

March 7, 2023

Submitted Electronically

Luke H. Clippinger, Chair
David Moon, Vice Chair
House Judiciary Committee
Maryland House of Delegates
House Office Building
6 Bladen St. Room 101
Annapolis, MD 21401

**RE: House Bill 853 – Baltimore City – Control Over Powers of Police
Commissioner – Favorable**

Dear Chairperson Clippinger and Vice Chair Moon:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),¹ we submit this written testimony in support of House Bill 853, the Baltimore City – Control Over Powers of Police Commissioner Act. House Bill 853 would give the Baltimore City Council the authority to pass ordinances regulating the operation and conduct of the Baltimore City Police Department (BPD), while increasing accountability and civilian participation with—and oversight of—a city-operated police department. It is imperative for the Maryland General Assembly to complete the transfer of authority over BPD to the Baltimore City Council, returning autonomy to Baltimoreans to conduct oversight and accountability of their own police department. LDF urges the passage of House Bill 853 and Senate Bill 758 to make this transfer take place as quickly as possible.²

I. Baltimore City Residents Must Regain Authority Over its Local Police Department.

Transferring control of BPD to Baltimore City has been studied and debated for years.³ Unlike all other jurisdictions in Maryland, Baltimore City has had limited power over its local police

¹ Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957. LDF's work to address police violence and misconduct dates back to its inception. *See, e.g., Shepherd v. Florida*, 341 U.S. 50 (1951) (reversing the wrongful interracial rape convictions of Black men who were brutally beaten by sheriff's deputies in an attempt to force confessions). Today, LDF's Justice in Public Safety Project uses litigation, policy advocacy, research, community organizing, and strategic communications to transform public safety systems, advance police accountability, and prevent and remedy the impact of racial bias in public safety.

² House Bill 853 sponsored by the Baltimore City Delegation and Senate Bill 758 sponsored by Senator Carter would transfer the legislative authority to control BPD to the Council and, if passed, would take effect on June 1, 2023.

³ *See* Danielle Kushner, *The Community Oversight Task Force's Recommendations for Strengthening Police Accountability and Police-Community Relations in Baltimore City*, COMMUNITY OVERSIGHT TASK FORCE 38 (Aug. 2018), <https://consentdecree.baltimorecity.gov/sites/default/files/Final%20COTF%20Report.pdf>.

department since the 1860s when state officials took over the city's police force to root out corruption.⁴ Yet, in the over 160 years that state officials have controlled BPD, the agency continues to grapple with corruption and its aftermath, including the criminal acts of BPD's Gun Trace Task Force.⁵ While Baltimore City taxpayers pay civil settlements for police misconduct,⁶ the City Council has been unable to adopt laws and policies to hold police officers accountable for their misconduct.⁷ Instead, Baltimore City officials and residents must ask the Maryland General Assembly to enact laws to increase police accountability and other public safety issues that are entirely local to Baltimore City.⁸

Black residents in Maryland and Baltimore are disproportionately policed and more likely to be subjected to police violence. Between 2015 and 2019, 63% of Baltimore residents were Black, whereas 90% of all police use of force incidents were against Black people, compared to just 7.3% of force incidents were against white people.⁹ The killing of Freddie Gray in 2015 and the police response to the uprising that followed demonstrated the urgent need for police accountability. The Department of Justice's (DOJ) subsequent 2017 investigation of BPD found stark racial disparities in the Baltimore City Police Department's stops, searches, arrests, and uses of force,¹⁰ further establishing the overdue necessity of immediate corrective action. Following the DOJ's investigation, a federal consent decree was agreed to and is still ongoing in its fifth year. The transfer of oversight authority of BPD to the Baltimore City Council is vital to ensure that the people of Baltimore have access to and a greater voice in the kinds of accountability measures that BPD adopts.

II. Baltimore City Council's Control Over the Baltimore Police Department Creates Needed Civilian Oversight and a Means for Accountability.

Measures to reform BPD's policies are underway, as mandated by the federal consent decree, and community engagement is one of the centerpiece reforms that is required. Specifically, Baltimore

⁴ See e.g., George A. Nilson, The Abell Foundation, *The Baltimore Police Department: Understanding its status as a state agency*, 2-3 (March 2019), <https://abell.org/publication/baltimore-police-department-understanding-its-status-as-a-state-agency/>; See also Danielle Kushner, *The Community Oversight Task Force's Recommendations for Strengthening Police Accountability and Police-Community Relations in Baltimore City*, COMMUNITY OVERSIGHT TASK FORCE 38 (Aug. 2018), <https://consentdecree.baltimorecity.gov/sites/default/files/Final%20COTF%20Report.pdf>.

⁵ Justin Fenton, *Baltimore expected to pay \$8 million to settle Gun Trace Task Force lawsuit*, WASH. POST (Nov. 15, 2020), https://www.washingtonpost.com/local/public-safety/baltimore-expected-to-pay-8-million-to-settle-gun-trace-task-force-lawsuit/2020/11/15/d3e8be22-2785-11eb-9b14-ad872157ebc9_story.html.

⁶ Jayne Miller, *Report details taxpayer payouts in Baltimore police misconduct cases*, WBALTV (Jan. 31, 2020), <https://www.wbal.com/article/report-payout-baltimore-police-misconduct-cases/30733232#>.

⁷ Edward Ericson Jr., *As City Council and public clamor for police body cameras, mayor hires group to clarify questions raised*, BALT. SUN (Nov. 4, 2014), <https://www.baltimoresun.com/citypaper/bcp-as-city-council-and-public-clamor-for-police-body-cameras-mayor-hires-group-to-clarify-questions-rai-20141104-story.html>.

⁸ Even so, attempts to pass laws that regulate BPD fail when introduced in the Maryland General Assembly, such as the 2016-2017 effort to require the BPD Commissioner to notify Baltimore City officials of the development of new tactics, technologies, and devices. See H.B. 58, 2017 Leg., 437th Gen. Assemb., Reg. Sess. (Md. 2017), available at <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0058?vs=2017RS&search=True>.

⁹ AMERICAN CIVIL LIBERTIES UNION OF MARYLAND, CHASING JUSTICE: ADDRESSING POLICE VIOLENCE AND CORRUPTION IN MARYLAND, 15, (Jan. 2019), <https://www.aclu-md.org/en/publications/chasing-justice-addressing-police-violence-and-corruption-maryland>.

¹⁰ *Investigation of the Baltimore City Police Department*, U.S. Dept. of Justice Civil Rights Div. (Aug. 10, 2016), https://static1.squarespace.com/static/59db8644e45a7c08738ca2f1/t/59db9c97cd39c33ffea89afe/1507564699528/bpd_findings_8-10-16.pdf.

City and BPD are required to “develop and implement community-engagement plans for creating opportunities for routine and frequent positive interactions between officers and community members, including those critical of BPD.”¹¹ Some requirements of these community-engagement plans include “outreach in all neighborhoods, including neighborhoods where no neighborhood association has been established to provide consultation and input to BPD”¹² and “collaborat[ion], where feasible, with neighborhood mediations in Baltimore that promote lasting resolutions of appropriately selected disputes among community members to reduce police involvement in these disputes.”¹³ If the Baltimore City Council had control of the police department, it could play a greater role in facilitating community engagement, assisting BPD in building trust in communities, and bringing BPD closer to substantial compliance with the terms of the consent decree.

III. The Maryland General Assembly Must Immediately Transfer Control of BPD to Baltimore to Fulfill the Will of the People without Delay.

In 2021, the Maryland General Assembly enacted legislation to transfer control of BPD to Baltimore City if Baltimore residents voted in favor of the measure.¹⁴ In 2022, Baltimore residents overwhelmingly voted in favor of transferring control of BPD to Baltimore City.¹⁵ Of the 130,000 Baltimore residents who voted, over 82% voted in favor of the ballot measure to transfer control.¹⁶ However, according to the Baltimore City Legal Department’s latest legal opinion, a provision in the Baltimore City Charter continues to prohibit the Baltimore City Council from fully exercising control over BPD.¹⁷ The Baltimore City Council’s lack of legislative authority over BPD is illustrated by the 2014 attempt of the City Council to require BPD officers to wear body worn cameras.¹⁸ When the Baltimore City Council passed an ordinance requiring BPD officers to wear body worn cameras, then-Mayor Rawlings-Blake and then-City Solicitor Nilson both asserted that the City Council’s legislation “violates a city charter provision that prohibits lawmakers from interfering with the power of the police commissioner.”¹⁹

¹¹ Consent Decree, *United States of America v. Police Department of Baltimore City, et. al.*, ¶ 19 <https://www.justice.gov/crt/case-document/file/925036/download>.

¹² *Id.* at ¶ 19(f).

¹³ *Id.* at ¶ 19(g).

¹⁴ See S.B. 786, 444th Leg., Maryland Police Accountability Act of 2021 – Baltimore City – Control of the Police Department of Baltimore City (Md. 2021), https://mgaleg.maryland.gov/2021RS/chapters_noln/Ch_133_sb0786E.pdf.

¹⁵ Official 2022 Gubernatorial General Election Results for Baltimore City (last accessed Feb. 17, 2023) https://elections.maryland.gov/elections/2022/general_results/gen_qresults_2022_by_county_3.html.

¹⁶ *Id.*

¹⁷ Elena R. DiPietro, Local Control Transition, (June 16, 2022), <https://mayor.baltimorecity.gov/sites/default/files/memo%20-%20Local%20Control%20Effect%20of%20Art.%20II.%20Sec.%2027.pdf>. Elena R. DiPietro also testified at the Baltimore City Council Public Safety and Government Operations oversight hearing on February 21, 2023 saying, “the last sentence [of Article 2, Section 27 of the Baltimore City Charter] is what causes the problem. The last sentence forbids the City Council from enacting legislation that would interfere with the powers of the Police Commissioner. . . . Only the General Assembly can remove that. That would free up the process at that point.” Elena R. DiPietro, Local Control Oversight Hearing, Baltimore City Council Public Safety and Government Operations, 27:05 (Feb. 21, 2023), <https://www.youtube.com/watch?v=dSfKAWF4h2Y&t=471s>.

¹⁸ Luke Broadwater, *City Council approves police body camera bill*, BALTIMORE SUN (Nov. 10, 2014), <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-body-camera-bill-20141110-story.html>.

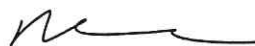
¹⁹ *Id.*

Three bills have been filed in the Maryland General Assembly that would strike the provision of the Baltimore City Charter and permit the Baltimore City Council to legislate. House Bill 853, filed by Delegate Smith, Chair of the House Baltimore City Delegation, and Senate Bill 758, filed by Senator Carter, Chair of the Senate Baltimore City Delegation, are identical cross-filed bills. If enacted, House Bill 853 and Senate Bill 758 would make the transfer of control of BPD effective June 1, 2023. The third proposal, House Bill 975, filed by Delegates Young, Addison, and Conaway, would make the transfer effective October 1, 2024, nearly two years after Baltimore residents overwhelmingly voted to restore control of BPD to Baltimore City.²⁰

For decades, Baltimore residents have sought oversight of BPD. Baltimore's Civilian Review board was established in 1999, long before many other municipalities in Maryland established similar, yet less authoritative, police accountability boards.²¹ Baltimore voters have again clearly expressed their desire to gain more control over BPD. We strongly urge the Maryland General Assembly to pass Senate Bill 758 and House Bill 853 to transfer control of BPD to the Baltimore City Council for greater oversight and input from Baltimoreans on the kind of police accountability they have sought for decades.

Thank you for considering our testimony. If you have any questions, please do not hesitate to contact us at aliu@naacpldf.org.

Sincerely yours,



Allen Liu
Policy Counsel

Jin Hee Lee
Director of Strategic Initiatives

²⁰ House Bill 975 would also extend the submission deadline of the final report of Baltimore City's Local Control Advisory Board by one year, from December 1, 2022, to December 1, 2023. <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0786/?ys=2021rs>.

²¹ Fern Shen, *Civilian Review Board Bill Aims to Protect Key Powers Needed to Hold BPD Accountable*, BALT. BREW, (Feb. 16, 2022) <https://www.baltimorebrew.com/2022/02/16/civilian-review-board-bill-aims-to-protect-key-powers-needed-to-hold-bpd-accountable/>.