
Police Misconduct: Ineffective Police Department Complaint-Review Procedures and the Proposition of Corrective Federal Oversight

*“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny.”*¹

I. INTRODUCTION

Over the past two centuries, the United States government has developed tools to accurately track annual tax revenues, but still has yet to implement effective means to report the exact number of lives police take in any given year.² This lack of accurate recordkeeping suggests that tracking the number of unarmed civilian deaths caused by police officers remains relatively low on the government’s to-do list.³ Through ineffective reporting techniques, federal officials place the death toll at approximately 400 civilians nationally per year.⁴ On the other hand, alternative sources estimate significantly higher numbers: Some records indicate that police killed as many as 1,093 and 1,146 people in the United States in 2016 and 2015 respectively.⁵

On average, the death toll has seen a positive incline over the last several years despite rising public outcry.⁶ In 2013, the total number of people killed

1. Letter from Martin Luther King, Jr., to Bishop C.C.J. Carpenter et al. (April 16, 1963), http://okra.stanford.edu/transcription/document_images/undecided/630416-019.pdf [<https://perma.cc/KRZ6-RN76>] (supporting notion of interconnectedness and ramifications of injustice in all states).

2. See Wesley Lowery, *How Many Police Shootings a Year? No One Knows*, WASH. POST (Sept. 8, 2014), https://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/?utm_term=.e145f280f2af [<https://perma.cc/4G6K-NSBQ>] (noting lack of accurate database or record of police shootings). The primary issue in producing accurate statistics is the method in which the numbers are gathered. See *id.* More than 17,000 police departments throughout the nation self-report their figures to the Department of Justice (DOJ) for “justifiable deaths.” See *id.* Michael Plant, a chief statistician from the Department of Justice, stated: “The FBI’s justifiable homicides and the estimates from (arrest-related deaths) both have significant limitations in terms of coverage and reliability that are primarily due to agency participation and measurement issues.” *Id.*

3. See *id.* (inferring reason behind poorly reported statistics on police killings).

4. See ANDREA M. BURCH, U.S. DEP’T OF JUSTICE, ARREST-RELATED DEATHS, 2003-2009 - STATISTICAL TABLES, PRODUCT NO. NCJ 235385, at 1 (2011), <http://www.bjs.gov/content/pub/pdf/ard0309st.pdf> [<https://perma.cc/PHD9-XYU2>] (estimating number of arrest-related deaths from 2003 to 2009). From 2003 to 2009, approximately 2,931 arrest related deaths were classified as homicide by law enforcement personnel. *Id.*

5. See *The Counted: People Killed by Police in the US*, GUARDIAN, <https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-map-us-police-killings#> [<https://perma.cc/Y9R7-GLES>] (tallying number of police killings in 2015 and 2016).

6. See *National Trends*, MAPPING POLICE VIOLENCE, <http://mappingpoliceviolence.org/nationaltrends> [<https://perma.cc/4Y3C-KKTC>] (drawing line of best fit through national trends to show slight increase).

by police was approximately 1,122; however, in 2014, that figure rose to 1,167—a 4% increase.⁷ Though this growth may not appear to be drastic, public outrage has brought this topic to the forefront of political conversations.⁸ Heightening the public’s awareness of these alarming figures is the objective of a multitude of online outlets, which have increased dissemination of this information on a national level and created a culture of outrage.⁹

This culture of outrage seems to have been ignited by the murder of Eric Garner, and was subsequently inflamed by a number of ensuing high-profile deaths of other unarmed civilians.¹⁰ Eric Garner was an unarmed forty-three-year-old man suspected of selling untaxed cigarettes.¹¹ In 2014, New York police officers beat and strangled Garner to death in the course of his arrest while Garner cried out, “I can’t breathe!”¹² An eyewitness recorded Garner’s arrest and death, and the video ultimately spread rapidly through Internet platforms such as Facebook and YouTube.¹³ While Garner’s death may have sparked the culture of outrage, the deaths of eighteen-year-old Michael Brown, Jr. and twenty-five-year-old Freddie Gray severely escalated the mounting

7. See *id.* (estimating number of Americans killed by police from 2013 to 2016). Given the inaccuracy of official statistics, this Note will rely upon unofficial numbers published by nongovernmental sources. See Lowery, *supra* note 2 (questioning accuracy of federal statistics)

8. See Celisa Calacal, *This Is How Many People Police Have Killed So Far in 2016*, THINKPROGRESS (July 5, 2016), <https://thinkprogress.org/this-is-how-many-people-police-have-killed-so-far-in-2016-7f1aec6b7098> [<https://perma.cc/87F2-SBLK>] (connecting heightened public awareness of police killings to policy shifts). One such policy shift occurred in Hennepin County, Minneapolis, where the county attorney decided to forgo the use of grand juries in cases involving fatal police shootings. See *id.* Substantially more police departments have begun to employ police body cameras as a means to decrease racial profiling, minimize police misconduct, and increase officer safety. See Karson Kampfe, Note, *Police-Worn Body Cameras: Balancing Privacy and Accountability Through State and Police Department Action*, 76 OHIO ST. L.J. 1153, 1158-59, 1169 (2015) (discussing current use of police body cameras and balance of accountability versus privacy).

9. See Calacal, *supra* note 8 (suggesting public awareness, rather than increased police killings, constitutes primary factor in culture of outrage). As awareness of the killing of unarmed civilians grows, so does the outcry for greater scrutiny on, and accountability for, police misconduct. See Iesha S. Nunes, Note, “Hands Up, Don’t Shoot:” *Police Misconduct and the Need for Body Cameras*, 67 FLA L. REV. 1811, 1814-15 (2015) (arguing need for body cameras on all police officers).

10. See AFP, *High-profile U.S. Police Killings of Black Suspects*, DAILY MAIL (May 1, 2015), <http://www.dailymail.co.uk/wires/afp/article-3064575/High-profile-US-police-killings-black-suspects.html> (listing high profile police killings from 2014 to 2015). Killings, like that of Michael Brown, drew national attention to the issue of police killing unarmed civilians and brought the public together in deep outrage and protest. See Linda Sheryl Greene, *Before and After Michael Brown—Toward an End to Structural and Actual Violence*, 49 WASH. U. J.L. & POL’Y 1, 3-4 (2015) (discussing aftermath of Michael Brown’s death). The police killing of Michael Brown caused demonstrations throughout the nation as well as demands for police accountability through the use of police body cameras. See Nunes, *supra* note 9, at 1814 (arguing improper conduct preventable with police body cameras).

11. See *2014 Unarmed Victims*, MAPPING POLICE VIOLENCE, <http://mappingpoliceviolence.org/unarmed2014> [<https://perma.cc/6TA5-YS4V>] (listing police killing of unarmed citizens in 2014).

12. See *id.* (describing Eric Garner’s death).

13. See Al Baker et al., *Beyond the Chokehold: The Path to Eric Garner’s Death*, N.Y. TIMES (June 13, 2015), <https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html> (chronicling chokehold and killing of Eric Garner).

tension between the police and the civilians they have sworn to protect.¹⁴ The highest number of police killings between 2013 and 2016 occurred in California, Florida, and Texas, even though the aforementioned high-profile killings occurred in other states.¹⁵

Considering the disparity in the number of police killings from state to state, this Note argues that the primary recourse for police misconduct is increased federal oversight, including more uniformity in the policies and procedures used to address and review citizen complaints against police officers.¹⁶ This Note begins with an abridged explanation of Congress's constitutional authority to enact legislation to compel state action.¹⁷ Subsequently, this Note discusses modern instances of police misconduct, including a review of the recent, high-profile cases and the federal government's reaction to growing public outrage.¹⁸ Furthermore, this Note explores the current laws governing the review of complaints made against police officers.¹⁹ Specifically, Part II of this Note focuses on the policies and procedures in the three states with the highest number of police killings, as compared to those of two states of comparable size with substantially lower killings.²⁰ Finally, this Note analyzes what increased federal oversight may accomplish, and what an ideal proposal to improve police transparency and accountability may look like.²¹

14. See AFP, *supra* note 10 (describing deaths of Freddie Gray and Michael Brown).

15. See *State Comparison Tool*, MAPPING POLICE VIOLENCE, <http://mappingpoliceviolence.org/states> [<https://perma.cc/67TJ-8JLM>] (comparing number of police killings in all fifty states). Specifically, police killed over 140 unarmed victims in California, over seventy in Florida, and approximately sixty in Texas between 2013 and 2016. *Id.* Moreover, there has been recent litigation involving the State of California and the failure of its internal police review structure, as created by its local and state legislatures. See *Galzinski v. Somers*, 207 Cal. Rptr. 3d 191, 193-94 (Cal. Ct. App. 2016) (enforcing petitioner's right to proper complaint review under local police department's published protocol). The federal government is only equipped to address the varying procedures and protocols of each individual police department through civil action for equitable and declaratory relief. See 34 U.S.C.A. § 12601 (West 2018). (outlawing pattern or practice by law enforcement depriving persons of constitutional rights). This statute empowers the Attorney General to bring civil suit against a police department if he or she has "reasonable cause" to believe there is a prohibited pattern or practice of police conduct; however, the statute provides no redress for victims. See *id.* *Contra* 42 U.S.C. § 1983 (2012) (providing civil relief for citizens against persons who, under color of law, deprive rights).

16. See *infra* Sections III.B.1-2 (suggesting areas of increased constitutional federal oversight and consequential increase in police accountability).

17. See *infra* Section II.A.1 (explaining Congress's constitutionally granted authority and limitations to Commerce Clause and Taxing and Spending Clause).

18. See *infra* Section II.B (describing several cases of police killing of unarmed minorities and federal government's reaction).

19. See *infra* Sections II.C.1-2 (noting current police complaint procedure law).

20. See *infra* Sections II.C.1-2 (examining citizen complaint review procedure for high-incident states versus low-incident states).

21. See *infra* Section III.B.1 (arguing for increased federal oversight to create uniformity amongst states and better community-police relations).

II. HISTORY

A. Abridged Explanation of Constitutionally Allowed Federal Oversight

1. Source of Congress's Authority to Compel State Action

The people of the United States granted all powers and authorities so vested in Congress through the ratification of our Constitution.²² The Constitution grants Congress the primary power to enact legislation, including legislation that compels state action.²³ Congress may only enact legislation governing specific subject matters as prescribed by the Constitution.²⁴ The Commerce Clause and the Taxing and Spending Clause are two examples of such prescriptions.²⁵ Over time, the Supreme Court has further defined and outlined the practical meaning of the Commerce Clause and, specifically, the precise types of interstate activity that may be regulated.²⁶ In *United States v. Lopez*, the U.S. Supreme Court explained that the Commerce Clause gives Congress the ability to regulate: the channels of interstate commerce; the instrumentalities of, or persons or things in, interstate commerce; and economic activities that substantially affect, or substantially relate to, interstate commerce.²⁷ Congress has used the Commerce Clause to regulate a broad range of activities, even those that the average person may not consider to be economic in nature or related to interstate commerce.²⁸ For example, Congress

22. See U.S. CONST. pmb. The preamble to the United States Constitution states:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Id. The phrase “We the *People* of the United States . . . do ordain and establish this Constitution,” speaks strongly to the Founding Fathers’ intent to specify *from whom* the powers granted to the federal government originate. See *id.* (emphasis added).

23. See U.S. CONST. art. I, § 1, 8 (defining Congress’s authority to enact legislation to compel state action); see also *infra* note 25 and accompanying text (describing two broad categories of federal legislative authority over states).

24. See U.S. CONST., art. I, § 8 (defining what Congress may regulate or control through its authority to enact legislation).

25. See *id.* art. I, § 8, cl. 1, 3 (defining Taxing and Spending Clause and Commerce Clause). The Taxing and Spending Clause grants Congress the authority to “lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.” See *id.* art. I, § 8, cl. 1. Additionally, the Commerce Clause grants Congress the authority “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” See *id.* art. I, § 8, cl. 3.

26. See, e.g., *United States v. Lopez*, 514 U.S. 549, 558-59 (1995) (defining three broad categories of activities Congress may regulate under Commerce Clause).

27. See *id.*

28. See *Wickard v. Filburn*, 317 U.S. 111, 128-29 (1942) (holding local economic activity substantially affects interstate commerce when aggregated); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 3 (1824) (applying more literal interpretation of Commerce Clause in upholding regulation of interstate ferry business). Additionally, the Supreme Court has held that Congress may regulate intrastate activity when the failure to

has utilized this power to promote social or moral initiatives—such as civil rights legislation—when other clauses of the Constitution would not allow such action.²⁹ Though the Commerce Clause confers upon Congress wide freedom to regulate numerous types of activity, courts have tempered this power.³⁰ In *United States v. Morrison*, Congress attempted to provide relief for women who had been victims of violence; the Supreme Court rejected Congress's argument that the violence prevented by the bill would otherwise affect women in the workplace, and thus have a negative effect on interstate commerce.³¹ Specifically, the Court held that Congress's proposed connection between violence against women and interstate commerce was too attenuated to be constitutionally permissible.³²

The Supreme Court has also limited the broad range of congressional authority granted by the Commerce Clause through the application of the Tenth Amendment, specifically holding that it prohibits commandeering the states.³³ Nevertheless, to constitutionally compel state action through the Commerce Clause while adhering to Tenth Amendment limitations, Congress may create

control such activity would undermine Congress's ability to regulate a greater interstate economic scheme. *See Gonzales v. Raich*, 545 U.S. 1, 22 (2005) (voicing Congress's ability to regulate some purely local, noneconomic activity).

29. *Compare Katzenbach v. McClung*, 379 U.S. 294, 304-05 (1964) (holding Congress may prohibit private discrimination at restaurants if hindering interstate commerce), and *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261-62 (1964) (furthering Congress's ability to prohibit discrimination in hotels), with *The Civil Rights Cases*, 109 U.S. 3, 25-26 (1883) (holding Congress cannot prohibit private discrimination under Fourteenth Amendment). In *Heart of Atlanta Motel*, the Court held that Congress may enact civil rights legislation where doing so removes hindrances on interstate commerce. *See* 379 U.S. at 261-62. The Court also found that there was sufficient evidence from a study conducted by Congress to show a reasonable correlation between the discrimination exhibited by the hotel and a disruption in the interstate travel of persons. *See id.* at 252-53.

30. *See infra* note 31 and accompanying text (recognizing limits on Congress's ability to regulate under Commerce Clause).

31. *See United States v. Morrison*, 529 U.S. 598, 627 (2000) (declaring Congress does not have power under Commerce Clause to regulate violence against women); *see also id.* at 614-15 (holding Congress lacked authority to enact statute under guise of affecting interstate commerce). The relevant statute that Congress enacted provided a civil remedy to victims of gender-motivated violence. *See Civil Rights Remedies for Gender-Motivated Violence Act*, Pub. L. No. 103-322, 108 Stat. 1941 (1994) (allowing victims of violence to recover for compensatory and punitive damages), *invalidated by United States v. Morrison*, 529 U.S. 598 (2000). In coming to its conclusion, the Court rejected Congress's argument that the regulation was constitutional due to the attenuated effects that violence against women would have on the national economy. *See Morrison*, 529 U.S. at 617-18. The government argued that the commission of these crimes would indirectly impact multiple economic areas such as employment, production, transportation, and consumption; but the Court held this reasoning was too attenuated and would result in Congress's ability to regulate well beyond the intent of the Commerce Clause. *See id.* at 615-18.

32. *See Morrison*, 529 U.S. at 612-615 recognizing attenuation between violence against women and economy).

33. *See U.S. CONST. amend. X; Printz v. United States*, 521 U.S. 898, 924 (1997) (recognizing Tenth Amendment commandeering limitations); *New York v. United States*, 505 U.S. 144, 161 (1992) (applying Tenth Amendment limitations on commandeering state legislature).

legislation that trumps state law, or states may enact their own legislation that is equivalent to, or more restrictive than the federal standard.³⁴

Under the Taxing and Spending Clause, Congress has the authority to “lay and collect Taxes” as well as “provide for the . . . general Welfare of the United States.”³⁵ The U.S. Supreme Court interpreted the latter portion of the clause as allowing Congress to give funds to the states for the general welfare of the United States, and place conditions upon receipt of those funds.³⁶ By placing conditions upon a state’s receipt of funds, Congress can regulate certain social activities that Congress cannot otherwise reach under the Commerce Clause.³⁷ Aside from the traditional powers granted under the Commerce and Taxing and Spending Clauses, these conditions give Congress the ability to further compel state action.³⁸

Similar to the Court’s treatment of the Commerce Clause, the Court has placed Tenth Amendment limits on the Taxing and Spending Clause.³⁹ For example, in *South Dakota v. Dole*,⁴⁰ the Supreme Court explained that the Tenth Amendment prohibits Congress from placing conditions on funds that are too coercive because doing so would allow Congress to commandeer a state by offering no true choice as to whether to accept the federal funds.⁴¹ The Court further explained that conditions on funding are constitutional if they are: for the general welfare; unambiguous; related to a federal national project, program, or interests; and do not violate the Tenth Amendment by commandeering the state through coercion.⁴²

34. See *New York*, 505 U.S. at 166-67 (differentiating between encouragement and commandeering of states). In *New York*, Congress enacted a statute that instructed the New York legislature to enact legislation that met certain environmental standards. See *id.* at 149-50 (demonstrating improper use of authority under Commerce Clause). The Court concluded that the statute violated the Tenth Amendment in part because this type of commandeering of the state legislature makes it extremely difficult for constituents to know who is responsible for the law: the federal government or the state government. See *id.* at 169. Alternatively, to achieve a similar goal, Congress could give states the option to either be trumped by federal law, or to create their own legislation equal to or greater than the minimum standard set by federal law. See *id.* at 167-68.

35. U.S. CONST. art. I, § 8, cl. 1.

36. See *South Dakota v. Dole*, 483 U.S. 203, 206-07 (1987) (declaring condition of minimum drinking age constitutional under Congress’s Taxing and Spending power). The Supreme Court has ruled that Congress may attach conditions on the funds they provide to states. See *id.* Additionally, the Court held that Congress’s condition on the state was not too coercive as it represented only 5% of the total federal funding otherwise available under the highway grants. See *id.* at 211.

37. See *id.* at 206-07, 211-12 (upholding minimum drinking age condition for receipt of federal highway funds to achieve social goals).

38. See *id.* at 206 (allowing incentivizing state action through conditional receipt of federal funding). Congress used the possibility of receiving funds for highways as an incentive for states; however, receipt of those funds was based upon the condition that the state raised its drinking age to twenty-one. See *id.* at 205-06.

39. See *id.* at 210-11 (outlining test to determine constitutionality of conditions on funds).

40. 483 U.S. 203 (1987).

41. See *id.* at 210-12 (establishing limits on Congress’s power under Tenth Amendment).

42. See *id.* at 207-08 (defining test related to Tenth Amendment limitations); see also *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 588 (2012) (upholding constitutionality of individual mandate through Congress’s power to tax, while holding Medicare expansion unconstitutional).

2. Past Federal Regulation of State Police

The United States has a history of police misconduct, but federal regulation of state police departments did not begin until after the 1963 Birmingham Campaign—a violent reaction to civil rights protests.⁴³ Following the Birmingham Campaign, Congress enacted the Civil Rights Act of 1964 as a means to protect citizens against discrimination in various forms.⁴⁴ Specifically, Title VI of the Civil Rights Act prohibited discrimination on the basis of race—among other classifications—by any program or activity that receives federal funding, including state police departments.⁴⁵ Subsequent federal regulatory activity developed following Rodney King’s beating in 1991.⁴⁶ In 1991, the police pursued Rodney King, a taxi driver, for suspicion of speeding and driving while intoxicated.⁴⁷ After the police pulled Rodney King over, a nearby witness recorded four officers kicking, tazing, and hitting King over fifty-three times.⁴⁸ Later, news reports informed the public that King suffered multiple bruises, a broken leg, and scars from the tasers that delivered 50,000 bolt shocks.⁴⁹ The four officers involved were tried and acquitted; this display of excessive force against a civilian culminated in riots, which concluded with fifty-five people dead and over 2,000 people injured.⁵⁰ In 1994, Congress responded to the Rodney King beating by passing the Violent Crime Control and Law Enforcement Act of 1994, which empowered the Attorney General to bring civil actions for equitable and declaratory relief against those state and local law enforcement agencies that have displayed a pattern or practice of infringing upon people’s constitutional rights.⁵¹ The Act

43. See Glenn Eskew, *Birmingham Campaign of 1963*, ENCYCLOPEDIA ALA. (Sept. 20, 2007), <http://www.encyclopediaofalabama.org/article/h-1358> [https://perma.cc/6GXD-KZZS] (chronicling 1963 protests in Birmingham as “climax of . . . modern civil rights movement”).

44. See Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.) (codifying protection of constitutional rights and prevention of discrimination); Eskew, *supra* note 43 (discussing intent behind legislation).

45. See 42 U.S.C. § 2000d (2012) (using federal funding to promote socioeconomic initiatives). The Act gives federal agencies that grant federal funding the authority to terminate or refuse to continue funding any recipient that has violated the statute by committing discrimination. See 42 U.S.C. § 2000d-1 (2012).

46. See Kimbriell Kelly et al., *Forced Reforms, Mixed Results*, WASH. POST (Nov. 13, 2015), <http://www.washingtonpost.com/sf/investigative/2015/11/13/forced-reforms-mixed-results/> [https://perma.cc/H7MH-9EKM] (discussing federal intervention in state police offices after civil rights violations); see also 42 U.S.C. § 2000d.

47. See Cydney Adams, *March 3, 1991: Rodney King Beating Caught on Video*, CBS NEWS (Mar. 3, 2016), <https://www.cbsnews.com/news/march-3rd-1991-rodney-king-lapd-beating-caught-on-video/> [https://perma.cc/BD9C-FNDF] (introducing facts surrounding beating of Rodney King).

48. See *id.* (describing Rodney King’s assault).

49. See *id.* (listing Rodney King’s injuries).

50. See *id.* (detailing outcome of criminal prosecution of four assaulting officers).

51. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 21040, 108 stat. 1796, 2071 (allowing Attorney General to restructure state police departments through civil penalties). Additionally, Congress has enacted legislation to provide civil relief for citizens that have been deprived of constitutional rights, privileges, or immunities of persons acting under the color of any statute, ordinance,

created a new tool for DOJ to bring about change with civil action, and began a large movement to restructure police departments.⁵²

B. An Overview of Modern Police Misconduct

1. High-Profile Cases and the Subsequent National Public Outrage

The United States has seen a steady increase in the amount of police-related homicides of unarmed victims, despite the existence of modern-day laws, tools, and the Attorney General's efforts to restructure specific police departments.⁵³ The death of seventeen-year-old Trayvon Martin exemplifies this recent rise of infamous police killings.⁵⁴ Though Martin was the first of several notable police killings, similar incidents from 2014 to 2016 caused an uproar throughout the nation.⁵⁵

regulation, custom, or usage. See 42 U.S.C. § 1983 (2012) (outlining civil action for deprivation of constitutional rights).

52. See Press Release, U.S. Dep't of Justice, Justice Department Reaches Agreement to Resolve Police Misconduct Case Against Columbus Police Department (Sept. 4, 2002), https://www.justice.gov/archive/opa/pr/2002/September/02_crt_503.htm [<https://perma.cc/M65A-BR28>] (announcing settlement agreement with Columbus Division of Police); Kelly et al., *supra* note 46 (discussing DOJ action under federal statute); see also *United States v. City of Los Angeles*, No. CV0011769, 2001 WL 314976, at *1 (C.D. Cal. Feb. 16, 2001) (requiring court approval of monitor in consent decree). As shown by *United States v. City of Los Angeles*, DOJ may work with police departments to address the allegations of improper practices and create a solution rather than always relying on the courts. See *City of Los Angeles*, 2001 WL 314976, at *1; Patrick Clark, U.S. DEP'T OF JUST., TAKING STOCK: REPORT FROM THE 2010 ROUNDTABLE ON THE STATE AND LOCAL LAW ENFORCEMENT POLICE PATTERN OR PRACTICE PROGRAM (42 USC § 14141), PRODUCT NO. NCJ 234458, at 2-4 (2011), <https://www.ncjrs.gov/pdffiles1/nij/234458.pdf> [<https://perma.cc/UF87-GU8W>] (reporting efficiency of 1994 police reform statute).

53. See *supra* notes 6-9 and accompanying text (summarizing increasing number of police-related homicides in recent years).

54. See *Trayvon Martin Shooting Fast Facts*, CNN, <http://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts/> [<https://perma.cc/9LZX-7SVD>] (describing facts and timeline of shooting and subsequent legal proceedings). George Zimmerman, a neighborhood watch volunteer, reported seeing a suspicious person, later identified to be teenager Trayvon Martin. See Greg Botelho, *What Happened the Night Trayvon Martin Died*, CNN (May 23, 2012), <http://www.cnn.com/2012/05/18/justice/florida-teen-shooting-details> [<https://perma.cc/MXV6-CXL2>] (expanding upon details of Trayvon Martin's death). Martin was returning from a convenience store where he was video recorded purchasing a bag of Skittles and an Arizona tea. *Id.* In Zimmerman's call to the police he stated, "This guy looks like he's up to no good, or he's on drugs or something. It's raining, and he's just walking around." *Id.* Zimmerman then pursued Martin against the police dispatcher's instructions. See *id.* It is unclear what exactly occurred in the moments preceding Martin's death; however, police found Martin dead, face down in the grass, with a bullet lodged in his chest fired from Zimmerman's handgun. See *id.* Subsequently, Zimmerman was criminally charged with second-degree murder, but was found not guilty. See *Trayvon Martin Shooting Fast Facts, supra*. The United States Justice Department also decided not to file federal civil rights charges against Zimmerman. See *id.*

55. See Jeremy Hobson, *After 9 High-Profile Police-Involved Deaths of African Americans, What Happened to the Officers?*, WBUR (July 11, 2016), <http://www.wbur.org/hereandnow/2016/07/11/america-police-shooting-timeline> [<https://perma.cc/NUN3-67AG>] (highlighting deaths of nine minorities and subsequent actions taken against officers); see also AFP, *supra* note 10 (listing several high-profile deaths in recent years). In 2014, police killed Eric Garner by subjecting him to a chokehold until he died from asphyxiation. See Hobson, *supra*. The police suspected Garner of illegally selling cigarettes in New York; however, despite the nonviolent nature of the alleged crime, Garner's well-recorded and publicized death did

As a result of these police killings of unarmed victims, the nation has begun to scrutinize police departments in multiple facets, including their failure to accurately keep and report their data.⁵⁶ In addition to the condemnation of the current data collection methods, many people across the nation have also called for increased accountability regarding criminal charges against responsible officers, measures to prevent future misconduct, and wide-scale policy reform.⁵⁷

not result in criminal charges against the officers involved. *See id.*; *see also* NBC News, *Eric Garner Chokehold Death: No Indictment*, YOUTUBE (Dec. 4, 2014), <https://www.youtube.com/watch?v=U0Y3FH9Nb3I> (showing moment of Eric Garner's arrest and death). In addition to the deaths of Eric Garner and Trayvon Martin, the police killing of unarmed, eighteen-year-old Michael Brown also received significant media attention. *See* AFP, *supra* note 10 (summarizing death of Michael Brown). Following the death of Brown in Ferguson, Missouri, there was unrest and protest, which only continued to escalate after authorities declined to charge the officer involved. *See id.* Similarly, the death of twenty-five-year-old Freddie Gray caused riots in Baltimore and many other U.S. cities. *See id.* Freddie Gray died post-arrest from injuries he received in transit to the station. *See id.* After arriving at the police station, officers discovered that the failure to secure Gray with a seatbelt caused fatal injuries during the drive. *See id.* Although these are only a few of the many unarmed individuals who have been killed by police, there are reports of other forms of police misconduct, aside from homicide. *See* NAT'L ADVISORY COMM'N ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS pt. 1, ch. 1 (1968), <http://www.eisenhowerfoundation.org/docs/kenrner.pdf> [<https://perma.cc/4DKS-5U5M>] (describing several scenes of police overreaction and excessive use of force).

56. *See* Sarah Lazare, 2015: *The Year Police Killings in America Were Counted*, MINTPRESS NEWS (Dec. 30, 2015), <http://www.mintpressnews.com/2015-the-year-police-killings-in-america-were-counted/212393/> [<https://perma.cc/CG8G-2JKM>] (criticizing data collection by United States government). In response to recent police misconduct, some sources have begun tracking the number of police killings nationwide, independent of official statistics published by federal agencies, state agencies, and police departments. *See* Kimberly Kindy et al., *Fatal Police Shootings in 2015 Approaching 400 Dead Nationwide*, WASH. POST (May 30, 2015), https://www.washingtonpost.com/national/fatal-police-shootings-in-2015-approaching-400-nationwide/2015/05/30/d322256a-058e-11e5-a428-c984eb077d4e_story.html [<https://perma.cc/3537-S72R>] (declaring project to track fatal police shootings). In addition to claims of poor data tracking and reporting, some suggest that the functionality and structure of the system itself fosters police misconduct in the form of violence against minorities. *See* Greene, *supra* note 10, at 20-21 (expressing frustration with current system because it promotes systemic violence).

57. *See* Kampfe, *supra* note 8, at 1158-59 (discussing need for increased accountability of police). One such method of increasing accountability is the recent demand for widespread use of body cameras. *See* Nunes, *supra* note 9, at 1814-15 (calling for increased use of body cameras). In addition to video recording, some have argued that large-scale reform is the only efficient means of enacting change at the local level. *See* Laurie L. Levenson, *Police Corruption and New Models for Reform*, 35 SUFFOLK U. L. REV. 1, 3 (2001) (claiming macro methods of reform most efficient). Furthermore, people have suggested: decreasing federal funding to discriminatory police departments; enacting state statutes identical to 34 U.S.C. § 12601; making all police department policies available for public review, including data on stop and frisks; and collecting all data related to police-involved shootings and in-custody deaths. *See* Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State "Pattern or Practice" Statute*, 19 GEO. MASON U. CIV. RTS. L.J. 479, 481-482 (2009) (proposing state statutes mirroring federal statute); *Defund Federal Grants to Police Departments That Don't Value Black Lives*, COLOROFCHANGE.ORG, <https://act.colorofchange.org/sign/tell-obama-stop-funding-cops-kill-black-people/> [<https://perma.cc/2GR6-HZ2E>] (calling for signatures on petition to cut federal funding to discriminatory police departments); *The Federal Government Must Hold Police Departments Accountable for Violence Against African Americans*, CREDO ACTION, http://act.credoaction.com/sign/Obama_BLM [<https://perma.cc/3VWM-9ZZU>] (calling for signatures on petition to five specific reform goals).

2. Federal Reaction to Outrage: Current Oversight Initiatives

In response to the public's outcry for accountability, transparency, and reform, the federal government has taken several steps to address the issues of data collection and state police statistical reporting.⁵⁸ For example, Congress enacted the Death in Custody Reporting Act of 2013 (DCRA).⁵⁹ Born from Congress's power under the Taxing and Spending Clause, the DCRA compels states receiving certain federal grants to report the death of individuals in custody, or else suffer monetary consequences.⁶⁰ Specifically, the DCRA requires states that receive funding through "part E of title I of Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.)" to report information including, but not limited to, the name, gender, race, ethnicity, and age of the deceased as well as the date, time, and location of his or her death.⁶¹ A state's failure to report will, at the discretion of the Attorney General, result in a 10% funding reduction that would otherwise be given by the federal grant program; such funds will be reallocated to other states that have been compliant with the DCRA's requirements.⁶²

Additionally, President Barack Obama created the President's Task Force on 21st Century Policing (Task Force) to—among other objectives—research the issue of police misconduct and make recommendations on how to reduce the number of such instances.⁶³ President Obama also moved for more immediate

58. See Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Justice Department Outlines Plan to Enable Nationwide Collection of Use of Force Data (Oct. 13, 2016), <https://www.justice.gov/opa/pr/justice-department-outlines-plan-enable-nationwide-collection-use-force-data> [<https://perma.cc/G586-95UP>] (detailing new data collection system to encourage reporting of arrest-related deaths); Hunter Schwarz, *Congress Decides To Get Serious About Tracking Police Shootings*, WASH. POST (Dec. 11, 2014), <https://www.washingtonpost.com/news/post-politics/wp/2014/12/11/congress-decides-to-get-serious-about-tracking-police-shootings/> [<https://perma.cc/ZUE5-UNMV>] (discussing resurgence of Death in Custody Reporting Act). The United States Justice Department recently announced the launch of a new data collection program in hopes of improving the ease with which data may be reported and the efficiency of the collected data's storage and analysis. See Schwarz, *supra*.

59. See Death in Custody Reporting Act of 2013, Pub. L. No. 113-242, 128 Stat. 2860 (2014); see also 34 U.S.C.A. § 60105 (West 2018) (requiring increased data collection from states).

60. See 34 U.S.C.A. § 60105 (establishing state and federal agency statistic reporting requirement); *supra* note 36 and accompanying text (discussing Congress's authority under Taxing and Spending Clause). The DCRA requires the statistical reporting of any person who dies while being detained, arrested, in the process of being arrested or incarcerated, or en route to incarceration on a quarterly basis. See *id.* § 60105(a).

61. See *id.* § 60105 (b), (c)(2) (outlining required information under DCRA).

62. See *id.* § 60105 (c)(1)-(2), (d) (outlining consequences for failing to conform to DCRA requirements).

63. See Exec. Order No. 13,684, 79 Fed. Reg. 76,865 (Dec. 18, 2014) (establishing Task Force). The object of the Task Force is "to identify the best means to provide an effective partnership between law enforcement and local communities that reduces crime and increases trust." *Id.* The Task Force published a final report of its recommendations to the President in May 2015, as well as a supplementary guidebook for implementation for both state and federal law enforcement agencies. See PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 1-4 (2015), <https://ric-zai-inc.com/Publications/cops-p311-pub.pdf> [<https://perma.cc/J9BJ-PB3V>] (highlighting six pillars behind Task Force's recommendations); PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING IMPLEMENTATION GUIDE: MOVING FROM

change by establishing the Law Enforcement Equipment Working Group (Working Group) to assess the current federal supply of military equipment to state law enforcement and make recommendations for increased oversight.⁶⁴ That initiative resulted in one major development: a prohibition on the transfer, sale, or purchase—using federally-provided funds—of several types of equipment from federal agencies to state police.⁶⁵ After performing an investigation, the Working Group concluded that “misuse, overuse, and inappropriate use” of prohibited equipment results in a severe strain on the relationship between law enforcement agencies and their respective communities.⁶⁶ The Working Group also recommended a prohibition on certain types of equipment; equipment that if used improperly or arbitrarily would create a negative impact on the community large enough to outweigh law enforcement’s need or utility for such equipment.⁶⁷

RECOMMENDATIONS TO ACTION 5-7 (2015), <http://noblenational.org/wp-content/uploads/2017/02/President-Barack-Obama-Task-Force-on-21st-Century-Policing-Implementation-Guide.pdf> [<https://perma.cc/3D85-YFZP>] (stating collaboration between government officials, law enforcement agencies, and communities vital to successful recommendation implementation). The following year, the Task Force published a progress report displaying examples of implementations at both the federal and state levels. PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING: ONE-YEAR PROGRESS REPORT 9-16, 23-35 (2016), <https://ric-zai-inc.com/Publications/cops-w0805-pub.pdf> [<https://perma.cc/7BRE-9KS6>] [hereinafter ONE-YEAR PROGRESS REPORT] (describing each state’s recommendation for 2015-2016 period). The Task Force’s progress report shows that several agencies began to implement the Task Force’s recommendations and create task forces of their own to ensure adherence at a deeper level. *See id.*; *see also* MASS. CHIEFS OF POLICE ASS’N & MASS. MAJOR CITY CHIEFS, A RESPONSE TO THE FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 22-25 (2015), <http://www.masschiefs.org/files-downloads/news-1/866-mcopa-mmcc-response-to-the-final-report-of-the-president-s-task-force-on-21st-century-police/file> [<https://perma.cc/PE7W-SYDA>] (discussing Massachusetts’s plan of action to implement and adhere to Task Force’s recommendations); POLICE EXEC. RESEARCH FORUM, CRITICAL ISSUES IN POLICING SERIES: GUIDING PRINCIPLES ON USE OF FORCE 119-20 (2016), <http://www.policeforum.org/assets/guidingprinciples1.pdf> [<https://perma.cc/NU33-GYMQ>] (discussing implementation of Police Executive Research Forum’s Critical Decision-Making Model on police use of force).

64. Exec. Order No. 13,688, 80 Fed. Reg. 3451 (Jan. 16, 2015) (establishing Law Enforcement Equipment Working Group). President Trump revoked Executive Order Number 13,688 two and half years later. Exec. Order No. 13,809, 82 Fed. Reg. 41,499 (Aug. 28, 2017) (instructing federal agencies to disregard recommendations of Law Enforcement Equipment Working Group).

65. *See* LAW ENF’T EQUIP. WORKING GRP., RECOMMENDATIONS PURSUANT TO EXECUTIVE ORDER 13688: FEDERAL SUPPORT FOR LOCAL LAW ENFORCEMENT EQUIPMENT ACQUISITION 12-13 (2015), <http://www.sheriffs.org/sites/default/files/LE-Equipment-WG-Final-Report.pdf> [<https://perma.cc/KX7S-UPZU>] (recommending list of military equipment prohibited for state law enforcement); *see also* Gregory Korte, *Obama Bans Some Military Equipment Sales to Police*, USA TODAY (May 18, 2015), <http://www.usatoday.com/story/news/politics/2015/05/18/obama-police-military-equipment-sales-new-jersey/27521793/> [<https://perma.cc/7M8U-4NHE>] (discussing President Obama’s ban on sale of certain military equipment to local police).

66. *See* LAW ENF’T EQUIP. WORKING GRP., *supra* note 65, at 10 (discussing rationale behind prohibited equipment list).

67. *See id.* at 13 (discussing balancing test in creating prohibition list). The types of equipment that appear in the Working Group’s recommendation include: tracked armored vehicles, weaponized vehicles, firearms or ammunition of .50 caliber or higher, grenade launchers, bayonets, and camouflage uniforms. *Id.* In coming to a decision, the Working Group found that all of the above-listed equipment had a potential negative impact on the community, which outweighed the need or utility of the equipment. *See id.* at 12 (listing prohibited equipment). Although this is a step that will help to keep communities safe, unfortunately, due to

C. Police Internal Review Laws

1. “High Incident” States’ Laws

a. An Examination of Texas’s Complaint Review Procedures

Texas is ranked as the state with the third highest number of police killings of unarmed victims between 2013 and 2016.⁶⁸ The Texas legislature established the Texas Commission on Law Enforcement (Texas Commission) to license officers, and to create, oversee, and enforce certain rules that officers must obey while in the line of duty.⁶⁹ As a result, the Texas Commission may only process or review complaints that concern its licensing-related matters.⁷⁰ Any complaints of rudeness, unprofessional conduct, improper investigations, or violations of citizens’ rights cannot be submitted to the Texas Commission; instead, complaints of misconduct must go to the law enforcement agency that employs the officer.⁷¹ This system results in a lack of uniform policies that govern the review of civilian complaints as it delegates those complaints and the procedures governing their review to the hands of individual law enforcement agencies.⁷²

b. An Examination of Florida’s Complaint Review Procedure

Florida had the second highest number of police killings of unarmed victims between 2013 and 2016.⁷³ The formal policies and procedures for the review of complaints against police officers vary from agency to agency, as Florida

the limitations on the powers of the federal government, states are still permitted to purchase these types of equipment using state funds. *See id.* (voicing “loophole” to acquire prohibited items).

68. *See State Comparison Tool, supra* note 15 (comparing Texas’s statistics on unarmed police killings to those of other states).

69. *See* TEX. OCC. CODE ANN. § 1701.051 (West 2017) (establishing Texas Commission on Law Enforcement). The Texas Commission was tasked with creating “minimum standards relating to competence and reliability, including education, training, physical, mental, and moral standards, for licensing as an officer,” among other responsibilities. *Id.* § 1701.151. As opposed to Florida’s similar oversight commission, the Texas Commission consists of three sheriffs, constables, or chiefs, three police officers, and three members of the public that must not be law enforcement personnel, related to or involved with law enforcement, or married to someone who participates in law enforcement. *See id.* §§ 1701.051-.052 (outlining membership requirements).

70. *See Complaint Procedures, TEX. COMM’N ON L. ENFORCEMENT*, <https://www.tcole.texas.gov/content/complaint-procedures> [<https://perma.cc/R6NA-WC7J>] (outlining restrictions on Texas Commission’s authority).

71. *See id.* (explaining types of complaints outside Texas Commission’s purview).

72. *See id.* (directing complaints related to unprofessional conduct to officer’s supervising agency). Under this system, any complaint against an officer must be made in writing and be considered by the head of the state or local law enforcement agency, and the officer that is the subject of the complaint must also receive a copy. *See* TEX. GOV’T CODE ANN. §§ 614.022-.023 (West 2017). Nevertheless, this requirement does not apply to “a peace officer or fire fighter appointed or employed by a political subdivision . . . or collective bargaining agreement . . . if the agreement relates to the investigation of, and disciplinary action resulting from, a complaint against a[n] . . . officer.” *See id.* § 614.021.

73. *See State Comparison Tool, supra* note 15 (indicating Florida yields second highest number of police killings).

statutes allow each individual agency to create their own policies.⁷⁴ In addition to the policies published by each agency, Florida requires the utilization of a complaint review board to handle complaints against an officer.⁷⁵ While each office can establish its own reviewing policy, the Florida legislature has established one central commission, the Criminal Justice Standards and Training Commission (Florida Commission), to set minimum requirements for police employment and ethical standards, and to enforce compliance with its rules.⁷⁶ Unfortunately, only one of the nineteen members of the Florida Commission is a civilian resident, which results in a disproportionate representation of civilians.⁷⁷

c. An Examination of California's Complaint Review Procedure

Between 2013 and 2016, California led the nation in the number of police killings of unarmed victims.⁷⁸ Similar to Florida and Texas, California requires individual law enforcement agencies to create their own complaint review

74. See FLA. STAT. § 112.533(1)(a) (2017) (imposing requirements on local law enforcement departments). As a result, the procedural methods for submitting a complaint, the information required on the complaint form, and the formalities of the review—including the procedure of review, the person who reviews the complaint, and whether the department initiates disciplinary action—all differ. Compare *Internal Affairs*, CITY ORLANDO, <http://www.cityoforlando.net/police/internal-affairs/> [https://perma.cc/S2D5-NP3W] (outlining Orlando's complaint procedure), with POLK CTY. SHERIFF'S OFFICE, GENERAL ORDERS MANUAL 1-2 (2011), <http://www.polksheriff.org/SiteCollectionDocuments/General%20Orders.pdf> [https://perma.cc/F4K5-72FD] (explaining Polk County's complaint procedure), and *Commendations & Complaints*, CITY FORT MYERS FLA. POLICE DEP'T, <https://www.fmpolice.com/209/File-a-Commendation-or-Complaint> [https://perma.cc/8JQU-FJ5F] (describing Fort Myers's complaint procedure).

75. See FLA. STAT. § 112.532 (2017) (establishing need for complaint review boards). The complaint review board varies in size depending on the type of officer that is the subject of the complaint; however, the review board does have strict requirements for board membership. See *id.* The statute requires (depending on the size of the agency) at least one of its members to be appointed by a chief administrator, and at least one member must be appointed by the officer that is the subject of the complaint. See *id.* The statute further prohibits the involvement of civilians, as it specifically requires board members be of the same discipline as the officer that is the subject of the complaint. See *id.*

76. See FLA. STAT. §§ 943.11-12 (2017) (establishing minimal oversight of local law enforcement agencies). The Florida Commission may enforce compliance with its rules, including its code of ethical conduct, through injunctions and civil fines. *Id.* § 943.12(14); see *Law Enforcement Officer Ethical Standards of Conduct*, FLA. DEP'T L. ENFORCEMENT, <http://www.fdle.state.fl.us/CJSTC/Officer-Requirements/LE-Ethical-Standards-of-Conduct.aspx> [https://perma.cc/6W3D-CRZR] (providing code of ethics for Florida police officers). Specifically, during the review of a complaint, an officer has the right to assert a claim that proper procedure is intentionally being ignored. See FLA. STAT. § 112.534 (2017) (outlining officer's relief for intentionally violating procedure). While the officer's right to challenge intentional procedural violations is codified, no such codified right exists for the complainant. See *id.*

77. See FLA. STAT. § 943.11(1)(a) (explaining Florida Commission's membership). The Florida Commission consists of three sheriffs, three chiefs of police, five police officers that are ranked sergeant or below, one person in charge of a county correctional facility, two correctional officers, one training center director, the state attorney general, the secretary of the department of corrections, the director of highway patrol, and a Florida resident who is not a law enforcement member. *Id.*

78. See *State Comparison Tool*, *supra* note 15 (providing California has highest number of unarmed police killings compared to other forty-nine states).

procedures.⁷⁹ The same California statute also mandates the removal of some complaints from personnel files before considering the promotion, transfer, or disciplinary action of any state police officer.⁸⁰ The complaints that are removed from the officer's personnel file may be used if they resulted in disciplinary action, which is unlikely because for the complaint to be subject to mandatory removal, it would have already been found to be frivolous, unfounded, or exonerated.⁸¹

2. "Low Incident" States' Law and Alternative Measures

a. Examination of the New York Complaint Review Procedure

Compared to Florida, California, and Texas, New York—a state with a roughly comparable population size—has relatively fewer incidents of police misconduct, and less than half the number of police killings.⁸² The New York legislature established the State Civil Service Commission (New York Commission) to create and enforce rules related to the jurisdictional classification, appointments, promotions, transfers, and other employment conditions of state police officers.⁸³ The statute also establishes similar commissions at the county and municipal levels that are given broad authority to discipline police officers.⁸⁴ Nevertheless, the statute does not empower the

79. See CAL. PENAL CODE § 832.5 (West 2018) (establishing California's requirement for local police departments to create procedures for reviewing complaints); *supra* notes 72, 74 and accompanying text (discussing Florida and Texas statutes).

80. See CAL. PENAL CODE § 832.5(b) (requiring removal of certain complaints from personnel files). Generally, each agency may store all civilian complaints that are encompassed by this section in the individual officer's personnel file, or in a file that is separate from the officer's personnel file. See *id.* (giving limited discretion on where to store complaints). Nevertheless, the agency is *required* to remove complaints from their general files that are found by that *same* agency to be frivolous, unfounded, or exonerated. See *id.* § 832.5(c) (requiring special action during promotions, transfers, or disciplinary action).

81. Compare CAL. PENAL CODE § 832.5(c)(2) (barring use of removed complaints except under certain circumstances), and CAL. PENAL CODE § 832.5(c) (requiring frivolous, unfounded, or exonerated complaints excised), with CAL. GOV'T CODE § 3304(f) (West 2018) (allowing disciplinary action for complaints under exception).

82. See *State Comparison Tool*, *supra* note 15 (showing statistics on New York's number of unarmed police killings); see also *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2017*, U.S. CENSUS BUREAU (Dec. 2017), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> [<https://perma.cc/3MHG-MGLE>] [hereinafter *State Population Totals*] (publishing population statistics per state).

83. See N.Y. CIV. SERV. LAW §§ 5-6 (McKinney 2017) (establishing State Civil Service Commission). The New York Commission consists of three commissioners, all of whom are appointed by the governor; however, the members cannot hold public office, public employment, or be engaged in private employment that would cause a conflict of interest. See *id.* § 5 (detailing membership of commission).

84. See *id.* § 15 (establishing local civil service commissions); see also *Civil Service Commission Appeal Guidelines: Role of the Civil Service Commission*, N.Y. STATE: DEP'T CIVIL SERVICE, <https://www.cs.ny.gov/commission/appealguidelines/guidelines.cfm> [<https://perma.cc/XLL8-KYAB>] (describing limits on state commission review of local commission's final decisions related to disciplinary action).

state commission with the ability to overturn these county and municipal disciplinary decisions.⁸⁵

b. Examination of the Georgia Complaint Review Procedure

Similar to New York, the State of Georgia is another example of a state with a low incident of unarmed civilian deaths caused by the police.⁸⁶ Although relatively close in population rank to the three high-incident states, Georgia has fewer unarmed civilian deaths.⁸⁷ The Georgia state legislature has not codified or established any standard or procedure for the review of civilian complaints against officers.⁸⁸ For the purposes of this examination, this section will look to Atlanta, Georgia's most populated city, and will consider the city's policies surrounding complaint review.⁸⁹ The City of Atlanta's Office of Professional Standards has published its complaint procedure through its Internal Investigations Unit.⁹⁰ The city also established the Atlanta Citizen Review Board (Atlanta Board) to oversee the Atlanta Police Department.⁹¹ Although

85. See N.Y. CIV. SERV. LAW § 15 (outlining jurisdictional authority of local civil service commissions).

86. See *State Comparison Tool*, *supra* note 15 (comparing number of unarmed police killings in Georgia to other states).

87. See *id.*; see also *State Population Totals*, *supra* note 82 (publishing population statistics per state).

88. See GA. CODE ANN. § 35-1-1 to -10-11 (2017) (providing laws related to law enforcement and agencies). Statutes related to the investigations of police for misconduct, if they existed, would likely be found in Title 35: Law Enforcement Officers and Agencies. See *id.* The Southern Center for Human Rights implies that the absence of a comprehensive standard is due to the different procedures employed in every city. SOUTHERN CENTER FOR HUMAN RIGHTS, KNOW YOUR RIGHTS: POLICE ABUSE ISSUES 1-2 (2010), <https://www.schr.org/files/post/POLICE%20ABUSE%20IN%20GEORGIA.pdf> [<https://perma.cc/SUJ7-PPEC>] (mentioning cities have different review procedures).

89. See *infra* note 90 and accompanying text (reviewing Atlanta's procedure for review of civilian complaints against police officers).

90. See OFFICE OF PROF'L STANDARDS, ATLANTA POLICE DEP'T, COMMENDING AN OFFICER & HOW THE COMPLAINT PROCESS WORKS, <http://www.atlantapd.org/home/showdocument?id=1258> [<https://perma.cc/J95C-A5SA>] (outlining complaint procedure for filing officer misconduct violations). The complaint procedure explains that a complaint can fall within two categories: "Priority I" and "Priority II." See *id.* (categorizing different types of complaints based on subject matter). Priority I complaints are of a "major nature," while Priority II complaints involve lesser instances of misconduct by officers including, but not limited to, vehicular accident or discourtesy. See *id.* (defining different categories of complaints). The Office of Professional Standards usually investigates Priority I complaints, while the officer's supervisor investigates Priority II complaints. See *id.* It is unclear whether the Office of Professional Standards issues final decisions on disciplinary activity independent of the police department. See *id.* Additionally, the Office of Professional Standards publishes an annual report, which provides detailed statistics of the open and closed investigations, types of complaints, and other investigation reporting figures. See OFFICE OF PROF'L STANDARDS, ATLANTA POLICE DEP'T., OFFICE OF PROFESSIONAL STANDARDS ANNUAL REPORT - 2014, at 2-7 (2014), <http://www.atlantapd.org/Home/ShowDocument?id=170> [<https://perma.cc/M2PK-7YLA>] (publishing data on civilian and internal complaints against police officers).

91. See ATLANTA, GA. CODE OF ORDINANCES § 2-2201 (2018) (establishing Atlanta Board). The Atlanta Board membership consists of multiple members who are appointed by the mayor, the city council, the president of the city council, each Neighborhood Planning Unit group, Gate City Bar Association, the Atlanta Bar Association, League of Women Voters of Atlanta, the Atlanta Business League, the Georgia Coalition for the People's Agenda, and the Urban League of Greater Atlanta. See *id.* § 2-2203 (describing makeup of

the Atlanta Board has the authority to fully investigate complaints against Atlanta police officers, it can only recommend certain actions to the chief of police, who may accept, reject, or modify those actions.⁹²

c. Civilian Review Boards

Important to a discussion of state commissions and their duties and authority in reviewing complaints of police misconduct, is a different type of complaint review body known as a civilian review board (CRB).⁹³ CRBs are typically comprised of citizens appointed by a mayor or governor, and are established to review and rule on complaints filed against police officers.⁹⁴ These CRBs usually have varying levels of authority depending on the municipality or state that created the CRB.⁹⁵ These varying levels of authority can be divided into three categories: investigative models, review models, and auditor models.⁹⁶ Despite the U.S. Justice Department's open support for the use of independent review bodies, some police have opposed the creation of CRBs.⁹⁷

Atlanta Board). Additionally, similar to New York, no member of the Atlanta Board may hold other public office or employment. *See id.* § 2-2204 (c) (prohibiting conflicts of interest).

92. *See* ATLANTA, GA., CODE OF ORDINANCES § 2-2213(m) (2018) (describing powers and duties of Atlanta Board). Though the Atlanta Board only has the power of recommendation, it allows for substantial involvement of civilians in the very public investigation of police misconduct allegations. *See id.* § 2-2213 (outlining scope of Atlanta Board's subpoena and investigatory power). Additionally, although the chief of police may reject the Atlanta Board's recommendations, the chief is required to provide either a "legal or factual justification, or indicate a managerial prerogative that clearly states the reason." *Id.* § 2-2213(o) (establishing required basis for police chief's rejection of Atlanta Board recommendation).

93. *See* *Civilian Review Boards*, FREE DICTIONARY, <https://legal-dictionary.thefreedictionary.com/Civilian+Review+Boards> [<https://perma.cc/3TPA-X9RR>] (defining civilian review board).

94. *See id.* (describing average composition of CRBs); *supra* notes 83 and 91 (demonstrating appointments by mayors and governors); *see also* *Civilian Review Boards*, POLICEMISCONDUCT.NET, <https://www.policemisconduct.net/explainers/civilian-review-boards/> [<https://perma.cc/3B7Z-NUPW>] (expanding on definition of CRBs).

95. *See* *Civilian Review Boards*, *supra* note 94 (describing different types of CRBs).

96. *See id.* (defining categories of different CRBs). Investigative models typically have the authority to subpoena police records. *See id.* This model is often expensive, as the need to hire private investigators typically accompanies their investigations. *See id.* Review models will most often review the investigation conducted by an internal affairs department, and typically may only agree or disagree with those findings. *See id.* The benefit of this model is the reduced cost associated with conducting an independent investigation, while the weakness rests with whether the review is truly independent, given the model's strong reliance on the internal affairs department. *See id.* The auditor model typically consists of a single auditor who monitors the activity of an internal affairs department and provides general feedback regarding its performance and the ways the department can improve its investigations. *See id.* (explaining auditor model of civilian boards).

97. *See* Martin Kaste, *Police Are Learning to Accept Civilian Oversight, but Distrust Lingers*, NPR (Feb. 21, 2015), <http://www.npr.org/2015/02/21/387770044/police-are-learning-to-accept-civilian-oversight-but-distrust-lingers> (discussing police reaction to creation of CRBs).

III. ANALYSIS

A. *Lack of Uniformity and the Subsequent Results*

1. *States Have Varying Statistics, Why?*

The United States continues to experience varying numbers of unarmed civilian deaths caused by law enforcement.⁹⁸ There are two reasons for this varying data: First, the policies, standards, and police-disciplinary procedures across the nation are not uniform, and second, each state employs a different method to track and report information about civilian deaths.⁹⁹ Moreover, because of the variant review procedures among states and incomplete information surrounding civilian deaths, it can be difficult for the federal government to create policies or laws that could foster meaningful, lasting change.¹⁰⁰

States have wildly differing statistics on the number and demographic of unarmed victims involved in police killings.¹⁰¹ This is largely because each state creates and implements its own policies, procedures, and standards to oversee its police force (including complaint procedures).¹⁰² The secondary reason why both the statistics and the confidence in those statistics vary is because the method in which they are tracked and reported has also largely been left to the states.¹⁰³ These differences from state to state are exemplified in the five states described in Sections II.C.1 and II.2.a-b of this Note.¹⁰⁴

2. *Commonalities Between High-Incident States*

There are two primary commonalities in high-incident states that are not present in low-incident states: the narrow jurisdictional authority of the high-incident states oversight commissions, and the level of civilian involvement in

98. See *supra* notes 3-4 and accompanying text (describing inaccurate statistics produced by federal government); see also *supra* note 6 (displaying national statistical trends from nongovernmental source).

99. See Lowery, *supra* note 2 (indicating inaccurate data primarily caused by differing reporting and tracking standards); see also *supra* Section II.C (outlining various police-disciplinary procedures).

100. See Lowery, *supra* note 2 (discussing difficulties in finding accurate data). Compare *The Counted: People Killed by Police in the US*, *supra* note 5 (showing alternative source of statistics), with BURCH, *supra* note 4, at 1-2 (showing federal government source of statistics).

101. See *supra* note 100 and accompanying text (highlighting difference in number of unarmed victims killed by police).

102. See *supra* Section II.C (outlining difference in standards and complaint procedures).

103. See *supra* note 2-3 and accompanying text (speaking to federal government's difficulty in collecting accurate data from states); see also BURCH, *supra* note 4, at 1-2 (exemplifying federal government's attempt to collect data from states).

104. See *supra* Sections II.C.1.a-c (overviewing police procedures in three high-incident states); *infra* Section III.A.2 (examining common issues in three high-incident states).

the complaint review procedure.¹⁰⁵ Florida, Texas, and California all have commissions that “oversee” the police departments of municipalities; however, as previously mentioned, these commissions have extremely limited jurisdictional authority.¹⁰⁶ Because these commissions have limited power, they do not have the ability to mandate uniform disciplinary procedures across their respective states or enact discipline against officers for misconduct.¹⁰⁷ Without the authority to compel uniform policies and procedures, it is difficult to implement effective improvements to limit police misconduct.¹⁰⁸ Secondly, the high-incident states discussed in this Note have minimal civilian involvement in their commissions, which leaves law enforcement to “police” themselves.¹⁰⁹ Ultimately, the substantial police involvement in reviewing complaints against police, coupled with the lack of jurisdictional authority in these state commissions, leave them partial and ill-equipped.¹¹⁰

In addition to minimal civilian membership, some commissions are not required to be transparent with civilian populations during the complaint review process.¹¹¹ By federally requiring a police chief to publicize a reason for rejecting a commission’s recommendation on officer punishments—as the city of Atlanta so requires—police would be more accountable to the public than police currently are in high-incident states.¹¹²

A second common flaw of these commissions, addressed by New York’s conflict of interest provisions, is the inherent partiality in the police-heavy membership of state commissions.¹¹³ By prohibiting the appointment of public or private employees with a conflict of interest, commissions would reduce—but not eliminate—the likelihood of partiality.¹¹⁴ In addition to the actions

105. See *supra* notes 69-71, 74-77, 80-81 and accompanying text (describing authority and membership composition of three state commissions); see also *supra* notes 83-85, 90-91 and accompanying text (illustrating authority and membership composition of Georgia and New York state commissions).

106. See *supra* notes 69-70, 74-76, 79-80 and accompanying text (describing jurisdictional authority of state commissions).

107. See *supra* note 74 and accompanying text (reviewing authority of Florida Commission); see also *supra* note 70 and accompanying text (outlining authority of Texas Commission); *supra* note 79 and accompanying text (displaying similar lack of jurisdictional authority in California Commission).

108. See *supra* notes 69-70, 74, 79 and accompanying text (showing lack of commission authority to generate uniform complaint policies across local law enforcement agencies).

109. See *supra* notes 71-72, 77 (showing lack of civilian membership in state commissions).

110. See *supra* notes 71-72, 77 and accompanying text (highlighting membership composition); *supra* notes 70, 76 (discussing jurisdictional authority of commissions).

111. See *supra* notes 70, 77, 80 and accompanying text (demonstrating lack of civilian involvement and transparency in various commissions).

112. See ATLANTA, GA. CODE OF ORDINANCES § 2-2213(o) (2018) (discussing requirements of police chief when rejecting commission recommendation); see also *supra* note 76 and accompanying text (noting complaints handled at local level); *supra* note 75 and accompanying text (inferring no requirement for board to act publicly); *supra* text accompanying note 79 (describing locally focused complaint review procedures).

113. See N.Y. CIV. SERV. LAW § 5 (McKinney 2017) (describing commission membership and bars on involving those employed by police departments).

114. Compare *id.* § 5(2)(a) (describing New York’s conflict of interest prohibition), with FLA. STAT. § 943.11(1)(a) (2017) (outlining Florida’s partial commission membership).

taken by individual states, impartiality and jurisdictional authority issues can be addressed through constitutionally permissible federal oversight.¹¹⁵

B. Recommended Changes

1. Increased Federally-Mandated Uniformity

The preamble to the Constitution lays out the federal government's purpose.¹¹⁶ The preamble eloquently states: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general welfare . . . establish this Constitution for the United States of America."¹¹⁷ Consequently, one of the missions which the federal government is tasked with is to "promote the general welfare."¹¹⁸ This general welfare is no longer promoted when riots occur in the streets as a direct result of the public's discontent with police departments' actions across the nation.¹¹⁹ Therefore, in situations where the general welfare is inhibited, the federal government has a responsibility to act.¹²⁰

Nevertheless, before the federal government can work to reduce the amount of unarmed civilians killed by law enforcement, accurate statistics on the current state of police misconduct are essential.¹²¹ To improve data collection and reporting across all states, the new administration should direct the Attorney General to aggressively utilize the tools available under the DCRA.¹²² Specifically, the DCRA allows the Attorney General to cut funding to states that fail to meet the DCRA's reporting standards.¹²³ If the Attorney General aggressively enforces this provision, it would mitigate the inaccurate statistics currently reported by states.¹²⁴

115. See *infra* Sections III.B.1-2 (identifying two possible courses of action federal government can take in addressing issues).

116. See U.S. CONST. pmb. (defining federal government's function and purpose).

117. *Id.*

118. See *id.* (highlighting one task charged to United States federal government).

119. See AFP, *supra* note 10 (describing riots due to death of unarmed victims).

120. See *Katzenbach v. McClung*, 379 U.S. 294, 301-02 (1964) (displaying federal government's historical involvement with racial discrimination); *Heart of Atlanta Motel v. U.S.*, 379 U.S. 241, 261-62 (1964) (demonstrating instance where Congress exercised authority to address racial animus).

121. See Lowery, *supra* note 2 (emphasizing importance of accurate statistics).

122. See *supra* notes 58-59, 61-62 and accompanying text (introducing tools created under DCRA).

123. See 34 U.S.C.A. § 60105 (West 2018) (empowering Attorney General with tools to enforce DCRA); see also *South Dakota v. Dole*, 483 U.S. 203, 216-17 (1987) (explaining degree of permissible funding cuts).

124. Compare *supra* note 3 (describing causes of inaccurate data), with 34 U.S.C.A. § 60105 (describing tools to compel improvements in data reporting).

2. Independent Review

a. Federal Independent Review Body

The federal government is well-equipped with tools to fulfill its responsibility to promote the general welfare.¹²⁵ Independent of the powers the DCRA vests in the Attorney General, this Note also discussed the federal government's ability to compel state action through the Taxing and Spending Clause.¹²⁶ Congress should utilize this authority to empower and instruct DOJ to review a state or municipality's eligibility to receive federal funding to support local law enforcement.¹²⁷ Congress has historically used conditions placed on funds as a means to compel action from states when it cannot constitutionally create direct legislation mandating the same action.¹²⁸ The aforementioned eligibility determinations under the DCRA could include an analysis similar to that allowed under 34 U.S.C. § 12601, which allows the Attorney General to bring civil action for equitable and declaratory relief against police departments that are not comporting with the goals and standards set by Congress.¹²⁹ By providing DOJ with the authority to review state police procedures as a condition for granting federal funding, the agency could address issues of inconsistent procedures and poor civilian representation.¹³⁰

b. State Independent Review Body

In addition to independent review authority at the federal level, states and cities should begin to introduce CRBs at the local levels as well.¹³¹ The keys to a successful CRB that improves the accountability of police departments to its constituents are: independence or authority, transparency, and accessibility to

125. See *supra* note 116 and accompanying text (discussing federal government's duties); *supra* note 123 and accompanying text (connecting additional federal government powers to solve issue).

126. See *supra* notes 34-38 and accompanying text (introducing constitutional authority under Taxing and Spending Clause).

127. See *supra* notes 36-38 and accompanying text (asserting authority to place conditions on federal funding).

128. See *supra* note 36 (recognizing Congress's authority to impose conditions on funds to compel state action). In *South Dakota v. Dole*, Congress desired to increase the drinking age nationwide and did so by making it a condition in order to receive federal highway funds. See *Dole*, 483 U.S. at 208-09 (achieving goal through conditions placed on funding).

129. Compare 34 U.S.C.A. § 12601 (West 2018) (describing Attorney General's ability to bring civil action), with 34 U.S.C.A. § 60105 (providing for Attorney General's determination of states' fulfillment of eligibility requirements).

130. Compare *supra* text accompanying notes 98-103 (outlining critical issues preventing accurate data reporting and subsequent obstacles to minimizing police misconduct), with *supra* text accompanying notes 116-129 (proposing realistic corrective actions to combat critical issues and bring about improved police review structures).

131. See *Civilian Review Boards*, *supra* note 94 (discussing best practices of CRBs); *infra* text accompanying notes 132-134 (recommending use of Taxing and Spending Clause to incentivize use of civilian review boards).

the community.¹³² The federal government likely cannot mandate the creation of these state and municipal CRBs under the Commerce Clause; however, the federal government may require it as a condition of the receipt of federal funding.¹³³ By creating CRBs that have independent authority to investigate, review, and rule on cases related to police misconduct, states would put an end to law enforcement's insular review and investigation of their own officers.¹³⁴

IV. CONCLUSION

Throughout the history of civilized society, there exists a constant balance between individual rights and the interests of a majority or centralized authority. The United States is no different. United States history is riddled with racial and socioeconomic inequalities that have been partially sustained by the abuse of police power. Despite the large number of unarmed civilians killed by police every year, the minimal centralized data collection requirements that exist are poorly enforced. States are left to track these statistics on their own, which leads to sparse, actionable evidence of the need for reform and oversight. Over time, the general public has become disturbed, while policy makers cannot address the issues that disturb them.

To address these issues, it is imperative that the federal government use the powers that the Constitution has granted to their full potential. The first and most important step is an aggressive stance on uniform data reporting. This can be accomplished if the Attorney General fully utilizes his or her power under the DCRA to review and withhold federal funds from noncompliant agencies. This is the best course of action to correct these problems because these goals can only be realized after a thorough analysis of more accurate information. Another course of action could be to implement an independent federal review department whose sole purpose is to review local police departments' procedures as an eligibility requirement for federal funding consistent with the Taxing and Spending Clause. In addition to federal oversight, local CRBs would spread the accountability of law enforcement to the citizens they have sworn to protect. When police misconduct becomes a growing issue, the populace is the one that suffers. More civilian oversight and publicity of the review process would drastically increase accountability of the police and

132. See *Civilian Review Boards*, *supra* note 94 (suggesting various key indicators of successful CRBs).

133. See *supra* note 36 and accompanying text (exemplifying Congress's authority to put conditions on receipt of federal funds).

134. See *Civilian Review Boards*, *supra* note 94 (evaluating results of CRBs best practices). Nevertheless, police have raised concerns about the qualifications of civilians and whether they should be vested with such authority. See Kaste, *supra* note 97 (raising police objections to civilians reviewing police conduct). Although meritorious, it is possible that these concerns may be dispelled with adequate training for CRB members, and clearly defining the departmental policies to give CRB members a better understanding of when an officer has acted with excessive force or otherwise inappropriately. See *id.* (providing measures to assure board member qualification).

confidence in their integrity. With such disinterested and objective oversight, local law enforcement would no longer be able to “police” themselves. Law enforcement’s current ability to “police” itself has already proved damaging; *Quis custodiet ipsos custodiet* or “who will guard the guards themselves?” The answer is those from whom all governmental authority stems: the people.

Michael C. McKeown