

I violated a speeding law that does not exist

By Wayne Hoffman/Idaho Freedom Foundation

I got a speeding ticket the other day. I was driving between meetings in Kootenai County when a state police officer pulled me over. But the ticket made me wonder. I wondered why the state of Idaho has a law that fines people \$155 for speeding. It turns out, it doesn't; I broke a law that doesn't exist. More on that in a moment.

I think a lot about the impact of Idaho law on the working poor. My job isn't just to promote low taxes, less government and less regulation; these are items typically found in the vernacular of the people from "our" side. No, we must think more about whether a law serves to unfairly inhibit or punish people in the pursuit of happiness and the enjoyment of the fruits of their labor.

For me, a \$155 speeding ticket, while annoying, isn't devastating. Sure, I will cut something out of my budget to pay the fine, but that item won't be food for my kids or electricity to heat my home. For others, sadly, that would be the case. The gas station attendant earning minimum wage will lose more than two days of income before taxes.

Now back to the fine for a law that doesn't exist. My speeding ticket says I violated Idaho Code 49-654(2)(E), excessive speeding, for doing 73 in a 55 zone. Turns out there is no such statute. The "E" on the ticket is the state police's own unique way of distinguishing between regular speeding and really, really fast speeding. That's because, apart from speeding in a school zone and not speeding in a school zone, there is only one kind of speeding in Idaho law, whether you are going 5 miles an hour too fast or 30. The Legislature made no distinction

The Supreme Court, however, in 1991 said there is a difference between driving too fast and really, really driving too fast. The difference between the former and the latter is 15 miles an hour. Today, the fine for speeding is \$90, but past the 15 miles an hour mark, it is \$155.

A couple of observations are worth making:

First, the Legislature itself should set the penalty for speeding. Instead, lawmakers, in 1988, decided that the state Supreme Court should figure that stuff out. It gave the court no parameters for doing so, and thus, my crime of speeding could as easily be \$355 as it is \$155. This could probably be argued to be an unconstitutional delegation of the Legislature's authority. But more importantly, when set by the Legislature, the questions I raised previously ("Is this penalty unduly punitive on portions of our population?") can be properly considered.

Second, in our Republic, there is a basic concept that says only the Legislature should make law; the court should adjudicate that law. In the case of Idaho's speeding regulations, the Supreme Court has assumed the role of a separate branch of government. Is it good policy? I don't know.

Perhaps a better policy is one that, for example, distinguishes between speeding at night and speeding in the day, speeding in a residential area or speeding on a highway. But this is something that should be worked out in the painstaking lawmaking process of the Legislature, with hearings in

front of the House and the Senate, debate in the two chambers of elected officials and the consideration of the governor.

Few regulations impact everyday Idahoans as much as the rules of the road. If you drive, you run the risk of running afoul of laws, both real and imagined. Lawmakers and the court would do well to get this portion of the law correct.

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