



**BCP** BETTER  
CITIES  
PROJECT

LOCAL POLICING, LOCAL OPTIONS

# REFORMING FEDERAL TASK FORCES

Creating more-responsive, effective  
community law enforcement

BY PATRICK TUOHEY



MISSION

***BCP uncovers ideas that work,  
promotes realistic solutions and  
forges partnerships that help people  
in America's largest cities live free  
and happy lives.***

# FOR BETTER POLICING, COMMUNITIES HAVE PLENTY OF TOOLS

**B**etter Cities Project is proud to release three new publications focusing on municipal police reform. The reports, focusing on qualified immunity, civil asset forfeiture, federal task forces and collective bargaining transparency, show local leaders what they can do — without federal or state authorities — to increase accountability and trust in the institutions dedicated to public safety. These are not a panacea; the challenges to public safety are significant and often well beyond law enforcement policy. But to those interested in taking small measures to build public confidence and encourage honest debate, these reforms are a good start.

In this report, BCP recommends against cities participating in federal task forces. While a city struggling with a crime spike may welcome federal assistance and the promise of increased resources and attention, federal officers are held to different standards than local authorities may like. A city or county might work to increase public support for police through reforming qualified immunity or civil asset forfeiture, only to have those efforts undone through an officer's participation in a federal task force.

Courts have ruled that local officers are considered federal agents even when agreements between local and federal authorities stated explicitly that this was not to be the case. Until the courts recognize such agreements, local authorities will be best served by avoiding them altogether.

These recommendations, as well as those in our companion reports, won't solve all the challenges of addressing crime and providing public safety. But for communities paralyzed by rancorous debates over policing, they offer the opportunity to work together on what can be done to help without waiting on state and federal legislatures.

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# FEDERAL TASK FORCES HAMSTRING LOCAL CONTROL; OPTING OUT IS AN OPTION

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Leveraging federal resources, expertise and manpower is very attractive to local political leadership and law enforcement alike. And serial offenders familiar with an overworked local law enforcement system also understand the implications of federal intervention. A retired police officer sums it up: When suddenly aware that the police cruiser he was in was heading toward a federal detention center for arraignment — rather than the county jail — the defendant’s demeanor changed from brazen to anxious and tearful. He knew that he was in a different circumstance.

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But local officials face a trade off when accepting federal support as their police may not be held to local policing standards regarding qualified immunity or civil asset forfeiture. The good news is that the Department of Justice has been responsive to local concerns regarding body cameras, so there is hope they will follow suit on other concerns. Until they do, it may be best to steer

clear of federal task forces altogether.

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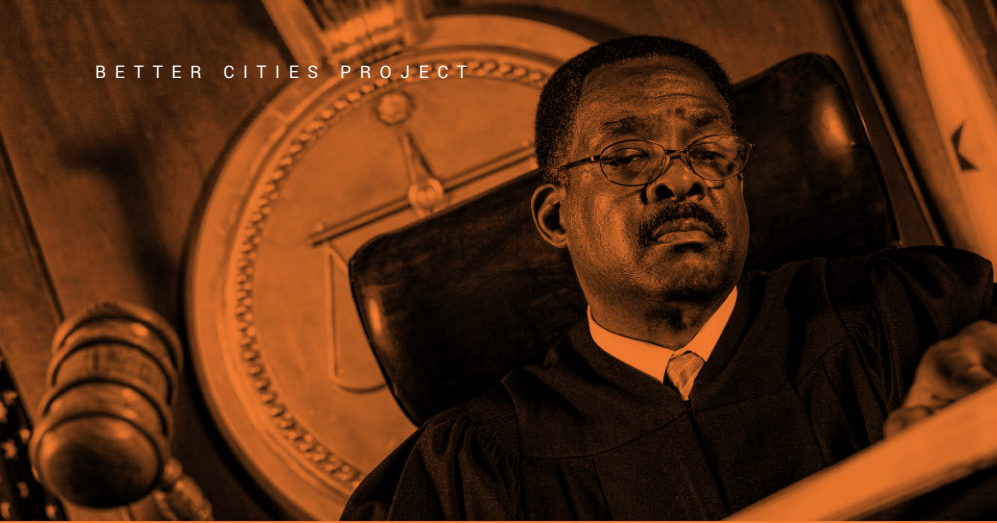
While local leaders can be tempted to partner with federal agencies for access to those resources, in doing so they sacrifice a great deal of local control. State troopers, county sheriff's deputies and city police officers who join federal task forces are considered federal agents — even though their salaries are paid by the same state and local institutions.

And that's where the troubles begin.

While the courts have been slow to remove this onerous legal burden, the executive branch has shown willingness to reform its own policies. Up until recently, federal agents were not required to wear body cameras, even if the localities in which these law enforcement officers operated did. Task forces also apply the federal standards of qualified immunity to local police officers detailed above, meaning that it may be impossible to hold local police accountable for their actions.

## HIGHLIGHTS

- Local law enforcement officials are regularly asked to cooperate in federal task forces; officers who join these task forces are considered federal agents, even though they are paid by local governments.
- Participation in federal task forces means a loss of control for local governments on issues ranging from use of force and body cameras to qualified immunity.
- Local governments can reduce or eliminate this loss of control with a simple policy that forbids any law enforcement officer from joining a federal task force without a vote from local elected officials.
- Section 1983 refers to the right of individuals to sue state employees or others serving “under color of state law” for violations of their civil rights.<sup>1</sup> Litigants can seek damages or an injunction to stop the practice in question. Unfortunately, as discussed in BCP’s report on qualified immunity, courts have often found that while federal agents have violated someone’s civil rights, there is no remedy because they did not violate “clearly established law,” often meaning a court ruling in reaction to identical circumstances.



## FEDERAL TASK FORCE CASES

Civil rights lawsuits against federal agents are complicated. Claims made against state or local officials alleging civil rights violations are handled under Section 1983 of the US Code<sup>1</sup>. This allows victims to sue in state or federal court to pursue monetary damages and/or a court to order that the improper conduct be stopped. But Section 1983 only applies to state officials, not federal ones.

In 1971, the Supreme Court issued a ruling in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* determining that the plaintiff could sue federal agents who violated his Fourth Amendment rights. In a 2017 case, however, Justice Kennedy wrote for the majority that expanding *Bivens* cases are, “now a ‘disfavored’ judicial activity... Indeed, the Court has refused to do so for the past 30 years.”<sup>2</sup>

The result: Officers can move between the two standards, complicating victims’ ability to seek damages.

In 2019, the family of a man killed by an Atlanta police officer sued the city. The court determined that the officer was a member of a federal task force, therefore invalidating their Section 1983 claims because they do not apply to federal officers. As a result, Atlanta joined other cities in withdrawing from the federal task force.

More recently, the case of James King, who was beaten and choked unconscious by plainclothes police who were members of a state-federal task force, was remanded by the Supreme Court back to the 6th Circuit to determine whether the federal government and its agents can be sued in the same lawsuit. Regardless of how this case resolves, it is clear cities shouldn’t participate in federal task forces until these civil rights issues are settled.

## QUALIFIED IMMUNITY

Qualified immunity is a court-imposed legal standard that often shields police and other government employees from being held accountable for violating constitutional rights — even when a judge agrees those rights have been violated. BCP recommends that cities reform qualified immunity even when their state or the federal government does not.

But even if a city adopts an ideal approach for holding public servants accountable, task force members won’t be held to that standard. Instead they’ll be protected by federal qualified immunity, which the US Congress has recently demonstrated it is unwilling to reform.

## USE OF FORCE

Several cities have pulled out of federal task forces in the past few years because the scandals involving protections given local law enforcement have come to outweigh any benefit of receiving federal assistance.

BCP proposes that cities bar local police from joining federal task forces until federal authorities not only agree to follow state and local laws on body cameras and use of force, but also state and local standards on qualified immunity.



# BODY CAMERAS: A SUCCESS STORY FOR CITIES

For years the Justice Department prohibited federal officers — including task force members — from wearing body cameras. Local police departments that required such cameras faced a dilemma: either refuse to participate in federal task forces, or tolerate a double standard among your own police force. At least one city, Atlanta, pulled out of a task force.<sup>3</sup>

As a result of public pressure from municipalities, and subsequent to a Department of Justice pilot program, the prohibition has ended.

In October 2020, Attorney General Barr announced that the Department of Justice would, “permit state, local, territorial, and tribal task force officers to use body-worn cameras on federal task forces around the nation. The department’s policy will permit federally deputized officers to activate a body-worn camera while serving arrest warrants, or during other planned arrest operations, and during the execution of search warrants.”<sup>4</sup>

In June 2021, the Department went further, issuing a memorandum<sup>5</sup> in which DOJ officers were required to wear and activate body cameras. “for purposes of recording their actions during: (1) a pre-planned attempt to serve an arrest warrant or other pre-planned arrest, including the apprehension of fugitives sought on state and local warrants; or (2) the execution of a search or seizure warrant or order.”

Body cameras demonstrate that federal policing policy can be influenced by local policy demands, and further underscores the necessity that cities insist on their own policing standards in other areas.



**BODY CAMERAS  
DEMONSTRATE THAT  
FEDERAL POLICING  
POLICY CAN BE  
INFLUENCED BY LOCAL  
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Local jurisdictions may want to just flatly refuse to have their employees participate in federal task forces until the Courts uphold such agreements that keep local law enforcement working under color of state law.

**... BUT LOCAL  
STANDARDS  
MAY NOT BE  
UPHELD**

However, it is not necessarily true that courts will uphold such deals. In *Askar v. Hennepin Cnty.*<sup>6</sup> A federal district court ruled in April 2022 that despite an agreement between local departments and the US Marshall Service that specifically stated that “[p]articipating agencies or their employees shall not be considered as the agents of any other participating agency” did not stop the Court from concluding that the local department employees were acting as federal agents.

# TAKING BACK LOCAL CONTROL

**No model ordinance is necessary for cities and counties to re-assert local control of their law enforcement agencies. A city council or county commission can simply, as a majority-vote policy, forbid any law enforcement officer from joining a federal task force except with majority approval from the local elected officials.**





# END NOTES

1. 42 U.S. Code § 1983 - Civil action for deprivation of rights. <https://www.law.cornell.edu/uscode/text/42/1983>

2. Ibid.

3. Jackman, “Federal task forces ban body cameras, so Atlanta police pull out, Others may follow,” *The Washington Post*, 2019. <https://www.washingtonpost.com/crime-law/2019/06/14/federal-task-forces-ban-body-cameras-so-atlanta-police-pull-out-others-may-follow/>

4. Department of Justice press release, October 29, 2020. <https://www.justice.gov/opa/pr/departement-justice-announces-use-body-worn-cameras-federal-task-forces>

5. Department of Justice, “Body-worn Camera Policy,” June 7, 2021. <https://www.justice.gov/dag/page/file/1402061/download>

6. *Askar v. Hennepin Cnty.*, CIVIL 21cv1829 (DSD/DTS) (D. Minn. Apr. 27, 2022); <https://law.justia.com/cases/federal/district-courts/minnesota/mndce/0:2021cv01829/196090/53/>



# ABOUT THE AUTHOR

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Patrick Tuohey is co-founder and policy director of the Better Cities Project. He works with taxpayers, media, and policymakers to foster understanding of the consequences – sometimes unintended – of local-government policies. He previously served as the senior fellow of municipal policy at the Show-Me Institute.

Patrick's essays have been published widely in print and online, including the Kansas City Urban League's 2015 and 2019 "State of Black Kansas City." His work has spurred parents and activists to oppose economic development incentive projects where they are not needed and was a contributing factor in the KCPT documentary, "Our Divided City" about crime, urban blight, and public policy in Kansas City.

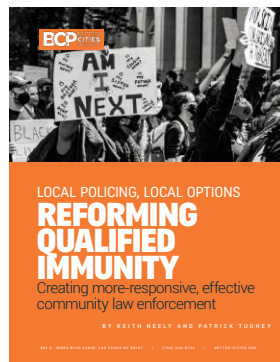


# ADDITIONAL READING

This report is one of three created by Better Cities Project as part of its Municipal Policing Project. Each report details a specific, effective reform that creates a more responsive, responsible local law enforcement function without waiting on action from Washington or the statehouse.



[bcp.fyi/forfeiture](http://bcp.fyi/forfeiture)



[bcp.fyi/qi](http://bcp.fyi/qi)



[bcp.fyi/transparency](http://bcp.fyi/transparency)





# NEXT STEPS **WE CAN HELP.**

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