and Enact Policies that Build Trust and Uphold the Constitution’s Racial Justice Safeguards of Due Process and Equal Protection.**

As the Council moves forward in enacting solutions to make our streets safer, there is an opportunity for those policies to be more fair and equitable than current schemes. Infrastructure investments such a speed bumps, traffic pattern adjustments, and fair individualized adjudications that a driver is not safe on the road are all possible policy avenues if done correctly. The WLC urges the Council to be thoughtful in tailoring any fines to be an appropriate disincentive to unsafe driving while as not devastating low-income communities.

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<sup>iii</sup> The District already uses a points system for suspending licenses for some moving violations. *See* Department of Motor Vehicles Driver Point System Chart, <https://dmv.dc.gov/page/point-system-chart> (last visited June 3, 2023). As long as that system includes due process protections for notice and hearing and focuses on the adjudicated violation and not the unpaid penalty, is a more safety-focused enforcement mechanism for clearly unsafe drivers than Clean Hands restrictions.

<sup>iv</sup> That this decision was vacated at the parties’ joint request in connection with a settlement agreement does not diminish the force of that opinion’s reasoning or make it any less likely that a court would rule in an identical way in the future.

Following sound constitutional principles in enacting these solutions can help the Council as it moves forward.

First, the Council should always consider solid due process protections for motorists. Whether it is automatic traffic enforcement, adjudications for losing a license for unsafe driving, or any new restrictions attached to unpaid fines, the inclusion of fair notice and a fair hearing will keep the District out of avoidable litigation and in line with the Fifth Amendment. Such processes will also help build trust with District residents. Hearings about the accuracy of any traffic penalties will start to show good faith on the part of the District that enforcement is about safety, not money.

The District can also further building trust with the community, public safety, and the Constitution by tailoring fines to an individual's ability to pay. A process that takes into account an individual's ability to pay could create the proper balance between discouraging dangerous driving and not discriminating against low-income individuals: a fine could still hurt enough for a driver to drive so as to avoid it but not so high as to make paying it futile.<sup>45</sup> Such a system could make it more expensive for wealthier drivers to speed or run red lights while not destroying the finances of someone already in poverty,<sup>46</sup> which could discourage even more drivers to avoid the pain of a ticket and support over all public safety. An ability to pay assessment would further the District's movement to traffic enforcement as public safety mechanism and away from a replacement for tax revenue. Such assessment would also be in keeping with the Constitution's guarantee against arbitrary and unjustified discrimination and the Supreme Court's admonition that an individual should not face a punishment simply because he is indigent.<sup>47</sup> Any fine structure that does not have such an assessment is at risk to future constitutional challenge and the Council should avoid having the District waste resources on losing litigation and instead put into place structures that promote both equity and safety.

The Council and District leaders must act to make Vision Zero a reality. Any actions the District takes are opportunities to change how DC enforces traffic laws in a more equitable, safer and effective way. Black lives are at stake.

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<sup>1</sup> 2022 UPDATE, <https://visionzero.dc.gov/pages2022-update> (last visited June 3, 2023).

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

<sup>3</sup> Adam Paul Susaneck, *Opinion: American Road Deaths Show an Alarming Racial Gap*, N.Y. TIMES, <https://www.nytimes.com/interactive/2023/04/26/opinion/road-deaths-racial-gap.html> (last visited June 3, 2023).

<sup>4</sup> STOP INCIDENTS DISTRICT OF COLUMBIA, [opendata.dc.gov/datasets/stop-data/about](https://opendata.dc.gov/datasets/stop-data/about) (last visited June 3, 2023).

<sup>5</sup> Vera Institute of Justice, INVESTING IN EVIDENCE-BASED ALTERNATIVES TO POLICING: NON-POLICE RESPONSES TO TRAFFIC SAFETY, Aug. 2021, <https://www.vera.org/downloads/publications/alternatives-to-policing-traffic-enforcement-fact-sheet.pdf> (last visited June 3, 2023).

<sup>6</sup> Tzedek DC, DRIVING DC TO OPPORTUNITY, 11-13.

<sup>7</sup> STOP INCIDENTS DISTRICT OF COLUMBIA, [opendata.dc.gov/datasets/stop-data/about](https://opendata.dc.gov/datasets/stop-data/about) (last visited June 3, 2023).

<sup>8</sup> DISTRICT OF COLUMBIA: 2020 CENSUS, <https://www.census.gov/library/stories/state-by-state/district-of-columbia-population-change-between-census-decade.html> (Last visited June 3, 2023).

<sup>9</sup> Vera Institute of Justice, INVESTING IN EVIDENCE-BASED ALTERNATIVES TO POLICING: NON-POLICE RESPONSES TO TRAFFIC SAFETY, Aug. 2021, <https://www.vera.org/downloads/publications/alternatives-to-policing-traffic-enforcement-fact-sheet.pdf> (last visited June 3, 2023).

<sup>10</sup> Kristin N. Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 AM. U. L. REV. 1513, 1556 (2018).

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- <sup>11</sup> *Dozier v. United States*, 220 A.D. 933, 944 (D.C. 2019).
- <sup>12</sup> Nell Greenfieldboyce, *For Black drivers, a police officer's first 45 words are portent of what's to come*, NPR, May 29, 2023, <https://www.npr.org/2023/05/29/1178279383/for-black-drivers-a-police-officers-first-45-words-are-a-portent-of-whats-to-com>.
- <sup>13</sup> *Whren v. United States*, 517 U.S. 806, 813-15 (1996).
- <sup>14</sup> District of Columbia Police Reform Commission, *DECENTERING POLICE TO IMPROVE PUBLIC SAFETY: A REPORT OF THE DC POLICE REFORM COMMISSION*, April 1, 2021, 100-01.
- <sup>15</sup> *Whren*, 517 U.S. at 813.
- <sup>16</sup> *Richards v. Gelsomino*, 814 Fed. Appx. 607, 611 (D.C. Cir. 2020).
- <sup>17</sup> Nell Greenfieldboyce, *For Black drivers, a police officer's first 45 words are portent of what's to come*, NPR, May 29, 2023, <https://www.npr.org/2023/05/29/1178279383/for-black-drivers-a-police-officers-first-45-words-are-a-portent-of-whats-to-com>.
- <sup>18</sup> *DECENTERING POLICE TO IMPROVE PUBLIC SAFETY* at 100-02.
- <sup>19</sup> *Id.* at 101-02.
- <sup>20</sup> 2020 VA. ACTS SB 5029 (CHAP0051).
- <sup>21</sup> Phila., Pa., Bill 210636-A (Oct. 27, 2021).
- <sup>22</sup> Oakland, Cal., Resolution 88607 (May 3, 2021).
- <sup>23</sup> *Lucero v. Minneapolis*, Minn. Dist. Ct. 4th Jud. Dist., Settlement Agreement and Order (May 31, 2023), [https://mn.gov/mdhr/assets/Court%20Enforceable%20Agreement\\_tcm1061-571942.pdf](https://mn.gov/mdhr/assets/Court%20Enforceable%20Agreement_tcm1061-571942.pdf) (last visited June 3, 2023).
- <sup>24</sup> L.A. Police Department, Policy – Limitation on Use of Pretextual Stops – Established, Mar. 1, 2022, [http://www.lapdpolicecom.lacity.org/030122/BPC\\_22-042.pdf](http://www.lapdpolicecom.lacity.org/030122/BPC_22-042.pdf) (last visited June 3, 2023).
- <sup>25</sup> *DECENTERING POLICE TO IMPROVE PUBLIC SAFETY* at 101.
- <sup>26</sup> D.C. Act 24-174 (2022).
- <sup>27</sup> *DRIVING DC TO OPPORTUNITY* at 11-12.
- <sup>28</sup> *Id.*
- <sup>29</sup> DC Health Matters 2023 Demographics, [https://www.dchealthmatters.org/demographicdata?id=130951&sectionId=936#sectionPiece\\_72](https://www.dchealthmatters.org/demographicdata?id=130951&sectionId=936#sectionPiece_72) (last visited June 3, 2023).
- <sup>30</sup> *DRIVING DC TO OPPORTUNITY* at 11.
- <sup>31</sup> Eric Williams & Tazra Mitchell, *Large Black-White Disparities in Poverty and Income Persisted in 2021*, DC FISCAL POLICY INSTITUTE BLOG (Sept. 15, 2022), <https://www.dcfpi.org/all/large-black-white-disparities-in-poverty-and-income-persisted-in-2021/#>.
- <sup>32</sup> *DRIVING DC TO OPPORTUNITY* at 14.
- <sup>33</sup> *Id.* at 10.
- <sup>34</sup> *Id.* at 3-4.
- <sup>35</sup> *Id.*
- <sup>36</sup> Luz Lazo & Emily Davies, *D.C. struggles to rein in risky drivers. One car has \$186,000 in tickets*, WASHINGTON POST, May 3, 2023, <https://www.washingtonpost.com/transportation/2023/05/02/dc-traffic-tickets-driving-penalties/>.
- <sup>37</sup> *Parham v. District of Columbia*, No. 22-2481 (CKK), 2022 U.S. Dist. LEXIS 231979, at \*32 (D.D.C. Dec. 27, 2022).
- <sup>38</sup> Caitlin Rogger, *Traffic cameras, Circulator & K Street: Where are we on DC's transportation budget?*, GREATER GREATER WASHINGTON, May 3, 2023, <https://ggwash.org/view/89493/ate-circulator-and-k-street-what-the-mayor-did-and-what-the-te-committees-done>.
- <sup>39</sup> Corey Dade, *What's Driving the Backlash Against Traffic Cameras*, NPR, Feb. 22, 2012, <https://www.npr.org/2012/02/22/147213437/whats-driving-the-backlash-against-traffic-cameras>.
- <sup>40</sup> ATE Active Locations April 2023, <https://ddot.dc.gov/sites/default/files/dc/sites/ddot/publication/attachments/ATE%20Active%20Locations%20April%202023.pdf> (last visited June 3, 2023).
- <sup>41</sup> 2022 U.S. Dist. LEXIS 231979, at \*3.
- <sup>42</sup> *Id.* at 24-25.
- <sup>43</sup> *Id.* at 30.
- <sup>44</sup> *Id.* at 9.
- <sup>45</sup> Joe Pinsker, *Finland, Home of the \$103,00 Speeding Ticket*, THE ATLANTIC, Mar. 12, 2015, <https://www.theatlantic.com/business/archive/2015/03/finland-home-of-the-103000-speeding-ticket/387484/>.
- <sup>46</sup> *Id.*
- <sup>47</sup> *See, e.g., Bearden v. Ga.*, 461 U.S. 660 (1983).