

NC Supreme Court Upholds Private College Campus Police Power

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The North Carolina Supreme Court recently issued a unanimous decision in *State v. Yencer*, upholding the constitutionality of Davidson College's law enforcement authority under the State's Campus Police Act. In ruling in favor of Davidson's campus police power, our Supreme Court brought North Carolina law back in step with Establishment Clause decisions of the U.S. Supreme Court as well as appellate decisions in other States which have examined the specific question of campus police authority delegated to religiously affiliated private colleges.

The *Yencer* case involved a 2006 arrest by a Davidson College police officer of a driver on a road near campus. Immediately following the arrest, the defendant initially pleaded guilty to driving while intoxicated and reckless driving. But she subsequently appealed based upon a theory that the State's delegation of campus police authority to Davidson was unconstitutional because the College was a religious institution. More specifically, the defendant contended that Davidson College's affiliation with the Presbyterian Church (USA) made it a religious institution, and therefore, the State's delegation of law enforcement authority to the College's campus police force violated the prohibition

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against excessive entanglement of church and government contained in the Establishment Clause of the First Amendment to the U.S. Constitution.

In its [opinion](#), the Supreme Court soundly rejected this notion that a private college's affiliation with a religious denomination, in and of itself, might render it a religious institution for purposes of the Establishment Clause. Recognizing that the defendant's theory was contrary to the reality of Davidson College's mission and how the school operates, the Court found that "Davidson College is not a church but a private liberal arts college." While acknowledging Davidson's historical link with the Presbyterian Church, the Court concluded that Davidson's "secular, educational mission predominates." Important bases for the Court's conclusion on this point included the Presbyterian Church's lack of control over the operation and management of Davidson College, as well as the school's curriculum, employment and policy decisions, and the property on which the school is located.

Key to the Court's analysis of the constitutionality of Davidson College's campus police authority were significant distinctions between North Carolina's current Campus Police Act (enacted in 2005), and the former company police statutes under which campus police forces previously operated. Noting that the Campus Police Act was specifically tailored to provide police protection in the context of colleges and universities, the Court focused on the Act's explicitly stated secular purpose (which the defendant did not dispute), and the limitations and protections contained in the Act to ensure neutral, uniform law enforcement by campus police, both of which were not included in the prior law. The more stringent statutory limitations which appeared to be persuasive to the Court include requirements that campus police officers meet uniform law enforcement

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education, training and service requirements applicable to other state police officers; systemic checks including Attorney General oversight of campus police agencies and the review of campus police arrests in State and federal courts; and the fact that the Act requires campus police to enforce only State and Federal laws.

Following a detailed, well-reasoned analysis in an opinion written by Senior Associate Justice Mark Martin, the Court found that the Campus Police Act does not advance or inhibit religion and does not foster an excessive government entanglement with religion. The Court concluded, “The Campus Police Act’s provision of secular, neutral, and no ideological police protection for the benefit of the students, faculty, and staff of Davidson College, as applied to defendant’s conviction for driving while impaired, does not offend the Establishment Clause of the First Amendment to the United States Constitution.”

Due to the uncertainty that had existed under our State’s case law for over 15 years regarding whether religiously affiliated private colleges and universities could operate their own campus police forces, the *Yencer* appeal garnered widespread interest, with the North Carolina Independent Colleges and Universities as well as the state’s major law enforcement associations submitting written arguments in support of the constitutionality of Davidson’s campus police power. While the Supreme Court’s decision applies directly to the DWI arrest at issue in the appeal and to Davidson College, given the thorough discussion and analysis of the Campus Police Act and Establishment Clause jurisprudence set forth in the opinion, it should have a chilling effect on currently pending and future challenges to the enforcement of state and federal law by campus police agencies in North Carolina.

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