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Education Under Fire?: An Analysis of Campus Carry and University Autonomy in Georgia

Brooke Anne Carrington

EDUCATION UNDER FIRE?: AN ANALYSIS OF CAMPUS CARRY AND UNIVERSITY AUTONOMY IN GEORGIA

Brooke Anne Carrington[*]

In 2017, Georgia's controversial campus carry bill was signed into law despite protest from the state's Board of Regents, university officials, and students. Georgia is one of ten states that has implemented campus carry. Georgia's campus carry statute is unique in that it may conflict with Georgia's Constitution, which vests the powers of "government, control, and management" of the University System of Georgia in the Board of Regents. Georgia courts have not yet addressed what this provision of the Constitution means. This Note applies general principles of constitutional interpretation to the provision.

This Note analyzes the framers' intent when drafting the provision in the 1940s and amending the provision in the 1980s. The history surrounding this constitutional provision is particularly informative because it was adopted after Governor Eugene Talmadge attempted to take over the university system in the 1940s. Some states have developed a university autonomy jurisprudence, which provides a preview of limits that a Georgia court may impose on the Board of Regents' powers. After analyzing the effects of the campus carry statutory scheme, this Note concludes that one portion of the statutory scheme conflicts with Georgia's Constitution, meaning the Board of Regents can implement further exceptions to campus carry.

[*] J.D. Candidate, 2020, University of Georgia School of Law; B.A., 2016, University of Georgia.

TABLE OF CONTENTS

I. INTRODUCTION

On May 4, 2017, Governor Nathan Deal signed the highly controversial campus carry bill into law, which mandates that public Georgia universities allow license holders to carry concealed handguns on college campuses.[1] The General Assembly considered similar legislation each year for five years prior.[2] The governor vetoed campus carry in 2016 after the Board of Regents (the Board), the presidents of twenty-nine universities, and campus police chiefs spoke out against the bill.[3] When vetoing the legislation in 2016, Governor Deal stated, "[f]rom the early days of our nation and state, colleges have been treated as sanctuaries of learning where firearms have not been allowed. To depart from such time-honored protections should require overwhelming justification. I do not find that such justification exists."[4]

But, in 2017, state lawmakers again introduced campus carry legislation.[5] This time, the drafters incorporated a limited number of exceptions.[6] The governor then indicated that he would agree to sign the bill because these exceptions adequately addressed his previous concerns.[7] Before Governor Deal officially signed the bill,

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[1] *See* Greg Bluestein, *Georgia Governor Signs Campus Gun Measure*, ATLANTA J. CONST. (May 4, 2017), https://www.ajc.com/news/state--regional-govt--politics/georgia-governor-signs-campus-gun-measure/f02kSvtstlOhpUhniiyxxO/ ("Gov. Nathan Deal signed a measure Thursday that . . . would allow people with firearms permits to carry concealed guns onto public college and university campuses . . . .").

[2] *See* Kristina Torres & Michelle Baruchman, *Is This the Year Georgia Legalizes Guns on College Campuses?*, ATLANTA J. CONST. (Mar. 27, 2017), https://politics.myajc.com/news/state--regional-govt--politics/this-the-year-georgia-legalizes-guns-college-campuses/djMbnT0Fc8uFiv1QyiJryK/ (mentioning that the legislation was considered for five years).

[3] Kristen Bailey, *USG Chancellor Weighs in on Campus Carry Legislation*, GA. TECH NEWS CTR. (Mar. 3, 2016), https://www.news.gatech.edu/2016/03/03/usg-chancellor-weighs-campus-carry-legislation ("[T]he Board of Regents, the presidents of its 29 institutions, its campus police chiefs, and many others support the current firearm law for campuses.").

[4] *Deal Issues 2016 Veto Statements*, OFF. OF THE GOVERNOR (May 3, 2016), https://nathandeal.georgia.gov/press-releases/2016-05-03/deal-issues-2016-veto-statements. He also stated that it was "highly questionable" whether campus carry would make campuses safer and even suggested a sentencing enhancer for those carrying unauthorized weapons on campus. *Id.*

[5] *See* Torres & Baruchman, *supra* note 2 (reporting that campus carry made its way through the legislature again in 2017).

[6] *See* O.C.G.A. § 16-11-127.1(c)(20)(A) (2018) (outlining exceptions to allowing guns on campus). The 2016 bill only included exceptions for student housing and sporting events. H.B. 859 § 1, 153d Gen. Assemb., Reg. Sess. (Ga. 2016).

[7] STATE OF GA. OFFICE OF THE GOVERNOR, HB 280 SIGNING STATEMENT (2017) ("I appreciate the thoughtful consideration given by the General Assembly in expanding these excluded areas within a college campus in this year's bill.").

students, faculty, the Board, and other university officials again spoke out against it.[8] In addition, the majority of students and Georgia citizens disagreed with allowing guns on college campuses.[9] Nevertheless, Governor Deal signed the bill, and his change in opinion from the previous year has been criticized as politically motivated and disconnected from concerns about students and the university system.[10] Governor Deal rationalized his decision to sign the bill by citing safety concerns for students that may be traveling through dangerous areas off campus when commuting to and from universities.[11]

Georgia is not the first state to enact campus carry legislation.[12] Due to the frequency of mass shootings, debate has swirled around whether to allow concealed carry on college campuses.[13] Counting Georgia, ten states have passed legislation allowing concealed

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[8] Johnny Kauffman, *Ga. University System Head Opposes New 'Campus Carry' Bill*, WABE (Feb. 20, 2017), https://www.wabe.org/ga-university-system-head-opposes-new-campus-carry-bill/ (describing Chancellor Steve Wrigley's statement that the Board, the presidents of Georgia's public universities, and campus police departments opposed the campus carry bill).

[9] *See* Rebecca Burns & Nate Harris, *Campus Carry Has Georgia's Pro-Gun Governor in the Hot Seat Again*, TRACE (May 2, 2017), https://www.thetrace.org/2017/05/georgia-campus-carry-nathan-deal-veto/ (stating that a poll of 4,300 students, staff, and faculty at the University of Georgia showed that sixty-nine percent of respondents opposed the 2016 version of campus carry); Maureen Downey, *Georgia Tech Student Leaders: We Don't Want Guns on Our Campus*, ATLANTA J. CONST. (Mar. 9, 2016), https://www.myajc.com/blog/get-schooled/georgia-tech-student-leaders-don-want-guns-our-campus/wynmdsPoXdChgFlF8Te7zJ/ (stating that 70 percent of 5,738 Georgia Tech students surveyed opposed the 2016 bill); Kristina Torres, *AJC Poll: Don't Allow Guns on Georgia's College Campuses*, ATLANTA J. CONST. (Jan. 8, 2017), https://www.ajc.com/news/state--regional-govt--politics/ajc-poll-don-allow-guns-georgia-college-campuses/1BoFZV6gB2RCA6lEdChU3L/ (stating that 54 percent of poll respondents did not want the legislature to pursue campus carry again in 2017).

[10] *See, e.g.*, Ian Bogost, *The Real Chaos of Campus Gun Laws*, ATLANTIC (May 8, 2017), https://www.theatlantic.com/education/archive/2017/05/the-real-chaos-of-campus-gun-laws/525762/ ("HB 280 looks like a law enacted for political spoils rather [than] policy effects."); EVERYTOWN FOR GUN SAFETY, COMPARING GOVERNOR DEAL'S 2016 VETO STATEMENT TO HB 280, https://everytown.org/wp-content/uploads/2017/04/4.8.17-Georgia-Veto-Comparison-Factsheet-FINAL.pdf (last visited Aug. 17, 2019) (demonstrating that H.B. 280 did not address the majority of Governor Deal's concerns about the 2016 bill).

[11] *See* STATE OF GA. OFFICE OF THE GOVERNOR, *supra* note 7 (reasoning that students are targeted because criminals know that students are unarmed and that universities have failed to adequately address this concern within the past year).

[12] *Guns on Campus: Overview*, NAT'L CONF. OF ST. LEGISLATURES (Aug. 14, 2018) http://www.ncsl.org/research/education/guns-on-campus-overview.aspx (referencing states that allow campus carry).

[13] *See id.* (reasoning that campus carry has become a hot issue because of mass shootings on campuses).

weapons on college campuses.[14] Twenty-three states have left the decision of whether to allow concealed carry to universities, and sixteen states have passed legislation prohibiting concealed weapons on college campuses altogether.[15]

Georgia's campus carry law is unique in that it may conflict with Georgia's Constitution.[16] Opponents of campus carry laws in other states have focused on possible claims under the United States Constitution.[17] For example, professors in Texas filed a lawsuit against state government officials claiming that campus carry violated the First, Second, and Fourteenth Amendments, but their lawsuit has failed thus far.[18] In contrast, in 2017, several Georgia professors filed suit against Governor Deal and the Georgia Attorney General, alleging that Georgia's campus carry statutes conflict with a provision in the state Constitution that delegates the government, management, and control of the university system to the Board.[19] The Superior Court of Fulton County dismissed the professors' complaint on sovereign immunity and standing grounds without reaching the state constitutional issue.[20]

This Note proceeds in three subsequent parts. Part II will explain Georgia's campus carry statutes and the constitutional provision at issue, discuss the history and political context surrounding the Constitutions of 1945 and 1983, and review Georgia case law. Part III of this Note argues that Georgia's Constitution gives the Board significant authority as an autonomous entity and that regulating firearms should be within that authority. Finally, Part IV concludes

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[14] *Id.*

[15] *Id.*

[16] *See, e.g.*, Verified Complaint for Declaratory and Injunctive Relief at 3–4, Knox v. Deal, No. 2017CV295763, 2017 WL 4354614 (Ga. Super. Ct. Sept. 25, 2017) (arguing that the statute is unconstitutional).

[17] *See, e.g.*, Glass v. Paxton, 900 F.3d 233, 236 (5th Cir. 2018) (dismissing plaintiffs' academic freedom claim and other claims); Shaundra K. Lewis, *Crossfire on Compulsory Campus Carry Laws: When the First and Second Amendments Collide*, 102 IOWA L. REV. 2109, 2141 (2017) (arguing that the First Amendment right to academic freedom prevails over the Second Amendment); Laura Houser Oblinger, *The Wild, Wild West of Higher Education: Keeping the Campus Carry Decision in the University's Holster*, 53 WASHBURN L.J. 87, 106–11 (2013) (arguing that campus carry violates the right to academic freedom).

[18] *See Glass*, 900 F.3d at 236 (dismissing the plaintiffs' claims).

[19] *See supra* note 16.

[20] *See generally* Knox v. Deal, No. 2017CV295763 (Ga. Super. Ct. Aug. 9, 2018) (denying injunction and dismissing plaintiffs' complaint). The plaintiffs in this suit urged the court to invalidate the entire campus carry statutory scheme, while this Note argues that one portion is invalid.

that Georgia's Constitution permits the Board to create additional exceptions to campus carry.

II. BACKGROUND

Georgia's campus carry legislation has taken effect through a combination of statutes.[21] O.C.G.A. § 16-11-127 criminalizes carrying guns into unauthorized locations, while O.C.G.A. § 16-11-127.1 establishes college campuses as an authorized location. Additionally, O.C.G.A. § 16-11-127.1 outlines exceptions where weapons are not authorized on college campuses, including student housing, athletic events, childcare centers, spaces used for high school instruction, faculty and administrative offices, and locations where disciplinary hearings are conducted.[22] To carry a handgun on a college campus, the carrier must have a license and the handgun must be concealed.[23] O.C.G.A. § 16-11-173 states that "no . . . agency, board, . . . school district, or authority of this state, other than the General Assembly . . . shall regulate in any manner . . . [t]he possession, ownership, transport, [or] carrying . . . of firearms or other weapons." O.C.G.A. § 16-11-173 plays a central role in the campus carry scheme even though it was part of the Georgia Code before. This statute was not problematic until the passage of H.B. 280 because the Board and the General Assembly had historically agreed that guns should be prohibited on campuses.

On the other hand, Article VIII of the Georgia Constitution states, "[t]he government, control, and management of the University System of Georgia . . . shall be vested in the Board of Regents of the University System of Georgia."[24] This language was part of a statute originally enacted in 1931 and was then codified in the Georgia Constitution in 1945.[25] The language of the provision was later altered in the current Constitution that took force in

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[21] O.C.G.A. § 16-11-127 (2018) (criminalizing unauthorized carry); O.C.G.A. § 16-11-127.1 (2018) (establishing universities as an exception where guns are permitted); O.C.G.A. § 16-11-173 (2018) (prohibiting, with limited exceptions, authorities other than the General Assembly from regulating firearms).

[22] O.C.G.A. § 16-11-127.1(c)(20)(A) (2018) (outlining the exceptions to campus carry).

[23] *Id.* (requiring license and concealment).

[24] GA. CONST. art. VIII, § 4, para. 1(b).

[25] O.C.G.A. § 20-3-51 (2018) (vesting the Board with government, control, and management); GA. CONST. of 1945, art. VIII, § IV, para. 1 (showing the same language).

1983.[26] Only approximately fifteen states give public universities autonomy under their Constitutions, with Michigan, California, and Minnesota giving the strongest form of autonomy to universities.[27]

A. CONTROVERSY SURROUNDING THE CONSTITUTION OF 1945

Codifying the Board's powers into the Georgia Constitution came in response to Governor Eugene Talmadge's over-involvement in the university system, which ultimately resulted in the disaccreditation of Georgia's public universities.[28] In 1941, Talmadge accused Walter D. Cocking, Dean of the College of Education at the University of Georgia, and Marvin S. Pittman, President of the Georgia State Teachers College at Statesboro, of favoring racial integration, having communist views, and generally offending "southern principles."[29] He attempted to manipulate the Board into dismissing both administrators, but the Board members disobeyed him.[30] Talmadge then dismissed the Board members who disagreed with him and packed the Board with his supporters.[31] With control of the Board, Talmadge fired any faculty member that he believed supported integration or communism, and he viewed professors from outside of Georgia as particularly suspect.[32] He also threatened to purge books from university libraries that conveyed messages with which he disagreed.[33] His takeover culminated in a

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[26] GA. CONST. art. VIII, § 4, para. 1 (demonstrating that certain language was deleted in the 1983 Constitution).

[27] Neal H. Hutchens, *Preserving the Independence of Public Higher Education: An Examination of State Constitutional Autonomy Provisions for Public Colleges and Universities*, 35 J.C. & U.L. 271, 282–307 (2009). The status of several states, including Georgia, is uncertain because the constitutional provisions have not been clearly interpreted by the courts. *Id.* at 302–07.

[28] *See* PATRICK NOVOTNY, THIS GEORGIA RISING 95 (2007) (describing the withdrawal of accreditation).

[29] *See id.* at 46–47 (summarizing Talmadge's accusations against the university administrators).

[30] *See id.* at 47, 54 (recounting how the Board initially dismissed Cocking and Pittman but subsequently reconsidered and reversed).

[31] *See* THOMAS G. DYER, THE UNIVERSITY OF GEORGIA: A BICENTENNIAL HISTORY, 1785–1985, at 230–31 (1985) (describing the packing of the Board).

[32] *See id.* at 231, 234–35 (discussing the firings of several professors and "the ridiculousness" of requiring professors to be from Georgia when only three professors at the University of Georgia School of Education were from Georgia); NOVOTNY, *supra* note 28, at 55–56 (discussing Talmadge's stance on "foreign professors").

[33] *See* NOVOTNY, *supra* note 28, at 56–57, 70–71 (discussing how the state assistant attorney general launched an investigation into "questionable" books on campus that discussed relations between the races, and how Talmadge stated, "[w]e're going to get rid of them").

scandal when the Southern Association of Colleges and Secondary Schools (SACSS) decided to revoke accreditation from ten of Georgia's public universities.[34]

Unsurprisingly, the accreditation of Georgia's universities became a major talking point during the election of 1942.[35] Ellis Arnall, Talmadge's main challenger during the primaries, announced his candidacy a matter of days before SACSS announced the withdrawal of accreditation.[36] He focused his campaign on restoring accreditation and insulating the Board from political influence.[37] Students across the state protested the disaccreditation and endorsed Arnall for governor,[38] and Arnall gave some of his most notable campaign speeches at universities.[39]

After Arnall won the governorship in 1942, the General Assembly unanimously passed a constitutional amendment giving the Board significant autonomy, and the governor signed the amendment.[40] The public ratified it in 1943 by a large majority.[41] Arnall stated that the purpose of the amendment was "to keep politics out of the education system."[42] Shortly after the adoption of the amendment, SACSS reinstated accreditation.[43]

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[34] *Id.* at 95–96 ("SACSS was 'forced to conclude that the University System of Georgia had been the victim of unprecedented and unjustifiable political inference' . . . . [The firings] 'flagrantly violated sound educational policy.'").

[35] *See* DYER, *supra* note 31, at 237 (stating that the university system was the dominant issue of the 1942 elections).

[36] *See* NOVOTNY, *supra* note 28, at 93–94 (describing the timing of Arnall's announcement).

[37] *See* DYER, *supra* note 31, at 237 (recounting how Arnall promised to "rectify past wrongs and work for restoration of the system's accreditation"); NOVOTNY, *supra* note 28, at 102 ("My first official act as Governor of Georgia will be to inaugurate and set in motion a program designed to free our state institutions from political influence, domination, and control." (citing ATLANTA J. CONST., May 17, 1942, at A12)).

[38] *See* DYER, *supra* note 31, at 237 ("The campaign also saw large numbers of university students actively working [on] Arnall's behalf."); NOVOTNY, *supra* note 28, at 108 (summarizing a protest in Statesboro).

[39] NOVOTNY, *supra* note 28, at 107–10 (describing speeches in Statesboro and Athens).

[40] DYER, *supra* note 31, at 238 ("Proposed as a constitutional amendment, the bills received unanimous approval from both houses of the legislature. Arnall immediately signed them into law and the people overwhelmingly ratified the action of governor and legislature in the next general election.").

[41] *Id.*

[42] NOVOTNY, *supra* note 28, at 119.

[43] *Id.* at 122 ("The executive committee of . . . (SACSS) restored the university system's accreditation on 30 January 1943.").

Arnall then headed the commission to rewrite Georgia's Constitution in 1943,[44] and the language of the provision remained unchanged.[45] In the Constitution of 1945, the provision stated,

> There shall be a Board of Regents of the University System of Georgia, and the government, control, and management of the University System of Georgia and all of its institutions in said system shall be vested in said Board of Regents of the University System of Georgia . . . . The said Board of Regents of the University System of Georgia shall have the powers and duties as provided by law existing at the time of the adoption of this Constitution, together with such further powers and duties as may be hereafter provided by law.[46]

B. CONSTITUTION OF 1983

Because Georgia's Constitution had become filled with an unorganized assortment of amendments, legislators decided in 1977 to again rewrite the document.[47] The language of the Board of Regents provision stayed essentially the same, but the drafters removed the language tying the Board's powers to statute:[48]

> (b) . . . The government, control, and management of the University System of Georgia and all of the institutions in said system shall be vested in the Board of Regents of the University System of Georgia . . . .
> (d) The board of regents may hold, purchase, lease, sell, convey, or otherwise dispose of public property,

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[44] 1 RECORDS OF THE COMMISSION OF 1943–1944 TO REVISE THE CONSTITUTION OF GEORGIA 4–5 (Albert B. Saye ed., 1946) (establishing Arnall as the chairman of the commission by a unanimous vote).

[45] GA. CONST. of 1945, art. VIII, § IV, para. 1.

[46] *Id.*

[47] *See* MELVIN B. HILL, JR., THE GEORGIA STATE CONSTITUTION: A REFERENCE GUIDE 16, 19 (1994) (describing the goals of the constitutional commission as making provisions flexible and removing all provisions that should be statutory in nature).

[48] *Compare* GA. CONST. of 1945, art. VIII, § IV, para. 1 (tying the Board's powers to statutes in 1945 and thereafter), *with* GA. CONST. art. VIII, § 4, para. 1(d) (only tying "other powers" to statute).

> execute conveyances thereon, and utilize the proceeds arising therefrom; may exercise the power of eminent domain in the manner provided by law; and shall have such other powers and duties as provided by law.[49]

Committee Member Erwin A. Friedman stated that the language was essentially as all-encompassing as he could imagine.[50] Committee members expressed an interest in maintaining the status quo of the university system and discussed at length the special balance of power between the Board and the General Assembly.[51]

C. GEORGIA CASE LAW

Georgia courts have not yet interpreted the specific language of the provision other than to determine that the Board has sovereign immunity because of its significant powers.[52] However, prior to the 1983 Constitution, the Supreme Court of Georgia generally described the Board's powers as broad and wide-reaching.[53] The

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[49] GA. CONST. art. VIII, § 4, para. 1.

[50] *See Committee to Revise Article VIII*, 1 STATE OF GEORGIA SELECT COMMITTEE ON CONSTITUTIONAL REVISION 1977–1981 TRANSCRIPTS OF MEETINGS 7 (June 10, 1980) ("[This provision is] about as concise and as clear and all encompassing as I think [it] could be. You know, it just says there shall be a Board of Regents and the government, control and management of the university system and all of its institutions shall be vested in said Board of Regents, period. I don't think it could be any better than that, to be perfectly honest with you."). This Note cites to the bound volumes of these transcripts, which are organized by date. The page numbers restart for each meeting date.

[51] *Id.* at 12 ("The relationship between the Board of Regents and the legislature is a dynamic relationship . . . . [T]he Board of course is very jealous of its constitutional responsibility with respect to higher education . . . and the legislature which each one is always very gracious about the other's authority and power . . . ."); *Committee to Revise Article VIII*, 1 STATE OF GEORGIA SELECT COMMITTEE ON CONSTITUTIONAL REVISION 1977–1981 TRANSCRIPTS OF MEETINGS 6 (May 22, 1980) ("I was of the impression that the Board of Regents has complete power and control, you know, over our University System.").

[52] *See, e.g.*, Olvera v. Univ. Sys. of Ga.'s Bd. of Regents, 782 S.E.2d 436, 438 (Ga. 2016) (reasoning that the Board has sovereign immunity because it "is the state agency vested with the governance, control, and management of the University System of Georgia").

[53] *See* McCafferty v. Med. Coll. of Ga., 287 S.E.2d 171, 175–76 (Ga. 1982) (discussing the legislative history behind the constitutional amendment of 1943 and concluding that the Board should be able to sue to protect its powers); Villyard v. Regents of Univ. Sys. of Ga., 50 S.E.2d 313, 317 (Ga. 1948) (ruling that the Board had the power to operate a laundry business at reduced prices because it was a power necessary to its usefulness); State v. Regents of Univ. Sys. of Ga., 175 S.E. 567, 572 (Ga. 1934) ("The powers granted are broad and comprehensive, and, subject to the exercise of a wise and proper discretion, the regents are untrammeled except by such restraints of law as are directly expressed, or necessarily

Court of Appeals of Georgia recently cited the constitutional provision in *Board of Regents of the University System of Georgia v. Doe* without interpreting what exactly the clause means.[54] The court confusingly cited cases prior to the 1983 revision and statutes that were in place prior to the 1945 Constitution.[55] However, the court did not need to resolve whether the Board is limited by statute to determine that the Board had the ability to delegate its powers to one of its institutions.[56] In addition, the Court of Appeals of Georgia lacks the jurisdiction to determine constitutional questions.[57] The Supreme Court of Georgia has ruled that the Board and university entities are subject to the Open Records Act and Open Meetings Act, but the case never mentioned the constitutional provision.[58]

Without much guidance from Georgia courts on how to interpret this provision of the Constitution, it is necessary to utilize Georgia's general approach to constitutional interpretation.

III. ANALYSIS

When determining if a statute conflicts with the Constitution, the plain meaning of the text governs.[59] Georgia courts also look to the intent of the framers, which can be derived from constitutional

implied. The Legislature does not pretend to govern the system, but has intrusted this responsibility to the Board of Regents.").

[54] 630 S.E.2d 85, 91–92 (2006).

[55] *See id.* (first citing *Villyard*, 50 S.E.2d at 315; and then citing O.C.G.A. § 20-3-31).

[56] *See id.* at 92 (reasoning that the Board did not show the law limits it in delegating power to Georgia Tech). *But see* Hutchens, *supra* note 27, at 306–07 (reasoning that *Doe* makes the status of constitutional autonomy in Georgia ambiguous).

[57] *See* GA. CONST. art. VI, § 6, para. 2 (stating that the Supreme Court of Georgia has exclusive appellate jurisdiction for constitutional questions).

[58] *See generally* Red & Black Publ'g Co. v. Bd. of Regents, 427 S.E.2d 257 (Ga. 1993) (holding that the University of Georgia's student Organization Court was subject to these statutes). One can safely assume that a constitutional argument was not presented to the court because the provision was not mentioned in the opinion.

[59] *See, e.g.*, Olevik v. State, 806 S.E.2d 505, 513 (Ga. 2017) ("[W]e consider the plain and ordinary meaning of the text, viewing it in the context in which it appears and reading the text in its most natural and reasonable manner."); Lathrop v. Deal, 801 S.E.2d 867, 882 (Ga. 2017) (reasoning that the plain and natural meaning governs because "[c]onstitutions are the result of popular will" (first citing Clarke v. Johnson, 33 S.E.2d 425, 427 (Ga. 1945); and then citing Ga. Motor Trucking Ass'n v. Ga. Dep't of Revenue, 801 S.E.2d 9, 12 (Ga. 2017))).

commissions,[60] and the effects of the statute if held valid.[61] Georgia has a strong presumption of constitutionality,[62] but if a statute and the Constitution conflict, the statute is considered void.[63]

A. TEXT

The Supreme Court of Georgia has repeatedly ruled that the plain meaning of the text always governs when interpreting constitutional provisions.[64] The plain meaning of this provision supports allowing the Board the discretion to decide where guns should be allowed on campus. According to *Merriam-Webster*, the term "vested" means "fully and unconditionally guaranteed as a legal right, benefit, or privilege."[65] "Government" means "exercis[ing] continuous sovereign authority over" or "the making and administration of policy in."[66] "Control" means "directing influence over."[67] "Management" means "the conducting or supervising of something."[68]

After deriving the plain meaning of this provision by defining each relevant term, it can be inferred that the Georgia Constitution gives the Board the absolute legal right to make policies concerning the university system. And notably, while the Constitution does not

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[60] *See, e.g.*, *Olevik*, 806 S.E.2d at 513 ("[T]he broader context in which that text was enacted may also be a critical consideration."); Neal v. State, 722 S.E.2d 765, 771 (Ga. 2012) ("The cardinal rule of construction is to ascertain the legislative intent, keeping in view the old law, the evil, and the remedy." (citing O.C.G.A. § 1-3-1(a) (2018))); Serv. Emps. Int'l Union v. Perdue, 628 S.E.2d 589, 591 (Ga. 2006) (reasoning that the intent of the framers is one of multiple considerations); Smith v. McMichael, 45 S.E.2d 431, 435 (Ga. 1947) (reasoning that the interpretation of a disputed provision by a constitutional commission could be used to show the framers' intent).

[61] *See, e.g.*, Cade v. State, 60 S.E.2d 763, 767 (Ga. 1950) ("[T]he courts may look at the effects of such [a] statute, if held valid.").

[62] *See, e.g.*, *Perdue*, 628 S.E.2d at 591 ("[W]e must presume that acts of the General Assembly are constitutional, and never declare them void 'except in a clear and urgent case . . . .'" (quoting Brugman v. State, 339 S.E.2d 244, 251 (Ga. 1986))); City of Calhoun v. N. Ga. Elec. Membership Corp., 213 S.E.2d 596, 605 (Ga. 1975) (reasoning that statutes must violate "express words of the Constitution" to be considered void).

[63] GA. CONST. art. I, § 2, para. 5 ("Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them."); *see also* Dennison MFG Co. v. Wright, 120 S.E. 120, 123 (Ga. 1923) ("[An unconstitutional statute] is wholly void. In legal contemplation it is as inoperative as if it had never been passed.").

[64] *See* cases cited *supra* note 59.

[65] MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1391 (11th ed. 2003).

[66] *Id.* at 541. Government is defined as "the act or process of governing." *Id.* These definitions are derived from the definition for "govern." *See id.*

[67] *Id.* at 272.

[68] *Id.* at 754.

contain any explicit limitation on the Board's powers, the drafters clearly did limit the Board of Education's powers in the preceding sections.[69] In the current Constitution, the Board's powers are no longer linked to statute.[70] Subparagraph (d) in the Board of Regents provision now states that that the Board will have such "other" powers as provided by law.[71] The plain meaning of this phrase does not limit those powers already given to the Board, such as the government, control, and management of the university system.[72] The Office of the Attorney General has also supported this interpretation.[73] Furthermore, this phrase is located in the section discussing the Board's powers as they relate to property and eminent domain, indicating that "other" refers to powers of a similar kind.[74] Accordingly, the Constitution of 1983 gives the Board even more power than the Constitution of 1945 because only "other powers" are now linked to statute instead of the Board's powers overall.[75]

However, the words "government, control, and management" are open textured terms.[76] Reasonable minds could disagree as to what the plain meaning of these terms include, such as whether they include implementing policies concerning safety and carrying firearms on campus. Courts will have a lot of leeway to interpret this phrase. Also, Georgia courts maintain a presumption of constitutionality and require that challenged statutes clearly

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[69] *See* GA. CONST. art. VIII, § 1, para. 1 ("[Regarding p]ublic education for the citizens prior to the college or postsecondary level[,] . . . the General Assembly may by general law provide for the establishment of education policies for such public education."); *Id.* § 2, para. 1(b) ("The State Board of Education shall have such powers and duties as provided by law.").

[70] *Compare* GA. CONST. of 1945, art. VIII, § IV, para. 1 ("The said Board of Regents of the University System of Georgia shall have the powers and duties as provided by law existing at the time of the adoption of this Constitution, together with such further powers and duties as may be hereafter provided by law."), *with* GA. CONST. art. VIII, § 4, para. 1(b) ("The government, control, and management of the University System of Georgia and all of the institutions in said system shall be vested in the Board of Regents . . . . The board of regents . . . shall have such other powers and duties as provided by law.").

[71] GA. CONST. art. VIII, § 4, para. 1.

[72] *See id.* (outlining the powers granted to the Board).

[73] Unofficial Op. Ga. Att'y Gen. U96-12 (1996) (advising that a resolution requiring the Board to take all actions necessary to uphold a Corps of Cadets program was merely advisory because "the General Assembly may not, through the passage of a Joint Resolution which has the effect of law, infringe upon the Board of Regents' constitutional authority to govern, control, and manage the University System of Georgia").

[74] GA. CONST. art. VIII, § 4, para. 1(d).

[75] *See* sources cited *supra* note 70.

[76] GA. CONST. art. VIII, § 4, para. 1(b).

conflict with the Constitution.[77] Therefore, courts may also consider the intent of the framers and the effects of the statute to determine if the statute and Constitution actually conflict with each other.[78]

B. INTENT OF THE FRAMERS

The framers of both Constitutions intended to give the Board complete autonomy to control matters that affect the quality of education.[79] Fear of overreach into the intimate workings of the university system was the entire reason the General Assembly proposed the constitutional amendment in the first place.[80] Governor Talmadge attempted to impose his views regarding segregation and communism onto university officials.[81] Georgia universities lost accreditation because the university system was so susceptible to political influence.[82] Faculty, students, and the citizens of Georgia demonstrated concern about the decrease in the quality of education at Georgia's universities, which is why the public overwhelmingly approved the constitutional amendment.[83] Governor Arnall, the most important framer of the 1945 Constitution, stated that the constitutional amendment would guard the university system from overreach both by the executive and the legislative branches.[84]

In essence, the framers almost created a fourth branch of government due to the amount of autonomy they granted to the Board. Universities have been described as separate entities that warrant more protection than a typical state agency because they

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[77] *See* cases cited *supra* note 62.

[78] *See* cases cited *supra* notes 60–61.

[79] *See supra* Part II; *see also* Federated Publ'ns, Inc. v. Bd. of Trs. of Mich. State Univ., 594 N.W.2d 491, 497 (Mich. 1999) (reasoning that the legislature cannot enter the educational sphere (citing Regents of Univ. of Mich. v. Mich. Emp't Relations Comm'n, 204 N.W.2d 218 (Mich. 1973))). *But see* Regents of Univ. of Mich. v. State, 419 N.W.2d 773, 780 (Mich. Ct. App. 1988) (reasoning that university autonomy should not be limited to a strictly educational sphere if there is no express limitation).

[80] *See supra* Section II.A.

[81] *See supra* notes 29–33.

[82] *See supra* note 34 and accompanying text.

[83] *See* DYER, *supra* note 31, at 239 ("Among the . . . most potent effects were the waves of adverse publicity which created an image of the university and other Georgia colleges as backwater institutions where academic freedom did not exist and where gallus-snapping demagogues regularly and successfully interfered in academic affairs.").

[84] RECORDS OF THE COMMISSION, *supra* note 44, at 200 ("No matter who is in the Legislature or no matter who is the Governor of Georgia, [the Board] will continue to function until the people change it, immune to the caprices and whims of politics . . . . [W]e went as far as we could."); *Id.* at 4–5 (establishing Arnall as chairman).

are not under the control of one sole branch of government.[85] The framers of the Constitution of 1945, including Governor Arnall, repeatedly emphasized that incorporating the Board into the Constitution would free it from political interference.[86] There is no better example of political interference than specifically overriding what the Board reasonably believes is best for education and the student body, especially when the students, faculty, and citizens of Georgia generally agree.[87]

The framers of the Constitution of 1983 agreed that the provision kept the Board free from political interference even though they slightly altered the language and structure.[88] The framers merely aimed to draft a longer lasting document because the Constitution contained a large number of amendments and so many constitutional provisions were linked to statute.[89] Considering this goal, the framers of the Constitution of 1983 did not intend to strip the Board of any powers it already possessed and only gave the General Assembly the ability to allocate to the Board further powers that are not in the Constitution.[90] They gave the Board even more power by no longer linking the powers of governance, control, and management to statute whatsoever. The commission agreed to keep the language from the 1945 Constitution because it was already all-encompassing.[91] The granting of lump sum appropriations to the Board also reflects the intention of the 1983 Commission to extend the powers of the Board as well as to protect it from the General Assembly.[92]

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[85] *See, e.g.*, DEBORAH K. MCKNIGHT, UNIVERSITY OF MINNESOTA CONSTITUTIONAL AUTONOMY: A LEGAL ANALYSIS 3 (2004), https://www.house.leg.state.mn.us/hrd/pubs/umcnauto.pdf ("Constitutional autonomy is a legal principle that makes a state university a separate department of government, not merely an agency of the executive or legislative branch.").

[86] *See* NOVOTNY, *supra* note 28, at 119 (demonstrating the framers' intent); *see also* DYER *supra* note 31, at 237 (discussing Governor Arnall's intent).

[87] *See* sources cited *supra* note 9 (discussing that students and citizens opposed the bill).

[88] *See Committee to Revise Article VIII*, *supra* note 50, at 6 ("[The Constitution] keeps higher education out of politics to a great degree.").

[89] *See* HILL, JR., *supra* note 47, at 19 (discussing the motivations behind rewriting the Constitution).

[90] *See Committee to Revise Article VIII*, *supra* note 50, at 41–42 (discussing that the powers of government, control, and management should be permanent powers in the Constitution but other powers could create a constitutional problem under the 1945 version).

[91] *See id*.

[92] GA. CONST. art. VIII, § 4, para. 1(c) (stating that the Board will receive lump sum appropriations instead of line item); *Committee to Revise Article VIII*, 2 STATE OF GEORGIA SELECT COMMITTEE ON CONSTITUTIONAL REVISION 1977–1981 TRANSCRIPTS OF MEETINGS 62

The drafters of the 1983 Constitution discussed the unique relationship between the Board and the General Assembly.[93] A legislator argued that the Board was almost its own branch of government because the Board and the legislature exercised checks and balances on each other. Committee Member Friedman stated,

> The Board is very careful not to want to test the legislature; the legislature is very careful not to want to test the Board, and so we have this ongoing kind of skirmishing in a good way in which each side wants to be constantly sure the other side understands the limits of its prerogatives.[94]

The drafters also discussed that the University System of Georgia was superior to systems in other states because there was one central authority entrusted with making policy and operational decisions.[95] Therefore, the framers of the Constitution of 1983 would have also disagreed with altering the delicate balance of power between these two branches of government by implementing campus carry, especially considering the fact that firearms have been prohibited from Georgia's universities since 1810.[96] Based on the interpretation above of the text and the intent of the framers, Georgia's university system should enjoy the same constitutional protection given by Michigan, California, and Minnesota.[97] In fact, Georgia's university autonomy provision warrants even more protection than the "Big Three" states due to the particularly unique history surrounding this constitutional amendment.[98]

(July 17, 1980) ("I think that would be a major power. What [lump sum appropriations are] doing is protecting them from the General Assembly.").

93 *Committee to Revise Article VIII*, *supra* note 50, at 12.

94 *Id.*

95 *See id.* at 4–7 (describing the uniqueness of Georgia's university system and that other higher education leaders across the country envied it).

96 *See* Plaintiffs' Motion for an Injunction and Memorandum in Support at 7, Knox v. Deal, No. 2017CV295763, 2017 WL 4354614 (Ga. Super. Ct. Sept. 25, 2017) ("And be it further ordained that no student shall be allowed to keep any gun, pistol, Dagger, Dirk sword cane or any other offensive weapon . . . ." (citing THE MINUTES OF THE SENATUS ACADEMICUS 1799–1842, at 85 (1976)).

97 *See* Hutchens, *supra* note 27, at 282 (reasoning that Michigan, California, and Minnesota strongly recognize university autonomy under their Constitutions). Other states have also recognized that universities are protected from legislative and executive interference. *Id.* at 293–307. But the parameters of their powers are less clear. *Id.*

98 *See id.* at 282 (discussing the "Big Three" states: Michigan, California, and Minnesota).

C. EFFECTS OF THE STATUTE IF HELD VALID

Deciding where firearms should or should not be allowed on college campuses should be a power within the Board's discretion because firearms affect the quality of postsecondary education. The effects of the statute demonstrate that campus carry conflicts with the Board's ability to effectively govern, control, and manage educational policy. The exceptions that the legislature incorporated into H.B. 280 do not adequately address the educational concerns associated with permitting guns on college campuses,[99] demonstrating that the General Assembly is not the correct body to make this determination. The Board has drawn attention to the overlooked issues with the legislation.[100] The university system's inability to control the presence of firearms in science laboratories produces the clearest conflict between educational policy and the effects of campus carry.[101] Firearms compromise laboratories because these spaces often contain hazardous chemicals.[102] A potential negligent discharge could prove disastrous. Now, Georgia universities cannot prohibit anyone from carrying a concealed handgun into a laboratory, putting both student and faculty safety at risk and threatening important research.[103]

Furthermore, professors and students have argued that permitting firearms in classrooms jeopardizes education because students and faculty feel less comfortable discussing sensitive topics.[104] Governor Deal described universities as "sanctuaries of

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[99] *See* O.C.G.A. § 16-11-127.1(c)(20)(A) (2018) (describing exceptions).

[100] *See Additional Information Regarding House Bill 280*, UNIV. SYS. OF GA., https://www.usg.edu/hb280/additional_information (last visited Nov. 13, 2019) (discussing that handguns are permitted in laboratories, summer camps, health centers, and spaces where high school students are present and that faculty members cannot inform students that they are taking a class with high school students where guns are prohibited nor carry guns in their own offices).

[101] *Id.* A similar argument can be made for art studios, which contain dangerous equipment that can reach temperatures above 20,000 degrees Fahrenheit. *See* Plaintiffs' Motion for an Injunction and Memorandum in Support, *supra* note 96, at 41.

[102] *See* William F. Banholzer et al., *The Importance of Teaching Safety*, CHEMICAL & ENGINEERING NEWS (May 6, 2013), https://cen.acs.org/articles/91/i18/Importance-Teaching-Safety.html (reasoning that students in academic labs are more likely to be injured than workers in industrial ones and noting that academic lab accidents have recently resulted in fatalities).

[103] *See Additional Information Regarding House Bill 280*, *supra* note 100.

[104] *See, e.g.*, Plaintiffs' Motion for an Injunction and Memorandum in Support, *supra* note 96, at 42 (claiming that guns will have a disparate impact on academic discussions); STUDENTS FOR GUN FREE SCHOOLS, WHY OUR CAMPUSES ARE SAFER WITHOUT CONCEALED HANDGUNS 2, http://dev.keepgunsoffcampus.org/wp-

learning" when vetoing campus carry in 2016, [105] and the classroom serves as the central forum for learning. Firearms have likely been banned from Georgia's campuses for centuries because university officials and legislators did not view them as appropriate in the educational environment.[106] Granted, students and faculty would not necessarily know that someone else in the classroom possessed a firearm because Georgia law requires that handguns on campus be concealed.[107] However, preliminary research demonstrates that states that have implemented campus carry will see an increase in personal violence on campus and that students and faculty feel unsafe.[108] These trends support the claim that campus carry impacts the educational environment even though students and faculty may not know exactly who is carrying a firearm.

Also, the current statute does not allow firearms at sporting events on campus.[109] It becomes difficult to distinguish why firearms should be banned from sporting events and not from large events on campus with controversial speakers or even lecture hall classes that include over 300 students. Having notable speakers on campus to discuss controversial issues is central to education and academic freedom. Speakers may feel less comfortable speaking on controversial topics knowing that participants will be carrying firearms. Texas universities, for example, have been able to address all of the above concerns because the state's version of campus carry

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content/uploads/2013/06/SGFSWhyOurCampuses-Electronic.pdf (last visited Nov. 13, 2019) ("Concealed handguns would detract from a healthy learning environment.").

105 *See Deal Issues 2016 Veto Statements*, *supra* note 4.

106 *See supra* note 96 and accompanying text.

107 O.C.G.A. § 16-11-127.1(c)(20)(A)(vii) (2018) (stating that exception only applies to concealed handguns).

108 *See* Julie A. Gavran, *Concealed Handguns on Campus a Multi-Year Crime Study*, 7 VISIONS 13, 14, 18 (2017) (demonstrating that Utah and Colorado both saw an increase in rape on campus after implementing campus carry, but causation remains unclear); Patricia Somers et al., *Duck and Cover, Little Lady: Women and Campus Carry*, 33 THOUGHT & ACTION 37, 43–48 (2017) https://www.researchgate.net/publication/320087678_Duck_and_Cover_Little_Lady_Women_and_Campus_Carry (arguing that campus carry has exacerbated power differentials between minorities on campus and that professors have changed their teaching practices because of it); DANIEL W. WEBSTER, FIREARMS ON COLLEGE CAMPUSES: RESEARCH EVIDENCE AND POLICY IMPLICATIONS 3, 15–22 (Oct. 15, 2016), https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/_pdfs/GunsOnCampus.pdf (concluding that campus carry could lead to more dangerous interpersonal disputes and suicides on campus and that states with "right to carry" laws have seen a significant increase in violence).

109 O.C.G.A. § 16-11-127.1(c)(20)(A)(i) (2018) (stating that exception does not apply to athletic sporting event property).

gives universities discretion to enact other reasonable regulations.[110] Texas universities have responded by banning guns from high hazard laboratories and from events where the speaker has a contract prohibiting firearms.[111]

D. LIMITS ON UNIVERSITY AUTONOMY IN OTHER STATES

Even those states that provide their university systems with a large amount of discretion recognize that universities are not completely free from legislative limits.[112] Michigan courts have held that the legislature can regulate universities through generally applicable statutes enacted for a clear statewide policy or the general welfare.[113] California allows the legislature to pass laws relating to certain budgeting issues, police powers, and matters of statewide concern that do not interfere with internal management.[114] Minnesota has also recognized that universities are at least subject to generally applicable laws that do not directly interfere with daily operations.[115] However, most states that recognize constitutional university autonomy have not yet encountered the issue of what happens when an exercise of the police power conflicts with universities' preferred educational policy.

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[110] TEX. GOV'T CODE ANN. § 411.2031(d-1) (West 2016) (providing that presidents or chief executive officers of higher education institutions can implement additional regulations).

[111] *See*, *e.g.*, THE UNIVERSITY OF TEXAS AT AUSTIN, CAMPUS CARRY POLICIES AND IMPLEMENTATION STRATEGIES 4–5 (Sept. 1, 2016) (prohibiting guns from laboratories with hazardous materials and special events that require prohibition by contract).

[112] *See* Hutchens, *supra* note 27, at 285, 288, 290–91 (discussing the limits of constitutional autonomy in the "Big Three").

[113] For example, Michigan courts have upheld laws that impose employment requirements on universities, which all public employers must obey, but they will not uphold laws specifically targeted at universities. *See*, *e.g.*, Branum v. State, 145 N.W.2d 860, 862 (Mich. Ct. App. 1966) (reasoning that universities are not immune from the state's workmen's compensation act because it is an exercise of the police power); Regents of the Univ. of Mich. v. State 419 N.W.2d 773, 779–80 (Mich. Ct. App. 1988) (holding statute prohibiting university from doing business in South Africa unconstitutional, and that although university could be limited by a general public policy, such a limit did not apply).

[114] *See* Karen Petroski, *Lessons for Academic Freedom Law: The California Approach to University Autonomy and Accountability*, 32 J.C. & U.L. 149, 180–81 (2005) (discussing the limits on constitutional autonomy). California, unlike Georgia, does not give lump sum appropriations to universities. *Id.*

[115] *See* Star Tribune Co. v. Univ. of Minn. Bd. of Regents, 683 N.W.2d 274, 290 (Minn. 2004) (holding that the state's Data Practices Act and Open Meeting Law did not interfere with university autonomy).

Even if Georgia adopted limitations on university autonomy similar to those in Michigan, California, and Minnesota, at least one of the statutes comprising Georgia's campus carry legislation should still be considered void or inapplicable.[116] Unlike some versions of campus carry in other states,[117] Georgia's statutory scheme specifically targets universities and is not part of a generally applicable law or clearly established statewide policy. In fact, Georgia's generally applicable policy is that weapons are prohibited from any school safety zone, which includes both K–12 schools and universities.[118] The recent legislation passed simply provides an exception to this generally applicable rule for license holders on university property.[119]

Georgia does not maintain a clearly established public policy of allowing citizens to carry guns everywhere—and certainly not in school zones—because the General Assembly has recognized that there are sensitive spaces where guns should not be allowed.[120] To the contrary, dating back to the 1800s, Georgia has maintained a statewide policy of recognizing school zones (including universities) as sensitive spaces, and only just recently made an exception for public universities.[121]

A Georgia court could conclude that the General Assembly validly exercised its police power by permitting guns on campus but that the Board can implement further regulations relating to firearms if deemed properly within its powers of government, control, and management. Georgia courts have generally held that the General Assembly may exercise its police powers if the means are reasonably necessary to protect the public welfare and that

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[116] *See supra* notes 112–15 and accompanying text.

[117] *See, e.g.*, COLO. REV. STAT. § 18-12-201 (2018) (providing for concealed carry generally instead of specifically targeting universities).

[118] *See* O.C.G.A. § 16-11-127.1(a)(3)(B) (2018) (defining a school safety zone as a college or university).

[119] *See id.* § 16-11-127.1(b)(1) (stating that it is illegal to carry in a school safety zone). For a comparable arrangement in another state, see *Regents of the University of Michigan v. State*, 419 N.W.2d 773, 779 (Mich. Ct. App. 1988) (reasoning that because a state act was "directed solely at educational institutions" it cannot be considered part of a statewide policy).

[120] *See* O.C.G.A. § 16-11-127 (2018) (establishing mental health facilities, polling places, court houses, jails, prisons, nuclear power plants, and places of worship as unauthorized locations).

[121] *Id.* § 16-11-127.1(b)(1) (stating that it is illegal to carry in a school safety zone); *see also supra* note 96.

restricting the carrying of firearms falls within its police powers.[122] Proponents of the law claim that campus carry protects students from crimes that may occur on or near campus and deters mass shooters.[123] Even assuming that these arguments have merit, determining whether guns should be allowed in a specific building or event on campus should be left within the Board's purview. The General Assembly's police power should not be unlimited in the university context, especially if the legislation directly interferes with education and is not part of a statewide policy or generally applicable law.

It is difficult to argue that simply decriminalizing the carrying of firearms on campus is outside the General Assembly's police power, but these code provisions along with O.C.G.A. § 16-11-173 severely limit the Board's discretion. O.C.G.A. § 16-11-127.1 only provides for a certain number of exceptions,[124] but the Board should be able to create additional exceptions, at least when the negative effects on education and daily operations outweigh any benefits to the general welfare. Research indicates that campus carry statutes have not had any correlation with preventing mass shootings thus far and have only led to increased violence on campus.[125]

If Georgia adopts the police power limitation adopted by other states, courts may grapple with what the delicate balance between the police power and educational policy should look like in the future. However, given the explicit text of O.C.G.A. § 16-11-173 and the practical implications of this code section after the other campus carry statutes took effect, Georgia courts need not delve into a complex constitutional construction analysis to find that Georgia's present campus carry statutory scheme conflicts with Georgia's Constitution. O.C.G.A. § 16-11-173 strips the Board of the ability to regulate firearms in any instance whatsoever. Upholding this portion of the statutory scheme would require the conclusion that regulating firearms could *never* fall within the Board's powers of "government, control, and management."[126] Therefore, O.C.G.A.

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[122] *See, e.g.*, King v. State, 535 S.E.2d 492, 496 (Ga. 2000) (reasoning that the public must require interference and that the means must be reasonably necessary to exercise the police power (citing Powell v. State, 510 S.E.2d 18, 25 (Ga. 1998))); *see also* Carson v. State, 247 S.E.2d 68, 73 (Ga. 1978) (holding that state law prohibiting ownership of sawed-off shotguns was not unreasonable and did not exceed police power).

[123] *See, e.g.*, STATE OF GA. OFFICE OF THE GOVERNOR, *supra* note 7.

[124] *See* O.C.G.A. § 16-11-127.1(c)(20)(a) (2018) (outlining exceptions).

[125] *See supra* note 108 and accompanying text.

[126] GA. CONST. art. VIII, § 4, para. 1(b).

§ 16-11-173 should be considered void or at least inapplicable to the Board.

The states that have ruled that universities cannot regulate firearms—Colorado, Oregon, and Utah—do not have a constitutional provision similar to Georgia's.[127] The Colorado Constitution does not give its Regents any powers.[128] In Oregon, the university system does not enjoy any constitutional protection.[129] The Utah Constitution directly links the university system's powers to statute.[130] Relatively few states in the United States allow the university system the same constitutional protections as Georgia, and those that do have not yet encountered this issue. Georgia is actually the only state that has implemented campus carry yet also has a strong university autonomy provision in its Constitution.[131] The historical context surrounding the original constitutional amendment of 1943 is certainly unique. Therefore, any Georgia court should be cautious about adopting another state's approach.

IV. CONCLUSION

Considering both the Constitution's text and the intent of the framers demonstrated by the constitutional commissions of 1943–1944 and 1977–1981, the Board of Regents should enjoy constitutional autonomy free from legislative and executive interference. However, the scope and possible limits on this power remain unclear because Georgia courts have not yet interpreted the

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[127] *See* Regents of the Univ. of Colo. v. Students for Concealed Carry on Campus, L.L.C., 271 P.3d 496, 502 (Colo. 2012) (holding that university policy violated the Concealed Carry Act); Or. Firearms Educ. Found. v. Bd. of Higher Educ., 264 P.3d 160, 165 (Or. Ct. App. 2011) (holding that the university system exceeded its authority by regulating firearms because it was already preempted by state law); Univ. of Utah v. Shurtleff, 144 P.3d 1109, 1122 (Utah 2006) (holding that the university is subject to statutes at issue and was unable to enact policies regarding firearms).

[128] COLO. CONST. art. 9, § 12 (describing how its Board of Regents is comprised, without specifically allotting any powers).

[129] OR. CONST. (excluding any mention of the university system).

[130] UTAH CONST. art. 10, § 4 ("The general control and supervision of the higher education system shall be provided for by statute.").

[131] *See Guns on Campus: Overview*, *supra* note 12 (noting that Arkansas, Colorado, Georgia, Idaho, Kansas, Mississippi, Oregon, Texas, Utah, Wisconsin, and Tennessee have adopted campus carry); Hutchens, *supra* note 27, at 281–307 (listing the states that recognize university autonomy at least to some degree). Idaho is the only other state that has adopted campus carry and recognizes university autonomy, but the Idaho Constitution only gives its Board of Regents the power to generally supervise and control financials. *See* IDAHO CONST. art. 9, § 10. Moreover, its Board's powers appear to be tied to statute. *Id.*

relevant constitutional provision. Even those states that have a developed higher education jurisprudence and recognize university autonomy have not yet addressed whether regulating firearms would be within their university system's purview. Georgia's campus carry legislation completely strips the Board and the university system overall from any ability to regulate where firearms can be present on campus. The university system should at the very least be allowed to regulate those situations where education could be seriously impacted.

Therefore, O.C.G.A. § 16-11-173 should be considered inapplicable to the Board, and the Board should be able to implement further exceptions to campus carry. Texas's version of campus carry could provide some useful guidance to the General Assembly on how to redraft campus carry legislation. Like Texas, Georgia could prevent the Board from implementing regulations that would result in a complete ban by implication, yet could still allow the Board to implement additional exceptions as should be allowed under the Constitution.[132] On the other hand, the concerns associated with allowing so many exceptions should not be overlooked, as most universities do not have the infrastructure to screen exempted areas or properly inform students and visitors of complex policies. Even though statutes and case law from other states can prove useful, Georgia courts should craft university autonomy jurisprudence around the state's unique history moving forward. If the Board and the University System of Georgia are not given the respect they deserve, Georgia citizens are left with one lingering question—what do constitutional amendments even stand for?

[132] *See* sources cited *supra* notes 110–11 (discussing Texas's campus carry statute).