

# PRIVATE CAMPUS POLICE AND THE FOURTEENTH AMENDMENT

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## ABSTRACT

The rise and expansion of private campus police forces raises critical concerns about the interpretation of the Fourteenth Amendment. As state legislatures continue to authorize private police to act as state law enforcement officers and extend their jurisdiction beyond campus boundaries, resembling traditional public law enforcement agencies, the application of the state action doctrine and due process protections remains unclear. This Article examines the state laws that empower private campus police officers to exercise police power off-campus and evaluates the implications for due process protections under the Fourteenth Amendment. The newly established Johns Hopkins University Police Department serves as a case study to explore how the expansion of private policing may infringe on fundamental democratic principles of self-governance. Specifically, this Article argues that the statutory delegation of off-campus police powers to private campus police officers violates the Due Process Clause of the Fourteenth Amendment by undermining city residents' right to meaningfully participate in self-governance and forcibly exposing them to private policing and surveillance. This Article advocates for a reexamination of the state action doctrine to account for the rise of private campus police forces and offers a novel interpretation of the Fourteenth Amendment's protections against private policing models.

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## INTRODUCTION

Private policing is a rapidly expanding phenomenon. More than one million people are employed in private security and law enforcement (private policing) positions in the United States—including private detectives, investigators, and security guards.<sup>1</sup> Private police are employed in a variety of contexts, and the providers of private policing vary by need and purpose.<sup>2</sup> However, they are fundamentally and specifically client-driven.<sup>3</sup> Providers of private policing include hospitals, casinos, railroads, and institutions of higher education. Private police are “lawful forms of organized, for-profit personnel” whose primary objectives include “the control of crime, the protection of property and life, and the maintenance of order” for their client.<sup>4</sup> Therefore, what crime must be controlled, what property must be protected, whose lives are valued, and what kind of order must be maintained is at the discretion of, and for the benefit of, their client.

Private police have increasingly become the first line of defense following September 11, 2001.<sup>5</sup> Following the events of 9/11, private security were tasked with protecting the nation’s critical infrastructure and key resources, such as nuclear power plants.<sup>6</sup> The Department of Homeland

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1. Paul Heaton, Priscilla Hunt, John MacDonald, & Jessica Saunders, *The Short- and Long-Run Effects of Private Law Enforcement: Evidence from University Police*, 59 J. L. & ECON. 889, 889 (2016) (outlining the number and impact of private law enforcement).

2. For example, private individuals situated within a community acting as neighborhood watch; guards, patrols, and private investigators for commercial security-related enterprises (e.g., security and alarm companies); employees with specialist policing, security, or risk-management roles within private or not-for-profit organizations.

3. Elizabeth E. Joh, *The Paradox of Private Policing*, 95 J. CRIM. L. & CRIMINOLOGY 49, 61–62 (2004) (describing an overview of how private police are client-driven).

4. *Id.* at 55 (defining the organization of private policing).

5. DEP’T HOMELAND SEC., THE NATIONAL STRATEGY FOR THE PHYSICAL PROTECTION OF CRITICAL INFRASTRUCTURES AND KEY ASSETS vii–xii (2003) [hereinafter HOMELAND SECURITY PROTECTION STRATEGY REPORT], [https://www.dhs.gov/xlibrary/assets/Physical\\_Strategy.pdf](https://www.dhs.gov/xlibrary/assets/Physical_Strategy.pdf).

6. *Id.* at 75 (outlining the enhancements of security forces, such as the use of licensed guards to “carry and use more powerful weapons”). Additionally, about 85% of national critical infrastructure is privately owned. U.S. GOV’T ACCOUNTABILITY OFF., THE DEPARTMENT OF HOMELAND SECURITY’S (DHS) CRITICAL INFRASTRUCTURE PROTECTION COST-BENEFIT REPORT 1 (2009).

Security (DHS) was charged with partnering with law enforcement and federal security officers to create a training and certificate regime for private security officers.<sup>7</sup> The federal government also created standards for private security to help disrupt terrorist organizations and to advance their role as a critical component of counter-terrorism efforts.<sup>8</sup> For example, these new standards included measures to: arm and train private security in weapons use; establish a security training program; develop standardized requirements for qualifications, training, and certifications; sustain skill levels and remain updated on terrorist weapons and tactics; and coordinate with federal, state, and local law enforcement to provide training, including within federal law enforcement academies.

As a result of these developments, the private security guard industry rapidly and “involuntarily transformed” from an “army of ‘rent-a-cops’ to the protectors of the homeland.”<sup>9</sup> This transformation blurred the line between private and public policing, as the role of private police expanded from basic security and protection to include traditional law enforcement services.<sup>10</sup> Consequently, the distinctions between them are now considered more theoretical rather than practical.<sup>11</sup> Elizabeth Joh spoke of a “paradox of private policing” wherein very little is known about private police and yet the “functions, responsibilities, and appearance of private and public police are increasingly difficult to tell apart.”<sup>12</sup> The boundaries of private police are vague because “there is no equivalent to criminal procedure law governing them.”<sup>13</sup> Private police are distinct from public law

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7. HOMELAND SECURITY PROTECTION STRATEGY REPORT, *supra* note 5, at xii (describing the charge to establish a model for a security training program).

8. U.S. STATE DEP’T, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 5 (2002), <https://2009-2017.state.gov/documents/organization/63562.pdf> (outlining the national commitments of disrupting and destroying terrorism. “Our priority will be first to disrupt and destroy terrorist organizations of global reach and attack their leadership; command, control, and communications; material support; and finances. This will have a disabling effect upon the terrorists’ ability to plan and operate.”); HOMELAND SECURITY PROTECTION STRATEGY REPORT, *supra* note 5, at 29 (for a description of how private security officers were tasked with supporting national security priorities).

“Despite the events of September 11, awareness of the implications of terrorist threats to critical infrastructures among members of industry in general remains relatively low. As time passes and focus on the events of that day recedes, the awareness and interest of the general public also recedes. As a result, security-related activities could lack the consistent focus required to assure protection, thus leaving us exposed once more . . . . Similarly, although private security officers are identified as an important source of protection for critical facilities, few formal standardized qualifications, training, or certification requirements exist for these positions across the critical sectors. Given the dynamic nature of the terrorist threat, there is an urgent need for ongoing training of security personnel to sustain skill levels and to remain up-to-date on evolving terrorist weapons and tactics.”

9. Associated Press, *Homeland Security’s Weak Link: Private Security*, THE GAINESVILLE SUN (May 30, 2007, 12:01 AM), <https://www.gainesville.com/story/news/2007/05/30/homeland-securitys-weak-link-private-security/31526502007>.

10. Law enforcement services include the apprehension, investigation, and detention of persons suspected of criminal offenses; responding to emergencies; the use of weapons and force; and order maintenance.

11. Heaton et al., *supra* note 1, at 891 (citing to the comparisons between private and public police).

12. Joh, *supra* note 3, at 49.

13. *Id.* at 61.

enforcement but they maintain similar roles in crime control, order maintenance, and the protection of life and property.<sup>14</sup>

A model of private policing that has significantly expanded over the last three decades exists within American higher education—private campus police forces.<sup>15</sup> While private campus police forces have existed in some form for more than 130 years, their presence and authority have significantly increased with the proliferation of private policing.<sup>16</sup> These forces consist of sworn and non-sworn officers<sup>17</sup> who provide a broad range of law enforcement services for a private institution of higher education.<sup>18</sup> However, despite their growth, private campus police forces remain a widely underexamined sector of policing.

Private campus police forces commonly receive their legal authority through state laws. Under these statutes, private campus police officers have the same police powers as their municipal counterparts.<sup>19</sup> They are generally authorized to patrol the campus, investigate crimes, enforce state and local laws, conduct arrests, execute warrants, respond to emergency calls, conduct traffic stops, issue citations, and maintain public order.<sup>20</sup> Furthermore, they are often trained and certified as law enforcement officers under the same state standards as their municipal counterparts.<sup>21</sup> Twenty-eight states and the District of Columbia statutorily currently

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14. *Id.* at 55–56 (providing a historical overview of private policing).

15. I use the term *private campus police forces* to describe the broad collective of campus law enforcement officers, agencies, and departments at private institutions of higher education and the term *private campus police* to describe a singular or specific law enforcement agency or department at a private institution of higher education. I also use the term *private campus police officers* to describe the police officers employed at private institutions of higher education. As a matter of distinction, I do not use the designation of “public” when referring to university police at public institutions of higher education. University police departments at public institutions of higher education are an extension of the state. I use the designation of *private* when referring to police officers at private institutions of higher education to signify the privatization of police and not a designation of their employment (i.e., refuting the idea that they are private “to” the institution).

16. See Vanessa Miller, *The Role of State Laws in the Privatization of Police on Campus*, HARV. EDUC. REV. (forthcoming 2025) (manuscript at 7) [hereinafter Miller, *Role of State Laws*].

17. In performance of their duties, sworn officers generally complete training from a law enforcement academy as prescribed by the state and possess the legal authority to arrest and enforce laws. Nonsworn officers, on the other hand, are civilian officers in a police department or law enforcement agency who generally do not have the authority to arrest or enforce laws.

18. For further discussion on the roles and responsibilities of private campus police, see *infra* Section I.A. See also Vanessa Miller & Katheryn Russell-Brown, *Policing the College Campus: History, Race, and Law*, 29 WASH. & LEE J. C.R. & SOC. JUST. 59, 64–83 (2023) (detailing a historical overview of the development of private campus police departments and their role in policing race and wealth); Grace Watkins, *Piety Police*, 134 YALE L.J. 2984 *passim* (2025) (discussing the roles and responsibilities of private campus police at religiously affiliated institutions).

19. Miller, *Role of State Laws*, *supra* note 16, at 4 (examining the police powers granted to university police at private campus police departments); Vanessa Miller, *A National Survey and Critical Analysis of University Police Statutes*, 72 BUFF. L. REV. 751, 765–68 (2024) [hereinafter Miller, *A National Survey*] (examining the police powers granted to university police at campus police departments at public institutions of higher education).

20. See Miller, *Role of State Laws*, *supra* note 16, at 4 (discussing the police powers granted to university police at private campus police departments).

21. *Id.* at 13–20 (examining the state laws that authorize private campus police forces); Miller, *A National Study*, *supra* note 19, at 787–92 (noting the state laws that authorize campus law enforcement agencies at public postsecondary institutions).

authorize private postsecondary institutions to hire their own police officers or establish their own law enforcement agency.<sup>22</sup> The number of states with a private university police statute has increased 211% in the last three decades.<sup>23</sup>

A significant concern about the statutory delegation of police power to private campus police relates to campus officers' authority to exercise police powers off-campus.<sup>24</sup> Off-campus jurisdiction includes anything beyond the immediate boundaries of campus, such as public roads and sidewalks adjacent to the campus and surrounding neighborhoods.<sup>25</sup> Fourteen states and the District of Columbia authorize private campus police officers to exercise their police powers off-campus.<sup>26</sup> In effect, private campus police officers in those fourteen states and the District of Columbia have authority and control over areas where the institution of higher education that employs them does not. Private campus police maintain police powers over communities they are not accountable to and have no duty to protect. This model of policing fundamentally encroaches on the rights of individuals to self-govern and be autonomous from the control and influence of forced systems of surveillance.

The distinctive private-but-public nature of private campus police raises critical questions about the constitutionality of expanded police jurisdiction—specifically the procedural safeguards from private police sovereignty. To begin addressing these constitutional concerns, this Article makes a narrow argument about the constitutionality of conferring off-campus police powers to private campus police and offers a reexamination of the application of the Fourteenth Amendment's Due Process Clause. It argues that granting statutory authority to private campus police to exercise police powers off-campus fundamentally undermines the right of city residents to meaningfully engage in self-governance by forcibly subjecting them to private policing paradigms they have neither authorized nor consented to.<sup>27</sup> The statutory delegation of off-campus police authority

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22. Miller, *Role of State Laws*, *supra* note 16, at 13–20 (examining the state laws that authorize private campus police forces).

23. *Id.* at 13 (explaining the statistical increase in states with a private university police statute).

24. For a discussion about the definition of off-campus jurisdiction and the implications of off-campus private campus police authority, please see *infra* Section I.B.1.

25. For example, the University of Southern California (USC) Department of Public Safety, one of the nation's largest private campus law enforcement agencies, is authorized to extend their jurisdiction off-campus to a wider “geographical patrol and response areas” so as to “better serve the USC community.” See UNIV. OF S. CALIFORNIA, 2024 ANNUAL SECURITY AND FIRE SAFETY REPORT 13 (2024), <https://dps.usc.edu/wp-content/uploads/2024/09/USC-ASR-2024-reduced-size-tagged-v.3.pdf>. Of note, crimes that occur off-campus, or crimes that do not occur within the Clery Act reportable geography, are not included in the USC Annual Security and Fire Safety Report, a federal crime reporting mechanism to inform the campus community and provide transparency around campus crimes. For more information about the purposes of the Clery Act, see *Frequently Asked Questions (FAQ)*, CLERY CTR., <https://www.clerycenter.org/faq>.

26. Miller, *Role of State Laws*, *supra* note 16, at 18–20 (identifying state laws that authorize private campus police officers to extend their jurisdiction off-campus).

27. The courts have found a delegation of state power to private entities violates due process, supporting the position that citizens have a constitutional right to be free from private interference in

effectively denies individuals a right to self-govern by placing them under the control of a private entity, limiting their ability to hold the private entity accountable or seek legal redress of harms.

This article contributes to a growing body of legal scholarship on university police<sup>28</sup> and takes a narrow yet novel approach to examining the police powers conferred on private campus police forces. As such, each Section could be expanded into full length articles that would substantively tackle issues such as state action, qualified immunity, law enforcement civilian review boards, governance, and legislative reform as they relate to private institutions of higher education. However, the primary purpose of this article is to offer a pointed argument on the possible due process implications by state laws that empower private campus police officers to exercise their police powers outside the physical boundaries of campus and into the surrounding community. It is my sincere hope this article brings about broader conversations not only about the powers of private campus police but the control that private institutions of higher education have on the communities that surround them.

Part I provides an overview of the expansion of private campus police forces across American higher education. It discusses the historical development of private campus police departments and the role of state laws in their proliferation. It also explains the variety among statutory definitions of “off-campus” jurisdiction. Part II reviews case law that applies the state action doctrine to private campus police. This is critical because the provisions of the Fourteenth Amendment—or any constitutional provision—are inapplicable to private campus police forces without a demonstration of state action. Part II argues private campus police qualify as state actors under a two-prong analysis and outlines the courts’ support for each prong of the analysis. The two-prong analysis includes the statutory authority of private campus police and a conduct analysis of private campus police officers.

Part III conducts a Fourteenth Amendment due process analysis, focusing on the democratic principle of self-governance as it applies to community members subject to the authority of private campus police officers. It supports this principle through an interpretation of self-governance as a liberty interest under the Fourteenth Amendment and argues that the delegation of police power to a private entity without meaningful community notice, inclusion, or oversight undermines the right of residents to

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public affairs. For a discussion on the unconstitutional delegation of state powers to private entities, see *infra* Section III.A.

28. The administration and pervasiveness of policing at American institutions of higher education is largely absent in legal scholarship. However, a handful of law articles focus on the legal implications of university police. See, e.g., Jamie P. Hopkins & Kristina Neff, *Jurisdictional Confusion that Rivals Erie: The Jurisdictional Limits of Campus Police*, 75 MONT. L. REV. 123 (2014); Leigh J. Jahnig, *Under School Colors: Private University Police as State Actors Under § 1983*, 110 NW. U. L. REV. 249 (2015); Trey A. Duran, *College Campus Police Abolition*, 31 KAN. J. L. & PUB. POL’Y 327 (2022); Miller & Russell-Brown, *supra* note 18; Miller, *A National Survey*, *supra* note 19; Sunita Patel, *Campus Police as Protest Police*, COLUM. L. REV. (forthcoming 2025); Watkins, *supra* note 18.

meaningfully participate in self-governance and deprives them of procedural due process rights. It also argues that public accountability, private membership, and capital interests play a significant role in the way courts interpret self-governance under the Fourteenth Amendment. While the central argument of Part III involves procedural due process, it briefly mentions the substantive due process rights this argument implicates.

## I. THE RISE OF CAMPUS POLICE FORCES

Private police are the largest provider of policing services in the United States yet remain largely understudied by scholars and researchers.<sup>29</sup> Private campus police forces in particular have exponentially grown in popularity, in part due to support from state legislatures. The steady increase of private university police statutes signifies increasing legislative support for an expanded model of private policing and for increased policing and surveillance around private institutions of higher education.<sup>30</sup>

Fundamental questions about private campus police are lurking beneath this Article's central argument. Who are they? Where do they receive their legal authority? What legal benefits and privileges do they possess as law enforcement officers? How do we conceptualize private campus police forces as part of—yet distinct from—private policing more generally?<sup>31</sup> This Part provides a historical account of the development of private campus police forces at American private postsecondary institutions and insight into the legislative governance, regulation, and authority of private campus police.

### *A. History and Development of Private Campus Police Forces*

Campus policing has existed on American college and university campuses for over a century.<sup>32</sup> In 1894, Yale University became the first postsecondary institution to establish a campus police force<sup>33</sup> when it hired two officers from the New Haven Police Department to patrol the campus.<sup>34</sup> Yale's model of campus policing set the foundation for policing American institutions of higher education—both public and private.

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29. Joh, *supra* note 3, at 49.

30. Miller, *Role of State Laws*, *supra* note 16, at 13–20 (describing the number of state laws that govern private campus police forces and an analysis of the expansive policing models at private institutions of higher education).

31. For a critical perspective on the legal, organizational, and social consequences of university police more generally, see COPS ON CAMPUS: RETHINKING SAFETY AND CONFRONTING POLICE VIOLENCE (Yalile Suriel, Grace Watkins, Jude Paul Matias Dizon, & John J. Sloan III eds., 2024).

32. Miller & Russell-Brown, *supra* note 18, at 65 (overviewing the history of campus policing).

33. Yale University, like other institutions of higher education, referred to their police departments as security. However, I use the word “campus police force” to explain the foundations of what would become a private campus police force.

34. WILLIS G. WISER, YALE MEMORIES 11 (1914) (autobiography of the first Yale police); Office of the President, *The Yale Police Department in a Time of Historic Change*, YALE UNIV. (June 22, 2020), <https://salovey.yale.edu/writings-and-speeches/statements/yale-police-department-time-historic-change>.

Private postsecondary institutions across the country hired security and police officers to secure buildings, guard the university's grounds and facilities, and respond to petty thefts from dormitory rooms.<sup>35</sup> They were also expected to serve as a physical barrier between the campus and persons unrelated to the university, particularly as institutions began to expand their geographical boundaries into the predominately working-class and Black neighborhoods they were built in.<sup>36</sup> Over time, this model of campus policing developed into large-scale private campus police departments with broad and long-lasting impacts on their respective campuses and surrounding communities.

In the early to mid-twentieth century, a handful of private institutions adopted the Yale model of policing. In the 1930s, the University of Chicago hired armed security officers to patrol campus and safeguard university property.<sup>37</sup> In 1936, Northwestern University established the Traffic Safety Institute and appointed a police officer as the director.<sup>38</sup> The Institute grew and eventually transformed into the Northwestern University Center for Public Safety, a full-fledged law enforcement agency.<sup>39</sup> In 1939, Duke University had four police officers on staff to provide law enforcement services on campus.<sup>40</sup> By 1961, the university's police force more than doubled to ten officers and the university hired its first Chief of Security.<sup>41</sup>

In 1947, Boston University established the Boston University Police Department with thirteen officers on staff assigned to patrol the center of campus.<sup>42</sup> In 1958, officers at Washington University in St. Louis were referred to as "campus police," and by 1959, the campus police force had

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35. DIANE C. BORDNER & DAVID M. PETERSEN, CAMPUS POLICING: THE NATURE OF UNIVERSITY POLICE WORK ix (1983) ("Historically these watchmen, who were usually older retired men and employed only at night and on weekends, were attached to the maintenance or physical plant department, and their main concern was with protection of college property."); BONNIE S. FISHER & JOHN J. SLOAN, III, CAMPUS CRIME: LEGAL, SOCIAL, AND POLICY PERSPECTIVES 24 (4th ed. 2022) (giving a brief history of the basic functions of early campus police).

36. DAVARIAN L. BALDWIN, IN THE SHADOW OF THE IVORY TOWER: HOW UNIVERSITIES ARE PLUNDERING OUR CITIES 24 (2021) ("Since American colonial times, the placement and design of college campuses reflected a clear antagonism toward urban life and the kind of social diversity that cities engendered.").

37. Jordan Larson, *A Brief History of the UCPD*, CHI. MAROON (May 25, 2012), <https://chicagomaroon.com/15685/grey-city/a-brief-history-of-the-ucpd/>; Meghan Thompson, *University of Chicago Police History May Offer Lessons for Hopkins, Baltimore, MD*. MATTERS (Feb. 21, 2019, 6:45 AM), <https://marylandmatters.org/2019/02/21/university-of-chicago-police-history-may-offer-lessons-for-hopkins-baltimore/>.

38. *Our History*, NW. CTR. PUB. SAFETY, <https://sps.northwestern.edu/center-for-public-safety/aboutnucps/history.html> (last visited May 1, 2025).

39. *Id.*

40. Duke University Police Department Records, 1955–2001, David M. Rubenstein Rare Book & Manuscript Libr., Duke Univ. (last indexed 2025) [hereinafter DUKE POLICE RECORDS], <https://archives.lib.duke.edu/catalog/uapolicedeptrecords>; Jodie Valade, *Protecting Duke Through the Years*, DUKE TODAY (Dec. 16, 2024), <https://today.duke.edu/2024/12/protecting-duke-through-years>.

41. DUKE POLICE RECORDS, *supra* note 40.

42. *Divisions*, BOS. UNIV. POLICE DEP'T, <https://www.bu.edu/police/about/divisions/> (last visited Feb. 24, 2024).

five officers and two vehicles for parking enforcement.<sup>43</sup> Around the same time, the Massachusetts Institute for Technology formally transformed their security and night watchman patrol operation into the MIT Police Department.<sup>44</sup> By the late 1960s and early 1970s, state legislation authorizing private postsecondary institutions to operate and maintain their own private campus police departments started to emerge.<sup>45</sup> For example, Rice University established the Rice University Police Department in 1970, one year after legislation passed permitting private universities in Texas to create a campus police department and hire sworn officers.<sup>46</sup>

The 1980s and 1990s brought upon a shift in institutional obligations of safety and reporting. In the 1980s, courts began to address whether and to what extent postsecondary institutions were responsible for keeping their campuses safe from crime.<sup>47</sup> In 1990, President George H.W. Bush signed into law the Student Right-to-Know and Campus Security Act of 1990, which was later renamed to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act).<sup>48</sup> The Clery Act required institutions that participate in federal student aid programs to record campus crime statistics and provide annual reports of crime statistics.<sup>49</sup> The introduction of the Clery Act and the shifting nature of institutional obligations of safety prompted postsecondary institutions to invest in their own campus police departments and increase the duties and responsibilities of those departments.<sup>50</sup>

Beginning in the 2010s, the surge of student activism and widespread adoption of technology and social media thrust the impact and role of campus police into the national spotlight. Specifically, the rise of the Black Lives Matter movement in 2014,<sup>51</sup> the murder of George Floyd and the

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43. Luke Ehrenstrom, *An Abridged History of the Washington University Police Department*, MEDIUM (Jul. 2, 2022), <https://medium.com/@lehrenstrom1999/an-abridged-history-of-the-washington-university-police-department-39d0a101a5d6>.

44. Massachusetts Institute of Technology: Police, MIT LIBRS., [https://archivesspace.mit.edu/agents/corporate\\_entities/1400](https://archivesspace.mit.edu/agents/corporate_entities/1400).

45. See SEYMOUR GELBER, U.S. DEPT' OF JUST., THE ROLE OF CAMPUS SECURITY IN THE COLLEGE SETTING 140–41 (1972), <https://www.ojp.gov/pdffiles1/Digitization/8966NCJRS.pdf>; for a discussion of statutory authority, see also *infra* Part II.

46. *Our History*, RICE UNIV. POLICE DEP'T, <https://rupd.rice.edu/about> (last visited Feb. 24, 2024).

47. See FISHER & SLOAN, *supra* note 35, at 4–5 (considering the implications of institutional obligations to protect students from harm); Philip Lee, *The Curious Life of In Loco Parentis at American Universities*, 8 HIGHER EDUC. IN REV. 65, 79 (2011) (outlining a key shift in the understanding of academic institutions' duties to enrolled students); Miller & Russell-Brown, *supra* note 18, at 80 n.97 (“Beginning in the 1980s, legal developments referred to as ‘college safety law’ impacted the relationship between students and universities. Courts began to grapple with the question—do colleges and universities owe a duty of care to protect its students from harm? Courts imposed various duty of care standards on postsecondary institutions.”).

48. 20 U.S.C. § 1092(f).

49. *Id.* The Clery Act has been amended five times since first enacted. See FISHER & SLOAN, *supra* note 35, at 5 (noting various amendments to the Clery Act).

50. For background on the Clery Act and its impact on campus policing as well as the newly developed institutional obligations of safety under tort law, see Miller & Russell-Brown, *supra* note 18, at 80–82.

51. *Our History*, BLACK LIVES MATTER (Mar. 19, 2024), <https://blacklivesmatter.com/our-history/>.

police killing of Breonna Taylor in 2020,<sup>52</sup> and the Cops Off Campus coalition in 2020<sup>53</sup> forced the broader campus community to reconcile with police violence and repression on American institutions of higher education and reevaluate the relationships between campus police departments and other law enforcement agencies.<sup>54</sup> During this time, campus police departments across the country continued to expand, growing in size and support. The campus police departments of the 2010s became increasingly militarized, acquiring military-grade weapons and tanks,<sup>55</sup> maintaining rank-and-file command structures, and adopting police regalia, uniforms, and operational protocols that made them virtually indistinguishable from other law enforcement agencies. Furthermore, institutions financially supported the expansion of campus police departments and state legislatures continued to pass university police statutes.<sup>56</sup>

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52. Denise Forte, *The Impact of George Floyd's Murder: One Year Later*, EDTRUST (May 25, 2021), <https://edtrust.org/blog/the-impact-of-george-floyds-murder-one-year-later/>; Alex Altman, *Why The Killing of George Floyd Sparked an American Uprising*, TIME (June 4, 2020, 6:49 AM), <https://time.com/5847967/george-floyd-protests-trump/>; Bob Gaetjens, *Kent State Students Protest Ruling in Breonna Taylor's Death*, RECORD-COURIER, <https://www.record-courier.com/story/news/2020/09/25/kent-state-students-protest-ruling-breonna-taylor-death/3535951001/> (last updated Sept. 25, 2020, 7:33 PM); James Finn, *Breonna Taylor Protest in Middlebury Draws Hundreds of Students, Residents*, VTDIGGER (Sept. 27, 2020, 1:29 PM), <https://vtdigger.org/2020/09/27/breonna-taylor-protest-in-middlebury-draws-hundreds-of-students-residents/>.

53. *Home*, COPS OFF CAMPUS COALITION, <https://copsoffcampuscoalition.com/> (last visited Jan. 20, 2025); Emily Rich, *The Movement to De-Cop the Campus*, IN THESE TIMES (Sept. 6, 2021), <https://inthesetimes.com/article/cops-off-campus-uc-police-abolition>; *Cops Off Campus Research Project*, ABOLITION UNIV., <https://abolition.university/cops-off-campus-research-project/> (last visited Mar. 29, 2025); Kate Mabus, Noah Tesfaye, Anna Deogratias, Andrew Eneim, Victoria Copeland, & Dominique Mikell, *What the Cops Off Campus Movement Looks Like Across the Country*, THE NATION (Apr. 12, 2021), <https://www.thenation.com/article/activism/campus-police/>; Jessica Hatrick, Lucien Baskin, Warren Wagner, A. Naomi Paik, & Audrey Beard, *Scaling Up and Building Solidarity: A Conversation with Organizers from the Cops off Campus Coalition*, THE ABUSABLE PAST (Aug. 1, 2022), <https://abusablepast.org/forum-6-7-scaling-up-and-building-solidarity-a-conversation-with-organizers-from-the-cops-off-campus-coalition/>; *Police Free Penn*, ACTION NETWORK, <https://actionnetwork.org/groups/police-free-penn> (last visited Mar. 29, 2025) (I believe Police Free Penn is the first “police free campus” organization).

54. Charles H.F. Davis III, *If Black Lives Matter to Colleges, They'll Divest from Campus Policing*, L.A. TIMES (July 9, 2020, 3:00 AM), <https://www.latimes.com/opinion/story/2020-07-09/campus-police-divestment-racism>; Robert T. Chase & Yalile Suriel, *Black Lives Matter on Campus—Universities Must Rethink Reliance on Campus Policing and Prison Labor*, BLACK PERSPECTIVES (June 15, 2020), <https://www.aaihs.org/black-lives-matter-on-campus-universities-must-rethink-reliance-on-campus-policing-and-prison-labor/>.

55. See Sara Weissman, *Over 100 Campus Police Departments Got Military Equipment Through This Federal Program*, DIVERSE: ISSUES IN HIGHER EDUC. (July 20, 2020), <https://www.diverseeducation.com/home/article/15107343/over-100-campus-police-departments-got-military-equipment-through-this-federal-program> (“According to data from the Defense Logistics Agency, over 100 university police departments have acquired military equipment this way, including Purdue University, Western Kentucky University, Arizona Western College, Illinois State University, Florida International University and Black River Technical College, all of which have guns through the program.”).

56. See Miller & Russell-Brown, *supra* note 18, at 102 (“Although public institutions make up a significant majority of institutions that maintain and operate on-campus police departments, full-fledged police departments at private institutions are becoming increasingly widespread. Several states have passed laws authorizing police officers at private institutions to maintain state-sanctioned law enforcement authority without being subject to public accountability. For example, the Campus Police Act [sic] in North Carolina authorizes private institutions of higher education to become eligible to

Johns Hopkins University (Hopkins) is an illustrative example of the expansion of private campus police forces. In 2018, Hopkins announced plans to establish the Johns Hopkins University Police Department (JHPD)—Maryland’s first private campus police force.<sup>57</sup> Officials responsible for the development of JHPD turned to the University of Chicago Police Department and University of Pennsylvania Police Department—two of the largest private campus police forces in the country—as exemplars of effective campus policing.<sup>58</sup> The following year, the Governor of Maryland signed the Community Safety and Strengthening Act into law.<sup>59</sup> The law authorized the establishment of the JHPD and required Hopkins to work in tandem with the Baltimore Police Department (BPD) if it decided to create the JHPD.<sup>60</sup> The institutional and legislative support to establish the JHPD sparked a years-long response from students, faculty, Baltimore community members, and staff.<sup>61</sup>

#### *B. Legislative Authority of Private Campus Police*

Private campus police officers are law enforcement officers employed by private institutions of higher education to carry out various functions on behalf of the state and the institution.<sup>62</sup> What distinguishes private campus police from private security guards, campus safety officers, or other campus security employees is the authority to exercise police powers

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participate in a state campus police program. The program authorizes the Attorney General to establish education and experience standards for campus police officers, maintenance of campus police department records, and deny or revoke certification for a campus police agency. In Illinois, the Private College Campus Police Act of 1992 authorizes campus police officers at private institutions in Illinois to ‘have the powers of municipal peace officers and county sheriffs,’ including the authority to make arrests.”).

57. Editorial Board, *We Need to Address Crime, but Creating a Hopkins Police Department is Not the Solution*, THE JOHNS HOPKINS NEWSL. (Mar. 8, 2018), <https://www.jhunewsletter.com/article/2018/03/we%20need%20to%20address%20crime%20but%20creating%20a%20hopkins%20police%20department%20is%20not%20the%20solution>.

58. See Thompson, *supra* note 37.

59. Rudy Malcom & Sabrina Abrams, *Governor Hogan Signs Hopkins Police Bill into Law*, THE JOHNS HOPKINS NEWSL. (Apr. 18, 2019), <https://www.jhunewsletter.com/article/2019/04/governor-hogan-signs-hopkins-police-bill-into-law>.

60. Editorial Board, *supra* note 57.

61. Campus community members and Baltimore residents were outraged at the existence of more police and called on Hopkins to reflect on whether a private campus police force was necessary. They pointed to Baltimore’s high police presence and the city’s failure to address root causes of crime, such as poverty. In protest of JHPD, Hopkins students occupied the central administration building for a month during which time they held teach-ins, film screenings, and wellness activities. The Baltimore Police Department forcibly removed and arrested student protesters. Faculty signed a letter calling the decision to create an armed private police force undemocratic and antagonistic. The Coalition Against Hopkins Policing (CAHP) filed a lawsuit over the Memorandum of Understanding (MOU) between Hopkins and BPD because they believed it violated state law and should be subject to judicial review. See Miller, *Role of State Laws*, *supra* note 16, at 2–3 (detailing a more comprehensive account of the community response to the creation of JHPD).

62. *Id.* at 14 (defining private campus police as police officers and/or peace officers (broadly referred to as law enforcement officers) for private colleges and universities); *see also* Miller, *A National Survey*, *supra* note 19, at 751 (overviewing university police statutes for public institutions of higher education).

on behalf of the state for a private college or university.<sup>63</sup> Their powers and legal authority are codified in state laws as well as institutional policies. Accordingly, their roles and responsibilities vary by state and by institution. The state laws are commonly referred to as private university police statutes.<sup>64</sup> As of 2024, twenty-eight states and the District of Columbia legislatively authorize private postsecondary institutions to employ private campus police.<sup>65</sup> The number of states with a private university police statute has increased 300% since 1972 and 211% since 1996, the last two dates comprehensive studies on private campus police statutes were conducted.<sup>66</sup>

Under these private campus police statutes, private campus police officers have police powers similar to their municipal counterparts.<sup>67</sup> They can patrol the campus, investigate crimes, enforce state and local laws, conduct arrests, execute warrants, respond to emergency calls, conduct traffic stops, issue citations, and maintain public order.<sup>68</sup> Furthermore, they are often trained and certified as law enforcement officers under the same state standards as their municipal counterparts.<sup>69</sup> Their status as a police officer *and* a private employee places them in a unique legal position. They have fundamental competing interests between public safety and order on one hand and serving the private economic and organizational interests of their employer on the other. In addition, they are responsible for enforcing institutional policies, such as student codes of conduct.<sup>70</sup>

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63. The absence of a state law does not bar a private university from creating a police department. There are private campus police officers that do not receive legal authority under state law but, instead, under legal agreements, such as a Memorandum of Understanding (MOU). For example, the University of Miami Police Department police officers “are sworn officers of the City of Coral Gables who have completed and graduated from rigid basic and in-service training programs mandated by the Florida Department of Law Enforcement . . . The University of Miami Police Department benefits from a close working relationship with the Coral Gables Police Department, South Miami Police Department, Miami-Dade County Police Department, and other local, state, and federal agencies . . . A written Memorandum of Understanding exists between the University and the Coral Gables Police Department, empowering UMPD officers, as described above.” See 2024–2025 UNIVERSITY OF MIAMI COMPREHENSIVE COMBINED ANNUAL SECURITY REPORT & ANNUAL FIRE SAFETY REPORT 6 (2024), <https://welcome.miami.edu/asr>. For this Article and argument, I focus on the statutory authority of police powers.

64. Miller, *Role of State Laws*, *supra* note 16, at 7 (noting the need to refer to and acknowledge university police statutes as a distinct body of law); *see also* Miller, *A National Survey*, *supra* note 19, at 751 (examining university police statutes for public institutions of higher education).

65. Miller, *Role of State Laws*, *supra* note 16, at 13.

66. *See GELBER*, *supra* note 45, at 1; Max L. Bromley, *Policing Our Campuses: A National Review of Statutes*, 15 AM. J. POLICE 1, 3 (1996); Miller, *Role of State Laws*, *supra* note 16, at 13.

67. Miller, *Role of State Laws*, *supra* note 16, at 11–17; *see also* Miller, *A National Survey*, *supra* note 19, at 795–97 (examining the police powers granted to university police at private campus police departments).

68. Miller, *Role of State Laws*, *supra* note 16, at 11–17; *see also* Miller, *A National Survey*, *supra* note 19, at 795–97 (discussing the police powers granted to university police at private campus police departments and the purposes for which they are hired).

69. Miller, *Role of State Laws*, *supra* note 16, at 22–23; *see also* Miller, *A National Survey*, *supra* note 19, at 804–05 (outlining the training requirements for private campus police officers).

70. Miller, *A National Survey*, *supra* note 19, at 795–97 (noting one of the purposes of private campus police is enforcing university policies).

While each state's private university police statute is unique, the statutes share several common elements. An empirical analysis of private university police statutes reveals eight common components: (1) police powers afforded to private campus police officers; (2) the jurisdiction of private campus police officers; (3) relationships between private campus police forces or private institutions and law enforcement agencies, government officials, and other higher education institutions; (4) the use and type of weapons authorized and whether there are training requirements for private campus police; (5) whether removal procedures exist for private campus police officers or departments; (6) the statutory purpose behind private campus police forces; (7) private institutions of higher education covered under the law; and (8) whether the state law that governs private campus police forces is the same as the state law that governs university police at public institutions.<sup>71</sup>

Table 1: Private University Police Statutes by U.S. State

State	Law Authorizing Private Campus Police?	Description
<b>Alabama</b>	Yes <sup>72</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus with exceptions.
<b>Alaska</b>	No	No state law authorizing private campus police.
<b>Arizona</b>	Yes <sup>73</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus.
<b>Arkansas</b>	Yes <sup>74</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus with exceptions.
<b>California</b>	Yes <sup>75</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction not limited to campus.
<b>Colorado</b>	No	No state law authorizing private campus police.
<b>Connecticut</b>	Yes <sup>76</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus.
<b>Delaware</b>	Yes <sup>77</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction not limited to campus.

71. Miller, *Role of State Laws*, *supra* note 16, at 13–14.

72. ALA. CODE § 16-22-1 (2025).

73. ARIZ. REV. STAT. ANN. § 15-1897 (2025).

74. ARK. CODE ANN. § 12-20-201 (West 2025).

75. CAL. PENAL CODE § 830.7 (West 2024).

76. CONN. GEN. STAT. § 7-92 (2025); § 7-277(a).

77. DEL. CODE ANN. tit. 24, § 5601 (2025).

<b>Florida</b>	No	No state law authorizing private campus police.
<b>Georgia</b>	Yes <sup>78</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction not limited to campus.
<b>Hawaii</b>	No	No state law authorizing private campus police.
<b>Idaho</b>	No	No state law authorizing private campus police.
<b>Illinois</b>	Yes <sup>79</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction not limited to campus.
<b>Indiana</b>	Yes <sup>80</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction not limited to campus.
<b>Iowa</b>	No	No state law authorizing private campus police.
<b>Kansas</b>	No	No state law authorizing private campus police.
<b>Kentucky</b>	Yes <sup>81</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus with exceptions.
<b>Louisiana</b>	Yes <sup>82</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus with exceptions.
<b>Maine</b>	No	No state law authorizing private campus police.
<b>Maryland</b>	Yes <sup>83</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus with exceptions.
<b>Massachusetts</b>	Yes <sup>84</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus.
<b>Michigan</b>	Yes <sup>85</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus.
<b>Minnesota</b>	No	No state law authorizing private campus police.
<b>Mississippi</b>	No	No state law authorizing private campus police.
<b>Missouri</b>	No	No state law authorizing private campus police.

78. GA. CODE ANN. § 20-8-1 (2025).

79. 110 ILL. COMP. STAT. 1020/1 (2024).

80. IND. CODE § 21-17-5-4 to -5 (2025).

81. KY. REV. STAT. ANN. § 61.360 (West 2025).

82. LA. STAT. ANN. § 17:1805 (2024).

83. MD. CODE ANN., PUB. SAFETY §§ 3-301 to 3-316 (LexisNexis 2024).

84. MASS. GEN. LAWS ch. 22C, § 63 (2025).

85. MICH. COMP. LAWS §§ 338.1087 to 338.1092 (2025).

<b>Montana</b>	No	No state law authorizing private campus police.
<b>Nebraska</b>	No	No state law authorizing private campus police.
<b>Nevada</b>	No	No state law authorizing private campus police.
<b>New Hampshire</b>	No	No state law authorizing private campus police.
<b>New Jersey</b>	Yes <sup>86</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction not limited to campus.
<b>New Mexico</b>	No	No state law authorizing private campus police.
<b>New York</b>	Yes <sup>87</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction varies according to institution.
<b>North Carolina</b>	Yes <sup>88</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction not limited to campus.
<b>North Dakota</b>	No	No state law authorizing private campus police.
<b>Ohio</b>	Yes <sup>89</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus.
<b>Oklahoma</b>	Yes <sup>90</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction not limited to campus.
<b>Oregon</b>	No	No state law authorizing private campus police.
<b>Pennsylvania</b>	Yes <sup>91</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction not limited to campus.
<b>Rhode Island</b>	Yes <sup>92</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction not limited to campus.
<b>South Carolina</b>	Yes <sup>93</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction not limited to campus.
<b>South Dakota</b>	No	No state law authorizing private campus police.

86. N.J. STAT. ANN. §§ 18A:6-4.2, 6-4.5 (West 2024).

87. N.Y. CRIM. PROC. LAW §§ 2.10, 2.20 (McKinney 2025).

88. N.C. GEN. STAT. § 74E-2 (2025).

89. OHIO REV. CODE ANN. § 1713.50 (West 2025).

90. OKLA. STAT. tit. 74, §§ 360.15 to 360.21 (2024).

91. 22 PA. CONS. STAT. § 501 (2025).

92. 12 R.I. GEN. LAWS § 12-2.1-1 (2024).

93. S.C. CODE ANN. § 59-116-10 (2024).

<b>Tennessee</b>	Yes <sup>94</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction varies according to institution.
<b>Texas</b>	Yes <sup>95</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus with exceptions.
<b>Utah</b>	Yes <sup>96</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus.
<b>Vermont</b>	No	No state law authorizing private campus police.
<b>Virginia</b>	Yes <sup>97</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction not limited to campus.
<b>Washington</b>	No	No state law authorizing private campus police.
<b>West Virginia</b>	No	No state law authorizing private campus police.
<b>Wisconsin</b>	Yes <sup>98</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus with exceptions.
<b>Wyoming</b>	Yes <sup>99</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus.
<b>District of Columbia</b>	Yes <sup>100</sup>	Authorizes private universities to appoint campus police with full law enforcement powers. Jurisdiction limited to campus with exceptions.

### 1. Off-Campus Jurisdiction

“Police jurisdiction” generally refers to the geographical boundaries that dictate where private campus police officers may exercise their police powers.<sup>101</sup> However, how institutions define physical jurisdiction<sup>102</sup> more broadly can have multiple meanings and varies by institution. For example, it is possible a university defines jurisdiction according to the

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94. TENN. CODE ANN. § 49-7-118 (2024).

95. TEX. EDUC. CODE ANN. § 51.212 (West 2023).

96. UTAH CODE ANN. § 53-19-201 (West 2025).

97. VA. CODE ANN. § 23.1-810 (2024).

98. WIS. STAT. § 175.42 (2024).

99. WYO. STAT. ANN. § 7-2-101 (2024).

100. D.C. CODE § 23-582 (2025).

101. For a more detailed explanation of extended jurisdiction, see Miller, *Role of State Laws*, *supra* note 16, at 18.

102. I use the term “physical jurisdiction” because some institutions use the word jurisdiction to account for the time in which a student is subject to university control and regulation, including disciplinary proceedings. For example, the University of North Carolina at Charlotte states the university has jurisdiction under the Code of Student Responsibility over student behavior from the time of an individual’s acceptance of an offer of admission until the individual is no longer in a “continuing relationship” with the university. *See University Jurisdiction*, CHARLOTTE STUDENT ACCOUNTABILITY AND CONFLICT RESOL., <https://accountability.charlotte.edu/student-conduct/university-jurisdiction/> (last visited Mar. 19, 2025).

tax-exempt line of the institution,<sup>103</sup> the Jeanne Clery reportable area for federal crime reporting,<sup>104</sup> the area covered subject to Title IX authority,<sup>105</sup> or the boundaries in which other law enforcement agencies have control.<sup>106</sup> What constitutes “off-campus jurisdiction” therefore refers to any area immediately beyond the designated boundaries of campus—however those designations are outlined. Consequently, the scope of off-campus jurisdiction may extend into the surrounding municipalities, such as public roads, adjacent buildings, highways, or neighborhoods.

For example, a private institution in Indiana may extend an officer’s jurisdiction to “the entire state, or to any part of the state” on the condition certain criteria are met.<sup>107</sup> Private campus police officers employed by a campus police agency under North Carolina law are permitted to exercise police powers on “any public road or highway passing through or immediately adjoining the property” of a private institution.<sup>108</sup> In Georgia, campus police officers at private institutions are authorized to exercise police power over the “campus,” which includes “any public or private property within 500 yards of the property of an educational facility and one-quarter

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103. The physical boundaries of a college or university campus may be difficult to ascertain due to heterogenous borders. University maps may provide a more nuanced detailed how buildings, campus grounds, and other properties collectively create the “boundaries” of a university. The “tax-exempt line” of a university does not refer to a distinct geographic “line” but represents the collective organization of where institutions own and operate properties in the municipality for the tax-exempt educational purposes. Many institutions even have their own town or municipal name and zip code to denote the unique geographical space of the university. For example, the main campus of The Pennsylvania State University is located within State College, PA. However, the university’s official address denotes University Park, PA, and the dedicated zip code 16802.

104. Police jurisdiction may include, but is not limited to, “Clery geography.” Institutions must include statistics for crimes that fall under the Clery act in the following locations: on-campus; on-campus student housing (if an institutions has such properties); public property within campus bounds; public property immediately adjacent to and accessible from on-campus locations; and non-campus buildings and properties owned or controlled by the institution that are used for educational purposes and frequently used by students but not part of the core campus, or those owned or controlled by a student organization officially recognized by the institution. *See Frequently Asked Questions*, CLERY CTR., <https://www.clerycenter.org/faq> (last visited Apr. 3, 2025).

105. Title IX geography is determined by the United States Department of Education. On January 31, 2025, the Trump Administration decided to enforce the 2020 Title IX regulations. Those regulations define jurisdiction not by a geographic test, but whether conduct “occurred in the context of an education program or activity . . . .” *See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30026, 30207 (May 19, 2020), <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal#citation-921-p30207>. For many institutions, Clery geography and Title IX geography cover similar physical grounds.

106. Similarly to the “tax exempt line,” the jurisdiction subject to other (non-campus police) law enforcement agencies is not defined by some line or border, but by which the university no longer has authority or control to exercise police powers.

107. IND. CODE § 21-17-5-5(c) (2024). Subsection (c) authorizes an institution to extend a police officer’s territorial jurisdiction to the entire state, or to any part of the state, if the following conditions are met: (1) the board of trustees adopts a resolution specifically describing the territorial jurisdiction of a police officer appointed under this chapter; and (2) the board of trustees notifies the superintendent of the police department and the sheriff of the county in which the institution is primarily located.

108. N.C. GEN. STAT. § 74E-6 (2025). Subsection (c) authorizes an institution to exercise police powers onto “(1) Real property owned by or in the possession and control of their employer; (2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property; and (3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon [the] property . . . .”

mile of any public street or public sidewalk connecting different buildings of the same educational facility" when the institution's property is a county with a population of 400,000 or more.<sup>109</sup> Private campus police officers in Louisiana possess powers of arrest on their respective campuses and on "all streets, roads, and rights-of-way to the extent they are within or contiguous to the perimeter" of the campus.<sup>110</sup>

Other states have limited police jurisdiction to only the "physical boundaries" of campus.<sup>111</sup> In 1972, a defendant was charged and convicted for the offense of Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor in Cleveland County, Oklahoma. The defendant was stopped and arrested by a campus police officer at the University of Oklahoma.<sup>112</sup> The defendant appealed the conviction seeking to determine whether the police officer has the power and authority to make arrests on property not owned by the university. The Oklahoma Court of Criminal Appeals reversed and remanded the case, holding the powers of a campus policeman are limited to "the protection and guarding of grounds, buildings, and equipment of the institution."<sup>113</sup> The current Oklahoma statute allows for public and private institutions with a campus police department to extend the jurisdiction of their campus police force over "highways, streets, roads, alleys, easements, and other public ways immediately adjacent to their campus" if they enter into an agreement with local law enforcement.<sup>114</sup>

In 1997, the Supreme Court of Wyoming addressed similar questions. In *Marshall v. State ex rel. Department of Transportation*,<sup>115</sup> a Sheridan College police officer pulled over the defendant for driving a car that matched the description of a stolen car.<sup>116</sup> The defendant was neither on campus nor previously on campus.<sup>117</sup> The officer placed the defendant under arrest for driving while under the influence and the Department of Transportation suspended their license for failing to undergo chemical testing.<sup>118</sup> The case first went before the Office of Administrative Hearings (OAH) and the hearing officer ruled the stop and arrest were based on reasonable suspicion and the officer was acting within his jurisdiction. The appeal sought to answer whether the campus police officer was within his authority to place the defendant under arrest.<sup>119</sup> The Wyoming statute that recognized the existence of campus police defines a "peace officer" as

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109. GA. CODE ANN. § 20-8-1 (2024).

110. LA. STAT. ANN. § 17:1805 (2024).

111. What constitutes the "physical boundaries" of campus is still not clearly defined.

112. The Oklahoma statute that authorizes and governs campus police at public institutions is the same statute that governs campus police at private institutions. OKLA. STAT. tit. 74, § 360.17 (2025).

113. *Courange v. State*, 510 P.2d 961, 962 (Okla. Crim. App. 1973).

114. tit. 74, § 360.17.

115. 941 P.2d 42 (Wyo. 1997).

116. *Id.* at 44.

117. *Id.*

118. *Id.* at 43.

119. *Id.*

“[a]ny duly authorized member of a municipal police force, a college or university campus police force . . . .”<sup>120</sup> The Court found that while the statute did not explicitly address the jurisdiction of a peace officer, it also did not have “express limits” on their jurisdiction.<sup>121</sup> To address this ambiguity, the Court applied the rule of confined jurisdiction, which confines a warrantless arrest to the boundaries of the government subdivision for which a police officer is employed, with the exception of a fresh pursuit.<sup>122</sup> Accordingly, campus police officers, like their municipal counterparts, do not have the authority to make arrests “outside their territorial boundaries” or outside of the “boundaries of the campus [they] serve[]” absent fresh pursuit.<sup>123</sup>

Of the twenty-nine jurisdictions with a private university police statute, fourteen states authorize private campus police officers to exercise their police powers off-campus.<sup>124</sup> Additionally, seven states and the District of Columbia limit the jurisdiction of private campus police officers to the physical boundaries of campus with the exception that, if certain conditions are met, they may authorize their police powers off-campus.<sup>125</sup> For example, private campus police officers at Syracuse University are limited to the “geographic area” of the university but may “provide assistance on any public highway which crosses or adjoins such grounds” when requested by the local chief law enforcement officer.<sup>126</sup> Similarly, private campus police officers in Arkansas may make an arrest “outside his or her primary jurisdiction” if they are summoned by another law enforcement agency, assist another law enforcement agency, are working under a mutual aid agreement or memorandum of understanding with local law enforcement, or traveling in the state under official business.<sup>127</sup> When an officer makes an arrest outside of the primary jurisdiction, they are required

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120. WYO. STAT. ANN. § 7-2-101(a)(iv)(B) (2025).

121. *Marshall*, 941 P.2d at 45.

122. *Id.* (“[A] peace officer’s authority to make a warrantless arrest was confined at common law to the boundaries of the governmental subdivision in which he held office. The doctrine of ‘fresh pursuit’ provided the only exception.”) (quoting *State v. Stahl*, 838 P.2d 1193 (Wyo. 1992)); *see also* *Van Horn v. State*, 802 P.2d 883, 887 (Wyo. 1990) (holding a municipal police officer cannot lawfully execute a municipal bench warrant outside municipal boundaries).

123. *Marshall*, 941 P.2d at 45–46.

124. Miller, *Role of State Laws*, *supra* note 16, at 18 (examining the extended jurisdiction of private campus police officers).

125. *Id.* at 19 (noting the limited with exceptions jurisdiction of private campus police officers).

126. N.Y. CRIM. PROC. LAW § 2.10(77)(b) (McKinney 2025) (“Such Syracuse University peace officers shall have the powers of peace officers within the geographical area of employment of the grounds or premises owned, controlled or administrated by Syracuse University within the county of Onondaga, except in those situations when requested by the chief law enforcement officer of the city of Syracuse or his or her designee, including by means of written protocols agreed to by the chief law enforcement officer of the city of Syracuse and Syracuse University, to provide assistance on any public highway which crosses or adjoins such grounds or premises.”).

127. ARK. CODE ANN. § 12-20-202 (2025). Subsection (a) defines the “primary jurisdiction” of a private campus police officer as “the private school or private college or university employing him or her.”

to “promptly notify the law enforcement agency with jurisdiction” with a report no later than the following day.<sup>128</sup>

The scope and extent of off-campus jurisdiction for private campus police varies widely across states and institutions. While some states limit police jurisdiction to the physical boundaries of campus—however physical boundaries may be defined—at least fourteen states authorize private campus police officers to exercise police powers beyond the immediate grounds of the institution.<sup>129</sup> Additionally, seven states and the District of Columbia permit private campus police officers to exercise off-campus jurisdiction under specific circumstances.<sup>130</sup> The statutory delegation of police powers off-campus raises significant concerns about the impact of a private police department on surrounding communities.

These concerns have unfolded in real-time as residents of Baltimore, Maryland confront the possibility of a private campus police force in their community. The JHPD is poised to become Maryland’s first private campus police force following the enactment of the Community Strengthening and Safety Act. The Act authorizes Hopkins to establish the police department and hire police officers to exercise law enforcement powers on behalf of the university on- and off-campus. The proposal to establish the JHPD sparked significant opposition from city residents and campus community members who argue the addition of a private campus police force to an already heavily policed city could exacerbate existing issues of over-policing and public accountability. The following section examines the efforts of Hopkins to create the state’s first private campus police force and chronicle community responses.

## 2. Johns Hopkins University Police Department

The JHPD is an illustrative example of the continued expansion of private campus policing. The creation, development, and community impact of the JHPD reflect the critical issues centered in this article: self-governance, private regulation and subjugation of a municipality, private police authority in public spaces, and a lack of meaningful community input.

Baltimore, Maryland is one of the heaviest policed cities in America, with nearly 5 officers per 1,000 residents.<sup>131</sup> The BPD is one of the nation’s

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128. *Id.*

129. Miller, *Role of State Laws*, *supra* note 16, at 18 (examining the extended jurisdiction of private campus police officers).

130. *Id.* at 19 (identifying the limited with exceptions jurisdiction of private campus police officers).

131. According to Federal Bureau of Investigation (FBI) data, the Baltimore Police Department employed 2,940 officers in 2019. Of those 2,940 officers, 2,465 officers were sworn law enforcement officers and 475 were non-sworn civilian officers. The population of Baltimore is approximately 597,239 residents. See Table 78: *Maryland Full-Time Law Enforcement Employees*, FBI, <https://ucr.fbi.gov/crime-in-the-u-s/2019/crime-in-the-u-s-2019/tables/table-78/table-78-state-cuts/maryland.xls> (last visited May 1, 2025). To calculate the number of police personnel per 1,000

largest municipal police departments and employs more than 2,000 sworn officers.<sup>132</sup> It operates a \$549 million budget and spends approximately \$840 per resident on policing, the highest per capita police budget in the country.<sup>133</sup> The extensive police presence in Baltimore is compounded by racial disparities in policing. BPD has a history of using force and violence against Black residents.<sup>134</sup> Black Baltimore residents are arrested at a rate 2.69 times higher than white Baltimore residents for nonserious or nonviolent offenses, such as drug possession and disorderly conduct.<sup>135</sup> In 2016, the U.S. Department of Justice released a report finding systemic racism in the department.<sup>136</sup> Its investigation concluded BPD's practices "perpetuate and fuel a multitude of issues rooted in poverty and race, focusing law enforcement actions in low-income, minority communities in a manner that is often unnecessary and unproductive."<sup>137</sup>

The JHPD, as required by state law,<sup>138</sup> would work in tandem with the BPD, expanding an already extensive police presence in the community.<sup>139</sup> Specifically, the Maryland law that authorizes the existence of

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residents, the formula is as follows: 2,940 (personnel) divided by 597,239 (population) = 0.0049 x 1,000 = 4.92 (police per 1,000 residents).

132. *About*, BALT. POLICE DEP'T, <https://www.baltimorepolice.org/about> (last visited Mar. 20, 2025).

133. *What Policing Costs: A Look at Spending in America's Biggest Cities*, Baltimore, MD, VERA INST. OF JUST., <https://www.vera.org/publications/what-policing-costs-in-americas-biggest-cities/baltimore-md> [hereinafter *What Policing Costs*]; Jessica Learish, *Defund the Police? Police Budgets of Major U.S. Cities*, CBS NEWS (Sept. 30, 2021, 5:12 PM), <https://www.cbsnews.com/pictures/defund-the-police-police-budgets-of-major-us-cities/> (last visited May 1, 2025).

134. Press Release, American Civil Liberties Union of Maryland, ACLU Rep.: "Chasing Justice" Exposes Racist Facts About Police Violence, Lack of Accountability in Maryland (Jan. 19, 2021), <https://www.aclu-md.org/en/press-releases/aclu-report-chasing-justice-exposes-racist-facts-about-police-violence-lack>. From 2015 to 2019, there were 22,884 uses of force incidents in Baltimore. "While Black people make up 63 percent of Baltimore City's population, 90.7 percent of those who the police used force on were Black people. Yet, Maryland is one of the few states that does not have a limit on police officers' use of force . . . . From 2005 to 2011, police officers in Maryland were charged with 271 crimes in 18 counties and Baltimore City, including 138 crimes of violence. BPD officers had sustained complaints that ranged from criminal sexual offenses to fabrication of evidence – without losing their jobs. In fact, 469 individual BPD officers were the subject of at least one complaint of physical violence against a community member."

135. *What Policing Costs*, *supra* note 133.

136. See generally C.R. DIV., U.S. DEP'T OF JUST., INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 3 (2016), <https://civilrights.baltimorecity.gov/sites/default/files/20160810 DOJ%20BPD%20Report-FINAL.pdf>.

137. *Id.* at 20. The following year, the federal government filed a complaint against BPD, the Mayor of Baltimore, and the City Council of Baltimore alleging they engaged in patterns or practices by law enforcement officers in deprivation of persons rights, privileges, and immunities under the Constitution. *See United States v. Balt. Police Dep't*, 249 F. Supp. 3d 816 (D. Md. 2017).

138. MD. CODE ANN., PUB. SAFETY § 3-303(a) (LexisNexis 2024). This section states Johns Hopkins University may create the Johns Hopkins University Police Department if it were to enter into a memorandum of understanding with the Baltimore Police Department.

139. The Johns Hopkins University Police Department (JHPD) is still under development. As of 2024, the memorandum of understanding between JHPD and the Baltimore Police Department (BPD) has been completed, and the university has appointed the inaugural Police Chief. On February 19, 2025, during the second Johns Hopkins University Police Accountability Board meeting, the Police Chief expressed his intention to hire 25 to 30 officers in 2025 and reach 100 employees (the statutory capacity of employees) by 2028. *See Shaan Udani, JHPD Accountability Board Discusses Department Expansion and Community Engagement*, THE JOHNS HOPKINS NEWSL. (March 2, 2025), <https://www.jhunewsletter.com/article/2025/03/jhpd-accountability-board-discusses-department-expansion-and-community-engagement>.

JHPD, the Community Strengthening and Safety Act, only authorizes its existence on the condition it enters into a Memorandum of Understanding (MOU) with the BPD. The MOU under the Community Strengthening and Safety Act is an “agreement between the Johns Hopkins University and the Baltimore Police Department regarding matters related to police jurisdiction and operations.”<sup>140</sup> The MOU mandates BPD have “primary responsibility for all investigations and arrests” for specific crimes, maintain evidence, and impound stolen cars according to BPD governing structures.<sup>141</sup> It also indicates the peace and police powers conferred to JHPD officers and notes the circumstances in which JHPD officers may exercise those powers on- and off-campus.<sup>142</sup>

Due to Baltimore’s history of racialized policing and the social and economic costs associated with policing, Hopkins campus community members expressed fears of racial profiling, racially biased policing, and insufficient consideration of alternative approaches to public safety.<sup>143</sup> Their grievances reflect a broader tension over policing, racial justice, the entanglement of a private institution with the state, and public accountability. Additional policing paradigms forcefully subject the Baltimore community to greater surveillance and control. An additional *private* police force raises important concerns about public accountability and oversight. Accordingly, Baltimore community members identified concerns about how the JHPD would encroach onto their daily lives.

In 2019, the Governor of Maryland signed into law the Community Safety and Strengthening Act, authorizing the creation of the JHPD—the state’s first private campus police force.<sup>144</sup> Campus community members and Baltimore residents were outraged and called on Hopkins to reflect on whether a private campus police force was necessary.<sup>145</sup> Coordinated efforts to challenge institutional narratives of policing and safety led to protests, arrests, and legal challenges. Multiple Hopkins students occupied Garland Hall and chained the doors in protest.<sup>146</sup> They held teach-ins, film screenings, and wellness activities to discuss how additional police

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140. MD. CODE ANN., EDUC. § 24-1201 (LexisNexis 2024).

141. *Id.* § 24-1202.

142. *Id.* Subsection (c) outlines the areas in which a university police officer may or may not exercise police authority, including areas discussed in the MOU and exceptions.

143. Lana Swindle, *JH Accountability Board Faces Backlash from Community During Virtual Meeting*, THE JOHNS HOPKINS NEWSL. (Sept. 20, 2024), <https://www.jhunewsletter.com/article/2024/09/jh-accountability-board-faces-backlash-from-community-during-virtual-meeting>.

144. Mark Reutter, *Johns Hopkins Plan for a Private Police Force Splits Communities and the Student Body*, BALT. BREW (Feb. 20, 2019, 9:03 AM), <https://www.baltimorebrew.com/2019/02/20/johns-hopkins-plan-for-a-private-police-force-splits-communities-and-the-student-body/>; S.B. 793, 2019 Leg., Reg. Sess. (Md. 2019).

145. Editorial Board, *Hopkins First Needs to Ask: “Should the University Even Have a Police Force?”*, THE JOHNS HOPKINS NEWSL. (Mar. 15, 2018), <https://www.jhunewsletter.com/article/2018/03/hopkins-first-needs-to-ask-should-the-university-even-have-a-police-force/>.

146. Fern Shen, *Protest at Johns Hopkins Against Private Police Force Ends in Blowtorches, Arrests and Tears*, BALT. BREW (May 8, 2019, 2:04 PM), <https://www.baltimorebrew.com/2019/05/08/protest-at-johns-hopkins-against-private-police-force-ends-in-blowtorches-arrests-and-tears/>.

presence would not make the community safer but would increase danger for students and the neighborhood.<sup>147</sup> After a month, the BPD cut the chains and made seven arrests.<sup>148</sup> A group of more than 60 faculty signed a letter calling the decision to create an armed private police force an “undemocratic” and “antagonistic” step by the institution.<sup>149</sup>

In August 2022, Hopkins announced it would begin the gradual process to develop and implement the JHPD.<sup>150</sup> The announcement came two years after the initial community outcry and a pause following nationwide protests against racism and police violence following the murder of George Floyd.<sup>151</sup> Students once again voiced concern about a lack of meaningful community input and a disregard for Black and minoritized voices in Baltimore.<sup>152</sup> The final MOU between JHPD and BPD was entered on December 2, 2022.<sup>153</sup> Baltimore city residents and members of the Coalition Against Hopkins Policing (the Coalition) filed a lawsuit over the MOU because they believed it violated state law and should be subject to judicial review.<sup>154</sup> However, the judge held the plaintiffs did not have standing. Members of the Coalition as well as the broader campus

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147. Staff Reporters, *Around Baltimore: Remembering the Garland Hall Sit-In, a Baltimore City Police Officer Shoots a Teen, and Tax Relief for City Homeowners*, BALT. BEAT (May 16, 2023), <https://baltimorebeat.com/around-baltimore-remembering-the-garland-hall-sit-in-a-baltimore-city-police-officer-shoots-a-teen-and-tax-relief-for-city-homeowners/>.

148. *Id.*

149. Zipporah Osei, *As Johns Hopkins Asks for Its Own Police, Residents React with Suspicion*, CHRON. HIGHER EDUC. (Mar. 6, 2019), <https://www.chronicle.com/article/as-johns-hopkins-asks-for-its-own-police-residents-react-with-suspicion/>. On January 13, 2020, more than 100 faculty signed a letter address to the Board of Trustees detailed major concerns about the implementation of a private police force, especially on the broader Baltimore community. *See* Katy Wilner, *101 Faculty Sign Letter Against Private Police Force*, THE JOHNS HOPKINS NEWSL. (Jan. 30, 2020), <https://www.jhunewsletter.com/article/2020/01/101-faculty-sign-letter-against-private-police-force>.

150. Aashi Mendpara, *University Announces Updates on Development of the Johns Hopkins Police Department*, THE JOHNS HOPKINS NEWSL. (Aug. 27, 2022), <https://www.jhunewsletter.com/article/2022/08/university-announces-updates-on-development-of-the-johns-hopkins-police-department> (noting Johns Hopkins’ announcement to move forward with plans to implement the JHPD).

151. Chris H. Park & Ryan Aghamohammadi, *University Delays Plans for Private Police Force*, THE JOHNS HOPKINS NEWSL. (June 13, 2020), <https://www.jhunewsletter.com/article/2020/06/university-delays-plans-for-private-police-force>.

152. Mendpara, *supra* note 150 (expressing the views of students with concerns over public accountability). A senior shared with The Johns Hopkins Newsletter: “I don’t think that safety issues on any of the campuses would indicate that after 142 years of not having a police force, they need one . . . JHPD is yet another experiment Hopkins is trying to perform on the surrounding Baltimore communities without their consent. It shouldn’t happen.”

153. Memorandum of Understanding Between the Johns Hopkins Police Dep’t and the Police Dep’t of Baltimore City Coordination of L. Enf’t Responsibilities (Dec. 2, 2022), <https://publicsafety.jhu.edu/assets/uploads/sites/9/2022/12/Final-Executed-MOU-12022022.pdf>.

154. Sabrina Leboeuf, *Johns Hopkins Responds to Appeal of Police Lawsuit Decision, Continues Planning for Department Launch*, BALT. SUN, <https://www.baltimoresun.com/2023/09/08/johns-hopkins-responds-to-appeal-of-police-lawsuit-decision-continues-planning-for-department-launch/> (last updated Sept. 11, 2023, 5:51 PM). The plaintiffs argued the memorandum should be voided due to contradictions and ambiguities. For example, the plaintiffs claim discrepancies between campus area maps and textual descriptions of campus areas under JHPD jurisdiction. On March 20, 2023, Circuit Judge Jeffrey M. Geller dropped the case arguing the plaintiffs’ case had no legal standing. *See* Sabrina Leboeuf, *Court Dismisses Lawsuit to Nullify Johns Hopkins Police Department Jurisdiction Agreement with Baltimore Police*, BALT. SUN, <https://www.baltimoresun.com/2023/03/20/court-dismisses-lawsuit-to-nullify-johns-hopkins-police-department-jurisdiction-agreement-with-baltimore-police/> (last updated March 20, 2023, 9:50 PM).

community remained engaged in the development of JHPD on the few occasions community input was sought.<sup>155</sup>

On September 14, 2024, the Johns Hopkins University Police Accountability Board (JHU Accountability Board) convened a virtual meeting to review the implementation of the JHPD.<sup>156</sup> The meeting highlighted widespread concerns among students and Baltimore residents about the policies and practices of the JHPD as well as the accessibility and function of the JHU Accountability Board.<sup>157</sup> Key issues raised at the meeting included concerns over a private, armed police force in Baltimore, unclear jurisdictional limits of JHPD police officers, racially discriminatory policing practices, baseless and dismissible claims about community public safety needs, a coordinated relationship between the university and the BPD, a lack of meaningful community input, and insufficient public accountability measures.<sup>158</sup>

Community concerns over accountability and public trust continue to be raised by community members.<sup>159</sup> The university's decision to lobby the Maryland legislature for its own private campus law enforcement agency, one with the ability to be armed and exercise police powers off-campus, while failing to meaningfully engage the community documents the significance of public governance. The turmoil surrounding the JHPD highlights the growing concern over heightened surveillance and police powers by a private police force. The creation of the JHPD serves as a timely and critical example of the expansion of private campus police across the country. The development of JHPD also reflects a larger pattern of state legislative support to expand private policing. By authorizing private campus police forces to possess state police officers and reinforce

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155. This section of the Article does not detail the incredible work completed by student and local journalists to accurately capture the community's involvement in the development of JHPD. For example, it does not detail the critical questions raised about the creation of an appointment to the JHPD Accountability Board or the format and accessibility of planned townhalls. I urge readers to search "police," "police department," or "private police" in The Johns Hopkins News-Letter's online archives, which can be found here: [https://www.jhunewsletter.com/search?a=1&s=police+department&ti=&ts\\_month=0&ts\\_day=0&ts\\_year=0&te\\_month=0&te\\_day=0&te\\_year=0&au=&tg=&ty=0](https://www.jhunewsletter.com/search?a=1&s=police+department&ti=&ts_month=0&ts_day=0&ts_year=0&te_month=0&te_day=0&te_year=0&au=&tg=&ty=0). I also urge readers to search "JHPD" in the Baltimore Sun's online archives, which can be found here: [https://www.baltimoresun.com/?s=JHPD&post\\_type=&category\\_name=&orderby=date&order=desc&sp%5B%5D=&sp%5B%5D=&obit\\_spotlight=&obit\\_site\\_name="](https://www.baltimoresun.com/?s=JHPD&post_type=&category_name=&orderby=date&order=desc&sp%5B%5D=&sp%5B%5D=&obit_spotlight=&obit_site_name=). This Article uses the development of JHPD as an illustrative example of the continued expansion of private campus police forces across the country and emphasizes the relevance and timeliness of the real impacts private campus police forces have on American communities and neighborhoods. I therefore urge you to read the stories from student and local journalists working tirelessly to tell the stories of those most affected by the threat of an additional police force in Baltimore, Maryland.

156. Swindle, *supra* note 143.

157. Of pressing concern was the virtual format of the meeting, which was originally set to be held in person. The sudden shift to a virtual meeting appeared to avoid direct engagement with the community and limit opportunities for meaningful dialogue. *See id.* ("Graduate student Janvi Madhani first voiced her discontent about the virtual setting of the meeting. Her views were shared by several other participants, who were disappointed that they were unable to meet their community members and engage in an open dialogue with the JH Accountability Board.").

158. *Id.* (detailing the concerns of community members over the JHPD).

159. *See* Udani, *supra* note 139 (discussing community concerns raised at the second JHU Accountability Board meeting of the spring semester).

historical institutional reliance on policing, lawmakers have actively contributed to private postsecondary institutions wielding significant law enforcement power over surrounding and neighboring communities. As private campus police forces continue to expand, so, too, do concerns over their role in surveillance and policing become increasingly urgent.

Addressing the expansion of private campus police can take a multi-faceted approach. However, in order to address the physical expansion of private campus police into surrounding communities, and the possible implications under the Fourteenth Amendment, the state action doctrine must first be considered. The next section reviews and discusses the applicability of the state action doctrine to private campus police, laying a foundation for a broader discussion on the constitutionality of off-campus jurisdiction.

## II. THE APPLICABILITY OF THE STATE ACTION DOCTRINE

By law and function, private campus police are uniquely situated as police officers with statutory authority to exercise traditional police functions such as stops, searches, and arrests *and* employees subject to the directives of their private employers and their financial interests. Their unique status raises significant legal questions, including whether private campus police qualify as state actors. While private campus police are employees of private institutions of higher education, they are, fundamentally, police officers carrying out the traditional functions of public law enforcement.

This Article reaches two key arguments. First, the state action doctrine applies to private campus police. Second, the authority of private campus police to exercise police powers off the physical boundary of campus violates the rights of community members to meaningfully engage in self-governance. Specifically, the right and interest of democratic autonomy to govern and manage public affairs is undermined and violates the Fourteenth Amendment.

This Part explains and supports the first argument—the applicability of the state action doctrine to private campus police. It conducts a two-pronged analysis to illustrate how and why private campus police qualify as state actors. The analysis considers (1) the statutory authority of private campus police and (2) the conduct of private campus police. This analysis reveals how private campus police act on behalf of the state when performing their job duties and do so under the authority of the state. Importantly, the analysis urges courts that do not view private campus police as state actors to reexamine the applicability of the state action doctrine. Some courts have found the private status of an institution bars qualification of the doctrine because officers act on behalf of the institution and not

the state.<sup>160</sup> As a consequence, there are inconsistencies in determining whether private campus police are state actors.

This Part reviews the state action doctrine and how its application to private campus police triggers constitutional protections from private campus police action. This Part answers the fundamental question “Are private campus police state actors?” by reviewing the case law that illustrates how the courts have applied the state action doctrine to private campus police and why, under the two-pronged analysis, private campus police qualify as state actors.

#### *A. Are Private Campus Police State Actors?*

The state action doctrine defines when private conduct can be attributed to the state, making the conduct subject to constitutional review. To determine whether private conduct qualifies as state action, courts turn to key elements and questions, such as the degree and type of state government participation,<sup>161</sup> whether the conduct serves a traditional public function,<sup>162</sup> whether the action relies on government assistance,<sup>163</sup> and whether the incidents are attributable to government.<sup>164</sup> To succeed on a

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160. *See Commonwealth v. Carr*, 918 N.E.2d 847, 852 (Mass. App. Ct. 2009) (holding Boston College Police Department officers acted on behalf of their employer and not the state in searching a student’s room and seizing weapons); *Hartley v. Agnes Scott Coll.*, 759 S.E.2d 857, 862 (Ga. 2014) (holding the actions of a private campus police officer do not qualify as state action if those actions are not performed for the state); *Robinson v. Davis*, 447 F.2d 753, 756–57 (4th Cir. 1971) (holding the private campus police officers performed normal functions for their employer and not the state when they assisted the university in drug investigations into students); *Univ. of the Incarnate Word v. Redus*, 602 S.W.3d 398, 408 (Tex. 2020) (holding a private campus police department is not accountable to the public and is therefore not an arm of the government).

161. *See Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 724 (1961). The Court held a lessee that operated a restaurant with an off-street parking facility owned and managed by the municipality could not exclude African Americans from the restaurant. The building was publicly built and owned, the restaurant was an integral part of the complex, the restaurant and the parking facilities complemented each other, the parking authority had regulatory power over the lessee, and the restaurant financially benefited the governmental agency. Therefore, the “degree of state participation and involvement in discriminatory action,” was sufficient.

162. *See Marsh v. Alabama*, 326 U.S. 501, 505–06 (1946). The Court held a privately owned town was open for use by the public and therefore the public is entitled to the freedoms of speech and religion. The Court reasoned the more the town was open for public use, the more the rights of the private owner are limited by the constitutional rights of the public. *See Flagg Bros., Inc., v. Brooks*, 436 U.S. 149, 157 (1978) (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 352 (1974)). The state arranged for the belongings of a person evicted from their home to be placed in a privately owned warehouse. The warehouse threatened to sell the belongings following a charge dispute. The Court held a state law authorizing storage facilities to sell the goods housed within its warehouses is not considered state action. The Court held there was no deprivation of right and the private entity was not acting on behalf of the state. Here, the public function analysis turns to a delegation of power that is “traditionally exclusively reserved to the State.”

163. *See Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 624 (1991). The Court held the exercise of peremptory challenges derives from governmental authority and the exercise of peremptory challenges is authorized by law. Additionally, the Court found jury selection is a traditional public function such that the jury is a “quintessential government body, having no attributes of a private actor.”

164. *See Jackson*, 419 U.S. at 351. The Court made clear that governmental involvement with private persons or private corporations is not sufficient to determine whether state action exists. The question turns to “whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself.”

claim, a plaintiff must demonstrate that the constitutionally violative conduct is the responsibility of the government and not a private actor. Demonstration of state action is imperative because the state action doctrine prohibits constitutional review of the actions of private individuals and entities. While it is most often associated with the Equal Protection Clause of the Fourteenth Amendment,<sup>165</sup> the state action doctrine also applies to claims based on other constitutional provisions, including the Due Process Clause.<sup>166</sup>

In our modern society, the state “is almost everywhere” and “regulat[es] almost everything,” rendering the public–private dichotomy vastly complex.<sup>167</sup> The legal challenges over state action for Fourteenth Amendment purposes primarily focuses on defining the amount of government action necessary to invoke the amendment’s protections.<sup>168</sup> Courts are often tasked with determining when private action is so closely entwined with the state as to trigger constitutional scrutiny. In some circumstances, courts have identified private individuals or entities that are imbued with governmental power and have abused that power.<sup>169</sup> A notable example is the existence and powers of private campus police.

This Section reviews cases that applied the state action doctrine to private campus police—specifically examining their existence and use of police powers. Private campus police officers are sworn law enforcement officers employed by a private college or university to, among several objectives, enforce the laws of the state and serve as a police officer for the institution.<sup>170</sup> Although private campus police officers work for a private employer, their status as a law enforcement officer of the state legally modifies and complicates their position.

Courts in several states have supported the position that private campus police are state actors.<sup>171</sup> They often rest their justification on one of

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165. The Fourteenth Amendment prohibits the “state” from abridging the privileges or immunities of citizens of the United States, depriving any person of life, liberty, or property, without due process of law, or denying to any person within its jurisdiction the equal protection of the laws. U.S. CONST. amend. XIV.

166. See *Shelley v. Kraemer*, 334 U.S. 1, 13–16 (1948) (nullifying and making void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws).

167. David M. Howard, *Rethinking State Inaction: An In-Depth Look at the State Action Doctrine in State and Lower Federal Courts*, 16 CONN. PUB. INT. L. J. 221, 254 (2017) (outlining the history and development of the state action doctrine); Wilson R. Huhn, *The State Action Doctrine and the Principle of Democratic Choice*, 34 HOFSTRA L. REV. 1379, 1387–92 (2006) (describing cases in which private individuals and entities have been considered state actors).

168. Case Comment, *The Fourteenth Amendment and the State Action Doctrine*, 24 WASH. & LEE L. REV. 133, 133 (1967).

169. Huhn, *supra* note 167, at 1386 (reviewing the state action doctrine as applied to private individuals and entities); *see also infra* Section II.A.1.

170. Miller, *Role of State Laws*, *supra* note 16, at 15–16 (analyzing the designated purposes of employing private campus police at private colleges and universities).

171. Notably, the United States Supreme Court has not ruled on whether *private campus police officers* are state actors under the Fourteenth Amendment. In 1964, the United States Supreme Court

two reasons: the statutory authority granted to private campus police departments and the conduct of private campus police officers.<sup>172</sup> For some courts, the mere existence of a private campus police statute imbues private campus police officers with state power.<sup>173</sup> For others, the conduct of private campus police officers as police officers renders them actors of the state.<sup>174</sup> In these circumstances, private campus police officers are “performing” governmental police functions such that their conduct is performing a state action. However, several courts have held that private campus police are private actors because they are under the direction of a private employer, irrespective of their legislative authority or their conduct as law enforcement officers.<sup>175</sup> This Section provides an in-depth analysis of relevant state court rulings and explains how private campus police can—and should—be considered state actors.

The statutory purpose and function of private campus police as law enforcement officers necessitates a fundamental question about their role: Are private campus police state actors? This question has come before the courts and resulted in inconsistent determinations. Despite the inconsistency, courts’ analyses often hinge on two pivotal questions: (1) whether the statutory authority of private campus police grants them the power and privileges of a state actor and (2) whether the conduct of private campus police is parallel to the conduct of municipal police who are unquestionably state actors.

In addressing these questions, courts often turn to the police authority and police powers of private campus police. First, private campus police are authorized as police officers under state law. Their police powers and designation as police officers are statutorily delegated and are virtually indistinguishable from other state law enforcement officers. The legislative bodies of twenty-eight states and the District of Columbia have authorized private institutions of higher education to hire and employ persons to be police officers for their respective institutions.<sup>176</sup> The statutory authorization of police power demonstrates the state’s willingness to assign a traditional public function—policing—to a private institution and the institution’s acceptance of that function and the privileges, benefits, and consequences that come with it.

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reviewed whether an off-duty sheriff moonlighting as private security acted under color of law when he enforced the park’s racial segregation. The Court considered why authority was invoked as a use of government authority. *See Griffin v. Maryland*, 378 U.S. 130, 135 (1964). Lower courts have addressed the applicability of the state action doctrine to private campus police, applying various state action tests to determine whether private campus police are state actors and, if so, to what extent constitutional provisions apply to their actions. It is possible, however, given the expansion of private campus police forces that the Supreme Court will address challenges to jurisdiction or police powers.

172. *See infra* Section II.A.1.

173. *See infra* Section II.A.1.

174. *See infra* Section II.A.1.

175. *See infra* Section II.A.1.

176. Miller, *Role of State Laws*, supra note 16, at 17 (noting the number of states that authorize private institutions of higher education to hire and employ police officers).

Second, private campus police function as traditional law enforcement officers of the state. A comprehensive analysis of their role, duties, responsibilities, appearance, and organizational structure demonstrates that they conduct themselves as police officers. For example, private campus police officers have a duty to enforce state and local laws; are able to serve search and arrest warrants, stop and temporarily detain individuals, use force to make arrests, and respond to emergencies and nonemergency calls; are publicly designated as police officers through uniforms, vehicles, badges, and other insignia; operate under a rank-and-file organizational structure; and use firearms and other deadly weapons in the course of their employment.<sup>177</sup> The conduct of private campus police as a point of analysis demonstrates a significant alignment between private campus police and the powers and objectives of the public police.

Courts determine whether private campus police qualify as state actors by evaluating their legislative authority to serve as police officers and their conduct in carrying out police functions. The following discussion illustrates how courts in states that authorize and govern private campus police forces apply the state action doctrine to private campus police. Building on these judicial analyses, this Section concludes by offering a framework for understanding why private campus police qualify as state actors for purposes of the Fourteenth Amendment.

### 1. Statutory Authority

As of 2024, twenty-eight states and the District of Columbia authorize and govern the existence of private campus police forces through state law.<sup>178</sup> Private university police statutes vary in scope but fundamentally authorize private institutions of higher education to hire persons to carry out law enforcement functions on behalf of the state and for the institution. As such, courts in several states have turned to the delegation of police power through the legislature as a factor in determining whether private campus police qualify as state actors.

According to some courts, private campus police officers qualify as state actors based solely on the statutory authority state legislatures have granted to them. In Illinois, private campus police possess the same powers as municipal police officers under the Private College Campus Police Act, making the existence and conduct of private campus police officers indistinguishable from state action.<sup>179</sup> In *Scott v. Northwestern University*

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177. *Id.* at 14 (examining the police powers and responsibilities of private campus police departments); COPS ON CAMPUS, *supra* note 31 (overviewing the impact of campus police departments on and off campus).

178. The states with a private university police statute include Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, Wyoming, and the District of Columbia. See COPS ON CAMPUS, *supra* note 31, at 18–22 (citing the number of states with a private university police statute). For more details about the state laws, see *infra* Section I.B.

179. 110 ILL. COMP. STAT. 1020/1 (2024).

*School of Law*,<sup>180</sup> a district court in Illinois held that police officers at Northwestern University are state actors because they have the same powers as municipal police under Illinois law.<sup>181</sup> The court held that by “accepting” state authorization to establish a police force, “Northwestern and its police must also accept the grave responsibility to protect an individual’s constitutional rights.”<sup>182</sup> In *Boyle v. Torres*,<sup>183</sup> the same court held that a grant of state authority to perform a traditional public function rises to the level of state action.<sup>184</sup> For the court, there was “no question that the [University of Chicago Police Department]’s role is one that has traditionally been the exclusive prerogative of the state . . . . When the ensemble of the officers’ power and functions is kept in view, there can be no doubt they are state actors.”<sup>185</sup>

Similarly, an Indiana court held that Butler University police officers are state actors because the state conferred general police powers, a traditional public function.<sup>186</sup> In *Finger v. State*,<sup>187</sup> the court held that a private entity is a state actor “when the state delegates to it a traditionally public function.”<sup>188</sup> Because the state legislature had delegated to Butler University police officers powers traditionally attributable to a government function, those officers “act under color of state authority.”<sup>189</sup> The Seventh Circuit Court of Appeals also held that Notre Dame police officers are state actors when exercising the police powers granted to them under Indiana law because “[t]he broad grant of power to police officers for private universities leaves little to differentiate them from any other police officer in the state of Indiana . . . .”<sup>190</sup> The Court held there was “no legal difference between a private actor who has been given police powers and a regular police officer employed within the state.”<sup>191</sup> The Circuit Court makes the important emphasis on the exercise of police powers, rather than the enforcement of institutional policies. This distinction is what fundamentally differentiates a private campus *security* officer from a private campus *police* officer. A private campus *police* officer is a sworn officer who

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180. No. 98 C 6614, 1999 WL 134059 (N.D. Ill. Mar. 8, 1999).

181. *Id.* at \*5 (“[O]n University property a member of Northwestern’s police force is every bit the law enforcement officer as is a member of the Chicago Police Department when one walks off the University’s downtown property and onto a public thoroughfare.”).

182. *Id.* at \*6.

183. 756 F. Supp. 2d 983 (N.D. Ill. 2010).

184. *Id.* at 994–96.

185. *Id.* at 995. The court explained the role of the University of Chicago Police Department as traditionally that of the states, including that the officers “carry guns, they wear police uniforms, and they patrol their territory in squad cars; they have the ongoing authority to detain citizens and place them in handcuffs; they have the authority to demand the individuals furnish them with ID.”

186. *Finger v. State*, 799 N.E.2d 528, 532 (Ind. 2003).

187. 799 N.E.2d 528 (Ind. 2003).

188. *Id.* at 532.

189. *Id.* (citing *Henderson v. Fisher*, 631 F.2d 1115, 1118 (3d Cir. 1980)) (“[T]he delegation of police powers, a government function, to the campus police buttresses the conclusion that the campus police act under color of state authority.”).

190. *Torres v. Univ. of Notre Dame du Lac*, No. 3:11-CV-209, 2012 WL 12292946, at \*8 (N.D. Ind. Mar. 23, 2012).

191. *Id.* at \*6.

possesses the authority to exercise law enforcement power, such as enforcing laws and effectuating arrests.

The Third Circuit held that the statutory authority given to a campus police department at a public university qualifies that department as a state actor. In *Henderson v. Fisher*,<sup>192</sup> the court held that campus police officers at the University of Pittsburgh, a public university, are state actors because “the Pennsylvania legislature has delegated to the campus police . . . the very powers which the municipal police force of Pittsburgh possesses.”<sup>193</sup> Relying on *Henderson*, the Eastern District of Pennsylvania held that officers of the University of Pennsylvania Police Department, the largest private police department in the state, and second largest university police department in the country, are also state actors for § 1983 purposes because “Pennsylvania law endows [them] with the plenary authority of a municipal police department in the patrol-zone territory,” which was once the “exclusive prerogative” of the City of Philadelphia.<sup>194</sup> The University of Pennsylvania Police Department employs “sworn municipal police officers certified through the Commonwealth of Pennsylvania Municipal Police Officers Training and Education Commission, and retain general law enforcement authority . . .”<sup>195</sup> The officers are endowed with plenary police powers such that they are “de facto police officers” that “may qualify as state actors under the public function test.”<sup>196</sup>

The North Carolina Court of Appeals held that Duke University police officers are state actors because the authority granted to them by the General Assembly is the same authority granted to municipal police officers.<sup>197</sup> In *State v. Ferebee*,<sup>198</sup> the court noted that Duke University police officers have “the same statutory authority granted to municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions within their jurisdiction.”<sup>199</sup> The North Carolina Campus Police Act authorizes private campus police officers as law enforcement officers of the state.<sup>200</sup>

In New York, a district court held Cornell University’s police officers were acting under state law for § 1983 purposes because Cornell University had the statutory authority to appoint “special deputy sheriffs” vested with the powers of peace officers to exercise police powers within its

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192. 631 F.2d 1115 (3d Cir. 1980).

193. *Id.* at 1118.

194. *Fleck v. Trs. of the Univ. of Pa.*, 995 F. Supp. 2d 390, 401–03 (E.D. Pa. 2014).

195. *Id.* at 402.

196. *Romanski v. Det. Ent., L.L.C.*, 428 F.3d 629, 637 (6th Cir. 2005) (citing *Henderson*, 631 F.2d at 1118).

197. See *Mills v. Duke Univ.*, 759 S.E.2d 341, 385 (N.C. Ct. App. 2014); *State v. Ferebee*, 630 S.E.2d 460, 462 (N.C. Ct. App. 2006).

198. 630 S.E.2d 460 (N.C. Ct. App. 2006).

199. *Id.* at 462.

200. N.C. GEN. STAT. § 74G-2 (2024).

jurisdiction.<sup>201</sup> In *Yuan v. Tops Market, LLC*,<sup>202</sup> Cornell University police officers responded to a dispute at a grocery store.<sup>203</sup> The university stated the store was within university-owned property and therefore within its police jurisdiction.<sup>204</sup> The plaintiff made several allegations, including that Cornell University police officers illegally detained him and that one officer “deliberately misused the authority of police for his personal benefit in my detainment.”<sup>205</sup> Although the plaintiff failed to establish the Cornell University police officers were acting pursuant to a policy that violated his constitutional rights, the court found the status of the Cornell University police officers as peace officers exercising police powers within their jurisdiction as sufficient to establish the officers were acting under state law.<sup>206</sup>

Importantly, concluding that officers of a private campus police department are state actors confers upon them the privileges and immunities of state officers, including sovereign immunity for actions undertaken in the course of their official duties. In *Mills v. Duke University*,<sup>207</sup> public official immunity protected two Duke University police officers after they shot and killed an individual outside of the Duke University Hospital premises.<sup>208</sup> The Court held Duke University police officers were entitled to public official immunity for their acts as private campus police officers.<sup>209</sup> The court noted a key factor in determining whether a police officer is an officer of the state is not the method by which they become a police officer but “the nature and extent of [the officer’s] duties and responsibilities with which [they] are charged under the law.”<sup>210</sup> Specifically, the court found it essential that a position was created by “the constitution or statutes of the sovereignty” for application of state office and the privileges attached to that office.<sup>211</sup> In *Mills*, the court found the Duke University police officers acted pursuant to the authority provided by the state

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201. *Yuan v. Tops Mkt., LLC*, 5:10-CV-1251, 2012 WL 4491106, at \*5–8 (N.D.N.Y. Sep. 28, 2012).

202. 5:10-CV-1251, 2012 WL 4491106 (N.D.N.Y. Sep. 28, 2012).

203. *Id.* at \*1–2.

204. *Id.* at \*5.

205. *Id.* at \*4.

206. *Id.* at \*5.

207. 759 S.E.2d 341 (N.C. Ct. App. 2014).

208. *Id.* at 344–45 (“Plaintiff contends that the officers cannot be covered by public official immunity because they were hired by, and were working for, a private institution—Duke University. We disagree . . . . It is clear that campus police such as Officers Carter and Liberto, like municipal police officers, act pursuant to authority granted by our General Assembly, and that their duties involve ‘the exercise of some portion of the sovereign power.’”) (quoting *State v. Hord*, 141 S.E.2d 241, 245 (N.C. 1965)).

209. *Id.* (“We hold that Officers Carter and Liberto are entitled to public official immunity for their acts in furtherance of their official duties so long as those acts were not corrupt, malicious, or outside of and beyond the scope of their duties.”) (citing *Clayton v. Branson*, 570 S.E.2d 253, 256 (N.C. Ct. App. 2002)).

210. *Id.* at 344 (quoting *Hord*, 141 S.E.2d at 245).

211. *Id.*

legislature and their “duties involve[d] ‘the exercise of some portion of the sovereign power.’”<sup>212</sup>

As these cases demonstrated, courts have found the existence of a state law authorizing private campus police sufficient to establish that these police are state actors. These laws reflect the legislature’s intentional delegation of police powers to private entities. Private university police statutes do not merely acknowledge the existence of private campus police but rather actively empower them with authority traditionally reserved for public law enforcement, such as the ability to investigate crimes, make arrests, and enforce local and state laws. By enacting private campus police statutes, state legislatures make a deliberate choice to extend police power to a nongovernmental entity, thereby creating a nexus between the state and the private institutions of higher education and transforming the actions of private campus police into state action subject to constitutional scrutiny.

Additionally, the discretionary nature of these statutes places unique responsibilities on private institutions of higher education when they decide to hire law enforcement officers.<sup>213</sup> Fundamentally, their decision to hire persons to act as law enforcement officers for the university as authorized by the statute obligates them to further accept the corresponding responsibilities of employing police officers. Under this analysis, the courts that hold private campus police officers are state actors are preserving the legislature’s decision to delegate police power to private actors and recognizing that private institutions are voluntarily bearing the burden of providing a traditionally public function when they establish private campus police forces.

This analysis forms the first prong of a two-part inquiry into whether and why private campus police qualify as state actors. The test is an element-based test in which either prong satisfies the application of state action. By first focusing on the legislature’s intent to delegate traditional police powers to private entities and the private postsecondary institution’s voluntary acceptance of this authority, courts establish a foundation for state action. The second prong, which considers the actions private campus police perform, involves demonstrating that the law enforcement duties of private campus police are indistinguishable from those of public officers. Together, these factors reinforce a framework for conceptualizing private campus police as an extension of the state.

## 2. Conduct Analysis

Courts also consider the conduct of private campus police officers to determine whether they qualify as state actors. This conduct analysis takes

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212. *Id.* (citing *Hord*, 141 S.E.2d at 245).

213. *Scott v. Nw. Univ. Sch. of L.*, No. 98 C 6614, 1999 WL 134059, at \*6 (N.D. Ill. Mar. 8, 1999) (holding that “[b]y accepting this authorization [from the state], Northwestern and its police must also accept the grave responsibility to protect an individual’s constitutional rights”).

a totality approach whereby the court identifies private campus police officers' specific actions and determines whether they are parallel to or amount to the actions of public police officers.

On April 16, 2019, a Yale University Police Department officer fired three rounds from his pistol in the "general direction" of a woman sitting in her car and struck her in the head following an erroneous call to 911 about a robbery in progress.<sup>214</sup> The incident took place off-campus at a gas station in Hamden, Connecticut, about five miles from the Yale University campus.<sup>215</sup> The plaintiff sued several individuals and entities, including Yale University.<sup>216</sup> She asserted Yale University is subject to liability under § 1983 for a deprivation of her constitutional rights committed by an individual acting under the color of state law.<sup>217</sup> Yale did not refute that it performs state action through its police department because it "performs a governmental policing function and has arrest authority."<sup>218</sup> It instead maintained that the plaintiff failed to state a *Monell* claim<sup>219</sup> because she did not allege Yale was deliberately indifferent to the risk of deprivation of constitutional rights.<sup>220</sup>

As discussed previously in *Commonwealth v. Carr*,<sup>221</sup> a Massachusetts court held that private campus police officers possess "authority beyond that of an ordinary citizen" and are therefore "treated as State agents subject to constitutional constraints."<sup>222</sup> The court held that police officers at Boston College hold special police powers from the legislature, including the power of arrest and the ability to use weapons, that go "beyond" that of an ordinary citizen or employee of the institution.<sup>223</sup> Here, their status as a police officer elevates their position from a private citizen or employee to that of a state agent because of the functions and conduct of their role.

Similarly, courts in New Jersey and Ohio have looked to the function and responsibilities of private campus police to determine if their conduct qualifies as state action. A New Jersey court held that a private campus police officer, by virtue of their role and responsibilities as a policeman for the university, was a "public servant" when a defendant was charged

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214. *Washington v. Eaton*, No. 3:20-CV-1111, 2021 WL 3291658, at \*3–4 (D. Conn. Aug. 2, 2021).

215. *Id.* at \*1 ("The Town of Hamden and the City of New Haven are contiguous municipalities.").

216. *Id.*

217. *Id.* at \*2.

218. *Id.* at \*10.

219. *Id.* at \*5 (stating that a *Monell* claim requires a plaintiff prove "that, through its deliberate conduct, the municipality was the 'moving force' behind the alleged injury").

220. *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690–91 (1978) (holding individuals can challenge law enforcement officers when misconduct violates their constitutional rights and can seek compensation and accountability from the officers and agency or municipality responsible for the policies that permitted the officer misconduct).

221. 918 N.E.2d 847 (Mass. App. Ct. 2009).

222. *Id.* at 852.

223. *Id.*

with obstruction of a public servant.<sup>224</sup> In *State v. Rodgers*,<sup>225</sup> the court held that police officers for Princeton University “perform[] . . . clearly a ‘governmental function’” under the New Jersey private campus police statute.<sup>226</sup> Here, their role as a police officer and the associated conduct of a police officer qualifies their actions as being undertaken on behalf of the state.

The Supreme Court of Ohio held that campus police officers at Otterbein University are “explicitly vested with the same powers and authority that are vested in a police officer of a municipal corporation or a county sheriff.”<sup>227</sup> According to the court, the Otterbein University Police Department was “established . . . for the purpose of exercising a core function of government . . .”<sup>228</sup> Its officers are “sworn, state-certified police officers who exercise plenary police power” in furtherance of their responsibilities.<sup>229</sup> In this case, while the legislative delegation of police power was an important factor, the *conduct* of the officers in performing their delegated powers was the pivotal point. Their conduct as police officers performing a core function of government is the same as public law enforcement, and they are therefore subject to the same legal frameworks.

In the District of Columbia, a district court held the actions of a George Washington police officer amounted to state action. In *McGovern v. George Washington University*,<sup>230</sup> a campus police officer acted on behalf of the state when they removed a protester from an auditorium.<sup>231</sup> Citing *Griffin v. Maryland*,<sup>232</sup> the court held that exercising police authority, wearing a police badge, and identifying oneself as a police officer can be seen as state action.<sup>233</sup> In *Griffin*, the court considered visual presentations, such as police insignia on a badge and verbal identification as a police officer, in conjunction with conduct closely associated with that of a state police officer.<sup>234</sup>

As these cases demonstrate, courts have held that the conduct of private campus police officers establishes them as state actors when their conduct is fundamentally equivalent to that of public law enforcement. This conduct analysis prong relies on the legislature’s delegation of police powers, a government function, to private entities to *serve and act* like law

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224. *State of New Jersey v. Rodgers*, A-3816-10T1, 2013 WL 1845502, at \*3–4 (N.J. Super. Ct. App. Div. May 3, 2013).

225. A-3816-10T1, 2013 WL 1845502, at \*3–4 (N.J. Super. Ct. App. Div. May 3, 2013).

226. *Id.* at \*4.

227. *State ex rel. Schiffbauer v. Banaszak*, 33 N.E.3d 52, 54 (Ohio 2015).

228. *Id.* at 55.

229. *Id.* at 53.

230. 245 F. Supp. 3d 167 (D.D.C. 2017).

231. *Id.* at 179–82.

232. 378 U.S. 130, 135 (1964) (holding the officer who arrested five Black men at a private amusement park enforcing the park’s racial segregation policy was a state actor, despite working as a private park employee at the time).

233. *McGovern*, 245 F. Supp. 3d at 181.

234. *Griffin*, 378 U.S. at 135 (“He wore a sheriff’s badge and consistently identified himself as a deputy sheriff rather than as an employee of the park.”).

enforcement. By acting on the authority to act and serve like law enforcement, the actions of private campus police are virtually indistinguishable from that of their municipal counterparts. This prong stems from the understanding that private campus police often perform functions traditionally and exclusively reserved for public law enforcement.

Courts have emphasized that the broad duties and responsibilities of private campus police parallel those of public law enforcement. The scope of private campus police officers' authority, the context in which they exercise their powers, and how they decide to exercise their powers all illustrate this parallel. This includes patrolling campus, enforcing laws, carrying out warrants and arrests, issuing citations, engaging in crime prevention, maintaining public order, operating a rank-and-file organization, wearing a police uniform, driving police cars, and displaying police insignia. This second prong of the state action inquiry closely examines the conduct—the role, duties, responsibilities, and actions—of private campus police to determine whether that conduct is, in fact, the conduct of state actors.

### 3. Private Action

Still, some courts have concluded that neither the statutory authority nor conduct of private campus police amounts to state action because those officers serve the *private* interests of a *private* employer and exercise their powers on behalf of and for a *private* entity.<sup>235</sup> Several cases illustrate the position that private campus police officers do not qualify as state actors. In these cases, the courts emphasize private campus police officers act on behalf of their respective private institutions rather than as agents of the state. The rulings seek to distinguish the actions of private campus police from municipal or state law enforcement officers.<sup>236</sup>

In Massachusetts, a court held that while the Fourth and Fourteenth Amendment apply to the actions of police officers at Boston College, the

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235. See *Commonwealth v. Carr*, 918 N.E.2d 847, 852–54 (Mass. App. Ct. 2009) (holding Boston College Police Department officers acted on behalf of their employer and not the state in searching a student's room and seizing weapons); *Hartley v. Agnes Scott Coll.*, 759 S.E.2d 857, 862 (Ga. 2014) (holding the actions of a private campus police officer do not qualify as state action if those actions are not performed for the state); *Robinson v. Davis*, 447 F.2d 753, 759 (4th Cir. 1971) (holding the private campus police officers performed normal functions for their employer and not the state when they assisted the university in drug investigations into students); *Univ. of the Incarnate Word v. Redus*, 602 S.W.3d 398, 408 (Tex. 2020) (holding a private campus police department is not accountable to the public and is therefore not an arm of the government).

236. See Jared Rothenburg, *Private Police Regulation and the Exclusionary Remedy: How Washington Can Eliminate the Public/Private Distinction*, 98 WASH. L. REV. 1081, 1083, 1093 (2023) (“However, there is a key legal distinction between the groups: private security forces, such as campus police, security guards, loss prevention officers, and the like, are not state actors.”) (“A meaningful distinction, then, lies less with what private and public police do and more with why and for whom they do it. Private police have a ‘client-defined mandate,’ which means that the desires and objectives of the client supersede any social goal that a public police force may ostensibly have, such as ensuring public safety or deterring crime. The difference in clientele served between public and private law enforcement is worth noting when considering how private actors conduct their investigations and whom they target.”).

circumstances of the case are reasonable and further the legitimate interests of the employer and not the state.<sup>237</sup> In *Carr*, a resident advisor for an on-campus residence hall contacted the Boston College Police Department to report a weapon inside a dormitory room. University policy prohibited all weapons of any kind and were subject to confiscation.<sup>238</sup> Boston College police officers entered the room and seized several weapons.<sup>239</sup> Following a search, officers also found drugs and drug paraphernalia.<sup>240</sup> The defendants were arrested. The court agreed the police officers were “[s]pecially commissioned officers formally affiliated with the sovereign and possessing authority beyond that of an ordinary citizen . . . and . . . treated as State agents subject to constitutional constraints as to search and seizure.”<sup>241</sup> However, the officers did not need a search warrant or consent to search the room because the officers entered the room to investigate a credible report of a weapon under the university’s policy.<sup>242</sup> The court held the officers’ actions were justified by legitimate private duties on behalf of the employer by lawful means to protect property.<sup>243</sup> Accordingly, the entry was not in furtherance of a criminal investigation but to address a violation of university policy, excluding the application of state action.<sup>244</sup>

Similarly, in *Robinson v. Davis*,<sup>245</sup> the Fourth Circuit held campus security officers at a private religious institution who were also town police officers were acting pursuant to their responsibilities for the private university and not police officers when they summoned students for disciplinary action.<sup>246</sup> Although the officers wore their town furnished police uniforms with “side arms” (i.e., weapons) on campus, the court held the summoned students knew the officers were “acting in their part-time

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237. *Carr*, 918 N.E.2d at 852 (holding Boston College Police Department officers acted on behalf of their employer and not the state in searching a student’s room and seizing weapons). The case was appealed to the Supreme Court of Massachusetts. The Court found no consent to search the room and suppressed the evidence. However, the Court did not decide whether entry was lawful. *Commonwealth v. Carr*, 936 N.E.2d 883, 885 (Mass. 2010) (“Because the drugs and other evidence will be suppressed, we need not decide whether the initial entry into the room was lawful.”).

238. *Carr*, 918 N.E.2d at 849 (“Pursuant to Boston College’s ‘Conditions for Residency’ all weapons of any kind, whether licensed or unlicensed and whether real, counterfeit, or toy, are prohibited and subject to confiscation. All students who reside in a dormitory must read these rules and signify their assent to abide by them in order to reside in a dormitory.”).

239. *Id.* at 849–50.

240. *Id.* at 850–51.

241. *Id.* at 852.

242. *Id.* at 851.

243. *Id.* at 852 (“However, the constitutional constraints upon such special police officers performing investigatory duties ‘does not mean that the bounds of permissible conduct are the same for the privately employed special officer as they would be for an ordinary police officer.’ The private function adds a new aspect to his activities that is relevant to proper application of constitutional protections against search and seizure. ‘The action he takes on behalf of his employer may be a lawful and necessary means of protecting the employer’s property, although it would be impermissible if taken on behalf of the State in pursuit of evidence. When the guard’s conduct is justified by his legitimate private duties, it should not be treated as lawless, or ‘unreasonable’ search and seizure.’” (quoting *Commonwealth v. Leone*, 435 N.E.2d 1036 (1982))).

244. *Commonwealth v. Carr*, 918 N.E.2d 847, 852–53 (Mass. App. Ct. 2009).

245. 447 F.2d 753 (4th Cir. 1971).

246. *Id.* at 759.

capacities as security officers.”<sup>247</sup> Here, the officers were participating in normal administrative functions of the institution and not performing duties imposed by state law.<sup>248</sup>

In *Hartley v. Agnes Scott College*,<sup>249</sup> the Supreme Court of Georgia found private campus police officers at Agnes Scott College do not receive immunity under the Georgia Torts Claim Act because they do not qualify as state officials.<sup>250</sup> The court’s decision relied on two factors. First, the Georgia Torts Claim Act expressly excludes private entities, like Agnes Scott College, from the definition of a “state officer or employee,” even if Agnes Scott College police officers are “law enforcement officers” included in the definition of “state officers.”<sup>251</sup> Second, the Georgia Torts Claim Act limits immunity to torts committed by a “state officer or employee” who was acting in the scope of their employment for a “state government entity.”<sup>252</sup> The Court held Agnes Scott College police officers work for a private institution, not for a state government entity, and their actions were in performance of their employment.<sup>253</sup>

Citing *Hartley* as an example, the Supreme Court of Texas held a university’s private police department is “not an arm of the state government” because it is “not accountable to the government.”<sup>254</sup> In *University of the Incarnate Word v. Redus*,<sup>255</sup> a private campus police officer stopped an individual on suspicion for driving while intoxicated and fatally shot them.<sup>256</sup> Their parents sued the university for wrongful death and the university claimed it was immune from suit due to its statutory authorization to form a police department.<sup>257</sup> However, the Court held sovereign immunity is “entity-based” and the State did not create the university, fund the police department, set departmental policies or procedures, hire or fire police officers, or have a say in the day-to-day operations and decision making of the university.<sup>258</sup> As a result, the State has no control over the university or its police officers. The university, not accountable to the state, does not qualify for sovereign immunity.<sup>259</sup>

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247. *Id.* at 758.

248. *Id.* at 759 (“Defendants in the instant case were not performing any duty imposed upon them by state law nor did they make any ‘pretense’ that they were acting under state law; they were working for the College.”).

249. 759 S.E.2d 857 (Ga. 2014).

250. *Id.* at 864.

251. *Id.* at 860 (noting the Georgia Campus Policeman Act authorizes campus police officers with “the same law enforcement powers . . . as a law enforcement officer of the local government with police jurisdiction over such campus”).

252. *Id.* at 862.

253. *Id.* at 863.

254. *Univ. of the Incarnate Word v. Redus*, 602 S.W.3d 398, 408 (Tex. 2020).

255. 602 S.W.3d 398 (Tex. 2020).

256. *Id.* at 402.

257. *Id.* at 402, 407.

258. *Id.* at 407.

259. *Id.* at 411–12 n.83. The Court acknowledges the legislature amended the statute to designate a campus police department as “a law enforcement agency and a governmental body” under the Public

The courts in these cases have emphasized the *private* classification of the employing institution for which private campus police are employed. They recognize private campus police, either as some form of security or some form of private police, but they do not recognize them as security or police for the public. Despite the statutorily delegated law enforcement authority, private campus police are primarily—if not entirely—acting for and on behalf of their employer. As a result, their actions are private, and not subject to the Constitution.

However, there is an incongruence in prioritizing the employer's private status over the statutory legal authority and statutory charge to be police officers responsible for enforcing public laws. While private campus police officers are employed by private institutions, they are nevertheless statutorily authorized to exercise police powers on behalf of—and because of—the state. This is a critical point for understanding the limits of constitutional protections in relation to private campus police forces. The failure to recognize the authority and conduct of private campus police because of their employer undermines accountability by attributing subsidiary protections to what would otherwise be considered police officers of the state. The responsibilities, duties, and training of private campus police are often similar, if not identical, to those of municipal police departments, with many private campus police officers undergoing the same certification processes and adhering to the same standards as their public counterparts.<sup>260</sup>

Private campus police carry out roles and duties that are staples of a public function, such as enforcing laws and maintaining order, irrespective of the employer they report to. Exempting any private campus police from the level of scrutiny applicable to state actors creates a gap in constitutional protections. This two prong state action inquiry would ensure private campus police are held to the same legal obligations as municipal law enforcement based on the significant public role they perform. Importantly, however, it should be noted that accountability as a government actor is not the ultimate objective of accountability but at least provides some basis or mechanism for transparency and oversight often not required of private actors.

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Information Act, but “only with respect to information relating solely to law enforcement activities.” The “Act of May 19, 2015, 84th Leg., R.S., ch. 300, § 1, 2015 Tex. Gen. Laws 1418, 1418 (codified at Tex. Educ. Code § 51.212(f)) (designating a “campus police department” as “a law enforcement agency and a governmental body for purpose of Chapter 552, Government Code [the Public Information Act], only with respect to information relating solely to law enforcement activities.”) However, because a private campus police department is still part of a private organization, the legislature “has directed that its immunity is conduct-based, not entity-based.”

260. Miller, *A National Survey*, *supra* note 19, at 756, 773 (detailing the training required of private campus police officers).

### III. A RECONFIGURATION OF THE FOURTEENTH AMENDMENT AND THE UNCONSTITUTIONAL EXPANSION OF PRIVATE CAMPUS POLICE FORCES

The rise and expansion of private campus police forces necessitates a reexamination of the procedural safeguards embedded in the Fourteenth Amendment. In twenty-one states and the District of Columbia, private campus police officers are statutorily authorized to exercise police powers beyond the physical boundaries of campus and into surrounding neighborhoods.<sup>261</sup> This delegation of authority raises significant concerns about self-governance, public accountability, and due process for the municipalities subject to the control of private campus police and, by extension, private institutions of higher education. By extending state law enforcement powers to private entities with limited or no public accountability structures, state legislatures have undermined the right of city residents to meaningfully engage in self-governance. It is therefore critical to address this model of policing as a potential erosion of due process protections in light of evolving private law enforcement practices.

This Part offers a due process analysis that centers and interprets the principle of self-governance as a liberty interest. It first explains the meaning and importance of self-governance as the freedom from private intervention in public governance—or the governance of public affairs and public life. Section III.A argues, using existing case law, that individuals have a constitutionally protected right to meaningfully participate in their own self-governance and that the delegation of public governance to private entities violates that right. Section III.B explores principles that support the importance of protecting self-governance, such as public accountability, private membership, and capital interests. Section III.C briefly discusses the potential procedural due process claims raised by the delegation of public governance to private entities without notice or oversight. It is worth noting again that each of these sections can be their own standalone law articles. This Article offers a novel interpretation of self-governance as a liberty interest and how private interference of autonomy and governance violates that interest.

#### *A. Democratic Principles of Self-Governance*

This section argues the right to self-govern, or to be free from forced private authority, is a constitutionally protected liberty interest that requires due process.<sup>262</sup> In fact, when residents' ability to meaningfully engage in the public governance of their own municipality is replaced or curtailed by private entities, the very legitimacy of democracy is threatened.

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261. *Id.* at 773 (overviewing the state laws that authorize private campus police officers to extend their jurisdiction off-campus).

262. This section will discuss how courts have found the states cannot delegate public governance to private entities because it violates (what I refer to as) a “right to self-govern.” See Nikolas Bowie, *The Constitutional Right of Self-Government*, 130 YALE L.J. 1652, 1727 (2021) (arguing the right to assemble, as first expressed, could be interpreted not as a narrow right of self-expression but rather as a broad right of self-government through local government).

At its core, democracy requires individuals to meaningfully engage with and participate in their own government—the principle of self-governance. This principle is fundamental to the functioning of public structures<sup>263</sup> and public life and ensures that representation, trust, accountability, and fairness are woven into the fabric of those public functions.

Statutory delegation of authority to private entities to manage public functions directly undermines the right of individuals to self-govern. It offends the basic principles of democracy and violates the procedural safeguards guaranteed in the Fourteenth Amendment. When private entities are authorized to perform public functions, there are no legitimate measures for public oversight or transparency. Such grants of authority violate the procedural safeguards of self-governance and provide limited legal recourse for those forced under the jurisdiction of a private entity. This erosion of procedural safeguards is particularly troubling in the context of policing and law enforcement.

The courts have been unequivocal on the importance and protection of self-governance, particularly against private intervention. In 1979, the Supreme Court of Georgia found the delegation of power to a private entity to appoint its members into public office was unconstitutional. In *Rogers v. Medical Association of Georgia*,<sup>264</sup> the court held it was unconstitutional for a legislative body to delegate appointive power to a private entity.<sup>265</sup> A Georgia law outlined the procedure by which the Governor appointed members to the State Board of Medical Examiners.<sup>266</sup> It stated: “All appointments to the board shall be made by the Governor and confirmed by the Senate. Appointments to the board of members who must hold an M.D. degree shall be made by the Governor from a list of not less than three nor more than five qualified candidates submitted to the Governor by the Medical Association of Georgia . . .”<sup>267</sup>

Plaintiffs sued over the statutory requirement of appointing board members based solely on the recommendation of the Georgia Medical Association, a private organization.<sup>268</sup> The plaintiffs were qualified medical doctors, licensed to practice in the state of Georgia, but were not members

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263. I use the term “public structures” to refer to systems and organizations created and maintained by government. This includes infrastructures and institutions, like education, regulatory systems, and voting.

264. 259 S.E.2d 85 (Ga. 1979).

265. *Id.* at 87.

266. The overriding mission of medical boards is to protect the public from incompetent, unprofessional, and improperly trained medical physicians by licensing and regulation. See Drew Carlson and James N. Thompson, *The Role of State Medical Boards*, 7 AMA J. ETHICS 311, 311 (2005). The Georgia Composite Medical Board (the state board) is also responsible for public education, transparency, and accountability. See *About the Georgia Composite Medical Board*, GA. COMPOSITE MED. BD., <https://medicalboard.georgia.gov/> (last visited Apr. 6, 2024).

267. *Rogers*, 259 S.E.2d at 86 n.1.

268. *Id.* at 87 (“Appellants claim a denial of due process and equal protection of the laws. They assert also that Code Ann. § 84-903 is unconstitutional because it delegates the power of appointment to a private interest group.”).

of or associated with the Georgia Medical Association.<sup>269</sup> Representing one-third of all licensed medical doctors in the state, they argued that they were “systematically excluded” from recommendation to public office in violation of their due process and equal protection rights.<sup>270</sup> They argued the “delegation of the power of appointment to public office to a private organization is unconstitutional.”<sup>271</sup>

The court agreed, concluding that the recommendation procedure clearly violates the constitutional protections of due process and equal protection because “no matter how responsible” a private organization is, it is “not in the public domain and is not accountable to the people as our constitution requires.”<sup>272</sup> The “[f]undamental principles embodied in our constitution dictate that the people control the government. ‘All government . . . is founded upon their will only, and is instituted solely for the good of the whole.’”<sup>273</sup> A delegation of power to manipulate public affairs is deeply unconstitutional because the people of the state have “the inherent, sole and exclusive right of regulating their internal government” as well as “the police thereof.”<sup>274</sup> Public affairs must be managed by the public and officials “who are accountable to the people.”<sup>275</sup>

The court concluded the appointment process in *Rogers* was unconstitutional under the Georgia Constitution, but it also noted that the due process guarantees under the Georgia Constitution are the same as those under the United States Constitution.<sup>276</sup> To reach this conclusion, the Supreme Court of Georgia first relied on the importance of self-governance and government as a representation of the will of the people. Citing the Georgia Constitution, the court noted that government “originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.”<sup>277</sup> Similarly, the U.S. Constitution is a “claim to govern”<sup>278</sup> derived from the people and for the people. It is an expression of the determination of the public to establish a government and be represented by that government.

The *Rogers* case fundamentally challenges the process by which public life and appointment to public office are determined. Legislative delegation of appointive power to a private entity unconstitutionally deprives the public of regulating their government, denying them the opportunity

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269. *Id.* at 86.

270. *Id.*

271. *Id.* at 87.

272. *Id.*

273. *Rogers v. Med. Assoc. of Ga.*, 259 S.E.2d 85, 87 (Ga. 1979).

274. *Id.*

275. *Id.*

276. The Supreme Court of Georgia held the “procedural rights afforded by the Due Process Clause of the Georgia Constitution in this context are the same as those afforded under the United States Constitution.” *DeKalb Cnty. Sch. Dist. v. Ga. State Bd. of Educ.*, 751 S.E.2d 827, 842 (Ga. 2013) (referring to the due process right as a notice prior to deprivation).

277. *Rogers*, 259 S.E.2d at 87.

278. *Bowie, supra* note 262, at 1661.

to elect persons accountable to the public. The Fourteenth Amendment's Due Process Clause protects against unconstitutional deprivations of basic individual rights—life, liberty, and property. Arguably, the most basic of individual rights includes the right to self-governance, or to participate in democracy and select a local electorate subject to the will of the people. The preservation of a democratic society is curtailed when private entities are delegated authority to perform government functions. Such a curtailment of democratic participation amounts to a deprivation of an accountable and representative government.

More than three decades later, the Georgia Supreme Court revisited *Rogers* when it found a state law was not unconstitutional because removal power was solely vested in the Governor and not a private entity. In *DeKalb County School District v. Georgia State Board of Education*,<sup>279</sup> the court considered the constitutionality of a state law requiring that when an accredited school “is placed on the level of accreditation immediately preceding loss of accreditation for school board governance related reasons,” the State Board of Education must consider whether to recommend the Governor suspend eligible members of the school board with pay.<sup>280</sup> The decision to suspend members of the school board, however, was solely within the Governor’s discretion.<sup>281</sup> Furthermore, before a school board member was removed permanently, they were afforded an opportunity to petition and a hearing within thirty days.<sup>282</sup> The court held that the process for removing elected school board members was constitutional because the decision rested with the Governor and permanent removal triggered notice and a hearing.<sup>283</sup> The Court found that it is

the Governor (an elected constitutional officer, accountable to the People as a whole), upon the recommendation of the State Board (a constitutional body), who makes the decision to suspend eligible members of the local board of education with pay ‘and, in consultation with the State Board of Education, appoint[s] temporary replacement members who shall be otherwise qualified to serve as members of such board.’<sup>284</sup>

Applying *Rogers*, the Court found the state law in question does not delegate suspension or removal powers to a private organization.<sup>285</sup> In fact, the determination of the private accrediting agency triggers a required hearing by the Board to determine whether the Governor take action.<sup>286</sup> Unlike in *Rogers*, the private agency does not have the power to affect the

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279. 751 S.E.2d 827 (Ga. 2013).

280. *Id.* at 830.

281. *Id.* at 845.

282. *Id.* at 843.

283. *Id.*

284. *DeKalb Cnty. Sch. Dist. v. Ga. State Bd. of Educ.*, 751 S.E.2d 827, 841 (Ga. 2013) (citing GA. CODE ANN. § 20-2-73 (a)(2) (2024)).

285. *Id.*

286. *Id.*

position of elected officials, but instead, brings in duly elected members of government to commence due process proceedings. The Court once again emphasized that a delegating body could not delegate the power to appoint to a private organization, because private organizations are accountable to its membership and not the public.<sup>287</sup>

These two cases demonstrate the importance of self-governance as a fundamental element of due process. The management of public affairs must remain under the control and authority of those duly elected to public office. The legislature cannot delegate the authority to appoint members to public office to private entities, because those entities, no matter their responsibility or capability, are not public officials and, importantly, maintain private interests that often are incongruent with the benefit of the public. In effect, the ungovernable may not govern the public. Any delegation of public matters to private entities denies individuals the ability to meaningfully participate in their government and denies them the procedural safeguards of due process.

Similarly, the Supreme Court of Illinois held that the “power to appoint public officers is the sovereign power of the State,” which “cannot be conferred upon a private person or group but must be delegated, if at all, to some public agency.”<sup>288</sup> In *People ex rel Rudman v. Rini*,<sup>289</sup> the court determined that private county political committees are not public officers and thus the legislature cannot delegate sovereign immunity to them because they are not controlled by state law.<sup>290</sup> In fact, the court stated that political committees “do not carry the badge of public office. They are not accountable to the public . . . and they do not separately substantially represent the populace of the area affected by appointment.”<sup>291</sup> It is the people, and not the political party, that “ha[s] the real interest” in the office and therefore the method for selecting individuals for public office should reflect the choice of the people as closely as possible.<sup>292</sup>

The Illinois Supreme Court underscored the *mode* of appointment as a central element in its analysis. It determined the methodology of appointing members to public office is just as important to the process of democracy and self-governance as who is elected. The procedural safeguard of electing members of the government is paramount to our democratic

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287. *Id.* (citing *Rogers*, 259 S.E.2d at 87) (“This Court held that while the General Assembly may, within constitutional limits, establish qualifications for public office and then designate a governmental appointing authority, it could not delegate the power to appoint to a private organization, noting that such an organization is not accountable to the people but to its membership.”).

288. *People ex rel. Rudman v. Rini*, 356 N.E.2d. 4, 7 (Ill. 1976).

289. 356 N.E.2d. 4 (Ill. 1976).

290. *Id.* at 7 (“The claim that the political party committees for the counties are now on a par with public officers and can be delegated sovereign authority by the General Assembly since they are controlled by statute is incorrect.”).

291. *Id.* (citing *People ex rel. Kell v. Kramer*, 160 N.E. 60 (Ill. 1928); *Teleser v. Holzman*, 201 N.E.2d 370 (Ill. 1964)).

292. *Id.* (holding the “mode of appointment”—the method for selecting individuals—is a critical element for analysis).

institutions as well as the U.S. Constitution.<sup>293</sup> On its face, it is an unconstitutional delegation of authority to skirt citizen participation in public affairs and empower private entities to subdue the democratic process.

Using these cases as support, the statutory delegation of off-campus police powers to private campus police forces undermines the right of city residents to meaningfully engage in public governance and forcibly exposes them to the sovereignty of private police. This due process violation deprives city residents of a personal and political right to “be governed only by their elected representatives”<sup>294</sup> and not by entities or individuals only accountable to their “respective organization”<sup>295</sup> and its private interests. Furthermore, this delegation forcibly exposes city residents—persons unaffiliated with a private postsecondary institution—to private campus policing and surveillance paradigms that provide no public oversight or legal redress of harms.

The right to self-govern and be free from the sovereignty of a private entity is a fundamental democratic principle that finds itself “deeply rooted in this nation’s history and tradition.”<sup>296</sup> The very existence of the Constitution serves as a reminder of the people’s will to participate in their government and maintain control over public structures and public life. This right of self-governance is in alignment with a historical understanding of the liberty interest under the Due Process Clause of the Fourteenth Amendment. Self-governance aligns with long-standing conceptions of liberty, as it encompasses “those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men,”<sup>297</sup> which includes the freedom to engage in governance of public affairs and freedom from forced private authority.

Fundamentally, when a legislature grants a private entity police power over municipalities that neither consent to its authority nor possess any mechanisms of transparency or accountability over its actions, the government effectively strips individuals of all meaningful participation in governance and in doing so undermines the very liberty interest the Due Process Clause is designed to protect.

#### *B. Public Accountability, Private Membership, and Capital Interests*

The argument that self-governance is a liberty interest that is infringed when legislatures delegate off-campus police authority to private campus police is incomplete without at least a minimal discussion of

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293. I want to note that state constitutions may also guarantee the unique principles of democracy. An examination of how specific state constitutions do or would protect the right of self-governance would be a worthwhile scholarly endeavor. However, this Article focuses on the federal constitution and its protections of self-governance as interpreted under the Fourteenth Amendment.

294. *Hetherington v. McHale*, 329 A.2d 250, 253 (Pa. 1974).

295. *In re Opinion of Justices*, 150 N.E.2d 693, 698 (Mass. 1958).

296. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (citing *Moore v. City of E. Cleveland*, 431 U.S. 494 (1977) (Powell, J., plurality opinion)).

297. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

public accountability, private membership, and capital interests. These three elements are fundamental to understanding what is at stake when a private police department forcibly subjects a community to its authority. They provide critical context that may be overlooked in a police-reliant social framework.<sup>298</sup>

First, and inherent to the discussion of self-governance, public accountability is crucial to the preservation of democratic institutions. Public accountability ensures governing institutions are transparent and responsive to the electorate. The legitimacy of democratic institutions is significantly curtailed when private entities are delegated the authority to exercise government functions without appropriate public accountability measures. Private entities that are not elected or governed by the public are not accountable to the public and “do not separately substantially represent the populace of the area affected” by them.<sup>299</sup>

In *United Chiropractors of Washington v. State*,<sup>300</sup> the Supreme Court of Washington held that the statutory delegation of public governance to a private entity constitutes a due process defect.<sup>301</sup> The court reviewed similar cases in which private entities were delegated public governance powers and noted how other courts had defined a generalized, structural objection to those delegations.<sup>302</sup> In its decision, the court cited the New Jersey Supreme Court’s invalidation of a delegation of power to a private entity to approve the trustees of a medical board.<sup>303</sup> In that case the New Jersey Supreme Court held,

We think such a power to determine who shall have the right to engage in an otherwise lawful enterprise may not validly be delegated by the Legislature to a private body which, unlike a public official, is not subject to public accountability, at least where the exercise of such power is not accompanied by adequate legislative standards or safeguards whereby an applicant may be protected against arbitrary or self-motivated action on the part of such private body.<sup>304</sup>

Second, for private campus police officers, membership to private postsecondary institutions is attached to employment and labor<sup>305</sup> such that institutional interests are embedded within their responsibilities. Members of private entities are “accountable solely to [their] respective organization

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298. This refers to American society’s heavy reliance on police as an automatic response to any and all social problems. Because police are often presented as the first and best solution to crime, poverty, and disorder, meaningful conversation about alternative ways of safety are overlooked or purposefully ignored.

299. *People ex rel Rudman v. Rini*, 356 N.E.2d 4, 7 (Ill. 1976).

300. 578 P.2d 38 (Wash. 1978).

301. *Id.* at 41.

302. *Id.* at 40–41.

303. *Grp. Health Ins. v. Howell*, 193 A.2d 103, 114 (N.J. 1963).

304. *United Chiropractors of Wash.*, 578 P.2d at 41 (quoting *Grp. Health Ins.*, 193 A.2d at 108).

305. See Theresa Rocha Beardall, *The Thick Green Line: How Material Benefits Motivate Police Workers and Impact Public Safety* 9 (Feb. 13, 2025) (unpublished manuscript) (on file with author).

and ha[ve] no connection with any branch of government in which the sovereign power is lodged by our Constitution.”<sup>306</sup>

Lastly, private postsecondary institutions maintain vested capital interests that oftentimes supersede public objectives.<sup>307</sup> Unlike public law enforcement agencies, which are publicly funded and accountable to the public, private police forces primarily serve the interests of private institutions. These interests often prioritize capital over public welfare, raising serious concerns about the privatization of public safety and the erosion of the state’s sovereign power to regulate crime and maintain public order. Private postsecondary institutions are structurally and financially dependent on tuition, endowments, market competition, real estate and infrastructure, corporate influence, and other financially stable revenue streams.<sup>308</sup> When these financial structures are layered with safety narratives embedded within racial capitalism, institutions must decide whom or what deserve protection.<sup>309</sup>

### C. Due Process Claims

A viable due process claim under the Fourteenth Amendment requires a demonstration of a constitutionally protected interest and the subsequent violation of that interest.<sup>310</sup> For procedural due process claims, an individual must show their interest was deprived without due process of law.<sup>311</sup> Acceptable procedural safeguards generally include notice and an opportunity for hearing, but an individual may also demonstrate that available procedures were inadequate or unjust, such when there were only

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306. In re Opinion of Justices, 150 N.E.2d 693, 698 (Mass. 1958).

307. I chose to use the phrase “capital interests” instead of financial or economic interests because it is important to emphasize the accumulation of wealth and resources tied to policing private institutions. Here, the protection of capital interests includes the protection of financial capital (monetary assets, such as property), human capital (knowledge and skills), and social capital (sustained network of elite institutional affiliations).

308. See American Association of University Professors, *Understanding Institutional Finances*, AAUP, <https://www.aup.org/issues-higher-education/financial-crisis/understanding-institutional-finances> (last visited August 18, 2025) (for an overview of private university finances).

309. Miller & Russell-Brown, *supra* note 18, at 59 (overviewing the history of campus policing as inextricably tied to policing race and wealth and how institutions prioritize capital interests over educational purposes).

310. See, e.g., Bd. of Regents v. Roth, 408 U.S. 564, 575–77 (1972) (holding that a Fourteenth Amendment Due Process Claim does not require a hearing unless the plaintiff demonstrate the alleged government action deprived them of an interest in “liberty” or that the plaintiff had a “property interest[]” in continued employment); Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542–47 (1984) (holding that a Fourteenth Amendment Due Process Claim for public-sector employees require a hearing before termination because public-sector employees may have a property interest in employment, therefore procedural safeguards are required prior to deprivation).

311. See, e.g., Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (determining that due process requires, at a minimum: (1) notice; (2) an opportunity to be heard; and (3) an impartial tribunal); Goss v. Lopez, 419 U.S. 565, 584 (1974) (holding public schools must provide a student with a notice and hearing prior to suspension); Goldberg v. Kelly, 397 U.S. 254, 269–70 (1970) (holding procedural due process requires a full hearing before welfare benefits are terminated, since the individual interest in these benefits greatly outweighs the interest of the government); Washington v. Glucksberg, 521 U.S. 702, 735–36 (holding the right to assisted suicide is not a fundamental liberty interest protected by the Due Process Clause since its practice has been, and continues to be, offensive to our national traditions and practices).

limited opportunity for a hearing, a biased decision-maker, an arbitrary or capricious decision-making process, or some other lack of fairness or transparency.<sup>312</sup> Courts often balance the individual interest and the government action with the government's interest in using a particular procedure.<sup>313</sup> Courts also consider factors such as the importance of the individual right and the need for the government action in question.<sup>314</sup>

This Article's fundamental argument rests on the premise that the statutory delegation of off-campus police powers to a private campus law enforcement agency at a private postsecondary institution deprives city residents of their constitutionally protected liberty interest in self-governance by forcibly subjecting them to the authority of a private police department and, by extension, the control and influence of a private postsecondary institution. The interest of self-governance and the subsequent deprivation of that interest trigger procedural safeguards. To maintain a viable due process claim, city residents must establish that their right to self-governance is a liberty interest protected under the Fourteenth Amendment and that the statutory delegation of off-campus police jurisdiction unconstitutionally deprives them of that right.

As affirmed in the sections above, a novel reading of the Due Process Clause of the Fourteenth Amendment embraces the protection of self-governance as a liberty interest—freedom from private interference into public governance structures. Courts have broadly interpreted the liberty interest to include personal freedoms such as the right to marry<sup>315</sup> and the right to rear children.<sup>316</sup> Despite the wide range of interpretation of the liberty interest, courts' interpretations are fundamentally based on the principles of autonomy and self-governance—concepts that are “deeply rooted in this Nation’s history and tradition.”<sup>317</sup> The delegation of public governance to a private entity is a procedural violation of the right to self-govern.

First, private postsecondary institutions seldom meaningfully work in tandem with the surrounding community when they make institutional decisions, including and especially in the context of internal financial and operational decisions such as establishing a university police

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312. See *Mullane*, 339 U.S. at 314–15.

313. *Goldberg*, 397 U.S. at 261.

314. *Glucksberg*, 521 U.S. at 709.

315. See generally *Loving v. Virginia*, 388 U.S. 1 (1967); *Obergefell v. Hodges*, 576 U.S. 644 (2015).

316. See generally *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Wisconsin v. Yoder*, 406 U.S. 205 (1972). An extensive discussion of liberty interests is not necessary for purpose of this Article. The key element in the examples above demonstrate a judicial commitment to autonomy and self-governance of public affairs and public life.

317. *Glucksberg*, 521 U.S. at 721 (quoting *Moore v. City of E. Cleveland*, 431 U.S. 494, 503 (1977) (Powell, J., plurality opinion)).

department.<sup>318</sup> There is typically no formal notice to the community, limited opportunities for community input, and minimal public accountability measures to safeguard the rights of residents against forced private policing.<sup>319</sup> When private institutions do engage with the community, insofar as public accountability may be concerned, the requested engagement is limited and offers very little meaningful participation with institutional decision-making.<sup>320</sup>

Second, the interests of self-governance significantly outweigh any possible governmental interest in delegating police powers to a private entity. The interests of self-governance are so fundamental to democracy and democratic institutions that any attempt to delegate police powers to a private entity, without the consent of the community under its jurisdiction, is substantially outweighed. Self-governance ensures communities have the autonomy to make decisions that directly impact their lives. When the state delegates the authority of off-campus jurisdiction to private campus police forces, it undermines the ability of the municipality to govern itself. Any such delegation must be scrutinized.

Private campus police and city residents operate with a substantial power disparity that requires critical attention. Off-campus jurisdictional powers provide private campus police with authority that extends into the community, but the community has no authority to exercise any powers on the campus. Private campus police have the authority to dismiss city residents from campus, but city residents are unable to dismiss private campus police from their neighborhoods. In effect, the public has no control over the private institution but the private institution, through its private campus law enforcement agency, has control over the surrounding municipality and the people in it.

Finally, self-governance constitutes a liberty interest protected under the Fourteenth Amendment. It embodies the right of individuals and communities to participate in and influence the governance structures that affect them. Given the fundamental role self-governance serves in a democratic society, the argument that self-governance should be recognized as a fundamental substantive due process right carries significant weight. Such recognition would impose heightened judicial scrutiny on laws that delegate public governance to private entities, such as the statutory delegation of police power to private campus police. However, a full

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318. See Miller & Russell-Brown, *supra* note 18, at 72–79 (outlining a historical discussion of the ways private universities forcefully expand into the surrounding communities with little to no notice or discussion); BALDWIN, *supra* note 36, at 24 (“Since American colonial times, the placement and design of college campuses reflected a clear antagonism toward urban life and the kind of social diversity that cities engendered.”) (demonstrating the hostility of private institutions to the neighborhoods in which they are built around).

319. See generally BALDWIN, *supra* note 36, at 17–49.

320. See discussion *supra* Section I.B.2.

substantiation of this claim requires a more extensive conceptual and doctrinal analysis that is beyond the scope of this Article.<sup>321</sup>

#### CONCLUSION

The rise of private campus police forces raises legal questions. Such questions include their statutory authority, purpose, and police powers. Through the expansion of private university police statutes, private universities have been able to cultivate a new policing paradigm—one that toes the line between public and private. Private campus police officers possess public law enforcement powers while furthering the private interests of their private institution. They enforce criminal laws, protect university assets, and serve as a physical border between their institution and the institution's expansion into the surrounding community, often signifying a policing of wealth.

Although this Article addresses a narrow argument about the authority of private campus police to exercise police powers off-campus, there is a broader normative argument to be made about the expansion of private campus police forces and the expansive control and influence of private postsecondary institutions into their surrounding communities. This Article argues the delegation of police powers to private entities undermines the democratic principle of self-governance. When a private entity is authorized to exercise police power over municipalities that have neither consented to its authority nor possess any mechanisms of transparency or accountability over its actions, the government effectively strips individuals of meaningful democratic participation in local governance. These municipalities are forcefully subject to the control of private police forces and are stripped of their liberty interest to be free from private interference in their public affairs. In doing so, the state undermines the very liberty interest the Due Process Clause is designed to protect. Subsequently, a reexamination of the Fourteenth Amendment's Due Process Clause is critical to understanding how to protect residents from the growing trend of private policing paradigms.

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321. This inquiry into self-governance as fundamental right is best suited for another project. This Article mentions it to highlight its implications for a broader Fourteenth Amendment argument.