

TARGETING POLICE UNIONS, RETHINKING REFORM

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ABSTRACT

Police unions are a powerful obstacle to reform and abolition movements alike. This article tracks the (re)emergence of a political strategy targeting police unions as a site of police reform and abolition amid the summer 2020 uprising. It takes Washington, D.C.'s Defund MPD (Metropolitan Police Department) movement as a case study on the successful targeting of police unions. The D.C. Defund movement imposed radical demands, achieved measurable restrictions on police union power, and, in doing so, revealed new possibilities for the role of police union contracts in divestment and community control. The D.C. Defund movement influenced the D.C. Council to pass legislation restricting the bargaining power of the D.C. Police Union and itself leveraged the police union contract as a site of transformation. By closely analyzing the course of the D.C. Defund movement's campaign against a police union, this article elucidates the larger challenges posed by police unions and explores strategies for addressing them that have been previously overlooked.

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I.
 INTRODUCTION

On May 25, 2020, George Floyd was murdered by Minneapolis Police Officer Derek Chauvin in broad daylight.¹ The next day, hundreds of protestors flooded the streets of Minneapolis.² Protestors remained in the streets for days.³ On May 27, protests began in cities across the country, including Louisville, the home of

1. Evan Hill, Ainara Tiefenthaler, Christiaan Triebert, Drew Jordan, Haley Willis, & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (Sept. 7, 2021), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> [https://perma.cc/F5G7-TEYV]; Aaron Cooper & Eric Fiegel, *Derek Chauvin, Convicted in the Murder of George Floyd, to Be Sentenced June 16*, CNN (Apr. 23, 2021, 6:01 PM), <https://www.cnn.com/2021/04/23/us/derek-chauvin-sentencing-george-floyd/index.html> [https://perma.cc/9PEA-PSD3] (discussing Chauvin’s murder conviction).

2. Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (Oct. 2, 2021), <https://www.nytimes.com/article/george-floyd-protests-timeline.html> [https://perma.cc/V3SY-S66G]; *A Timeline of the George Floyd and Anti-Police Brutality Protests*, AL JAZEERA (June 11, 2020), <https://www.aljazeera.com/news/2020/6/11/a-timeline-of-the-george-floyd-and-anti-police-brutality-protests> [https://perma.cc/5UC3-W86G].

3. *Supra* note 2.

Breonna Taylor, and Los Angeles, the home of Rodney King.⁴ The demonstrations spread across the country—and even across the world—and persisted for months.⁵ The protestors did not share a unified vision for policing but collectively formed one of the largest protest movements in U.S. history.⁶

For many, responding to police terror and organizing mass protest were nothing new. The Ferguson uprising and the birth of the Movement for Black Lives generated a profound increase in the visibility of police violence and its relationship to anti-Black racism⁷ and amplified a demand to divest from police and prisons.⁸ But the scale of the summer 2020 uprising far surpassed Ferguson and its sister movements. It penetrated the mainstream in new ways and forced “radical”

4. See *id.* For an early account of the Breonna Taylor protests in Louisville, see Josh Wood, *Breonna Taylor's Mother Calls for End to Violence After Seven Are Shot in Protest*, *GUARDIAN* (May 29, 2020, 3:10 PM), <https://www.theguardian.com/us-news/2020/may/29/breonna-taylor-kentucky-protests-shooting> [<https://perma.cc/UWV7-3BDR>]. For an account of Los Angeles Police Department (LAPD) violence and activist resistance from the beating of Rodney King through the Floyd/Taylor uprising in LA, see Sam Levin, *Rodney King: 30 Years After Brutal Beating, Activists Say LAPD 'Still Corrupt and Violent'*, *GUARDIAN* (Mar. 3, 2021, 1:00 AM), <https://www.theguardian.com/us-news/2021/mar/02/rodney-king-lapd-police-30-years-later> [<https://perma.cc/7U9W-UMR6>].

5. *Protests Across the Globe After George Floyd's Death*, *CNN* (June 13, 2020, 3:22 PM), <https://www.cnn.com/2020/06/06/world/gallery/intl-george-floyd-protests/index.html> [<https://perma.cc/7SKN-Y5QB>].

6. By some estimates, more than 25 million protested in the United States. See, e.g., Larry Buchanan, Quoc Trung Bui, & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, *N.Y. TIMES* (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/FK3N-2AYH>].

7. See Brittany Packnett Cunningham, *How Ferguson Woke Us Up*, *TIME* (Aug. 8, 2019, 5:52 AM), <https://time.com/5647329/ferguson-police-brutality-activism-america> [<https://perma.cc/HXE6-BM5D>] (“The uprising shifted society: long before Trump’s Inauguration, resistance marches emerged across the country, mirroring Ferguson in tenacity and power, centered on their own victims of police violence. The uprising shifted culture . . . The uprising shifted politics: police shootings went from footnotes to front-page stories . . . Democratic presidential candidates are now expected to not only have plans for ending police violence but also to talk knowledgeably about systemic racism.”). See also Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 *CAL. L. REV.* 1781, 1785 n.8 (2020) [hereinafter Akbar, *Abolitionist Horizon*] (asserting that “[s]cholarly attention to police killings and mass criminalization has increased dramatically since Ferguson” and citing to several developments in the scholarship).

8. See *Invest-Divest*, *MOVEMENT FOR BLACK LIVES*, <https://m4bl.org/policy-platforms/invest-divest/> [<https://perma.cc/526P-5A4F>] (last visited Mar. 1, 2022) [hereinafter *MOVEMENT FOR BLACK LIVES*, *Invest-Divest*] (describing the “Invest/Divest” prong of the Movement for Black Lives’ (M4BL) 2016 Vision for Black Lives, a policy agenda for Black liberation that included proposals to divest from police, prisons, fossil fuels, and “exploitative corporations” and invest in health care, education, employment, and restorative justice programs). M4BL also incorporated abolition of police, prison, and immigration detention into its 2020 revision of the platform. See *End to All Jails, Prisons, and Immigration Detention*, *MOVEMENT FOR BLACK LIVES*, <https://m4bl.org/policy-platforms/end-jails-prisons-detention> [<https://perma.cc/LE5C-PQ82>] (last visited Mar. 1, 2022).

platforms like police abolition into policy discussions at the local, state, and national levels.⁹

The summer 2020 uprising also resurfaced a demand to “defund the police.”¹⁰ The Movement for Black Lives initially popularized the demand through its 2016 Vision for Black Lives, which included a call to divest from police and invest in communities.¹¹ This call has since “morphed into the demand to ‘defund the police.’”¹² As the demand grew more widespread, it was used to describe a range of goals and policies ranging from modest police budget cuts¹³ to zeroing out police budgets and shifting the resources into vital social services like housing,

9. See, e.g., Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> [<https://perma.cc/MMX8-K576>] (documenting the historical failures of police reform and describing a vision for society that makes police “obsolete”); Rashawn Ray, *What Does ‘Defund the Police’ Mean and Does It Have Merit?*, BROOKINGS: FIXGOV (June 19, 2020), <https://www.brookings.edu/blog/fixgov/2020/06/19/what-does-defund-the-police-mean-and-does-it-have-merit/> [<https://perma.cc/J5J7-5Z3D>] (distinguishing police abolition from defunding and describing the rise in and rationale for municipal policies reallocating police funding into social services, education, and work infrastructure); Scottie Andrew, *There’s a Growing Call to Defund the Police. Here’s What It Means*, CNN (June 17, 2020, 10:32 AM), <https://www.cnn.com/2020/06/06/us/what-is-defund-police-trnd/index.html> [<https://perma.cc/2PEF-JQFG>] (describing the call to “[d]isband[] police altogether” as “radical” and “gaining traction”). For a description of city-level Defund victories in 2020–2021, see INTERRUPTING CRIMINALIZATION, THE DEMAND IS STILL #DEFUNDTHEPOLICE 44–61 (2021), <https://static1.squarespace.com/static/5ee39ec764dbd7179cf1243c/t/60806839979abc1b93aa8695/1619028044655/%23DefundThePolice%2BUpdate.pdf> [<https://perma.cc/KB7F-6C5L>].

10. Farah Stockman & John Eligon, *Cities Ask If It’s Time to Defund Police and ‘Reimagine’ Public Safety*, N.Y. TIMES (June 8, 2020), <https://www.nytimes.com/2020/06/05/us/defund-police-floyd-protests.html> [<https://perma.cc/N4C3-6AZN>] (describing widespread calls to defund and dismantle the police). See YOANA TCHOUKLEVA, AMALEE BEATTIE, & JOSH COTTLE, EQUAL JUST. SOC’Y, DEFUNDING THE POLICE: BRIEF OVERVIEW OF HISTORY, MODELS AND THE DEMANDS OF THE MOVEMENT 1–2 (2020) [hereinafter Equal Justice Society Memo], <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:4bb4fb99-c2e8-46e4-8ebc-6789a9c6b88c> [<https://perma.cc/G38L-QHHD>] (describing the origins of #DefundThePolice in “a long history of visioning and organizing” led by “Black abolition feminists”).

11. Equal Justice Society Memo, *supra* note 10, at 11–12; INTERRUPTING CRIMINALIZATION, *supra* note 9, at 4 (locating the Defund demand in the 2016 Movement For Black Lives platform and describing the demand as “echo[ing] the demands of the Black Panther Party’s 10 point platform for Black Liberation: ‘We want an immediate end to POLICE BRUTALITY and MURDER of Black people. . . . We want land, bread, housing, education, clothing, justice and peace.’”).

12. Jessica M. Eaglin, *To “Defund” the Police*, 73 STAN. L. REV. ONLINE 120, 135 (2021).

13. See, e.g., Talia Richman & Yvonne Wenger, *The Baltimore City Council Eliminated \$22 Million from the Police Budget. What Does That Look Like?*, BALT. SUN (June 17, 2020, 7:00 AM), <https://www.baltimoresun.com/politics/bs-md-pol-police-budget-explainer-20200617-4yjweepbkreknjlef4f45jiblm-story.html> [<https://perma.cc/DY74-KUVJ>] (describing a proposal to eliminate \$22 million from the Baltimore Police Department’s budget of more than half a billion dollars).

education, and healthcare.¹⁴ However, for abolitionist organizers, “defund the police” is not a demand for reform but for radical transformation.¹⁵

Organizers’ call to “defund the police” is “a call to decrease police budgets, size, scope, and power while investing into alternative community safety models and wellbeing services (anti-homelessness, healthcare, education, drug rehabilitation, affordable housing, etc.),” with the eventual goal of abolishing the police.¹⁶ As Professor Jessica Eaglin put it:

Importantly, abolitionists neither seek to eliminate police tomorrow nor to exist in a world without replacements. Rather, they seek to create ways to connect that are sensitive to the needs of the most marginalized in society, particularly intersectionally vulnerable black people. In the long term, such a world would not include police, in any form or for any function. Defunding the police moves society in that direction.¹⁷

In other words, defunding the police is more than cutting or reallocating police funds; it requires investment in new infrastructures for safety, accountability, and repairing harm.¹⁸

14. See Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 111–12 (2020) [hereinafter Akbar, *Demands*] (describing the overlap in abolitionist and liberal reformer demands as an “interest convergence” (quoting Derrick A. Bell, Jr., Comment, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523–28 (1980))); MOVEMENT FOR BLACK LIVES, *Invest-Divest*, *supra* note 8 (listing among its demands “[a] reallocation of funds at the federal, state and local level from policing and incarceration (JAG, COPS, VOCA) to long-term safety strategies such as education, local restorative justice services, and employment programs.”).

15. See Equal Justice Society Memo, *supra* note 10, at 3 (“While views differ on whether defunding means disbanding police entirely or merely diverting a portion of their budgets into community solutions, the prevailing stance originating from activists on the ground is that defunding ‘is an abolitionist demand,’ situated in a long-term goal of abolishing the police as agents of the prison industrial complex.”) (citation omitted).

16. *Id.* at 3.

17. Eaglin, *supra* note 12, at 127.

18. See INTERRUPTING CRIMINALIZATION, *supra* note 9, at 4–5.

The rise in abolitionist demands amid the 2020 uprising re-energized public scrutiny of police unions.¹⁹ There is a growing consensus that police unions play an important role in shielding police from accountability and enabling police violence.²⁰ They do this by lobbying against progressive police reforms and bargaining for contract provisions that delay or interfere with misconduct investigations, shield officers from discipline, or flout consent decrees.²¹ After prosecutors charged George Floyd's killer, Derek Chauvin, with murder and manslaughter, the Minneapolis police union president lambasted political leaders and protestors, whom he called a "terrorist movement" in a letter to the union.²² Such vocal police union resistance to the movement occurred in the shadow of mounting police

19. See, e.g., Benjamin Sachs, *Police Unions: It's Time to Change the Law and End the Abuse*, ONLABOR (June 4, 2020), <https://www.onlabor.org/police-unions-its-time-to-change-the-law/> [<https://perma.cc/9482-3UEK>]; Planet Money, *Police Unions and Police Violence*, NPR (June 5, 2020), <https://www.npr.org/2020/06/05/871298161/police-unions-and-police-violence> [<https://perma.cc/S3B3-HPEQ>]; The New Yorker Radio Hour, *The Power of Police Unions*, NEW YORKER (July 31, 2020), <https://www.newyorker.com/podcast/the-new-yorker-radio-hour/the-power-of-police-unions> [<https://perma.cc/6AXV-NBQS>]; Kim Kelly, *No More Cop Unions*, NEW REPUBLIC (May 29, 2020), <https://newrepublic.com/article/157918/no-cop-unions> [<https://perma.cc/QZ78-WGX5>]. Prior to the summer 2020 uprising, critique of police unions was confined to a few voices within and outside the labor movement. See, e.g., Paul Butler, *The Fraternal Order of Police Must Go*, NATION (Oct. 11, 2017), <https://www.thenation.com/article/archive/the-fraternal-order-of-police-must-go/> [<https://perma.cc/W963-S8EW>]; Mario Vasquez, *Univ. of California Academic Workers' Union Calls on AFL-CIO to Terminate Police Union's Membership*, IN THESE TIMES (July 27, 2015), <https://inthesetimes.com/article/afl-cio-police-unions-racism-black-lives-matter> [<https://perma.cc/UU4N-ZQN2>].

20. See Sachs, *supra* note 19; Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191, 1222–39 (2017); Abdul N. Rad, *Police Institutions and Police Abuse: Evidence from the US 2* (2018) (M.A. thesis, University of Oxford) (finding "a positive and significant relationship between police abuse and police protections"); Dhammika Dharmapala, Richard H. McAdams, & John Rappaport, *Collective Bargaining and Police Misconduct: Evidence from Florida 2–3* (Univ. of Chi., Public Law Working Paper No. 655, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3095217 [<https://perma.cc/U56H-QHR2>] (study of Florida sheriff's offices finding collective bargaining rights "led to a substantial increase in violent incidents of misconduct" relative to police departments not conferred the same rights).

21. See generally Rushin, *supra* note 20; Adeshina Emmanuel, *How Union Contracts Shield Police Departments from DOJ Reforms*, IN THESE TIMES (June 21, 2016), <https://inthesetimes.com/features/police-killings-union-contracts.html> [<https://perma.cc/W59M-6JWZ>] (analyzing the effect of police collective bargaining agreements on consent decrees entered in 17 cities between 1997 and 2016 and finding that "[p]olice unions watered down measures that contradicted their contracts, or they launched legal challenges that, even when unsuccessful, delayed implementation"); Stephen Rushin & Allison Garnett, *State Labor Law and Federal Police Reform*, 51 GA. L. REV. 1209 (2017); Ayesha Hardaway, *Time Is Not on Our Side: Why Specious Claims of Collective Bargaining Rights Should Not Be Allowed to Delay Police Reform Efforts*, 15 STAN. J. C.R. & C.L. 137, 172–81 (2019). See *infra* Section II.A for a discussion of Stephen Rushin's research on problematic police contract terms and their impact.

22. Noam Scheiber, Farah Scheiber, & J. David Goodman, *How Police Unions Became Such Powerful Opponents to Reform Efforts*, N.Y. TIMES (June 6, 2020), <https://www.nytimes.com/2020/06/06/us/police-unions-minneapolis-kroll.html> [<https://perma.cc/UZ3B-NTZQ>].

militarization, repression, and brutality against protestors, facilitated in part by the emergency context of the COVID-19 pandemic.²³

A. What the Defund MPD Movement Meant for Police Unions.

This article explores how the Defund movement informs the police union debate through a case study of Washington, D.C.’s “Defund MPD” coalition, an abolitionist movement that targeted the Metropolitan Police Department (MPD).²⁴ Amid the summer 2020 uprising, Defund MPD and the D.C. Council²⁵ each took immediate steps to target the D.C. Police Union as a source of power and a site of reform and transformation.²⁶ The D.C. Council and Defund MPD campaigns provide concrete examples of the range of political strategies available to restrict police union power and to mitigate the structural racial harm of policing. As this article will demonstrate, the case of D.C. shows how Defund movements shifted the conversation on police unionism through the imposition of radical demands, achieving measurable restrictions on police union power and revealing new

23. The COVID-19 emergency powers and frequently cited property damage that occurred amid the protests in the summer of 2020 led executive officials ranging from local mayors to U.S. Attorney General William Barr to justify the deployment of federal officials to cities and towns across the U.S. See, e.g., Colin Dwyer, *Minnesota to Deploy Record Guard Force to Contain Unrest over Death of George Floyd*, NPR (May 30, 2020), <https://www.npr.org/2020/05/30/866094145/minnesota-to-deploy-record-guard-force-to-contain-unrest-over-death-of-george-fl> [https://perma.cc/2YUV-QSFC]; Soo Kim, *Protests Near Me—List of Cities Rioting, States Where National Guard Has Been Deployed*, NEWSWEEK (June 1, 2020), <https://www.newsweek.com/protests-near-melist-cities-rioting-states-where-national-guard-has-been-deployed-1507770> [https://perma.cc/3UXX-UM5C]; *George Floyd: Mapping U.S. National Guard Deployments*, AL JAZEERA (June 1, 2020), <https://www.aljazeera.com/news/2020/6/1/george-floyd-mapping-us-national-guard-deployments> [https://perma.cc/2PDH-U6A4].

24. *About*, DEFUND MPD, <https://www.defundmpd.org/about> [https://perma.cc/9RK6-94CL] (last visited Mar. 1, 2022).

25. Not quite a state and not quite a city, D.C. has an idiosyncratic government structure. The District of Columbia Home Rule Act of 1973 established its current form of government, which consists of an executive, legislative, and judicial branch. Like a city, D.C. elects a Mayor endowed with executive powers and a Council overseeing the legislative branch. However, the U.S. Congress maintains the power to overturn laws passed by the D.C. Council, and the U.S. President appoints (and the U.S. Senate confirms) all D.C. judges. *DC Government Organization*, OFFICE OF THE CITY ADMINISTRATOR, <https://oca.dc.gov/page/dc-government-organization> [https://perma.cc/4C2V-9VUW] (last visited Mar. 1, 2022).

26. The idea to target a police union is not new. See *infra* Section II.A. This paper seeks to understand the relationship of the police union to the abolitionist movement in D.C. as it gained momentum in 2020. However, movements do not operate in isolation, and it is worth considering the work of other movement leaders who have pursued a parallel strategy. See, e.g., Sukyi McMahon & Chas Moore, *To Reform the Police, Target Their Union Contract*, N.Y. TIMES (Apr. 8, 2019), <https://www.nytimes.com/2019/04/08/opinion/austin-police-union-contract.html> [https://perma.cc/3SK6-A9DZ] (describing Austin Justice Coalition’s intervention in the Austin, TX police union contract); #NIXTHE6, <https://nixthe6.org/> [https://perma.cc/R7LK-9Q4G] (last visited Mar. 1, 2022) (describing dataset of 600 police contracts and proposing grassroots efforts to eliminate six problematic provisions).

possibilities for police union contracts to serve goals of divestment and community control.²⁷

This article does not assume that the lessons of D.C. apply universally, nor does it attempt to characterize the national conversation on police unions. Nonetheless, by closely analyzing the course of one Defund movement's campaign against a police union, this article elucidates aspects of the police union problem and strategies for addressing it that were previously overlooked.

The article proceeds in three parts. Part II situates the case study in the existing literature on police unions. Part III describes the rise of D.C.'s Defund movement and the emergence of the strategy to target the D.C. Police Union across three sites: mass protest, the local legislative process, and the contract negotiations between the District and the D.C. Police Union. Part IV explores the implications of the case study for academic and policy debates on police unionism. It argues the existing literature on police unions is limited by its adherence to reformist approaches to policing, which tend to invest in and enhance the legitimacy of policing.²⁸ Defund MPD's approach reveals new, transformative strategies to redress police union abuses. By challenging police salary and benefits terms as well as misconduct terms, Defund MPD introduced a distinct model of police accountability and violence prevention that challenges the reformist paradigm. The Defund campaign provides a model of governance that restores power and resources to the historically marginalized—and could repair the racial violence that concerns reformers and abolitionists alike.

B. A Note on Reform and Abolition

This article works from an assumption that the distinction between reform and abolition is salient to the choices we make about how communities are formed, governance is shaped, and harm is remediated. Police reform differs from police abolition in its approaches and goals. Police reform seeks to improve the efficacy

27. See *infra* Part III.

28. By contrast, police and prison abolitionists refer to abolitionist proposals that reduce the size of the carceral system (but do not eliminate it) as “non-reformist reforms.” See, e.g., Garrett Felber, *The Struggle to Abolish the Police Is Not New*, BOS. REV. (June 9, 2020), <http://bostonreview.net/race/garrett-felber-struggle-abolish-police-not-new> [<https://perma.cc/ER8H-G5D9>] (“Many continue to endorse what [Ruth] Wilson Gilmore calls ‘non-reformist reforms’—in other words, reforms that shrink the carceral system and thus continue to move us incrementally, in the words of abolitionist organizer Mariame Kaba, ‘toward the horizon of abolition.’”); Dan Berger, Mariama Kaba, & David Stein, *What Abolitionists Do*, JACOBIN (Aug. 24, 2017), <https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration> [<https://perma.cc/4S3B-N6W5>] (“Central to abolitionist work are the many fights for non-reformist reforms—those measures that reduce the power of an oppressive system while illuminating the system’s inability to solve the crises it creates.”). French philosopher André Gorz has been credited with coining the term. See Akbar, *Demands*, *supra* note 14, at 101.

of policing along metrics such as crime reduction, accuracy, fairness, and safety.²⁹ Reform does not question the premise that police play an important public safety role in society; as such, it orients toward improving the project of policing, often with the distinct goal to legitimate policing³⁰ and with the effect of increasing police budgets.³¹ Abolition envisions a world without police and prisons on the premise that policing and incarceration create, maintain, and exacerbate racial and economic inequality.³² To the extent that police abolitionists engage in law and policy reform,³³ they seek to enact “non-reformist reforms” that reduce the funding and scale of policing—a paradigm that is discussed further in Part IV.³⁴ This case study of Defund MPD, an abolitionist movement,³⁵ demonstrates how the rise in abolitionist demands inflected the debate on police unions and urges legal scholars and advocates to consider the potential for such a non-reformist approach to remedy police violence.

II.

THE PROBLEM OF POLICE UNIONS: REFORMIST APPROACHES

For decades, police unions were overlooked by scholars of both policing and labor.³⁶ In 2015, activists who participated in the Ferguson Uprising called

29. Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 793 (2021) (summarizing the traditional goals of police reform: “that policing practices should reduce crime, make people feel safe, and promote trust between police officers and communities so that they can work together to coproduce safety—all while limiting the harms of policing, such as police violence, as much as possible”).

30. For a critical account of traditional police reform objectives, see *id.* at 793–99 (categorizing police reform into “instrumental” approaches, which measure crime rates and the rates of harms committed by police and seek to balance the two, and “legitimacy” approaches, which seek to encourage cooperation with police by promoting perceived “fairness” in policing).

31. Akbar, *Abolitionist Horizon*, *supra* note 7, at 1826 (“[C]ommon police reforms like training, body cameras, and community policing increase funding, resources, and, possibly, scale.”).

32. See *id.* at 1815–16 (citing Critical Resistance’s definition of the prison industrial complex and describing policing and incarceration as “contingent, rather than necessary, forms of violence, constitutive of the terrain of inequality and maldistribution”).

33. As opposed to advocating for non-reformist steps toward abolition, many abolitionists focus on building alternatives to the legal system, such as mutual aid and transformative justice. See, e.g., Dean Spade, *Solidarity Not Charity: Mutual Aid for Mobilization and Survival*, 38 SOC. TEXT 131 (Mar. 2020) (arguing that “expanding use of mutual aid strategies will be the most effective way to support vulnerable populations to survive, mobilize significant resistance, and build the infrastructure we need for the coming disasters”); TRANSFORMHARM.ORG, <https://transformharm.org/> [<https://perma.cc/E64M-R8EY>] (last visited Mar. 1, 2022) (offering a “resource hub about ending violence” including information about abolition, transformative justice, restorative justice, community accountability, and other topics).

34. Akbar, *Demands*, *supra* note 14, at 100–02 (describing the origins of the term “non-reformist reforms” and the use of the term by abolitionists). See also *infra* Part IV.

35. DEFUND MPD, *supra* note 24 (“[W]e are a Black-led multi-racial coalition of people and organizations in DC who share a common vision of a city without prisons and police.”).

36. See generally Samuel Walker, *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*, 9 POLICE PRAC. & RES. 95 (2008). See also Benjamin Levin, *What’s Wrong with Police Unions?* 120 COLUM. L. REV. 1333, 1336 (2020).

attention to the obstructionist role of police unions by developing the first national database of police contracts accessible to the public.³⁷ The Police Union Contract Project aimed to empower communities to intervene in police contract negotiations and block provisions that facilitate police impunity for misconduct.³⁸ Scholars built upon this movement work through empirical studies and reform proposals that substantiated the role of police labor organizations in hindering reform and facilitating violence.³⁹

Prior proposals have emphasized labor law solutions to policing problems. This work is useful for its identification of transsubstantive strategies:⁴⁰ it indicates that the problem of police unions is rooted in the interlocking of labor law and the constitutional law of policing, among other bodies of law, and that much is missed by engaging these substantive areas in isolation. However, the literature is limited to the extent that it endorses a reformist view of policing, which defines police violence as a deviation, rather than a norm.⁴¹ This approach to policing implies the existing legal structure for police accountability would reduce violence if it were not for the union tampering with the procedures.

These labor law approaches are reformist because they aim to preserve the system of policing and enhance its perceived fairness by enabling discipline for misconduct.⁴² Many of the strategies would enhance opportunities for public input on police bargaining while maintaining police officers' control over disciplinary and economic terms.⁴³ These proposals define the problem of police unions narrowly: police unions create obstacles to traditional modes of police reform. The policy interventions are accordingly narrowly drawn.

37. Krithika Varagur, *How Black Lives Matter Activists Plan to 'Check the Police,'* HUFFPOST (Dec. 7, 2015), https://www.huffpost.com/entry/police-union-contract-project_n_565f4193e4b08e945fedb444? [<https://perma.cc/HE96-7G2A>] (describing the origin story of The Police Union Contract Project and Campaign Zero).

38. The Police Union Contract Project was one of the early police accountability efforts made by Campaign Zero after Ferguson. *Id.*

39. See Rushin, *supra* note 20, at 1222; Catherine L. Fisk, & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 750 (2017); Dharmapala, McAdams, & Rappaport, *supra* note 20.

40. K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 695 (2020) (“The strategies of M4BL member organizations are transsubstantive: they cut across and link together multiple issue areas as codeterminants of a deeper problem of historical inequalities and oppression.”).

41. Akbar, *Abolitionist Horizon*, *supra* note 7, at 1838.

42. See Akbar, *Demands*, *supra* note 14, at 103 (“[R]eformist reforms draw on and advance critiques of our system—whether that be capitalism or the carceral state—that do not question underlying premises or advance alternative futures.”).

43. The moderate nature of these reforms perhaps can be attributed to an underlying concern that police union reforms will undermine legitimate police labor power and by extension, public-sector union power. See Fisk & Richardson, *supra* note 39, at 789–91 (addressing the concern that their modest reform proposal will weaken public-sector unions). See generally Levin, *supra* note 36 (arguing that many critiques of police unions apply broadly to public-sector unions and suggesting that critics conceptualize the problem of police unions as *policing* problems, rather than labor power problems).

Labor reformist approaches to police unions fall into two broad categories: external and internal checks on police union power.

A. External Checks on Police Union Power

Stephen Rushin describes a “web” of labor and employment protections that facilitate police impunity for misconduct and improper use of force.⁴⁴ First, state labor law can facilitate police union control, as some courts have interpreted discipline as a mandatory subject of bargaining.⁴⁵ In other words: the police chief cannot unilaterally set disciplinary policy. Unions have taken this opportunity to bargain for problematic disciplinary provisions in their contracts, such as limiting pathways for civilian complaints and delaying interrogations of officers accused of misconduct, often conceding salary and benefits improvements in exchange for laxer discipline.⁴⁶ Second, civil service statutes, applicable to most government employees, and Law Enforcement Officer Bills of Rights (LEOBRs), applicable only to law enforcement, make officer demotion and termination costly and thereby disincentivize police management from taking corrective action.⁴⁷ Finally, a third category of police union protections obscure police records: law enforcement unions have successfully lobbied for privileges such as legislative limitations on open records laws to prevent the public release of officer files and body camera footage.⁴⁸

Rushin argues that these police union protections are problematic because they undermine traditional criminal law modes of police accountability.⁴⁹ The primary modes of police regulation—civil rights enforcement (through the Department of Justice or private § 1983/*Bivens* litigation⁵⁰), criminal prosecution, and the Fourth Amendment’s exclusionary rule—are thought to increase the costs of

44. Rushin, *supra* note 20, at 1203.

45. *Id.* at 1205–06 (explaining how some state courts have interpreted discipline as “conditions of employment” and thereby enabled police unions to bargain over disciplinary matters).

46. *Id.* at 1222–39, 1246.

47. Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 797–98 (2012); Rushin, *supra* note 20, at 1208–12 (describing LEOBRs and explaining that states are split on whether collective bargaining agreements can trump state civil service law—in other words, whether civil service laws provide a floor or ceiling for legitimate bargaining issues—so unions can bargain for greater protections from termination, for example).

48. Rushin, *supra* note 20, at 1212–13. These are not labor and employment laws per se, but they have a material impact on officer discipline.

49. *Id.* at 1199. Rushin also expresses the view that these protections are problematic because police are more powerful than other public employees and are legally permitted to use violence. *See id.* at 1247–48.

50. § 1983 is a provision of the U.S. Code providing a civil cause of action to private parties when state or local officials violate their constitutional rights. 42 U.S.C. § 1983. *Bivens* created a parallel remedy for constitutional violations by federal officials, but the doctrine has been severely limited since. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971); *see The Supreme Court, 2019 Term—Leading Cases*, 134 HARV. L. REV. 410, 555 (2020) (“It has been forty years since the Supreme Court last recognized the existence of a new *Bivens* cause of action.”).

police misconduct, deterring officers from committing misconduct and incentivizing police management to punish officers who engage in illegal or unconstitutional activity.⁵¹ Police labor and employment protections undermine this deterrence/incentive theory in two primary ways: (1) they make discipline slow, costly, and difficult and (2) they conceal, alter, or clear records of police misconduct so discipline and accountability are never initiated to begin with. By enhancing procedural protections for officers facing discipline, clearing misconduct records, and blocking civilian oversight, police unions—and the public law that governs police labor and employment—erase the grounds for misconduct investigation and circumvent the mechanisms in place for police management, communities, the Department of Justice, and civil rights plaintiffs to redress systemic police harms.⁵² In sum, police unions insulate management from the costs of misconduct by undermining investigations before they begin. As a result, the cost of misconduct is borne by the portions of the public subject to police abuse.

In Rushin’s view, police collective bargaining is a particularly troublesome lever of power because it occurs without public participation and thus is subject to “regulatory capture.”⁵³ Officers can trade protection from discipline for lower salaries, and the city can boast of a reduced budget while passing on the costs of police impunity to a “relatively small and politically disadvantaged minority”—namely poor constituents of color.⁵⁴ In a study of 178 police union contracts from many of the nation’s largest cities, Rushin identifies the seven most prevalent “problematic provisions” in police unions’ collective bargaining agreements (CBAs): (1) delay officer interrogations after alleged misconduct, (2) provide officer access to evidence before interrogation, (3) limit consideration of disciplinary history (e.g., through destruction of personnel records after a short time), (4) limit the length of investigation or establish a statute of limitations, (5) limit anonymous complaints, (6) limit civilian oversight, and (7) provide for arbitration of discipline.⁵⁵

Rushin’s proposed solution is to increase public participation in police union bargaining by opening negotiations to the public or requiring disciplinary terms to be developed with public input.⁵⁶ Structuring public participation into the bargaining process could address the problem of regulatory capture and eliminate some of the union-favoring terms in CBAs. By reducing or eliminating the union’s special protections from discipline, civilians, police management, and other state

51. See generally Harmon, *supra* note 47; Rushin, *supra* note 20, at 1199.

52. Rushin, *supra* note 20, at 1198–99; Emmanuel, *supra* note 21. But see Kate Levine, *Police Suspects*, 116 COLUM. L. REV. 1197 (2016) (arguing that all criminal defendants should receive some of the procedural protections police have secured through LEOBRs, particularly those related to interrogation).

53. Rushin, *supra* note 20, at 1215–16.

54. *Id.*

55. *Id.* at 1217–20.

56. *Id.* at 1244–45.

actors could hold police accountable through the traditional criminal law modes and the legislative process.

Catherine Fisk and her colleagues built upon Rushin's work during the summer 2020 uprising, proposing a series of California-specific law reforms that would impose external checks on police bargaining.⁵⁷ The authors recommend that state law require public input on the government's bargaining proposals for the police union before negotiation begins and before ratifying a contract.⁵⁸ They also suggest that all law enforcement disciplinary records and decisions resulting from arbitration and civil service hearings be made publicly accessible.⁵⁹ Like Rushin, the authors propose a moderate level of community input on law enforcement CBAs, limited to discipline and use of force, while stressing the need for transparent and accurate records. The authors seem to infer greater transparency will produce greater accountability, while leaving intact the bargaining process and its primary decision makers.

B. Internal Checks on Police Union Power

Catherine Fisk and L. Song Richardson have argued that reformers have overlooked the role of internal police department hierarchies in stymying reform.⁶⁰ Police unions rose in prominence during the "professionalism era" of policing, in which policing became subject to greater regulation.⁶¹ Police unions responded to the imposition of top-down rules and "arbitrary exercises of management power" by negotiating for more favorable wages, conditions, and disciplinary processes.⁶² Still today, rank-and-file officers have little say in police policy, in part due to the top-down organizational culture of police departments and in part due to public-sector labor law that gives management discretion over "the mission and methods of public work"—in this context, policing tactics.⁶³ While management must bargain over wages, promotion, and discipline,⁶⁴ it can decline to bargain over police policy, such as use of force standards, altogether.

57. Catherine Fisk, Joseph Grodin, Thelton Henderson, John True, Barry Winograd, & Ronald Yank, *Reforming Law Enforcement Labor Relations*, CAL. L. REV. ONLINE (Aug. 2020), <https://www.californialawreview.org/reforming-law-enforcement-labor-relations> [https://perma.cc/JTH3-UG62].

58. *Id.*

59. *Id.* California recently passed a law permitting disclosure of records involving "law enforcement shootings or the use of force causing serious injury or death; sustained findings that a law enforcement officer committed sexual assault; and sustained findings of dishonesty by an officer that impacted the reporting, investigation, or prosecution of a crime," but the authors propose all records should be accessible. *Id.*

60. See Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712 (2017) (describing the hierarchical management structure of police departments, the resultant mistrust between management and the rank-and-file, and proposing changes that empower rank-and-file officers to participate in reform).

61. *Id.* at 738.

62. *Id.*

63. *Id.* at 740.

64. *Id.*

Fisk and Richardson argue that the exclusion of rank-and-file officers from policy decisions foments resistance—and has played a key role in motivating police union opposition to reform. They propose that amplifying the voices of the rank-and-file can disrupt the cycle of repression and resistance and produce long-term gains in police accountability.⁶⁵ Specifically, they propose a modified system of minority representation that would enable reform-minded officers to negotiate with management on matters of police practices, traditionally deemed non-mandatory subjects of bargaining.⁶⁶ The minority union could be represented by an existing police officers' affinity group or a group or organization composed of community members, such as a Black Lives Matter chapter.⁶⁷ Fisk and Richardson's insights suggest that, from a labor relations perspective, police officers are not a monolith and that a meaningful response to the problems of policing must engage with the power differentials within departments and unions themselves.⁶⁸ Changing the internal structure of police unions could facilitate long-term change from within police departments.

Fisk and Richardson's proposal is self-consciously "modest."⁶⁹ They would preserve majority union control over the existing contract, including economic and disciplinary terms, while the minority union would be allowed to confer with management over policy issues outside the scope of the contract.⁷⁰ In other words, Fisk and Richardson's proposal would not alter or restrict the economic power of the existing majority union, nor its ability to negotiate for the extraordinary disciplinary protections critiqued by Rushin.⁷¹ This is a crucial distinction between the labor reformist approach and the abolitionist vision set forth by the Defund MPD Coalition, which is explored in Parts III and IV.

III.

CASE STUDY: WHY REFORMERS AND ABOLITIONISTS TARGETED THE D.C. POLICE UNION

Long before the summer 2020 uprising, Washington, D.C., had been the site of a sustained movement against policing and racial violence.⁷² D.C. has also been

65. *Id.* at 792–97.

66. *Id.* at 786–87.

67. *Id.* at 721.

68. *See also* Levin, *supra* note 36, at 1376–78 (arguing that critics of police unions should be attentive to heterogeneity within police departments to properly diagnose what is problematic about their unions or who is best situated to impose discipline or accountability).

69. Fisk & Richardson, *supra* note 60, at 786.

70. *Id.* at 786–87; *see also* Catherine Fisk, *Reforming Police Unions*, ONLABOR, (July 31, 2017), <https://onlabor.org/reforming-police-unions/> [<https://perma.cc/5292-UEMG>].

71. Fisk & Richardson, *supra* note 60, at 787 (“[The duty to confer with a minority unit] is not intended to weaken the economic and disciplinary protections for which police unions have bargained.”).

72. *See generally* *Who We Are*, STOP POLICE TERROR PROJECT DC, <https://www.sptdc.com/who-we-are> [<https://perma.cc/6NYX-TCDX>] (last visited Mar. 1, 2022) (describing the history and origins of Stop Police Terror Project DC in solidarity with Ferguson).

a site of counter-resistance by the D.C. Police Union, an affiliate of the Fraternal Order of Police (FOP).⁷³ In the years leading up to the 2020 uprising, D.C.-based abolitionist groups developed radical platforms that allowed them to meet the moment of mass protest. Some of the campaigns predating the uprising included the Stop Police Terror Project’s platform to end stop-and-frisk,⁷⁴ DecrimNow DC’s movement to decriminalize sex work,⁷⁵ and Black Lives Matter DC’s Cop Watch program.⁷⁶ Days after the killing of George Floyd, organizers formed the Defund MPD coalition and helped concentrate abolitionist demands on local officials.⁷⁷

The D.C. Council responded swiftly to the summer’s demonstrations, passing emergency police reform legislation just over two weeks after George Floyd’s death.⁷⁸ In addition to traditional police reforms like restricting use of force and increasing civilian oversight, the legislation proposed a police labor reform: it barred the D.C. Police Union from negotiating over discipline.⁷⁹ Later in 2020, Defund MPD developed its own campaign targeting the District’s contract negotiation with the police union.⁸⁰ This case study explores why activists and legislators prioritized the D.C. Police Union contract as a site of divestment and reform

73. The Fraternal Order of Police is a national labor organization with a membership of over 355,000 members organized in more than 2,100 local chapters (“lodges”). See *About the Fraternal Order of Police*, FRATERNAL ORDER OF POLICE, <https://www.fop.net/CmsPage.aspx?id=223> [perma.cc/7CD8-CSFT] (last visited Mar. 1, 2022). For a brief description of the FOP’s history of resistance to police reform in D.C., see Nell Geiser, *DC Police Union Negotiations Are Another Front in the Fight for Abolition*, WASH. SOCIALIST (Dec. 2020), <https://washingsocialist.mcdcsa.org/ws-articles/20-12-police-union-negotiations> [https://perma.cc/JTQ3-VSZR].

74. *No More Stop and Frisk*, STOP POLICE TERROR PROJECT DC, <https://www.sptdc.com/nomorestopandfrisk> [https://perma.cc/GJ43-N7UC] (last visited Mar. 1, 2022).

75. See DecrimNow DC (@DecrimNowDC), TWITTER, <https://twitter.com/decrimnowdc> [https://perma.cc/E6GJ-EB4J] (last visited Mar. 1, 2022).

76. *BLM DC Cop Watch*, BLACK LIVES MATTER DC, <https://www.dcbml.org/new-page> [https://perma.cc/D3TM-QQFP] (last visited Mar. 1, 2022); Cop Watch DC (@copwatch_dc), TWITTER, https://twitter.com/copwatch_dc [https://perma.cc/2ZBG-HK8L] (last visited Mar. 1, 2022) (showing that Cop Watch DC joined Twitter in July 2018); Cop Watch DC (@copwatchdc1312), FACEBOOK, https://www.facebook.com/copwatchdc1312/?ref=page_internal [https://perma.cc/938M-UP26] (last visited Mar. 1, 2022) (showing the group was active on Facebook predating the uprising).

77. See *infra* Section III.A.

78. *Council Unanimously Passes Emergency Police and Justice Reform Measure*, COUNCIL OF D.C. (June 10, 2020), <https://dccouncil.us/council-unanimously-passes-emergency-police-and-justice-reform-measure/> [https://perma.cc/68V7-EJ59]. See *infra* Section III.B.

79. Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act, D.C. Act 23-437, § 101, 67 D.C. Reg. 12993, 12994–95 (Oct. 28, 2020) (establishing criminal penalty for law enforcement use of neck restraints); § 106, 67 D.C. Reg. at 12999–13000 (establishing use of force review board to include five civilian members); § 119, 67 D.C. Reg. at 13005–06 (heightening the standard that allows police use of deadly force); § 123(b), 67 D.C. Reg. at 13009–11 (establishing police complaints board for Metro Transit Police to include four civilian members); § 116, 67 D.C. Reg. at 13004 (banning disciplinary bargaining in all law enforcement contracts), <https://code.dccouncil.us/dc/council/acts/23-437> [https://perma.cc/TXM6-UT87]. See *infra* Section III.B.

80. See *infra* Section III.A.

amid the Defund uprising. It reveals a complex interaction between liberal reformers, abolitionists, and law enforcement resisters and interrogates the narratives of policing, safety, and accountability that emerged from this struggle.

The summer of 2020's mass protests, and the specter of police violence that surrounded them, polarized the public narrative on policing such that public officials were forced to make a choice: side with the people or side with the police.⁸¹ The legislation allowed the D.C. Council to align itself publicly with the movement and to defend its commitments to police accountability and transparency, while the police union made itself a target through vocal counter-resistance and litigation challenging the reforms. Finally, the Defund movement's intervention in the police union contract revealed limitations in the legislation's ability to check the power of the police and raised important questions on the relevance of police unions to police reform and abolition that are taken up in Part IV.

A. Mass Protest: Creating the Conditions for Radical Action

Protest movements and their demands have been overlooked frequently by legal scholars as legitimate sources of political and social theory.⁸² Though, or perhaps because, movements are difficult to study, they are vital sources of critique, research, and policy.⁸³ The story of the D.C. Defund movement illustrates the pivotal role of grassroots social movements in diagnosing the problems of policing, including through collection of research and data, shifting public narratives and policy horizons, and influencing local political leaders to take action.⁸⁴

This case study concentrates on D.C.'s Defund MPD Coalition, which formed in summer 2020 from activist organizations predating the uprising and maintained political pressure through direct action and campaigns targeting the District's 2021 budget and police union contract. The Defund movement created the conditions under which the D.C. Council could restrict the power of the police union and

81. Movement theorists Carlos Saavedra and Paul Engler refer to these moments as “trigger events,” where a dramatic or tragic event occurs, and movements can re-frame their campaigns around such a choice. Carlos Saavedra, *Five Ways Funders Can Support Social Movements*, STAN. SOC. INNOVATION REV. (July 9, 2018), https://ssir.org/articles/entry/five_ways_funders_can_support_social_movements# [<https://perma.cc/C9UG-JDVU>].

82. See Akbar, *Abolitionist Horizon*, *supra* note 7, at 1783 (“For decades, law faculty have dismissed demands to divest from and dismantle the police as fringe and unworkable.”). See generally Amna A. Akbar, Sameer M. Ashar, & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821, 825 (2021) (making the case that “legal scholars should take seriously the epistemological universe of today’s left social movements, their imaginations, experiments, tactics, and strategies for legal and social change” and proposing and defending a methodology to achieve this goal).

83. See Amna A. Akbar, *Law’s Exposure: The Movement and the Legal Academy*, 65 J. LEGAL EDUC. 352, 354–56 (2015) [hereinafter Akbar, *Law’s Exposure*] (arguing movements, though “messy and multifaceted,” contest the basic assumptions undergirding the legal system and thus deserve a space in legal education).

84. See *infra* Section III.B. See also Akbar, *Law’s Exposure*, *supra* note 83, at 361 (“Gathering and then publicizing the data are in themselves acts of resistance”).

citizens could claim a role in the union's pending contract negotiation.⁸⁵ It did this by making a radical demand—"defund the police"—that polarized the narrative on policing and forced officials to take urgent action.

The D.C. George Floyd protests began on May 29, 2020.⁸⁶ On May 31, D.C. Mayor Muriel Bowser announced a citywide curfew from 11 pm to 6 am.⁸⁷ On June 1, Bowser modified the curfew to begin at 7 pm; federal officers began tear-gassing protestors around the White House and Lafayette Park thirty minutes before curfew, just in time for President Trump to stage a photo opportunity outside St. John's Episcopal Church.⁸⁸ According to then-MPD Chief of Police Peter Newsham, more than 300 arrests were made that night, the majority of which were for curfew violations.⁸⁹ Bowser lifted the curfew on June 4, citing peaceful protests, and sought to distance herself from federal law enforcement, whose pervasive use of force and chemical weapons marked the early days of the protests.⁹⁰

In D.C. and elsewhere, the summer's public discourse on policing took shape in the context of extensive federal law enforcement and military presence. National media attention turned to D.C. as the U.S. Park Police, National Guard, and other federal agents plowed through protestors, deploying tear gas, smoke

85. Prior to 2020, Stop Police Terror Project DC had raised the issue of police union power. The group advocated for input into the contract but appears to have learned of the contract at too late a stage to alter its terms. Black Lives Matter DC, Stop Police Terror Project DC, & Anthony Lorenzo Green, *SPTP DC, BLM DC, & Commissioner Anthony Lorenzo Green Letter to Council Re: Proposed MPD Union Contract*, STOP POLICE TERROR PROJECT DC (Nov. 13, 2018), <https://www.sptdc.com/press-releases/2018/11/13/sptp-dc-blm-dc-amp-commissioner-anthony-lorenzo-green-letter-to-council-re-proposed-mpd-union-contract> [https://perma.cc/4PG7-YGYW] [hereinafter *SPTP DC Letter*] ("It has been brought to our attention that the Committee plans to hold a roundtable on MPD's proposed Collective Bargaining Agreement (CBA) on November 14, 2018. We are extremely concerned about the unreasonably short turn-around time as well the contents of the proposed agreement.").

86. Laura Wainman, *From Unrest to Joy, DC's Week of George Floyd Protests Made Space for a Spectrum of Emotions*, WUSA9 (June 12, 2020, 11:21 PM), <https://www.wusa9.com/article/features/producers-picks/timeline-george-floyd-protests-dc-one-week/65-7f078101-df9d-4bf2-b630-9616a516d6f1> [https://perma.cc/639T-5DX4].

87. *Id.*

88. *Id.*; see Mayor Muriel Bowser & Peter Newsham, Press Conference (June 2, 2020) (transcript available at <https://www.rev.com/blog/transcripts/washington-dc-mayor-muriel-bowser-press-conference-transcript-june-2> [https://perma.cc/E645-644H]).

89. Bowser & Newsham, *supra* note 88. The majority of the questions addressed to the Mayor pertained to the federal law enforcement's use of chemical weapons against protestors, which Bowser had called "shameful" on Twitter. *Id.* Newsham denied MPD involvement in the violent clearing of protestors for the "presidential movement," but acknowledged that his force used pepper spray and other weapons to subdue protestors. *Id.*

90. See Hannah Natanson, Antonio Olivo, Rebecca Tan, & Tom Jackman, *Bowser Relaxes D.C. Curfew as Tensions Rise Between Local Leaders and Trump Administration*, WASH. POST (June 4, 2020), https://www.washingtonpost.com/local/bowser-relaxes-citywide-curfew-as-tensions-rise-between-local-leaders-and-the-trump-administration/2020/06/03/e7f06af8-a5b4-11ea-b473-04905b1af82b_story.html [https://perma.cc/FM8A-7XQL]; Will Vitka, *Bowser: No Curfew for DC Thursday; Out-of-State Troops Should Leave*, WTOP (June 4, 2020, 12:49 PM), <https://wtop.com/dc/2020/06/dc-george-floyd-protest-coronavirus-update-june-4/> [https://perma.cc/FKB5-ZLQ4].

cannisters, and rubber bullets, among other weapons, in what looked like an effort to clear the way for President Trump's June 1 photo-op.⁹¹ President Trump stood before the church, held a bible, and delivered his first televised speech since the George Floyd uprising began.⁹² The church, damaged during the protests, became a symbol for conservative counter-resistance to Black Lives Matter.⁹³

Federal law enforcement and military presence in Washington grew in the following days.⁹⁴ After protestors were brutally cleared from Lafayette Square, fences were erected around the perimeter of the White House.⁹⁵ Two days later, the fencing was expanded, and rows of heavily armed federal law enforcement officers and troops guarded the perimeter, coming face to face with protestors.⁹⁶ District officials denounced the show of federal force and lack of local accountability.⁹⁷ Many federal agents wore no badges or emblems indicating their agency

91. Ashley Parker, Josh Dawsey, & Rebecca Tan, *Inside the Push to Tear-Gas Protesters Ahead of a Trump Photo Op*, WASH. POST (June 1, 2020), https://www.washingtonpost.com/politics/inside-the-push-to-tear-gas-protesters-ahead-of-a-trump-photo-op/2020/06/01/4b0f7b50-a46c-11ea-bb20-ebf0921f3bbd_story.html [https://perma.cc/2LUJ-65T5]; Carol D. Leonnig, Matt Zapposky, Josh Dawsey, & Rebecca Tan, *Barr Personally Ordered Removal of Protesters near White House, Leading to Use of Force Against Largely Peaceful Crowd*, WASH. POST (June 2, 2020), https://www.washingtonpost.com/politics/barr-personally-ordered-removal-of-protesters-near-white-house-leading-to-use-of-force-against-largely-peaceful-crowd/2020/06/02/0ca2417c-a4d5-11ea-b473-04905b1af82b_story.html [https://perma.cc/G6MC-VKZU]. Officials later disputed the assertion that protestors were cleared for the purpose of the photo-op, including in a report issued by the Interior Department's inspector general in June 2021. Annie Karni, *Park Police Had Planned to Clear Area Before Trump's Walk to Church, Watchdog Says*, N.Y. TIMES (June 9, 2021), <https://www.nytimes.com/2021/06/09/us/politics/park-police-trump-lafayette-square.html> [https://perma.cc/7396-2B7S] (noting that the report only addressed the involvement of the U.S. Park Police and "was not to be seen as a definitive account of the day, in part because so many other law enforcement agencies were involved").

92. Zack Beauchamp, *Officers Fire Tear Gas on Peaceful Protesters to Clear the Way for Trump's Photo Op*, VOX (June 1, 2020, 8:06 PM), <https://www.vox.com/policy-and-politics/2020/6/1/21277530/trump-speech-police-violence-dc-tear-gas> [https://perma.cc/NXY9-FKR3].

93. *Id.* The bishop of the church distanced herself from the photo-op and repudiated Trump for using her church as a "prop." Mario Koran & Helen Sullivan, *Bishop 'Outraged' Over Trump's Church Photo Op During George Floyd Protests*, GUARDIAN (June 2, 2020, 12:06 AM), <https://www.theguardian.com/us-news/2020/jun/02/outrageous-christian-leaders-reject-trump-use-of-church-as-prop-during-george-floyd-protests> [https://perma.cc/79E4-G97A].

94. Wainman, *supra* note 86 (describing increased presence of National Guard in Lafayette Square on June 2nd and unmarked law enforcement presence outside the White House on June 3rd, as the fenced perimeter was pushed farther out); Zolan Kanno-Youngs & Katie Benner, *Trump Deploys the Full Might of Federal Law Enforcement to Crush Protests*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/02/us/politics/trump-law-enforcement-protests.html> [https://perma.cc/LE5X-QD5M].

95. Dareh Gregorian, *New Fence Around the White House Becomes a Canvas for Protesters*, NBC NEWS (June 8, 2020, 12:40 PM), <https://www.nbcnews.com/politics/white-house/new-fence-around-white-house-becomes-canvas-protesters-n1227506> [https://perma.cc/QWX7-FT4T]; Lauren Egan, *White House Adds Fencing Around Perimeter*, NBC NEWS (June 4, 2020, 7:56 PM), <https://www.nbcnews.com/politics/white-house/white-house-adds-new-fencing-around-perimeter-n1225296> [https://perma.cc/8U7W-CL9F].

96. Natanson, Olivo, Tan, & Jackman, *supra* note 90.

97. *Id.* (noting the frustration of local leaders and lack of federal officer identification, and quoting Mayor Bowser as stating, "We should all be concerned about who is giving the orders[.]")

or names, and some reportedly refused to identify themselves when asked by protestors.⁹⁸ The lack of officer identification attracted critique for multiple reasons: first, it prevented accountability for misconduct, and second, the lack of badges and name tags made law enforcement “all-but indistinguishable” from white supremacist militia members who had showed up to counter-protest.⁹⁹

Each of these incidents provided powerful symbols that allowed protestors across the country to polarize the narrative on policing and demand transformation: the more the police look like the military—or white militia, for that matter—the stronger the argument that policing is an inherently violent institution that cannot exist in its current form. The militant law enforcement response to days of protests in D.C. confirmed the protestors’ outrage about police brutality, as they “fled chemical gas and flash-bomb grenades” and faced officers in fatigues and riot gear at protests intended to resist and condemn police violence.¹⁰⁰ Police militarization was in no way unique to D.C. or to the 2020 uprising;¹⁰¹ however, the scale of the movement and the images of police clashing with protestors shined a light on the problems with policing that activists decried.¹⁰² The protests created a stage on which police violence was displayed, the voices of protestors were amplified, and elected officials could be scrutinized for their responses.

Initially, the protestors did not say much about the D.C. Police Union. The union was absent from Black Lives Matter DC’s initial demands, released on June 6, which called broadly to “Defund Police” and echoed long-standing local campaigns, such as the efforts to decriminalize sex work, to end stop-and-frisk, to

98. Garrett M. Graff, *The Story Behind Bill Barr’s Unmarked Federal Agents*, POLITICO (June 5, 2020, 8:08 AM), <https://www.politico.com/news/magazine/2020/06/05/protests-washington-dc-federal-agents-law-enforcement-302551> [<https://perma.cc/UU65-9SX2>].

99. *Id.* These conditions of anonymity are of graver concern in the context of federal law enforcement: for example, many of the officers on the streets of D.C. were deployed from the Federal Bureau of Prisons and thus were not trained to operate in the street policing or mass protest context, with its heightened concern for protecting civil liberties. *Id.* See also Anthony Capaccio, *Federal Plan to Control D.C. Protests Taps 7,600 Personnel*, BLOOMBERG (June 5, 2020, 10:16 AM), <https://www.bloomberg.com/news/articles/2020-06-05/federal-plan-to-control-d-c-protests-has-7-600-personnel-tapped> [<https://perma.cc/DP47-DDSD>] (releasing a federal law enforcement personnel plan for the D.C. protests and describing the controversy surrounding federal agents’ lack of identification and lack of experience “responding to civil unrest”).

100. Natanson, Olivo, Tan, & Jackman, *supra* note 90.

101. See, e.g., Shirley Li, *The Evolution of Police Militarization in Ferguson and Beyond*, ATLANTIC (Aug. 15, 2014), <https://www.theatlantic.com/national/archive/2014/08/the-evolution-of-police-militarization-in-ferguson-and-beyond/376107/> [<https://perma.cc/K8CX-ACH3>] (tracing the heavy militarization of police at Ferguson, which drew widespread critique, to a Department of Defense program that provides surplus military equipment to state and local police departments).

102. Even before the protests, controversy surrounded the Park Police’s use of force. See Tom Jackman, *Park Police Changed Their Policies on Use of Force, Pursuits After Officers Chased and Killed Motorist Bijan Ghaisar*, WASH. POST (Feb. 7, 2020), <https://www.washingtonpost.com/crime-law/2020/02/07/park-police-changed-their-policies-use-force-pursuits-after-officers-chased-killed-motorist-bijan-ghaisar/> [<https://perma.cc/MPH9-FTWF>].

abolish school police, and to block the creation of a new jail in the District.¹⁰³ However, in a largely overlapping list of demands released on Twitter on the same day, Stop Police Terror Project-DC included a call to “Dissolve Police Unions.”¹⁰⁴ The demand stated:

Police unions negotiate contracts with cities—including DC—that insulate police from accountability, even when they murder unarmed people. These agreements prevent cities from firing (or in DC even releasing photos of) violent officers who repeatedly violate people’s rights. Accountability and reducing the power of police requires the dissolution of these powerful institutions.¹⁰⁵

One week later, the newly formed Defund MPD coalition launched a campaign targeting the 2021 District budget.¹⁰⁶ Though the police union would not become a primary target for Defund MPD until the fall of 2020, the mass movement created the conditions for the local legislature to confront the union’s power.

B. Emergency Legislation Bans Disciplinary Bargaining

On June 4, 2020, the sixth consecutive day of protests, D.C. Council member Charles Allen introduced an emergency bill that included a number of police reforms, including a ban on neck restraints, expedited release of body camera footage, and a requirement that the names of police officers involved in shooting

103. Black Lives Matter DC (@DMVBlackLives), TWITTER (June 6, 2020, 10:05 AM), <https://twitter.com/DMVBlackLives/status/1269269073071869952/> [<https://perma.cc/9Y4G-HY9X>] (tweeting the following demands: (1) Defund police; (2) No new jails; (3) Decriminalize sex work; (4) Police-free schools; (5) Drop the charges against protestors; (6) End cash bail in Maryland; and (7) Ban stop and frisk); see Martin Austerhuhle, *Here’s What Black Lives Matter D.C. Is Calling for, and Where the City Stands*, NPR (June 9, 2020), <https://www.npr.org/local/305/2020/06/09/872859084/here-s-what-black-lives-matter-d-c-is-calling-for-and-where-the-city-stands> [<https://perma.cc/3TML-6ERW>]. A major win for Police-Free Schools came in July, when the D.C. Council voted to terminate MPD’s security contract with D.C. Public Schools. Defund MPD (@Defund_MPD), TWITTER (July 7, 2020, 7:57 PM), https://twitter.com/Defund_MPD/status/1280652205150949377 [<https://perma.cc/3L69-KFSP>].

104. Stop Police Terror Project DC (@StopCopTerrorDC), TWITTER (June 6, 2020, 10:59 AM), <https://twitter.com/StopCopTerrorDC/status/1269282787451944962/> [<https://perma.cc/S648-PWGD>]; see also Austerhuhle, *BLM D.C.*, *supra* note 103 (describing the Stop Police Terror Project DC’s demands and discussing and contextualizing the BLM demands in relation to prior organizing and reform legislation that was being considered by the D.C. Council).

105. Stop Police Terror Project DC, *supra* note 104.

106. Defund MPD (@Defund_MPD), TWITTER (June 15, 2020, 7:35 PM), https://twitter.com/Defund_MPD/status/1272674046455545868 [<https://perma.cc/LTG4-3ZXA>]; Press Release, Stop Police Terror Project DC, Stop Police Terror Project DC Demands Better Than a \$15 Million Cut to MPD Budget (June 25, 2020), <https://www.sptdc.com/press-releases/2020/6/25/stop-police-terror-project-dc-demands-better-than-a-15-million-cut-to-mpd-budget> [<https://perma.cc/8S7Y-UKZ7>] (detailing early activist efforts to decrease the MPD Budget).

deaths or other serious uses of force be released.¹⁰⁷ On June 9, Council members debated and unanimously passed the Comprehensive Policing and Justice Reform Emergency Amendment Act of 2020.¹⁰⁸ The legislation—and subsequent litigation challenges—created a platform for public officials and police union representatives to enter the debate generated by activists in the streets. The Council adopted a narrative centering the values of accountability, transparency, and anti-subordination, while the police union countered this narrative by proclaiming the legislation “a deliberate and reactionary concession to anti-police rhetoric.”¹⁰⁹

The sheer pace at which this legislation was developed makes it worthy of study.¹¹⁰ The Emergency Act covered a wide range of police reforms, including changes to use-of-force standards and investigations of police misconduct, and a ban on police union bargaining over discipline.¹¹¹ This section explores why the Council responded with this bill and how different players in the D.C. political landscape responded to its provisions, particularly the restriction on police bargaining.

In a Resolution dated June 9, 2020, the D.C. Council declared “an emergency with respect to the need to provide for comprehensive policing and justice reform

107. Martin Austerhuhle, *New D.C. Police Reform Bill Would Outlaw Chokeholds, Speed Release of Bodycam Footage*, NPR (June 5, 2020), <https://www.npr.org/local/305/2020/06/05/870595281/new-d-c-police-reform-bill-would-outlaw-chokeholds-speed-release-of-bodycam-footage> [https://perma.cc/GJ4A-C3VZ]; Press Release, Councilmember Charles Allen, Councilmember Charles Allen Circulates Omnibus Emergency Bill with Policing Reforms, Will Be Introduced and Voted on Tuesday (June 4, 2020), <https://thedcline.org/2020/06/04/press-release-councilmember-charles-allen-circulates-omnibus-emergency-bill-with-policing-reforms-will-be-introduced-and-voted-on-tuesday/> [https://perma.cc/M9Y5-AC9Q].

108. *DC Council Unanimously Passes Police Reform Legislation Amid Ongoing Protests*, NBC WASH. (June 9, 2020, 9:51 PM), <https://www.nbcwashington.com/news/local/dc-council-unanimously-passes-police-reform-legislation-amid-ongoing-protests/2327213/> [https://perma.cc/9EUH-2HDJ]. See Martin Austerhuhle (@maustermuhle), TWITTER (June 9, 2020, 2:31 PM), <https://twitter.com/maustermuhle/status/1270371812413771782> [https://perma.cc/4BP4-VL2H] (providing a play-by-play of the Council hearing).

109. Complaint at 7, *Fraternal Order of Police, Metro. Police Dep’t Lab. Comm. v. District of Columbia*, 502 F. Supp. 3d 45 (D.D.C. 2020) (No. 20-2130).

110. Cf. Joe Dandron, *Columbus City Council Approves New Police Contract, Calls Online Post Before Meeting ‘Clerical Error’*, COLUMBUS DISPATCH (July 27, 2021, 12:21 PM), <https://www.dispatch.com/story/news/2021/07/27/columbus-city-council-approves-police-union-contract-14-pay-raise/5377116001/> [https://perma.cc/YK5Y-SFHE] (describing the Columbus City Council’s approval of a new police union contract, including a provision implementing a Civilian Police Review Board, more than one year after D.C. passed its Emergency Act); Christopher Gavin, *Why Marty Walsh Vetoed an Ordinance to Limit Police Use of Tear Gas and Rubber Bullets*, BOSTON.COM (Jan. 5, 2021), <https://www.boston.com/news/local-news/2021/01/05/marty-walsh-tear-gas-rubber-bullet-veto> [https://perma.cc/UHD2-EDFV] (describing legislation restricting police use of chemical weapons in protests that passed the Boston City Council in December 2020, only to be vetoed in January 2021).

111. Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act, D.C. Act 23-437, 67 D.C. Reg. 12993 (Oct. 28, 2020).

for District residents and visitors.”¹¹² The Resolution empowered the Council to pass legislation swiftly without Congressional review, while expressly aligning itself with the protestors’ urgent call for transformation.¹¹³ The Resolution echoed the protests: it stated the names of individuals killed by the police across the country and in the District, and it drew a historical line from slavery through decades of racial terror in the United States to the over-incarceration and over-policing of Black communities in 2020.¹¹⁴ In declaring a policy “emergency,” the Resolution advanced a vision of democratic process that placed value on the role of protest in generating policy from the ground up.¹¹⁵

The initial version of the Emergency Act did not include provisions regulating employment and discipline within the Metropolitan Police Department.¹¹⁶ D.C. Council Chair Phil Mendelson added the two employment-related provisions at a hearing on the evening the legislation was passed: (1) the Metropolitan Police Department may not hire an officer who has committed misconduct in another agency or jurisdiction and (2) the D.C. Police Union may not bargain over discipline.¹¹⁷ These reforms responded to the prominent critique that police unions prevent terminations and investigations of officers who repeatedly commit misconduct, while blocking legislative efforts for accountability.¹¹⁸ The restraint on disciplinary bargaining set out to address these issues by preventing the union from implementing disciplinary protections via the union contract. Police management—namely, the

112. Comprehensive Policing and Justice Reform Emergency Declaration Resolution of 2020, D.C. Resol. 23-430, 67 D.C. Reg. 7743 (June 9, 2020), <https://lms.dccouncil.us/Legislation/PR23-0826> [<https://perma.cc/M8QS-SMGX>].

113. In a press release announcing the legislation, the Council said that emergency bills “do not require that a hearing be held, must pass by a super-majority, remain effective for 90 days and become effective immediately once signed by the Mayor, and without the need for Congressional review.” COUNCIL OF D.C., *supra* note 78.

114. § 2, 67 D.C. Reg. at 7743–44.

115. § 2(h), 67 D.C. Reg. at 7744 (“The Council must listen to the voices of District residents and act accordingly to bend the arc of justice.”).

116. See Erik Salmi, *Councilmember Charles Allen’s Comprehensive Police Reform Bill Passes Council Unanimously*, OFFICE OF COUNCILMEMBER CHARLES ALLEN (June 4, 2020), https://www.charlesallenward6.com/councilmember_charles_allen_circulates_omnibus_emergency_bill_with_policing_reforms_will_be_introduced_and_voted_on_tuesday [<https://perma.cc/WZ9J-MPKM>] (including an early draft of the bill and noting that “[t]he bill was [subsequently] amended to modify to forbid [sic] future police contracts from addressing disciplinary measures, bans [sic] the use of tear gas and other militarized gear, and created [sic] a commission to review police reform more broadly”).

117. Comprehensive Policing and Justice Reform Emergency Amendment Act of 2020, Amendment: D.C. Bill 23-774 (introduced June 9, 2020), <https://lms.dccouncil.us/downloads/LIMS/45107/Meeting1/Amendment/B23-0774-Amendment1.pdf> [<https://perma.cc/PN32-GVUP>].

118. See *infra* Section III.C (describing the legislative intent of the provision in the context of the union’s court challenge); *supra* Sections II.A–II.B (describing the critique of police unions as obstacles to reform).

police chief¹¹⁹—would unilaterally set disciplinary policies.¹²⁰ This provision later drew a court challenge from the police union.¹²¹ However, it passed relatively unnoticed in a crowded council hearing.¹²²

The legislation created another platform for Defund activists to push for radical and transformative change. Defund activists insisted the bill did not go far enough to address the demands of protestors. In an interview with the *Washington Post*, Eteng Ettah, an organizer with Black Youth Project 100, commented, “Folks aren’t interested in reform anymore. The system is beyond reform. Everything that’s included is just a Band-Aid. . . . A different training here or a different protocol there will not be enough to stop the police violence in the city.”¹²³ Later in June, as the D.C. Council considered a plan to reduce the MPD budget, the Committee on the Judiciary and Public Safety received “more than 18,000 comments via email and video that overwhelmingly favored shrinking funding for police.”¹²⁴ Defund protestors strategically deployed media and demonstrated outside councilmembers’ homes to maintain public pressure and concentrate the public narrative on abolitionist goals.¹²⁵

In Council debates over the emergency bill, Councilmember David Grosso pushed for a modest decrease in police funds: he proposed capping the MPD at 3,500 officers, as opposed to its current 3,863.¹²⁶ During the June 9 Council debate, Grosso highlighted the “environment of over-policing” in D.C. given the presence of federal law enforcement combined with the large number of MPD

119. For a helpful description of the police department management structure, see Fisk & Richardson, *supra* note 60, at 722–24.

120. Subtitle K.

121. See *infra* Section III.C.

122. See Martin Austermuhle (@maustermuhle), TWITTER (June 9, 2020, 11:31 AM), <https://twitter.com/maustermuhle/status/1270377865146781696> [<https://perma.cc/WL66-9F35>] (detailing debate on each Councilmember’s proposed amendments, including a lengthy debate on Councilmember David Grosso’s proposal to cap the MPD at 3,500 officers, and describing the swift inclusion of Mendelson’s provision banning disciplinary bargaining: “Now Mendelson is going through four amendments. The first would prohibit MPD from hiring officers with a history of misconduct in other departments. Allen accepts it. *The second would make disciplinary issues and process non-negotiable in the police contract.* Added to bill.”) (emphasis added).

123. Julie Zauzmer Weil & Fenit Nirappil, *D.C. Toughens Officer Hiring and Discipline, as Wave of Police Reform Sweeps the U.S.*, WASH. POST (June 9, 2020), https://www.washingtonpost.com/local/dc-politics/dc-council-police-reform/2020/06/09/c77ae6b0-aa49-11ea-a9d9-a81c1a491c52_story.html [<https://perma.cc/82FK-HCT8>].

124. Fenit Nirappil & Peter Hermann, *D.C. Activists and Lawmakers Confront Challenges of ‘Defund Police’ Movement*, WASH. POST (June 25, 2020), https://www.washingtonpost.com/local/dc-politics/dc-police-cuts/2020/06/25/dacff0e2-b6f2-11ea-a510-55bf26485c93_story.html [<https://perma.cc/5ZZB-JA55>].

125. See *DC Council May Repeal, Replace Police Reforms Passed in Emergency Vote*, NBC WASH. (July 7, 2020, 2:48 PM), <https://www.nbcwashington.com/news/local/dc-council-may-repeal-replace-police-reforms-passed-in-emergency-vote/2354499/> [<https://perma.cc/NB9C-YWRV>].

126. Austermuhle, *Here’s What Black Lives Matter D.C. Is Calling for, and Where the City Stands*, *supra* note 103.

officers.¹²⁷ Councilmember Allen commented that, even excluding federal officers, D.C. spends more money per capita than any other American city on police and has more sworn officers per capita than any other American city.¹²⁸ Ultimately, Council deferred the issue of defunding.¹²⁹

Even in its modest form, the emergency bill met resistance. Mayor Bowser delayed signing the legislation for weeks and urged Council to “slow down and hold public hearings.”¹³⁰ The police chief spoke publicly on the danger of the heightened use-of-force standard, which he argued would inhibit police from apprehending violent offenders.¹³¹ The police union called the legislation “a dangerous path to unchecked violence in the District” and threatened “a mass exodus in personnel.”¹³² Mayor Bowser often aligned her position with the police union and the Chief: she distanced D.C. from the events in Minneapolis and argued the MPD had been reformed since its darker days, when the Department faced a DOJ investigation for widespread excessive use of force.¹³³

The Mayor’s resistance further evidences the Defund movement’s success at polarizing public discussion. While the Council and the movement announced the systemic, historical role of racial violence in American police departments, the Mayor and the police union countered this narrative. Commenting on the efforts to reduce the MPD budget, the union stated, “[T]he idea that our department is systemically racist in a way that manifests itself in brutality and civil rights

127. Martin Auster Muhle, *D.C. Council Passes Emergency Police-Reform Bill, Delays Cutting Size Of MPD*, NPR (June 10, 2020), <https://www.npr.org/local/305/2020/06/10/873654735/d-c-council-passes-emergency-police-reform-bill-delays-cutting-size-of-m-p-d> [https://perma.cc/N4FU-JFPC].

128. Hearing on Bill No. 23-0774 before the Committee on the Judiciary & Public Safety, Council of the District of Columbia, Statement of Councilmember Charles Allen at 3:20 (June 9, 2020), http://dc.granicus.com/MediaPlayer.php?view_id=44&clip_id=5475 [https://perma.cc/2J3D-66KM].

129. Auster Muhle, *supra* note 127 (observing that “the bill passed Tuesday did not directly address the issue of how MPD is funded”); NBC WASH., *supra* note 108 (“Council members could not agree on whether to cap the size of the police department to 3,500 officers.”).

130. Zauzmer Weil & Nirappil, *supra* note 123; Martin Auster Muhle (@maustermuhle), TWITTER (June 9, 2020, 11:06 AM), <https://twitter.com/maustermuhle/status/1270371812413771782> [https://perma.cc/29MG-HW79] (tweeting a photo of a message from Mayor Bowser to Council); Fenit Nirappil, *D.C. Council Reconsiders Sweeping Police Bill*, WASH. POST (July 6, 2020) [hereinafter Nirappil, *Sweeping Bill*], https://www.washingtonpost.com/local/dc-politics/dc-council-reconsiders-sweeping-police-reform-bill/2020/07/06/5e9b436a-bf9d-11ea-9fdd-b7ac6b051dc8_story.html [https://perma.cc/5AJX-8A2Y].

131. Nirappil, *Sweeping Bill*, *supra* note 130.

132. Zauzmer Weil & Nirappil, *supra* note 123; *see also* Bob Barnard, *DC Police Union Survey Says 71 Percent Polled Considering Leaving MPD over Police Reform Legislation*, FOX 5 DC (June 19, 2020), <https://www.fox5dc.com/news/dc-police-union-survey-says-71-percent-polled-considering-leaving-mpd-over-police-reform-legislation> [https://perma.cc/M5TA-QBXW] (“A survey by the D.C. Police Union shows 71 percent of its polled members are considering leaving the Metropolitan Police Department over police reform legislation.”).

133. Auster Muhle, *supra* note 130 (describing the Mayor’s response to the emergency bill). For detailed information on the 1999–2001 DOJ Investigation, *see DOJ Investigation of the Washington, D.C., Metropolitan Police Department*, C.R. LITIG. CLEARINGHOUSE, <https://www.clearinghouse.net/detail.php?id=1026> [https://perma.cc/J4K3-P6MJ] (last visited Mar. 1, 2022).

violations is preposterous. The MPD has been at the forefront of police reform for 20 years. Problems that exist in other cities do not exist here.”¹³⁴ In delaying the passage of the emergency legislation, the Mayor stated, “[I]t is important to note that the Metropolitan Police Department (MPD) has over the past 18 years instituted many of the reforms that other jurisdictions are now starting to consider.”¹³⁵ The position of the Mayor and the police union underscores a vision of policing fundamentally at odds with the Defund movement: in this view, there are good police departments and bad ones—a view that became increasingly outmoded as Defund gained power.

Protestors took every opportunity to target Mayor Bowser, who appeared regressive in the polarized atmosphere.¹³⁶ She was chastised by many for requesting to move money from other District programs into the MPD budget in order to cover overtime accrued during the summer’s protests.¹³⁷ As public pressure mounted, Mayor Bowser ultimately signed the emergency police reform bill on July 22 after convincing the Council to make a few of her proposed changes.¹³⁸

July also marked a series of discussions and public hearings on the 2021 District budget—another opportunity for Council to heed the demands of Defund protestors that had gone unanswered in the emergency legislation. Amid activists’ calls for more drastic measures,¹³⁹ councilmember Charles Allen proposed a \$15 million budget cut to the MPD, a reduction of less than 3 percent of the \$533 million police department budget proposed by Bowser, widely considered a

134. Shomari Stone & Gina Cook, *DC Police Union Urges Budget Approval as Protesters Call for Defunding*, NBC WASH. (June 15, 2020), <https://www.nbcwashington.com/news/local/dc-police-union-urges-budget-approval-as-protesters-call-for-defunding/2334372/> [<https://perma.cc/W6PS-U4N9>].

135. Austermuhle, *supra* note 130.

136. See *Bowser Lies, People Die*, https://docs.google.com/document/d/1Ty2_3KZbkLiAGHgrqffx7Zn4kR5CYhZO2fReSIRG308/edit [<https://perma.cc/JY5C-237E>] (action toolkit blaming Mayor Bowser for police use of chemical weapons against protestors).

137. See Margaret Barthel, *Mayor Bowser Wants to Move \$43 Million from D.C. Budget to Cover Police Overtime from Protests This Summer*, WAMU (Oct. 22, 2020), <https://wamu.org/story/20/10/22/bowser-move-43-million-cover-police-overtime-during-racial-justice-protests/> [<https://perma.cc/L244-Y4MS>].

138. Fenit Nirappil, *Bowser Signs D.C. Police Bill That Compels ID of Officers Who Used Deadly Force, Enfranchises Prisoners*, WASH. POST (July 23, 2020), https://www.washingtonpost.com/local/dc-politics/bowser-signs-dc-police-bill-that-compels-id-of-officers-who-used-deadly-force-enfranchises-prisoners/2020/07/23/e2b882a8-cd1b-11ea-91f1-28aca4d833a0_story.html [<https://perma.cc/XW2L-RHWL>]. Mayor Bowser proposed relatively minor changes: body camera footage would be released on August 15 rather than July 1, and family members of those killed by police could block the release of footage. *Id.* Additionally, her administration convinced the Council to scrap a heightened use of force standard proposed. See Nirappil, *Sweeping Bill*, *supra* note 130.

139. Zauzmer Weil & Nirappil, *supra* note 123.

distortion of the Defund demands.¹⁴⁰ The D.C. Council ultimately cut the 2021 MPD operating budget by a mere 1.7 percent.¹⁴¹

C. Litigation Creates Platform for Police Union Resistance

The Emergency Act was effective for 90 days from when it was signed by Mayor Bowser on July 22, 2020.¹⁴² When the 90-day period expired, an identical bill was enacted as temporary legislation, which remained effective 225 days and allowed the D.C. Council to receive a greater depth of public participation prior to passing permanent legislation.¹⁴³ The D.C. Council voted unanimously to renew the Act as temporary legislation in May 2021, and the thirteen councilmembers collectively introduced a permanent version of the bill in June 2021.¹⁴⁴ This iterative process generated multiple fora for debate on the bill: in addition to Committee meetings and public hearings, the D.C. Police Union brought two civil rights lawsuits challenging the legislation.¹⁴⁵ Through federal and state litigation, the police union developed and tested a counter-narrative to the summer's protests and to the Council itself. The District, in turn, had to defend its rationale for the Comprehensive Policing and Justice Reform Emergency Amendment Act. The lawsuits shifted public attention to the police union as an adversary to reform and forced the District to articulate the role of police unions in blocking

140. Fenit Nirappil & Peter Hermann, *D.C. Lawmaker Proposes Cutting \$15 Million from Police Budget, Forcing Council Review of Chief*, WASH. POST (June 23, 2020), https://www.washingtonpost.com/local/public-safety/dc-police-budget/2020/06/24/f8fff726-b60a-11ea-a8da-693df3d7674a_story.html [<https://perma.cc/K9TY-CSGC>]; Nirappil, *Sweeping Bill*, *supra* note 130; Andrea Swalec, *DC Council Committee Approves \$15M Cut to Police Budget*, NBC WASH. (June 26, 2020, 11:28 AM), <https://www.nbcwashington.com/news/local/dc-council-committee-approves-15m-cut-to-police-budget/2344969/> [<https://perma.cc/TH9A-AL5Q>].

141. ELIANA GOLDING, DC FISCAL POL'Y INST., WHAT'S IN THE FY 2021 POLICE AND PUBLIC SAFETY BUDGET? (2020), <https://www.dcfpi.org/wp-content/uploads/2020/10/Whats-in-the-FY-2021-Police-and-Public-Safety-Budget-1.pdf> [<https://perma.cc/QW8H-ELRW>] (breaking down the MPD budget in detail and calling this cut “a far cry from advocates’ calls to defund or divest from the police”).

142. COUNCIL OF D.C., *supra* note 78; Nirappil, *supra* note 138 (“Bowser Signs”).

143. *See How a Bill Becomes a Law*, COUNCIL OF D.C., <https://dccouncil.us/how-a-bill-becomes-a-law/> [<https://perma.cc/UX5Y-UHRQ>] (last visited Mar. 1, 2022).

144. Comprehensive Policing and Justice Reform Temporary Amendment Act of 2021, D.C. Act 24-89, 68 D.C. Reg. 5837 (Sept. 3, 2021), <https://lims.dccouncil.us/Legislation/B24-0197> [<https://perma.cc/4J3H-QGKZ>] (temporary legislation effective through April 2022); Comprehensive Policing and Justice Reform Amendment Act of 2021, D.C. Bill 24-320, <https://lims.dccouncil.us/Legislation/B24-0320> [<https://perma.cc/7K46-XDH8>] (permanent legislation, introduced).

145. Fraternal Order of Police, Metro. Police Dep’t Lab. Comm. v. District of Columbia, 502 F. Supp. 3d 45 (D.D.C. 2020), *appeal docketed*, No. 21-7059 (D.C. Cir. June 7, 2021); Fraternal Order of Police, Metro. Police Dep’t v. District of Columbia, No. CA 003492 B (D.C. Super. Ct. 2021).

accountability.¹⁴⁶ The litigation over the Emergency Act highlights the contestation over the role of police unions and the vision for police reform in D.C.

I. Fraternal Order of Police v. District of Columbia (*D.D.C. 2020*)

On August 5, 2020, the union filed a Section 1983 action in federal court, arguing the legislation's ban on disciplinary bargaining violated the union's and its members' Equal Protection, Due Process, Bill of Attainder, and Contracts Clause protections under the U.S. Constitution and, by extension, the D.C. Home Rule Act.¹⁴⁷ The suit, dismissed in November upon the District's motion,¹⁴⁸ generated discussion on the Act's previously overlooked discipline provision. Section 116 of the Comprehensive Policing and Justice Reform Emergency Amendment Act provided that "[a]ll matters pertaining to the discipline of sworn law enforcement personnel shall be retained by management and not be negotiable" in any collective bargaining agreement entered with the Fraternal Order of Police (FOP) after September 30, 2020.¹⁴⁹ Section 116 accomplished this by amending a provision of D.C.'s Comprehensive Merit Personnel Act of 1978 (CMPA) delimiting the scope of District employee collective bargaining.¹⁵⁰ The amendment bars collective bargaining on questions of police discipline—which means it reserves questions of police discipline to the police chief and managerial-level officers.

The union alleged that the amendment "singles out" the D.C. Police Union from the other 44 unions representing District employees as the sole union denied the right to bargain over discipline.¹⁵¹ Conceding that economic legislation was subject only to rational basis review, the union argued this singling out violated the Equal Protection Clause because it had no relation to a rational government purpose and was rooted in discriminatory intent.¹⁵² The Equal Protection analysis

146. See, e.g., Peter Hermann, *D.C. Police Union Sues District over Changes in Disciplinary Process for Officers*, WASH. POST (Aug. 5, 2020), https://www.washingtonpost.com/local/public-safety/dc-police-union-sues-district-over-changes-in-disciplinary-process-for-officers/2020/08/05/28cf050c-d71f-11ea-930e-d88518c57dcc_story.html [<https://perma.cc/M5ZR-RB75>]; Keith L. Alexander, *D.C. Police Union Seeks Court Injunction to Stop Release of Body-worn Camera Footage, Officers' Identity Following Fatal Interactions*, WASH. POST (Aug. 10, 2020), https://www.washingtonpost.com/local/public-safety/dc-police-union-seeks-court-injunction-to-stop-release-of-body-worn-camera-footage-officers-identity-following-fatal-interactions/2020/08/10/deb8785a-db28-11ea-8051-d5f887d73381_story.html [<https://perma.cc/DKQ8-8MYQ>]; Natacia Knapper (@nknapper), TWITTER (Dec. 6, 2020, 10:00 AM), <https://twitter.com/nknapper/status/133560002094264322> [<https://perma.cc/L8CU-RPCU>] (D.C. movement leader responding to Police Union claims that emergency legislation had already increased violent crime in the District).

147. Complaint, *supra* note 109, at 2.

148. *Fraternal Order of Police*, 502 F. Supp. 3d at 51.

149. Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act, D.C. Act 23-437, § 116, 67 D.C. Reg. 12993, 13004 (Oct. 28, 2020).

150. D.C. CODE § 1-617.08 (2020).

151. Complaint, *supra* note 109, at 4–5.

152. *Id.* at 7 ("The Defendants' motivation for the Act is not grounded in logic, data, sound policy or reason, but is instead a deliberate and reactionary concession to anti-police rhetoric and protests being carried out by a small number of citizens, many of whom are not even District residents.").

allowed the union to position itself as a public-sector union like any other; the union reminded the Court that a stated purpose of the CMPA was to ensure that “employees are protected against coercion for partisan political purposes”¹⁵³ and argued that this amendment had no purpose but to discriminate against a group of people “presently disfavored politically.”¹⁵⁴

This frame vilified the legislation and the protests as “reactionary” political actions driven by “anti-police” forces irrelevant to the D.C. Police and its union.¹⁵⁵ For this claim, it relied in part on a narrative that the protests were driven by outsiders.¹⁵⁶ Throughout its brief, the union distanced the D.C. Police from the protests’ demands, arguing the protests and the legislation were a response to George Floyd’s death—a *Minneapolis* policing problem.¹⁵⁷ It characterized the legislation as an irrational response to a tragic event that occurred “over one thousand miles” from the District.¹⁵⁸ In this view, the police killing of George Floyd was an isolated occurrence rather than an example of the violence endemic to policing.

In its Motion to Dismiss, the District argued that the choice to reserve to management all matters of discipline was consistent with the Act’s transparency and accountability goals. The District was justified in enacting a rule specific to police unions due to the unique character of police as guardians of public safety and the “extraordinary powers” endowed in police to fulfill this role.¹⁵⁹ It argued that provisions “tailored to specific District employees” are commonplace within the CMPA.¹⁶⁰ Additionally, under the D.C. Code, police officers (and firefighters) receive a “90-day rule” limiting the time in which disciplinary action can be brought against them—a procedural protection not granted to other public-sector

153. *Id.* at 5 (citing D.C. CODE § 1-601.02 (2021)). The FOP left out the second half of this provision, which suggests it could be narrow in scope to the election context. Sec. (c) reads in full, “Employees are protected against coercion for partisan political purposes *and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office*” § 1-601.02(c) (emphasis added).

154. Complaint, *supra* note 109, at 23.

155. *Id.* at 7.

156. *Id.* (arguing that the Act was a deliberate “concession to anti-police rhetoric and protests being carried out by a small number of citizens, many of whom are not even District residents”).

157. *Id.* at 11.

158. *Id.* at 10. For this claim, the FOP relied on the Act’s express reference to George Floyd’s death. See Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act, D.C. Act 23-437, § 101, 67 D.C. Reg. 12993, 12994–95 (Oct. 28, 2020). However, as the Court noted in its Order granting the District’s Motion to Dismiss, the FOP “cherry-picked” this provision from the Section banning neck restraints. Fraternal Order of Police, Metro. Police Dep’t Lab. Comm. v. District of Columbia, 502 F. Supp. 3d 45, 57 (D.D.C. 2020), *appeal docketed*, No. 21-7059 (D.C. Cir. June 7, 2021).

159. Memorandum of Points & Authorities in Support of Defendants’ Opposition to Plaintiff’s Motion for Summary Judgment & Cross-Motion to Dismiss Plaintiff’s Complaint or, in the Alternative, for Summary Judgment at 13, *Fraternal Order of Police*, 502 F. Supp. 3d 45 (D.D.C. 2020) (No. 20-2130).

160. *Id.* at 4.

employees.¹⁶¹ Because police have such great power, including the authority to use deadly force in some circumstances, their errors matter more than those of other public employees.¹⁶² In arguing that law enforcement officers are *sui generis*, the District evinced a view of police as tremendously powerful, subject to abuse of power, and therefore distinct from other public employees.

The District relied on the Act's legislative history to support its rational purpose. In the emergency resolution authorizing the Act's passage, the Council announced the need for "comprehensive policing and justice reform" evidenced by protests against racist policing, lack of police accountability, and systemic racial injustice.¹⁶³ Citing the deaths of Black D.C. residents at the hands of the police, the resolution countered the union's "outsider" narrative, locating the problem of police violence at home in the District.¹⁶⁴ Lastly, the legislative history shows that Council Chair Mendelson introduced Section 116 to prevent the use of collective bargaining to "shield employees from accountability," a practice especially concerning for "employees who have as much power as police officers."¹⁶⁵

Rational basis review is a low bar; the District merely needed to argue that the prohibition on bargaining over discipline was reasonably related to a legitimate goal of police accountability.¹⁶⁶ Nonetheless, the District took the opportunity to argue that the policy prohibiting bargaining over discipline was not only rational, but wise. In a footnote citing recent studies of police collective bargaining, the District explained how police union contracts threaten to obstruct accountability mechanisms advanced by legislatures.¹⁶⁷ It went on to argue summarily, "By ensuring that management's right to discipline sworn officers is unencumbered by the CBA negotiations, the District can improve police accountability."¹⁶⁸

The Court granted the District's Motion to Dismiss.¹⁶⁹ In finding that the union failed to state an equal protection claim, the Court largely adopted the District's reasoning. The legislative history showed no evidence of "anti-police rhetoric,"¹⁷⁰ and the District had a rational basis for distinguishing police from other public employees based on officers' "unique accountability, scope of powers, and jurisdiction."¹⁷¹ Finally, the Court deferred to the District's legislative judgment

161. *Id.* at 5.

162. *Id.* at 13.

163. *Id.* at 7 (quoting Comprehensive Policing and Justice Reform Emergency Declaration Resolution of 2020, D.C. Resol. 23-430, § 2(j) 67 D.C. Reg. 7743, 7744 (June 9, 2020)).

164. *Id.* at 17.

165. *Id.* at 8 (quoting Comprehensive Policing and Justice Reform Emergency Amendment Act of 2020, Amendment: D.C. Bill 23-774 (introduced June 9, 2020)) (emphasis removed).

166. *Id.* at 14–15.

167. *Id.* at 16 n.2.

168. *Id.* at 17.

169. Fraternal Order of Police, Metro. Police Dep't Lab. Comm. v. District of Columbia, 502 F.Supp.3d 45 (D.D.C. 2020), *appeal docketed*, No. 21-7059 (D.C. Cir. June 7, 2021).

170. *Id.* at 53–54.

171. *Id.* at 54–55 (contrasting correctional officers, whose jurisdiction covers only "specific District facilities").

that the restriction on bargaining was rationally related to police accountability.¹⁷² The Court sided with the District on the remaining claims, and the union's appeal is pending.¹⁷³

2. Fraternal Order of Police, Metropolitan Police Dep. v. District of Columbia et al. (*D.C. Super. Ct. 2020*)

Two days after filing the federal suit, the police union filed a case in D.C. Superior Court challenging a provision of the Emergency Act mandating the release of body camera recordings and the names of officers involved in a death or serious use of force within five business days, as well as the retroactive release of all names and recordings from such incidents since the District's Body-Worn Camera Program was launched in October 2014.¹⁷⁴ As part of its complaint, the D.C. Police Union filed an emergency motion for a temporary restraining order (TRO) seeking to block the release of this footage on the grounds that the provision violated officers' substantive due process right to privacy and the separation of powers established under D.C. law.¹⁷⁵ The Court denied the TRO, finding the public interest in transparency outweighed the risk of harm to officers,¹⁷⁶ and later granted the District's motion to dismiss the remaining claims.¹⁷⁷

Prominent civil rights actors—Lawyers Committee for Civil Rights, D.C. Public Defender Service, ACLU of D.C., Washington Lawyers' Committee for Civil Rights and Urban Affairs, and Law4Black Lives—submitted an amicus brief in support of the District's Motion to Dismiss in this case.¹⁷⁸ This brief brought out the history of failed police reform in D.C. and suggested that the public release of body camera footage could give teeth to a thus-far ineffective program. In so arguing, amici echoed the Defund movement's critiques of Mayor Bowser and

172. *Id.*

173. *Id.* at 55–58 (rejecting Bill of Attainder challenge), 58–60 (rejecting Contract Clause challenge), 60–62 (rejecting substantive Due Process challenge).

174. Fraternal Order of Police, Metro. Police Dep't v. District of Columbia, No. CA 003492 B (D.C. Super. Ct. 2021); see Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act, D.C. Act 23-437, § 103(b), 67 D.C. Reg. 12993, 12995–96 (Oct. 28, 2020). The Emergency Act amended D.C. Code § 5-116.33, a provision of the 2014 statute establishing the body camera program, which gave the mayor authority to release footage of police shootings and other critical events “in matters of significant public interest” and after consultation with the police chief, U.S. Attorney's Office for the District of Columbia, and Office of the Attorney General. Order Granting Defendant's Motion to Dismiss, at 2, *Fraternal Order of Police*, No. CA 003492 B (quoting D.C. Mun. Regs. tit. 24, § 3900.10 (2021)).

175. Complaint at 3, 8–14, *Fraternal Order of Police*, No. CA 003492 B.

176. Order Denying Temporary Restraining Order, at 3, *Fraternal Order of Police*, No. CA 003492 B.

177. Order Granting Defendant's Motion to Dismiss at 9, *Fraternal Order of Police*, No. CA 003492 B.

178. Brief for Lawyers' Committee for Civil Rights; Public Defender Service for the District of Columbia; ACLU Foundation of the District of Columbia; Washington Lawyers' Committee for Civil Rights and Urban Affairs & Law4BlackLives DC as Amici Curiae Supporting Defendant at 6–7, *Fraternal Order of Police*, No. CA 003492 B [hereinafter Brief of Amici Curiae].

police management and advanced a power-shifting vision of police accountability in which the impacted community plays a pivotal role in overseeing retribution for misconduct.¹⁷⁹

The brief underscored the racial character of police violence in the District,¹⁸⁰ which amici argued had not been remedied since the MPD's horrific record of violence produced a DOJ agreement in 2001.¹⁸¹ They argued that efforts at police accountability have failed in large part due to restraints on investigation and discipline, imposed by the union, that shield police misconduct from the public.¹⁸² As amici discussed, the 2014 Body-Worn Camera Program was no exception. Prior to the emergency legislation, the Mayor had sole discretion over release of body camera footage—a power she seldom exercised—and union leadership ardently resisted external review of police-involved shootings.¹⁸³ The emergency legislation sought to remedy this problem by amending the 2014 statute to enact a presumption in favor of disclosure.¹⁸⁴

Amici also asserted the central role of the public as an “independent check” on law enforcement, citing the previous failure of the act to achieve transparency and accountability due to the Mayor's and police department's resistance to disclosure.¹⁸⁵ The new amendment requires, rather than permits, the release of officer names and footage immediately after an officer-involved death or serious use of force, with a narrow exception allowing the victim or family of the victim to block release.¹⁸⁶ The amendment shifts from a presumption *against* disclosure to a presumption *in favor* of disclosure—and shifts the power to block release from the Mayor to the family impacted by the violence depicted. Amici underscored the importance of placing this power in the hands of the public due to the MPD's track record of distorting footage of serious incidents: even in footage retroactively released pursuant to the 2020 amendment, the MPD released “selectively edited and slickly produced compendiums of video clips overlaid with commentary” rather than raw footage.¹⁸⁷ The Emergency Act marks a shift in the recognition that citizens, not just victims, have a right to accurate disclosure of police misconduct—and full accountability can only be achieved with full transparency. As amici put it, “[p]eople are entitled to know what is being done in their names.”¹⁸⁸

The Superior Court granted the District's Motion to Dismiss, finding that the union failed to establish standing and that its separation of powers and due process

179. *See id.*

180. *Id.* at 1–2.

181. *Id.* at 7–8.

182. *Id.* at 8–11.

183. *Id.* at 12–15.

184. *Id.* at 15–16.

185. *Id.* at 16, 20–21.

186. Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act, D.C. Act 23-437, § 103, 67 D.C. Reg. 12993, 12995–97 (Oct. 28, 2020).

187. Brief of Amici Curiae, *supra* note 178, at 17 n.34.

188. *Id.* at 17.

arguments failed to state a claim upon which relief could be granted.¹⁸⁹ The union filed a notice of appeal on July 23, 2021.¹⁹⁰ The Superior Court case is a quintessential example of the use of the police union to attempt to block reform legislation.¹⁹¹ Though Mendelson’s amendments addressed the police use of collective bargaining to evade accountability, the emergency legislation did not constrain the union as a political actor. Resource-intensive tactics like litigation and lobbying are prominent in the police union arsenal and may account in part for the historical failure of police reform legislation in D.C.

D. Defund MPD Targets the Union Contract

While the D.C. Council’s emergency legislation aimed to close loopholes for misconduct by simply eliminating union power to negotiate over discipline in the contract, Defund MPD took a different tack. The Coalition demanded the District implement a series of reforms *through* the terms of the police union contract and in so doing, asserted the union’s role as an implicit party to the negotiations.¹⁹² Defund MPD departed from the Council’s reformist model in form and substance: by drafting a bargaining proposal and demanding re-investment in non-carceral public services, Defund leveraged the contract to assert its voice in police discipline and to reduce the police budget.

On November 19, 2020, the Defund MPD Coalition announced a letter-writing campaign titled “TELL D.C. COUNCIL: STOP POLICE UNION CONTROL!”¹⁹³ The Coalition called on activists to write to the Mayor, Councilmembers, and other public officials proposing several terms for the next police union contract, ranging from a ban on raises and bonuses to a requirement that

189. Order Granting Motion to Dismiss, Fraternal Order of Police, Metro. Police Dep’t v. District of Columbia, No. CA 003492 B (D.C. Super. Ct. 2021).

190. Notice of Appeal, *Fraternal Order of Police*, No. CA 003492 B.

191. Parallel issues have been litigated in several states; the Second Circuit recently affirmed an SDNY decision largely denying an injunction to the New York Police Department officers union (joined by the firefighters and correctional officers unions), who sought to block the release of police disciplinary records after New York State officials repealed the police-protective § 50-a of the New York State Civil Rights Law. *Uniformed Fire Officers Ass’n v. de Blasio*, 846 Fed. App’x. 25 (2d Cir. 2021); see Benjamin Weiser, *Police Unions Lose Bid to Keep Disciplinary Records a Secret*, N.Y. TIMES (July 28, 2021), <https://www.nytimes.com/2021/02/16/nyregion/nypd-discipline-records-ruling.html> [<https://perma.cc/D6SK-MMBD>].

192. The most recent D.C. Police Union contract expired on September 30, 2020. Hermann, *supra* note 146. The City resumed bargaining with the D.C. Police Union under the new rule imposed by the temporary legislation. See Geiser, *supra* note 73 (describing resumption of bargaining and Defund MPD’s demands for the contract and referencing the failure of the union’s court challenge to the Act’s labor provision).

193. Black Lives Matter DC (@DMVBlackLives), TWITTER (Nov. 19, 2020, 9:32 AM), <https://twitter.com/dmvblacklives/status/1329432267438043136?> [<https://perma.cc/A34H-6UZY>] (announcing the letter-writing campaign and linking to Action Network); DEFUND MPD, *Tell DC Council: Stop Police Union Control! Police Union Contract Letter Writing Campaign*, <https://docs.google.com/document/d/1VC5VqoRA4KfVnJ5L7sb6mjiwINoQ1k6wzwcClf35vQ/> [<https://perma.cc/F6AE-L4NJ>].

administrative leave during investigations of serious misconduct be unpaid.¹⁹⁴ This is a substantially different move from the Council's approach, which sought to circumvent union obstacles to police reform legislation by transferring power to police management.¹⁹⁵ Defund's proposal did not rely on management to hold the police force accountable; rather, it implemented contract provisions to bind both management and the union to a more radical platform of divestment.

A close look at Defund's bargaining proposal reveals its dual goal of ensuring discipline for misconduct and reallocating the MPD budget to non-police services. In contradiction to the Emergency Act, Defund proposed several disciplinary terms, such as banning promotions for two years following disciplinary action, taking away paid leave during investigations of misconduct, and requiring termination of an officer whose conduct was the basis for a civil rights suit with damages over \$10,000 (if civil damages are less than \$10,000, Defund would make the officer personally liable for damages).¹⁹⁶ This move suggested that the emergency legislation did not go far enough to address police union abuses of power and critiqued the ways in which the legislation left existing power structures in place by empowering management.¹⁹⁷ Defund's disciplinary provisions would also have the effect of reducing the MPD budget; applying a divest-invest framework, the letter proposed that the District reallocate these savings to give non-police public employees a raise.¹⁹⁸

Underlying Defund's letter was an implicit critique from organized labor: would shrinking the police union's power undermine other public-sector unions? The letter expressed solidarity with non-police public-sector unions, referring to teachers, nurses, and other public workers as "sisters, brothers, and family."¹⁹⁹ In an article in the *Washington Socialist* (a publication produced by members of the Metro DC Democratic Socialists of America, a Defund Coalition member),²⁰⁰ labor organizer Nell Geiser explained the basis for this distinction.²⁰¹ Geiser argued police differ from other public-sector employees because "they are empowered to

194. DEFUND MPD, *supra* note 193.

195. Comprehensive Policing and Justice Reform Emergency Amendment Act of 2020, Amendment: D.C. Bill 23-774, Subtitle K (introduced June 9, 2020).

196. DEFUND MPD, *supra* note 193. This provision is significant in light of widespread officer indemnification. Although several civil rights doctrines are designed to impose officer liability, public employee indemnification laws and informal practices of city attorneys across the country ensure that officers virtually never pay damages and settlement awards. See Joanna Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885, 936–37 (2014) ("Between 2006 and 2011, in forty-four of the seventy largest law enforcement agencies across the country, officers paid just .02% of the dollars awarded to plaintiffs in police misconduct suits. In thirty-seven small and mid-sized law enforcement agencies, officers never contributed to settlements or judgments. No officer in any of the eighty-one jurisdictions satisfied a punitive damages judgment entered against him.").

197. See *infra* Section IV.B.

198. DEFUND MPD, *supra* note 193.

199. *Id.*

200. *About Washington Socialist*, WASH. SOCIALIST, <https://washingtonsocialist.mdcdsa.org/about> [<https://perma.cc/M429-DF8Q>] (last visited Mar. 1, 2022).

201. Geiser, *supra* note 73.

use violence against DC residents”); in a capitalist system, this violence functions to “uphold the prevailing social order.”²⁰² The article also emphasized the strength of the D.C. Police Union’s opposition. Citing the lawsuit and the most recent collective bargaining agreement, the author characterized the union as a “critical barrier” to defunding the D.C. police.²⁰³ After the police union made itself a salient target through public acts of resistance, Defund sought to shrink the size and power of the union by targeting disciplinary measures as well as wage and hour terms.²⁰⁴

With a couple of exceptions, organized labor in D.C. was notably silent on the emergent Defund movement and its choice to target the police union.²⁰⁵ The vandalism of the AFL-CIO’s D.C. headquarters during the protests drew momentary attention to the potential tensions between Defund and organized labor.²⁰⁶ In response, the D.C. Local of the Amalgamated Transit Union (ATU) (an affiliate of the AFL-CIO) released a public letter expressing solidarity with the protestors and calling on the labor movement to examine its role in perpetuating racism.²⁰⁷ ATU Local 689 joined with transit workers across the country in refusing to transport arrested protestors to jail²⁰⁸ and reflected on the way in which labor power does not immunize workers from systemic racism and police violence: “We are a majority [B]lack union [b]ut even with these good union jobs our

202. *Id.*

203. *Id.*

204. *Supra* note 192.

205. The Nonprofit Professional Employees Union and the newly formed National Women’s Law Center United Union are members of the Defund MPD Coalition. *See* DEFUND MPD, *supra* note 193; Press Release, Nat’l Women’s Law Ctr., National Women’s Law Center Employees Form Staff Union (Apr. 22, 2020), <https://nwlc.org/press-releases/national-womens-law-center-employees-form-staff-union> [<https://perma.cc/686Q-GRDD>]. These unions are part of a trend of white-collar workers who have demanded divestment from police unions. *See Writers Guild of America, East Unanimously Passes Resolution Calling on the AFL-CIO to Disaffiliate with the International Union of Police Associations*, WRITERS GUILD OF AM., E. (June 8, 2020), <https://www.wgaeast.org/writers-guild-of-america-east-unanimously-passes-resolution-calling-on-the-afl-cio-to-disaffiliate-with-the-international-union-of-police-associations/> [<https://perma.cc/T3B6-BX7F>]; Mario Vasquez, *Univ. of California Academic Workers’ Union Calls on AFL-CIO To Terminate Police Union’s Membership*, IN THESE TIMES (July 27, 2015), <https://inthesetimes.com/article/afl-cio-police-unions-racism-black-lives-matter> [<https://perma.cc/6VXX-B6KQ>] (explaining the United Auto Workers Local 2865’s call for the AFL-CIO to disaffiliate with the International Union of Police Associations on the basis of the historical role of the police in defending capital and upholding white supremacy).

206. *See* Paul Heideman, *To Break the Power of the Police, We Need to Mobilize the Power of Labor*, JACOBIN (June 3, 2020), <https://jacobinmag.com/2020/06/police-labor-union-organizing-cops-racism> [<https://perma.cc/LJS2-9T8W>].

207. Press Release, Amalgamated Transit Union Local 689, ATU Local 689 Statement on Black Lives Matter (June 1, 2020), <https://www.atulocal689.org/press/press-release-atu-local-689-statement-on-black-lives-matter> [<https://perma.cc/AU7Z-XJRY>].

208. *See, e.g.*, Daniel Moattar, “*I Refuse to Transport Radical Youth to Jail*”: *More and More City Bus Drivers Are Done Helping Cops*, MOTHER JONES (June 5, 2020), <https://www.motherjones.com/anti-racism-police-protest/2020/06/bus-driver-resistance-george-floyd-police-cops-protest-arrest/> [<https://perma.cc/YRY9-MAY7>].

members still routinely suffer from systemic racism and law enforcement abuses.”²⁰⁹ Defund did not have to reckon with these questions directly, as no other local union showed up to critique Defund or stand with the FOP.²¹⁰

Defund’s approach demonstrates the potential for police contract negotiations to serve as a platform for divestment and reinvestment, alongside budgetary and legislative reform. Although Defund’s efforts to shrink the police through the 2021 District Budget largely failed, its approach to the contract negotiations was symbolically powerful. Rather than asking the City to make cuts, Defund issued its own bargaining proposal, asserting its expertise and demanding a transfer of power into the hands of those impacted by police violence—those who have long known the abuses of racial profiling, baseless stop-and-frisk, and excessive force in the District.²¹¹ This strategy is explored in Part IV as a community control model of police reform.

IV.

DEFUND MPD: A NON-REFORMIST APPROACH TO POLICE UNIONS

As described in Part II, prior proposals for restricting police union power have emphasized modest labor law reforms in service of traditional police accountability goals. Defund MPD departed from the labor reformist approach by seeking non-reformist, transformative police union reforms. Defund’s demands characterized the problem of police unions broadly, understanding police unions as facilitators of a violent system of racial social control. Accordingly, Defund’s intervention sought to shrink the scope and budget of the MPD, while placing community demands at the center of the police bargaining process. Defund’s approach reveals the limitations of the labor reformist strategy. By narrowly defining the problem as individual instances of police misconduct, the reformist approach falls into the trap of decades of failed police reforms, which have been minimally effective at reducing violence.²¹²

209. Amalgamated Transit Union Local 689, *supra* note 207. The union went on to articulate a series of soul-searching questions for the labor movement, not least of which: “Why did young [B]lack and brown workers, frustrated with constant injustice, not view the AFL-CIO as their natural ally with over a century of experience in the struggle for equality? Why did they not recognize that act as burning their own house?” These statements point to larger questions beyond the scope of this article on the limits of racial solidarity within U.S. labor movements and labor law. *See, e.g.*, Marion Crain & Ken Matheny, *Labor’s Identity Crisis*, 89 CAL. L. REV. 1767, 1774–76 (2001).

210. This contrasts with other cities with active abolitionist movements. In Seattle, teachers unions and the local Service Employees International Union (SEIU) participated in an effort to expel the police union from the county’s labor council. Alexandra Bradbury, *Why a Local Labor Council Just Expelled the Seattle Police Guild*, LABOR NOTES (June 18, 2020), <https://labornotes.org/2020/06/why-local-labor-council-just-expelled-seattle-police-guild> [<https://perma.cc/A8YK-7E5D>]. In Los Angeles, two SEIU affiliates are members of a major abolitionist coalition. *Who We Are*, JUSTICELA, <https://justicelanow.org/about/> [<https://perma.cc/GAN3-SCLC>] (last visited Mar. 1, 2022).

211. *See SPTP DC Letter*, *supra* note 85 (reporting data on racial disparities in police stops and use of force).

212. *See Akbar*, *Abolitionist Horizon*, *supra* note 7, at 1802–14.

As Professor Amna Akbar observes, a “‘very clear dividing line’ will not always exist between ‘reformist’ and ‘non-reformist reforms.’”²¹³ Nonetheless, as Akbar argues, the distinction is meaningful and instructive:

Whereas reformist reforms aim to improve, ameliorate, legitimate, and even advance the underlying system, non-reformist reforms . . . seek to delegitimize the underlying system in service of building new forms of social organization. . . . [T]hey seek to sustain ideological crisis as a way to provoke action and develop public consciousness about the possibilities of alternatives and our collective capacity to build them together.²¹⁴

Defund MPD’s strategy was distinctly non-reformist. It contextualized police unions’ historical and present role in maintaining and exacerbating race and class oppression and sought to reorder power relations to prioritize the communities being policed. Defund’s approach provides a powerful, overlooked model that advances the debate on police unions by introducing the tactics of community control and divestment.

A. Police Accountability

Defund’s bargaining proposal sheds light on the differing conceptions of accountability undergirding the D.C. Council, labor reformist, and abolitionist approaches to police unions. While each group identifies police accountability as a central goal, their proposals create distinct accountability structures that reveal distinct conceptions of policing.

The Council articulated the purpose of the Emergency Act as providing accountability for past harms, but the Act did not provide a convincing pathway to accountability. In the Resolution authorizing the passage of the Act, the Council described the “‘conflicted and troubling relationship” between Black District residents and law enforcement.²¹⁵ It expressed a sense of duty to these constituents, stating that “[t]he Council must listen to the voices of District residents and act accordingly to bend the arc of justice.”²¹⁶ The emergency legislation, however, did not structure a role for District residents in police discipline. Instead, the Council left matters of discipline to police management.²¹⁷ This policy relies on a premise that management will impose harsh discipline for misconduct, which would in turn deter violence against civilians, reduce the scope of policing, or otherwise

213. Akbar, *Demands*, *supra* note 14, at 102 (quoting ANDRE GORZ, STRATEGY FOR LABOR: A RADICAL PROPOSAL 7 (Martin A. Nicolaus & Victoria Ortiz trans., 1967)).

214. *Id.* at 104.

215. Comprehensive Policing and Justice Reform Emergency Declaration Resolution of 2020, D.C. Resol. 23-430, § 2(g), 67 D.C. Reg. 7743, 7743–44 (June 9, 2020).

216. § 2(i), 67 D.C. Reg. at 7744.

217. Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act, D.C. Act 23-437, 67 D.C. Reg. 12993 (Oct. 28, 2020).

respond to the demands of protestors.²¹⁸ Given the consistent alignment between the Mayor, Police Chief, and union, there was reason to be skeptical of this position. Further, as Rushin's illustration of the "web" of state labor law shielding officers from discipline explains, collective bargaining is just one part of a larger legal structure blocking police accountability to the public.²¹⁹

The Council's approach also departed from the labor reformists for its seeming neglect of public input on police discipline. Whereas Catherine Fisk and her colleagues proposed public hearings on police union contract proposals and additional transparency mechanisms, the Council merely eliminated disciplinary bargaining.²²⁰ The scant legislative materials surrounding the Emergency Act suggest that Council expected management to handle discipline in a way that was more accountable to the public than the union—but it is unclear how constituents can influence police management, apart from electing a Mayor sympathetic to community demands who might influence the police chief.²²¹ Perhaps the Council thought new civilian oversight measures also passed in the Emergency Act would enhance police management's accountability to the public.²²² Perhaps the Council planned to reject Mayoral appointments for Police Chief absent certain promises of accountability—but prior practice does not indicate that Council held this goal

218. See Levin, *supra* note 36, at 1367–68, 1399–400 for a critique of the police union debate that draws attention to parallels between police union critics and anti-union critics generally. Levin argues the emphasis on union "capture" of elected officials obscures the role of elected officials themselves in perpetuating police union abuses. He suggests that police accountability might not necessarily follow from eliminating police unions, as local government actors are free to enact the same abusive policies that they signed off on in police collective bargaining agreements.

219. See Rushin, *supra* note 20, at 1203.

220. *Supra* note 213.

221. The following civil service statutes give the Mayor control over police employment: D.C. CODE § 5-101.03 (2021) (describing duties of Mayor, including "(1) To preserve the public peace; (2) To prevent crime and arrest offenders . . . (6) To remove nuisances existing in the public streets, roads, alleys, highways, and other places; (7) To provide a proper police force at every fire, in order that thereby the firemen and property may be protected"); D.C. CODE § 5-105.01 (describing appointment process for police officers); D.C. CODE § 5-1304 (describing workweek and overtime provisions; designating the Mayor as the "authorizing official" for MPD); D.C. CODE § 5-1305 (providing that the Mayor will reimburse MPD officers for tuition for educational coursework).

222. The Emergency Act included revisions to the membership of the Office of Police Complaints, § 105, 67 D.C. Reg. at 12998–99 (setting Police Complaints Board membership at "9 members . . . none of whom . . . shall be affiliated with any law enforcement agency," without addressing past involvement with law enforcement), and the Use of Force Review Board, § 106, 67 D.C. Reg. at 12999–3000 (still majority police, but with three members appointed by Mayor and two appointed by Council who hold specific qualifications such as direct experience of police use of force), as well as the creation of a new Police Reform Commission, § 122, 67 D.C. Reg. at 13007–08 (that would have the power to make non-binding recommendations to the Mayor on police discipline, among other topics).

or that this mechanism would be a particularly effective means of influencing police management.²²³

The last police union contract ratification, in 2018, is illustrative. The D.C. Council's Committee on Labor and Workforce Development invited only one opportunity for public input on the CBA—two days before the contract would be ratified.²²⁴ The contract was hailed as the first to reach ratification without impasse or arbitration in seventeen years,²²⁵ but was criticized for its failure to engage the impacted community, particularly on issues of discipline and salary.²²⁶ It appears that the Labor and Workforce Development Committee has not held a public hearing on the current contract negotiation.²²⁷ If 2018 is any indication, it will not invite public input until it is too late to make a difference.

By contrast, through its 2020 public letter campaign, Defund MPD asserted a direct role for the community in determining the new police union contract's terms. Defund's bargaining proposal suggests it viewed the contract as a locus of policymaking, akin to the District budget or legislative process. This approach reflects the reality that police unions inflect and develop policy through the collective bargaining process and asserts the importance of public participation, particularly of those most impacted by racialized police violence, in determining these

223. For example, Chief Peter Newsham (who recently stepped down to lead a police department in Northern Virginia) was confirmed in a vote that only had one Council member's holdout, but has faced criticism for his response to protests and police killings in the District. Daniella Cheslow, Rachel Sadon, Martin Austermuhle, & Natalie Delgadillo, *D.C. Police Chief Peter Newsham is Heading to Virginia's Prince William County*, DCIST (Nov. 25, 2020, 11:44 PM), <https://dcist.com/story/20/11/24/dc-police-peter-newsham-leaving-prince-william/> [<https://perma.cc/FJJ3-HD5M>].

224. *SPTP DC Letter*, *supra* note 85.

225. Rachel Kurzius, *D.C. and Police Union Reach New Labor Agreement for First Time in Nearly Two Decades*, DCIST (Aug. 30, 2018, 5:25 PM), <https://dcist.com/story/18/08/30/dc-and-police-union-reach-new-labor/> [<https://perma.cc/QVA3-W8VQ>].

226. *See SPTP DC Letter*, *supra* note 85.

227. *See Meetings and Hearings Schedule*, COUNCIL OF D.C., <https://dccouncil.us/events/month/> [<https://perma.cc/DR4J-W97G>] (last visited Mar. 1, 2022) (showing no public hearings on the contract negotiation); *Labor & Workforce Development Public Roundtable*, COUNCIL OF D.C., <https://dccouncil.us/event/labor-workforce-development-public-roundtable-12/> [<https://perma.cc/54H2-L8HM>] (last visited Mar. 1, 2022) (announcing a non-public hearing on the SEIU contract). Council Chair Mendelson was forthright in his defense of this rationale, calling the disciplinary appeals processes implemented by the union “an impediment to best policing practices.” Hermann, *supra* note 146 (further explaining that “D.C. Police Chief Peter Newsham has complained for years that it is too hard to fire officers for misconduct, and that he has been forced to rehire terminated officers who appealed through arbitration”).

policies.²²⁸ After the movement did not obtain the budget cuts and radical reforms it sought through the legislative process,²²⁹ it turned to the union contract as an alternative. Many of Defund MPD's contract terms are now policy goals in its roadmap to reducing the MPD's budget by 50% over the next three years.²³⁰ To the extent that shifting policy design into the hands of constituents directly impacted by police violence is a goal, Defund's approach to the police union contract is a useful model.

Defund's bargaining proposal reflects a "community control" approach to policing and budgeting. Social movements, including the Movement for Black Lives, have shown a growing interest in developing policies and platforms that give constituents direct control over public services like police, infrastructure, and schools.²³¹ In their article *The Institutional Design of Community Control*, K. Sa-beel Rahman and Jocelyn Simonson discuss the rationale and organizing principles for this model.²³² Taking movements in Chicago and Oakland as case studies, Rahman and Simonson explain how movements have structured community control over policing into local legislation. For example, rather than instituting a community oversight board, Chicago organizers proposed a "Civilian Police Accountability Council" (CPAC) that would be empowered "to appoint the superintendent, to adopt rules for police conduct, and to sign off on all disciplinary decisions."²³³ The CPAC would be composed of community members who had no personal or professional connections to law enforcement.²³⁴ This example illustrates the three design principles of community control: (1) control rather than input, (2) representation of the historically disempowered, and (3) the exercise of authority *ex ante* rather than *ex post*.²³⁵ Community members designed the standards for police discipline *ex ante* and were empowered to make disciplinary decisions, in contrast

228. See Simonson, *supra* note 29, at 850–56, for a defense of movement claims of "expertise" based on lived experiences of marginalization from and by the criminal legal system. *But see* John Rappaport, *Some Doubts About "Democratizing" Criminal Justice*, 87 U. CHI. L. REV. 711, 745, 749 (2020) (challenging the premises of policing scholars, including Simonson, who favor "democratization," including the notion that greater community input leads to the incorporation of marginalized perspectives). James Forman's historical study of punitive crime policy driven by Black leaders and constituents in Washington, D.C., also casts some doubt on the premise that community control implies or ensures decarceral policy. JAMES FORMAN, JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* (2017).

229. GOLDING, *supra* note 141.

230. *Our Roadmap to Refunding Our Community*, DEFUND MPD, <https://www.defundmpd.org/roadmap> [<https://perma.cc/H5XZ-4LGC>] (last visited Mar. 1, 2022).

231. See *Community Control*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/community-control/> [<https://perma.cc/X4WX-V2JE>] (last visited Mar. 1, 2022). See generally Rahman & Simonson, *supra* note 40 (articulating the concept of community control as distinct from community input and providing case studies from grassroots movements in Chicago, Oakland, and Detroit).

232. Rahman & Simonson, *supra* note 40.

233. *Id.* at 705–06 (describing a Chicago ordinance proposed by grassroots organizers, which ultimately was rejected in favor of a reformist proposal endorsed by Mayor Rahm Emmanuel).

234. *Id.*

235. *Id.* at 719–27, 729.

to civilian review boards, which assess misconduct *ex post* and provide recommendations that are seldom followed.²³⁶ By endowing impacted community members with real authority and shifting the moment at which that authority is exercised, community control models open the possibility of making structural changes to policing that get at its very foundation.²³⁷

Community control's transfer of authority and emphasis on *ex ante* policy design evokes a view of accountability broader than accounting for past wrongs. Accountability instead might imply iterative and transformative possibilities for violence prevention, including alternative, non-punitive systems of healing, like transformative justice.²³⁸ Simonson argues that such transfer of power is inherently reparative in that it restores power to communities that have been denied political power as a result of policing.²³⁹

By drafting contractual provisions, Defund claimed a direct role in defining the scope and power of the police department *ex ante*. In the hands of Defund, the contract became a site of policymaking accessible to people impacted by police violence.²⁴⁰ Defund defined itself against the police union's regulatory capture: "the road to abolition and a safe community is to disrupt and disempower [the FOP's] control over our communities and the DC council [sic]. This fight is one of transparency and accountability versus the white boys club and DC FOP Power."²⁴¹ This move casts doubt on the D.C. Council's choice to empower police management and reveals the limitations of the labor reformist proposals, which orient toward community input rather than community control and leave the structure of police bargaining intact.²⁴² For example, Catherine Fisk and her

236. See, e.g., Kelly McConney Moore, *For Civilian Review Boards to Work, They Must Avoid Past Mistakes*, ACLU CONN. (Sept. 10, 2020, 6:00 PM), <https://www.acluct.org/en/news/civilian-review-boards-work-they-must-avoid-past-mistakes> [<https://perma.cc/LC9T-MK89>] (describing present and historical failure of civilian review boards, in part due to police union resistance).

237. Rahman & Simonson, *supra* note 40, at 727 ("Ex ante influence may also facilitate broader contestation of dominant ideas about the purpose and benefits of services such as policing in the first place.").

238. See Barnard Ctr. for Rsch. on Women, *What is Transformative Justice?*, YOUTUBE (Mar. 11, 2020), https://www.youtube.com/watch?v=U-_BOFz5TXo [<https://perma.cc/P3V7-2SXB>].

239. Simonson, *supra* note 29, at 831.

240. An issue beyond the scope of this article is the difficulty of defining the "impacted community" and the extent to which Defund MPD or BLM DC can speak for this necessarily diverse group. Professor Monica Bell argues that there is a shifting, contextual set of relationships that marginalized communities take to the criminal legal system and organizes these relationships into four modalities: subordination, consumption, resistance, and transformation. Monica C. Bell, *The Community in Criminal Justice: Subordination, Consumption, Resistance, and Transformation*, 16 DU BOIS REV. 197, 197–98 (2019). Bell argues that the subordination modality has been over-emphasized in criminal law reform and highlights the promise of considering the other three modalities in enhancing the power of communities to design policies that meet their diverse goals. *Id.* at 210–11. Defund MPD's strategy evokes a "transformative" modality, which Bell defines as "community engagement in deliberate, organized, and often collective action to ease the negative impact of the criminal legal system on members of marginalized communities." *Id.* at 208.

241. DEFUND MPD, *supra* note 193.

242. See Rahman & Simonson, *supra* note 40, at 711 (describing the difference between power and input).

colleagues' proposal for California would allow the community to observe negotiations or comment publicly on bargaining terms—but only on matters of discipline and use of force, and without binding authority.²⁴³

By contrast, Defund MPD viewed the contract as a vehicle for divestment. By claiming the CBA as a forum for communities to develop policy and influence the District budget, Defund opened the possibility for community control to be implemented in the police discipline process and perhaps in public-sector union negotiations across the board.²⁴⁴ The letter campaign itself embodied a democratic “input” model of accountability—whereby elected officials are meant to take direction from constituents on the substance of the CBA—but asserted the importance of community control over budgeting, discipline, and policy.²⁴⁵

Community control evokes a deep critique of the legal system's role in maintaining race and class oppression and asks for a model of democratic governance that restores power to the historically marginalized.²⁴⁶ As such, one critique of community control is that “communities” are not a monolith. They have diverse political composition, and inequities can arise in the transfer of power to the historically marginalized.²⁴⁷ That the composition of the “community” itself is contested and risks cooptation²⁴⁸ is not a reason to neglect such proposals. Rather, Defund movements, speaking in many voices, pose a powerful and dynamic counterweight to existing modes of policymaking—one that demands recognition, investment, and further inquiry.²⁴⁹

243. Fisk, Grodin, Henderson, True, Winograd, & Yank, *supra* note 57. For a defense of “evidence-based” policy and, at a minimum, a blend of technocratic expertise alongside popular input, see Rappaport, *supra* note 228, at 809–13.

244. The Movement for Black Lives policy platform, “Community Control,” links the problems of policing, budgeting, and schools. MOVEMENT FOR BLACK LIVES, *supra* note 231.

245. See Rahman & Simonson, *supra* note 40 (describing community control experiments in economic development).

246. Simonson, *supra* note 29, at 830 (“The reparative argument for power shifting comes down to a simple idea: we must take historical wrongs into account when thinking about reform in the present. . . . Within police reform, this means recognizing that the denial of citizenship by everyday policing requires repair through deliberate efforts to shift political power downward.”). In endorsing a contestatory model of democracy, Jamelia Morgan adds another layer to the community control critique: how criminal law itself defines the boundaries of “the community,” excluding those already marginalized by disability, race, and gender. Jamelia Morgan, *Rethinking Disorderly Conduct*, 109 CAL. L. REV. 1637, 1637 (2021).

247. See *supra* note 228.

248. See Simonson, *supra* note 29, at 817 (“With respect to policing in particular, movement actors make a deliberate attempt to reclaim the notion of ‘community’ as one of bottom-up power, in contrast to the dominant concept of ‘community policing’ in mainstream police reform. These groups have diagnosed community policing as a dangerous ‘misnomer’ that ‘provide[s] a façade of legitimacy that allows policing to continue as usual.’” (quoting *Counter-CAPS Report: The Community Engagement Arm of the Police State*, WE CHARGE GENOCIDE 3, 6 (Oct. 28, 2015) <http://wechargegenocide.org/wp-content/uploads/2015/10/CAPSreport-final.pdf> [<https://perma.cc/FG39-QT55>])).

249. For a defense of engaging with, and taking direction from, movements in legal scholarship, see generally Akbar, Ashar, & Simonson, *supra* note 82.

Though Defund's assertion of community control has just begun, it has already proven effective. The scale and presence of the mass movement on the ground in D.C. mobilized the D.C. Council to pass swifter and broader reform legislation in July 2020 than most cities have achieved today.²⁵⁰ From this position of leverage, Defund challenged reformers to address the police union contract as a site of divestment—and to reimagine community power in a way that addresses the roots of economic oppression and state violence.

B. Police Violence

By defining the problem of police unions as one of blocking police reform and regulation, the reformist proposals imply that the institution of policing can be improved. This approach reflects a narrow view of police “violence,” where violence is defined by excessive force, unlawful killings, and constitutional violations—deviations from the institutional norms of policing created by law.²⁵¹ Under this narrow definition, “economic” contract terms are distinct from “disciplinary” contract terms because police labor rights are only problematic to the extent that they obscure misconduct and block accountability for unlawful or deviant activity. This framework implicitly endorses criminal law reform approaches to policing: it proposes these reforms would reduce police violence—narrowly defined—absent union capture.

Defund MPD follows an abolitionist tradition in challenging this premise and collapsing the distinction between “economic” and “disciplinary” terms. To Defund, the problem with police unions is not that they block reform or render it ineffective. Abolitionists have long asserted reforms like body cameras, implicit bias training, and civilian oversight fail to remediate police violence and that there

250. Juliet Williams, *Oakland Mayor Seeks to Reverse Police Cuts amid Crime Spike*, AP (Nov. 29, 2021), <https://apnews.com/article/business-crime-police-violence-homicide-cce4672e4de0c205a703614ee101336d> [<https://perma.cc/K793-SCEP>] (describing a trend in progressive cities, including Oakland, California, Portland, Oregon, and New York, New York, to restore police budgets after making cuts amid the uprising). See *supra* note 110 and accompanying text (inviting the reader to compare the pace of progress in D.C. and other cities).

251. Scholars have critiqued the narrow focus on constitutional restraints on policing from multiple ideological perspectives. For one, the narrow focus on constitutional law obscures a variety of regulatory mechanisms that play a larger role in influencing police policy and conduct. See, e.g., Harmon, *supra* note 47 at 763 (arguing constitutional criminal procedure amounts to only a small dimension of police regulation); Seth W. Stoughton, *How the Fourth Amendment Frustrates the Regulation of Police Violence*, 70 EMORY L. J. 521 (2021) (critiquing the primacy of Fourth Amendment frameworks for regulating police use of force and advocating alternatives). Others advocate a broader conception of “police violence” that emphasizes that the historical function of policing to protect property and property-holders and to control and subjugate minorities. See, e.g., Akbar, *Abolitionist Horizon*, *supra* note 7, at 1838 (describing violence as central to policing and stating, “An abolitionist history reveals police to be centrally concerned with violent control of the movement, labor, land, and resistance of Black and Indigenous people and more.”); Nirej Sekhon, *Police and the Limit of Law*, 119 COLUM. L. REV. 1711 (2019) (theorizing municipal police as a sovereign power practically beyond the reach of the law that ostensibly constrains them).

is little of police reform worth salvaging.²⁵² Instead, they assert that police unions are problematic because they expand the *collective power and scope* of policing, whether through lobbying, increasing police budgets, or facilitating impunity for overt acts of violence.²⁵³ This is not to say abolitionists don't care about civil rights violations—many do.²⁵⁴ But the abolitionist analysis of police violence cuts deeper than the Fourth Amendment. It defines police violence broadly as the carceral response to social problems such as unemployment, mental health, domestic violence, and access to healthcare and housing.²⁵⁵ Policing and incarceration maintain these systems of inequality by surveilling, patrolling, and “cag[ing] the people who struggle through them.”²⁵⁶ Contact with the criminal legal system in turn entrenches deprivation and marginalization, through debt, job loss, housing instability, and other harms.²⁵⁷

The abolitionist view centers the role of policing, with its origins in slave patrols and union-busting cops, in maintaining economic oppression.²⁵⁸ This history continues to manifest today. For example, in Ferguson and St. Louis, huge amounts of city revenue are extracted from poor, Black communities through the misdemeanor system and municipal fines and fees.²⁵⁹ For abolitionists, an end to violence requires a measurable reduction in policing and incarceration and a restoration of resources to communities that have been victimized continually and generationally by these systems. Defund MPD justifies the decision to restrict the

252. See, e.g., Akbar, *Abolitionist Horizon*, *supra* note 7, at 1810–11 (on body cameras and other uses of technology by police); Rahman & Simonson, *supra* note 40, at 701–02 n.97–98 and accompanying text (describing diverse positions of activists on civilian review); *Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE https://static1.squarespace.com/static/59ead8f9692ebec25b72f17f/t/5b65cd58758d46d34254f22c/1533398363539/CR_NoCops_reform_vs_abolition_CRside.pdf [<https://perma.cc/55ZQ-L79P>] (“Some argue for Civilian Review Boards ‘with teeth,’ the power to make decisions and take away policing tools and tactics. However, a board with that level of power has never existed despite 50+ years of organizing for them.”).

253. Akbar, *Abolitionist Horizon*, *supra* note 7, at 1842 (“The power of the police lies as much in the police’s budgets, unions, and scale as it does in the belief that police provide for public safety and solve social problems.”).

254. See DEFUND MPD, *supra* note 193 (“It is essential that the DC Council members that we elected retain and use their ability to hold the police accountable and to protect the civil rights of DC residents. The current FOP CBA prevents that.”).

255. Akbar, *Abolitionist Horizon*, *supra* note 7, at 1815–16.

256. *Id.*

257. See, e.g., Bruce Western, PUNISHMENT AND INEQUALITY IN AMERICA (2006) (identifying the impact of incarceration on economic inequality, job loss, and wages, especially among young Black men); Norrinda Hayat, *Housing the Decarcerated: Covid-19, Abolition & the Right to Housing*, 110 CAL. L. REV. 639 (2022) (describing the system of eviction and subsidized housing policies that promote exclusion of people with criminal records and their families).

258. Akbar, *Abolitionist Horizon*, *supra* note 7, at 1812–13, 1817–18.

259. *Id.* at 1792; see THOMAS HARVEY, JOHN MCANNAR, MICHAEL-JOHN VOSS, MEGAN CONN, SEAN JANDA, & SOPHIA KESKEY, ARCHCITY DEFENDERS: MUNICIPAL COURTS WHITE PAPER (2014), <https://www.archcitydefenders.org/wp-content/uploads/2019/03/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf> [<https://perma.cc/HJH9-KWDC>]. For a critique of the economic incentives of the misdemeanor system, including regressively “tax[ing]” the poor to generate public revenue, see ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL 116–17, 132–37 (2018).

collective power of police *as workers* on the basis that police unions contribute to the suppression and marginalization of the poor and working class far more than they raise standards of work or promote worker power.²⁶⁰ It is for this reason that some have argued police unions are not part of the labor movement at all.²⁶¹

In targeting the D.C. Police Union's systems of promotion, termination, and administrative leave, Defund MPD underscored the tension—if not the direct contradiction—between police economic power and the economic marginalization of communities who are disproportionately policed and incarcerated. Defund's choice to target both “economic” and “disciplinary” terms reflects the falsity of this distinction through an abolitionist lens. Defund's strategy reveals weaknesses in the reformist approach, which fails to account wholly for the role of police in producing and maintaining racial and economic oppression.

Abolitionists have observed the way in which police reform, through its narrow view of violence, has grown the scope of and investment in policing without reducing police violence even in its narrow form. For example, the 20th century saw two major waves of police reform, in the 1960s and 1990s respectively, which focused on police-community relations.²⁶² The 1968 Omnibus Crime Control and Safe Street Act, sponsored by Lyndon B. Johnson, and Bill Clinton's 1994 Crime Bill each funneled billions of dollars into local police departments.²⁶³ Such reforms bolstered the legitimacy of the police under the banner of “community policing,” but closer contact between police and marginalized communities only meant increased surveillance, arrests, and incarceration—without decreasing crime.²⁶⁴ Body cameras and other reforms that increase the technology available

260. See Akbar, *Abolitionist Horizon*, *supra* note 7, at 1800 n.69 (quoting PAUL BUTLER, CHOKEHOLD: POLICING BLACK MEN (2017)) (describing law enforcement as “an employment stimulus plan for working-class white people, who don't have to compete for jobs with all the [B]lack men who are locked up, or who are underground because they have outstanding arrest warrants, or who have criminal records that make obtaining legal employment exceedingly difficult”); Shawn Gude, *Why We Can't Support Police Unions*, JACOBIN (July 31, 2015), <https://www.jacobinmag.com/2015/07/black-lives-matter-patrick-lynch-ferguson> [<https://perma.cc/42VL-WMLH>] (“Police organize as *police*, not workers.” (quoting KRISTIAN WILLIAMS, OUR ENEMIES IN BLUE: POLICE AND POWER IN AMERICA)). But see Levin, *supra* note 36, for a forceful critique of the inconsistencies this position raises, such as the notion that higher-wage workers are not entitled to labor protections.

261. See *supra* note 205.

262. Intercepted, *Ruth Wilson Gilmore Makes the Case for Abolition*, INTERCEPT, at 5:11 (June 10, 2020), <https://theintercept.com/2020/06/10/ruth-wilson-gilmore-makes-the-case-for-abolition/> [<https://perma.cc/YQT5-E24T>] (citing Naomi Murakawa's work).

263. *Id.* For an historical account of the Johnson-era roots of mass incarceration and the policies that laid the infrastructure for a ballooning in police funding, see ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA (2016).

264. See, e.g., Philip V. McHarris, *Community Policing is Not the Answer*, APPEAL (Dec. 2, 2019), <https://theappeal.org/community-policing-is-not-the-answer/> [<https://perma.cc/Q5TC-9Q5E>] (citing a study showing community policing enhanced perceived legitimacy of police but did not reduce crime).

to police similarly have a limited effect on safety while increasing police budgets and enhancing perceived police legitimacy.²⁶⁵

The labor reformists risk reinforcing the historical failure of police reform by ascribing to the narrow view of violence. Reformist scholars and the D.C. Council proposed to improve policing by heightening control over police discipline. This approach suggests the problem with police unions is that they prevent discipline and termination of officers who deviate from the law of police. The abolitionist critique shows us that such a narrow approach to police reform is likely to enhance (or at a minimum, leave untouched) police power, legitimacy, and funding, thus reinforcing a system of racialized social control and deepening inequality. The D.C. Council's move to shift power into the hands of the police chief might increase terminations for egregious misconduct but is unlikely to reduce the scope of policing in D.C. or its racial impacts.

Defund's abolitionist tactics demonstrate a new approach to countering police union power. They asked not for more Chauvin trials but for a retrenchment of police economic power. By defining police violence too narrowly, the labor reformist interventions contradict Defund's goals, but the inverse is not true. Defund's broad economic critique of policing draws connections between policing, deprivation, and violence that could meaningfully address the conditions that allow police to abuse, harass, and kill with impunity.

V.

CONCLUSION

Abolitionist futures are built at the scale of the hyperlocal.²⁶⁶ From the 18,000 public comments advocating defunding to the demands of the police contract, Defund MPD mapped the path to abolition through practical, proximate steps. This kind of accountability requires a historical and hyperlocal attention to power and violence and a commitment to the cyclical work of repair. It also demands a shift in assumptions about who holds the expertise to change or redesign the system for the better.²⁶⁷

This case study of Defund MPD showed how rising abolitionist movements shifted the landscape of police reform in D.C. and forced a reckoning with the power of police unions. Through the lens of Defund MPD's strategy, it drew out a critique of labor reformist approaches to police unions and articulated the

265. See Akbar, *Abolitionist Horizon*, *supra* note 7, at 1809–14; Seth Stoughton, *Police Body-Worn Cameras*, 96 N. C. L. REV. 1363, 1415–21 (2018) (describing several examples of body-worn camera programs whose efficacy was limited by police department failure to implement the policies).

266. See Akbar, *Abolitionist Horizon*, *supra* note 7, at 1845.

267. Simonson, *supra* note 29, at 852–53 (asserting, “Rather than looking for expertise from social scientists or veterans on the police force, the people with expertise on what democratic policing should look like may instead be those who are subject to the domination of the police on a regular basis,” and drawing on the work of James Baldwin and Paul Butler to support this claim).

underlying motivations and promise of community control strategies for transforming police labor organization and its tendency to resist accountability.

The strength of the labor reformist approach to police unions is its recognition of the multiple sources of law that operate together to facilitate police violence. This work points the way toward the CBA as a site of reform. But the greatest prospects of this strategy lie in a more radical conception than the labor reformists contemplate. Defund's abolitionist approach challenges reformists to explore the consequences of maintaining the assumptions of labor law and police reform while trying to end racial violence and foster accountability to communities who have been systemically surveilled, injured, and controlled by policing. Greater attention to local visions and experiments like Defund MPD's campaign against police union control can foster insights into the entrenched pattern of failed police reform and open new, transformative possibilities for public safety that restore agency to communities harmed by policing.