

# POLICE QUOTAS

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*The American public is slowly recognizing the criminal justice system's deep defects. Mounting visual evidence of police brutality and social protests are generating an appetite for something different. How to change this system is still an open question. People across the political spectrum vary in their conceptions of the pressing problems and how to solve them. Interestingly, there is one consequential and overlooked area of the criminal justice system where there is broad consensus: police quotas.*

*Police quotas are formal and informal measures that require police officers to issue a particular number of citations or make a certain number of arrests. Although law enforcement leadership typically denies implementing quotas, courts, legislators, and officers have all confirmed the existence of this practice and linked it to odious criminal justice problems such as racial profiling, policing for profit, and over-criminalization. These problems have led legislators in many states to implement statutory prohibitions on quotas. Some of these statutes are of recent vintage and others are decades old. Nevertheless, these prohibitions and their attendant litigation have escaped sustained analytical scrutiny. Legal scholars typically overlook police quotas, subsume them within other categories (e.g., broken windows policing), or give pat acknowledgment of their existence without explaining how they work.*

*This Article corrects these omissions and makes two arguments. First, it contends that police quotas are a significant but undertheorized feature of criminal law and procedure. Quotas make police rewards and sanctions significant features of punishment in ways that can trump criminal offending and pervert due process principles. Second, it argues that quota-based policing is a unique area where there is widespread agreement and possibilities for change. Liberals, libertarians, conservatives, police officers, police unions, and racial minorities have all criticized police quotas. These vastly different constituents have argued that quotas distort police discretion and produce unnecessary police-civilian interactions. This Article supplements these arguments with a novel descriptive, statutory, and jurisprudential account of police quotas in the United States. It offers a framework for understanding the arguments for and objections to quotas, and proposes some normative strategies that could build on statutory and litigation successes.*

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## INTRODUCTION

Before the Great Lockdown, criminal justice reformers across the ideological spectrum lamented “policing for profit.”<sup>1</sup> Commentators usually discuss this practice through the more sanitized sounding category of “legal financial obligations” (LFOs).<sup>2</sup> The economic implications of the COVID-19 pandemic have put a spotlight on this type of predatory “cash register justice.”<sup>3</sup> As of this writing, the National League of Cities has reported that 2,100 cities anticipate budget deficits.<sup>4</sup> Since hundreds of jurisdictions have relied on LFOs in the past,<sup>5</sup> and some have continued to do so during the crisis,<sup>6</sup> there is good cause for concern that LFOs will figure into an uncertain economic future. As Professor Brandon Garrett notes, “[a]fter the last financial crisis, most states ramped up on fines and fees,” transformed police

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<sup>1</sup> DICK M. CARPENTER II, LISA KNEPPER, ANGELA C. ERICKSON & JENNIFER McDONALD, *INSTITUTE FOR JUSTICE, POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE* (2d ed. 2015); Roger Pilon, *America’s Frightening “Policing for Profit” Nightmare*, NAT’L INT. (Jan. 23, 2015), <https://nationalinterest.org/feature/americas-frightening-policing-profit-nightmare-12094>; Emma Andersson & Susan Dunn, *‘Policing For Profit’ Is Alive and Well in South Carolina*, ACLU (Feb. 12, 2019, 3:45 PM), <https://www.aclu.org/blog/criminal-law-reform/reforming-police/policing-profit-alive-and-well-south-carolina>.

<sup>2</sup> These LFOs include, but are not limited to: “usage fees” levied on defendants for their arrest, adjudication, incarceration, probation, and electronic monitoring; statutory fines that impose economic sanctions as punishments for crimes; and civil forfeiture laws that allow governments to confiscate money and property that are purportedly linked to crime.

<sup>3</sup> See Laura I. Appleman, *Nickel and Dimed into Incarceration: Cash Register Justice in the Criminal System*, 57 B.C. L. REV. 1483 (2016) (discussing the turning of the criminal justice system into a revenue center for state courts and corrections); see also *Developments in the Law—Policing and Profit*, 128 HARV. L. REV. 1706, 1723–46 (2015) (discussing usage fees, for-profit probation supervision and civil forfeiture); Bernadette Atuahene, *Predatory Cities*, 108 CALIF. L. REV. 107, 175–78 (2020) (discussing predatory fees various U.S. cities impose on residents through excessive fines, property forfeiture, and debtors’ prisons); Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 CALIF. L. REV. 277, 285–88 (2014) (describing various economic sanctions, including statutory fines, restitution, forfeitures, administrative court costs, incarceration costs, parole processing, and probation fees).

<sup>4</sup> NAT’L LEAGUE OF CITIES & U.S. CONF. OF MAYORS, *THE ECONOMY AND CITIES: WHAT AMERICA’S LOCAL LEADERS ARE SEEING* (2020), <https://www.usmayors.org/2020/04/14/the-economy-and-cities-what-americas-leaders-are-seeing>.

<sup>5</sup> See Mike Maciag, *Addicted to Fines*, GOVERNING (Sept. 2019), <https://www.governing.com/topics/finance/gov-addicted-to-fines.html> (finding through an extensive national analysis that fines fund “more than 10 percent of general fund revenues in nearly 600 U.S. jurisdictions”).

<sup>6</sup> Brandon L. Garrett, *Guest Post: Court Fines and Fees Shouldn’t Be Used to Recover Lost Revenue from Pandemic*, WASH. POST (May 12, 2020, 7:00 AM), <https://www.washingtonpost.com/crime-law/2020/05/12/guest-post-court-fines-fees-shouldnt-be-used-recover-lost-revenue-pandemic/> (“[S]ome jurisdictions are still jailing people for unpaid debt, potentially exposing them to the novel coronavirus, which is exploding in our jails.”).

officers into “revenue collectors,” and relied on “our poorest citizens to fund basic functions of government.”<sup>7</sup>

Amidst the epidemiological crisis, the summer 2020 protests inspired a new, popular reexamination of policing. Rooted primarily in anger around anti-Black police violence, the protests productively altered public opinion and amplified longstanding issues tied to the political economy of policing.<sup>8</sup> Concerns about cities using the police to generate municipal funds—which garnered attention after the Ferguson unrest six years ago<sup>9</sup>—remain on the reform agenda. But now there is closer scrutiny on the core functions of the police. Popular opinion still hews to the belief that law enforcement serves a public safety function,<sup>10</sup> but visual evidence of racialized police killings is applying pressure to that assumption. These instances of state violence have forced the general public to grapple with the racially and financially exploitative nature of the criminal justice system. Lurking beneath these concerns is a practice that has eluded legal scholars despite its reported prominence in criminal justice administration: police quotas.

Police quotas are formal and informal measures that require police officers to issue a particular number of citations or make a certain number of arrests. They are sometimes formal and pre-specify a quantity.<sup>11</sup> Other times, they are informal and premised on an implied understanding that employment actions—promotion, compensation, or discipline—will be predicated on an officer’s ability to engage in a “sufficient” amount of enforcement activity.<sup>12</sup> Evaluative jargon such

<sup>7</sup> *Id.*

<sup>8</sup> See Nate Cohn & Kevin Quealy, *How Public Opinion Has Moved on Black Lives Matter*, N.Y. TIMES (June 10, 2020), <https://www.nytimes.com/interactive/2020/06/10/upshot/black-lives-matter-attitudes.html> (noting leftward public opinion shift in support of race and criminal justice issues).

<sup>9</sup> See Editorial, *Policing for Profit Perverts Justice: Our View*, USA TODAY (Mar. 11, 2015, 7:01 PM), <https://www.usatoday.com/story/opinion/2015/03/11/ferguson-mo-police-traffic-tickets-justice-department-editorials-debates/70175690> (bringing attention to “policing for profit” after Ferguson protests).

<sup>10</sup> See Kendall Karson, *64% of Americans Oppose ‘Defund the Police’ Movement, Key Goals: Poll*, ABC NEWS (June 12, 2020, 5:30 AM), <https://abcnews.go.com/Politics/64-americans-oppose-defund-police-movement-key-goals/story?id=71202300> (describing how Americans oppose calls for defunding the police).

<sup>11</sup> See, e.g., MO. ANN. STAT. § 304.125 (West, Westlaw through 2020 2d Reg. Sess.) (“No political subdivision or law enforcement agency shall have a policy requiring or encouraging an employee to issue a certain number of citations for traffic violations on a daily, weekly, monthly, quarterly, yearly, or other quota basis.”).

<sup>12</sup> See, e.g., TEX. TRANSP. CODE ANN. § 720.002(a)(1) (West, Westlaw through end of 2019 Reg. Sess.) (“A political subdivision or an agency of this state may not establish or maintain, formally or informally, a plan to evaluate, promote, compensate, or discipline a peace officer according to the officer’s issuance of a predetermined or specified number of any type or combination of types of traffic citations.”).

as “benchmarks,”<sup>13</sup> “productivity goals,”<sup>14</sup> and a host of other terms often obscure the operation of what are sheer police quotas.<sup>15</sup>

Quotas may seem like an inapt object of inquiry considering current calls for radical change as opposed to incremental reforms. But, as this Article shows, quotas animate important criminal justice issues, chiefly racial profiling, civil rights violations, and police corruption. In *Floyd v. City of New York*, the federal decision that struck down the New York Police Department’s racially discriminatory stop-and-frisk policy, quotas were prominent themes.<sup>16</sup> The Department of Justice’s report on Ferguson, which made the country aware of policing for profit, highlighted quota abolition in its Recommendation section.<sup>17</sup> Interestingly, more than twenty states have statutory prohibitions on police quotas.<sup>18</sup> Criminal defendants, civil rights plaintiffs, aggrieved police officers, and police unions have deployed these statutes in state and federal courts to challenge quotas and extract concessions from municipalities.<sup>19</sup> Nevertheless, police quotas, like criminal enforcement mechanisms more generally,<sup>20</sup> have not received meaningful consideration by legal academics.<sup>21</sup> Instead, scholars typically engage quotas via the related but analytically distinct practice of broken windows policing or anecdotal accounts.<sup>22</sup> This lack of sustained attention

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<sup>13</sup> SERDAR KENAN GUL & PAUL E. O’CONNELL, POLICE PERFORMANCE APPRAISALS: A COMPARATIVE PERSPECTIVE 71 (2013) (acknowledging the existence of quotas and noting how some police departments use “benchmark targets for summonses and arrests”).

<sup>14</sup> POLICE REFORM ORG. PROJECT, WORKING TOWARDS A MORE SAFE AND FAIR CITY: ABOLISHING QUOTAS AND INVOLVING COMMUNITIES 2 (2014), [https://www.policereformorganizingproject.org/wp-content/uploads/2012/09/Working\\_Towards\\_a\\_More\\_Safe\\_and\\_Fair\\_City.pdf](https://www.policereformorganizingproject.org/wp-content/uploads/2012/09/Working_Towards_a_More_Safe_and_Fair_City.pdf) (“[P]roductivity goals”[sic] are a euphemism for a ‘quota system.’”).

<sup>15</sup> See *infra* notes 32–36.

<sup>16</sup> 959 F. Supp. 2d 540, 596–602 (S.D.N.Y. 2013).

<sup>17</sup> U.S. DEP’T OF JUST., C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 91 (2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) [hereinafter Ferguson Report].

<sup>18</sup> See *infra* Appendix A.

<sup>19</sup> See *infra* Part II.

<sup>20</sup> Alice Ristroph, *The Thin Blue Line from Crime to Punishment*, 108 J. CRIM. L. & CRIMINOLOGY 305 (2018) (describing how substantive criminal law scholarship rarely addresses issues of police conduct).

<sup>21</sup> Some noteworthy exceptions that have given some attention to quotas include Nathaniel Bronstein, Note, *Police Management and Quotas: Governance in the CompStat Era*, 48 COLUM. J.L. & SOC. PROBS. 543 (2015) and Mary De Ming Fan, *Disciplining Criminal Justice: The Peril Amid the Promise of Numbers*, 26 YALE L. & POL’Y REV. 1 (2007).

<sup>22</sup> On broken windows policing, see generally ISSA KOHLER-HAUSMANN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING (2018) (investigating the consequences of broken windows policing in New York City). For anecdotal accounts, see COREY PEGUES, ONCE A COP: THE STREET,

persists despite scores of case law,<sup>23</sup> empirical evidence,<sup>24</sup> references in government reports,<sup>25</sup> and annual settlements,<sup>26</sup> that all point to the existence of police quotas across the country.

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THE LAW, TWO WORLDS, ONE MAN 146 (2016) (former NYPD officer describing the existence of quotas in the department); NORM STAMPER, TO PROTECT AND SERVE: HOW TO FIX AMERICA'S POLICE 1–4 (2016) (former San Diego officer describing the existence of quotas in his department); John Marzulli, *We Fabricated Drug Charges Against Innocent People to Meet Arrest Quotas, Former Detective Testifies*, N.Y. DAILY NEWS (Oct. 13, 2011), <https://www.nydailynews.com/news/crime/fabricated-drug-charges-innocent-people-meet-arrest-quotas-detective-testifies-article-1.963021> (officer admitting that the NYPD framed people to meet quota requirements).

<sup>23</sup> See, e.g., *Becker-Ross v. State*, 595 S.W.3d 261, 265, 269, 272 (Tex. App. 2020) (finding that there was sufficient evidence to show that the city administrator pressured the city marshal to write a certain number of traffic tickets within a specified period in violation of state prohibition on quotas); *Policemen's Benevolent Labor Comm. v. City of Sparta*, No. 5-19-0039, 2019 WL 5457948, at \*1, \*7 (Ill. App. Ct. Oct. 22, 2019) (concluding that a police department's practice of evaluating citations, traffic stop warnings, and extra-duty assignments violated state law prohibiting the implementation of quotas); *Gerwer v. Kelly*, 980 N.Y.S.2d 275, 275 (Sup. Ct. 2013) (ruling against an officer who falsified thirty-seven fictitious summonses in order to meet an alleged quota requirement); *People v. Schwartz*, No. 282028, 2009 WL 30457, at \*1, (Mich. Ct. App. Jan. 6, 2009) (noting that the defendant officer's issuing of four undated speeding tickets to meet a quota would secure entitlement to overtime).

<sup>24</sup> See JOHN McLAUGHLIN, McLAUGHLIN & ASSOC.'S, *NEW YORK PATROLMEN'S BENEVOLENT ASSOCIATION MEMBERSHIP STUDY* 53 (2016), <https://www.nycpba.org/media/19346/160315-pbasurvey.pdf> (surveying approximately 6,000 members of New York City's police union which found that 89% of respondents believed that NYPD supervisors imposed quotas); Jonathan Auerbach, *Are New York City Drivers More Likely to Get a Ticket at the End of the Month?*, SIGNIFICANCE MAG., Aug. 2017, at 25 (using significance testing to conclude that New York City drivers are more likely to receive a ticket at the end of the month, substantiating a long-held belief about the use of quotas); Scott W. Phillips, *Police Discretion and Boredom: What Officers Do When There Is Nothing to Do*, 45 J. CONTEMP. ETHNOG. 580, 589 (2016) (qualitative study of a police department finding that officers noted that there was no formal quota but that they were expected write about ten tickets a month).

<sup>25</sup> See Ferguson Report, *supra* note 17, at 11; U.S. DEP'T OF JUST., C.R. DIV. & U.S. ATT'Y'S OFF., DIST. OF N.J., *INVESTIGATION OF THE NEWARK POLICE DEPARTMENT* 21 (2014), [https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark\\_findings\\_7-22-14.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf).

<sup>26</sup> See Mike Sprague, *Whittier to Pay \$3 Million to Settle Police Ticket Quota Case*, WHITTIER DAILY NEWS (Jan. 16, 2020, 2:11 PM), <https://www.whittierdailynews.com/2020/01/15/whittier-to-pay-3-million-to-settle-police-ticket-quota-case>; Matt Sledge, *Gretna Police Agree to \$70K Settlement in Ex-Cop's Lawsuit Claiming Arrest Quotas*, NEW ORLEANS ADVOC., (June 3, 2019, 11:12 AM), [https://www.nola.com/news/courts/article\\_b1990837-e425-5c46-a3d8-4817a8b81367.html](https://www.nola.com/news/courts/article_b1990837-e425-5c46-a3d8-4817a8b81367.html); Joshua Sharpe, *DeKalb Still Denies Police 'Quota' System After Settling Suit for \$150K*, ATLANTA J.-CONST. (Sept. 27, 2018), <https://www.ajc.com/news/crime-law/dekalb-still-denies-police-quota-system-after-settling-suit-for-150k/IuFHQg3pT4lnsVyPETZxkM>; Peggy Wright, *Mendham Twp. Cop's 'Ticket Quota' Lawsuit Settles for \$650K*, MORRISTOWN DAILY REC. (Dec. 5, 2017, 8:37 AM), <https://www.dailyrecord.com/story/news/2017/12/04/mendham-twp-cops-ticket-quota-lawsuit-settles-650-k/918964001>; Hailey Branson-Potts & Emily Alpert Reyes, *City Will Pay LAPD Officer Nearly \$1 Million to End Lawsuit over Ticket Quotas*, L.A. TIMES (Jan. 13, 2016, 11:05 PM), <https://www.latimes.com/local/cityhall/la-me-0114-lapd->

This Article makes two straightforward arguments. First, it contends that police quotas shape the enforcement of criminal laws by introducing a host of perverse incentives into an already insecure body of criminal procedure. This leads to the Article's second claim. I argue that quota-based policing is a discrete area where there is widespread agreement about the problems with quota-based policing and possibilities for change. Police unions, often considered the source of our penal status quo, have argued that such requirements distort discretion and generate unnecessary police-civilian contact.<sup>27</sup> Liberal, conservative, and libertarian reformers have all lodged similar arguments and emphasized the ways quotas lead to violations of civil liberties.<sup>28</sup>

The broad condemnation of quota-based policing makes this issue a particularly ripe place for reform, and an area that should be scrutinized by legal scholars and advocates. This Article inaugurates the conversation. It builds on the fragments of existing scholarship to offer a robust framework for understanding police quotas. It offers a novel descriptive and statutory account of police quotas and is the first piece of scholarship to describe the jurisprudential landscape of this practice.

Eliminating police quotas would be no panacea. However, it is an underappreciated area that has synergies with a larger constellation of penal change strategies. For abolitionists, addressing quotas could be an interim step toward a world with a smaller police imprint.<sup>29</sup> If advocates achieve the goal of defunding the police, addressing quotas will become especially central, as smaller police forces may increas-

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settlement-20160114-story.html; J. David Goodman, *Officer Who Disclosed Police Misconduct Settles Suit*, N.Y. TIMES (Sept. 29, 2015), <https://www.nytimes.com/2015/09/30/nyregion/officer-who-disclosed-police-misconduct-settles-suit.html> (\$600,000); Dave Phillips, *Former Novi Officer Gets \$280,000 in Ticket Quota Lawsuit Settlement*, OAKLAND PRESS (Apr. 17, 2014), [https://www.theoaklandpress.com/news/nation-world-news/former-novi-officer-gets-280-000-in-ticket-quota-lawsuit-settlement/article\\_35e4db17-f817-5965-98c9-cef2484f562b.html](https://www.theoaklandpress.com/news/nation-world-news/former-novi-officer-gets-280-000-in-ticket-quota-lawsuit-settlement/article_35e4db17-f817-5965-98c9-cef2484f562b.html); Joel Rubin & Catherine Saillant, *L.A. Approves \$6-Million Settlement over Alleged Traffic Ticket Quotas*, L.A. TIMES (Dec. 10, 2013, 12:00 AM), <https://www.latimes.com/local/la-xpm-2013-dec-10-la-me-tickets-20131204-story.html>.

<sup>27</sup> See *infra* Section III.C.1.

<sup>28</sup> See *infra* Section III.C.3.

<sup>29</sup> See Dorothy E. Roberts, *The Supreme Court, 2018 Term - Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 11, 114–18 (2019) (arguing that abolition movement activists can utilize the Reconstruction Amendments and “non-reformist reforms” to temporarily further their aims and ultimately build a society without prisons); Anna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 460 (2018) (describing how the abolitionist approach focuses on reducing the greater social and fiscal footprint of police on society as opposed to efforts to improve the police and criminal law).

ingly rely on quotas and technology to do more with less personnel.<sup>30</sup> This is precisely what has occurred in Camden, New Jersey, a city that is considered a model for police reform.<sup>31</sup> For law enforcement officials who oppose quotas and a general public who believe the police have a role in our social order, attention to quotas could lead to more rigorous conversations about the function of police.

This Article proceeds in four Parts. Part I sketches the different ways police quotas take shape organizationally. It then offers a brief legislative history and analysis of anti-quota statutes.

Part II moves to the caselaw and describes how police officers, criminal defendants, and civil rights plaintiffs have challenged police quotas. This Part shows how doctrinal and evidentiary hurdles have hampered claims, but also details how some parties have succeeded in court or extracted settlements from municipalities.

Part III captures the definitional contours of quotas. First, I discuss the defensibility of this practice. Though often unarticulated, police quotas give law enforcement leadership a way to monitor, measure, and evaluate police activity while guarding against legitimate concerns about officers shirking their duties. Such evaluations are akin to the kinds of assessments that are standard in many workplaces. This Part offers responses to these defenses. It also describes additional problems that police quotas pose for three groups: police officers forced to comply with these requirements; marginalized communities that are often the subjects of quota-satisfying officers; and a general public that can be deprived of efficiently used resources because of quotas.

Part IV takes a normative turn. This Part offers suggestions for how to raise public awareness of quota-based policing and generate coalition-building in states that do not already have quota prohibitions. This Part also provides suggestions on how to improve existing statutes.

The Conclusion offers thoughts on the urgency of this topic, and the Appendices offer a comprehensive list of quota bills and statutes.

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<sup>30</sup> Stephen Rushin & Roger Michalski, *Police Funding*, 72 FLA. L. REV. 277, 285 (2020) (suggesting that defunding police could lead to excessive ticketing and civil asset forfeiture); see Ingrid Burrington, *What Amazon Taught the Cops*, NATION (May 27, 2015), <https://www.thenation.com/article/archive/what-amazon-taught-cops> (discussing how algorithmic criminal justice assumes the credibility of the underlying crime data and noting how “countless scandals over quotas” in policing suggest that this is a huge assumption).

<sup>31</sup> See Sidney Fussell, *What Disbanding the Police Really Meant in Camden, New Jersey*, WIRED (July 1, 2020, 3:03 PM), <https://www.wired.com/story/disbanding-police-really-meant-camden> (describing the increase in electronic surveillance after the city overhauled its police department); see *infra* notes 177–83 and accompanying text.

## I

## THE TEXTURE OF POLICE QUOTAS

This Part maps the terrain of police quotas. Scholars and the media often discuss the existence of quotas, but the term itself is often undefined or poorly described. Section I.A offers a robust representation of how quotas are administered. Section I.B details the statutory landscape of anti-quota laws and categorizes the twenty-one states that have enacted such legislation.

*A. The Definitional Landscape*

Quotas are formal and informal measures that require law enforcement to have a certain number of contacts with individuals or issue a certain number of citations or arrests. Because quotas have a pejorative connotation, law enforcement organizations use a range of alternative terms to accomplish the same work. These phrases—which are sometimes used earnestly and sometimes as subterfuge—include “benchmarks,”<sup>32</sup> “productivity goals,”<sup>33</sup> “targets,”<sup>34</sup> “performance management,”<sup>35</sup> and “objectives.”<sup>36</sup> To get a more granular understanding of quotas, one might consider four features of this police practice: 1) the level of formality; 2) how they are quantified; 3) the law enforcement action that is required; and 4) the prospect of an adverse/favorable employment action.

*1. Formality*

Quotas range in their formality. Like any other policy, quotas can operate through formal channels (e.g., in writing or through official

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<sup>32</sup> GUL & O’CONNELL, *supra* note 13.

<sup>33</sup> See POLICE REFORM ORG. PROJECT, *supra* note 14; Robert Gangi, *When Police Are Encouraged to Abuse, Not Protect*, ALTERNET (Nov. 30, 2012), <https://www.alternet.org/2012/11/when-police-are-encouraged-abuse-not-protect> (“NYPD officials use the term ‘productivity goals’ as a poorly veiled euphemism for the Department’s quota system, as a thin cover for the pressure placed on street officers to make an expected number of arrests, or to issue a sufficient number of summonses.”).

<sup>34</sup> Malcolm K. Sparrow, *Measuring Performance in a Modern Police Organization*, NEW PERSPS. POLICING BULL., Mar. 2015, at 1, 18 (“[S]ome departments set targets for functional outputs, including enforcement activities such as arrests, stops, searches and traffic citations.”).

<sup>35</sup> Jen Chung, *Bloomberg Says Police Quotas Will Be Investigated*, GOTHAMIST (Nov. 9, 2010, 5:45 PM), <https://gothamist.com/news/bloomberg-says-police-quotas-will-be-investigated> (quoting Mayor Bloomberg as saying “we don’t have quotas . . . but we certainly have performance management”).

<sup>36</sup> TODD DOUGLAS, *THE POLICE IN A FREE SOCIETY: SAFEGUARDING RIGHTS WHILE ENFORCING THE LAW* 71 (2017) (noting that many police agencies “have informal quotas: *precinct averages*, *benchmarks*, *performance goals*, *objectives*, *targets*, and other euphemistic references to what is essentially a quota”).

communication) or through informal mechanisms. A useful example of a formal quota can be found in Ridgetop, Tennessee.<sup>37</sup> The city of approximately 2,000 people disbanded its police department in 2019 after officers exposed an attempt by the mayor and vice mayor to impose a quota. Officers recorded both officials demanding that the department write 210 citations to help generate revenue for the city.<sup>38</sup> Another example is from Brooklyn, New York, where a New York Police Department (NYPD) official posted memos in a police stationhouse detailing how many summonses cops were required to hand out.<sup>39</sup> One document outlined the specific number of tickets needed: sixty cell phone, fifty seatbelts, sixty-five double park, forty bus stops, and twenty-five tints.<sup>40</sup> Another memo began, “[g]ood day we need the following,” and proceeded to list various moving violations.<sup>41</sup> That document required that summonses be handed out at accident-prone locations and specified five intersections.<sup>42</sup>

Quotas can also be informal and based on unwritten requirements or implied understandings.<sup>43</sup> In North Brunswick, New Jersey, one veteran officer recounted how officers would receive four hours of overtime pay for every forty tickets written.<sup>44</sup> Though the police department had no official policy, there was an “unwritten understanding.”<sup>45</sup> Another law enforcement official described how officers would “go hunting” in Black and Latinx neighborhoods and compete to see who could issue the most tickets.<sup>46</sup> This kind of informality is especially common in states that legally prohibit police quotas, since police brass want to avoid memorializing requirements in ways that

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<sup>37</sup> Zuri Davis, *A Tennessee Police Department's Last Officer Resigns over Ticket Quotas*, REASON (Nov. 6, 2019, 2:45 PM), <https://reason.com/2019/11/06/a-tennessee-police-departments-last-officer-resigns-over-ticket-quotas/printer>.

<sup>38</sup> *Id.*

<sup>39</sup> See Chung, *supra* note 35.

<sup>40</sup> *Id.*

<sup>41</sup> James Fanelli, *Cops at Brooklyn's Crime-Ridden 77th Precinct Told to Meet Quotas for Moving Violations, Memos Say*, N.Y. DAILY NEWS (Nov. 8, 2010), <https://www.nydailynews.com/new-york/cops-brooklyn-crime-ridden-77th-precinct-told-meet-quotas-moving-violations-memos-article-1.452621>.

<sup>42</sup> *Id.*

<sup>43</sup> See Rich Morin, Kim Parker, Renee Stepler & Andrew Mercer, *Inside America's Police Departments*, PEW RSCH. CTR. (Jan. 11, 2017), <https://www.pewsocialtrends.org/2017/01/11/inside-america-police-departments> (finding that about a third of police officers say they are expected to meet a quota for arrests and tickets).

<sup>44</sup> Sarah Wallace, *NJ Police Targeted Black and Latino Neighborhoods to Fulfill Ticket Quotas, Cops Say*, NBC N.Y. (Feb. 13, 2020, 8:08 PM), <https://www.nbcnewyork.com/investigations/nj-police-targeted-black-and-latino-neighborhoods-to-fulfill-ticket-quotas-cops-say>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

can be subject to discovery in future litigation or scrutinized by the media.

## 2. Numerical Requirements

Police quotas have quantitative dimensions. Sometimes they are numerically specific, as in the Brooklyn example mentioned above. Other examples are instructive. Police documents from Dekalb County, Georgia, for instance, revealed that officials kept detailed statistics on officer activities, with categories including “citation goal[s],” “total citations,” and “% to goal citations.”<sup>47</sup> A slogan for the police department was, “[t]wo tickets a day keep the sergeants away. Five a day keep the lieutenants at bay.”<sup>48</sup> In Pennsylvania, two officers lied about a DUI arrest and were caught on police dashcam video conferring about which one would get credit for the arrest because they both needed their “20 for the month.”<sup>49</sup> When criminal justice commentators discuss quotas, they usually focus on these numerically specific requirements.

But not all quotas are numerically precise. Sometimes the numerical dimension of a quota requirement is just a general guide and some quotas don’t specify any number at all. On the former, Denver, Colorado, is noteworthy. Colorado has no statutory prohibition on quotas. In 2016, the City, which generated \$30 million annually from parking citations, inked a \$50 million contract with a software company to manage its parking enforcement.<sup>50</sup> Contract documents indicated that predictive algorithms produced a “daily citation expectation” for agents.<sup>51</sup> The City insisted that the goal was not a strict requirement but a “guide.”<sup>52</sup> A legislative audit of West Virginia State Police, which identified an informal quota regime, illustrates the further vagueness of quotas that specify no number at all. The auditor’s survey included many responses from officers who indicated

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<sup>47</sup> Rhonda Cook, *Arrest Quotas Led Dekalb Officer to Plant Drugs, Lawsuit Claims*, ATLANTA J.-CONST. (Nov. 28, 2016), <https://www.ajc.com/news/local/arrest-quotas-led-dekalb-officer-plant-drugs-lawsuit-claims/5AMfRowntaQrZfQLsAhL6K>.

<sup>48</sup> Sharpe, *supra* note 26.

<sup>49</sup> Peter Hall, *Lawsuit Ends with Reminder to Pennsylvania State Troopers About Rule Against Ticket Quotas*, MORNING CALL (June 26, 2018), <https://www.mcall.com/news/police/mc-nws-pa-state-police-dui-quota-settlement-20180626-story.html>.

<sup>50</sup> Jeremy Jojola, *A Quota Behind Denver Parking Citations?*, 9NEWS (Feb. 27, 2017, 11:12 PM), <https://www.9news.com/article/news/local/investigations/a-quota-behind-denver-parking-citations/415777446>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

that no specific requirements existed, but that “numbers are strongly emphasized.”<sup>53</sup>

### 3. *Law Enforcement Activity*

Quotas require a particular kind of law enforcement activity. This is typically an arrest, citation, or ticket. In rare instances, they require contacts, warnings, or stops. Arrests, citations, and tickets are at the center of police quotas and constitute much of this Article’s discussion. Allegations and settlements surrounding arrest quotas have hounded the NYPD for years.<sup>54</sup> Citations and tickets were at the center of the Department of Justice’s Ferguson Report.<sup>55</sup> Contacts or stops require more explanation.

Sometimes contacts substitute for arrests and citations. For example, in Arizona, a state without a statutory prohibition on quotas, a Tucson police chief was criticized for an overt one-ticket-a-day policy. After he changed it to a one-contact-a-day requirement,<sup>56</sup> Republicans led a push for an anti-quota bill. Though the Fraternal Order of Police supported the bill, Governor Doug Ducey ultimately vetoed it.<sup>57</sup> As a result, police in Arizona remain free to use contacts to fulfill quota requirements.

South Carolina, which does have a statutory prohibition,<sup>58</sup> highlights the importance of contacts in police quotas. The Santee Police Department, situated along the well-traveled Interstate 95, came under scrutiny in 2019 after a memo demanding “a heavy increase” in traffic stops surfaced.<sup>59</sup> Lieutenant Riley Null authored the memo,

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<sup>53</sup> W. VA. LEGIS. AUDITOR, PERFORMANCE EVALUATION & RSCH. DIV., LEGISLATIVE PERFORMANCE REVIEW—WEST VIRGINIA STATE POLICE: SURVEY COMMENTS 46, 52, 54 (2008). The auditor asked: “Does the WVSP require each Trooper to issue a specified number of traffic citations or warning citations on a monthly basis?” Some of the responses included: “No specific #, but we have to show results. . . . No specific number is given, but ‘numbers’ are strongly emphasized. . . . There is no specific number but if you don’t have contacts they reprimand you. . . . No specific #, but get bad [employee performance appraisals] or verbally reprimand [sic] for not having a considerable amount of contacts.” *Id.* at 43–54.

<sup>54</sup> See *infra* notes 194–95.

<sup>55</sup> See Ferguson Report, *supra* note 17.

<sup>56</sup> Howard Fischer, *Arizona Bill Would Outlaw Police Traffic Ticket Quotas*, TUSCON.COM (Jan. 23, 2015), [https://tucson.com/news/local/crime/arizona-bill-would-outlaw-police-traffic-ticket-quotas/article\\_d6bf8125-aec6-5e2e-ad0d-4ab16b181d4c.html](https://tucson.com/news/local/crime/arizona-bill-would-outlaw-police-traffic-ticket-quotas/article_d6bf8125-aec6-5e2e-ad0d-4ab16b181d4c.html).

<sup>57</sup> Ducey argued that “in its current form, I worry that police chiefs and local entities will be prevented from objectively gauging performance in their departments—a concern for officers themselves, the public and overall public safety.” Matthew Hendley, *Ducey Vetoes Ban on Police Ticket Quotas*, PHX. NEW TIMES (Apr. 2, 2015, 5:57 AM), <https://www.phoenixnewtimes.com/news/ducey-vetoes-ban-on-police-ticket-quotas-6661896>.

<sup>58</sup> See S.C. CODE ANN. § 23-1-245 (West, Westlaw through 2020 Sess.).

<sup>59</sup> Michael Majchrowicz, *Internal Memo Suggests SC Police Department Violated Law Banning Ticket Quotas*, POST & COURIER (May 16, 2019), <https://>

sent it to patrol officers, and called for increased “contacts” with motorists.<sup>60</sup> Null threatened, “if activity is not increased, you will be required to have your body cameras recording during your entire shift to try and determine what activity is consuming your time.”<sup>61</sup> Because the South Carolina statute makes an exception for points of contact,<sup>62</sup> the memo is likely legal. This is why it is important to offer the definitional landscape of quotas before delving into the statutory prohibitions: many of the statutes that prohibit quotas do not cover the full range of police activity that could be considered a quota.

#### 4. Incentives/Adverse Employment Actions

Incentives and adverse employment decisions loom in the background of police quotas. Police departments have offered overtime, barbecue, pizza, gift cards, car wash coupons, and trophies to officers who meet quotas.<sup>63</sup> Failure to meet quotas can result in adverse employment actions, including denial of days off, transfers, undesirable assignments, and, of course, termination.<sup>64</sup> Police leadership can communicate the threat of an adverse employment action to an officer in an attempt to make them comply with a quota. In the cash-strapped city of Gretna, Louisiana, situated across the Mississippi River from New Orleans, threats of adverse employment decisions were rampant. In a recorded conversation with a patrolman, Lieutenant J.R. Rogers

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[www.postandcourier.com/news/internal-memo-suggests-sc-police-department-violated-law-banning-ticket-quotas/article\\_aa02a4d6-77f2-11e9-8a32-b75a8475adde.html](http://www.postandcourier.com/news/internal-memo-suggests-sc-police-department-violated-law-banning-ticket-quotas/article_aa02a4d6-77f2-11e9-8a32-b75a8475adde.html).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> See § 23-1-245 (defining “points of contact” as a “law enforcement officer’s interaction with citizens and businesses within their jurisdictions and the law enforcement officer’s involvement in community-oriented initiatives” and allowing for evaluations based on this category).

<sup>63</sup> Randy Travis, *Douglasville Cops Offered BBQ if They Wrote Enough Traffic Tickets*, FOX 5 ATLANTA (Mar. 10, 2020), <https://www.fox5atlanta.com/news/douglasville-cops-offered-bbq-if-they-wrote-enough-traffic-tickets> (barbecue); Daniela Altimari & John Lender, *Police Commissioner Says ‘Pizza Memo’ Was Not Ticket Quota*, HARTFORD COURANT (Apr. 2, 2012), <https://www.courant.com/news/connecticut/hc-xpm-2012-04-02-hc-pizza-tickets-report-0403-20120402-story.html> (pizza); Justin George, *Metro Transit Police Held a Competition to Encourage Arrests and Other Enforcement*, WASH. POST (Feb. 20, 2020, 7:02 PM), [https://www.washingtonpost.com/local/trafficandcommuting/metro-transit-police-held-a-competition-to-encourage-arrests-and-other-enforcement/2020/02/12/02146d84-4dd7-11ea-9b5c-eac5b16dafa\\_story.html](https://www.washingtonpost.com/local/trafficandcommuting/metro-transit-police-held-a-competition-to-encourage-arrests-and-other-enforcement/2020/02/12/02146d84-4dd7-11ea-9b5c-eac5b16dafa_story.html) (gift cards); Debbie Dujanovic, *Emails Reveal Incentives Behind Cottonwood Police Issuing Tickets*, KSL BROAD. (Oct. 24, 2013, 11:01 PM), <https://www.ksl.com/article/27376993/emails-reveal-incentives-behind-cottonwood-police-issuing-tickets> (carwash coupons and gift cards); Jack Douglas Jr. and Jason Allen, *One North Texas Officer Says Ticket Quotas Do Exist. . . And It May Be a Ticket to a Trophy*, CBS DFW (May 20, 2013, 10:23 PM), <https://dfw.cbslocal.com/2013/05/20/one-north-texas-officer-says-ticket-quotas-do-existand-it-may-be-a-ticket-to-a-trophy> (trophies and letters of appreciation).

<sup>64</sup> Cook, *supra* note 47.

insisted, “[s]omebody has got to go to jail every 12 hours,” and threatened termination if the subordinate failed to comply.<sup>65</sup> Another officer testified that officers were told the city would stop paying for their insurance and contribute less to their retirement fund if they did not increase their arrests and citations.<sup>66</sup> The tethering of quota compliance to job security was so blatant that one officer gave a sergeant who was recently passed over for a promotion “a gift of knee pads, vaseline [sic], and ink pen refills—the implication being that the only way he’d be able to get that promotion was to either write up more of his patrolmen for not meeting the quota or perform sexual favors.”<sup>67</sup>

Understanding these four features of quota-based policing—the level of formality, the nature of the numerical requirement, the enforcement activity demanded, and the potential employment actions—is important for a few reasons. First, the scholarly literature has yet to offer a robust description of quotas that captures the different permutations of the practice. Second, statutory prohibitions fall short of capturing the full scope of police activities that constitute quotas, which partially explains why quotas still exist in places that have enacted rules proscribing the practice. Third, these categories highlight gray areas in a non-transparent culture of policing. The strongest version of a quota would be a memorialized demand that police arrest a specific amount of people or face termination. A less detectable iteration might involve an informal communication to an officer to “increase their activity” with no threat of adverse employment outcome.<sup>68</sup> Such conduct would be permissible under some statutes and prohibited in others. Therefore, having a definitional grasp of these features is integral to understanding the following discussion about statutory prohibitions.

### B. *Statutory Landscape*

This subsection briefly describes the politics that animated some of the legislative prohibitions on quotas. Some of these statutes are of late-twentieth-century vintage and developed against the backdrop of police professionalization. These early anti-quota laws were driven by interests in police work conditions, public safety, and fair policing.

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<sup>65</sup> Michael Isaac Stein, *Police Lawsuits Provide an Inside View of Cash Register Justice in Louisiana*, SCALAWAG (Nov. 5, 2018), <https://www.scalawagmagazine.org/2018/11/louisiana-cash-register-justice>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> See, e.g., CRIME + PUNISHMENT (Hulu 2018) (describing a conversation in which an NYPD lieutenant tells an officer that he needs to “catch up with everybody” in terms of numbers of arrests).

These issues, along with concerns about racial justice, have continued to inspire more recent statutes. After explaining this history, this subsection categorizes the various anti-quota statutes.

### 1. *A Brief History*

The legislative history of quota prohibitions is scattered because, in many states, legislators passed these laws without fanfare. However, a close inspection can impose some coherence and highlight themes of public safety, police conditions, and police corruption. Noteworthy legislative activity surfaced in the 1970s. Black Democratic Assemblyman John Miller ushered California's bill in 1975.<sup>69</sup> Miller, who has been described as a "progressive independent in local politics," was politically shrewd and couched his support for quota bans in inclusive rhetoric.<sup>70</sup> The Howard University-trained lawyer—whose district included the racially and socio-economically diverse cities of Oakland and Berkeley—voiced a simultaneous concern for police officers and for the public. Describing quotas as "unfair, undemocratic, and unjust," Miller was troubled by the idea that failure to meet quotas could lead to an officer's demotion.<sup>71</sup> At the same time, Miller expressed concern about "the average California driver" who would be unbelievably by a "rubber stamp traffic court system which finds 90 percent of those cited guilty."<sup>72</sup> Finally, Miller highlighted due process issues and pre-saged the problems the Department of Justice would find forty years later in Ferguson when he stated: "The spectacle of cities gaining revenue for the conviction of citizens, and judges creating revenue by making criminals out of those brought before them . . . goes against our historical concepts of justice and fair play."<sup>73</sup> In many ways, California's statute was motivated by multi-constituent concerns that remain applicable today.

New York passed its bill in 1978, and though police and the public may have been beneficiaries, the statute was a response to outright police corruption.<sup>74</sup> The Commission to Investigate Alleged Police

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<sup>69</sup> See *Measure to Outlaw CHP's Ticket Quotas*, BERKELEY GAZETTE, July 22, 1975, at 1 (describing Miller's role in helping pass California's anti-quota law).

<sup>70</sup> David Mundstock, *Chapter 10 – The June 1976 Campaign and the New Slate Politics*, BERKELEY CITIZENS ACTION, [https://berkeleycitizensaction.org/?page\\_id=397](https://berkeleycitizensaction.org/?page_id=397) (last visited Dec. 28, 2020).

<sup>71</sup> See *Measure to Outlaw CHP's Ticket Quotas*, *supra* note 69, at 1.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*; see Ferguson Report, *supra* note 17, at 2 ("This emphasis on revenue has compromised the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing, and has also shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community.").

<sup>74</sup> See Bronstein, *supra* note 21, at 544.

Corruption, or the Knapp Commission (led by United States District Court Judge Percy Knapp), produced one of the earliest and most extensive insights into the use of quotas in modern urban policing.<sup>75</sup> The Commission found that “informal arrest quotas” were “an inducement to a particular kind of corruption,” most specifically, “the arrest of individuals not actually apprehended in the commission of the charged crime.”<sup>76</sup> Testimony to the Commission described “a pattern of requiring a quota of four felony arrests per month.”<sup>77</sup> The informal policy led to a practice of “flaking,” which is when police plant drugs on suspects.<sup>78</sup> The longstanding, sexist practice of arresting sex workers and not their procurers also featured prominently in New York’s quota-based culture. “Plainclothesmen assigned to prostitution details were faced with the necessity of producing a stipulated number of arrests a night and, in order to do so, often arrested persons they considered to be ‘obvious’ prostitutes, without obtaining sufficient legal evidence.”<sup>79</sup>

Finally, the Commission unearthed widespread collusion between police and numbers runners, particularly in “ghetto neighborhoods” where investigators discovered “numerous bookmaking operations and some high-stakes, organized card and dice games.”<sup>80</sup> These operations were brazenly public and payoffs to police ensured that these activities would go unpunished, “except for token arrests made to give an appearance of activity.”<sup>81</sup> The report’s description, which reveals the intricacy of corruption and its relationship to quotas, is worth quoting at length:

Most often, when plainclothesmen needed a token arrest to meet arrest quotas or to give the appearance of activity, they would tell the operator of a spot and arrange a time and place for the arrest. The operator would then select someone to take the arrest, who was usually either one of his employees who had a relatively clean arrest record or an addict who was paid for his trouble. Whoever took the arrest would put a handful of bogus policy slips in his pocket and meet the plainclothesman at the designated time and place, where, often as not, he would get into their car without even waiting to be asked.<sup>82</sup>

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<sup>75</sup> COMM’N TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE CITY’S ANTI-CORRUPTION PROCEDURES, COMM’N REP. 28 (1972).

<sup>76</sup> *Id.* at 28.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 71.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 83.

Whereas work conditions and the unfair doling out of tickets helped generate the enactment of the California statute, in New York it was the excesses of police culture and corruption that necessitated statutory prohibitions on quotas. In the ensuing decades, many states would pass laws that drew on one or more of these rationales.

Concerns about the work environment of police inspired the enactment of a few statutes. Democratic State Representative Perry Bullard introduced Michigan's statute in 1988 after speaking with police officers who described how the pressure to comply with quotas diminished their ability to fight crime.<sup>83</sup> During testimony for the bill, Jack Brown, executive director of the Fraternal Order of Police, lamented, "One of the most disgusting things we have as police officers is these quotas."<sup>84</sup> Wisconsin, led by Republican State Assemblyman DuWayne Johnsrud, passed its bill more than a decade later in 1998.<sup>85</sup> Before the bill's passage, Johnsrud said, "[a]ny time an officer has to work under a quota, he has to make decisions with a hammer hanging over his head."<sup>86</sup> Reflecting on the bill fifteen years after its passage, Johnsrud's rationale was the same. He explained that the bill came at the wishes of the State Patrol Troopers Union, which was concerned that officers were writing tickets at the expense of other safety-related work.<sup>87</sup> In Utah, Republican State Senator Howard Stephenson helped the state pass its bill in 2018.<sup>88</sup> Stephenson noted his opposition to police operating as revenue generators and claimed, "I don't believe policemen should be looking to meet a quota on bad behavior. What if there isn't enough bad behavior? Do you just have to make it up?"<sup>89</sup> The various statutes, passed in states spanning the east coast to the west coast, demonstrate the public safety-interested, police officer-protecting nature of quota prohibitions.

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<sup>83</sup> See Jim Mitzfield, *Ticket Quotas Cost Undeserving Drivers: Police*, S. BEND TRIB., Sept. 1, 1987, at B2; MICH. COMP. LAWS ANN. § 257.750 (West, Westlaw through P.A. 2020, No. 256 of 2020 Reg. Sess.).

<sup>84</sup> Mitzfield, *supra* note 83.

<sup>85</sup> *Police Banned from Using Speeding Ticket Quotas*, J. TIMES (Mar. 25, 1998), [https://journaltimes.com/news/national/police-banned-from-using-speeding-ticket-quotas/article\\_a6faa127-90da-566f-a702-d46300ecf88f.html](https://journaltimes.com/news/national/police-banned-from-using-speeding-ticket-quotas/article_a6faa127-90da-566f-a702-d46300ecf88f.html).

<sup>86</sup> Reid Magney, *Officials Say Standards Are Needed for Police*, LA CROSSE TRIBUNE, Jan. 8, 1998, at A6.

<sup>87</sup> Adam Schragar, *Legislators: State Patrol Policy Lists Quota, is 'Against the Law,'* CHANNEL3000 (Dec. 28, 2018, 1:32 AM), <https://www.channel3000.com/legislators-state-patrol-policy-lists-quota-is-against-the-law>.

<sup>88</sup> See Ben Winslow, *Utah Could Soon Ban Police Quotas in Traffic Stops*, FOX 13 (Feb. 5, 2018, 11:58 PM), <https://www.fox13now.com/2018/02/05/utah-could-soon-ban-police-quotas-in-traffic-stops>.

<sup>89</sup> *Id.*

Racial controversy has also inspired some states' prohibitions on police quotas. After the killing of Michael Brown exposed Ferguson's police practices, then-state congressman and future Republican Attorney General Eric Schmitt shepherded Missouri's legislation. Schmitt said that he authored the bill to "ensure that our citizens wouldn't simply be used as ATMs to fill municipal government coffers."<sup>90</sup> The police killing of Walter Scott, an unarmed Black motorist, likely led to the enactment of South Carolina's statute. After thirty-three-year-old officer Michael Slager stopped fifty-year-old Scott for a broken taillight, Scott fled, and Slager shot him in the back.<sup>91</sup> Slager claimed that he struggled with Scott over his taser and shot him out of fear.<sup>92</sup> Video evidence taken by a bystander later revealed that Scott was seventeen feet away when the officer shot him and that Slager had dropped his taser near him in "an attempt to plant evidence and skew the investigation."<sup>93</sup> Justin Bamberg, a civil rights attorney who represented the Scott family and serves as a Democratic Representative in the South Carolina General Assembly, subsequently authored the bill.<sup>94</sup> After Tennessee passed its quota bill in June 2020, Democratic Representative Rick Staples noted that quotas lead to Black people being frisked by police officers, and said that the "legislation will limit unnecessary contact between the two."<sup>95</sup> The existence of bipartisan and multi-constituent opposition to quotas is apparent from the widespread enactment of these statutory prohibitions.

## 2. *Types of Quota Prohibitions*

This subsection details the different types of anti-quota laws. The varying types of legislation make straightforward generalizations

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<sup>90</sup> *Missouri's Attorney General Sues City of Marshfield for Illegal Traffic Ticket Quota Scheme*, KY3 (Dec. 9, 2019, 4:06 PM), <https://www.ky3.com/content/news/Missouris-attorney-general-sues-city-of-Marshfield-for-illegal-traffic-ticket-quota-scheme-565986731.html>.

<sup>91</sup> See Alan Blinder, *Michael Slager, Officer in Walter Scott Shooting, Gets 20-Year Sentence*, N.Y. TIMES (Dec. 7, 2017), <https://www.nytimes.com/2017/12/07/us/michael-slager-sentence-walter-scott.html>.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Grace Beahm, *Haley Signs Bill Banning Law Enforcement Ticket Quotas*, POST & COURIER (June 9, 2016), [https://www.postandcourier.com/politics/haley-signs-bill-banning-law-enforcement-ticket-quotas/article\\_7449a3c5-b4ff-509f-b716-7bd7b72a38c7.html](https://www.postandcourier.com/politics/haley-signs-bill-banning-law-enforcement-ticket-quotas/article_7449a3c5-b4ff-509f-b716-7bd7b72a38c7.html) (reporting on Bamberg's representation of the Scott family and his sponsorship of the bill).

<sup>95</sup> Tyler Arnold, *Criminal Penalties for Issuing Police Ticket Quotas Passes Tennessee House*, CENTER SQUARE (June 11, 2020), [https://www.thecentersquare.com/tennessee/criminal-penalties-for-issuing-police-ticket-quotas-passes-tennessee-house/article\\_eb5a2f34-ac0e-11ea-b5cc-6fd6b8293d42.html](https://www.thecentersquare.com/tennessee/criminal-penalties-for-issuing-police-ticket-quotas-passes-tennessee-house/article_eb5a2f34-ac0e-11ea-b5cc-6fd6b8293d42.html).

tricky. Indeed, the difficulty of offering a general framework might help explain the scholarly gap on police quotas. Some of these laws are either poorly drafted or cover a small amount of activity. Consider two examples. Florida's statute simply states: "a traffic enforcement agency may not establish a traffic citation quota."<sup>96</sup> This prohibition does not define what a quota is or whether it has to be numerically specific in order to fall under the scope of the statute. Such interpretative tasks are left to courts, assuming that allegations of quotas get that far.

Utah's statute, passed in 2018, is a bit more specific. It defines quotas as "any requirement or minimum standard regarding the *number or percentage* of citations or arrests."<sup>97</sup> But this provision still does not specify whether the prohibited "requirement" or "standard," must be formal.

The shortcomings of Utah and Florida's statutes are representative of the many limitations of anti-quota laws. Most statutes only cover some aspects of quota-based policing, and each statute is different. What one state considers an illegal quota, another state may find permissible. Most basically, anti-quota laws vary on how formal or numerically specific quotas must be to fall under the statute. All statutes prohibit departments from requiring officers to issue a certain amount of citations or traffic violations. Some laws go further and include arrests, while others cover precursory law enforcement activities such as stops and warnings. Most focus on whether the failure to meet a quota leads to some kind of employment action.

*Formality:* As Figure 1 demonstrates, state statutes vary in their language and their characterization of quotas as formal and/or informal. "Direct" and "indirect" are also words used to capture formality. For example, Nebraska only prohibits law enforcement from "directly" requiring an officer to meet a quota.<sup>98</sup> Informal pressure put on a police officer to improve their numbers is not covered. Pennsylvania's statutory language, by contrast, forbids any law enforcement agency from establishing or maintaining any policy "directly or indirectly."<sup>99</sup> Other jurisdictions, like New Jersey, are silent on which communicative mechanisms are forbidden and state that law enforcement may not "establish any quota for arrests or cita-

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<sup>96</sup> FLA. STAT. ANN. § 316.640 (West, Westlaw through Ch. 184 of 2020 2d Reg. Sess.).

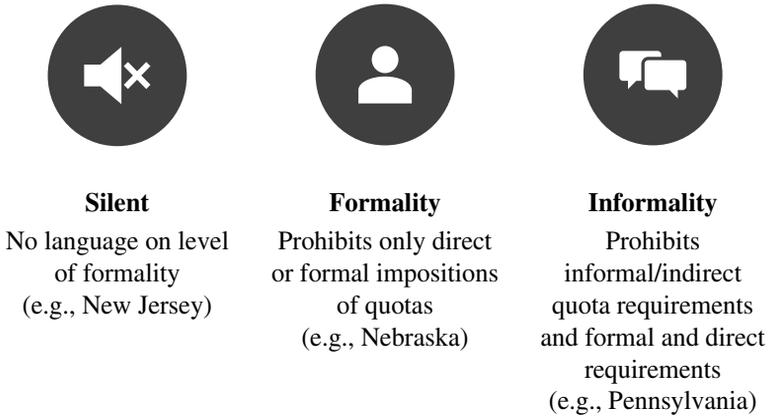
<sup>97</sup> UTAH CODE ANN. § 77-7-27 (West, Westlaw through 2020 6th Spec. Sess.) (emphasis added).

<sup>98</sup> NEB. REV. STAT. ANN. § 48-235 (West, Westlaw through end of 2020 2d Reg. Sess.).

<sup>99</sup> 71 PA. STAT. AND CONS. STAT. ANN. § 2001 (West 2020).

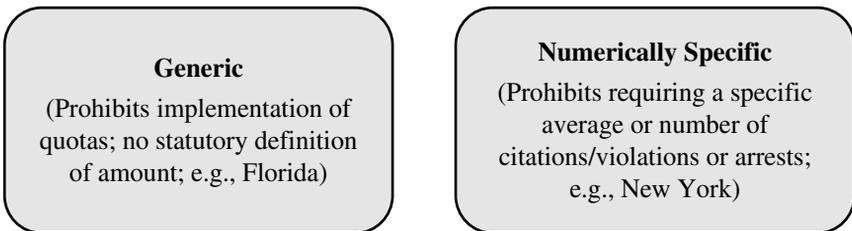
tions.”<sup>100</sup> This might include direct or indirect quotas, or encapsulate only formal quotas. Since many of these statutes are under-litigated, the available language is crucial for parties seeking to bring a claim that an agency violated the prohibition.

FIGURE 1. FORMALITY AND QUOTA STATUTES



*Quantification:* Numerical requirements are also present in some state prohibitions. Michigan’s statute is typical in that it bars agencies from requiring a “predetermined or specified number of citations.”<sup>101</sup> Some states, like Florida, do not make any reference to numbers, which could simply mean that a number is implied in the definition of quota but could also leave room for the use of averages, which some departments use to circumvent quota prohibitions.<sup>102</sup>

FIGURE 2. QUANTIFICATION AND QUOTA STATUTES



*Law Enforcement Activity:* All statutes specify which law enforcement activities cannot be subject to a quota. Seventeen states prohibit

<sup>100</sup> N.J. STAT. ANN. § 40A:14-181.2 (West, Westlaw through L.2020, c.136 and J.R. No. 2).

<sup>101</sup> MICH. COMP. LAWS ANN. § 257.750 (West, Westlaw through P.A. 2020, No. 256 of 2020 Reg. Sess.).

<sup>102</sup> See Sparrow, *supra* note 34.

quotas for citations and traffic violations.<sup>103</sup> Nine states include citations, traffic violations, *and* arrests.<sup>104</sup> Other states are overinclusive or underinclusive when it comes to activity outside of citations, traffic violations, and arrests. Two states, Wisconsin and Rhode Island, include warning notices and investigative stops, respectively.<sup>105</sup> These states seem to recognize that warnings and stops can lead to the kind of law enforcement activity that quota legislation is designed to cover, and accordingly include these precludes into their statutory schemes. Some jurisdictions take the opposite approach. Missouri excludes warnings from its statute,<sup>106</sup> whereas South Carolina and Illinois make *exceptions* for “points of contact.”<sup>107</sup> In these three jurisdictions, such precursory activity does not fall under the state statute. All other states are silent on whether these kinds of law enforcement activities are covered by their statutes. Thus, read in whole, American statutes that prohibit quotas focus primarily on citations, traffic violations, and arrests, leaving significant room for penumbral pursuits that are related but do not fall into those specific law enforcement activities.

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<sup>103</sup> These states include Connecticut, Illinois, Florida, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin.

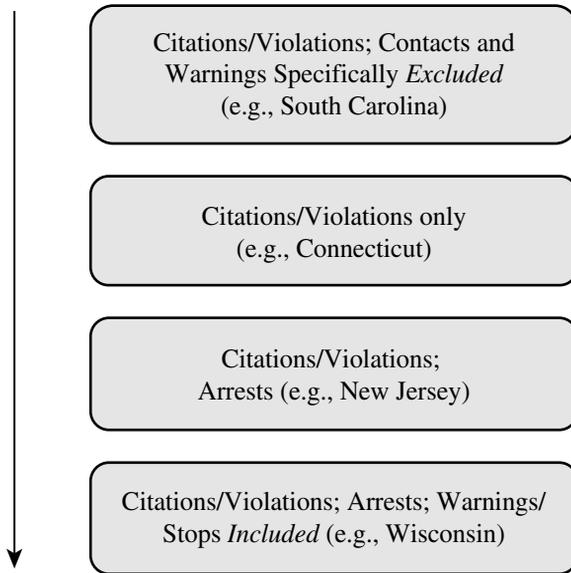
<sup>104</sup> Arkansas, California, Louisiana, Maryland, New Jersey, New York, North Carolina, Rhode Island, and Utah all include citations, tickets, and arrests.

<sup>105</sup> WIS. STAT. ANN. § 349.025 (West, Westlaw through 2019 Act 186); 31 R.I. GEN. LAWS ANN. § 31-27-25 (West, Westlaw through ch. 79 of 2020 2d Reg. Sess.).

<sup>106</sup> MO. ANN. STAT. § 304.125 (West, Westlaw through 2020 2d Reg. Sess.) (“This section shall not apply to the issuance of warning citations.”).

<sup>107</sup> S.C. CODE ANN. § 23-1-245 (West, Westlaw through 2020 Sess.); 20 ILL. COMP. STAT. ANN. 2610/24 (West, Westlaw through P.A. 101-651).

FIGURE 3. LAW ENFORCEMENT ACTIVITY AND QUOTA STATUTES

**Least Expansive****Most Expansive**

*Employment Actions:* A few states use specific language prohibiting the use of quotas for incentives and adverse employment actions. Texas, for example, prohibits the use of quotas to “*evaluate, promote, compensate, or discipline*” police officers.<sup>108</sup> Some states focus only on adverse employment actions. New York’s ban, which has been subject to the most litigation, prohibits “a reassignment, a scheduling change, an adverse evaluation, a constructive dismissal, the denial of a promotion, or the denial of overtime, based in whole or in part on such employee’s failure to meet a quota.”<sup>109</sup> By specifying the range of employment actions, these statutes supply potential plaintiffs (typically police officers) with the statutory language to bring claims against departments that implement quotas. States like Arkansas, by contrast, are silent on this issue. One could interpret this silence to mean that employment action is impliedly forbidden by the statute or as an intentional omission by the legislature.

<sup>108</sup> TEX. TRANSP. CODE ANN. § 720.002 (West, Westlaw through end of 2019 Reg. Sess.) (emphasis added).

<sup>109</sup> N.Y. LAB. LAW § 215-a (McKinney, Westlaw through L.2019, ch. 758 and L.2020, chs. 1 to 387).

FIGURE 4. EMPLOYMENT ACTIONS AND QUOTA STATUTES

**Silent**

(No language on Type of Employment Action; e.g., Arkansas)

**Adverse Employment Action Only**

(e.g., New York)

**Employment Benefits + Adverse Action**

(e.g., Texas)

*Additional Features:* Two statutes have unique features that are worth noting. First, Illinois has a provision that attempts to address potential funding complications that may arise from prohibitions.<sup>110</sup> Its statute states that the prohibition on quotas “shall not affect the conditions of any federal or State grants or funds awarded to the municipality and used to fund traffic enforcement programs.”<sup>111</sup> Second, Tennessee amended its prohibition in July 2020 and made violation of the statute a Class B misdemeanor subject to a fine.<sup>112</sup> Since it is a new amendment, time will tell if this will successfully deter police brass attempting to implement quotas. The shortcomings of each of these different types of state quota prohibitions often interface with other legal obstacles and shape litigation outcomes. That will be the topic of the next Part.

## II

### POLICE QUOTA LITIGATION

The national patchwork of quota-based statutes has produced a variegated body of caselaw. Police officers are the typical plaintiffs that bring these cases to court. They usually argue that their resistance to or inability to meet a quota led to some adverse employment action. Alternatively, officers claim that they endured retaliation for speaking out about quotas—a claim that usually involves First Amendment issues.

People subject to criminal law enforcement are also common parties in police quota litigation.<sup>113</sup> These individuals fall into two catego-

<sup>110</sup> 65 ILL. COMP. STAT. ANN. 5/11-1-12 (West, Westlaw through P.A. 101-651).

<sup>111</sup> *Id.*

<sup>112</sup> Act of July 15, 2020, ch. 801, 2020 Tenn. Pub Acts, <https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf>.

<sup>113</sup> There are a handful of cases where governments have brought charges against public officials who implemented or conformed to quotas, but these are rare. *See* Becker-Ross v. State, 595 S.W.3d 261 (Tex. App. 2020); Gerwer v. Kelly, 980 N.Y.S.2d 275 (Sup. Ct. 2013).

ries. They can be criminal defendants who argue that their contact with law enforcement was predicated on an officer's compliance with an illegal quota system. In essence, these parties raise the practice of quota-based policing as an affirmative defense. In instances where alleged quota-based contact resulted in dropped charges or the termination of the criminal action, parties have also brought federal civil rights lawsuits under 42 U.S.C. § 1983.<sup>114</sup> In these cases, which sometimes emerge from jurisdictions without anti-quota laws, plaintiffs argue that law enforcement's adherence to police quotas led to a violation of their civil rights.

Whether the party challenging the quota is an officer or a civilian, there are a range of socio-legal, doctrinal, and evidentiary hurdles that litigants must overcome before courts will meaningfully engage with their claims. This subsection briefly describes these hurdles for both groups, then describes the varying outcomes of these cases.

### A. *Police Speech and the Blue Code*

Police officers are the group most likely and best positioned to litigate challenges to quotas, but the "code of silence," which prohibits officers from reporting misconduct, serves as a barrier.<sup>115</sup> This code<sup>116</sup>—which commentators also refer to as "the blue wall of

<sup>114</sup> 42 U.S.C. § 1983.

<sup>115</sup> See, e.g., Isidoro Rodriguez, *The Plight of the Police Whistleblower*, CRIME REPORT (June 18, 2020), <https://thecrimereport.org/2020/06/18/the-plight-of-the-police-whistleblower> (quoting Seth Stoughton, law professor and former police officer, saying "[t]here is tremendous pressure in policing, a cultural pressure, to not expose fellow officers to either professional or physical threats").

<sup>116</sup> See SANJA KUTNJAK IVKOVIC, *FALLEN BLUE KNIGHTS: CONTROLLING POLICE CORRUPTION* 20 (2005) (describing the code as "the informal prohibition within police culture of reporting misconduct by fellow officers—binds police together"); see also Bret D. Asbury, *Anti-Snitching Norms and Community Loyalty*, 89 OR. L. REV. 1257, 1285–92 (2011) (describing the code as an anti-snitching norm rooted in ideas about group loyalty and family); David Rudovsky, *Police Abuse: Can the Violence Be Contained?*, 27 HARV. C.R.-C.L. L. REV. 465, 487 (1992) ("The code of silence does more than prevent testimony. It mandates that no officer report another for misconduct, that supervisors not discipline officers for abuse, that wrongdoing be covered up, and that any investigation or legal action into police misconduct be deflected and discouraged."). Courts have also recognized the code in § 1983 actions. See Gabriel J. Chin & Scott C. Wells, *The "Blue Wall of Silence" as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 239, n.16 (1998) (listing cases). See generally Myriam E. Gilles, *Breaking the Code of Silence: Rediscovering "Custom" in Section 1983 Municipal Liability*, 80 B.U. L. REV. 17, 18 (2000) (exploring the police "code of silence" as an unconstitutional police practice under § 1983). In the context of quotas, the blue code could be understood in two ways. First, it could be understood as a prohibition against one officer revealing another officer's compliance with an illegal quota (a form of misconduct) to a perceived outsider (i.e. the public, the media). Alternatively, it could apply to an officer who reveals that law enforcement leadership is enforcing quotas. At its core, the code is about a brotherhood in which some police officers might not include management. Put another way, there is an

silence,” “blue cocoon,” “blue shield,” or “blue curtain”<sup>117</sup>—has been a problem in American policing for almost a century.<sup>118</sup> One police misconduct attorney explains how a breach of this code can be consequential: “while police officers may feel that a fellow officer has acted wrongfully, they fear that they will lose their job, or be subject to ridicule, ostracization, and physical reprisals from their comrades if the truth is told.”<sup>119</sup> The same applies to speaking out about quotas. The case of Adrian Schoolcraft is telling. Schoolcraft worked for the NYPD and secretly recorded superiors discussing illegal quotas or, as some officials described it, “paying the rent.”<sup>120</sup> Three weeks after he made misconduct allegations, a dozen officers, led by a deputy chief, went to his apartment.<sup>121</sup> A tape recording of the event revealed that the deputy chief Mike Marino, who has been described as a devotee of NYPD’s numbers-driven policing,<sup>122</sup> warned Schoolcraft, “they are going to treat you like an EDP [emotionally disturbed person] . . . . Now, you have a choice. You get up like a man and put your shoes on and walk into that bus, or they’re going to treat you as an EDP and

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argument that the blue code is about protecting not police leadership, but rank and file. But actual instances involving police officers revealing the existence of quotas suggest that leadership is considered part of the code. *See generally* Radley Balko, Opinion, *The Blue Wall: Stronger than Ever*, WASH. POST (Sept. 4, 2015), <https://www.washingtonpost.com/news/the-watch/wp/2015/09/04/the-blue-wall-stronger-than-ever> (describing instances of police officers who have revealed the existence of quotas and allege retaliation from their peers and leadership).

<sup>117</sup> *See* Chin & Wells, *supra* note 116, at 237 n.15 (describing the different terms for the code).

<sup>118</sup> *See* Craig B. Futterman, Chaclyn Hunt & Jamie Kalven, *Youth/Police Encounters on Chicago’s South Side: Acknowledging the Realities*, 2016 U. CHI. LEGAL F. 125, 182 (noting that “over the last eighty-five years, at least nine different commissions around the nation have identified the police code of silence as a serious problem that prevents accountability” and listing all of the reports).

<sup>119</sup> G. Flint Taylor, *A Litigator’s View of Discovery and Proof in Police Misconduct Policy and Practice Cases*, 48 DEPAUL L. REV. 747, 758 (1999); *see also* Aziz Z. Huq & Richard H. McAdams, *Litigating the Blue Wall of Silence: How to Challenge the Police Privilege to Delay Investigation*, 2016 U. CHI. LEGAL F. 213, 247–48 (“Scholarship on policing amply shows that police officers enforce the code of silence with social ostracism, refusals to answer calls for backup, denials of promotion, reassignments to less desirable postings, and threats of violence.”).

<sup>120</sup> Graham Rayman, *The NYPD Tapes: Inside Bed-Stuy’s 81st Precinct*, VILLAGE VOICE (May 4, 2010), <https://www.villagevoice.com/2010/05/04/the-nypd-tapes-inside-bed-stuys-81st-precinct>.

<sup>121</sup> *See* Graham Rayman, *NYPD Tapes Update: Queens DA Richard Brown’s Report on Whistleblower Cop Raises More Questions than It Answers*, VILLAGE VOICE (Dec. 13, 2012), <https://www.villagevoice.com/2012/12/13/nypd-tapes-update-queens-da-richard-browns-report-on-whistleblower-cop-raises-more-questions-than-it-answers>.

<sup>122</sup> *See* Graham Rayman, *Deputy Chief Michael Marino in Stop-and-Frisk Trial: ‘Do Your Job or Suffer the Consequences,’* VILLAGE VOICE (Mar. 25, 2013), <https://www.villagevoice.com/2013/03/25/deputy-chief-michael-marino-in-stop-and-frisk-trial-do-your-job-or-suffer-the-consequences>.

that means handcuffs.”<sup>123</sup> Schoolcraft was subjected to the latter and forcibly committed to a psychiatric ward.<sup>124</sup> After six days in the ward, he was discharged and suspended and continued to receive visits from police officers.<sup>125</sup> Ultimately, he made the tapes public and sued the NYPD for retaliation.<sup>126</sup> The NYPD settled.<sup>127</sup> Since the incident, the City has not “released one report, document or even scrap of paper which explains the NYPD’s handling of the episode or details the department’s conclusions about Schoolcraft’s allegations.”<sup>128</sup> While this is one of the more spectacular examples of what happens when the code of silence is breached, it highlights its retaliatory nature.<sup>129</sup> As some of the cases discussed in this Article show, the threat of retaliation can determine whether quota cases make it to courts and, if they do, the posture in which they enter the legal system.

The code of silence bleeds into First Amendment issues involving police speech. The Supreme Court in *Garcetti v. Ceballos* ruled that public employees who speak pursuant to their job duties have no First Amendment protection from retaliation for such speech.<sup>130</sup> If an officer speaks about a quota in their official capacity, then a First Amendment retaliation claim cannot succeed. The only way such a claim could prevail is if the officer demonstrates that she spoke as a citizen and not as an employee. Post-*Garcetti*, federal district and appeals courts have rejected retaliation claims brought by police officers who argued that they were subject to an adverse employment action due to their complaints about police quotas.<sup>131</sup> Considering the

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<sup>123</sup> Graham Rayman, *NYPD Tapes 4: The WhistleBlower, Adrian Schoolcraft*, VILLAGE VOICE (June 15, 2010), <https://www.villagevoice.com/2010/06/15/nypd-tapes-4-the-whistleblower-adrian-schoolcraft>.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Goodman, *supra* note 26.

<sup>127</sup> *Id.*

<sup>128</sup> Graham Rayman, *Adrian Schoolcraft: The Other NYPD Scandal in the Room*, VILLAGE VOICE (Apr. 20, 2011), <https://www.villagevoice.com/2011/04/20/adrian-schoolcraft-the-other-nypd-scandal-in-the-room>.

<sup>129</sup> Roberta Ann Johnson, *Whistleblowing and the Police*, 3 RUTGERS J.L. & URB. POL’Y 74, 83 (2005) (“The threat of retaliation against whistleblowers has a chilling effect. The threat prevents officers from coming forward to expose corrupt and abusive practices and it prevents serious wrongdoing from being addressed in-house.”).

<sup>130</sup> 547 U.S. 410, 424 (2006).

<sup>131</sup> See, e.g., *Taylor v. Pawlowski*, 551 F. App’x 31, 31 (3d Cir. 2013) (ruling that officer’s statements to his superiors about the illegality of a quota system for traffic stops were not protected speech under the First Amendment, and that he was acting as a public employee speaking pursuant to his duties); *Cid v. Bd. of Cnty. Comm’rs*, No. 18-4012, 2019 WL 161495, at \*7 (D. Kan. Jan. 9, 2019) (rejecting a First Amendment retaliation claim brought by a terminated officer because he “directed his speech to his immediate supervisors and others in his chain of command—but no one outside that chain of command” and did not make a showing that his speech “involve[d] a matter of public concern and not merely a

inadequacy of whistleblower laws, which often fail to cover police officers and impose technical requirements, *Garcetti* presents a quagmire.<sup>132</sup> Officers concerned about quota-based policing in their departments can keep their objections in-house and follow typical grievance procedures. However, this process typically requires the grievant to inform a chain of command (e.g., their immediate supervisor, then chief of police, then the city manager).<sup>133</sup> The grievance process can subject the officer to the hazards of retaliation for breaking the code of silence, and under *Garcetti*, the officer may not be protected. The officer could also go public, as some have recently done,<sup>134</sup> but that option can be similarly, if not more, antagonizing to colleagues and lead to resignations that are difficult to remediate.<sup>135</sup> These social and legal constraints provide some insight into why statutes prohibiting quotas are infrequently litigated.

### B. Evidentiary Challenges for Civilians

Challenges to quota-based policing brought by civilians raise many of the evidentiary problems discussed in “access to justice” scholarship. This body of work describes how infidelity to discovery rules, strict pleading standards, and the judicial hostility to the enforcement of civil rights make courts inaccessible to civilians.<sup>136</sup> As a threshold matter, discovery disputes can preclude parties from demonstrating that quota-based policing exists. For example, in cases

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personal issue internal to the workplace”); *Whitehead v. City of New York*, 953 F. Supp. 2d 367, 375 (E.D.N.Y. 2012) (“[P]laintiff’s refusal to comply with the quota policy is not protected by the First Amendment because he confined his opposition to and criticism of the quota policy within the NYPD and never attempted to communicate his complaints to the public.”). *But see* *Matthews v. City of New York*, 779 F.3d 167, 176 (2d Cir. 2015) (finding that officer spoke as a citizen when he spoke to his commanding officers about its arrest policy).

<sup>132</sup> Whistleblower laws sometimes lack statutory coverage for municipal and county employees (categories police officers often fall in) and have various technical requirements for coverage (e.g., mandated initial disclosure to supervisors for protection to attach). *See* Ann C. Hodges & Justin Pugh, *Crossing the Thin Blue Line: Protecting Law Enforcement Officers Who Blow the Whistle*, 52 U.C. DAVIS L. REV. ONLINE 1, 26–31 (2018).

<sup>133</sup> *See* LARRY K. GAINES & JOHN L. WORRALL, POLICE ADMINISTRATION 344–45 (2012) (describing grievance procedures).

<sup>134</sup> *See infra* note 330; *supra* notes 37, 44, 65, 120–29.

<sup>135</sup> *See* Huq & McAdams, *supra* note 119, at 247–48 (suggesting that harassment that forces an officer to resign should be understood as a constructive discharge and noting “the well-known reality is that it remains difficult or impossible to prove constructive discharge in any individual case, given the code of silence”).

<sup>136</sup> *See* STEPHEN B. BURBANK & SEAN FARHANG, RIGHTS AND RETRENCHMENT: THE COUNTERREVOLUTION AGAINST FEDERAL LITIGATION (2017); ERWIN CHERMERINSKY, CLOSING THE COURTHOUSE DOOR: HOW YOUR CONSTITUTIONAL RIGHTS BECAME UNENFORCEABLE (2017); SARAH STASZAK, NO DAY IN COURT: ACCESS TO JUSTICE AND THE POLITICS OF JUDICIAL RETRENCHMENT (2015).

involving criminal defendants who were charged with driving while intoxicated and sought arrest data to prove the existence of police quotas, some courts have ruled that such information is not relevant or would not bear any material information.<sup>137</sup>

Some civil rights plaintiffs have unsuccessfully brought legal actions arguing that quota-satisfying officers violated their rights. For example, in *D.H. v. City of New York*, a group of women of color were arrested and charged with loitering for the purposes of prostitution.<sup>138</sup> They brought a § 1983 suit against the City of New York and their arresting officers. The plaintiffs challenged the constitutionality of the loitering statute and argued that they were discriminated against on the basis of their race, gender, and gender identity.<sup>139</sup> The plaintiffs also argued that the arrests were products of quota-based policing.<sup>140</sup> To support their claim, they relied on statistical evidence and a statement from a former police officer who noted that arrest quotas led cops to go after “black, . . . Hispanic, . . . [and] LGBT communit[ies].”<sup>141</sup> Notwithstanding this evidence, New York’s anti-quota statute,<sup>142</sup> and the NYPD’s documented struggles with quotas,<sup>143</sup> the court found their arguments unpersuasive. The court granted the defendants’ motion to dismiss and ruled that the plaintiffs had failed to show that “one of *these* defendants needed to make these arrests to meet his or her performance goals and arrest quotas, assuming such goals and quotas existed.”<sup>144</sup> By requiring this kind of evidence at the pleading stage, particularly in a jurisdiction that has

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<sup>137</sup> See, e.g., *Mayes v. City of Oak Park*, No. 05-CV-74386-DT, 2007 WL 9751967, at \*1 (E.D. Mich. Sept. 28, 2007), *aff’d*, 285 F. App’x 261 (6th Cir. 2008) (ruling that the plaintiff, a former public safety officer who claimed his termination was based on race and disability discrimination, was not entitled to racial data on arrests and tickets in Oak Park because it was not relevant to his claim); *Page v. State*, 7 S.W.3d 202, 206 (Tex. App. 1999) (rejecting defendant’s request for DWI task force information, which he argued was material and could be used to impeach the arresting officer since a DWI quota directive would have given the officer a motive to falsify his report); *County of Nassau Police Dep’t v. Judge*, 654 N.Y.S.2d 174, 175 (App. Div. 1997) (ruling that motorist was not entitled to production of internal police directives and orders that allegedly established DWI quota system because the respondent did not demonstrate that any information would be relevant or exculpatory).

<sup>138</sup> 309 F. Supp. 3d 52, 63 (S.D.N.Y. 2018).

<sup>139</sup> *Id.* at 64.

<sup>140</sup> *Id.* at 76.

<sup>141</sup> *Id.* at 75.

<sup>142</sup> N.Y. LAB. LAW § 215-a (McKinney, Westlaw through L.2019, ch. 758 and L.2020, chs. 1 to 387).

<sup>143</sup> See Bronstein, *supra* note 21 (arguing that the New York anti-quota statute has largely failed to rectify the negative practices of the NYPD).

<sup>144</sup> *D.H.*, 309 F. Supp. 3d at 76 (emphasis added).

been the poster-child for police quotas, the court created a high bar for future civil rights plaintiffs seeking to challenge this practice.

Many of the same problems arise in federal cases out of jurisdictions that do not have quota legislation. Before Tennessee passed its legislation, a federal court in that state heard a case brought by Terry Wynn, a Black physician who was stopped by the police after speeding to a hospital to help deliver a patient's baby.<sup>145</sup> Despite the intervention of a hospital supervisor who came to the hospital parking lot to inform the arresting officer that Wynn was indeed a doctor, the officer prepared a criminal summons against Wynn for speeding, felony evading arrest, resisting arrest, and a host of other violations.<sup>146</sup> A local prosecutor dropped the charges.<sup>147</sup> Meanwhile, the officer was suspended for a month for what the police chief described as a failure of judgement.<sup>148</sup> Wynn brought a § 1983 suit, arguing that the officer and the City had violated her Fourth and Fourteenth Amendment rights.<sup>149</sup> She argued that the City of Pulaski had a quota that required law enforcement to obtain "10 'traffic or custodial arrests' per month as a work performance goal," citing the arresting officer's own testimony as evidence.<sup>150</sup> The court ruled that this testimony was not indicative of a "hard-and-fast policy of the department."<sup>151</sup> If it was a formal policy, the court added, "municipal liability cannot attach in the absence of showing some link between the quota and the allegedly false arrest of, and use of excessive force on, Dr. Wynn."<sup>152</sup> Ultimately, in the federal tribunals where non-officers bring their challenges to quotas, courts demand tight causal links between the alleged quota and the constitutional violation. These evidentiary demands, along with different statutory conceptions of quotas, have likely stunted the development of case law in this area.

### C. Wins and Losses

Challenges to quotas that get beyond these hurdles have had mixed success. This subsection describes the few wins that plaintiffs have achieved when litigating police quotas, as well as the many losses.

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<sup>145</sup> Wynn v. City of Pulaski, No. 11-0025, 2013 WL 527154 (M.D. Tenn. Feb. 11, 2013).

<sup>146</sup> *Id.* at \*3.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at \*13.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

Some criminal defendants have persuaded appellate tribunals that quotas governed their arrests and were not adequately considered by trial courts. In Pennsylvania, for example, various courts have interpreted the state's anti-quota law as creating an affirmative defense if defendants can prove a violation of the statute by a preponderance of the evidence.<sup>153</sup> In *Commonwealth v. Greene*, a Pennsylvania court reversed a speeding conviction after the defendant produced a memo from a sergeant to patrol supervisors imploring them to increase their citations from 168 to 450 a month and insisting that they "get the numbers up."<sup>154</sup> The court ruled that the defendant met his burden, and interpreted the memo as creating an impermissible quota.<sup>155</sup>

A Texas appeals court came to a similar conclusion, reversing the DWI conviction of a defendant who was precluded from cross-examining the arresting officer about a departmental quota for DWI arrests, even though the officer was the state's sole witness and had testified that a quota existed.<sup>156</sup> The appellate court ruled that the trial court had abused its discretion and deprived the appellant of his Sixth Amendment right to confrontation.<sup>157</sup> A cross-examination that revealed the existence of a DWI quota would also play a role in a Louisiana court's decision to vacate a conviction.<sup>158</sup>

Police officers who exposed the existence of quotas have also successfully brought retaliation claims against police departments. These decisions were not per se challenges to the alleged quota system, but they remain important because they contribute to the small body of litigation that addresses quotas, shed light on the existence of the practice, and demonstrate the stakes for police officers who complain about this kind of policing. Many of these challenges were First Amendment retaliation cases, decided before *Garcetti* ruled out employee claims of retaliation for things they said while on duty.<sup>159</sup> Other cases, decided before and after *Garcetti*, did not hinge on First Amendment claims, and involved officer complaints about quotas and

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<sup>153</sup> See, e.g., *Woolston v. Cutting*, 474 A.2d 698, 701 (Pa. 1984) (holding that in authoring the anti-quota statute, the legislature intended it to function as an affirmative defense rather than a civil cause of action).

<sup>154</sup> *Commonwealth v. Greene*, 32 Pa. D. & C.3d 48, 52-53 (Ct. Com. Pl. 1984).

<sup>155</sup> *Id.* at 53-54.

<sup>156</sup> *Alexander v. State*, 949 S.W.2d 772, 773-74 (Tex. App. 1997).

<sup>157</sup> *Id.* at 775. *But see* *Hollier v. State*, No. 14-99-01348-CR, 2001 WL 951014, at \*7 (Tex. App. Aug. 23, 2001) (rejecting a similar claim because, unlike in *Alexander*, the appellant could not show that the arresting officer was operating under a quota at the time of arrest).

<sup>158</sup> See *State v. Sampia*, 696 So. 2d 618, 620 (La. Ct. App. 1997).

<sup>159</sup> See, e.g., *Begg v. Moffitt*, 555 F. Supp. 1344, 1365 (N.D. Ill. 1983) (finding a violation under the First Amendment); *Ruhlman v. Barger*, 435 F. Supp. 447, 450 (W.D. Pa. 1976) (same).

police misconduct. Two are noteworthy. *Iglesias v. City of Hialeah*, the more modest and recent of the two, took place in a small city outside of Miami.<sup>160</sup> Juan Iglesias, an officer in the City's police department,<sup>161</sup> sent letters to the City's police chief and mayor protesting the enforcement of illegal ticket quotas.<sup>162</sup> Nevertheless, he received multiple disciplinary notices for not meeting traffic enforcement standards.<sup>163</sup> He used the state's whistleblower law to argue that the City had illegally retaliated against him for complaining about the quotas.<sup>164</sup> The trial court awarded him lost wages but precluded him from seeking noneconomic damages—a decision that the appellate court reversed.<sup>165</sup>

*Martinez v. Village of Mount Prospect* is the most noteworthy court victory involving a police challenge to a quota.<sup>166</sup> The case involved a Latinx police trainee, Martinez, who brought a national origin employment discrimination claim against the Village of Mount Prospect, a community outside of Chicago.<sup>167</sup> He argued that police leadership directed officers to target Latinx drivers to meet ticket quota requirements; to support his claim, he presented evidence highlighting the disproportionate number of traffic tickets given to Latinx drivers.<sup>168</sup> A federal district court entered an approximately \$1.1 million settlement for Martinez<sup>169</sup> and enjoined the Village from “directing, suggesting, ordering or otherwise communicating that any police officer should focus, concentrate, target, profile, or otherwise modify law enforcement efforts in any way on the sole basis of the national origin of any person.”<sup>170</sup> Finally, the presiding judge sent a letter, included in the opinion, to the Department of Justice.<sup>171</sup> The

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<sup>160</sup> *Iglesias v. City of Hialeah*, No. 3D18-639, 2019 WL 3309040 (Fla. Dist. Ct. App. July 24, 2019).

<sup>161</sup> *Id.* at \*1.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at \*2. This dispute spawned a separate ongoing case involving Iglesias's sergeant, Paul DiPietro. In his testimony for Iglesias's case, DiPietro was reprimanded for failing to adequately discipline Iglesias, and then in Iglesias's civil suit, gave testimony that contradicted the City's position that there was no traffic quota. He argued that he was retaliated against by reassignment to a far location and then terminated. DiPietro brought his own claim into federal court, which the parties settled in 2020. *See* Joint Stipulation for Dismissal With Prejudice at 1, *DiPietro v. City of Hialeah*, No. 19-cv-23212 (S.D. Fla. Sept. 10, 2020), ECF No. 50.

<sup>166</sup> 92 F. Supp. 2d 780 (N.D. Ill. 2000).

<sup>167</sup> *Id.* at 781.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 782.

<sup>171</sup> *Id.*

letter highlighted the interface of the quota policy and racial profiling and encouraged the agency to investigate the Village for civil rights violations.<sup>172</sup>

*Martinez* represents one of the more significant rulings on police quotas, but when cases are decided on the merits, it is much more common for plaintiffs to lose. Judicial rebuffs come in a variety of forms. Sometimes courts, relying on *Garcetti*, rule that officer objections to police quotas do not constitute protected speech, which often ends the analysis.<sup>173</sup> Sometimes courts are unpersuaded by evidence that points to the existence of quotas.<sup>174</sup> Sometimes the claims are outright unpersuasive, as in *Gravitt v. N.C. Division of Motor Vehicles*,<sup>175</sup> where the Fourth Circuit rejected claims brought by a police officer and a police union who argued that North Carolina's quota policy violated officers' right to equal protection because the policy operated in some districts but not others.<sup>176</sup>

Two litigation losses are particularly instructive for thinking about quota-based policing in the future. Both cases, brought by police unions, reveal how departments and jurisdictions can work around statutory prohibitions. The first concerns Camden, New Jersey, which has been at the center of police reform for its drastic reboot of its police department.<sup>177</sup> In *Fraternal Order of Police, Lodge 1 v. City of Camden*, the Fraternal Order of Police challenged the City's implementation of a "directed patrol" program that required

<sup>172</sup> *Id.*

<sup>173</sup> See, e.g., *Whitehead v. City of New York*, 953 F. Supp. 2d 367, 375 (E.D.N.Y. 2012) (holding that the plaintiff officer's objections to the quota were not protected by the First Amendment because refusing to comply with the quota does not constitute expressive conduct).

<sup>174</sup> See, e.g., *Statewide Univ. Police Ass'n v. Bd. of Trs. of Cal. State Univ.*, B290293, 2020 WL 2213040, at \*5–6 (Cal. Ct. App. May 7, 2020) (finding no violation of the state's quota statute where personal evaluation "comment cards" offering feedback on the lack of parking enforcement citations were not punitive in nature); *Oliverio v. Butler Univ.*, No. 15-cv-01630, 2017 WL 1650501, at \*9 (S.D. Ind. May 2, 2017) (rejecting plaintiff's invocation of the respondent's quota requirement for parking tickets as not relevant because he was arrested for battery); *Matarazzo v. Safir*, 689 N.Y.S.2d 494, 495 (App. Div. 1999) (dismissing claim because petitioners gave no indication of how many tickets petitioners had to write and the only evidence offered was from two supervising officers from two different precincts who directed the individual petitioners to perform duties, during their meal breaks, that were likely to result in the issuance of tickets); *Commonwealth v. McClellan*, 45 Pa. D. & C.3d 627, 628 (C.P. Chester 1987) (rejecting defendant's affirmative quota defense because he only offered budget statements that showed projected revenues, which the court argued did not establish the existence of a quota system).

<sup>175</sup> 33 F. App'x 45, 47 (4th Cir. 2002).

<sup>176</sup> The plaintiffs also raised relatively unpersuasive claims under the Due Process clause, the Privileges and Immunities clause, and the Fourth Amendment. See *id.* at 47, 49.

<sup>177</sup> See Fussell, *supra* note 31.

police officers to “engage” people whether or not they were suspected of wrongdoing.<sup>178</sup> The directed patrol program consisted of “a structured 15–20 minute deployment into a targeted area to accomplish a specific patrol or crime reduction function.”<sup>179</sup> The contacts were to be tracked and recorded, and officers on regular patrol were expected to perform a minimum of eighteen contacts.<sup>180</sup> According to plaintiffs, failure to comply with these numerical requirements was cause for disciplinary action.<sup>181</sup> The City argued that the program was not a quota because it required police-civilian interactions and not arrests or citations.<sup>182</sup> The Third Circuit relied on the text of the statute and, in a short analysis, agreed.<sup>183</sup> *Fraternal Order* is a paradigmatic example of how a police department can circumvent a statutory prohibition on quotas by focusing on precursory activity such as stops and contacts.

Another failed litigation challenge highlights the sophisticated ways through which police departments can subvert quota statutes. In *Phillipsburg Policemen’s Benevolent Ass’n Local No. 56 v. Township of Phillipsburg*, a local police union challenged a township’s “self-directed patrol index policy,” which created a point system to evaluate police officers.<sup>184</sup> The index assigned different values to different kinds of arrests and citations:

- 4 Points - Narcotics arrests (4 points per subject arrested)
- 4 Points - Burglary and theft arrests
- 3 Points - Warrant arrests (1 subject, multiple warrants = 3 points)
- 2 Points - All moving motor vehicle summonses
- 2 Points - Quality of life summonses (e.g., excessive noise, alcohol related offenses, and animal offenses)
- 2 Points - Other arrests (e.g., disorderly conduct, domestic violence offense; 2 points per subject)
- 2 Points - Unsecured business found (report completed)
- 1 Point - All other town ordinance violations
- 1 Point - Hazardous conditions reported (report must be completed for incident)
- 1 Point - All parking tickets

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<sup>178</sup> 842 F.3d 231, 236 (3d Cir. 2016).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 237.

<sup>183</sup> *Id.* at 239.

<sup>184</sup> *Phillipsburg Policemen’s Benevolent Ass’n Local No. 56 v. Twp. of Phillipsburg*, A-5016-12T3, 2014 WL 8765463, at \*1 (N.J. Super. Ct. App. Div. May 5, 2015).

- 1/2 Point - For every two individual community policing contacts per tour of duty (4 contacts = 2 points, 6 contacts = 3 points, etc.)<sup>185</sup>

Officers who received an index of two or more points received an exceptional performance evaluation.<sup>186</sup> The union argued that the policy undermined the state's prohibition on quotas, and the trial court agreed.<sup>187</sup>

The appellate court struggled because the statute's language only prohibited traffic violations and arrests and, according to the Township, officers could achieve an excellent evaluation without resorting to either.<sup>188</sup> The court acknowledged that the policy "does not, on its face, require quotas" but went on to find that the "defendants cannot avoid the statutory prohibition by crafting a carefully worded policy that does not, when read literally, violate a statutory mandate, but does so when implemented."<sup>189</sup> It added, "if it looks like a duck, quacks like a duck, then it probably is a duck."<sup>190</sup> Notwithstanding the court's acknowledgment of possible subterfuge, it reversed the trial court's conclusion that the policy constituted an illegal quota.<sup>191</sup> As I explain in more detail in Part IV, decisions like *Fraternal Order* and *Phillipsburg* are more than simple losses for police unions. They demonstrate how quota statutes can be evaded in ways that harm the public and frustrate efforts to reign in police malfeasance.

#### D. Settlements

Social norms, legal hurdles, and an unfavorable jurisprudential landscape are features of quota litigation, but so are settlements. Government settlements with officers and civilians have touched various parts of the country—from small cities to big cities—and have ranged from five-figure to eight-figure payouts.<sup>192</sup> Though settlements often come with the qualification that they are not admissions of guilt, they provide a provisional glimpse behind the "blue wall" that quotas sometimes operate behind. Settlements typically come after courts reject motions by governments to dispense with litigation, leaving a body of law that may be useful for future challenges. At a bare min-

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<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at \*2.

<sup>188</sup> *Id.* at \*3.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at \*4.

<sup>192</sup> *See supra* note 26.

imum, settlements reveal how much a jurisdiction wants to avoid litigating their public insistence that they do not use quotas.

New York City, the jurisdiction with the country's largest police force,<sup>193</sup> has struggled with quota allegations and doled out the most in settlements. Adrian Schoolcraft—the involuntarily committed officer discussed above—survived a motion for summary judgment after a federal judge ruled that his speech was protected because he spoke as a citizen. Shortly thereafter, the City of New York settled with Schoolcraft for \$600,000.<sup>194</sup> That same year, the City settled with Craig Matthews, an NYPD officer who complained that his Bronx precinct had competitions for who could make the most arrests, conduct the most stop-and-frisks, and issue the most summonses.<sup>195</sup> The Second Circuit ruled that Matthews's speech was protected by the First Amendment and the City subsequently settled with Matthews for \$280,000 to avoid further litigation.<sup>196</sup>

A little less than a year later, after a federal judge certified a class of defendants subject to quota-based policing and subsequently imposed sanctions on the NYPD for destroying relevant evidence, the City of New York settled with the class for \$75 million.<sup>197</sup> Under the settlement, the City agreed to reiterate its policy that quotas were illegal and that supervisors who implemented them could be subject to discipline.<sup>198</sup> In *Floyd v. City of New York*, the famous “stop and frisk” decision, quotas were a significant theme.<sup>199</sup>

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<sup>193</sup> SHELLEY S. HYLAND & ELIZABETH DAVIS, BUREAU OF JUST. STAT., LOCAL POLICE DEPARTMENTS, 2016: PERSONNEL 3 (2019), <https://www.bjs.gov/content/pub/pdf/lpd16p.pdf> (noting that in 2016, New York City had the largest local police department with more than three times the number of employees than any other department).

<sup>194</sup> Goodman, *supra* note 26.

<sup>195</sup> *Mathias v. City of New York*, 779 F.3d 167, 169 (2d Cir. 2015); *see also* Christopher Mathias, *NYC to Pay \$280,000 Over Cop Who Exposed City's Quota System*, HUFFPOST (Dec. 7, 2015, 3:48 PM), [https://www.huffpost.com/entry/craig-matthews-nypd-quotas\\_n\\_5665cab8e4b072e9d1c6d86b](https://www.huffpost.com/entry/craig-matthews-nypd-quotas_n_5665cab8e4b072e9d1c6d86b).

<sup>196</sup> Mathias, *supra* note 195.

<sup>197</sup> *See Stinson v. City of New York*, No. 10 Civ. 4228, 2016 WL 54684, at \*2–3 (S.D.N.Y. Jan. 5, 2016) (describing how the City failed to issue a litigation hold until three years after the complaint was filed, maintained a policy that provided for the destruction of evidence, destroyed materials related to CompStat meetings, destroyed activity reports, failed to preserve text messages, produced few responsive documents, was “grossly negligent,” and acted in “bad faith”); Benjamin Weiser, *New York City to Pay Up to \$75 Million Over Dismissed Summonses*, N.Y. TIMES (Jan. 23, 2017), <https://www.nytimes.com/2017/01/23/nyregion/new-york-city-agrees-to-settlement-over-summonses-that-were-dismissed.html>.

<sup>198</sup> Weiser, *supra* note 197.

<sup>199</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540, 596–602 (S.D.N.Y. 2013) (analyzing the pressure that quotas impart on officers to increase their stop numbers); *see also* Jenn Rolnick Borchetta, *Continuing to Reform the NYPD's Stop and Frisk Practice*, DEMOS (Feb. 16, 2016), <https://www.demos.org/blog/continuing-reform-nypds-stop-and-frisk-practice> (noting the NYPD norm of officers being judged “on how many stops they do”).

On the other side of the country, the City of Los Angeles has paid millions in settlements to police officers who claim that the Los Angeles Police Department (LAPD) illegally required them to comply with ticket quotas. All of the settlements derive from allegations that Captain Nancy Lauer ordered officers to write at least eighteen traffic tickets each shift and required that eighty percent of citations be for major violations.<sup>200</sup> Officers who did not comply would be denied overtime or receive undesirable work assignments.<sup>201</sup> Despite the City's claim that the number was a goal and not a mandate, a jury awarded two officers over \$1 million in damages.<sup>202</sup> Two years later, the City agreed to pay a settlement of almost \$6 million to eleven police officers in a separate lawsuit over the same quota system.<sup>203</sup> In 2016, the City paid \$950,000 to a former officer who also claimed that he was retaliated against for not participating in a ticket quota system.<sup>204</sup> Most recently, the City of Whittier, located in Los Angeles County, settled for \$3 million with six officers who refused to participate in an arrest quota scheme.<sup>205</sup>

Miami Gardens, which has the largest Black population in Florida and has been called the "stop-and-frisk capital of America,"<sup>206</sup> has produced two settlements tied to quota-based policing. The first involved Earl Sampson, a Black man who was stopped more than four hundred times between 2008 and 2013, often for trespassing at his place of work.<sup>207</sup> Sampson led a class of Black and Latinx defendants who sued the City of Miami Gardens, arguing that the City's police department violated their constitutional rights by adhering to a racialized system of quota-based policing that led officers to selectively stop and frisk Black males ages fifteen to thirty.<sup>208</sup> A few weeks after a

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<sup>200</sup> Joel Rubin & Catherine Saillant, *LAPD to Pay \$10 Million in Traffic Ticket Quota Controversy*, L.A. TIMES (Dec. 10, 2013, 12:00 AM), <https://articles.latimes.com/2013/dec/10/local/la-me-ln-ticket-quota-20131210>.

<sup>201</sup> *Id.*

<sup>202</sup> Special Verdict, *Chan v. City of Los Angeles*, No. BC 418750 (Cal. Super. Ct. Apr. 11, 2011); Andrew Blankstein & Joel Rubin, *LAPD Officers Who Complained About Ticket Quotas Are Awarded \$2 Million*, L.A. TIMES (Apr. 12, 2011, 12:00 AM), <https://www.latimes.com/local/la-xpm-2011-apr-12-la-me-ticket-quotas-20110412-story.html>.

<sup>203</sup> Rubin & Saillant, *supra* note 200.

<sup>204</sup> Branson-Potts & Reyes, *supra* note 26.

<sup>205</sup> Sprague, *supra* note 26; *see also* Rivera v. City of Whittier, No. BC574443, 2017 WL 3579659, at \*1 (Cal. Super. Ct. July 7, 2017) (evaluating the six plaintiffs' claims that they had been retaliated against for whistleblowing the existence of an illegal quota).

<sup>206</sup> Meg O'Connor, *Inside 'The Stop-and-Frisk Capital of America,'* APPEAL (Feb. 21, 2019), <https://theappeal.org/inside-the-stop-and-frisk-capital-of-america>.

<sup>207</sup> *Id.*

<sup>208</sup> *Sampson v. City of Miami Gardens*, No. 13-CV-24312, 2015 WL 11202372, at \*1 (S.D. Fla. May 27, 2015).

federal court declined a motion for summary judgment on those issues, the City settled with the plaintiffs for an undisclosed amount.<sup>209</sup>

During the litigation and subsequent settlement, a dispute about the use of quotas took place inside the police department. Wanda Gilbert, a Black crime analyst responsible for the police department's statistics, grew concerned about dubious arrests and quota-based policing that she claimed were tied to five percent yearly raises.<sup>210</sup> She corroborated the testimony in the *Sampson* litigation and claimed that the Black police chief, Matthew Boyd, directed officers "to stop all Black males between the ages of 15 and 30 years old."<sup>211</sup> She also described how "boys as young as seven," and adolescents "riding their bikes home from school" were accosted by police.<sup>212</sup> Gilbert wrote multiple memos to Boyd and met with City administrators, who told her not to put her concerns in writing because they would become public record.<sup>213</sup> She was fired after she wrote a final memo in 2011 protesting the department's practices. After Gilbert's own protracted legal battles, which made their way to the Eleventh Circuit, the City settled with her for approximately \$1 million.<sup>214</sup>

Quota-based policing can also be fatal, as was the case in Atlanta when police officers killed an elderly woman during an illegal raid of her home. Officers in the Atlanta Police Department's narcotics unit, operating under a quota, pulled a gun on a man they had previously arrested, planted marijuana on him, and demanded that he tell them where they could find drugs.<sup>215</sup> He made up an address, which happened to be the residence of ninety-two-year-old Kathryn Johnston and had a wheelchair ramp in the front.<sup>216</sup> The officers made false statements to a magistrate judge to secure a no-knock search warrant.<sup>217</sup> They could not kick down the security gate, so they used a pry bar and a battering ram during the nighttime raid.<sup>218</sup> Johnston lived

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<sup>209</sup> See Order and Notice of Settlement, *Sampson v. City of Miami Gardens*, No. 13-CV-24312 (S.D. Fla. June 23, 2015), ECF No. 228.

<sup>210</sup> See Charles Rabin, *She Was Fired After Speaking Out About Bad Arrests. She Sued and Just Won \$1 Million*, MIAMI HERALD (Dec. 4, 2018, 6:01 PM), <https://www.miamiherald.com/news/local/crime/article222442315.html>.

<sup>211</sup> Heather Dunhill, *Retired Crime Analyst Wanda F. Gilbert on Police Reform and Growing Up in Segregated South Florida*, SARASOTA MAG. (Aug. 17, 2020, 11:42 AM), <https://www.sarasotamagazine.com/news-and-profiles/2020/08/wanda-f-gilbert>.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> Rabin, *supra* note 210.

<sup>215</sup> Radley Balko, *The Militarization of America's Police Forces*, 11 CATO'S LETTER 1, 1–2 (2013).

<sup>216</sup> Ted Conover, *A Snitch's Dilemma*, N.Y. TIMES MAG. (June 29, 2012), <https://www.nytimes.com/2012/07/01/magazine/alex-white-professional-snitch.html>.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

alone in a dangerous neighborhood, where an elderly neighbor was recently raped.<sup>219</sup> She fired one shot, which provoked 39 shots by the officers, some of which ultimately killed her.<sup>220</sup> After the shooting, the officers searched the home, found no drugs, and subsequently planted three bags of marijuana they had seized earlier that day in Johnston's basement.<sup>221</sup> Afterward, the officers conspired to fabricate a story that they then shared with homicide investigators.<sup>222</sup> An FBI investigation found that the narcotics unit had a performance quota of nine arrests per month.<sup>223</sup> In her sentencing of the three officers, U.S. District Judge Julie Carnes concluded that the pressure to adhere to the quotas played a role in the killing.<sup>224</sup> The City of Atlanta ultimately awarded a \$4.9 million settlement to the family of Kathryn Johnston.<sup>225</sup>

It would be a mistake to understand quota settlements as a big city phenomenon. Some of these settlements have surfaced in small towns across the country. Local governments have settled cases involving allegations of quota-based policing in the City of Mendham in central New Jersey,<sup>226</sup> Smyrna, Delaware,<sup>227</sup> Lehigh, Pennsylvania,<sup>228</sup> Novi, Michigan,<sup>229</sup> Byrnes Mills, Missouri,<sup>230</sup> and the central California city of Paso Robles.<sup>231</sup> Financially, law professors Joanna Schwartz and John Rappaport have explained how these kinds

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Third Atlanta Police Officer Pleads Guilty in Fatal Shooting of Elderly Woman*, DEPT. OF JUST. (Oct. 30, 2008), <https://www.justice.gov/archive/opa/pr/2008/October/08-crt-972.html>.

<sup>222</sup> *Id.*

<sup>223</sup> Bill Rankin, *Ex-Cops Get 5–10 Years for Drug Raid – Judge Agrees Atlanta Police Quotas Influenced Officers' Behavior*, ATLANTA J.-CONST., Feb. 25, 2009, at C1.

<sup>224</sup> *Id.*

<sup>225</sup> Ernie Suggs, *City to Pay Slain Woman's Family \$4.9 Million*, ATLANTA J.-CONST. (Aug. 11, 2012), <https://www.ajc.com/news/local/city-pay-slain-woman-family-million/GWqsgDARzmOhvpb7iPY6FI>.

<sup>226</sup> See Wright, *supra* note 26.

<sup>227</sup> *ACLU Reaches Settlement with Smyrna Police over Wrongful Arrests*, ACLU (Feb. 19, 2015), <https://www.aclu.org/press-releases/aclu-reaches-settlement-smyrna-police-over-wrongful-arrests>.

<sup>228</sup> See Hall, *supra* note 49.

<sup>229</sup> See Phillips, *supra* note 26.

<sup>230</sup> See Robert Patrick & Jeremy Kohler, *Former Byrnes Mill Police Chief Stole \$12,800 from Suspects, Feds Say*, ST. LOUIS POST-DISPATCH (Apr. 20, 2017), [https://www.stltoday.com/news/local/crime-and-courts/former-byrnes-mill-police-chief-stole-from-suspects-feds-say/article\\_faa278bd-25ef-5a8d-953a-534bc11f62c0.html](https://www.stltoday.com/news/local/crime-and-courts/former-byrnes-mill-police-chief-stole-from-suspects-feds-say/article_faa278bd-25ef-5a8d-953a-534bc11f62c0.html).

<sup>231</sup> See Scott Brennan, *City Pays \$125,000 to Settle Lawsuit over Ticket Quotas*, PASO ROBLES DAILY NEWS (Mar. 24, 2014, 8:23 PM), <https://pasoroblesdailynews.com/city-pays-125000-settle-lawsuit-ticket-quotas/15896>.

of settlements can be consequential for smaller jurisdictions.<sup>232</sup> Socially, such settlements—which circulate in mainstream media outlets as well as in local papers of the day—can lead to the kinds of distrust in police that exists in bigger cities. The crucial difference is that many of these localities are not freighted by the same racial politics of large urban cities.<sup>233</sup> The geographical diversity of these settlements highlights how disputes about quota-based policing impact not only racial minorities—the presumed subjects of mass incarceration—but a broader and unassuming public.

Overall, one can glean a few themes from the legal challenges to police quotas discussed in this Part. First, many hurdles preclude these cases from being meaningfully heard by courts. Some obstacles reflect the general “closing of the courthouse doors” to civil rights litigants and criminal defendants.<sup>234</sup> Other impediments, like the code of silence, are specific to police culture and jurisprudence. Second, cases that do make it to a trial on the merits are still unlikely to win. Third, and relatedly, quota litigation is especially likely to settle. Settlements sit alongside victories, allegations, memoirs, police recordings, and criminological scholarship that all point to the existence of police quotas. With the definitional, statutory, and jurisprudential landscape sketched out, the Article will now turn to consider policy considerations both for and against the practice of police quotas.

### III

#### THE THEORETICAL CONTOURS OF POLICE QUOTAS

Most observers of the criminal justice system typically understand quotas through a pejorative lens. In scholarly literature, robust defenses of quotas are relatively rare. The closest thing to a defense is the claim by criminology scholars and law enforcement officials that police need to be evaluated and monitored in some way. This Part begins by considering the best possible rationales for why quotas

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<sup>232</sup> See John Rappaport, *How Private Insurers Regulate Public Police*, 130 HARV. L. REV. 1539, 1565–66 (2017) (describing how large municipalities have “broad tax bases and big budgets” that allow them “to absorb the shock of large judgments and settlements that might seriously damage a smaller city”); see also Joanna C. Schwartz, *How Governments Pay: Lawsuits, Budgets, and Police Reform*, 63 UCLA L. REV. 1144, 1174 (2016) (“Smaller jurisdictions will presumably feel the financial effects of lawsuits more acutely.”).

<sup>233</sup> See KIM PARKER ET AL., PEW RSCH. CTR., WHAT UNITES AND DIVIDES URBAN, SUBURBAN, AND RURAL COMMUNITIES 4 (2018), <https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2018/05/Pew-Research-Center-Community-Type-Full-Report-FINAL.pdf> (describing the racial makeup and attitudes across different types of geographical communities).

<sup>234</sup> See CHEMERINSKY, *supra* note 136 (describing how the Supreme Court’s decisions have resulted in restricted access to the courts for those hoping to enforce their constitutional rights).

might be desirable and defensible. Despite the normative position this Article adopts, it is analytically unsatisfying to oppose police quotas without confronting possible arguments.

Although some of the arguments in favor of quotas are weighty, Section III.B contends there are more compelling reasons on the side of prohibiting them. This Section builds on arguments that have been raised by opponents by offering a more comprehensive view of why quotas constitute bad policy. Moreover, it situates these objections within the definitional, statutory, and jurisprudential context described in Parts I and II. In doing so, Section III.B lays the groundwork for Part IV's normative claims.

### A. *Defenses*

There are at least four possible defenses of quotas that surface in criminology, in the media, and in public statements made by law enforcement officials. The first is that quotas protect against police shirking and idleness. The second is that quotas make the police more productive (e.g., through "performance targets," "goals," "expectations"). Both of these defenses assume that there is a specific amount of illegal activity occurring in the world, and that officers should respond to some portion of it. The third defense involves the evaluative utility of quotas and maintains that quotas provide an ostensibly neutral way to assess police performance. The final defense of quotas is rare and accepts the profit-generating nature of policing.

#### 1. *Police Idleness*

The cultural stereotype of lazy, underactive police officers is tied to a longstanding anxiety about police productivity. Concerns about shirking invoke basic agency theory where police officers act as agents for the principal. It is assumed that police officer-agents, "will shirk their responsibilities when given half a chance."<sup>235</sup> If they are not "sufficiently monitored or bonded, agents will be lazy or irresponsible—or at least not entirely selfless in their motivations."<sup>236</sup> Quotas are an attempt to reduce the agency costs that come with police administration. Although concerns about shirking exist across many organizations,<sup>237</sup> these worries have unique expressions in policing. In 1909, Leonhard Fuld, one of the earliest scholars of American urban

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<sup>235</sup> Eric W. Orts, *Shirking and Sharking: A Legal Theory of the Firm*, 16 YALE L. & POL'Y REV. 265, 276–77 (1998).

<sup>236</sup> *Id.*

<sup>237</sup> See generally JOHN BREHM & SCOTT GATES, WORKING, SHIRKING, AND SABOTAGE: BUREAUCRATIC RESPONSE TO A DEMOCRATIC PUBLIC (1997) (studying shirking in federal, state, and local bureaucracies in order to debunk the concept of the "lazy bureaucrat").

policing, observed that “the policeman’s life is a lazy life . . . as much of his time is spent doing nothing.”<sup>238</sup> Fuld also noted that police are different because “[t]he authority with which they are invested . . . create in them an inordinate desire to shirk their work or, as they themselves express it, ‘to take it easy.’”<sup>239</sup> NYPD spokesman Al O’Leary captured this sentiment in the 1990s. When six transit cops donned nooses at a news conference to protest their “bondage” to quotas, O’Leary lambasted: “If the union is suggesting we should go back to the days of coffee-drinking, doughnut eating, do-nothing cops, then they’re way out of sync with policing today.”<sup>240</sup>

Most defenses of quotas reject the formal label but embrace the idea of evaluating officers because of a concern about laziness. When Atlanta Police Chief Richard Pennington rejected the idea that his department utilized quotas, he conceded to maintaining a related euphemism and admitted, “Yes, we have performance measures in the Atlanta Police Department. We have to have performance measures because if we don’t have them, the officers would come in every day with nothing on their sheets.”<sup>241</sup> Departments certainly cannot eliminate shirking, but quotas can address this concern by demanding a minimum amount of law enforcement activity while utilizing employment sanctions to ensure compliance. Considering the significant amount of money spent on policing,<sup>242</sup> it is reasonable to expect some minimum output level, whether in the seemingly mundane realm of traffic enforcement or the more serious world of arrests.<sup>243</sup>

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<sup>238</sup> LEONHARD FELIX FULD, *POLICE ADMINISTRATION: A CRITICAL STUDY OF POLICE ORGANISATIONS IN THE UNITED STATES AND ABROAD* 91 (2d ed. 1910).

<sup>239</sup> *Id.* at 48–49.

<sup>240</sup> Dean Chang, *Tix Quota No Token Rule: TA Cops*, N.Y. DAILY NEWS, Nov. 17, 1992, at 15.

<sup>241</sup> Brenda Goodman, *Atlanta’s Mayor Defends Chief Against Misconduct Accusations*, N.Y. TIMES (May 1, 2007), <https://www.nytimes.com/2007/05/01/us/01atlanta.html>.

<sup>242</sup> See Niall McCarthy, *How Much Are U.S. Cities Spending on Policing in 2020?*, FORBES (June 12, 2020, 5:21 AM), <https://www.forbes.com/sites/niallmccarthy/2020/06/12/how-much-are-us-cities-spending-on-policing-in-2020-infographic> (stating that police budgets run as high as billions of dollars in several major cities in the United States, including New York (\$5.61 billion), Los Angeles (\$1.73 billion), and Chicago (\$1.68 billion)).

<sup>243</sup> See generally CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD P. HAIDER-MARKEL, *PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP* (2014) (describing the impact of police stops on racial disparities and perceptions of citizenship in the United States); Anna Roberts, *Arrests as Guilt*, 70 ALA. L. REV. 987 (2019) (examining the consequences of arrests and the implicit fusion of arrests and guilt); Rachel A. Harmon, *Why Arrest?*, 115 MICH. L. REV. 307 (2016) (arguing against the outsized role arrests play in policing); Eisha Jain, *Arrests as Regulation*, 67 STAN. L. REV. 809 (2015) (examining how arrests are systematically used as a regulatory tool outside of the criminal justice system).

## 2. *Productivity*

Ensuring sufficient police activity is another rationale for quotas.<sup>244</sup> While related to idleness, this defense is premised on the idea that there is a certain amount of illegal activity in the world (i.e., traffic violations or criminal offenses) and that officers should attend to some portion of it.<sup>245</sup> Lieutenant Colonel Kelly of Chesterfield County, located outside of Richmond, Virginia, captured this sentiment when he stated, “Our officers are on the road 12 hours a day, so, if in a 12-hour period of time they stop three cars, I don’t think that’s unfairly targeting our citizens.”<sup>246</sup> Productivity rationales also ostensibly ensure the fair distribution of work within a police force.<sup>247</sup> An officer in Georgia recently recounted how one of his colleagues refused to answer calls or provide backup to other officers, and admitted that the department would “need a quota system to get a guy like that moving or he’d just park his car and sleep.”<sup>248</sup>

To make this productivity rationale more concrete, consider the case of drunk driving. Although Americans generally agree that driving while drunk is wrong and dangerous, many still tolerate it.<sup>249</sup> Setting aside real and often consequential issues of implementation,<sup>250</sup> as a general matter, one might argue that the careful dedication of police resources to drunk driving is uncontroversial. It would also be

<sup>244</sup> See Bronstein, *supra* note 21, at 551–53.

<sup>245</sup> See NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., DEP’T OF TRANSP., 2 MANUAL FOR POLICE TRAFFIC SERVICES PERSONNEL PERFORMANCE EVALUATION SYSTEM 1 (1977) (“Productivity is not another name for ‘quotas.’ Productivity refers to measures of job performance to be used in comparison to expected levels of performance.”).

<sup>246</sup> Melissa Hipolit, *Former Police Officer Exposes Chesterfield’s Ticket Quota Goals*, WTVR (July 15, 2014, 6:04 AM), <https://wtvr.com/2014/07/14/chesterfield-quota-investigation>.

<sup>247</sup> See ATLANTA CITIZEN REV. BD., STUDY AND INQUIRY INTO THE ATLANTA POLICE DEPARTMENT’S INVOLVEMENT IN THE DEATH OF MS. KATHRYN JOHNSTON 24 (2010) (“A manager must ensure that officers are working and the work is fairly distributed.”).

<sup>248</sup> Bill Torpy, *Did DeKalb’s Cops Have Arrest and Ticket Quotas?*, ATLANTA J.-CONST. (Oct. 2, 2016), <https://www.ajc.com/news/local/bill-torpy-large-did-dekalb-cops-have-arrest-and-ticket-quotas/GxkflThnOJlUaFTSQ5Fd7N>.

<sup>249</sup> See generally BARRON H. LERNER, ONE FOR THE ROAD: DRUNK DRIVING SINCE 1900 (2011) (tracing the history of drunk driving and efforts to stop it); JAMES B. JACOBS, DRUNK DRIVING: AN AMERICAN DILEMMA (1989) (analyzing Americans’ drunk driving problem and anti-drunk driving policies); Fredrick Kunkle, *Americans Are Still Way Too Tolerant of Drunken Driving*, WASH. POST (Aug. 31, 2016, 8:02 AM) <https://www.washingtonpost.com/news/tripping/wp/2016/08/31/americans-are-still-way-too-tolerant-of-drunk-driving-safety-advocates-say> (discussing the problem of drunk driving in the United States today).

<sup>250</sup> Implementation questions are related but not necessarily fatal to this rationale; instead such administrative issues—which unavoidably implicate questions of race, poverty, gender, and sexual orientation—can be attended to by training, oversight, and compliance.

reasonable to expect results, particularly in places where drunk driving is likely to occur (e.g., large sporting events) or during times of the year when people may be more willing to drink and drive (e.g., holidays). The absence of a numerical goal or a threat of adverse employment action would render this enforcement priority an empty mandate. For supporters of this defense, ticket quotas raise the stakes.

### 3. *Evaluation*

One might also argue that quotas can be useful for evaluative purposes. Various arguments are available on this front. First, as a general matter, employment-based, numerical expectations are unremarkable. In its discussion of quotas, the Atlanta Citizen Review Board explained, “Production quotas are a common part of modern life. Almost all of us work at jobs where [sic] we have explicit or implicit numerical goals.”<sup>251</sup> The power to arrest and a legally sanctioned monopoly over violence differentiate police from typical employees, but it is not obvious that these extraordinary powers should exempt law enforcement from standard models of employer evaluation. In fact, such an exemption might add another layer to “police exceptionalism,” much to the chagrin of criminal justice reformers.<sup>252</sup> Defenders of quotas might argue that numbers-based imperatives should not be the *only* standards for evaluating police officers, but they would certainly include quotas among them. They would likely point to the fact that many statutes expressly prohibit law enforcement from relying exclusively on numbers when assessing officers.<sup>253</sup> This argument for the evaluative utility of quotas focuses on the standard nature of numbers-based evaluations in the employment world and highlights the need to consider numbers alongside other factors.

Besides the normalcy of quantitative requirements in work settings, evaluation-based defenses of quotas also focus on their perceived tangibility and neutrality. On the former, Joe Giacalone, a former New York City law enforcement officer who defends the use

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<sup>251</sup> ATLANTA CITIZEN REV. BD., *supra* note 247, at 22.

<sup>252</sup> See, e.g., Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1843 (2015) (“Policing agencies—for that is what they are, agencies of executive government—fail to play by the rules of administrative governance.”).

<sup>253</sup> See, e.g., N.J. STAT. ANN. § 40A:14-181.2 (West, Westlaw through L.2020, c.126 and J.R. No. 2) (“The department or force shall not use the number of arrests or citations issued by a law enforcement officer as the sole criterion for promotion, demotion, dismissal, or the earning of any benefit provided by the department or force.”); N.C. GEN. STAT. ANN. § 20-187.3 (West, Westlaw through S.L. 2020-97 of 2020 Reg. Sess.) (“Pay and promotions of members of the Highway Patrol shall be based on their overall job performance and not on the basis of the volume of citations issued or arrests made.”).

of quantitative benchmarks, claims that “[t]here are very few ways we can evaluate police officers’ activity.”<sup>254</sup> Since it is impossible to “count how many times [police officers] shake someone’s hand on the street,” Giacalone is unbothered by critiques of quotas and insists that “it’s written in the job description to make arrests and write summons.”<sup>255</sup> Alongside this results-oriented approach to policing is the idea that quotas are straightforward and empirically superior to subjective assessments. Indeed, criminologists have acknowledged that quotas are sometimes justified because “such numbers are easy to calculate and compare.”<sup>256</sup> Some describe these quantitative metrics as less vulnerable to the idiosyncrasies of police management.<sup>257</sup>

The idea of objectivity is significant because promotion in policing is notoriously nepotistic and subject to interpersonal politics.<sup>258</sup> Quotas, it could be argued, provide a more impersonal way to assess employee productivity and address longstanding concerns about diversity in law enforcement.<sup>259</sup>

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<sup>254</sup> George Joseph, *NYPD Commander’s Text Messages Show How the Quota System Persists*, APPEAL (Dec. 12, 2018), <https://theappeal.org/nypd-commanders-text-messages-show-how-the-quota-system-persists>.

<sup>255</sup> *Id.*

<sup>256</sup> STEVEN M. COX, SUSAN MARCHIONNA & BRIAN D. FITCH, INTRODUCTION TO POLICING 243–44 (3d ed. 2017).

<sup>257</sup> See FRANK J. LANDY, PERFORMANCE APPRAISAL IN POLICE DEPARTMENTS 6 (1977) (“One of the major issues in performance measurement is the nature of the information gathered . . . . Most critics of subjective or judgmental performance evaluation imply that the judgment made by the supervisor is more related to personal idiosyncrasies than to the behavior of the person being rated.”).

<sup>258</sup> See THOMAS J. GRADEL & DICK SIMPSON, CORRUPT ILLINOIS: PATRONAGE, CRONYISM, AND CRIMINALITY 136 (2015) (discussing how a Chicago police officer failed to receive a promotion for failing to follow the directions of a corrupt local politician); STEVEN LEINEN, BLACK POLICE, WHITE SOCIETY 136 (1984) (discussing how promotion for detectives in the NYPD relied on both quantitative factors (number of arrests), and the leveraging of personal connections (“having ‘sponsors’ or ‘personal contacts’ on the job”)); Andrea Shalal & Jonathan Landay, *Black Cops Say Discrimination, Nepotism Behind U.S. Police Race Gap*, REUTERS (July 2, 2020, 10:28 AM), <https://www.reuters.com/article/us-minneapolis-police-blackofficers/black-cops-say-discrimination-nepotism-behind-u-s-police-race-gap-idUSKBN2432T8> (stating that discrimination in hiring and promotion has hampered Black representation in police forces in the United States).

<sup>259</sup> On diversity, see MANGAI NATARAJAN, WOMEN POLICE IN A CHANGING SOCIETY: BACK DOOR TO EQUALITY (2008) (describing the development of women police over the past twenty years); DAVID E. BARLOW & MELISSA HICKMAN BARLOW, POLICE IN A MULTICULTURAL SOCIETY: AN AMERICAN STORY (2018) (describing the role that social, political, and economic relationships have played in the historical development of the police); see generally David Alan Sklansky, *Not Your Father’s Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 1209 (2006) (describing the recent dramatic shift in the demographics of police departments).

#### 4. Revenue Generation

The image of mercenary police officers seizing civilians to meet quantitative goals is unsavory and makes explicitly revenue-based defenses of quotas rare. However, administrative practices across the country reveal an undeniable fact: law enforcement helps generate money for municipal coffers. This stark reality became clear in Nevada a few years ago, when state legislators vigorously protested the decriminalization of traffic tickets.<sup>260</sup> They argued that such an action would lead to an annual loss of \$33 million in the counties of Washoe and Reno.<sup>261</sup>

The profitability of law enforcement also helps explain why cities get nervous when police officers engage in purposeful work slow downs. Public safety is an issue, but so is money. “Cops not writing summonses is usually very effective” and garners immediate attention “because it affects the city finances greatly.”<sup>262</sup> Perhaps the most obscene version of policing for profit was the well-documented debacle in Ferguson, Missouri, where the federal government found that revenue, rather than public safety needs, shaped the city’s racially discriminatory policing.<sup>263</sup> Defenders of revenue-based policing might concede that profit-motivated arrest quotas are indefensible and instead limit their defense to quotas for traffic tickets and violations, which represent the core feature of all anti-quota statutes and pending bills.<sup>264</sup>

A revenue-based defense of police quotas would highlight the fact that, in many jurisdictions, revenue from traffic violations helps finance socially valuable goods. Pennsylvania imposes a two-dollar surcharge on traffic violations that goes to its Access to Justice Account, which funds civil legal services in the state.<sup>265</sup> A recent California law imposes a four-dollar fee on moving violations to support emergency air medical services.<sup>266</sup> In a driver-friendly state with

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<sup>260</sup> James DeHaven, *Do Traffic Tickets Unfairly Hurt the Poor? Nevada Lawmakers Eyeing Traffic Law Reforms*, RENO GAZETTE-J. (Dec. 21, 2017, 4:42 PM), <https://www.rgj.com/story/news/politics/2017/12/21/do-traffic-tickets-unfairly-hurt-poor-nevada-lawmakers-again-eyeing-traffic-law-reforms-despite-city/975423001>.

<sup>261</sup> *Id.*

<sup>262</sup> Haven Orecchio-Egresitz, *Police Have Traditionally Protested Anti-Police Rhetoric by Making Fewer Arrests. Right Now That’s Exactly What the Public Wants*, INSIDER (June 16, 2020, 1:41 PM), <https://www.insider.com/police-have-historically-protested-by-making-fewer-arrests-its-become-2020-6>.

<sup>263</sup> See Ferguson Report, *supra* note 17.

<sup>264</sup> See *infra* Appendices A & B.

<sup>265</sup> 42 PA. STAT. AND CONS. STAT. ANN. § 3733.1(c)(3) (West, Westlaw through 2020 Reg. Sess. Act 95).

<sup>266</sup> *Governor Signs Bipartisan Bill to Extend Funding for Emergency Air Medical Services*, PR NEWswire (Oct. 8, 2019, 2:42 PM), <https://www.prnewswire.com/news->

the country's largest population, this surcharge directly helps the critical victims of automobile accidents<sup>267</sup> and improves services to rural residents who need critical care in urban centers.<sup>268</sup> Surcharges for traffic violations in New Jersey fund research on spinal cord repair, brain injury, and autism treatment.<sup>269</sup> In Michigan during the 2017-2018 fiscal year, penal fine revenues, including fines from traffic tickets, generated approximately \$24.6 million, with \$24.2 million distributed to public libraries and \$392,800 distributed to law libraries.<sup>270</sup> Notably, all of these states have quota prohibitions on the books.<sup>271</sup> Government benefits derived from traffic violations, defenders would argue, are not extraordinary.

With this reality of government-generated profit in mind, a defender of quotas would argue that the remaining issue is whether quotas are an ideal way to actualize the subsidies that flow out of traffic laws. This is a question of tradeoffs.

Many jurisdictions rely on these kinds of cross-subsidies because of the legislative and electoral unpopularity of raising taxes. Jeff Cumins, a political scientist and expert in state budgets, captures this problem: "Legislators can get creative in ways to find revenue. Particularly in the last decades we've been in an anti-tax orientation, and so this is one way to raise money for legislators' pet projects and programs."<sup>272</sup> Funding by traffic violations is particularly salient in rural parts of the country as well as states in the southeast, where research has shown that jurisdictions have an unusually high reliance on fees and fines.<sup>273</sup> These localities have small property tax bases and collect fewer sales taxes than their urban counterparts because of relatively lower commerce.<sup>274</sup> Thus, "[e]ven when the ethical and fiscal problems with financing government through fines are apparent,

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releases/governor-signs-bipartisan-bill-to-extend-funding-for-emergency-air-medical-services-300934138.html; CAL. GOV'T CODE § 76000.10(c)(1) (West, Westlaw through ch. 372 of 2020 Reg. Sess.).

<sup>267</sup> § 76000.10(e)(1).

<sup>268</sup> *Governor Signs Bipartisan Bill to Extend Funding for Emergency Air Medical Services*, *supra* note 266.

<sup>269</sup> Laura Herzog, *We Paid \$405M in Tickets Last Year; See Where the Money Went*, NJ.COM (Jan. 16, 2019), [https://www.nj.com/news/2016/05/where\\_your\\_ticket\\_payment\\_money\\_goes\\_funds\\_new\\_jer.html](https://www.nj.com/news/2016/05/where_your_ticket_payment_money_goes_funds_new_jer.html).

<sup>270</sup> MICHIGAN HOUSE OF REPRESENTATIVES FISCAL AGENCY, FISCAL BRIEF: TRAFFIC CITATION REVENUE 5 (2019), [https://www.house.mi.gov/hfa/pdf/alpha/fiscal\\_brief\\_traffic\\_citation\\_revenue.pdf](https://www.house.mi.gov/hfa/pdf/alpha/fiscal_brief_traffic_citation_revenue.pdf).

<sup>271</sup> *See infra* Appendix A.

<sup>272</sup> Liz Gonzalez, *Special Report: Why Traffic Tickets in California Are So High*, FOX26 NEWS (Apr. 29, 2019), <https://kmpm.com/news/local/special-report-why-traffic-tickets-in-california-are-so-high>.

<sup>273</sup> *See* Maciag, *supra* note 5.

<sup>274</sup> *Id.*

viable alternatives remain hard to find.”<sup>275</sup> Defenders of quota-based policing would contend that such regimes are just one part of a larger set of tradeoffs when policymakers are considering how to diversify money streams. They would argue that this version of policing should be openly debated and carefully considered instead of categorically rejected based on grotesque examples. Implementation and the specter of discrimination still loom, but defenders of quotas would maintain that these issues are analytically distinct and correctable.<sup>276</sup>

## B. Counterarguments

Law enforcement, scholars of policing, critics of the police, and the media have all offered insights that quickly dispense with some of these rationales for quotas. This subsection supplements these insights with new objections. It offers a point-by-point refutation of the above-described defenses of quotas—some of which are compelling at first glance but suffer from practical and empirical problems.

### 1. *The Allure of Activity*

First, quota-based policing does not guard against shirking. Quotas may produce law enforcement activity, but officers who want to shirk will still find ways to cut corners even when there are quotas in place designed to keep them productive.<sup>277</sup> Consider the cases of Blaine Morgan and Michael Baker, two police officers in Charleston, South Carolina. Both officers disclosed that they falsified traffic tickets in an effort “to boost their respective citations totals” and subsequently resigned.<sup>278</sup> Their scam involved writing bogus traffic tickets without motorists’ knowledge.<sup>279</sup> The officers had the tickets dismissed because they had no intention of following through on them in court. But, as one news article said at the time, “one of the officers apparently slipped up. He did not dismiss a ticket in time for court

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<sup>275</sup> Matt Ford, *The Problem with Funding Government Through Fines*, ATLANTIC (Apr. 2, 2015), <https://www.theatlantic.com/politics/archive/2015/04/the-problem-with-funding-government-through-fines/389387>.

<sup>276</sup> See *supra* note 249.

<sup>277</sup> See TOM BARKER, POLICE ETHICS: CRISIS IN LAW ENFORCEMENT 131 (3d ed. 2011) (“Supervisors who impose quotas . . . increase the risks that officers will cut corners or bend the laws . . . to meet the quotas . . .”); ROGER G. DUNHAM & GEOFFREY P. ALPERT, CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS 207 (7th ed. 2015) (“Management practices may encourage corruption by imposing pressures for arrest quotas or make it acceptable to cut corners to effect arrests.”).

<sup>278</sup> Michael Majchrowicz, *2nd Charleston Police Officer Who Falsified Traffic Tickets Resigns from Department*, POST & COURIER (Sept. 14, 2019), [https://www.postandcourier.com/news/2nd-charleston-police-officer-who-falsified-traffic-tickets-resigns-from-department/article\\_16b6279e-a334-11e9-a925-87076f916396.html](https://www.postandcourier.com/news/2nd-charleston-police-officer-who-falsified-traffic-tickets-resigns-from-department/article_16b6279e-a334-11e9-a925-87076f916396.html).

<sup>279</sup> *Id.*

and the driver was notified.”<sup>280</sup> After Officer Morgan resigned; the Charleston Police Department admitted that Morgan artificially inflated the number of tickets written in an attempt to conceal the fact that he was not actively and appropriately patrolling his area.<sup>281</sup> This statement casts doubts on whether quotas can mitigate shirking and highlights the perverse incentives they invite.

A similar case involving the termination of a ticket-falsifying, quota-fulfilling officer made it to the Supreme Court of Mississippi. The state fired officer Sammy William Ray for writing “ghost tickets.”<sup>282</sup> In a sworn statement, he confessed, “During the time I have been employed with the [Mississippi Department of Public Safety], I have written 20–25 tickets that may or may not be factual tickets . . . . This was done to increase my ticket activity.”<sup>283</sup> In an interview where he was questioned about his motives, he unambiguously added, “I was just trying to play a numbers game. You know, just trying to stay out of hot water.”<sup>284</sup>

A massive overtime abuse scandal in Massachusetts also injects doubt into whether police quotas actually make officers more productive. The overtime scandal dated back to 1996 and involved more than twenty officers in the now-defunct Troop E of the Massachusetts State Police (MSP), which patrolled the Massachusetts Turnpike.<sup>285</sup> Prosecutors claimed that officers were “expected to issue a minimum of 8–10 citations” for each shift.<sup>286</sup> Inability to meet this requirement “had to be explained to supervisors and command staff,” and “[r]epeated failures to meet this quota often resulted in a trooper being blocked from receiving [such] overtime opportunities.”<sup>287</sup>

Because MSP received federal funding, the Department of Justice became involved and ultimately charged and convicted eight people of

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<sup>280</sup> Anne Emerson, *CPD Chief: Full-Scale Investigation into Unwarranted Ticket Writing*, ABC4 NEWS (July 11, 2019), <https://abcnews4.com/news/local/cpd-chief-full-scale-investigation-into-unwarranted-ticket-writing>.

<sup>281</sup> *Id.*

<sup>282</sup> Ray v. Miss. Dep’t of Pub. Safety, 172 So. 3d 182, 184 (Miss. 2015).

<sup>283</sup> *Id.* at 186.

<sup>284</sup> *Id.* at 185.

<sup>285</sup> Matt Rocheleau, *State Police Overtime Scheme, Illegal Ticket Quota Was Devised by Higher-Ups 20 Years Ago, Former Trooper Says*, BOS. GLOBE (Feb. 6, 2020, 8:56 PM), <https://www.bostonglobe.com/2020/02/07/metro/state-police-overtime-scheme-ticket-quota-system-stretches-back-20-years-former-trooper-says>.

<sup>286</sup> Scott J. Croteau, *Were Mass. State Police Troopers in OT Scandal Told to Fill Ticket Quotas? Agency Denies New Allegation in Federal Court Filing*, MASS. LIVE (Mar. 20, 2019), <https://www.masslive.com/news/2019/03/were-mass-state-police-troopers-in-ot-scandal-told-to-fill-ticket-quotas-agency-denies-new-allegation-in-federal-court-filing.html>.

<sup>287</sup> *Id.*

various embezzlement-related charges.<sup>288</sup> Quotas were a motivating factor in the overtime scheme. According to one of the Department of Justice's sentencing announcements, the officers "admitted that they had been paid for hours they did not work, and for overtime shifts from which they left early."<sup>289</sup> The scheme was so elaborate that the federal judge directed prosecutors to revisit whether the parties should be charged with conspiracy.<sup>290</sup>

Elsewhere, quota-based policing has led officers to plant crack on innocent people,<sup>291</sup> lazily dump summonses on clearly abandoned cars,<sup>292</sup> cite fictitious drivers,<sup>293</sup> and ticket dead people.<sup>294</sup> Such malfeasance is not only in the domain of individual decisionmaking but can shape organizational culture. Police supervisors who require officers to meet quotas are also beholden to numbers in ways that encourage the aforementioned forms of misconduct.<sup>295</sup> The absence of empirical scholarship on quota-based shirking, coupled with the exis-

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<sup>288</sup> See, e.g., U.S. Attorney's Office, District of Mass., *Former Massachusetts State Trooper Sentenced to Three Months in Prison for Overtime Fraud* (Mar. 26, 2019), <https://www.justice.gov/usao-ma/pr/former-massachusetts-state-trooper-sentenced-three-months-prison-overtime-fraud>.

<sup>289</sup> Press Release, U.S. Attorney's Office: District of Mass., *Two Massachusetts State Troopers Sentenced in Overtime Abuse Investigation* (June 4, 2019), <https://www.justice.gov/usao-ma/pr/two-massachusetts-state-troopers-sentenced-overtime-abuse-investigation>.

<sup>290</sup> Matt Rocheleau, *Judge Orders Federal Prosecutors to Explore Whether State Police OT Scandal Was a 'Conspiracy,'* BOS. GLOBE (Jan. 30, 2020, 3:45 PM), <https://www.bostonglobe.com/2020/01/30/metro/judge-wolf-orders-federal-prosecutors-explore-whether-state-police-overtime-scandal-was-conspiracy>.

<sup>291</sup> See Oren Yaniv, *Ex-Cop Jason Arbeen Cries for Judge, Gets Probation; Judge Gustin Reichbach Could Have Given Him 4 Years*, N.Y. DAILY NEWS (Feb. 3, 2012), <https://www.nydailynews.com/new-york/ex-cop-jason-arbeen-cries-judge-probation-judge-gustin-reichbach-4-years-article-1.1016083>; Press Release, Drug Policy Alliance, *Former NYPD Detective Testifies that Police Regularly Plant Drugs on Innocent People to Meet Arrest Quota* (Oct. 12, 2011), <https://www.drugpolicy.org/news/2011/10/former-nypd-detective-testifies-police-regularly-plant-drugs-innocent-people-meet-arres>; Jim Dwyer, *The Drugs? They Came from the Police*, N.Y. TIMES (Oct. 13, 2011), <https://www.nytimes.com/2011/10/14/nyregion/those-drugs-they-came-from-the-police.html>.

<sup>292</sup> ELIZABETH REUSS-IANNI, *TWO CULTURES OF POLICING: STREET COPS AND MANAGEMENT COPS* 112 (1983).

<sup>293</sup> Tom Jackman, *Md. Trooper Wrote DWI Tickets to Fictitious Drivers, Pleads Guilty to Perjury*, WASH. POST (Aug. 6, 2020, 6:33 AM), <https://www.washingtonpost.com/crime-law/2020/08/06/md-trooper-wrote-dwi-tickets-fictitious-drivers-pleads-guilty-perjury>.

<sup>294</sup> Paul Pizzuto, *Ex-NYPD Officer, Says He Ticketed Dead People to Meet Quotas*, HUFFPOST (Sept. 7, 2012, 11:17 AM), [https://www.huffpost.com/entry/paul-pizzuto-ex-nypd-officer-ticketed-dead-people-quotas\\_n\\_1864310](https://www.huffpost.com/entry/paul-pizzuto-ex-nypd-officer-ticketed-dead-people-quotas_n_1864310).

<sup>295</sup> See Christopher Slobogin, *Testifying: Police Perjury and What to Do About It*, 67 U. COLO. L. REV. 1037, 1044 n.32 (1996) ("[P]olice supervisors, driven by the same crime control and quota pressures that drive field officers, actively encourage testifying.").

tence of widespread evidence of police corruption,<sup>296</sup> leads to the reasonable conclusion that these requirements do not incentivize diligent policing and instead contribute to the scourge of wrongful convictions.<sup>297</sup>

## 2. *Arbitrariness*

Arbitrariness and inattention to quality foil the expectation that quotas will enhance police productivity. It bears noting that how one measures productivity depends on how one envisions the function of police. The purpose of law enforcement is usually tied to standard conceptions of crime control, public safety, and private property protection. But many critics of the criminal justice system attribute other, less uplifting goals, to the police, including enforcement of the racial order and oversight of the poor. There is much evidence to support the latter understanding.<sup>298</sup> However, this Section's analysis will proceed, for argument's sake, with the former, good-faith conception of the police.

Even assuming that police serve the socially beneficial purpose of protecting life and property, numbers will not be completely impeachable and have a role in how this division of government is evaluated. But per se quotas are blunt objects that do not neatly get at public

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<sup>296</sup> See IVKOVIC, *supra* note 116; Rudovsky, *supra* note 116; Russell Covey, *Police Misconduct as a Cause of Wrongful Convictions*, 90 WASH. U. L. REV. 1133, 1133 (2013); Carroll Seron, Joseph Pereira & Jean Kovath, *Judging Police Misconduct: "Street-Level" Versus Professional Policing*, 38 L. & SOC'Y REV. 665 (2004) (surveying New York City residents' accounts of instances where police officers engaged in prohibited behavior such as use of unnecessary force and abuse of authority).

<sup>297</sup> See JESSICA S. HENRY, *SMOKE BUT NO FIRE: CONVICTING THE INNOCENT OF CRIMES THAT NEVER HAPPENED* 66 (2020) ("Quotas result in no-crime wrongful convictions because they motivate the police to arrest people for crimes that never happened and cause innocent people to plead guilty [to them] so they can go home.").

<sup>298</sup> See, e.g., PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* (2017); SALLY E. HADDEN, *SLAVE PATROLS: LAW AND VIOLENCE IN VIRGINIA AND THE CAROLINAS* (2001); ALEXES HARRIS, *A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR* (2016); TALITHA L. LEFLOURIA, *CHAINED IN SILENCE: BLACK WOMEN AND CONVICT LABOR IN THE NEW SOUTH* (2015); ALEXANDRA NATAPOFF, *PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL* (2018); ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* (2017); LOÏC WACQUANT, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* (2009); NEIL WEBSDALE, *POLICING THE POOR: FROM SLAVE PLANTATION TO PUBLIC HOUSING* (2001); Bruce Western & Katherine Beckett, *How Unregulated Is the U.S. Labor Market? The Penal System as a Labor Market Institution*, 104 AM. J. SOC. (1999).

safety. Scholars and legislative supporters have noted their arbitrariness,<sup>299</sup> but there is more to unearth.

The arbitrariness of police quotas is highlighted by their overinclusive and underinclusive nature. Unreasonably high quotas can extract officers' time and prevent them from addressing more serious threats that, if attended to, could lead to greater public safety benefits.<sup>300</sup> When quotas are low, as supporters claim, public safety benefits are questionable.<sup>301</sup> A quota of two arrests every six weeks led one cop to offer the following query: "Suppose the officer makes two arrests the first two weeks? What does he do the next four?"<sup>302</sup> If the productivity rationale governs, the officer could technically coast. Ultimately, the productivity defense for quotas is rife with incoherence. It can be irresponsible to public safety by serving as a distraction from more serious criminal wrongdoing. This rationale can also be insensitive to public safety by only scratching the surface of illegality and allowing officers to satisfy a minimal threshold quota that may not correspond with actual criminal offending.

### 3. *Thin Evaluations*

It is undeniable that law enforcement leadership needs some method to evaluate officers, but quotas are subpar instruments for such assessments. Critics of quotas inside and outside of law enforcement have taken the laziness rationale and deployed it against supervisors, with one online commenter arguing that "[q]uotas are management's lazy attempt to make a very few lazy employees pick up the pace."<sup>303</sup> But a simpler, less loaded critique is available: Quotas poorly capture the qualitative dimensions of policing and misguidedly

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<sup>299</sup> See, e.g., Bronstein, *supra* note 21, at 545; Mitch Smith, *New Law Bans Police Use of Ticket Quotas*, CHI. TRIB. (June 16, 2014), <https://www.chicagotribune.com/news/ct-xpm-2014-06-16-chi-quinn-signs-into-law-bill-banning-police-ticket-quota-20140615-story.html> (noting support for Illinois's quota statute and quoting one legislator who stated, "Arbitrary quotas on the number of tickets that have to be issued by police officers undermines the public trust in the police departments' priorities . . . [b]y eliminating these quotas, we can restore that trust and ensure that police officers are free to do their job protecting the public").

<sup>300</sup> David I. Dewar, *Goal Displacement*, in *ENCYCLOPEDIA OF PUBLIC ADMINISTRATION AND PUBLIC POLICY* 193, 196 (David Andrew Schultz & James A. Beverly eds., 2004).

<sup>301</sup> See *id.*

<sup>302</sup> Athelia Knight & Benjamin L. Weiser, *Street Cops*, WASH. POST (July 12, 1982), <https://www.washingtonpost.com/archive/politics/1982/07/12/street-cops/68359866-8b67-4514-a6a2-3aa39b4a1b38>.

<sup>303</sup> Stephen Cain, Comment to *Ticket Quota for Ypsilanti Police Officers Is Illegal, Arbitrator Finds*, ANN ARBOR NEWS (Feb. 5, 2010, 6:04 AM), <http://www.annarbor.com/news/ticket-quota-for-ypsilanti-police-officers-is-illegal-arbitrator-finds>.

privilege quantity. The insights of criminologist Malcolm Sparrow are helpful here. Professor Sparrow writes:

Some departments set targets for functional outputs, including enforcement activities such as arrests, stops, searches and traffic citations. This . . . should never be the default position or become normal practice. If you want quality work from a carpenter, it makes no sense to demand that he or she drill a certain number of holes or hammer a quota of nails. The essence of craftsmanship involves mastery of all the tools and the ability to select among them based on a clear understanding of the specific task in hand. Functional quotas make little sense in this context.<sup>304</sup>

The obsession with quantity sacrifices a long list of qualitative concerns that are relevant to policing, namely good judgment, fairness, reasonableness, and legality.<sup>305</sup> Defenders of quotas may point to statutes that prohibit exclusive consideration of citations and arrests and require evaluations to be holistic. Nevertheless, the constellation of case law, settlements, officer testimony, and media accounts described in this Article suggests that, at a bare minimum, holistic evaluation of police is not a typical practice.<sup>306</sup>

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<sup>304</sup> Sparrow, *supra* note 34, at 18.

<sup>305</sup> *Id.* at 18–20; *see also* Floyd v. City of New York, 959 F. Supp. 2d 540, 601 (S.D.N.Y. 2013) (“For the purposes of performance review, an unconstitutional stop is no less valuable to an officer’s career than a constitutional one—because the two are indistinguishable.”); Tracey L. Meares, *The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing—And Why it Matters*, 54 WM. & MARY L. REV. 1865, 1875–80 (2013) (describing rightful policing, which focuses on the fairness of police conduct, as opposed to the traditional emphases on lawful or efficient policing). The obsession with numbers is not unique to policing: Scholars have criticized how prosecutors, too, overemphasize convictions and their win-loss records at the expense of fair criminal justice outcomes. *See* Stephanos Bibas, *Prosecutorial Regulation Versus Prosecutorial Accountability*, 157 U. PA. L. REV. 959, 992, 987 (2009) (suggesting that “prosecutors view their jobs as maximizing convictions” and, along the lines of Professor Sparrow, noting how “conviction statistics ignore other important outcomes, such as declinations, sentences, and victim satisfaction”); Rachel E. Barkow, *Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law*, 61 STAN. L. REV. 869, 883 (2009) (“Prosecutors may feel the need to be able to point to a record of convictions and long sentences if they want to be promoted or to land high-powered jobs outside the government.”); Angela J. Davis, *The American Prosecutor: Power, Discretion, and Misconduct*, 23 CRIM. JUST. 24, 28 (2008) (remarking that most of the prosecutors the author, a criminal procedure scholar and former director of the D.C. Public Defender Service, engaged with “seemed to focus almost exclusively on securing convictions, without consideration of whether a conviction would result in the fairest or most satisfactory result for the accused or even the victim”).

<sup>306</sup> STAMPER, *supra* note 22, at 3 (“In fact, many supervisors believe that counting and recapping activity is the only way to evaluate police performance.”).

#### 4. Tradeoffs and Revenue-Based Defenses

Finally, it should go without saying that the police should not be tasked with generating revenue. Though such a normative claim may seem obvious, it chafes against the entrepreneurial realities of American policing. “Economic sanctions,” Beth Colgan explains, “constitute the most common form of punishment in the United States.”<sup>307</sup> If the profit-based defense of police quotas rests on a question of tradeoffs—that is, tickets allow localities to generate revenue when they cannot raise taxes—then the tradeoffs at least need to be named and assessed.

Fortunately, empiricists are beginning to name the costs of for-profit policing. Many of their studies focus on the disproportionate racial effects of policing for profit.<sup>308</sup> But even when measured only in terms of the public-safety purpose of policing, quotas come with considerable costs. Rebecca Goldstein and her colleagues have studied how municipal reliance on fees, fines, and forfeitures, as opposed to taxes, produce “undesirable outcomes that may not have been anticipated by policymakers aiming simply to cover a revenue shortfall.”<sup>309</sup> Relying on census data that collected the revenue and expenditure data of approximately 90,000 local governments, they found that reallocating police resources to money-generating activity was “associated with neglect of other important police functions, namely, the investigation of violent crimes.”<sup>310</sup> This revenue-based orientation ultimately “compromises their ability to perform their traditional functions.”<sup>311</sup> According to the study, a one percent increase in the share of revenues from fees, fines, and forfeitures is associated with a 3.7 per-

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<sup>307</sup> Beth A. Colgan, *Beyond Graduation: Economic Sanctions and Structural Reform*, 69 DUKE L.J. 1529, 1537 (2020).

<sup>308</sup> See generally, Akheil Singla, Charlotte Kirschner & Samuel B. Stone, *Race, Representation, and Revenue: Reliance on Fines and Forfeitures in City Governments*, 56 URB. AFFS. REV. 1132 (2020); Allison P. Harris, Elliott Ash & Jeffrey A. Fagan, *Fiscal Pressures and Discriminatory Policing: Evidence from Traffic Stops in Missouri*, 5 J. RACE, ETHNICITY, & POL. 450 (2020), <https://doi.org/10.1017/rep.2020.10>; Kelsey Shoub, Leah Christiani, Frank R. Baumgartner, Derek A. Epp & Kevin Roach, *Fines, Fees, Forfeitures, and Disparities: A Link Between Municipal Reliance on Fines and Racial Disparities in Policing*, 0 POL’Y STUD. J. 1 (Aug. 7, 2020), <https://doi.org/10.1111/psj.12412>.

<sup>309</sup> Rebecca Goldstein, Michael W. Sances & Hye Young You, *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, 56 URB. AFFS. REV. 5, 24 (2018); see also Michael D. Makowsky & Thomas Stratmann, *Political Economy at Any Speed: What Determines Traffic Citations?*, 99 AM. ECON. REV. 509, 510 (2009) (finding in empirical study that “the likelihood and dollar amounts of fines [for speeding tickets] are decreasing functions of local property tax revenue” and also that “the likelihood of receiving a speeding fine is higher in towns that are in a fiscal crunch caused by a rejected increase in the property tax limit”).

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

centage point decrease in the clearance rate for violent crimes.<sup>312</sup> Economist Anna Harvey has similarly concluded that “fiscal incentives can distort the allocation of law enforcement effort[s]” in ways that have distributional consequences for public safety.<sup>313</sup> Notwithstanding empirical work that highlights the compromising cost of profit-based policing, there are a host of other constituent-specific problems with police quotas.

### C. *Additional Objections*

It is essential to not let defenses of quotas and counterarguments to them totally consume how quotas are understood. This subsection offers a series of additional reasons why quotas constitute lousy policy. To highlight the unique possibility for building consensus on prohibiting quotas, this subsection focuses specifically on three constituents: law enforcement, the general public, and racial minorities.

#### 1. *Law Enforcement Objections*

Police officers and police unions have been some of the most prominent opponents of quotas. Two criticisms often offered by unions stand out. The first concerns how quotas curtail the discretion of officers.<sup>314</sup> Patrick Lynch, head of the Police Benevolent Association, the police union for the NYPD, has been vocal on this issue. In an op-ed that was relatively dismissive of the racial dimensions of police-citizen encounters, Lynch argued that quotas were the source of New York City’s policing woes.<sup>315</sup> Such requirements, he complained, “risk turning officers into automatons.”<sup>316</sup> The Illinois Fraternal Order of Police Labor Council, which supported Illinois’s quota statute, echoes a similar sentiment on its website, stating that “[q]uotas turn police officers into tax collection machines instead of

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<sup>312</sup> *Id.*

<sup>313</sup> Anna Harvey, *Fiscal Incentives in Law Enforcement*, 22 AM. L. & ECON. REV. 173, 173 (2020). In his support for Illinois’s statute, Chicago State Senator Bill Cunningham relevantly noted, “Policing should not be used as a revenue enhancement strategy by municipalities. . . . Officers will no longer be distracted from their regular law enforcement duties in order to meet ticket quotas.” See *Cunningham Bill Signed into Law*, BEVERLY REV. (Aug. 28, 2018), [https://www.beverlyreview.net/news/community\\_news/article\\_618a47fe-aae8-11e8-9a28-872a66178e5c.html](https://www.beverlyreview.net/news/community_news/article_618a47fe-aae8-11e8-9a28-872a66178e5c.html); see also Michael D. Makowsky, Thomas Stratmann & Alex Tabarrok, *To Serve and Collect: The Fiscal and Racial Determinants of Law Enforcement*, 48 J. LEGAL STUD. 189, 189 (2019) (finding in empirical study “that revenue-driven law enforcement can distort police behavior and decision-making, . . . altering the quantity, type, and racial composition of arrests”).

<sup>314</sup> See Bronstein, *supra* note 21, at 550.

<sup>315</sup> Patrick J. Lynch, *The Real Fix for Stop-and-Frisk*, N.Y. DAILY NEWS (Oct. 7, 2013, 4:20 AM), <https://www.nydailynews.com/opinion/real-fix-stop-and-frisk-article-1.1476893>.

<sup>316</sup> *Id.*

professional law enforcement officers. It distracts police officers in the exercise of their day-to-day law enforcement activities.”<sup>317</sup>

Quotas are legal in Arizona, but the Tucson Police Officers Association has advocated for a statutory prohibition. Jason Winsky, government affairs director for the union, declared, “We’re just philosophically opposed to any kind of quota . . . . It’s a morale issue for us because the officer no longer has discretion.”<sup>318</sup> In Washington, where quotas are also legal, retired Spokane police officer and Washington State Senator Jeff Holy sponsored a bill prohibiting the practice.<sup>319</sup> For Holy, “[a]n officer’s ability to make an independen[t] decision allows them to apply the level of enforcement action they believe to be appropriate for the situation. An officer being *directed* to apply enforcement action to comply with an employer policy or ticket quota reflects badly on law enforcement.”<sup>320</sup> These discretion-based objections are organized around the belief that quotas lead officers to be ruled by numbers instead of common-sense judgment.

Curtailed discretion bleeds into the second major criticism offered by police: that quotas limit the scope of their work. This critique works in two different directions. On one end is a concern that quotas prevent officers from attending to more serious crimes. Quantitative studies of law enforcement priorities lend support to this idea.<sup>321</sup> On the other end is a concern that quotas disincentivize police from engaging in socially beneficial activity that is less penal and harder to quantify. “If I break up a fight between two boys and send them home, I don’t get credit,” an officer explained.<sup>322</sup> “If I help deliver a baby in an emergency, I get no credit. But I score points if I issue a seat belt summons . . . .”<sup>323</sup>

When quotas distract from serious crimes and preclude the ostensible services that law enforcement holds itself out as offering (officers

<sup>317</sup> Brenda Schory, *New Law to End Ticket Quotas; Locally, Most Local Police Agencies Say They Never Had Them Anyway*, KANE CNTY. CHRON. (July 31, 2014, 10:48 PM), <https://www.kcchronicle.com/2014/07/29/new-law-to-end-ticket-quotas-most-local-police-agencies-say-they-never-had-them-anyway/afzdt5z>.

<sup>318</sup> Yoohyun Jung, *Police Union Calls for Elimination of Traffic-Ticket Quota*, ARIZ. DAILY STAR (Oct. 9, 2014), [https://tucson.com/news/blogs/police-beat/police-union-calls-for-elimination-of-traffic-ticket-quota/article\\_2cde50a7-10a0-5e18-8908-7335510ce811.html](https://tucson.com/news/blogs/police-beat/police-union-calls-for-elimination-of-traffic-ticket-quota/article_2cde50a7-10a0-5e18-8908-7335510ce811.html).

<sup>319</sup> *New WA Bill Would Discourage Traffic-Ticket Quotas for Officers*, MYNORTHWEST (Feb. 17, 2020, 2:44 PM), <https://mynorthwest.com/1723060/ticket-quotas-officers-washington>.

<sup>320</sup> *Senate Passes Holy Bill that Seeks to Discourage Traffic-Ticket Quotas for Officers*, WASH. STATE SENATE REPUB. CAUCUS (Feb. 17, 2020) (emphasis added), <https://jeffholy.src.wastateleg.org/tag/sen-jeff-holy>.

<sup>321</sup> See *supra* text accompanying notes 309–13.

<sup>322</sup> POLICE REFORM ORG. PROJECT, *supra* note 14, at 3.

<sup>323</sup> *Id.*

pledge to protect and *serve*), the nature of police work narrows, and public safety is compromised. Of course, quotas are not diametrically opposed to public safety, but they create scenarios where the public safety objective is deprioritized. Adherence to quotas leads police officers to be more concerned about obtaining a reward or avoiding a penalty.<sup>324</sup> Many officers are unbothered by this state of affairs and play the numbers game, but some disapprove. Their objections supply a powerful internal critique.

It is critical to understand that police unions are not typically torchbearers of criminal justice reform. In many ways, they have impeded reform.<sup>325</sup> As organizations tasked with ensuring optimal work conditions for their members, union concerns about quotas are far from selfless. Officers who protest quotas in their individual capacities typically do so as a response to employment grievances rather than altruistic civil rights concerns. These sobering realities do not, however, mean that the police's insights on quotas are bankrupt. In fact, their complaints are consonant with scholarly observations and warrant meaningful consideration.

## 2. *Racial Vulnerability*

Vulnerability to violent police encounters, and the racial subjugation that has been a feature of policing, make racial minorities foreseeable critics of quotas. This opposition is well warranted. Officers have confessed to using racial minorities to fulfill their quotas and pad their statistics.

In New Jersey, one officer described quota compliance as a sport that took place in minority communities. "Guys were going out. They were competing for how many tickets each guy could get," he revealed.<sup>326</sup> "They're saying they're going out hunting. You go to traffic court and you see the impact. 90% of the people you see there are blacks and latinos."<sup>327</sup> The practice of "hunting" occurred in New York, too. In an affidavit in one of many cases involving police quotas, former NYPD officer Christopher LaForce said that he had decided

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<sup>324</sup> Molly Davis, *Why the Utah Legislature Banned Police Quotas*, LIBERTAS INST. (Mar. 19, 2018), <https://libertasutah.org/op-eds/why-the-utah-legislature-banned-police-quotas>.

<sup>325</sup> See Benjamin Levin, *What's Wrong with Police Unions?*, 120 COLUM. L. REV. 1333, 1340–46 (2020) (describing the critiques of police unions); Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 747–56 (2017) (discussing how police unions have been obstacles to criminal justice reform); Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191, 1191 (2017) (arguing that internal disciplinary procedures developed by police unions during the collective bargaining process can hinder criminal justice reform).

<sup>326</sup> Wallace, *supra* note 44.

<sup>327</sup> *Id.*

to retire because of the fatigue that quota-inspired racial profiling induced. “I got tired of hunting Black and Hispanic people because of arrest quotas,” he complained.<sup>328</sup> In addition to civilians, quotas also impact minority officers. These officials, who some hold out as a solution to racist policing, are sometimes forced to comply with a practice that facilitates discrimination and jeopardizes police relations with minority communities.<sup>329</sup> Additional empirical evidence suggests that minorities bear the brunt of the kinds of revenue-based policing that sometimes informs quota regimes.

On the federal level, Immigration and Customs Enforcement (ICE) has long had formal arrest quotas that impact the undocumented population and the predominantly Latinx community that is subject to ICE raids.<sup>330</sup> The Department of Justice’s investigation into the City of Ferguson led it to conclude that “[F]erguson’s police and municipal court practices both reflect and exacerbate existing racial bias,” and specifically recommended that the Ferguson Police Department “[p]rohibit the use of ticketing and arrest quotas, whether formal or informal.”<sup>331</sup>

The vulnerability of racial minorities to being targeted by quotas can lead to unnecessary, and sometimes violent, contact with the police. Recall that South Carolina passed its quota statute in response to a police officer’s killing of Walter Scott, an unarmed Black man. The defense team argued that the encounter stemmed from the officer’s attempt to fulfill his department-mandated quota of three minor violations every shift.<sup>332</sup> A desire to decrease unnecessary police and citizen contact also motivated Tennessee’s recent quota

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<sup>328</sup> Joseph Goldstein & Ashley Southall, ‘I Got Tired of Hunting Black and Hispanic People,’ N.Y. TIMES (June 17, 2020), <https://www.nytimes.com/2019/12/06/nyregion/nyc-police-subway-racial-profiling.html>.

<sup>329</sup> See *id.*; CRIME + PUNISHMENT, *supra* note 68; Sklansky, *supra* note 259 (discussing how the diversification of police departments affects their relationships with the communities they serve).

<sup>330</sup> See *Diaz-Bernal v. Myers*, 758 F. Supp. 2d 106, 114 (D. Conn. 2010); Nathan Treadwell, *Fugitive Operations and the Fourth Amendment: Representing Immigrants Arrested in Warrantless Home Raids*, 89 N.C. L. REV. 507, 560–61 (2011); Michael J. O’Brien, “Widespread” Uncertainty: *The Exclusionary Rule in Civil-Removal Proceedings*, 81 U. CHI. L. REV. 1883, 1898–99 (2014).

<sup>331</sup> Ferguson Report, *supra* note 17, at 2, 91.

<sup>332</sup> Cynthia Roldan, *Ticket Quota Limit Proposal for Law Enforcement Heads for Senate Floor*, POST & COURIER (Nov. 2, 2016), [https://www.postandcourier.com/politics/ticket-quota-limit-proposal-for-law-enforcement-heads-for-senate/article\\_14f44c11-d0f2-57c0-91b1-69b23bd536c8.html](https://www.postandcourier.com/politics/ticket-quota-limit-proposal-for-law-enforcement-heads-for-senate/article_14f44c11-d0f2-57c0-91b1-69b23bd536c8.html).

statute,<sup>333</sup> which levies criminal fines on law enforcement officials who impose quotas.<sup>334</sup>

A pause is necessary here, lest causal mechanisms get confused. Quotas do not cause police brutality and killings. Rogue officers and legal cultures of impunity are better explanations. But quotas can create the conditions for violent or even lethal interactions. Quotas figured prominently in an almost 200-page decision where a federal judge painstakingly described how the NYPD maintained a racist stop-and-frisk policy that flouted constitutional rules.<sup>335</sup> That policy encouraged officers to “crush the fucking city,” and indiscriminately stop Black and Latinx people without any legal reason because they “‘can always articulate’ some basis for a stop after the fact.”<sup>336</sup> Testimonies given to the Center for Constitutional Rights, which litigated the Floyd case, described how stops often resulted in excessive use of force by police against minorities who were slapped, thrown against walls, tasered, and brutalized.

Moreover, quotas subject racial minorities to police interactions that are often devoid of legal remedies and exacerbate their marginalization. Devon Carbado’s insights into the relationship between racial vulnerability and police misconduct are clarifying. “The more vulnerable a group is to predatory policing, the greater that group’s police contact and thus the greater the exposure to the possibility of violence.”<sup>337</sup> Such predation “trades on and compounds the marginalization of an already marginalized group” and “facilitates police violence by increasing the frequency [of minority contact] with the police.”<sup>338</sup>

An intersectional analysis further reveals how quotas exacerbate social inequality and make marginalized groups easy targets for police misconduct. Women of color, low-income people, and members of the LGBTQ community are particularly susceptible to being targeted by quota-fulfilling police officers. Police whistleblower Adhyl Polanco explains:

[W]hen you go hunting, when you put any type of numbers on a police officer to perform, we are going to go for the most vulnerable. Of course, we’re going to go for the LGBT community, we’re

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<sup>333</sup> See Arnold, *supra* note 95.

<sup>334</sup> Act of July 15, 2020, ch. 801, 2020 Tenn. Pub. Acts, <https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf>.

<sup>335</sup> Floyd v. City of New York, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

<sup>336</sup> *Id.* at 598–99.

<sup>337</sup> Devon W. Carbado, *Predatory Policing*, 85 UMKC L. REV. 545, 561 (2017).

<sup>338</sup> *Id.*

going to the black community, we're going to those that have no vote, that have no power.<sup>339</sup>

Quotas exacerbate social vulnerability and make marginalized groups easy targets for police misconduct. When set against the larger context of police corruption, the predatory nature of quotas demonstrates why the practice constitutes bad policy.

### 3. *The General Significance of Quotas*

Police quotas should concern the general population. Some people may be undisturbed or feel unaffected by the problems police quotas invite either because they occupy a demographic group that is not a posterchild for mass incarceration or because they imagine themselves as law-abiding and invulnerable to quota-based policing. Criminal law theorist Doug Husak invites skepticism of such beliefs.<sup>340</sup> He observes that “[o]ffenses are so far-reaching that almost everyone has committed one or more at some time or another; the criminal law no longer distinguishes ‘us’ from ‘them.’”<sup>341</sup> Going a step further, Professor Husak estimates that “over 70% of living adult Americans have committed an imprisonable offense at some point in their life.”<sup>342</sup> Thus, the average person should be concerned about quotas because they likely engage in activities that come under the purview of this kind of policing.

Quotas can also lead to routine violations of constitutional rights and civil liberties. An officer who is forced to comply with a quota “will find it difficult to be sympathetic to procedural due process guidelines which stand in the way of filling his quota.”<sup>343</sup> In addition to due process issues, quotas invite equal protection problems, implicate Fourth Amendment issues related to unconstitutional police stops, and raise First Amendment concerns involving a police officer’s ability to speak out about quotas without fear of retaliation. Constitutional problems with quotas have arisen in large, diverse metropolitan areas like New York, Chicago, and Los Angeles as well as small cities like Mount Enterprise, Texas (with a population of approximately 450

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<sup>339</sup> Sarah Wallace, *More NYPD Officers Say There’s Proof of Quota-Driven Arrests*, NBC N.Y. (Apr. 1, 2016, 8:48 PM), <https://www.nbcnewyork.com/news/local/nypd-officers-arrest-quota-exclusive-interview-pressure-numbers>.

<sup>340</sup> See DOUGLAS HUSAK, *OVERCRIMINALIZATION: THE LIMITS OF THE CRIMINAL LAW* 24 (2008).

<sup>341</sup> *Id.*

<sup>342</sup> *Id.*

<sup>343</sup> Albert T. Quick, *Attitudinal Aspects of Police Compliance with Procedural Due Process*, 6 AM. J. CRIM. L. 25, 31 (1978).

people) and racially homogenous states like Utah (approximately ninety percent white).<sup>344</sup>

James Spadola, a former Delaware officer who has advocated for anti-quota legislation in his state, argues that “quotas transform civilians into a performance measure and potential arrest statistic, as opposed to an American with constitutional rights and protections that should be served and protected by the police.”<sup>345</sup> The availability of more sanitized euphemisms (e.g., performance standards, targets, activity) and the lack of rigorous investigations into quotas keep the general public from realizing how common they are in law enforcement. In a country that is only beginning to understand the problems of over-policing, quotas are a poorly understood practice that compromise an already fragile body of constitutional law.

For conservatives and liberals who believe that the police serve a public safety function, quotas are distortive and jeopardize the legitimacy of law enforcement. These distortive features may be of particular concern to law-and-order conservatives. John Eterno, a criminologist who spent two decades as an officer and retired as a captain in the NYPD, explains how quotas pervert police goals in his book *The Crime Numbers Game: Management by Manipulation*.<sup>346</sup> Eterno and his co-author Eli Silverman (also a criminologist) argue that quotas encourage police to focus on less difficult crimes “at the expense of more significant and arduous arrests.”<sup>347</sup> In a society where consensual crimes like drug trafficking leave no discernible complainant, murders often go unsolved, sexual assault is underreported, and white-collar crimes go unpunished. This should be a cause of concern for fiscal conservatives, law-and-order advocates, and supporters of victims’ rights.

Deeper questions of legitimacy also abound, as quotas undermine liberal concerns about procedural justice and the rule of law. Laurie Robinson, who was responsible for developing recommendations after the Department of Justice’s Ferguson investigation, explained how quotas and numbers-policing can shape public opinion: “If citizens believe that tickets are being issued or arrests are being made for rea-

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<sup>344</sup> *Mount Enterprise, Texas Population 2020*, WORLD POPULATION REV., <https://worldpopulationreview.com/us-cities/mount-enterprise-tx-population> (last visited Jan. 9, 2020); *Utah Population 2020*, WORLD POPULATION REV., <https://worldpopulationreview.com/states/utah-population> (last visited Dec. 20, 2020).

<sup>345</sup> James Spadola, *Delaware Should Ban Police Quotas*, DEL. ONLINE (July 28, 2017, 11:45 AM), <https://www.delawareonline.com/story/opinion/contributors/2017/07/28/delaware-should-ban-police-quotas-james-spadola/519661001>.

<sup>346</sup> JOHN A. ETERNO & ELI B. SILVERMAN, *THE CRIME NUMBERS GAME: MANAGEMENT BY MANIPULATION* (2017); see also Bronstein, *supra* note 21, at 555–56.

<sup>347</sup> ETERNO & SILVERMAN, *supra* note 346, at 11.

sons other than the goal of law enforcement,” she contends, “then their trust in the legitimacy of the system is really eroded.”<sup>348</sup> Others have echoed this view.<sup>349</sup> As liberal reformers and some conservative allies work to repair a criminal justice system riddled with imperfections, they need to address how quotas influence internal enforcement priorities and shape public conceptions of fairness.

Skeptics of incremental criminal justice reform—a group in which I find membership—may believe that reforming the practice of police quotas fails to confront the incorrigible nature of American policing. The strongest version of this critique would likely come from abolitionists who resist reformist reforms that tinker at the edges of the criminal justice system, as opposed to non-reformist reforms, which “have as their end goal the eventual dismantling of that system and are understood to be individual elements or steps in a larger strategy of structural transformation.”<sup>350</sup> This is a valid concern. Eliminating police quotas cannot solve the problems of white supremacy and poverty management that are central to the criminal justice system, but there are at least three reasons why abolitionists and radicals should care about police quotas. These reasons are theoretical, tactical, and temporal.

First, addressing the problem of quotas can be an important interim step toward reducing the imprint of the penal state, which is one goal of abolitionism.<sup>351</sup> Enforcing quota statutes and stamping out the practice elsewhere could shift the police away from understanding civilians as “stats to be harvested” and reduce unnecessary police encounters.<sup>352</sup> Taken one step forward, addressing quotas could also turn out to be especially necessary if the previously unorthodox, but increasingly recognizable, goal of defunding the police is achieved.<sup>353</sup> There is a strong reason to believe, based on the Camden example,

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<sup>348</sup> Joel Rose, *Despite Laws and Lawsuits, Quota-Based Policing Lingers*, NPR (Apr. 4, 2015, 4:47 AM), <https://www.npr.org/2015/04/04/395061810/despite-laws-and-lawsuits-quota-based-policing-lingers>.

<sup>349</sup> See Smith, *supra* note 299; Jonathan Banks, *Thing Blue Lies: How Pretextual Stops Undermine Police Legitimacy*, 66 CASE W. RESV. L. REV. 931 (2016).

<sup>350</sup> Marina Bell, *Abolition: A New Paradigm for Reform*, LAW & SOC. INQUIRY 1, 14 (2000).

<sup>351</sup> See, e.g., *Abolition Can't Wait*, 8 TO ABOLITION, <https://www.stoabolition.com/why> (last visited Jan. 9, 2020); Dan Berger, Mariame Kaba & David Stein, *What Abolitionists Do*, JACOBIN (Aug. 24, 2017), <https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration>.

<sup>352</sup> *The Big Reason Tampa Police Write So Many Tickets: They're Told To*, TAMPA BAY TIMES (Dec. 16, 2015), <https://www.tampabay.com/news/publicsafety/crime/theres-a-big-reason-tampa-police-write-so-many-tickets/2252912>.

<sup>353</sup> See Peter Simek, *What 'Defunding' the Dallas Police Department Could Look Like*, D MAG. (June 12, 2020, 11:14 AM), <https://www.dmagazine.com/frontburner/2020/06/what-defunding-the-dallas-police-department-could-look-like>.

that quotas could become more prominent in police forces with reduced personnel.<sup>354</sup>

Finally, quotas speak directly to an emerging discourse about the *purpose* of police. As this Article has shown, quota-based policing applies sharp pressure to common-sense assumptions about the public safety, crime-fighting conception of law enforcement. Attacking quotas—which have demonstrable connections to financial exploitation and racial subjugation—is at least consonant with the abolitionist insistence on rethinking punishment and reimagining the state’s relationship to vulnerable communities and the general population.

#### IV NORMATIVE PATHS FORWARD

What is one to do with these descriptive and definitional insights? This Part offers some recommendations on how to curb police quotas. Before beginning, I want to stress two things. First, any solution to the problem of police quotas cannot be strictly legal. A gauntlet of obstacles—white supremacy,<sup>355</sup> some jurisdictions’ narcotic addiction to profit-based policing,<sup>356</sup> judicial hostility to the enforcement of civil rights in federal courts,<sup>357</sup> and many others—are too mountainous for any set of neat positive law or policy prescriptions. Any attempt to curb quotas must be multi-pronged and multi-disciplinary.

Second, I do not try to propose *better* mechanisms for evaluating or incentivizing the police. I resist that normative move because it has already been taken up by criminologists<sup>358</sup> but more importantly because strategies for better policing dangerously invert the analysis. Almost half of American states have legislatively determined that police quotas are impermissible, and a few others have pending bills. The crucial normative issues are not about substitute incentives or evaluation metrics, but instead about how existing statutory schemes can be improved and how they can be introduced to jurisdictions that have not yet recognized the imprudence of police quotas.

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<sup>354</sup> See *supra* text accompanying notes 177–88; Fussell, *supra* note 31; Rushin & Michalski, *supra* note 30.

<sup>355</sup> See FBI, WHITE SUPREMACIST INFILTRATION OF LAW ENFORCEMENT 4 (2006), <https://s3.documentcloud.org/documents/402521/doc-26-white-supremacist-infiltration.pdf>; Vida B. Johnson, *KKK in the PD: White Supremacist Police and What to Do About It*, 23 LEWIS & CLARK L. REV. 205, 211 (2019).

<sup>356</sup> See Maciag, *supra* note 5.

<sup>357</sup> See *supra* note 136 and accompanying text.

<sup>358</sup> See Sparrow, *supra* note 34; NAT’L INST. OF JUST., PERSPECTIVES ON RESEARCH AND EVIDENCE-BASED POLICING 15–20 (2020); Gul & O’Connell, *supra* note 13, at 51–98.

### A. *A Prospective Research Program*

Legal scholars must scrutinize police quotas as a critical component of the criminal justice system and as a practice that interacts with other areas of law. Police quotas matter because they animate and intersect with issues that legal scholars wrestle with, wrangle over, and consider to be fundamental to ideas about quality and justice. Traditionally, legal scholars have relinquished the study of quotas to criminologists who have a different set of intellectual interests and commitments. Instead of engaging directly with quotas, legal scholars have either overlooked them, subsumed them within other categories (e.g., broken windows policing), or given no more than pat acknowledgment of their existence. This Article supplies a framework for understanding how police quotas work, how they are defended, and why they are indefensible, but these formulations are only initial steps.

The demonstrated existence of police quotas abrades core understandings of criminal law and constitutional procedure. What does it mean when criminalization is not a product of wrongdoing, but is instead spawned by police attempts to thwart employment sanctions or garner occupational rewards? On the procedural side, the existence of race-based police quotas has been verified by federal courts, police officers, and sponsors of legislative prohibitions. How can this reality be reconciled with our country's frail Equal Protection jurisprudence<sup>359</sup> or with an exception-riddled Fourth Amendment<sup>360</sup> that makes satisfying quotas at the expense of minorities fairly straightforward?

For civil rights scholars, litigation involving police quotas highlights the disparity between actual government practices and stingy judicial interpretations of what constitutes a custom or policy under § 1983. Civilians are not the only aggrieved subjects of quota-based policing. Most of the relevant statutes are about work conditions. Criminal justice scholars are increasingly devoting their attention to labor law and employment law, and police quotas fit neatly into such considerations.<sup>361</sup> Examining the issue of police quotas may provide a new entry point into thinking about live controversies in criminal justice administration and civil rights more generally.

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<sup>359</sup> See Russell K. Robinson, *Unequal Protection*, 68 STAN. L. REV. 151, 154 (2016) (discussing how “the Supreme Court has steadily diminished the vigor of the Equal Protection Clause”).

<sup>360</sup> See RIC SIMMONS, SMART SURVEILLANCE: HOW TO INTERPRET THE FOURTH AMENDMENT IN THE TWENTY-FIRST CENTURY 174 (2019).

<sup>361</sup> See *supra* text accompanying note 324.

Quotas also showcase intragovernmental tensions that matter to local government law scholars and legislative experts. In states where they are prohibited, law enforcement leadership often imposes quotas to demonstrate productivity.<sup>362</sup> Scholars who study how governments work could provide fruitful insights on how to enforce anti-quota statutes and how to counteract pathologies that stand in the way. Tax law scholars could also help clarify the relationship between local tax policy and policing for profit—which often serves as a substitute for increased taxing.<sup>363</sup> Police quotas are often the mechanisms for such “taxation by citation”<sup>364</sup> and make critical tax law scholars relevant interlocutors.<sup>365</sup>

Outstanding empirical questions remain. Besides litigation outcomes and settlements, scholars and the general public do not have any empirical data on the efficacy of quota statutes. It would be helpful to know how jurisdictions with prohibitions compare to jurisdictions where quotas are permissible. Scholars should examine how prohibitions affect a jurisdiction’s incidence of police misconduct, the size of its misdemeanor docket, clearance rates, its reliance on legal financial obligations (e.g., fees and fines), and the satisfaction of its citizens. The results could help shed light on issues specific to criminal justice as well as broader questions at the intersection of law and inequality.

### B. *Investigative Agendas and Public Awareness*

The media should continue to play an important role in uncovering and publicizing the existence of police quotas. As Justice Brennan correctly observed, “[c]ommentary and reporting on the criminal justice system is at the core of First Amendment values, for the operation and integrity of that system is of crucial import to citizens concerned with the administration of government.”<sup>366</sup> Interestingly, Justice Brennan’s comments were in a decision that involved media reporting on a murder trial. This felony-centric, trial-oriented understanding of criminal justice does not represent the bulk of cases

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<sup>362</sup> See NATAPOFF, *supra* note 298, at 59.

<sup>363</sup> See *supra* notes 308, 312; Michael W. Sances & Hye Young You, *Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources*, 79 J. POLITICS 1090 (2017).

<sup>364</sup> DICK M. CARPENTER, KYLE SWEETLAND & JENNIFER McDONALD, INST. FOR JUST., *THE PRICE OF TAXATION BY CITATION* 5 (2019), <https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf>.

<sup>365</sup> See Nancy J. Knauer, *Critical Tax Policy: A Pathway to Reform?*, 9 NW. J.L. & SOC. POL’Y 206, 254 (2014); Anthony C. Infanti, *Tax Equity*, 55 BUFF. L. REV. 1191, 1196 (2008) (discussing the concept of tax equity and its applications).

<sup>366</sup> *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 587 (1976).

that are currently churned through the system. Slapdash misdemeanor processing better approximates the criminal justice system.<sup>367</sup> Nevertheless, Justice Brennan's observations maintain relevance. Journalism still "contribute[s] to the public's understanding of . . . the . . . criminal justice system" and can address some of its failures.<sup>368</sup>

The task of local news outlets and investigative journalists is to look beyond trials and examine police conduct and practices. This is not a simple task, but our current political climate is ripe for such scrutiny. First, many news outlets are increasingly reexamining their longstanding fidelity to police accounts. They are more willing to disbelieve how police describe criminal justice administration.<sup>369</sup> This reconsideration is undoubtedly influenced by social protest movements and video evidence of brutality that often contradicts initial police accounts. This journalistic skepticism should apply to the longstanding insistence of police leaders that they do not administer quotas despite evidence suggesting otherwise.<sup>370</sup> Second, the current legal landscape will also enable journalistic investigation into police quotas. The Court's First Amendment jurisprudence, which generally does not protect officers from retaliation if they object to quotas in their employee capacity, essentially funnels their speech into the public sphere. Many of the litigated quota cases involve officers who leaked information to the media.<sup>371</sup> Finally, the general public's increasing recognition of the bias and brutality of American law enforcement is creating space for a more receptive audience to journalistic accounts of police quotas.<sup>372</sup>

Local news, mainstream media, and nonprofit investigative reporters are well-situated to more robustly examine police quotas. In places like Charleston, Rhode Island, and Damascus, Arkansas, media reporting on police quotas have led to the ACLU sending letters to all

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<sup>367</sup> NATAPOFF, *supra* note 298 at 218 (describing the misdemeanor process, which represents the bulk of criminal justice cases, as "sloppy, inaccurate, unpredictable and disrespectful").

<sup>368</sup> Nebraska Press Ass'n, 427 U.S. at 587.

<sup>369</sup> See Paul Farhi & Elahe Izadi, *Journalists Are Reexamining Their Reliance on a Longtime Source: The Police*, WASH. POST (June 30, 2020), [https://www.washingtonpost.com/lifestyle/media/journalists-are-reexamining-their-reliance-on-a-longtime-source-the-police/2020/06/30/303c929c-b63a-11ea-a510-55bf26485c93\\_story.html](https://www.washingtonpost.com/lifestyle/media/journalists-are-reexamining-their-reliance-on-a-longtime-source-the-police/2020/06/30/303c929c-b63a-11ea-a510-55bf26485c93_story.html) (discussing how some journalists are now unwilling to take the police's account of events "at face value").

<sup>370</sup> See *supra* text accompanying notes 35, 240, 245.

<sup>371</sup> See CRIME + PUNISHMENT, *supra* note 68; Rayman, *supra* note 120; Rayman, *supra* note 121; Rayman, *supra* note 122; Tracy Oppenheimer, *Auburn Cop Fired for Resisting Quotas Gets Online Support; City Officials Deny Deny Deny*, REASON (July 26, 2013, 10:45 AM), <https://reason.com/2013/07/26/online-community-comes-to-whistle-blower>.

<sup>372</sup> See Cohn & Quealy, *supra* note 8.

police chiefs in the state reminding them of the illegality of quotas<sup>373</sup> and the loss of the right to issue tickets,<sup>374</sup> respectively. Mainstream news outlets like the socialist *Jacobin*,<sup>375</sup> the moderate *New York Times*,<sup>376</sup> the libertarian *Reason*,<sup>377</sup> and the conservative *Washington Examiner*<sup>378</sup> have all reported on police quotas and done so in unfavorable terms. The same is true for criminal justice-specific outlets such as *The Marshall Project*<sup>379</sup> and *The Appeal*.<sup>380</sup>

All of these organizations have the infrastructure to probe how police quotas operate. They know how to gather difficult-to-obtain documents and data like evaluation reports that demonstrate the existence of quotas and testimonial evidence.<sup>381</sup> Drawing from these sources, the media can shape public understanding by giving coverage to officers and civilians who have persuasive evidence that they have been governed by or subject to police quotas. Since, as discussed in Part II, many allegations of police quotas do not make it to courts or get quietly settled, journalistic accounts can be crucial to encouraging policy changes or legislative reform.

Reporters can also probe the connections between quotas and other pathologies. In states that do not have prohibitions on quotas, journalists—armed with a deeper understanding of how quotas operate—could examine how this practice is tied to police misconduct, policing for profit, and racial profiling. In states that have legislated against police quotas, reporters should consider these requirements within the larger category of police corruption that has been of interest to journalists. Overall, the public has traditionally understood

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<sup>373</sup> Patrick Anderson, *RI ACLU to Police Departments: Traffic Ticket Quotas Are Illegal*, PROVIDENCE J. (Nov. 28, 2017, 4:38 PM), <https://www.providencejournal.com/news/20171128/ri-aclu-to-police-departments-traffic-ticket-quotas-are-illegal>.

<sup>374</sup> Debra Hale-Shelton, *Arkansas Town's Bid to Lift Speed-Trap Sanctions Denied: Still Can't Write Tickets*, ARKANSAS DEMOCRAT-GAZETTE (May 17, 2018, 4:30 AM), <https://www.arkansasonline.com/news/2018/may/17/damascus-bid-denied-still-can-t-write-t>.

<sup>375</sup> See Nick Tabor, *The Mayor Who Cracked Down on Baltimore*, JACOBIN (May 14, 2015), <https://www.jacobinmag.com/2015/05/omalley-baltimore-clinton-democratic-primary-president>.

<sup>376</sup> See Goldstein et al., *supra* note 309.

<sup>377</sup> See Oppenheimer, *supra* note 371.

<sup>378</sup> See Editorial, *Arrests Should Be Based on Crimes, Not Quotas*, WASH. EXAMINER (June 6, 2006, 12:00 AM), <https://www.washingtonexaminer.com/editorial-arrests-should-be-based-on-crimes-not-quotas>.

<sup>379</sup> Ken Armstrong, *How to Fix American Policing*, MARSHALL PROJECT (July 13, 2016, 10:00 PM), <https://www.themarshallproject.org/2016/07/13/how-to-fix-american-policing>.

<sup>380</sup> See George Joseph, *NYPD Commander's Text Messages Show How the Quota System Persists*, APPEAL (Dec. 12, 2018), <https://theappeal.org/nypd-commanders-text-messages-show-how-the-quota-system-persists>.

<sup>381</sup> See DAVID CULLIER & CHARLES N. DAVIS, *THE ART OF ACCESS: STRATEGIES FOR ACQUIRING PUBLIC RECORDS* 114–26 (2011) (chronicling methods for handling evasive agency responses and noting the success of some news organizations' tactics).

the media as a government watchdog.<sup>382</sup> This oversight function is no different in the area of police quotas.

### C. *Statutory Reform*

The remaining issues concern getting quota provisions enacted in states without them and improving existing statutes. Enacting new statutes is simultaneously straightforward and challenging. It is straightforward because bipartisan support has already helped get quota bills passed in many states and objections to police quotas have been made by interest groups across the ideological spectrum. At the same time, getting quota statutes on the books is not easy, as demonstrated by the nine states that have drafted bills but have not been able to convert them to enacted legislation; some of these bills were drafted more than a decade ago.<sup>383</sup> Police chiefs and politicians worry that these bills will hamper their ability to evaluate officers.<sup>384</sup> The research and investigative agendas mentioned above could engender more public awareness, whereas intentional partnerships could move the legislative ball forward. South Carolina, Missouri, and Tennessee—all states that recently adopted statutes—did so by considering and representing that quotas impacted a cross-section of diverse interests.<sup>385</sup>

The other task is to shore up existing statutes. Most anti-quota laws have appreciable shortcomings, including ambiguity about whether they apply to informal requirements, and loopholes for stops and warnings. To this end, the Appendix includes the skeleton of a model statute addressing some of these shortcomings and collating the best features of existing legislation.<sup>386</sup> It is far from comprehensive since this Article cannot supply answers to critical questions about future implementation. But, it is a starting point for statutory amendments as well as consideration of new anti-quota laws.

The model statute also proposes an additional provision that is not found in existing quota statutes and requires explanation: Pension forfeiture should be a consequence of violating the statute. This may

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<sup>382</sup> See JAMES L. AUCOIN, *THE EVOLUTION OF AMERICAN INVESTIGATIVE JOURNALISM* 12 (2005).

<sup>383</sup> See *infra* Appendix B.

<sup>384</sup> See, e.g., N.J. STATE ASS'N OF CHIEFS OF POLICE, *LEGISLATIVE POSITION PAPER: OPPOSITION TO S1105 / A2126* (2016), <https://www.njsacop.org/Files/NJSACOP%20Position%20Paper%20-%20Opposition%20to%20S1105%20%20A2126.pdf> (opposing amendments to state anti-quota law).

<sup>385</sup> See *supra* Section I.B.

<sup>386</sup> See *infra* Appendix C.

sound like an extraordinary ramification.<sup>387</sup> But many states already have laws that either revoke, reduce, or suspend the pensions of public employees who have been convicted of a felony<sup>388</sup> or any crime related to their public employment.<sup>389</sup> West Virginia's pension forfeiture law is arguably the most liberal, simply stating that "honorable service is a condition to receiving any pension, annuity, disability payment or any other benefit under a retirement plan."<sup>390</sup> The efficacy of quota statutes is still an open empirical question, but it is clear from the litigation discussed in Part II that police continue to implement police quotas even in states that prohibit them. Where judicial avenues for redress are limited, pension forfeiture can be a potential deterrent. The measure has been proposed by police abolitionists,<sup>391</sup> and economists have tentatively found that states with stronger pension forfeiture laws experience lower rates of police misconduct.<sup>392</sup> Adding a pension forfeiture provision could add teeth to existing statutes and help stamp out stubborn police quotas.

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<sup>387</sup> James Jacobs and his colleagues have analyzed arguments for and against pension forfeiture and conclude that imprisonment and fines would be better sanctions. This suggestion might be subject to concerns about "progressive punitivism" that uses incarceration to advance social justice goals. Jacobs and his colleagues do suggest a model for pension revocation that would be less harsh than some states' schemes. See James B. Jacobs, Coleen Friel & Edward O'Callaghan, *Pension Forfeiture: A Problematic Sanction for Public Corruption*, 35 AM. CRIM. L. REV. 57, 89–91 (1997); Hadar Aviram, *Progressive Punitivism: Notes on the Use of Punitive Social Control to Advance Social Justice Ends*, 68 BUFF. L. REV. 199, 201–02 (2020).

<sup>388</sup> See, e.g., 40 ILL. COMP. STAT. ANN. 5/2-156 (West, Westlaw through P.A. 101-651); VA. CODE ANN. § 51.1-124.13 (West, Westlaw through 2020 Reg. Sess.); OHIO REV. CODE ANN. § 2929.192 (West, Westlaw through File 60 of 133d Gen. Assemb. 2019-2020); N.C. GEN. STAT. ANN. § 135-18.10 (West, Westlaw through S.L. 2020-97 of 2020 Reg. Sess.).

<sup>389</sup> MASS. GEN. LAWS ANN. ch. 32, § 15(4) (West, Westlaw through ch. 226 of 2020 2d Ann. Sess.) ("In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement allowance."); GA. CODE ANN. § 47-1-21(b) (West, Westlaw through 2020 Legis. Sess.) ("If a public employee commits a public employment related crime . . . in the capacity of a public employee and is convicted for the commission of such crime, such employee's membership in any public retirement system shall terminate on the date of final conviction and such employee shall not at any time thereafter be eligible for membership in any public retirement system."); see also ALASKA STAT. ANN. § 37.10.310 (West, Westlaw through ch. 32 of 2020 2d Reg. Sess.); ME. REV. STAT. ANN. tit. 5, § 17062 (West, Westlaw through 2019 2d Reg. Sess.); N.J. STAT. ANN. § 43:1-3.1(b)(17) (West, Westlaw through L.2020, c.127 & J.R. No.2); 43 PA. STAT. AND CONS. STAT. ANN. § 1313(a) (West, Westlaw through 2020 Reg. Sess. Act 95); 36 R.I. GEN. LAWS ANN. § 36-10.1-3 (West, Westlaw through ch. 79 of 2020 2d Reg. Sess.).

<sup>390</sup> W. VA. CODE ANN. § 5-10A-1 (West, Westlaw through 2020 Reg. Sess.).

<sup>391</sup> See *Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE, [https://www.criticalresistance.org/wp-content/uploads/2020/08/CR\\_NoCops\\_reform\\_vs\\_abolition\\_REV2020.pdf](https://www.criticalresistance.org/wp-content/uploads/2020/08/CR_NoCops_reform_vs_abolition_REV2020.pdf) (last visited Dec. 30, 2020).

<sup>392</sup> See D. Bruce Johnsen & Adam David Marcus, *Pension Forfeiture and Police Misconduct*, 14 J.L. ECON. & POL'Y 1, 30 (2017).

### CONCLUSION

Although police quotas have escaped serious in-depth scrutiny, a diverse cross-section of the public rejects their use and believes that criminal sanctions should not be tied to law enforcement statistics or incentives. This Article provides descriptive insights into how police quotas work and why they are a pressing criminal justice issue. Moving forward, interim and long-term strategies must confront the reality that, across the country, quotas are a basic feature of policing.

APPENDIX A. STATE STATUTES

Statutory Prohibitions on Police Quotas		
State	Statute Title	Statute Overview
<b>Arkansas</b>	ARK. CODE ANN. § 12-6-302 (West, Westlaw through 2020 1st Extraordinary Sess. and 2020 Fiscal Sess.)	No state or local agency employing law enforcement officers engaged in the enforcement of any motor vehicle traffic laws of this state or any local ordinance governing motor vehicle traffic may establish any policy requiring any law enforcement officer to meet an arrest quota . . . .
<b>California</b>	CAL. VEH. CODE § 41602 (West, Westlaw through Ch. 372 of 2020 Reg. Sess.)	No state or local agency . . . may establish any policy requiring any peace officer or parking enforcement employees to meet an arrest quota.
<b>Connecticut</b>	CONN. GEN. STAT. ANN. § 7-282d (West, Westlaw through 2020 Reg. Sess.) Imposition of traffic ticket quotas prohibited	<ul style="list-style-type: none"> <li>• No municipal police department may impose any quota with respect to the issuance of . . . summonses for motor vehicle violations upon any policeman in such department.</li> <li>• “Quota” means a specified number of . . . summonses for motor vehicle violations to be issued within a specified period of time.</li> <li>• Nothing in this section shall prohibit such department from using data concerning the issuance of . . . summonses in the evaluation of an individual’s work performance provided such data is not the exclusive means of evaluating such performance.</li> </ul>
<b>Florida</b>	FLA. STAT. ANN. § 316.640 (West, Westlaw through Ch. 184 of 2020 2d Reg. Sess.)	8(b): A traffic enforcement agency may not establish a traffic citation quota.
<b>Illinois</b>	20 ILL. COMP. STAT. ANN. 2610/24 (West, Westlaw through P.A. 101-651) State Police quotas prohibited	The Department may not require a Department of State Police officer to issue a specific number of citations within a designated period of time.
	65 ILL. COMP. STAT. ANN. 5/11-1-12 (West, Westlaw through P.A. 101-651) Quotas prohibited	<ul style="list-style-type: none"> <li>• A municipality may not require a police officer to issue a specific number of citations within a designated period of time. This prohibition shall not affect the conditions of any federal or State grants or funds awarded to the municipality and used to fund traffic enforcement programs.</li> <li>• A municipality may not, for purposes of evaluating a police officer’s job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties.</li> <li>• Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer’s points of contact.</li> </ul>

<p><b>Louisiana</b></p>	<p>LA. STAT. ANN. § 40:2401.1 (West, Westlaw through 2020 2d Extraordinary Sess.) Prohibition against quotas</p>	<p>No municipality or any police department . . . shall establish or maintain, formally or informally, a plan to evaluate, promote, compensate, or discipline a law enforcement officer on the basis of the officer making a predetermined or specified number of any type or combination of types of arrests or require or suggest to a law enforcement officer, that the law enforcement officer is required or expected to make a predetermined or specified number of any type or combination of types of arrests within a specified period.</p>
<p><b>Maryland</b></p>	<p>MD. CODE ANN. PUB. SAFETY § 3-504 (West, Westlaw through 2020 Reg. Sess.)</p>	<p>(a) In this section, “quota” means the mandating of a finite number of arrests made or citations issued that a law enforcement officer must meet in a specified time period. (b) A law enforcement agency may not: (1) establish a formal or informal quota for the law enforcement agency or law enforcement officers of the agency; or (2) use the number of arrests made or citations issued by a law enforcement officer as the sole or primary criterion for promotion, demotion, dismissal, or transfer of the officer. (c) This section does not preclude a law enforcement agency from: (1) using quantitative data for arrests, citations, and other law enforcement activities as management tools or in evaluating performance; (2) collecting, analyzing, and applying information concerning the number of arrests and citations in order to ensure that a particular law enforcement officer or group of law enforcement officers does not violate an applicable legal obligation; or (3) assessing the proportion of the arrests made and citations issued by a law enforcement officer or group of law enforcement officers.</p>
<p><b>Michigan</b></p>	<p>MICH. COMP. LAWS ANN. § 257.750 (West, Westlaw through P.A. 2020, No. 256 of 2020 Reg. Sess.)</p>	<ul style="list-style-type: none"> <li>• A police officer shall not be required to issue a predetermined or specified number of citations for violations of this act or of local ordinances substantially corresponding to provisions of this act, including parking or standing violations.</li> <li>• A police officer’s performance evaluation system shall not require a predetermined or specified number of citations to be issued.</li> </ul>
<p><b>Minnesota</b></p>	<p>MINN. STAT. ANN. § 169.985 (West, Westlaw through 2020 Reg. Sess.)</p>	<p>A law enforcement agency may not order, mandate, require, or suggest to a peace officer a quota for the issuance of traffic citations, including administrative citations authorized under section 169.999, on a daily, weekly, monthly, quarterly, or yearly basis.</p>
<p><b>Missouri</b></p>	<p>MO. ANN. STAT. § 304.125 (West, Westlaw through 2020 2d Reg. Sess.)</p>	<p>No political subdivision or law enforcement agency shall have a policy requiring or encouraging an employee to issue a certain number of citations for traffic violations on a daily, weekly, monthly, quarterly, yearly, or other quota basis. This section shall not apply to the issuance of warning citations.</p>

<b>Nebraska</b>	NEB. REV. STAT. ANN. § 48-235 (West, Westlaw through end of 2020 2d Reg. Sess.)	A state agency or political subdivision shall not directly require a law enforcement officer employed by the state agency or political subdivision to issue a certain number or percentage of traffic citations, police citations, memoranda of traffic violations, memoranda of faulty equipment, or any other type of citation on any periodic basis.
<b>New Jersey</b>	N.J. STAT. ANN. § 40A:14-181.2 (West, Westlaw through L.2020, c.136 and J.R. No. 2)	<ul style="list-style-type: none"> <li>• A State, county or municipal police department . . . shall not establish any quota for arrests or citations.</li> <li>• The department or force shall not use the number of arrests or citations issued by a law enforcement officer as the sole criterion for promotion, demotion, dismissal, or the earning of any benefit provided by the department or force.</li> </ul>
<b>New York</b>	N.Y. LAB. LAW § 215-a (McKinney, Westlaw through L.2019, ch. 758 and L.2020, chs. 1 to 387) Discrimination against employees for failure to meet certain ticket quotas	No employer or his or her duly authorized agent shall transfer or in any other manner penalize or threaten . . . based in whole or in part on such employee's failure to meet a quota . . . .
<b>North Carolina</b>	N.C. GEN. STAT. ANN. § 20-187.3 (West, Westlaw through S.L. 2020-97 of 2020 Reg. Sess.) Quotas prohibited	<ul style="list-style-type: none"> <li>• The Secretary of Public Safety shall not make or permit to be made any order, rule, or regulation requiring the issuance of any minimum number of traffic citations, or ticket quotas . . . .</li> <li>• Pay and promotions of members of the Highway Patrol shall be based on their overall job performance and not on the basis of the volume of citations issued or arrests made.</li> </ul>
<b>Pennsylvania</b>	71 PA. STAT. AND CONS. STAT. ANN. § 2001 (West, Westlaw through 2020 Reg. Sess. Act 95)	No political subdivision or agency of the Commonwealth shall have the power or authority to order, mandate, require or in any other manner, directly or indirectly, suggest to any police officer . . . that said police officer . . . shall issue a certain number of traffic citations, tickets or any other type of citation on any daily, weekly, monthly, quarterly or yearly basis.
<b>Rhode Island</b>	31 R.I. GEN. LAWS 31-27-25 (West, Westlaw through ch. 79 of 2020 2d Reg. Sess.) Ticket quotas prohibited	<ul style="list-style-type: none"> <li>• No state or municipal agency engaged in the enforcement of any motor vehicle traffic or parking laws of this state, or any local ordinance governing motor vehicle traffic or parking, may establish or maintain any policy, formally or informally, requiring any officer to meet a quota.</li> <li>• "Quota" means any requirement regarding the number of arrests or investigative stops made, or summonses or citations issued, by an officer regarding motor vehicle traffic or parking violations.</li> <li>• Nothing contained herein shall preclude a local or municipal agency from using data concerning arrests or investigative stops made, or summonses or citations issued, and their disposition in the evaluation of an officer's work performance, provided such data is not the exclusive means of evaluating such performance.</li> </ul>

<p><b>South Carolina</b></p>	<p>S.C. CODE ANN. § 23-1-245 (West, Westlaw through 2020 Sess.)</p>	<ul style="list-style-type: none"> <li>• A law enforcement agency, department, or division may not require a law enforcement officer employed by the agency, department, or division to issue a specific amount or meet a quota for the number of citations he issues during a designated period of time.</li> <li>• An employee of a law enforcement agency, department, or division who files a report with an appropriate authority alleging a violation of the provisions contained in this section is protected by the provisions contained in Chapter 27, Title 8. (D) As contained in this section: (1) “law enforcement agency, department, or division” includes, but is not limited to, municipal police departments, sheriff departments, the Highway Patrol, SLED, and other agencies that enforce state and local laws; (2) “quota” means a fixed or predetermined amount; (3) “points of contact” means a law enforcement officer’s interaction with citizens and businesses within their jurisdictions and the law enforcement officer’s involvement in community-oriented initiatives.</li> <li>• Nothing in this section shall prohibit a law enforcement agency, department, or division from evaluating an officer’s performance based on the officer’s points of contact.</li> </ul>
<p><b>Tennessee</b></p>	<p>TENN. CODE ANN. § 39-16-516 (West, Westlaw through end of 2020 2d Extraordinary Sess.)                  Traffic offense citation quotas — Performance standards</p> <p>Replaced by Act of July 15, 2020, ch. 801, 2020 Tenn. Pub Acts, <a href="https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf">https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf</a>.                  See also TENN. CODE ANN. § 50-1-304 (West, Westlaw through end of 2020 2d Extraordinary Sess.) (Whistleblower Act)</p>	<ul style="list-style-type: none"> <li>• A public official or employee shall not establish or maintain, formally or informally, a plan to evaluate, promote, compensate, or discipline a law enforcement officer solely by the issuance of a predetermined or specified number of any type or combination of types of traffic citations.</li> <li>• A public official or public employee shall not require or suggest to a law enforcement officer that the law enforcement officer is required or expected to issue a predetermined or specified number of any type or combination of types of traffic citations within a specified period.</li> <li>• Nothing in this section shall prohibit a municipal corporation, a political subdivision or any agency of this state, from establishing performance standards for law enforcement officers that include issuance of traffic citations, but do not require issuance of a predetermined or specified number or any type or combination of types of citations as the sole means of meeting such performance standards.</li> </ul>

<b>Texas</b>	TEX. TRANSP. CODE ANN. § 720.002 (West, Westlaw through end of 2019 Reg. Sess.) Prohibition on Traffic-Offense Quotas	<ul style="list-style-type: none"> <li>• A political subdivision or an agency of this state may not establish or maintain, formally or informally, a plan to evaluate, promote, compensate, or discipline a peace officer according to the officer's issuance of a predetermined or specified number of any type or combination of types of traffic citations . . . .</li> <li>• A political subdivision or an agency of this state may not require or suggest to a peace officer, a justice of the peace, or a judge of a county court, statutory county court, municipal court, or municipal court of record . . . that the peace officer is required or expected to issue a predetermined or specified number of any type or combination of types of traffic citations within a specified period.</li> </ul>
<b>Utah</b>	UTAH CODE ANN. § 77-7-27 (West, Westlaw through 2020 6th Spec. Sess.) Quotas for arrest, citation prohibited	A political subdivision or law enforcement agency employing a peace officer may not require or direct that a peace officer meet a law enforcement quota. Subsection (2) does not prohibit a political subdivision or law enforcement agency from including a peace officer's engagement with the community or enforcement activity as part of an overall determination of the peace officer's performance.
<b>Wisconsin</b>	WIS. STAT. ANN. § 349.025 (West, Westlaw through 2019 Act 186) Quotas relating to the enforcement of traffic regulations prohibited	No state agency or political subdivision of this state may require a law enforcement officer to issue a specific number of citations, complaints or warning notices during any specified time period for violations of traffic regulations.

APPENDIX B. STATE BILLS

State Bills on the Prohibition of Police Quotas		
State	Bill Title	Bill Overview
<b>Arizona</b>	H.R. 2410, 52d Leg., 1st Reg. Sess. (Ariz. 2015)	<p>Prohibits municipalities, police departments, boards of supervisors, sheriffs and DPS from:</p> <ul style="list-style-type: none"> <li>• implementing or establishing a traffic complaint quota for peace officers (officers) employed by a police department, sheriff’s department or DPS;</li> <li>• basing the determination of an officer’s rank or classification on the number of traffic complaints the officer issues; or</li> <li>• consider[ing] the number of traffic complaints an officer issues as a factor when determining the officer’s rank or classification.</li> </ul>
<b>Colorado</b>	S. 84, 67th Gen. Assem., 2nd Reg. Sess. (Colo. 2010)	<p>16-2.5-311. Arrest Quotas.</p> <ul style="list-style-type: none"> <li>• An employing agency may not establish any policy requiring any peace officer to meet an arrest quota.</li> <li>• An employing agency may not use the number of arrests or citations issued by a peace officer as the sole criteria for promotion, demotion, reprimand . . . .</li> </ul>
<b>District of Columbia</b>	Sense of the Council in Support of Enhanced Metro Transit Police Department Oversight Resolution of 2020, 67 D.C. Reg. 14611 (Dec. 1, 2020)	<ul style="list-style-type: none"> <li>• Finding that “some MTPD officers had created and were participating in a ‘game’ in which officers were rewarded for making arrests and issuing citations.”</li> <li>• Establishing an independent review body to address officer complaints.</li> </ul>
<b>Georgia</b>	H.R. 738, 2009 Gen. Assem., Reg. Sess. (Ga. 2009) 2009 Bill Text GA H.B. 738	<ul style="list-style-type: none"> <li>• No local governing authority, law enforcement unit, or peace officer shall by influence or demand require that peace officers employed by a law enforcement unit meet quotas for arrests or the issuance of citations or otherwise increase or maintain the number of arrests or citations for the purpose of providing or increasing revenue.</li> <li>• No local governing authority shall withhold or decrease or threaten, suggest, or imply that such local governing authority will withhold or decrease any funding, revenues, or the operation budget for a law enforcement unit that fails to meet quotas for arrests or the issuance of citations or otherwise fails to increase or maintain the number of arrests or citations for the purpose of maintaining or increasing revenue.</li> </ul>

<b>Nevada</b>	S. 390, 1999 Leg., 70th Sess. (Nev. 1999)	<p>[A] state or local law enforcement agency in this state shall not:</p> <ul style="list-style-type: none"> <li>• establish or carry out a policy that requires or encourages, either directly or indirectly, a police officer employed by the law enforcement agency to meet a quota for issuing citations or making arrests.</li> <li>• consider the number of citations issued or arrests made by police officers employed by the law enforcement agency when determining the needs of the agency with respect to equipment, funding or staffing.</li> </ul>
<b>Virginia</b>	H.R. 1376, 2015 Sess. (Va. 2015)	<p>A sheriff shall not . . .</p> <ul style="list-style-type: none"> <li>• establish a formal or informal quota that requires a deputy to make a specific number of arrests or issue a specific number of summonses within a designated period of time.</li> <li>• use the number of arrests made or summonses issued by a deputy as the sole criterion for evaluating a deputy's job performance.</li> </ul>
<b>Washington</b>	S.R. 6316, 66th Leg., Reg. Sess. (Wash. 2020)	<p>The number of citations issued by a law enforcement officer for traffic infractions, or the amount of penalties assessed from the issuance of such citations, may not be considered in any performance review, evaluation, rating, assessment, salary, promotion, or assignment of the law enforcement officer.</p>
<b>West Virginia</b>	<p>1992 Bill Tracking W. Va. H.R. 4037 Prohibiting the use of ticket writing quotas by the Department of Public Safety</p> <p>H.B. 2984 (W. Va. 2000) Prohibiting arrest quotas</p>	<p>Any state or local agency . . .</p> <ul style="list-style-type: none"> <li>• May not establish policy or expectations requiring any officer to meet an arrest quota or use the number of arrests or citations issued by an officer as the criterion for promotion, demotion, dismissal or the earning of any benefit provided by the agency.</li> <li>• May not use the number of arrests or citations issued by their officers as the criterion for funding, staffing or equipment needs.</li> </ul>

## APPENDIX C. MODEL STATUTE

No political subdivision or law enforcement agency employing a law enforcement officer shall require or suggest, directly or indirectly, that a law enforcement officer should follow a quota.

“Quota” means a specified average, percentage, or number of warnings, stops, citations, or arrests to be issued on any daily, weekly, monthly, quarterly or yearly basis.

No political subdivision or law enforcement agency employing a law enforcement officer shall use the number of warnings, stops, citations, or arrests issued by a law enforcement officer as the sole or primary criterion for an officer’s demotion, penalization, transfer, termination, constructive dismissal, promotion, or earning of any benefit.

Any officer penalized for failing to adhere to a quota system shall be fully compensated and shall be provided an avenue of legal remedy beyond the unit’s internal complaint system.

A violation of this section is a Class B misdemeanor, subject to pension forfeiture only.

A court of this State shall enter an order of pension forfeiture pursuant to this section immediately upon a finding of guilt by the trier of fact or a plea of guilty entered in any court of this State unless the court, for good cause shown, orders a stay of the pension forfeiture pending a hearing on the merits at the time of sentencing.

Nothing in this section shall be deemed to preclude the authority of the board of trustees of any State or locally-administered pension fund or retirement system created under the laws of this State from ordering the forfeiture of all or part of the earned service credit or pension or retirement benefit of any member of the fund or system for misconduct occurring during the member’s public service.