

June 3, 2022

Sent Via Email:

Bennington Select Board
Bennington, Vermont

Re: Civilian Review of Bennington Police Misconduct

Chair Jenkins and Members of the Bennington Select Board:



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The Rutland Area NAACP and American Civil Liberties Union of Vermont (ACLU-VT) write regarding Bennington’s recently created Community Policing Advisory Review Board (CPARB). As you know, our organizations have [called for genuine civilian oversight](#) of Bennington’s Police Department (BPD). To make that oversight possible, Bennington residents require and deserve a civilian board that—at a minimum—can review specific complaints of police misconduct and take appropriate action.

Unfortunately, the current version of CPARB does not come close to providing a meaningful police accountability mechanism. We understand that CPARB’s limited power is due at least in part to the Select Board’s interpretation of Vermont law as constraining the ability of local cities and towns to delegate or authorize civilian review of police complaints.

Although we believe that Vermont law allows the Select Board to go further than it did in delegating authority to CPARB, we agree that Bennington likely needs additional statutory authorization to create the kind of civilian oversight model necessary to deliver constitutional policing for Bennington’s residents.

For that reason, we write to urge the Select Board to formally seek that authority from the General Assembly, both in the form of a charter amendment and as a broader statutory change. Elevating this issue for the legislature will provide much-needed clarity, not just for Bennington, but for the state as a whole, and show the Select Board’s commitment to providing equal services to all Bennington residents, regardless of race or status.

Bennington Residents Require—and Deserve—A Citizen Oversight Board that Can Review Specific Complaints

Bennington needs a robust civilian review board to oversee its police department. As the Select Board knows, the Department has a well-documented history of exclusionary and discriminatory practices, and these issues are systemic. [The 2019 review of its police department](#), conducted by the non-partisan International Association of Chiefs of Police (IACP)—the largest professional association of law enforcement leaders—makes that clear: The report detailed residents experiencing a “dual policing structure—one with civility and dignity for those viewed favorably by the department, and another for everyone else in the community,” IACP Rpt. at 16. A **full fifth** of respondents reported experiencing discrimination at the hands of the Department. *Id.* at 28. And the report further outlined how—despite Bennington being, “by and large, a vibrant and peaceful



town,” *id.* at 7—the Department had embraced an aggressive “warrior” mentality, eschewed best practices, and failed to structure its mission around principles of community policing.

Within this portrait of a police force unmoored from its obligation to protect Bennington’s residents impartially, respectfully, and equally, one particular theme bears emphasis: Bennington residents fear reprisal from BPD. The authors noted, for example, how community members hesitate to make complaints for fear that they will “suffer retaliation by the department.” *Id.* at 17. The report further detailed how “[residents] indicated that they or others were afraid to call for services from BPD for fear of harassment or targeting despite needing assistance,” and that “[s]ome community members, particularly members of diverse populations, feel that if they make a complaint to the police—even in cases where they’re a victim of a crime—” the Department has made clear that “they will become the target of the criminal investigation.” *Id.* at 16–17. The report even described how residents’ “heightened fear of retaliation” had interfered with IACP factfinders’ ability to gather information, as community members “expressed fear in sending emails to the independently managed inbox, completing the survey, and meeting with the team” out of concern that “they would be targeted by BPD.” *Id.* at 18.

These findings, compiled and reported by other law enforcement professionals, make plain what Bennington residents already know through their lived experiences: the Department cannot be relied on to self-police, and a BPD-controlled complaint process puts vulnerable residents at risk. As the IACP report itself urged, residents require a genuine mechanism for civilian oversight that will assist the victims of police misconduct and ensure that the Department impartially serves the full community it is sworn to protect. Indeed, the urgency of that need is what led our organizations to [oppose the creation of an exploratory task force](#) last fall, instead recommending that the Select Board create a review board immediately.

Unfortunately, the current version of CPARB falls far short of providing that necessary mechanism. As created, CPARB “does not have the power or authority to investigate, review, or otherwise participate in matters involving specific police personnel or specific police-related incidents,” and cannot “receive, or review complaints initiated against personnel of the police.” Instead, all complaints must go to the Department exclusively (as part of a combined process the Department insisted on creating that will receive “compliments” in addition to reports of misconduct). CPARB is limited to merely reviewing a “database” of “anonymized compliments and complaints” solely for the purpose of “identifying” trends.

That purely symbolic process does nothing to alleviate the issues or fears outlined by the IACP report, and all but guarantees that prior Department practices will continue unabated. To address the deep-rooted shortcomings showcased by the report, Bennington residents require and deserve a civilian board that—at a minimum—can review specific complaints of police misconduct and take appropriate action.

The Select Board Can and Should Seek Clarity on this Issue

In its deliberations surrounding CPARB, the Select Board acknowledged that a mechanism for citizen review of specific complaints was essential. Several members of the Select Board also emphasized the need for a process external to the Department for citizen concerns, one that would allow residents to raise instances of misconduct without fear of retaliation or harassment. However, based on the advice of its legal counsel, the Select Board ultimately concluded that the Town lacked the statutory authority to delegate to CPARB the power to review specific complaints submitted to BPD or to create a separate mechanism for reporting and investigating instances of misconduct.

That conclusion surprised many. As several Select Board members pointed out, the current legal landscape is deeply confusing. Vermont law expressly envisions “review of officer discipline by civilians, which may be a selectboard *or other elected or appointed body.*” 20 V.S.A. § 2401(4)(E) (emphasis added); *see also id.* § 2403 (contemplating reporting by “the chair of [an] agency’s civilian review board”). But at the same time, other statutory provisions assign specific police oversight duties to the Select Board, Town Manager, and/or Chief of Police—duties which, under background principles of Vermont municipal law, are generally non-delegable unless explicitly authorized. *See, e.g.*, 24 V.S.A. §§ 1931–35. Select Board members were understandably puzzled by a statutory scheme that clearly envisions robust citizen review of police misconduct but fails to provide clear authorization for municipalities to create and empower those bodies.

We believe that Vermont law allows the Select Board to go further than it did in structuring CPARB, and that existing authority would allow a citizen body to at least receive copies of specific complaints. However, we agree that—given the provisions described above—Bennington likely requires additional authorization to create a civilian review board with the kind of investigatory and substantive review power that is so clearly needed.

To address the deep-rooted issues of racial profiling and police misconduct in Bennington, and to regain community trust, the Select Board can and should formally seek this additional authority for CPARB. One way to do so would be to draft a charter amendment that would expressly allow the Select Board to delegate some of its authority to another body. Another would be to ask the General Assembly to clarify this issue for all municipalities going forward.

We strongly encourage the Select Board to pursue both strategies—the latter because the legal questions confronted by the Select Board will not be limited to Bennington and any Vermont municipality looking to create a robust civilian review board will face similar confusion about the scope of its authority. The Select Board’s recent experience with its CPARB is an opportunity to highlight these issues, bringing clarity not just to Bennington but to the entire state.

We understand that several individuals have contacted Senators Sears and Campion as well as several of their colleagues in the legislature to inform them of the legal questions the Select Board confronted, and how those considerations informed CPARB's final structure. As far as we know, however, the Town has not actively sought additional authority to create a more empowered CPARB.

Our organizations strongly urge the Select Board to do so. We stand ready to support and assist legislators and the Board in elevating this issue before the General Assembly—and in strengthening municipalities' power to create genuine oversight mechanisms for constitutional policing. To that end, please let us know how the Select Board plans to move forward on this critical issue, and whether there are specific questions our organizations can assist with. We are committed to a vision of community safety that provides equal services and dignity to all Bennington residents, regardless of race or status, and look forward to the Select Board demonstrating the same.

Sincerely,

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