

ARLINGTON BRANCH #7047

NAACP

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May 13, 2021

Arlington County Board  
The Honorable Matt de Ferranti, Chair  
The Honorable Katie Cristol, Vice Chair  
The Honorable Christian Dorsey, Member  
The Honorable Takis P. Karantonis, Member  
The Honorable Libby Garvey, Member

2100 Clarendon Blvd Ste 300  
Arlington, VA 22201

Dear Board members:

The Arlington Branch #7047 of the National Association for the Advancement of Colored People (NAACP) writes to urge the Arlington County Board to take real action on [Police Practices Group's \(PPG\) recommendations](#) of February 15, 2021, and reject the recommended superficial adoption of only a small number of recommendations. Notably, on April 20, 2021, the Arlington County Manager [proposed](#) gutting state-approved authority during his [presentation](#) to the County Board which legally authorized local Civilian Review Boards (CRB) to investigate the use of force and police misconduct concerns thoroughly, with investigative power backed up with subpoena power, thus enabling investigations that are, and are perceived as, independent and impartial.

We applaud the Board for convening the Police Practices Group (PPG) in 2020 and the PPG's thoughtful and well-researched recommendations to the County Board, including the recommendation for a hybrid civilian oversight board/auditor ("oversight board"). *See* PPG, Report and Recommendations of the Subcommittees, App. A (Feb. 15, 2021) ("PPG Recomm."). We were pleased that the County Manager has stated that he, too, agrees with the creation of such a review board, *See* Report of County Manager Regarding PPG Recommendations, April 20, 2021.

Based upon our review, the County Manager has recommended a "review board" though his support does not embrace a fully independent and effective review and audit process nor advance the spirit or intent of the new law. The Arlington Branch NAACP strongly recommends adopting a robust CRB structure, with independent staffing (someone who does not report to the County Manager) and a reevaluation of the other PPG recommendations which were tabled, not fully or well funded, or otherwise diluted. Specifically, as outlined below, the Board should accept and adopt the full PPG CRB Subcommittee recommendations.

We strongly disagree with the County Manager's apparent rejection of three of the functional authorities that the PPG recommended: (1) investigatory authority "to be exercised on a limited basis" for matters it deems need to be independently investigated, (2) to seek a subpoena for necessary testimony or other evidence, and (3) authority to make binding disciplinary recommendations. PPG Recomm. at 22-23. These

Founded in 1909 in response to the ongoing violence against Black people around the country, the NAACP (National Association for the Advancement of Colored People) is the largest and most pre-eminent civil rights organization in the nation. We have over 2,200 units and branches across the country, along with well over 2M activists. Our mission is to secure the political, educational, social, and economic equality of rights to eliminate race-based discrimination and ensure all persons' health and well-being. Units of the NAACP are designated as 501(c)(4) organizations, and only the National Office is a 501(c)(3) organization. A 501(c)(4) organization is a nonprofit corporation operated exclusively to promote social justice.

recommendations closely track the authority that the Virginia General Assembly delegated in 2020 to local jurisdictions to adopt. *See* Va. Code Ann. §§ 9.1-601(A)(1)-(2) (authority to investigate and to make findings on complaints and incidents regarding police conduct), (D) (authority to apply for subpoenas), & (A)(3) (authority to make “binding disciplinary determinations” “[c]oncordant with any investigation”) (2020) (“Virginia Act”). The County Manager described the former as “unnecessary” (although he was “still weighing” this recommendation) and criticized the latter as an “outside group disciplining county employees,” thereby intruding on his management. We believe that these concerns are misplaced.

### **Independent Investigatory Authority**

“Unfettered access” to relevant records is a “critical component of effective oversight.” Joseph De Angelis, Richard Rosenthal, & Brian Buchner, *Civilian Oversight of Law Enforcement: Assessing the Evidence* (2018). It is no wonder, then, that the General Assembly gave independent investigatory authority first and second place in its list of an oversight board’s possible duties. Moreover, a recent survey of civilian oversight boards found that the investigatory authority for over 50% included subpoena authority for documents and 40%, like authority for testimony. Darrel W. Stephens, Ellen Scrivner, & Josie F. Cambareri, *Citizen Oversight of Police in Major Cities* at 6 (2018). Thus, the Virginia Act followed a widely approved model in authorizing civilian oversight bodies to exercise independent investigatory authority and apply for subpoenas. More recently yet, the neighboring City of Alexandria approved such authority (including subpoena authority) for its newly constituted Independent Policing Review Board (using an Independent Policing Auditor/Investigator acting for it) for incidents resulting in death, or involving the use of force, severe misconduct, sexual conduct, and certain verbal conduct. City of Alexandria Ordinance No. 5337, § 2-4-227(d) (April 17, 2021). Maryland, too, has reportedly approved independent investigations. *See* Ovetta Williams, Peter Hermann, & Tom Jackman, *After the death of George Floyd, lawmakers in Md., Va. and D.C. set out to hold police more accountable. Here are some key measures*, Wash. Post, May 6, 2021. (“If an officer is accused of misconduct, an administrative charging committee, *which is made up of five civilians and has subpoena powers*, will analyze the local agency investigation and recommend discipline to the police chief.”) (Emphasis Added).

The PPG-proposed oversight board would likewise use its independent investigative authority “on a limited basis” for matters that most warrant independent investigation, not for every complaint or incident involving the Arlington County Police Department (ACPD). We anticipate that the Board will find that the ACPD can reliably handle many investigations including routine personnel matters. However, for some matters, self-investigation by ACPD or police officials assigned to the newly formed Critical Incident Response Team will inevitably be viewed by the community as inherently unreliable, even if the investigation correctly and in good faith found that no procedures or professional standards were violated. Police do not need to investigate themselves. For such matters, the Board’s independent investigation can more credibly exonerate the officers involved and the ACPD when the evidence supports such a finding. It is important to note for the record that the Northern Virginia Police Chiefs and Sheriffs Committee created the [Northern Virginia Critical Incident Response Team \(CIRT\)](#) in January 2021, shortly after the Virginia General Assembly passed legislation and the Governor signed into law, a bill [granting localities](#) the authority for independent civilian review boards with subpoena power. Three of the largest law enforcement departments in Northern Virginia — the Fairfax County police, the Loudoun County Sheriff’s Office, and the Alexandria police — did not join the CIRT response team. On its face the CIRT appears to be designed to avoid the implementation of the independent investigative powers granted by the General Assembly.

If implemented correctly as envisioned by the PPG, the independent oversight board would *not* often need to use its subpoena authority. Indeed, a study for the Department of Justice shows that 50% of the boards in the study that had subpoena authority never used it. See Peter Finn (for Dept. of Justice, Off. of Just. Programs, Natl. Inst. of Just.), *Citizen Review of Police: Approaches and Implementation* viii (Mar. 2001). That is partly because the relevant police departments have cooperated in making witnesses and evidence available to their boards.

Both the Virginia Act and the PPG recommendation anticipate and encourage such cooperation by authorizing the exercise of subpoena authority “only after efforts to obtain information/records voluntarily from ACPD have been exhausted” and after “escalating its request up to the County Manager.” PPG Recomm. at 22. Applications to the circuit court for a subpoena are a last resort, and the recommended PPG procedure thus gives the County Manager himself the opportunity to head it off. But the existence of such subpoena authority at the end of the line incentivizes voluntary cooperation along the way, which is why the General Assembly included it the authorities granted to CRB’s and why the PPG recommended it.

Independent investigatory authority is the most important tool that an oversight board has for effective *and credible* oversight. We therefore urge you to include this authority (including subpoena authority) for the oversight board, as the Virginia Act allows and encourages.

### **Binding Disciplinary Determinations**

However, independent investigatory authority is not enough if insufficient or even no disciplinary action follows a citizen oversight board’s findings and recommendations for discipline. Yet, the absence of meaningful follow-through is common. “[W]hen a finding from an oversight body disagrees with the department’s internal finding, some chiefs and sheriffs give little or no weight to the oversight body’s finding in determining discipline. In some jurisdictions, chiefs and sheriffs accept internal affairs findings and decide on discipline long before they even receive the oversight body’s findings. Some have never changed an I.A. [Internal Affairs] finding because of an oversight finding that was different.” Finn at 109-110. *See* attachment, citing data. The General Assembly addressed this precise problem by authorizing civilian oversight bodies to make binding disciplinary determinations. Recently, Maryland passed legislation that permits the police chief only to *increase* the discipline recommended by a civilian oversight board for officer misconduct. Williams, *supra* (“The chief cannot impose discipline lower than the recommendation.”) (emphasis added).

The County Manager’s concern that the PPG’s recommendation for binding disciplinary determinations intrudes on his management of county employees is overbroad and contrary to legislative authority.

- First, the PPG was not addressing county library or public works employees; its recommendation applies to only the small group of county employees authorized (and sometimes called upon) *to use force, to lawfully detain, and to make arrests*.
- Second, binding disciplinary determinations would be limited to “*serious* breaches of ACPD procedures or professional standards,” PPG at 23 (emphasis added); Va. Code Ann. § 9.1-601(B)(3), not misuse of a County car or abuse of overtime or other routine contact, or personnel actions.

- Third, the PPG recommendation expressly provides that disciplinary determinations would only be made by the oversight board “in consultation with the ACPD Police Chief.” PPG at 23. If the Chief’s views are evidence-based and reasonable, we anticipate that the oversight board would shape its disciplinary determinations accordingly. If they are not, then that would be precisely a case in which the Board’s contrary determination *should* be binding, both to promote police accountability and the Board’s credibility in the community.
- Finally, the oversight board is *not* an “outside group,” as the County Manager described it. It should be composed of diverse Arlington residents and stakeholders, specially trained for the task. It may include former law enforcement officers and current County employees who have no conflicts of interest, working with an Auditor/Monitor who is, of course, him/herself a County employee, and appointed by the County Board.

Giving the oversight board the General Assembly-approved authority to make binding disciplinary determinations would make no statement about the ACPD’s past disciplinary efforts. “[E]ven when a police or sheriff’s department is being conscientious in imposing appropriate discipline without citizen review, an oversight procedure can reassure skeptical citizens that the agency is indeed following through responsibly on citizen complaints.” Finn at 111. Furthermore, we believe that the consultation procedure recommended by the PPG will, in most cases, yield disciplinary determinations in which the oversight board and the Police Chief are aligned, enhancing community trust in both. We, therefore, urge you to include this authority for the oversight board, conditioned on such prior consultation.

It is worth repeating that we think that there will be few, if any, cases in which the CRB will be compelled to seek subpoena authority or to make a disciplinary determination at odds with the Police Chief. “Even when citizen oversight bodies do have some authority over the police, they have generally exercised it cautiously.” *Id.* But it is the very existence of these authorities that makes it unlikely that they will be used because they encourage cooperation between the CRB and the ACPD.

\* \* \*

In receiving the County Manager’s report on the PPG recommendations at the April 20, 2021 meeting, Chair de Ferranti commented that the Board’s object in deciding on the PPG recommendations was to make community residents “*feel[] safe,*” not just *be safe.* We wholeheartedly agree. The perception that the recommended oversight board has independent investigatory authority and the authority to impose accountability by meaningful discipline is critical to our community’s safety. An oversight board that lacks either will not meet what board member Mr. Karantonis described at the same meeting as the “key element: ... establishing trust between police and our community and creating the accountability nexus between the two.”

The PPG spent seven months reviewing best practices, options, and effective strategies. The PPG was led by highly qualified facilitators chosen by the County Manager, had significant County employee and community input, fully debated its findings and its recommendations, and put forward a thoughtful, detailed, and thorough 80-page report with a list of recommendations. To have the seminal proposal watered down and other proposals underfunded or subject to more “study” disrespects the complex, well-researched and thoughtful work put into the proposals that would define Arlington as an authentic progressive and transparent voice on this issue. Instead, the arguments advanced by County Staff against

the PPG's careful recommendations are those that protect the status quo, fall well short of what progressive neighboring jurisdictions are doing, and would turn the racial reckoning of 2020 into just another bureaucratic exercise. We believe the Governor of Virginia did not sign into law independent civilian review boards that are merely another place to air concerns, divert energy and "advise" without impact. The time is now to be bold, lead, and throw out antiquated notions of managerial prerogative, siloed power bases, and unquestioned police authority. To build trust, repair bridges, and create true community partnerships between police and residents, at a minimum, state-granted CRB authority must be implemented by the County. That is, in fact, the bare minimum.

The Arlington Branch NAACP strongly encourages you to exercise the full CRB authority granted to Arlington County by State law, reevaluate the PPG's many CRB recommendations put on hold, and put more resources and commitment into enacting them. The incidents of 2020, including ACPD involvement in Lafayette Square, the racial profiling of citizen, and now this soft embrace of the recommendations made by the County's own esteemed panel of experts, appointed by the County Manager, casts a long shadow over the County's and your commitment as public servants to learn from and embrace the lessons from the deaths of Mr. Ahmaud Arbery, Mr. George Floyd, Ms. Brianna Taylor, and too many others, many following police encounters.

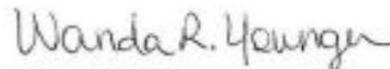
Sincerely,



Julius D. "J.D." Spain, Sr.  
President



Kent D. Carter  
First Vice-President,  
Chair, Criminal Justice Committee



Wanda Younger  
Branch Secretary

cc Arlington County Manager Mark Schwartz  
Deputy County Manager, Chief Race and Equity Officer, Samia Byrd  
PPG Civilian Review Board Subcommittee Members  
Arlington Branch NAACP, Executive Committee & Active Members  
Commonwealth's Attorney for Arlington County and the City of Falls Church.  
Arlington County Delegation to Virginia's General Assembly  
Virginia State Conference NAACP, Richmond, VA

## **Attachment: Lack of Disciplinary Follow-Through**

“[I]n 2012 ‘the NYPD followed the [Civilian Complaint Review Board’s] recommendation in only 25 out [sic] 258 cases (9.7%). Officers received no discipline in 104 cases (40.3%).’ The CCRB recommended that officers receive the most severe discipline (ranging from loss of vacation days, suspension, probation, or termination) in 175 cases, however ‘the NYPD only sought charges in 7.’” Corinthia A. Carter, *Police Brutality, the Law & Today’s Social Justice Movement: How the Lack of Police Accountability Has Fueled #hashtag Activism*, 20 CUNY L. Rev. 521, 539–40 (2017), citing, *inter alia*, Sonia Moghe, *NYPD Fails to Discipline Officers Who Use Excessive Force, Report Says*, CNN (October 2, 2015, 12:24 PM), <http://www.cnn.com/2015/10/02/us/new-york-police-excessive-force-report/> [<https://perma.cc/HB9N-432T>]; Timothy Williams, *Chicago Rarely Penalizes Officers for Complaints, Data Shows*, N.Y. TIMES (November 18, 2015), <http://www.nytimes.com/2015/11/19/us/few-complaints-against-chicago-police-result-in-discipline-data-shows.html> [<https://perma.cc/5VK5-RRS3>] (“From 2011 to 2015, 97 percent of more than 28,500 citizen complaints resulted in no officer being punished, according to the files.”)

Ovetta Wiggins, Peter Hermann, & Tom Jackman, *After the death of George Floyd, lawmakers in Md., Va. and D.C. set out to hold police more accountable. Here are some key measures*, Wash. Post 5.6.21:

### **... Maryland measures**

#### **Oversight and Discipline/Law Enforcement Officers Bill of Rights**

The new law, which takes effect in July 2022, repeals the country’s oldest Law Enforcement Officers Bill of Rights, doing away with provisions that include giving officers a five-day grace period before providing a statement about an incident and allowing an officer’s disciplinary record to be scrubbed after three years. The legislation also creates a new process for imposing discipline, designed to give civilians a larger role. If an officer is accused of misconduct, an administrative charging committee, which comprises five civilians and has subpoena powers, will analyze the local agency investigation and recommend discipline to the police chief. The Chief cannot impose discipline lower than the recommendation. An officer can appeal to a trial board. The three-member Board includes two civilians.