

Loyola University Chicago, School of Law

LAW eCommons

Faculty Publications & Other Works

2021

Federal (De)Funding of Local Police

Roger Michalski

University of Oklahoma College of Law, roger.michalski@ou.edu

Stephen Rushin

Loyola University Chicago School of Law, srushin1@luc.edu

Follow this and additional works at: <https://lawcommons.luc.edu/facpubs>



Part of the [Law Enforcement and Corrections Commons](#)

Recommended Citation

Roger Michalski & Stephen Rushin, Federal (De)Funding of Local Police, 110 GEO. L.J. ONLINE 54 (2021).

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Faculty Publications & Other Works by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

Federal (De)Funding of Local Police

ROGER MICHALSKI* & STEPHEN RUSHIN**

INTRODUCTION

For years, political leaders have attempted to use federal funding as a tool to influence local police behavior. In June of 2020, then-Presidential candidate Joseph R. Biden wrote an op-ed arguing that the federal government should allocate hundreds of millions of dollars to promote community policing, facilitate police departments' purchases of body cameras, and improve mental health services.¹ More recently, Democrats in Congress have included provisions in the proposed Racial Justice in Policing Act that would withhold federal funding from local police departments that fail to eliminate the use of no-knock warrants in drug cases,² chokeholds,³ and racial profiling tactics by their officers.⁴ On the other side of the political aisle, former President Donald J. Trump used the threat of reductions in federal funding to influence the behavior of local police departments when he ordered the Attorney General to create a list of so-called “anarchist jurisdictions” that would be disfavored in receiving federal grants.⁵

But can federal police funding function as an effective policy lever at the local level? Is federal funding or the threat of defunding a sufficiently strong tool to effectuate deeply contentious policy goals over local opposition? This Essay presents an empirical analysis of federal funding for local and state police agencies in the United States. It finds that the federal government remains a relatively minor contributor to local police budgets. Federal funding only reaches a minority of local police agencies—around ten percent of all agencies in any given year. In total, only around twenty percent of all non-

* Professor of Law, University of Oklahoma College of Law. © 2021, Roger Michalski & Stephen Rushin.

** Associate Professor of Law, Loyola University Chicago School of Law.

¹ Joe Biden, *Opinion, Biden: We Must Urgently Root Out Systemic Racism, from Policing to Housing to Opportunity*, USA Today (June 11, 2020, 11:17 AM), <https://www.usatoday.com/story/opinion/2020/06/10/biden-root-out-systemic-racism-not-just-divisive-trump-talk-column/5327631002> [<https://perma.cc/FGS4-G5T4>].

² Racial Justice in Policing Act, H.R. 7120, 116th Cong. § 362(b)–(c) (2020).

³ *Id.* at § 363(b)–(c).

⁴ *Id.* at § 331 (a)–(b).

⁵ President Donald J. Trump, *Memorandum on Reviewing Funding to State and Local Government Recipients That Are Permitting Anarchy, Violence, and Destruction in American Cities* (Sept. 2, 2020), <https://www.whitehouse.gov/presidential-actions/memorandum-reviewing-funding-state-local-government-recipients-permitting-anarchy-violence-destruction-american-cities> [<https://perma.cc/F99Z-L4HE>].

federal law enforcement agencies during the past eight years have received federal funds. The federal government only spends \$10-30 per capita on local policing, a relatively small percentage of the roughly \$350 per capita that the typical U.S. municipality spends on policing each year.⁶

Our findings indicate that most U.S. law enforcement agencies are not acutely reliant on federal funding. These findings have several important implications for the literature on police reform and accountability. The first finding is that the federal government is a relatively minor contributor to local police operations. From this observation, we conclude that efforts to use the lever of federal funding to alter the behavior of local police departments will at most have a limited effect, particularly if the reforms that federal lawmakers demand are expensive or unpopular locally. In such cases, local leaders may believe that the risk of losing federal funding is preferable to the change federal lawmakers demand. Second, we conclude from our findings that federal lawmakers will be better able to effectuate constitutional policing through means other than withholding federal funds. We therefore propose alternative means by which federal lawmakers can effectuate police reform that do not rely on leveraging (limited) federal funds. Finally, our findings reinforce the view that the ongoing debate about defunding police departments and reimaging public safety should occur primarily at the local level.

I. METHODOLOGY

To better understand the reach and influence of federal funding for local law enforcement agencies we collected and combined multiple data sources. To our knowledge, no legal scholarship has utilized this combination of data to portray the scope of federal support for local law enforcement agencies.

The first source of data is program grants to non-federal law enforcement agencies administered by the Department of Justice (DOJ). Different units of DOJ administer and supervise different grants. Some make information about grants readily available.⁷ For others, we had to informally request the data or use formal Freedom of Information Act (FOIA) requests. In total, we collected data on roughly 100,000 federal grants from a broad range of years; however, the years from which data were available varied between programs. To make data-ranges from different programs comparable, we limited our

⁶ See *infra* Part II.

⁷ See, e.g., *FY 2020 Off. on Violence Against Women Grant Awards by Program*, U.S. DEP'T OF JUST. <https://www.justice.gov/ovw/awards/fy-2020-ovw-grant-awards-program> [<https://perma.cc/W3MZ-9DBF>] (last visited Apr. 6, 2021); *Grants and Funding*, U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS <https://data.ojp.usdoj.gov/stories/s/Office-of-Justice-Programs-Funding/khtv-6ugu/> [<https://perma.cc/57RC-CT9J>] (last visited Apr. 6, 2021).

analysis to roughly 40,000 grants administered between 2011 and 2019.⁸ We excluded data from 2009 and 2010 as anomalous: these years saw unusual spikes in emergency grant disbursements because of the financial crisis and the Great Recession.⁹

Some of these DOJ grants are delivered to state agencies that in turn distribute funds to local agencies. Initially, we attempted to collect information on these pass-through grants. Some state agencies make information about the DOJ grants that they administer readily available on their websites, and some helpfully provided such information upon informal request, but many others were less cooperative. Given the scope of these grants and the limitations of this Essay, we did not engage in a fifty-state, FOIA-supported data-collection effort. Instead, as further explained below, our estimators take these data limitations into account.

Next, we matched these data on federal grant programs with a dataset on local law enforcement agencies from the Census of State and Local Law Enforcement Agencies (CSLLEA).¹⁰ Originally captured in 2008,¹¹ we supplemented and updated the dataset to the extent we could, though we found the task of counting all active U.S. law enforcement agencies difficult because many have merged, split, or ceased operations since that year. We matched grants and law enforcement agencies using a combination of geographic identifiers, agency identifiers, and fuzzy grant program keyword matching.¹² This

⁸ The number of overall grants under these programs must be read with caution because many of these programs provide financial support for law enforcement agencies and other types of recipients (for example, non-profits).

⁹ Such emergency appropriations, then and now, merit separate treatment.

¹⁰ This dataset is available at *Data Collection: Census of State and Local Law Enforcement Agencies (CSLLEA)*, U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STATS. <https://www.bjs.gov/index.cfm?ty=dcdetail&iid=249> [https://perma.cc/D78N-NXHW] (last visited Apr. 6, 2021).

¹¹ According to DOJ, the 2014 CSLLEA was not released due to data quality concerns, and there is, as of this writing, no "estimate as to when the 2018 CSLLEA will be available." E-mail from AskBJS@usdoj.gov, Bureau of Just. Stats., Dep't of Just., to Roger Michalski, Professor of Law, University of Oklahoma College of Law (June 29, 2020) (on file with authors).

¹² Most of the matching was done by unique geographic and agency identifiers that yielded single matches. However, in some instances this did not yield any matches or any unique matches. Often this was due to typos in one of the databases or small variations in spelling (For example, Fort Wayne and Ft. Wayne; Mount Vernon and Mt. Vernon; Winston-Salem and Winston Salem, Martha's Vineyard and Marthas Vineyard; La Cañada Flintridge and La Canada Flintridge, St. Charles Parish and Saint Charles Parish, etc.). In those instances, fuzzy probability searches allowed us to identify close matches. Our approach may have yielded some erroneous matches, but we have confidence that we were able to approximate federal funding for local law enforcement agencies in a manner superior to existing alternatives. We hope other researchers will reach enhanced estimates by improving on our model.

methodology allowed us to estimate the percentage of local law enforcement agencies that received federal funds and the amount that they received in the years under study.¹³

Next, we compared this dataset with data from the Annual Survey of Governments (ASG).¹⁴ The ASG provides data on the expenditure of law enforcement agencies at all levels of government. That, in turn, allowed us to estimate the percentage of law enforcement expenditures attributable to federal sources. Finally, we aggregated agency and funding information by county and county-equivalents in part of our analysis to examine geographic patterns.¹⁵

We stress that these data have important limitations and readers are advised to keep certain caveats in mind. First, the data are imperfect. For example, there are inconsistencies in the spelling of either municipalities or their law enforcement agencies, or both, across different databases. These inconsistencies introduce ambiguity. Matching governments and their constituent law enforcement agencies with the grants that they have received also creates error given the quality and quantity of our data. More fundamentally, the complexity of some programs combined with limited data introduces further ambiguity. For instance, some programs distribute grants to governments (for example, a county) that in turn partially fund law enforcement functions (for instance, the sheriff's office of that county). The extent to which grant resources are actually applied to law enforcement activity is sometimes not clear from the data.

Second, the population of law enforcement agencies under analysis is inexact because some newly created agencies have not been added to the list and some agencies that no longer exist remain on the list. Because the total number of agencies is a denominator in some portions of our analysis, this introduces further uncertainty and error.

Third, there are numerous federal programs that provide funding and support to local law enforcement agencies. In this Essay, we focus on DOJ

¹³ Keeping in mind, of course, that some agencies might receive multiple federal grants in a given year.

¹⁴ See *Annual Survey of State and Local Government Finances*, U.S. CENSUS BUREAU <https://www.census.gov/programs-surveys/gov-finances.html> [https://perma.cc/K6SC-KU6T].

¹⁵ The methodology used here is explained in greater detail in our prior work. See generally Stephen Rushin & Roger Michalski, *Police Funding*, 72 FLA. L. REV. 277 (2020); Roger Michalski & Joshua Sellers, *Democracy on a Shoestring*, 74 VAND. L. REV. (forthcoming 2021).

grants, the most significant and direct source of federal funding for local law enforcement agencies. We did not collect grant data from other federal agencies because of their smaller scope. For example, the Department of Homeland Security (DHS) provides various preparedness programs for which local law enforcement agencies might qualify. However, much of this funding is not spent on law enforcement but rather on firefighting,¹⁶ flood protection,¹⁷ and emergency food & shelter.¹⁸ Similarly, the Department of Agriculture administers programs that might benefit local law enforcement agencies¹⁹ amongst a wide range of other activities such as childcare facilities,²⁰ rural water provisions,²¹ tribal colleges,²² historic barn preservation,²³ and healthcare services.²⁴ However, even if all of these non-DOJ grants were spent supporting local law enforcement agencies, they would still pale in comparison to the DOJ grants. These non-DOJ grants are important to some communities and their respective local law enforcement agencies, but they are unlikely to function as an effective lever for federal control over local

¹⁶ Department of Homeland Security Appropriations Act, S. 3109, 115th Cong., tit. III § 5 (2019) (“\$700,000,000, to remain available until September 30, 2020, of which \$350,000,000 shall be for Assistance to Firefighter Grants and \$350,000,000 shall be for Staffing for Adequate Fire and Emergency Response Grants under sections 33 and 34 respectively of the Federal Fire Prevention and Control Act of 1974.”).

¹⁷ *Id.* at § 6 (“\$350,000,000 for emergency management performance grants under the National Flood Insurance Act of 1968 . . . the Robert T. Stafford Disaster Relief and Emergency Assistance Act[,] . . . the Earthquake Hazards Reduction Act of 1977[,] . . . section 762 of title 6, United States Code, and Reorganization Plan No. 3 of 1978”); H.R. 6776, Cong. 115th Cong. tit. III, § 8 (2018) (“\$262,531,000 for necessary expenses for Flood Hazard Mapping and Risk Analysis, in addition to and to supplement any other sums appropriated under the National Flood Insurance Fund, and such additional sums as may be provided by States or other political subdivisions for cost-shared mapping activities”); S. 2582, 116th Cong., tit. III, § 9 (2020) (“\$10,000,000 for Rehabilitation of High Hazard Potential Dams under section 8A of the National Dam Safety Program Act”).

¹⁸ S. 2582, 116th Cong., tit. III, § 10 (“\$120,000,000 for the emergency food and shelter program under title III of the McKinney-Vento Homeless Assistance Act”).

¹⁹ *See, e.g., Community Facilities Direct Loan & Grant Program, USDA RURAL DEVELOPMENT*, <https://www.rd.usda.gov/programs-services/community-facilities-direct-loan-grant-program> [<https://perma.cc/BCW5-F6QH>] (last visited Apr. 13, 2021) (allowing use for “[p]ublic safety services such as fire departments, police stations, prisons, police vehicles, fire trucks, public works vehicles, or equipment.”).

²⁰ *See Food, Conservation, and Energy Act of 2008, Pub. L. No. 110–246, § 4103, 6004 122 Stat. 1651, 1861, 1924 (2008).*

²¹ *See id.* at § 6006.

²² *See id.* at § 6007.

²³ *See id.* at § 6020.

²⁴ *See id.* at § 6024.

police throughout the country.²⁵ Still, it is important to recognize that we focus here on some sources of federal support and omit others.²⁶

Together, these limitations and caveats caution against reading our observations as exact counts. We discuss estimates instead of reporting precise numbers to avoid suggesting a false sense of mathematical certainty where the data do not support such confidence. Our estimates provide a ballpark sense of the scope and shape of federal funding for local law enforcement agencies. That said, given the paucity of prior empirical research on this topic, we believe that even a rough approximation will help to reduce the confusion and misperceptions among policymakers and the media.

As such, this is a first, quick, and crude take on an important question, designed to inspire further dialogue with more thorough, detailed, and time-consuming data collection and examination. Given the urgency of current debates surrounding federal support for local police, we wanted to launch that project immediately. We look forward to seeing other researchers expand and refine our approach.

II. FINDINGS

Our data show that the promise of federal funding may exert little influence on local law enforcement activity. Nationwide federal funding for local law enforcement agencies accounts for around \$10-30 per capita. In comparison, non-federal funding is around \$350 per capita, ranging from as high as \$910 in the District of Columbia, \$530 in New York, and \$487 in California, to as little as \$186 in Kentucky and \$217 in West Virginia.²⁷ As such, federal funding accounts nationwide for between three and nine percent of overall local law enforcement budgets. The expanse of the range in the estimate reflects the difficulty of making such estimates.²⁸ However, the numbers appear

²⁵ See *infra* Part II.

²⁶ Another program worth mentioning here is administered by the Department of Defense, often called the Excess Property Program or 1033 Program. This program raises unique accounting issues because it is not a source of funding but instead provides surplus military equipment to law enforcement agencies. See 10 U.S.C. § 2576(a) (“The Secretary of Defense, under regulations prescribed by him, may sell to State and local law enforcement, firefighting, homeland security, and emergency management agencies, at fair market value [various firearms and equipment].”). Future research might account for this program. Pending such research, however, we conclude that this program is likely of greater symbolic importance than financial importance.

²⁷ Criminal Justice Expenditures: Police, Corrections, and Courts, URBAN INSTITUTE, <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/police-and-corrections-expenditures> [<https://perma.cc/YU3D-FZL3>] (last visited Apr. 13, 2021).

²⁸ See *supra* Part I.

reliable: DOJ grants to local law enforcement total less than \$5 billion per year, or less than \$20 per capita.²⁹ Even assuming that non-DOJ funding sources match that amount, the per-capita expenditures would be still less than \$40. However, non-DOJ sources for which local law enforcement qualify are small.³⁰ For example, standard DHS preparedness grants account for typically less than \$2 billion per year.³¹ Although law enforcement agencies qualify for some of these grants, they are not the sole recipients. Many of these grants indeed go to recipients that are not law enforcement agencies. DHS, for example, provides its preparedness grants “to state, local, tribal and territorial governments, as well as transportation authorities, nonprofit organizations and the private sector.”³² Employing reasonable assumptions, we estimate that per-capita federal funding of local law enforcement agencies is less than \$20 and may be as little as \$10. Given how large the country is and how much state and local governments spend on law enforcement, these federal funding sources are not overwhelming. They are large in absolute terms, but small in relative terms.

Grant structures also do not ensure an even distribution of federal financial support for local law enforcement. Some local law enforcement agencies might not qualify for certain grants, others might not win them, and some might not even apply (perhaps because they do not need them, know about them, or have the resources or institutional expertise to successfully apply for them). As such, we inquired into how many agencies receive any kind of financial support from federal programs in a given year. Again, with reasonable assumptions, our analysis suggests that only about ten percent of local law enforcement agencies receive one or more grants in any given year.³³ The vast majority of local law enforcement agencies accordingly do not receive

²⁹ See U.S. DEP’T OF JUST., FY 2020 BUDGET REQUEST AT A GLANCE 3 n.1 <https://www.justice.gov/jmd/page/file/1142306/download> [<https://perma.cc/3LJP-E4VP>] (“The FY 2020 discretionary and mandatory request for state, local, and tribal law enforcement assistance is \$4.3 billion.”); U.S. DEP’T OF JUST., FY 2019 BUDGET REQUEST AT A GLANCE 3 n.1 <https://www.justice.gov/jmd/page/file/1033086/download> [<https://perma.cc/DV2Q-FWCE>] (“The FY 2019 discretionary and mandatory request for state, local, and tribal law enforcement assistance is \$3.9 billion.”).

³⁰ See *supra* notes 15–24 and accompanying text.

³¹ See, e.g., Press Release, *DHS Announces Funding Opportunity for \$1.87 Billion in Preparedness Grants*, U.S. DEP’T OF HOMELAND SEC. (Feb. 25, 2021), <https://www.dhs.gov/news/2021/02/25/dhs-announces-funding-opportunity-187-billion-preparedness-grants> [<https://perma.cc/8FER-XNPA>].

³² See *DHS Announces Funding Opportunity for Fiscal Year 2020 Preparedness Grants*, U.S. DEP’T OF HOMELAND SEC. (Feb. 14, 2020), <https://www.dhs.gov/news/2020/02/14/dhs-announces-funding-opportunity-fiscal-year-2020-preparedness-grants> [<https://perma.cc/R878-Q6CN>].

³³ This rough estimate is based on dividing the number of local law enforcement agencies that received at least one grant in a given year by the total number agencies (keeping in mind the methodological caveats explained earlier in the Essay).

federal grants and are therefore not directly dependent on federal funding sources.

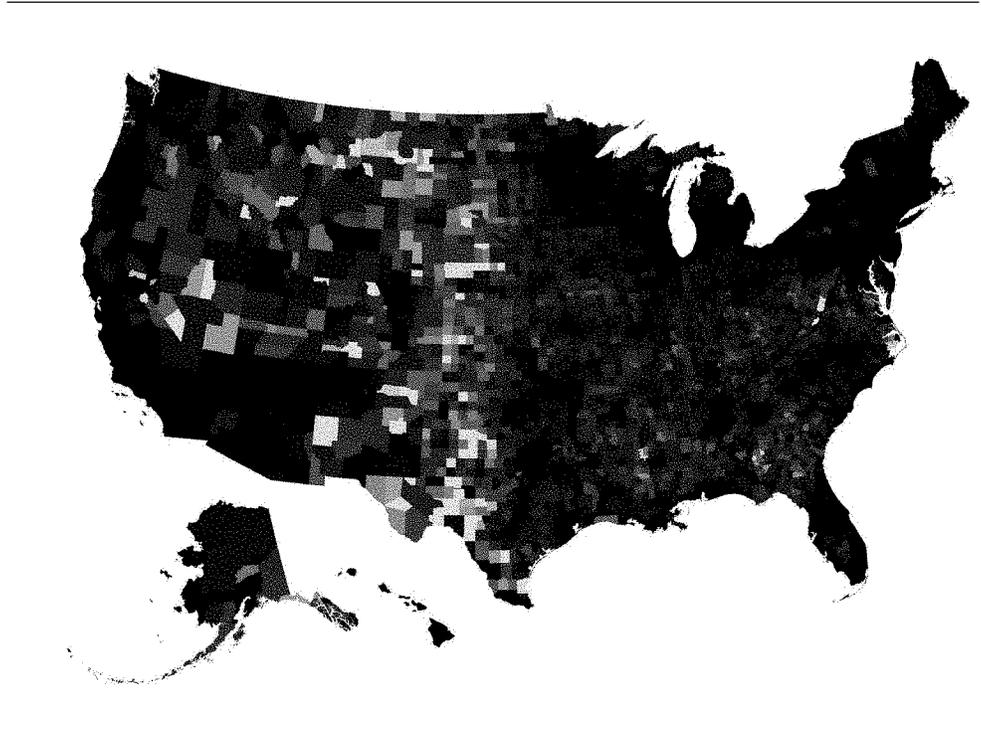
Perhaps, however, the cast of receiving agencies rotates from year to year so that an agency might not be dependent this year but likely will be next year. To examine this possibility, we counted the percentage of non-federal law enforcement agencies that received federal funding in the past eight years. We found that around twenty percent received at least one federal grant. Thus, though there is some turnover in the population of recipient agencies, many receive awards year after year. Meanwhile, many other agencies never receive federal grants.

Next, we examined the percentage of local law enforcement budgets derived from federal funding. Our data indicate substantial variation among local law enforcement agencies as to the percentage of their budgets attributable to federal funding. Among local law enforcement agencies in our analysis that received any federal funding, the median percentage was forty percent of the agency's budget. We suspect that this surprisingly high percentage indicates that primarily small local law enforcement agencies are the ones receiving federal grants. For that small subset of agencies, even a modest grant could make the difference between having one deputy or two.

Finally, we examined the geographical distribution of the federal grants.³⁴ Figure 1 aggregates eight years of federal grants for a range of sub-federal government entities by county or county-equivalent. It provides a broad per-capita measure of federal support for local law enforcement agencies in different parts of the country.

³⁴ See Roger Michalski, *MDL Immunity: Lessons from the National Prescription Opiate Litigation*, 69.1 AM. U. L. REV. 175, 196 (2019) (“Geography is information-rich, multifaceted, and underutilized.”).

Figure 1. Average Per-Capita Federal Grants to Local Law Enforcement Agencies 2011-2019, Aggregated by County or County-Equivalent



Note: High per-capita expenditures are highlighted in yellow, low expenditures in purple.

As Figure 1 illustrates, many federal grants support local law enforcement agencies in less population-dense parts of the country—most notably a column rising from Western Texas, through Oklahoma, Kansas, and Nebraska to the Dakotas and Montana, though there are pockets of significant support in other parts of the country as well. Conversely, Figure 1 also shows that, for good or bad, law enforcement agencies that serve large population centers have received little per-capita funding. For example, agencies in many parts of the Northeast, the Great Lakes region, and the West Coast receive comparatively little federal support. For them, and for most law enforcement agencies, federal funding does not make up a substantial portion of their annual expenditures.

III. IMPLICATIONS FOR POLICING LITERATURE

Our findings have several important implications for the literature on policing. First, the federal government is a relatively insignificant source of funding for the vast majority of local law enforcement agencies. Because of this, congressional efforts to tie federal funding to local reform may have

minimal effect, particularly if the reform efforts are expensive, politically unpopular locally, or difficult to implement.

Congress has nonetheless attempted such efforts on several occasions. Most recent was the House of Representative's passage of the Racial Justice in Policing Act (the Act), which Democrats proposed after the killing of George Floyd.³⁵ One of the enforcement mechanisms that the Act uses to induce the compliance of local law enforcement agencies is the revocation or suspension of federal funding.³⁶ For example, the Act conditions providing federal funding for local law enforcement agencies on their prohibition of no-knock warrants in drug cases,³⁷ chokeholds,³⁸ and racial profiling.³⁹

Another example is the Deaths in Custody Reporting Act of 2013, which tied ten percent of federal funding to states' reporting of deaths caused by local police officers.⁴⁰ Although Congress's efforts to improve local policing are admirable, they suffer from the same flaw—a belief that local agencies will be motivated to implement reforms for fear of losing federal funding. In the relatively small number of rural agencies that receive (and in some cases rely substantially on) federal funding, this may be a reasonable assumption. But around eighty percent of all agencies have received little to no funding from the federal government during the period under study.⁴¹ This finding suggests that the possibility of withheld federal funding is a relatively weak enforcement mechanism.

Second, and relatedly, the limited potential of federal funding to influence policing suggests that Congress is better off considering alternative approaches to motivating reforms. For example, Congress could overrule the qualified immunity doctrine.⁴² It could amend the mental state requirement

³⁵ Racial Justice in Policing Act, H.R. 7120, 116th Cong. (2020).

³⁶ *Id.* at § 114(i).

³⁷ *Id.* at § 362(b)–(c).

³⁸ *Id.* at § 363(a)–(b).

³⁹ *Id.* at § 331(a)–(b).

⁴⁰ Deaths in Custody Reporting Act of 2013, Pub. L. No. 113-242, 128 Stat. 2860 (2014) (codified at 34 U.S.C.A. § 60105). For a discussion of the Deaths in Custody Reporting Act in the context of police reform more generally, see Stephen Rushin, *Using Data to Reduce Police Violence*, 57 B.C. L. REV. 117, 118–19 (2016).

⁴¹ See *supra* Part II.

⁴² See generally Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 NOTRE DAME L. REV. 1797 (2018) (providing a thorough analysis of the failures of the qualified immunity doctrine); Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 YALE L.J. 1 (2017) (conducting a detailed empirical analysis on some of the supposed justifications for qualified immunity and finding that these assumptions are likely unfounded); Joanna C. Schwartz, *After Qualified Immunity*, 120 COLUM. L. REV. 309 (2020) (imagining the world after the overturning of qualified immunity). For an additional historical analysis of qualified

for criminal prosecutions of police officers who deprive individuals of their civil rights under 18 U.S.C. § 242.⁴³ It could increase federal funding for DOJ pattern or practice lawsuits seeking equitable relief against local police departments under 34 U.S.C. § 12601.⁴⁴ DOJ currently has the resources to complete only a small number of such investigations every year.⁴⁵ To help fill this underenforcement gap, Congress could legislatively empower the U.S. Attorney General to deputize private parties to seek equitable relief against local police departments, as proposed by Professor Myriam Gilles.⁴⁶ Congress could grant state attorneys general the authority to initiate in federal courts pattern or practice suits against local law enforcement agencies in their state.⁴⁷ Perhaps most dramatically, Congress could use the Voting Rights Act of 1965 as a blueprint for police reform by exercising its authority under Section 5 of the Fourteenth Amendment to establish a coverage formula for regulating local police departments.⁴⁸ If Congress hopes to exert greater control over local policing, it has numerous alternative avenues through which it may do so and need not rely on the threat of withholding the relatively small amount of federal money flowing to local law enforcement agencies each year.

Finally, our findings are a sobering reminder of the challenges facing supporters of defunding local law enforcement agencies in the United States.⁴⁹ If localities actually relied on federal funding, defunding advocates might be

immunity, see generally William Baude, *Is Qualified Immunity Unlawful?* 106 CALIF. L. REV. 45 (2018).

⁴³ For example, the mental state could be changed from requiring willful conduct to requiring only reckless conduct. See 18 U.S.C. § 242 (stating that it is unlawful for any person under color of law to “willfully subject[]” someone to a deprivation of their civil rights).

⁴⁴ See Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3189, 3226 (2014) (identifying this statute, previously codified at 42 U.S.C. § 14141, as being “underenforced” and outlining the high cost of enforcement and the need for additional resources).

⁴⁵ *Id.* at 3226.

⁴⁶ See Myriam E. Gilles, *Reinventing Structural Reform Litigation: Deputizing Private Citizens in the Enforcement of Civil Rights*, 100 COLUM. L. REV. 1384, 1417–18 (2000).

⁴⁷ See generally Jason Mazzone & Stephen Rushin, *State Attorneys General as Agents of Police Reform*, 69 DUKE L.J. 999 (2020) (arguing for such an expansion of authority to state attorneys general at both the state and federal level); see also Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State “Pattern or Practice” Statute*, 19 GEO. MASON U. C.R. L.J. 479, 536–51 (2009) (arguing for states to give authority to state attorneys general to seek equitable relief against local police departments engaged in patterns or practices of unlawful behavior).

⁴⁸ See generally Jason Mazzone & Stephen Rushin, *From Selma to Ferguson: The Voting Rights Act as a Blueprint for Police Reform*, 105 CALIF. L. REV. 263 (2017).

⁴⁹ For an excellent example of some of the scholarship on the emerging and growing police abolitionist movement, see generally Amna Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781 (2020).

able to make substantial inroads via sweeping federal funding legislation. But given the current budget reality, any efforts to defund policing by curtailing federal spending on policing is likely to be minimally effective at most. In fact, such efforts may exacerbate the already cavernous inequalities between poorer rural police departments and wealthier urban and suburban ones. We do not mean to imply that all federal funding flowing to local police departments is necessary or efficacious. But successful efforts to substantially reduce the footprint of U.S. policing will require advocates to win thousands of debates in local city council meetings across the country rather than shepherd a single defunding bill through Congress.

CONCLUSION

As the defund-the-police movement gains traction in American politics, several media outlets have fixated on federal sources of police funding. NPR, for instance, remarked that “[f]unding for local law enforcement now increasingly comes from the federal government.”⁵⁰ And a CNBC analysis found that federal funding of law enforcement, primarily through two DOJ grant programs—the Community Oriented Policing Services and the Byrne Justice Assistance Grants—has helped grow law enforcement expenditure nationwide by two hundred percent since 1980.⁵¹ Although it may be true that federal expenditures on local policing have increased in recent decades, this Essay finds that federal funding remains a relatively insignificant contributor to most local police expenditures.

More generally, our findings emphasize the limits of many existing federal proposals for police reform that are tied to funding. Our findings are a reminder that conversations on defunding police departments and reimagining public safety must ultimately happen at the local level. Because most police departments are not reliant on federal funding, tying comprehensive reform efforts to the availability of these funds is likely to fail. Further, any future efforts to reform policing at the federal level may need enforcement mechanisms other than the withholding of funding.

⁵⁰ Brian Naylor, *How Federal Dollars Fund Local Police*, NAT’L PUB. RADIO (Jun. 9, 2020, 5:10 AM), <https://www.npr.org/2020/06/09/872387351/how-federal-dollars-fund-local-police> [<https://perma.cc/E2F4-8BD3>].

⁵¹ Nathaniel Lee, *Here’s How Two Federal Programs Helped Expand Police Funding by over 200% Since 1980*, CNBC (Jun. 25, 2020, 11:16 AM), <https://www.cnbc.com/2020/06/25/two-federal-programs-helped-expand-police-funding-by-over-200percent.html> [<https://perma.cc/WDE8-TF2G>].