



# The Washington Report

**The Newsletter of the National Association of Police Organizations**  
*Representing America's Finest*

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**January 8, 2021**

## **NAPO President Releases Statement in Response to Riots at the Capitol**

On January 7, NAPO released the following statement from President Mick McHale regarding the criticism being laid against U.S. Capitol Police over their response to the violent mob of rioters that breached the U.S. Capitol:

On behalf of the National Association of Police Organizations (NAPO), I want to recognize the dedication and service of the U.S. Capitol Police and the other state, local and federal law enforcement agencies who responded to the riot and violence at the U.S. Capitol on January 6.

We recognize and acknowledge that there are great political divides in our nation. As law enforcement officers, the first law we are sworn to uphold is the Constitution of the United States. And we strive to protect all the rights contained therein, including First Amendment rights. At the same time, mass protests regarding controversial issues present an extremely volatile situation, and the deliberate and provocative acts of a few can swiftly turn what was a relatively peaceful assembly into a dangerous and violent mob.

Officers, in fact, put their own safety at risk in protecting the legitimate First Amendment rights of protesters, even those protesters who vilify and despise the police. They also risk their own safety in restoring public order and welfare when it is threatened by violent criminals, regardless of the political motivations or beliefs of the individual persons involved.

When elected politicians seek to substitute their own judgement for that of experienced officers, regarding the dangerousness of mobs, and how swiftly a situation can spiral out of control, the result can often be greater danger to public safety, and an increase in physical harm as well as damage to property and institutions. One example of this is the removal of "tools from the toolbox" that officers may need to protect themselves and the public in riotous situations. These tools may include teargas or other irritants, less-lethal projectiles, and even items such as helmets and shields. When the legitimate availability of these tools to officers is foreclosed at the front end, the predictable result is that demonstrations that might have remained relatively peaceful, or at least less violent, quickly escalate to destructive violence.

The great harm here is that officers are sometimes placed in a situation where, having been stripped of legitimate less-forceful means of maintaining and restoring order, they find themselves approaching a situation where they are forced to choose between no force at all and deadly force, because the intermediate use-of-force tools have been restricted or prohibited. This situation clearly risks great harm, destruction and even death, that might otherwise have been prevented. In cities across the country, the dissatisfaction with

police response to sometimes violent protests during the summer have led to the deliberate disengagement or “standing down” of officers and the banning of vital de-escalation tools.

The political and social atmosphere in our country is overheated right now, and it is likely that legitimate protests are at risk of being hijacked by a few bad actors. Because this is an existing and foreseeable risk, it is incumbent upon our civil leadership, both our elected officials and our law enforcement agency heads, to insist that our line officers be properly equipped and trained in the full spectrum of options available to them to maintain and restore public order.

## **NAPO Priorities: 116<sup>th</sup> Congress Review**

The 116<sup>th</sup> Congress (2019-2021) was very successful for NAPO in moving our legislative and policy priorities. As the 117<sup>th</sup> begins, we will take a moment to reflect on and highlight the wins and achievements accomplished over the past two years.

### NAPO Priority Legislation Signed into Law

**Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11<sup>th</sup> Victim Compensation Fund Act.** It reauthorizes the 9/11 Victim Compensation Fund through fiscal 2090 to compensate first responders and other individuals with health conditions caused by toxin exposure due to the attacks on September 11, 2001. It also requires the reimbursement of any claims previously reduced due to insufficient funds.

**Repeal of the “Cadillac Tax”.** The Fiscal 2020 Consolidated Appropriations Act, H.R. 1865, included a provision that permanently repealed the “Cadillac Tax”, a 40 percent excise tax on employer-sponsored health plans that was set to go into effect in 2022.

**Supporting and Treating Officers in Crisis (STOIC) Act.** It reauthorizes and revitalizes a Department of Justice (DOJ) grant program for law enforcement officer family-support services that expired in 2000 and was last funded in 2005. In addition to the family-support services available under the grant, the STOIC Act will expand the grant program’s eligible uses to better address the mental-health and support needs of law enforcement officers, especially as it relates to suicide prevention. The bill would specifically allow grant recipients to use funds to establish suicide-prevention programs and to support officers suffering stress and mental-health issues.

**Bulletproof Vest Partnership Grant Program Permanent Reauthorization.** It permanently authorizes the Bulletproof Vest Partnership (BVP) Grant Program, a matching grant program through the Department of Justice that helps fund state and local law enforcement efforts to purchase bullet resistant vests for their officers. Additionally, it increased the authorization up to \$30 million per year.

**Safeguarding America’s First Responders Act.** It establishes a presumption under the Public Safety Officers’ Benefits (PSOB) Program that an officer’s death or disability due to contracting COVID-19 is in the line of duty.

**Law Enforcement Suicide Data Collection Act.** Requires the Department of Justice to establish a program to collect confidential data on law enforcement and former law enforcement suicides at the local, state and federal levels.

**National Law Enforcement Museum Commemorative Coin Act.** It directs the U.S. Treasury Department to mint and issue up to 1.2 million gold, silver, and copper clad coins celebrating the National Law Enforcement Museum in Washington, D.C. Proceeds from the sale of the commemorative coins will provide a needed future stream of private funding for the Museum to ensure its permanence.

**Debbie Smith Reauthorization Act.** It reauthorizes grants that support state and local efforts to process DNA evidence in rape kits, including grants under the Debbie Smith DNA Backlog Grant Program and grants to provide DNA training and education for law enforcement personnel, corrections personnel, and court officers.

**Don't Break Up the T-Band Act.** It repeals the auction of the 470-512 MHz (T-Band) that was mandated by the Middle Class Tax Relief and Job Creation Act of 2012. This allows public safety licensees to remain on the T-Band spectrum, ensuring first responders nationwide continue to have access to advanced communications capability.

The bills that were enacted into law in the 116<sup>th</sup> Congress were significant priorities for NAPO. The enactment of the Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11<sup>th</sup> Victim Compensation Fund Act, the Bulletproof Vest Grant Program Permanent Reauthorization Act, and the permanent repeal of the “Cadillac Tax” are considerable, long-fought for victories for NAPO and our members.

### NAPO Priority Legislation Passed by the House or Senate

**Protecting America's First Responders Act.** This bill passed the Senate by voice vote on May 16, 2019. It would ease the strict requirements for disabled officers to qualify for PSOB disability benefits, ensuring that officers who are catastrophically injured in the line of duty, but can still perform some level of work, would still qualify for the much-needed benefit. It would also ensure that beneficiaries receive the highest award amount possible and it will make certain that all children of public safety officers disabled or killed in the line of duty are able to benefit from the Public Safety Officers' Education Assistance program.

**Rehabilitation for Multiemployer Pensions Act.** This bill passed the House on July 24, 2019 by a vote of 264-169. It would create a Pension Rehabilitation Trust Fund and establish a Pension Rehabilitation Administration within the Treasury Department to make loans to failing multiemployer defined benefit plans.

**Restoring Tax Fairness for States and Localities Act.** This legislation passed the House by a vote of 218-206 on December 19, 2019. This bill would repeal the cap on state and local tax (SALT) deduction for two years – tax years 2020 and 2021 – and would reinstate above-the-line deductions for certain, significant work-related out-of-pocket expenses for first responders.

**COPS Counseling Act.** This bill passed the Senate on May 14, 2020 by unanimous consent. This bill would implement confidentiality standards for federal law enforcement peer support counseling programs and directs the Attorney General to report on best practices and professional standards for state and local peer counseling programs.

NAPO is already working on getting these important bills reintroduced in the new 117<sup>th</sup> Congress and it is our priority to see them all signed into law this Congress.

## NAPO Non-Legislative Victories

**Victory in D.C. LEOSA Court Case.** The United States Court of Appeals for the D.C. Circuit issued an opinion on May 21, 2019 in *Duberry v. District of Columbia*. NAPO participated as an amicus curiae in this case in January. In its opinion, the D.C. Circuit roundly rejects the D.C. Government’s arguments on this appeal, and affirms that the plaintiffs – retired law enforcement officers – are “qualified retired law enforcement officers” under the Law Enforcement Officers Safety Act (LEOSA, also known as H.R. 218 or the officers’ right to carry law) for the purpose of carrying concealed firearms. **It also reaffirms that they have the right under 42 U.S.C. § 1983 to bring a court action to obtain that determination.** This is one of the strongest pro-LEOSA cases nationwide.

**NAPO Court Victory on Behalf of Officers.** In a victory for NAPO and law enforcement officers across the country, the United States Court of Appeals for the Fifth Circuit (one step below the Supreme Court) has followed our legal argument and granted a new hearing on the issue of immunity for officers involved in a use of force. NAPO had argued that the Court made a mistake when it first evaluated this case and declined to find that the officers had immunity from suit. NAPO, along with our member association the Combined Law Enforcement Associations of Texas (CLEAT), urged the Court to rehear this case, and now they have agreed to do so.

NAPO was the only national police labor group to get involved, and CLEAT was the only Texas police labor group to do so, as well.

**Executive Order on Safe Policing for Safe Communities.** In response to the death of George Floyd, President Trump issued Executive Order 13929, Safe Policing for Safe Communities, on June 19, 2020, directing the Attorney General to incentivize transparency, accountability and training for state and local law enforcement. NAPO was consulted on the Executive Order and we endorsed it because it recognizes the needs and legitimate rights of law enforcement officers, while implementing new standards that will improve policing practices and policies.

We continued to work with the White House and the Department of Justice (DOJ) on the implementation of the Executive Order and offered input into the Attorney General’s guidelines for executing the order, the *Standards for Certification on Safe Policing for Communities*, which were released on October 28. NAPO believes these *Standards* represent a vital contribution towards the betterment of American policing. Because they take into consideration the concerns and needs of both law enforcement managers and street officers, as well as the communities we are called to serve, the *Standards* bode well to enjoy wide acceptance and implementation by agencies across the country.

## **NAPO’s Legislative Scorecard for the 116th Congress**

Find out how your representatives and senators voted on NAPO’s priority issues by reviewing NAPO’s Legislative Scorecard for the 116th Congress, which is available on our [website](#) under Washington Report. The results include all *recorded votes* that impacted NAPO’s members in the House of Representatives and Senate during the 116th Congress (2019 – 2021). The Legislative Scorecard includes a description of the votes analyzed in 2019 and 2020 and NAPO’s stance on each of the votes and spreadsheets detailing how members of the U.S. House of Representatives & Senate voted on each of our priority bills as well as which Senators and Members of Congress sponsored and cosponsored our priority legislation.

If you have any questions about the Legislative Scorecard or any of the legislation that NAPO is currently working on, please contact the NAPO Office at (703) 549-0775 or [info@napo.org](mailto:info@napo.org).

## **Democrats Win in Georgia, Take Control of Senate**

Democrats Raphael Warnock and Jon Ossoff won in the run-off election on January 5 to represent Georgia in the Senate, giving Democrats control of the Senate, the House and the Presidency. With the Democrats gaining these two seats, the Senate is now split 50-50 with Vice President-elect Kamala Harris the tie-breaking vote. Senator Charles Schumer (D-NY), the current Minority Leader, will become the Majority Leader, and he has indicated he will not shy away from putting more partisan bills on the floor for a vote, something that Majority Leader Mitch McConnell (R-KY) often avoided.

A 50-50 split Senate has only occurred three times in the history of Congress. The last time it happened in 2001, there was an agreement between Republican and Democratic leadership to evenly split committee rosters and staff resources, with the Majority Leader given the power to move any bill that had a tie vote in committee. It is yet to be determined what the power sharing agreement will be between Majority Leader Schumer and Minority Leader McConnell.

With Democrats holding a very narrow majority in the House and an even narrower majority Senate, our ability to protect qualified immunity for officers, safeguard officer due process, and stop continuing efforts to “defund the police” will be an uphill battle. Moderate Democrats will be our lifeline against certain damaging police reform policies as their votes will be necessary for Democrats to pass anything. There will need to be some bipartisan compromise on legislation, particularly in the Senate as the Democrats do not hold a filibuster-proof majority, or it stands little chance of making its way to the President’s desk to be signed into law.

Progressives are pushing President-Elect Biden to support eliminating the legislative filibuster, which requires 60 Senators to support moving forward with debate for a bill to have a vote on the floor. The elimination of the filibuster would allow a bill to pass with a simple majority, giving the Democrats greater ability to pass their legislative agenda without much compromise. Biden has stated that he does not support abolishing the filibuster and it is uncertain that it has the support of all Democrat Senators, which would be necessary for it to happen. NAPO will be following this issue closely.

## **Biden to Nominate Merrick Garland for Attorney General**

President-Elect Biden has announced that he is nominating Merrick Garland to be Attorney General. Mr. Garland was nominated to the U.S. Supreme Court in 2016 by President Obama to replace the late Justice Antonin Scalia, but the Senate, controlled by Republicans, never took up his nomination. He is currently serving as a judge on the D.C. Circuit Court of Appeals. While Mr. Garland is considered a relatively moderate pick for Biden, it is expected that Biden will nominate more progressive candidates to serve under him in the Department of Justice (DOJ).

Biden is also nominating Lisa Monaco as Deputy Attorney General. Ms. Monaco previously served as President Obama’s homeland security adviser. Vanita Gupta, who was the Assistant Attorney General for the Civil Rights Division under President Obama and is currently the president of the Leadership Conference on Civil and Human Rights, will be nominated as Associate Attorney General. Rounding out the top leadership of the DOJ is Kristen Clarke, nominated as Assistant Attorney General for the Civil Rights Division. Ms. Clarke is the president of the Lawyer’s Committee for Civil Rights Under Law and previously ran the Civil Rights Bureau for the New York State Attorney General. The three nominees have previously stated their support for significant police reform, including defunding the police. Ms. Gupta, in her role overseeing the Civil Rights Division under President Obama, greatly expanded the DOJ’s use of pattern and practice investigations and consent decrees.

Under this DOJ leadership team, we can expect a very active Civil Rights Division, much like it was under the Obama Administration, greater scrutiny of state and local law enforcement, and changes in priorities for funding for state and local law enforcement assistance programs to reward grants to those agencies that have implemented or are implementing certain police reform policies.

## **Mental Health Report Released as Part of Safe Policing for Safe Communities Executive Order**

The Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) released a [report on mental health resources](#) to support the law enforcement community, the mental health community, and state and local leaders, as required by President Trump's Executive Order on Safe Policing for Safe Communities. The report includes best practices and models that provide more opportunities for mental health treatment in place of incarceration, during incarceration and after incarceration, and that proven to improve law enforcement responses to mental health crises.

*Please monitor NAPO's website, [www.napo.org](http://www.napo.org), and Facebook page: National Association of Police Organizations, and follow us on Twitter at NAPOpolice for breaking news and updates.*