

The Power of the Purse: Instigating Social Change Through Strategic Municipal Bond Investments

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Jenna Reifler, *The Power of the Purse: Instigating Social Change Through Strategic Municipal Bond Investments*, 31 U. MIA Bus. L. Rev. 87 ()

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The Power of the Purse: Instigating Social Change Through Strategic Municipal Bond Investments

Jenna Reifler

Municipal bonds are generally understood as mutually beneficial for both issuer and holder—they allow cities to secure capital for local improvements and investors to earn reliable and tax-exempt profits. It turns out, however, that the lack of disclosure for issuing general obligation bonds presents the perfect camouflage for cities to secure funding despite their local social responsibility inadequacies.

Cities quietly shell out millions of dollars in settlements to the victims of police-misconduct. Largely unreported and untracked, many municipalities fund such settlements through general obligation bonds, which are colloquially termed police brutality bonds. As a result, and often unbeknownst to the layperson, the burden of accountability for police misconduct lies with the taxpayer. Moreover, and in many cases, the lack of required disclosure for general obligation bonds renders the bondholders themselves unaware that their financial gain is tied to police brutality. Emerging data shows that police brutality bonds aid the transfer of “wealth from communities—especially over-policed communities of color—to Wall Street and wealthy investors.” Under increased public scrutiny for socially responsible investing, large financial institutions purchasing municipal bonds risk catastrophic reputational implications. Environmental, social, and governance criteria (“ESG”) have become the modern threshold of investment decision making, and many large banks are revising their strategies in accordance with ESG. But, absent the requisite knowledge of police misconduct to invest in accordance with ESG criteria, investors face risks when sourcing funds to municipalities.

As lawmakers' efforts to reform policing are often thwarted by barriers like qualified immunity, financial limitations, and political disputes, incremental solutions may offer hope. By demanding information or withholding funds, large investors in the municipal bond market hold the power of the purse that can bring pressure for policy reform from all sides.

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I. INTRODUCTION

Solving a nuanced problem requires a firm grasp of its nuanced composition, and the nuanced problem of police misconduct has stumped lawmakers eager to enact reform for decades.¹ In 2021, footage of the murder of George Floyd at the hands of law enforcement officers brought

¹ See generally *What 100 Years of History Tells Us About Racism in Policing*, ACLU (Dec. 11, 2020) [hereinafter *ACLU*], <https://www.aclu.org/news/criminal-law-reform/what-100-years-of-history-tells-us-about-racism-in-policing>.

about a resurgence² of rallying cries for policy reform nationwide.³ Police violence is now recognized as a public health crisis,⁴ yet inquiries into whether any progress has been made to advance safe policing have all landed upon the same complication—a lack and obscurement of publicly available data.⁵ Law enforcement agencies are not subjected to comprehensive disclosure and reporting requirements, which means that for many settlements resulting from misconduct, the data required to track trends of improvements or shortfalls is nonexistent.⁶ Because there is no rule or law about what cities or states have to collect, parsing through independently assembled and disparate information on police misconduct fails to provide a complete picture of the problem’s composition.⁷

² In 2012, public outrage ensued following the tragic killing of Trayvon Martin by police officer George Zimmerman—who was subsequently acquitted. See Karen Grisby Bates, *A Look Back at Trayvon Martin’s Death, and the Movement It Inspired*, NPR (July 31, 2018, 7:34 AM), <https://www.npr.org/sections/codeswitch/2018/07/31/631897758/a-look-back-at-trayvon-martins-death-and-the-movement-it-inspired>. The power of social media amplified a type of public discourse previously unseen and ignited a sense of urgency for change. See generally Jamillah Bowman Williams et al., *#BlackLivesMatter—Getting from Contemporary Social Movements to Structural Change*, 12 CAL. L. REV. ONLINE 1, 14-15 (2021). Social movements garnering media attention, like that of #BlackLivesMatter following Trayvon Martin’s killing, translated to changes in the way much of the public viewed police misconduct and increased a sense of urgency to enact reform. See *id.* Despite national recognition of the need for police reform, the annual rate of police killings remained stagnant in the years following Trayvon Martin’s death. See Desmond Ang et al., *Police Violence Reduces Civilian Cooperation and Engagement with Law Enforcement* (Harvard Kennedy Sch., Working Paper No. RWP21-022, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3920493.

³ See ACLU, *supra* note 1.

⁴ The American Public Health Association declared police brutality a public health crisis in 2020. Press Release by Georges C. Benjamin, APHA Exec. Dir., *APHA Calls Out Police Violence as a Public Health Crisis*, AM. PUB. HEALTH ASS’N (Jun. 4, 2020), <https://www.apha.org/news-and-media/news-releases/apha-news-releases/2020/apha-calls-out-police-violence>.

⁵ See Vera Bergengruen, *‘We Continue to Spin in Circles.’ Inside the Decades-Long Effort to Create a National Police Use-of-Force Database*, TIME (June 30, 2020, at 5:05 PM), <https://time.com/5861953/police-reform-use-of-force-database/>.

⁶ See Jonathan D. Silver & Joel Jacobs, *Most Pa. Police Departments Still Don’t tell FBI about shootings, deadly encounters*, PITTSBURGH POST-GAZETTE (Nov. 7, 2021, 8:14 AM), <https://www.post-gazette.com/news/crime-courts/2021/11/07/use-of-force-database-pennsylvania-fbi-pittsburgh/stories/202111030170>; Scott Calvert & Dan Frosch, *Police Rethink Policies as Cities Pay Millions to Settle Misconduct Claims*, THE WALL ST. J. (Oct. 22, 2020, 11:26 AM), <https://www.wsj.com/articles/police-rethink-policies-as-cities-pay-millions-to-settle-misconduct-claims-11603368002>.

⁷ See Amelia Thomson-DeVeaux et al., *Cities Spend Millions on Police Misconduct Every Year. Here’s Why It’s So Difficult to Hold Departments Accountable.*, FIVETHIRTYEIGHT (Feb. 22, 2021), <https://fivethirtyeight.com/features/police-misconduct-costs-cities-millions-every-year-but-thats-where-the-accountability-ends/>.

Local governments shell out billions of dollars in settlements annually to compensate victims of police misconduct—but “[w]ho foots the bill?”⁸ In many instances, and often unbeknownst to the layperson, that financial burden lies with taxpayers.⁹ Though largely unreported, many municipalities across the country pay police misconduct settlements and judgments through general obligation municipal bonds,¹⁰ or, colloquially termed, police brutality bonds.¹¹ Municipal bonds, which are debt securities issued by states, cities, counties or other governmental entities in order to fund local obligations,¹² were once termed “the original socially responsible investment.”¹³ Historically, municipal bonds have provided a mutual benefit to issuer and holder by securing the issuer’s debt and garnering profits for the holder.¹⁴ But what happens when an unanticipated police misconduct settlement rocks a municipality’s annual budget? Oftentimes, existing general obligation bond funds are reallocated from planned community improvements or infrastructure projects to cover the settlement’s cost.¹⁵ The result? A “transfer of wealth from communities—especially over-policed communities of color—to Wall Street and wealthy investors.”¹⁶ In such instances, offending law enforcement agencies and officers are relieved of any fiscal accountability.¹⁷ Instead, it is taxpayers who are held indirectly financially liable to repay bondholders the total

⁸ See Joanna C. Schwartz, *How Governments Pay: Lawsuits, Budgets, and Police Reform*, 63 UCLA L. REV. 1144, 1147 (2016).

⁹ See Alyxandra Goodwin et al., ACTION CTR. ON RACE & ECON., POLICE BRUTALITY BONDS: HOW WALL STREET PROFITS FROM POLICE VIOLENCE, 3 (2020), https://acrecampaigns.org/wp-content/uploads/2020/06/ACRE_PBB_2020_2.pdf.

¹⁰ Municipal bonds are debt securities issued by states, cities, counties or other governmental entities in order to fund local obligations. See Danielle Moran, *BlackRock, Goldman Join Racial-Justice Push in Muni-Bond Market*, BLOOMBERG L. (Sept. 24, 2021, 5:00 AM), <https://news.bloomberglaw.com/banking-law/blackrock-goldman-join-racial-justice-push-in-muni-bond-market>.

¹¹ See Goodwin et al., *supra* note 9, at 3.

¹² *What are Municipal Bonds*, SEC (Sept. 18, 2019) [hereinafter *SEC Bonds*], <https://www.sec.gov/munied>.

¹³ Stephen Gandel, *‘Fiscal Justice Ratings’ Fight Police Brutality with Finance*, THE N. Y. TIMES (Oct. 16, 2021), <https://www.nytimes.com/2021/10/16/business/dealbook/fiscal-justice-ratings.html?searchResultPosition=3>.

¹⁴ See *SEC Bonds*, *supra* note 12.

¹⁵ See, e.g., Goodwin et al., *supra* note 9, at 9 (discussing reallocation of funds in New Haven, Connecticut, when a planned bridge renovation project was postponed in order to fund police misconduct settlements and was later replenished through the issuance of additional bonds).

¹⁶ *Id.* at 3.

¹⁷ See Schwartz, *supra* note 8, at 1178. “Fifty-eight percent of cities with the largest law enforcement agencies do not require those agencies to contribute to settlements and judgments, but cities’ budgeting practices insulate at least 80 percent of city law enforcement agencies from any financial effects of payouts.” See *id.* at 1193.

settlement amount—plus interest.¹⁸ Although an economic win for bondholders, who garner profits from interest and other fees, the financial industry’s steady shift towards socially responsible investing has prompted investor concern on the broader implications of police brutality bonds.¹⁹

As financiers of the four trillion-dollar municipal bond market,²⁰ large banks possess indirect power over municipalities: they have broad discretion to assess the stability of local economies, to invest or not, and to influence bond pricing levels.²¹ The financial industry as a whole is trending towards socially responsible investing,²² and has embraced environmental, social, and governance criteria ESG as essential guiding factors to inform investment decisions.²³ In recognition that knowledge is power, Mammoth Wall Street investors, including Goldman Sachs, BlackRock, and Morgan Stanley, are beginning to ask questions about municipalities’ commitment to racial equity and police reform before making investment decisions.²⁴ By demanding transparency from municipalities with high levels of police misconduct, cities can either be incentivized to enact meaningful reform to encourage continuing investments, or risk divestments as a result of social responsibility shortfalls. By lifting the veil of secrecy from the police brutality bond market, solutions to enact positive change can be realized.²⁵

¹⁸ See Goodwin et al., *supra* note 9, at 3-7.

¹⁹ In 2006, the United Nations Principles for Responsible Investment (“PRI”) report incorporated environmental, social, and governance criteria in its evaluation of companies for the first time. Betsy Atkins, *Demystifying ESG: Its History & Current Status*, FORBES (June 8, 2020, 4:49 PM), <https://www.forbes.com/sites/betsyatkins/2020/06/08/demystifying-esgits-history--current-status/?sh=66aff67e2cdd>. The PRI’s goal is to define “responsible investment as a strategy and practice to incorporate [ESG] factors in investment decisions and active ownership.” *What Is Responsible Investment?* PRINCIPLES FOR RESPONSIBLE INV. [hereinafter *PRI*], <https://www.unpri.org/an-introduction-to-responsible-investment/what-is-responsible-investment/4780.article>.

²⁰ \$4 trillion represents the total amount of outstanding funds in the municipal bond market. SIFMA, *US Municipal Bonds Statistics* [hereinafter *SIFMA*], Available at: <https://www.sifma.org/resources/research/us-municipal-bonds-statistics/> (last updated Feb. 2, 2022).

²¹ See Moran, *supra* note 10.

²² See Atkins, *supra* note 20.

²³ See Caitlin Reilly, *Investors Want Details on Bonds that Pay for Police Misconduct*, ROLL CALL (July 1, 2020, 6:09 PM), <https://www.rollcall.com/2020/07/01/investors-want-details-on-bonds-that-pay-for-police-misconduct/>.

²⁴ See *id.*; see Moran, *supra* note 10.

²⁵ Press Release, Rep. Gregory W. Meeks, *Rep. Meeks Introduces Bill Requiring Wall Street Disclosures of Bonds Relating to Police Brutality* (June 19, 2020), <https://meeks.house.gov/media/press-releases/rep-meeks-introduces-bill-requiring-wall-street-disclosures-bonds-relating>.

This paper examines the interconnectedness between informed financial investments and realized social reform. It further argues that incentivizing disclosure of police-misconduct data will allow large financial institutions to harness their power to exert financial pressure for reform indirectly through financial motivations. This paper serves as a call to action for municipal bond investors in the trillion-dollar market to recognize that their influence can function as a preliminary tool to enact social change through the power of the purse.

Part II of this paper provides an overview of the municipal bond market and its role in funding police misconduct settlements, as well as an overview of the influence of ESG on the financial industry's decisions to invest. Part III of this paper discusses the current laws and regulations on municipal bond disclosure requirements, and the status of police misconduct related data collection in the United States. Part IV of this paper analyzes potential solutions to increase disclosure and asserts the importance of passing legislation and enacting regulatory reform to increase transparency of police misconduct in order to realize meaningful reform. Concluding, Part V of this paper summarizes the benefits of increasing transparency of police misconduct in order to influence investor decision-making that can bring about meaningful and unrealized reform.

II. MUNICIPAL BONDS

A. *An Overview*

The municipal bond market is enormous.²⁶ In 2022 alone, municipal issuers in the United States borrowed \$386.6 billion from investors.²⁷ The market and its investors have immensely broad reach and power over a municipality's financing—funding everything from school and highway construction to legal settlements and judgments against local governments.²⁸ As long term investments that are paid back over decades, municipal bonds (and the municipalities they support) are subject to unpredictable changes that can impact their economic value, including climate change or social unrest.²⁹ But, because municipal bonds are generally exempt from federal income tax and default is extremely rare,

²⁶ \$4 trillion dollars represents the total amount of outstanding funds in the municipal bond market. SIFMA, *supra* note 20.

²⁷ Microsoft Excel File, US-Municipal-Bonds-Statistics-SIFMA (Feb. 6, 2023), <https://www.sifma.org/resources/research/us-municipal-bonds-statistics/>.

²⁸ See Moran, *supra* note 10.

²⁹ See HIP Investor Team, *Muni Bond Risks Vary with Climate Threats and Resilience*, VANECK (Sept. 23, 2022) [hereinafter *VANECK*], <https://www.vaneck.com/us/en/blogs/municipal-bonds/muni-bond-risks-vary-with-climate-threats-and-resilience/>.

investors often assess them as a highly attractive and low-risk revenue stream.³⁰ Municipalities that issue the bonds, however, are often subjected to high borrowing interest rates that fluctuate with the market.³¹

Unlike revenue bonds, which are guaranteed by specific revenue sources like highway tolls,³² general obligation municipal bonds are backed by the full faith and credit of the issuer and/or the issuer's taxing power of its residents.³³ They are typically issued by a municipality to raise money to pay for general day-to-day expenses, which recent studies reveal may include unexpected legal settlements.³⁴ When an issuer decides that it needs to borrow money through municipal bonds, it sells securities to underwriters who then develop the offering documents, engage ratings agencies, determine interest rates, price the bonds for market, and sell them to investors.³⁵ In some instances, municipalities issue distinct bonds to repay settlements, referred to as judgment obligation bonds, that solely fund civil settlements and provide clear notice to investors of the purpose and allocation of their investment.³⁶ In other instances, municipalities source funds to pay settlements from their broader general obligation bond funds,³⁷ which obscures an investor's ability to distinguish where their investment was allocated.

B. *Funding Police Misconduct Settlements*

Settlements and judgments may be funded by governments' general funds, dedicated funds, federal aid, municipal bonds, or liability

³⁰ See Heather Gillers, *Rising Interest Rates Hit Municipal-Bonds Market*, THE WALL ST. J. (Jan. 23, 2022, 8:00 AM), <https://www.wsj.com/articles/rising-interest-rates-hit-municipal-bonds-market-11642882996> (discussing the volatility of the municipal bond market interest rates and the risk it poses to borrowers); see *SEC Bonds*, *supra* note 12.

³¹ See *id.*; The investors, or bondholders, are generally extremely affluent people and institutions that decide to invest in municipalities in order to earn revenue from underwriting services, other fees, and most importantly, interest rates. See Goodwin et al., *supra* note 9 at 11.

³² See Daniela Pylypczak-Wasylyszyn, *General Obligation vs. Revenue Bonds: A MunicipalBonds.com Guide*, MUNICIPALBONDS.COM (June 24, 2015), <https://www.municipalbonds.com/education/two-types-of-bonds-general-obligation-vs-revenue-bonds/>.

³³ See *id.*

³⁴ See Goodwin et al., *supra* note 9, at 12.

³⁵ See *The Underwriting Process*, MSRB <https://msrb.org/Underwriting-Process> (last visited Nov. 10, 2022).

³⁶ For example, the City of Los Angeles issued judgment obligation bonds in 2009, named "Judgment Obligation Bonds, Series 2009-A, Judgment Obligation Bonds Proceeds Fund," to "finance the payment of judgments related to civil rights violations against current and former City police officers" in a series of cases against the City. L.A., Cal., Admin. Code § 5.83.5.

³⁷ See Goodwin et al., *supra* note 9, at 15.

insurance.³⁸ Aggregating the limited publicly available information on how municipalities fund sizeable police misconduct settlements, Joanna Schwartz, Professor of Law, surveyed and procured data from seventy jurisdictions with the largest law enforcement agencies nationwide.³⁹ The data revealed that the majority of cities pay settlements and judgments without any contribution from law enforcement agencies.⁴⁰ Further, most large cities self-insure by paying police misconduct settlements out of a planned city budget in order to avoid issues with private insurers.⁴¹ Other cities rely on existing general obligation bonds, or issue new police brutality bonds, to cover settlement costs.⁴² When sizeable settlements are financed by existing general obligation bonds, however, municipalities are left to shift budgets away from other planned expenditures.⁴³ As a result, they are forced to either cut “essential public services—particularly in poor communities of color” to account for the settlement,⁴⁴ or take on more debt by issuing incremental bonds.⁴⁵

When cities borrow to fill budget gaps, repaying the accruing debt takes priority over other proposed uses of the funds—like renovating public schools or repairing decaying local infrastructure.⁴⁶ The city of New Haven, Connecticut, for example, redirected \$6.35 million in funds intended for the construction of a bridge to pay for a police misconduct settlement in 2017.⁴⁷ Additionally, New Haven withdrew funds from twenty other city programs in order to fund the \$8.4 million settlement, and was subsequently forced to borrow an additional \$8.4 million the

³⁸ See generally Schwartz, *supra* note 8, at 1207-39.

³⁹ See *id.* at 1156.

⁴⁰ See *id.* at 1223. (Showing that 55% of participating law enforcement agencies in Schwartz’ study revealed that settlements and judgments are paid by the locality without any contribution from the police department).

⁴¹ See Stephen Wulff, *Flipping the “New Penology” Script: Police Misconduct Insurance, Grassroots Activism, and Risk Management-Based Reform*, 47 LAW & SOC. INQUIRY 162, 168 (2022).

⁴² See Cheryl Corley, *How Police Misconduct Affects Cities and Taxpayers Financially*, NPR’s ALL THINGS CONSIDERED (Sept. 16, 2020, 4:06 PM), <https://www.npr.org/2020/09/16/913693664/how-police-misconduct-affects-cities-and-taxpayers-financially>; “According to the City of Chicago’s Office of Budget and Management, the city set aside just over \$19 million a year to cover police brutality settlements in 2015 and 2016. However, Chicago has exceeded this budget consistently. The city’s practice of allocating tens of millions less a year for police settlements than it actually spends obscures the true cost of these cases.” See Goodwin et al., *supra* note 9 at 18.

⁴³ See Goodwin et al., *supra* note 9 at 12.

⁴⁴ *Id.* at 11.

⁴⁵ See *id.* at 12.

⁴⁶ See generally *id.*

⁴⁷ See Jon Greenberg, *Police misconduct settlements can shift city budgets*, POLITIFACT, May 27, 2021, <https://www.politifact.com/factchecks/2021/may/27/tim-kaine/police-misconduct-settlements-can-shift-city-budge/>.

following year through its bond program to commence construction of the bridge.⁴⁸ The lingering question becomes: how often does this occur nationwide? William D. Green, a history professor at Augsburg University stated that “the fact that that’s unclear is a problem, because it allows the city to pay this thing off and then flip it under the table.”⁴⁹ Some cities regularly “shift money from budgets earmarked for education, social services, and infrastructure to cover payouts, bond borrow, or both. To pay off debts owed to bondholders, some cities use funds from public services, raise taxes, and/or continually issue new bonds, which perpetuates debt cycles.”⁵⁰

In 2018, the Action Center on Race and the Economy (“ACRE”) published the first comprehensive report of its kind on the frequency that borrowing is used to pay police-related settlements.⁵¹ The study, titled “Police Brutality Bonds: How Wall Street Profits from Police Violence,” sought to “uncover the lengths that municipalities have gone to hide both the costs of police violence and who profits from it.”⁵² First, the ACRE report found that most official statements provided by issuing cities to investors for police brutality bonds failed to disclose any information regarding which settlements the borrowed funds would pay.⁵³ As a result, it is “very difficult to determine whether or not a city is borrowing for police related settlements and judgments, and it is even harder to identify which cases they’re borrowing to pay for and what their total costs are.”⁵⁴ Because data proved so difficult to uncover, ACRE focused its report on the case studies of five cities: Chicago, Cleveland, Lake County, Los Angeles, and Milwaukee.⁵⁵ Amalgamating each city’s expenditures on police brutality bonds from 2008-2017, the ACRE report found that the five cities spent a total of \$837.8 million in police brutality bonds to compensate victims of police misconduct.⁵⁶ On the backend, \$891 million in interest was paid to investors,⁵⁷ and the resulting expense in interest to taxpayers totaled \$1.73 billion.⁵⁸ As ACRE’s findings indicate, the

⁴⁸ *See id.*

⁴⁹ Brentin Mock, *How Cities Offload the Cost of Police Brutality*, BLOOMBERG CITYLAB (June 4, 2020, 2:41 PM), <https://www.bloomberg.com/news/articles/2020-06-04/the-financial-toll-of-police-brutality-to-cities>.

⁵⁰ *See* Wulff, *supra* note 41 at 168.

⁵¹ *See generally* Goodwin et al., *supra* note 9, at 1.

⁵² *Id.* at 3.

⁵³ *See id.* at 15.

⁵⁴ *Id.*

⁵⁵ *See generally id.* at 3-31.

⁵⁶ *Id.* at 4.

⁵⁷ *Id.* at 8.

⁵⁸ *Id.* at 4.

investors that purchase police brutality bonds reap generous profits, while taxpayers are left to repay their governments' swelling debts.⁵⁹

C. *Shifting Priorities: The Expansion of ESG*

Environmental, social, and governance principles play an increasingly important role in investment decision-making. In the past, “the ESG movement has mostly steered clear of the muni bonds market, and when ESG investing tactics are applied to muni bonds, the focus [has historically been] on environmental issues. One reason for this, experts say, is a lack of data.”⁶⁰ In order to make investment decisions, investors often rely upon broad disclosure, or accurate and detailed official statements from their potential investees.⁶¹ While most financial institutions have long operated under the notion that reducing overhead costs equates to higher revenue and a growing bottom line, many investors now assess investments through evaluating a company's “*triple* bottom line”: people, planet, and profit.⁶² Largescale institutional investors are increasingly recognizing that “firms with promising [ESG] metrics tend to produce superior financial results,”⁶³ as they can reduce future risks related to volatile social unrest, energy prices, and extreme weather events.⁶⁴ In addition to purely economic motives, big-name investors have begun to recognize the importance of maintaining alignment between reputation and action.⁶⁵ In 2021, Goldman Sachs shareholders urged its Board of Directors to consider the social impact of its investments after learning that the bank underwrote a \$225 million offering for the city of Chicago that was used to pay settlements and judgments resulting from police violence.⁶⁶

In recognition of the risks and the power that investors in the municipal bond market assume, five investment giants, including BlackRock, Goldman Sachs, and Morgan Stanley, joined forces in 2021

⁵⁹ *See id.* at 18.

⁶⁰ Gandel, *supra* note 13.

⁶¹ *See* Goodwin et al., *supra* note 9 at 12.

⁶² *See* Kelsey Miller, *The Triple Bottom Line: What It Is & Why It's Important*, HARVARD BUS. SCH. ONLINE (Dec. 8, 2020), <https://online.hbs.edu/blog/post/what-is-the-triple-bottom-line>.

⁶³ *Id.*

⁶⁴ VANECK, *supra* note 29.

⁶⁵ Goldman Sachs 2021 racial equity audit, Available At: <https://static1.squarespace.com/static/5d374de8aae9940001c8ed59/t/5fc975780d07ef0ed0e5389/1607038329012/Goldman+Sachs+2021+racial+equity+audit+proposal+Final.pdf> (last visited Feb. 20, 2022).

⁶⁶ *See id.*

to ask municipalities for increased transparency on social issues.⁶⁷ They developed the Municipal Issuer Racial Equity & Inclusion Framework⁶⁸ (the “Framework”), which asks issuers to disclose information like whether they collect data to review police misconduct, leverage community development programs, or partner with independent organizations to provide oversight and review of police misconduct allegations.⁶⁹ The questionnaire’s stated purpose is to “open a constructive and voluntary dialogue with municipal issuers (borrowers) on critical issues surrounding racial equity and inclusion” and “supports increased engagement and disclosure that can help stakeholders make more informed investment decisions.”⁷⁰ Commentators assert that the Framework “reflects the growing influence of the socially responsible investment business, with Wall Street funds eager to cater to investors seeking to use their funds to combat global warming or promote societal change.”⁷¹ Alexa Gordon, head of municipal ESG at Goldman Sachs, noted that the responses they receive from the Framework will ultimately impact their decisions about which bonds to buy.⁷² Those municipal issuers that show a willingness to engage with investors to address systemic police brutality will likely continue to earn funding—as long as they provide data that shows that they are taking action to advance social stability.⁷³ Investment in risky and not properly vetted ESG markets can catastrophically impact a company’s reputation, liquidity, and opportunity for growth—a risk that serves as the primary driver for companies’ commitments to ESG investing.⁷⁴

Investors have long based their decisions to purchase municipal bonds on strong ratings from major credit rating agencies like Moody’s and Fitch, and ignored the “S,” or social considerations at stake.⁷⁵ According to Larry Bellinger, head of municipal bond research at Alliance Bernstein, there is “relatively adequate research on carbon footprints and natural

⁶⁷ Municipal Issuer Racial Equity & Inclusion Engagement Framework (2021) [hereinafter *The Framework*], <https://arizent.brightspotcdn.com/c6/27/fe12c9ce4256a3dd3c153e330f35/questionnaire-for-muni-issuers-2021-just-capital-9-24-2021.pdf>.

⁶⁸ *Id.*

⁶⁹ *See id.*

⁷⁰ *Id.*

⁷¹ Moran, *supra* note 10.

⁷² *See id.*

⁷³ *See id.*

⁷⁴ *See generally* Susan Bokermann, *ANALYSIS: Corporate Reputation Is What Drives ESG Disclosures*, BLOOMBERG LAW (Nov. 8, 2021 at 1:25 PM), <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-corporate-reputation-is-what-drives-esg-disclosures>.

⁷⁵ *See* Gandel, *supra* note 13.

hazards,” but “on social justice issues, ‘data is a problem.’”⁷⁶ At the forefront of ESG investing initiatives is often “E”—the environmental prong, for which disclosure requirements already exist through the Environmental Protection Agency.⁷⁷

In an attempt to fill the void for the “S”, the social prong of ESG, Napoleon Wallace and Ryan Bowers co-founded Activest,⁷⁸ a new type of ratings system that factors what they call “fiscal justice” into its bond ratings.⁷⁹ Activest rates municipalities’ credit based on eight social justice factors, each serving as an identifier of the early warning signs of social unrest that pose a long-term financial risk.⁸⁰ One of those factors is the potential cost of police misconduct, which is often ignored by traditional rating agencies like Moody’s:⁸¹

Moody’s considers climate change as having created the broad-based conditions for increased financial risk, while extreme weather events are considered the specific, unpredictable, destabilizing events that actually result in massive losses. Similarly, social and economic equality in cities have created the conditions for increased risk, while police brutality, police settlements and the often ensuring social unrest are the specific, unpredictable, destabilizing, costly events that result from inequality.⁸²

The success of Activest’s first client, Adasina Social Capital, which earned nearly sixty million dollars in under one year for its socially responsible investment strategy, signals the largely untapped financial gain that investing in municipalities that display strong social stability can bring.⁸³

⁷⁶ *Id.*

⁷⁷ The EPA requires the “reporting of greenhouse gas (“GHG”) data and other relevant information from large GHG emission sources, fuel and industrial gas suppliers, and CO2 injection sites in the United States.” *See Learn About the Greenhouse Gas Reporting Program (GHGRP)*, US ENVIRONMENTAL PROTECTION AGENCY (Oct. 17, 2022), <https://www.epa.gov/ghgreporting/learn-about-greenhouse-gas-reporting-program-ghgrp>.

⁷⁸ *See generally* ACTIVEST, <https://www.activest.org/about/>.

⁷⁹ Gandel, *supra* note 13.

⁸⁰ *See id.*

⁸¹ *See id.*

⁸² ACTIVEST, <https://www.activest.org/about/>.

⁸³ *See* Gandel, *supra* note 13.

III. DISCLOSURE REQUIREMENTS AND DATA COLLECTION

The two broadly recognized instruments available for changing societal habits are: (1) traditional regulatory and legal approaches, or (2) “economic incentive or market-based policies that rely on market forces to correct” behavior.⁸⁴ Traditional regulatory and legal approaches to enact police reform have proven largely ineffective; despite a decades-old federal law requesting the collection and disclosure of police use-of-force data,⁸⁵ a seven-year effort by the FBI to build a reliable database,⁸⁶ and a Presidential EO demanding transparency,⁸⁷ American citizens still lack reliable data on local law enforcement’s use-of-force.⁸⁸

A. *Regulating the Municipal Bond Market*

Municipal securities are subject to federal securities laws and their anti-fraud provisions,⁸⁹ but are exempt from the registration and reporting requirements of the securities acts.⁹⁰ The Municipal Securities Rule Making Board (the “MSRB” or the “Board”), established in the Securities Act Amendments of 1975, is the primary regulatory body charged with overseeing the municipal bond market.⁹¹ The Board, which is overseen by both Congress and the Securities and Exchange Commission (the “SEC”), has supervisory authority over municipal bond underwriters and broker-dealers—but does not have authority to regulate the municipal entities

⁸⁴ Environmental Protection Agency, *Economic Incentives* (Sept. 8, 2022), <https://www.epa.gov/environmental-economics/economic-incentives> (discussing the use and usefulness of financial incentives in the sustainability financial market).

⁸⁵ See Tom McEwen, *National Data Collection on Police Use of Force*, U.S. DEP’T OF JUST., BUREAU OF JUST. STATISTICS 1, 4 (April 1996), <https://bjs.ojp.gov/content/pub/pdf/ndcopuof.pdf>.

⁸⁶ See FBI, *National Use-of-Force Data Collection* [hereinafter *FBI Database*], <https://www.fbi.gov/services/cjis/ucr/use-of-force#:~:text=The%20FBI%20created%20the%20National,agencies%20on%20January%201%2C%202019> (last visited Feb. 21, 2022).

⁸⁷ See Exec. Order No. 13,929, 85 Fed. Reg. 37,325 (June 16, 2020).

⁸⁸ See Bergengruen, *supra* note 5.

⁸⁹ 17 C.F.R. § 240.10b-5 (1951). Rule 10b-5 of the Securities and Exchange Act of 1934 is known as the anti-fraud provision, which prevent any person from engaging in fraud—whether intentional or unintentional—when issuing or purchasing securities.

⁹⁰ Mark Robbins & Bill Simonsen, *The Quality and Relevance of Municipal Bond Disclosure: What Bond Analysts Think*, MUNICIPAL FINANCE JOURNAL, 2010, <https://www.nfma.org/assets/documents/surveyarticle8.10.pdf>.

⁹¹ Municipal Securities Rulemaking Board, *The Role and Jurisdiction of the MSRB*, 1, 2, <https://www.msrb.org/msrb1/pdfs/Role-and-Jurisdiction-of-MSRB.pdf> (last visited Feb. 20, 2022).

issuing bonds⁹² so as not to interfere with state sovereignty.⁹³ Because the MSRB cannot directly require disclosure from bond-issuing localities, it must do so indirectly through the underwriters of municipal bonds.⁹⁴

By requiring municipal bond underwriters to ensure that issuers comply with Rule 15c2-12 of the Code of Federal Regulations, the MSRB has indirect power to require specific disclosure from issuers.⁹⁵ Rule 15c2-12 requires that municipal bond underwriters ensure that an issuer has entered into a continuing disclosure agreement with the SEC.⁹⁶ Continuing disclosure agreements commit issuers to provide specific information and major events to the MSRB regarding its securities.⁹⁷ The 2019 revisions to Rule 15c2-12 established that issuers must disclose, on an ongoing basis, any financial obligations that reflect an incurrence of a material financial obligation, and any financial obligations that reflect material financial difficulties.⁹⁸ The added provisions of Rule 15c2-12 have led to inconsistencies in reporting and general market participant confusion.⁹⁹ For example, of all issuers required to report private debt, studies utilizing data from the Federal Reserve show that only 20% to 45% of private debt agreements are publicly filed.¹⁰⁰ Ernesto Lanza, acting director for the SEC's Office of Municipal Securities, stated that Rule 15c2-12 is "an area the office is watching closely, following an academic study that found serious deficiencies in continuing disclosure."¹⁰¹

B. *Federal Disclosure Laws and Roadblocks*

Absent direct legislation or regulation mandating disclosure, law enforcement agencies are under no pressure to report their police misconduct data; "there exists a conflict of interest, as the same state responsible for violence is also responsible for reporting it."¹⁰² In recent

⁹² See Ivan T. Ivanov et al., *Limits of Disclosure Regulation in the Municipal Bond Market*, 1-63,1 (Jan. 31, 2022), Available at SSRN: <https://ssrn.com/abstract=4022819>.

⁹³ See U.S. CONST. amend. X.

⁹⁴ See Ivanov et al., *supra* note 92, at 6.

⁹⁵ See *id.* at 7.

⁹⁶ See 17 CFR Part 240, Release No. 34-83885 (2019); File No. S7-01-17, Amendments to Municipal Securities Disclosure, 1, 5, (2019).

⁹⁷ See *id.*

⁹⁸ See Ivanov et al., *supra* note 92, at 6.

⁹⁹ See Connor Hussey, *SEC taking a closer look at issuer disclosure*, THE BOND BUYER (Jan. 24, 2022, 1:12 p.m.), <https://www.bondbuyer.com/news/sec-taking-a-closer-look-at-issuer-disclosure>.

¹⁰⁰ See Ivanov et al., *supra* note 92, at 23.

¹⁰¹ Hussey, *supra* note 99.

¹⁰² Fablina Sharara et al., *Fatal police violence by race and state in the USA, 1980-2019: a network meta-regression*, 396 LANCET 10307 at 1240 (Oct. 2, 2021), [https://www.the-lancet.com/journals/lancet/article/PIIS0140-6736\(21\)01609-3/fulltext](https://www.the-lancet.com/journals/lancet/article/PIIS0140-6736(21)01609-3/fulltext).

years, numerous bills have been proposed, both on the federal and local level, to increase transparency of police violence data in the United States. Two specific bills, the Cost of Police Misconduct Act (“CPMA”) of 2020¹⁰³ and the Disclose Police Brutality Bonds Act (“DPBA”) of 2021¹⁰⁴ showcased legislative efforts to increase transparency of police misconduct on both a federal and state level. The CPMA, if passed, would require data collection and disclosure from all federal law enforcement agencies that receive grants from JAG,¹⁰⁵ which is the leading source of federal justice funding to law enforcement agencies.¹⁰⁶ The DPBA, which died in Congress, demanded that the Securities Exchange Act of 1934 be revised to require “issuers to disclose services performed for State and local governments in connection with the issuance of bonds that may be used to pay for settlements or judgments in connection with police violence or civil rights abuses.”¹⁰⁷

Mandating disclosure of police misconduct data, however, inevitably requires that local law enforcement agencies already have the resources to collect data in the first place so as not to interfere with state sovereignty.¹⁰⁸ The Tenth Amendment, which establishes state sovereignty, gives States broad authority to enact legislation within their localities’ purview without interference from Congress.¹⁰⁹ The Supreme Court has recognized limitations on Congress’ power to legislate over state affairs, and historically, legislation on individual localities’ law enforcement approaches falls beyond the scope of congressional power and lies exclusively with the states.¹¹⁰ The anti-commandeering doctrine further limits congressional power to mandate disclosure, prohibiting Congress from passing federal laws that force states to adopt or enforce federally mandated policies.¹¹¹ However, although the Tenth Amendment limits congressional reach into state matters, the Spending Clause empowers

¹⁰³ H.R. 1481, 117th Cong. (2021).

¹⁰⁴ H.R. 7261, 116th Cong. (2020).

¹⁰⁵ H.R. 1481, 117th Cong. (2021).

¹⁰⁶ Bureau of Justice Assistance, Edward Byrne Memorial Justice Assistance Grant (JAG) Program, [hereinafter *JAG*], <https://bja.ojp.gov/program/jag/overview> (last visited Feb. 18, 2022).

¹⁰⁷ See Bill Summary, H.R. 7261, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/7261?s=1&r=330>.

¹⁰⁸ See U.S. CONST. amend. X. (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”).

¹⁰⁹ See Whitney K. Novak, *Congress and Law Enforcement Reform: Constitutional Authority*, CONGRESSIONAL RESEARCH SERVICE LSB10487, 1, 1 (June 4, 2020), <https://crsreports.congress.gov/product/pdf/LSB/LSB10487>.

¹¹⁰ See *id.*

¹¹¹ See *id.*

Congress to further its policy objectives, so long as they are for the “general welfare of the United States,”¹¹² by attaching conditions on states’ receipt of federal funds.¹¹³

Congress first considered methods of enacting legislation to increase disclosure from local law enforcement agencies in 1994.¹¹⁴ Written into law that same year, the Violent Crime Control and Law Enforcement Act, states that the Attorney General shall acquire data about the use of excessive force by law enforcement officers and publish an annual summary of all acquired data.¹¹⁵ In order for the law to be constitutional, individual law enforcement agencies’ participation must be voluntary.¹¹⁶ In 2015, the Federal Bureau of Investigation (the “FBI”) partnered with law enforcement agencies in order to bring a national database on police use-of-force to the public.¹¹⁷ Four years later, in 2019, the National Use-of-Force Data Collection (“Data Collection”) finally launched nationwide to the public.¹¹⁸ Wholly reliant on voluntary participation by law enforcement agencies, the database provides information on police use-of-force by state.¹¹⁹ Notably, in 2020, the FBI added participation data to its Data Collection, which details which states do, and do not, participate.¹²⁰

In June 2020, President Trump issued an Executive Order (“EO”) on Safe Policing for Safe Communities.¹²¹ The EO’s stated purpose is to restore trust and confidence between communities and law enforcement officers, “particularly in African-American communities” where “we must redouble our efforts as a Nation to swiftly address instances of misconduct.”¹²² The EO orders state and local law enforcement agencies to assess and improve their practices and policies through independent

¹¹² U.S. CONST. art. I, § 8, cl. 1.

¹¹³ *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 537 (2012) (“[I]n exercising its spending power, Congress may offer funds to the States, and may condition those offers on compliance with specified conditions.”); *See Novak, supra* note 109 at 2.

¹¹⁴ *See Violent Crime Control and Law Enforcement Act of 1994*, Pub. L. No. 103-322, 108 Stat. 1796, 2071-72 (1994).

¹¹⁵ *See id.*

¹¹⁶ Some legal experts believe that it is unclear whether Congress would have the power to enact a blanket mandatory disclosure requirement, while others believe that doing so would be considered commandeering and thus unconstitutional. *See Bergengruen, supra* note 5.

¹¹⁷ *See FBI Database, supra* note 86.

¹¹⁸ *See id.*

¹¹⁹ *See id.*

¹²⁰ *See id.*

¹²¹ Exec. Order No. 13,929, 85 Fed. Reg. 37,325 (June 16, 2020); *see* U.S. DEPT. OF JUST., SAFE POLICING FOR SAFE COMMUNITIES FACT SHEET (2021), https://cops.usdoj.gov/pdf/executive_order/Fact_Sheet.pdf (the fact sheet for President Trump’s EO was revised as recently as May 2021 and remains in effect).

¹²² Exec. Order No. 13,929, 85 Fed. Reg. at 37,325.

credentialing bodies, which shall be certified by the Attorney General.¹²³ Consistent with applicable law and the Spending Clause of the Constitution, the EO also directs the Attorney General to grant discretionary funding only to those law enforcement agencies that comply with the credentialing standards.¹²⁴ Additionally, the EO directs the Attorney General to develop a database to “coordinate the sharing of information between and among Federal, State, local, tribal, and territorial law enforcement agencies concerning instances of excessive use of force”¹²⁵ The EO’s proposed database will include, among other information, data on civil judgments against law enforcement officers.¹²⁶

C. *Where is the Data?*

In 2021, only 7,559 out of 18,514 federal, state, local, and tribal law enforcement agencies provided use-of-force data to the Federal Bureau of Investigation’s (“FBI”) database.¹²⁷ As a result of data inaccuracies and the lack of participation by law enforcement agencies in the FBI’s Data Collection, non-profit organizations,¹²⁸ research teams,¹²⁹ media mammoths,¹³⁰ and individuals¹³¹ have begun to compile their own publicly available databases to expose the secrecy of police misconduct statistics. In October 2021, one of the first comprehensive studies on police violence related fatalities in the United States statistics was published by *The*

¹²³ *See id.*

¹²⁴ *See id.*

¹²⁵ *Id.*

¹²⁶ *See id.*

¹²⁷ FED. BUREAU OF INVESTIGATION, *Crime Data Explorer* (last visited Feb. 20, 2022), <https://crime-data-explorer.fr.cloud.gov/pages/le/uof>.

¹²⁸ *See* CAMPAIGN ZERO, <https://campaignzero.org/about/what-we-do/> (last visited Feb. 20, 2022) (“Campaign Zero is a project of the non-profit 501(c)(3) organization, WeTheProtestors,” which funds the Mapping Police Violence database that tracks police use of force nationwide and by state); *see* ACCOUNTABLE NOW, <https://www.accountablenow.com/our-story> (last visited Feb. 20, 2022) (Accountable Now, funded by a group of non-profit organizations and The Leadership Conference of Civil and Human Rights, is a database of police misconduct whose mission is to increase transparency in order to achieve justice and accountability in policing).

¹²⁹ *See* Sharara et al., *supra* note 102 at 1239-55; *see also* Jamiles Lartey, et al., *The Counted*, MIT OPEN DOCUMENTARY LAB (last visited Feb. 20, 2022), <https://docubase.mit.edu/project/the-counted/>.

¹³⁰ *See Fatal Force*, THE WASH. POST (Oct. 31, 2022), https://www.washingtonpost.com/graphics/investigations/police-shootings-database/?itid=lk_interstitial_manual_10.

¹³¹ *See* Philip Matthew Stinson, *The Henry A. Wallace Police Crime Database*, BOWLING GREEN STATE UNIVERSITY (last visited Feb. 20, 2022), <https://policecrime.bgsu.edu/> (Phillip M. Stinson, a former police officer and Professor at Bowling Green State University, created his own database for police violence when he realized that none otherwise existed).

Lancet.¹³² The study’s authors set out to examine “the presence and extent of under-reporting of police violence in the US Government-run vital registration data.”¹³³ Because law enforcement agencies are not required to disclose their information by law, the researchers “compared data from the USA National Vital Statistics System (NVSS) to three non-governmental, open-source databases on police violence,” including Fatal Encounters, Mapping Police Violence, and The Counted.¹³⁴ They found that between 1980 and 2017, over half of the previously estimated number of deaths resulting from police misconduct were missing or unreported—17,000 lives lost and unaccounted for in public records.¹³⁵ One of those lives is 24-year-old Romir Talley, who was fatally shot by a police officer in 2019, and as of 2022, his death is still missing from the federal database.¹³⁶ A majority of the country’s law enforcement agencies continue to decline participation in data collection despite calls for transparency gaining urgency nationwide.¹³⁷ In Pennsylvania, for example, only 1% of police agencies sent their use-of-force statistics to the FBI.¹³⁸ Incomplete data record keeping by agencies makes it nearly impossible to conclude whether any meaningful changes have been enacted in any given city.¹³⁹ The exclusion of individuals like Romir Talley from statistical counts, while also undermining their tragic deaths, prevents the statistical realization of police violence.¹⁴⁰

The sparse and inconsistent data on police misconduct instances and fatalities extends to information on settlements and judgments awarded to the victims of police violence.¹⁴¹ Despite researchers’ and scholars’ attempts to determine how municipalities budget and pay for police misconduct, many cities are unable or unwilling to provide accurate and complete records.¹⁴² Others have shown indifference;¹⁴³ a member of Chicago’s law department explained that “the city doesn’t track the information ‘because it serves us no purpose,’” and that even settlements

¹³² See Sharara et al., *supra* note 102 at 1239-55.

¹³³ *Id.* at 1239.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ See Silver et al., *supra* note 6.

¹³⁷ *Id.*

¹³⁸ See *id.*

¹³⁹ See Thomson-DeVeaux et al., *supra* note 7.

¹⁴⁰ See Sharara et al., *supra* note 102 at 1250 (“Under-reporting obfuscates and minimizes the larger public health issue . . .”).

¹⁴¹ See Tom Jackson, *Congress to consider bill requiring police to report their misconduct settlements*, THE WASH. POST (Mar. 5, 2021 at 7:23 PM), <https://www.washingtonpost.com/nation/2021/03/05/police-misconduct-reporting/>.

¹⁴² See Goodwin et al., *supra* note 9 at 6.

¹⁴³ See Thomson-DeVeaux et al., *supra* note 7.

paid from a dedicated fund were often “later . . . replenished with bond proceeds.”¹⁴⁴

IV. ANALYSIS

Large investors in the municipal bond market have the power to exert financial pressure and impact changes to police reform and data transparency, changes which legislators and regulators have grappled with for decades. Without adequate and accurate knowledge on the specific cases and settlements, it is difficult, if not impossible, to measure any improvements in policing.¹⁴⁵ Police misconduct is a multi-level problem, which means bringing pressure for reform is a multi-level process. By implementing the combined efforts of financial pressure and increased legislation and regulation, municipal bond investors will have the tools to indirectly expedite reform efforts from issuing localities. Enacting police reform requires public access to the currently concealed data that explains the breadth, trends, and shortfalls of police misconduct. The power of the purse of municipal bond investors offers a preliminary solution to igniting reform from the outside, in.

A. The Power of the Purse: How Investors Can Instigate Reform

Regulatory change is often driven by the “realisation among national and international regulators that the financial sector can play an important role in meeting global challenges.”¹⁴⁶ Large institutional investors have the power to withhold funding from investees that pose risks to their reputation and corporate values. The power of the purse, in many cases, can be just as strong as federal demands to influence the way local governments respond to social issues. As attempts by the federal government to express urgency in collecting and reporting police misconduct data have failed,¹⁴⁷ a creative solution can be found by looking to the source of funding that issuers of “police brutality bonds” rely upon. Investors have broad and uninhibited power to either demand change or rescind continued financing because the Spending Clause and the Tenth Amendment pose no barriers to private actors. Additionally, municipal bond issuers have stealthily dodged filing requisite, not voluntary, private

¹⁴⁴ Goodwin et al., *supra* note 9 at 17.

¹⁴⁵ See Tom Jackman, *For a second year, most U.S. police departments decline to share information on their use of force*, THE WASH. POST (June 9, 2021 at 8:00 am), <https://www.washingtonpost.com/nation/2021/06/09/police-use-of-force-data/>.

¹⁴⁶ See PRI, *supra* note 19.

¹⁴⁷ See Bergengruen, *supra* note 5.

debt agreements pursuant to Rule 15c2-12, with only 20% to 45% complying.¹⁴⁸ Demands from large institutional investors have the power to change the statistics by committing to doing independent research and continually requesting information from municipalities. Private and institutional investors commonly acknowledge that “reputations of companies linked to fossil fuels are at immediate risk from a fast-growing divestment campaign.”¹⁴⁹ Recognizing that the same holds true for risks associated with social volatility, investors could protect their reputations by considering the ways in which local governments address their shortfalls in social responsibility.

Although many municipal issuers are under no legal duty to provide, or even collect, data on their local law enforcement agencies’ use-of-force, institutional investors have the power to circumvent the limited disclosure requirements by financially incentivizing transparency. A growing commitment to ESG, as made evident by the Framework established by banks including Goldman Sachs and Morgan Stanley,¹⁵⁰ is slowly entering the municipal bond market. Large banks want to know whether the municipal issuers they consider for investment pose future risks and to ensure their own reputational risk-management.¹⁵¹ When corporate values and actions are misaligned, financial institutions face risks of upsetting shareholders, clients, and the public, resulting in costly reputational damage.¹⁵² Consequently, and as heightened attention is placed on how major financial institutions allocate their money, the threat of pulling money from municipalities with inadequate measures for police reform and data collection can pressurize reform from the power of the purse.

Furthermore, financial incentives from the federal government, like that of President Trump’s 2020 EO which announced that Edward Byrne Memorial Justice Assistance Grant (“JAG”) Program¹⁵³ grants would be discretionarily conditioned upon cooperation with data reporting requests, do not have as much power to incentivize action from local and state governments’ as large financial institutions do.¹⁵⁴ JAG grants, for example, comprise a small percentage of funds spent on police services in most localities. Although still reliant upon the federal funding that JAG

¹⁴⁸ See Ivanov et al., *supra* note 92 at 23.

¹⁴⁹ Damian Carrington, *AXA IM warns that companies linked to fossil fuels risk their reputations*, THE GUARDIAN (Jan. 15, 2015), <https://www.theguardian.com/environment/2015/jan/15/axa-warns-companies-linked-fossil-fuel-risk-reputations>.

¹⁵⁰ See *The Framework*, *supra* note 67.

¹⁵¹ See generally *id.*

¹⁵² See *id.*

¹⁵³ JAG, *supra* note 106.

¹⁵⁴ See NATHAN JAMES AND KRISTIN FINKLEA, CONG. RSCH. SERV., R46443, PROGRAMS TO COLLECT DATA ON LAW ENFORCEMENT ACTIVITIES: OVERVIEW AND ISSUES 11 (2021).

grants provide, municipalities are more heavily reliant upon issuing municipal bonds that they can issue on a moment's notice to finance unexpected settlements.¹⁵⁵ If investors begin to take action to demand transparency from municipalities in conjunction with regulatory demands, social change can be sooner realized.

ESG bonds, or “green bonds” offer a strong example of how bond investors can harness their power of the purse to enact change. Much like police brutality bonds, green bonds require a comprehensive understanding of data that shows sustainability shortfalls and successes in order to determine their volatility. Upon the inception of green bonds over a decade ago, investors made clear to issuers that they valued sustainable investment opportunities and wanted data prior to making decisions.¹⁵⁶ In turn, issuers began to look for ways to improve and increase their commitment to sustainability and drive down their carbon emissions.¹⁵⁷ As of 2021, the green bond market currently stands at just over half a trillion dollars—a 50% increase from the market size just five years prior.¹⁵⁸ The upward trend of investment in green bonds evidences the market's growing interest in socially responsible investing.¹⁵⁹

Another way that investors can employ data to enact change may at first seem ironic: increasing investments into governments whose data shows a struggle to control police misconduct—but shows a desire to do so.¹⁶⁰ Adasina Social Capital¹⁶¹ (“Adasina”) does just that.¹⁶² Adasina's investment strategy is counterintuitive to what many commentators suggest in the age of ESG—it looks for bond offerings in cities like Ferguson or Kenosha, where a high percentage of city budgets comes from

¹⁵⁵ *See id.*

¹⁵⁶ *See 10 Years of Green Bonds: Creating the Blueprint for Sustainability Across Capital Markets*, THE WORLD BANK (Mar. 18, 2019), <https://www.worldbank.org/en/news/immersive-story/2019/03/18/10-years-of-green-bonds-creating-the-blueprint-for-sustainability-across-capital-markets>.

¹⁵⁷ *See generally* Matthew Goldstein and Emily Flitter, *Cracking Down on a Wall Street Trend: E.S.G. Makeovers*, THE NEW YORK TIMES (Sept. 17, 2022), <https://www.nytimes.com/2022/09/17/business/dealbook/esg-wall-street.html>.

¹⁵⁸ Liam Jones, *\$500bn Green Issuance 2021: social and sustainable acceleration: Annual green \$1tn in sight: Market expansion forecasts for 2022-2025*, CLIMATE BONDS INITIATIVE (Jan. 31, 2022), <https://www.climatebonds.net/2022/01/500bn-green-issuance-2021-social-and-sustainable-acceleration-annual-green-1tn-sight-market>.

¹⁵⁹ *See* Goldstein et al., *supra* note 157.

¹⁶⁰ *See generally* Bernice Napach, *Why Rachel Robasciotti Works to ‘Mobilize Investors’*, THINKADVISOR (Jan. 6, 2022, 9:11AM), <https://www.thinkadvisor.com/2022/01/06/why-rachel-robasciotti-works-to-mobilize-investors/?slreturn=20220012230601>.

¹⁶¹ *See generally* ADASINA SOCIAL CAPITAL [hereinafter *ADASINA*], <https://adasina.com/campaigns/>.

¹⁶² Napach, *supra* note 160.

finances and fees on residents— and it buys as many as it can.¹⁶³ By pouring financing into struggling cities, or those with a low “fiscal justice” rating, investors at Adasina are able to engage with community leaders and law enforcement agencies to provide recommendations on how to enact change that will reduce their expenses.¹⁶⁴ Rather than forcing the hand of law enforcement agencies to begin collecting data by threats of withdrawing funding, Adasina utilizes the power of the purse by giving money to the cities that struggle the most with police misconduct as a way to open the door for conversation on policy reform.¹⁶⁵

B. *Proven Benefits of Data Collection and Disclosure*

State and local governments nationwide should look to New York City’s ClaimStat¹⁶⁶ program as a case study in understanding the potential benefits of investing time and money into collecting and reporting police misconduct data. Currently, many state and local governments excuse a lack of data oversight with lack of resources. However, by investing in data collection and cross-agency communication, law enforcement agencies and local governments can reduce costs associated with police misconduct and bring about positive reform. In order to tackle its policing problems at the source, New York City Comptroller Scott M. Stringer launched ClaimStat in 2014 to remedy the local government’s problems through data informed analysis.¹⁶⁷ ClaimStat, a data-driven initiative, allows “City agencies to review claims data in real time, identify claim filing trends that are costly to the City, and implement policies and best practices to mitigate risk.”¹⁶⁸ Through ClaimStat, local agencies like the New York Police Department (“NYPD”) are able to assess shortfalls quickly in order to take action.¹⁶⁹ The program’s longest standing partnership, between the Comptroller’s Office and the NYPD, proved almost immediately resourceful in reducing tort claims and settlements filed against the NYPD.¹⁷⁰ Prior to ClaimStat’s inception, the number of tort claims filed and settled against the NYPD steadily increased between

¹⁶³ *See id.*

¹⁶⁴ *See id.*

¹⁶⁵ *See generally* ADASINA, *supra* note 161.

¹⁶⁶ SCOTT M. STRINGER ET AL., N. Y. C. COMPTROLLER, BUREAU OF POLICY AND RESEARCH, CLAIMSTAT 2.0: REDUCING CLAIMS AND PROTECTING NEW YORKERS 1 (2017), <https://comptroller.nyc.gov/wp-content/uploads/documents/ClaimStat-2-0.pdf>.

¹⁶⁷ *Id.* at 4.

¹⁶⁸ SCOTT M. STRINGER ET AL., OFFICE OF THE N. Y. C. COMPTROLLER, CLAIMS REPORT: FISCAL YEAR 5 [hereinafter *ClaimStat Claims Report*] (2021), <https://comptroller.nyc.gov/wp-content/uploads/documents/Claims-Report-FY-2020.pdf>.

¹⁶⁹ Stringer et al., *supra* note 166, at 4.

¹⁷⁰ *See id.* at 5.

2011 and 2014.¹⁷¹ After ClaimStat's inception in 2014, however, the number of tort claims filed and settled against the NYPD steadily dropped year-over-year, down by roughly 60% as of 2020, proving that knowledge is power.¹⁷²

C. *Regulatory Recommendations*

The MSRB has the power to revise municipal bond disclosure requirements for issuers to specifically account for the ongoing ambiguity stemming from Rule 15c2-12, as well as concerns relating to the use of municipal bonds to fund police misconduct related settlements. First, the MSRB should act swiftly to clarify the ambiguous language of Rule 15c2-12 and define more clearly which disclosures and private debts are "material." In late 2021, SEC Chairman Gary Gensler signaled that an overhaul of disclosure requirements in the municipal bond market may be on the horizon.¹⁷³ In recognition of the market's opaque disclosures, and the risks associated with widespread default, industry experts are rethinking pre-trade transparency requirements.¹⁷⁴ As COVID-19 adds financial stress to local governments and financial institutions alike, determining risk and appropriately pricing bonds is essential to preventing liquidity breakdowns in the event of financial crisis.¹⁷⁵

The MSRB should also revise its mandatory municipal bond offering disclosures to require that all bonds that will fund settlements and judgments are issued and named as distinct judgment obligation bonds, rather than allowing settlements to be financed by the broader pool of general obligation bond funds. Without such a requirement, cities can discretely pay off settlements without disclosing detailed information to investors or keep their taxpayers informed of costly settlements resulting from police violence. By requiring settlement and judgment bonds to be issued in distinct categories, and offered independently of general obligation bonds, underwriters would be able to work with both investors and issuers to set ongoing reporting agreements. As is often the case with green bonds, those issued independently to serve a specific purpose can be subjected to varying reporting requirements as dictated by the investor.¹⁷⁶

¹⁷¹ ClaimStat Claims Report, *supra* note 168, at 13.

¹⁷² *Id.*

¹⁷³ See Jack Pitcher, *Gensler Turns Spotlight on How Hard It Can Be to Get Bond Prices*, BLOOMBERG (Sept. 14, 2021, 1:35 PM), <https://www.bloomberg.com/news/articles/2021-09-14/gensler-turns-spotlight-on-how-hard-it-can-be-to-get-bond-prices>.

¹⁷⁴ *See id.*

¹⁷⁵ *See id.*

¹⁷⁶ See Gong Cheng et al., *Sovereigns and sustainable bonds, challenges and new options*, BIS QUARTERLY REVIEW 1, 52 (Sept. 19, 2022), https://www.bis.org/publ/qtrpdf/r_qt2209d.htm.

For example, an investor knowingly financing a judgment bond would have an opportunity to engage with the city and encourage policy reform; the bondholder could work with the city to negotiate interest rates by rewarding ongoing data reporting and commitment to reform, and penalizing data secrecy and complacency. Although the MSRB is limited in its ability to require disclosure, calls for police reform and the financial industry's commitment to ESG principles make revisions necessary in order for both bond issuers and bondholders to maintain trust.

D. *Limitations*

Although the financial industry offers a potential solution to indirectly demand police reform from local governments and law enforcement agencies, its power does have limits. First, law enforcement officers and chiefs of police have raised financial concerns that prevent them from compiling and tracking data with accuracy.¹⁷⁷ In Houston, one law enforcement agency expressed its support for gathering data to report to the FBI's data-collection but lacked adequate staffing in order to do so.¹⁷⁸ Even if the financial institutions withheld funding or shifted investment strategies accordingly, law enforcement agencies across the country may still struggle to gather the necessary resources to create a database or compile the data.

V. CONCLUSION

The complexity of the problem of police brutality still plagues the United States today, and solutions for reform remain dormant beneath the veil of secrecy that hides the problem-defining data. Although some law enforcement agencies release varying levels of detailed data on their police misconduct statistics, the inconsistent patchwork of local and federal data collection requirements depletes hope for immediate reform.¹⁷⁹ Now that Wall Street investors are beginning to question social stability and racial equity of potential municipal issuers, a novel source for potential reform blooms. The power of the municipal bond market is unrealized in addressing concerns of police misconduct and has broad potential to bring about real change that legislation and regulation cannot. Those who are "charged with the power of the purse . . . need to know what kind of risk" they are managing, and if police misconduct settlements cause the

¹⁷⁷ See Jackman, *supra* note 145.

¹⁷⁸ *Id.* ("[S]ome agencies reported that accessing the restricted data entry portal was 'a hassle,' and the bureau estimated in a filing in the Federal Register that it took about 38 minutes to enter the data for each incident.")

¹⁷⁹ See Bergengruen, *supra* note 5.

municipality to lose millions, then the public should be made aware of such significant lawsuits.¹⁸⁰ When traditional approaches fail, however, creative economic-based approaches may offer solutions. Once armed with accurate data on police misconduct, investors will have the ability to incentivize policy reform that regulatory action has failed to enact for decades.

¹⁸⁰ See Steve Bohnel, *Bill would increase transparency in county lawsuit settlements*, BETHESDA BEAT (May 19, 2021, 6:13 PM), <https://bethesdamagazine.com/bethesda-beat/government/bill-would-increase-transparency-in-county-lawsuit-settlements/>.