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Defending the Public Quad: Doxxing, Campus Speech Policies, and the First Amendment

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Abstract. This Essay explores how universities bound by the First Amendment can constitutionally proscribe doxxing—the malicious publication of personally identifying information. As campus controversies have fueled targeted harassment campaigns against students, staff, and faculty, responses from university administrators have been limited. To defend members of their educational community from threats to their safety, well-being, and reputation, schools should follow the lead of states experimenting with prohibitions on doxxing. Doing so, however, will require carefully working through various legal and practical problems, which this Essay surveys and offers initial responses to, in an effort to outline how the "public quads" of the United States may remain spaces for robust inquiry and free expression.

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Introduction

> *I suppose it's theoretically conceivable that at some unknown future time information technology might get so powerful that [dignity, freedom, and individuality] will indeed be threatened with 'destruction' by [online] speech . . . .*
>
> — Eugene Volokh[1]

Online activity often leads to serious offline consequences, as social media can easily direct mass anger toward individuals caught in the crossfire of cultural and political debates.[2] Yet legal scholars have not yet paid much attention to doxxing[3]—the revealing of "information about (an individual) on the internet, typically with malicious intent."[4] On campuses throughout the country, university administrators are confronting a dilemma posed by doxxing: how to uphold free speech principles while protecting students and staff from threats to their safety, psychological well-being, and reputation. This Essay explores how public universities—and private universities bound by the First Amendment—can constitutionally proscribe doxxing. Part I provides background on doxxing and how states and schools have begun to approach the

1. Eugene Volokh, *Freedom of Speech and Information Privacy: The Troubling Implications of a Right to Stop People from Speaking About You*, 52 STAN. L. REV. 1049, 1112 (2000).

2. *See, e.g.*, Lisa Eadicicco, *This Female Game Developer Was Harassed So Severely on Twitter She Had to Leave Her Home*, BUS. INSIDER (Oct. 12, 2014, 8:46 AM PDT), https://perma.cc/8HBP-HJQK (detailing how "violent and graphic death threats on Twitter," combined with the publication of her home address, led a woman and her husband to flee their home).

3. Doxxing may be associated with—but is not identical to—other forms of internet-based speech harm that have received more scholarly attention, such as cyberstalking, cyberbullying, and revenge porn. *See, e.g.*, Eugene Volokh, *One-to-One Speech vs. One-to-Many Speech, Criminal Harassment Laws, and "Cyberstalking,"* 107 NW. U. L. REV. 731 (2013); Lyrissa Lidsky & Andrea Pinzon Garcia, *How Not to Criminalize Cyberbullying*, 77 MO. L. REV. 693 (2012); Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 354 (2014); Emma Marshak, Note, *Online Harassment: A Legislative Solution*, 54 HARV. J. ON LEGIS. 503 (2017) (cyberstalking); Kirsten Hallmark, Note, *Death by Words: Do United States Statutes Hold Cyberbullies Liable for Their Victims' Suicide?*, 60 HOUS. L. REV. 727 (2023) (cyberbullying); Snehal Desai, Note, *Smile for the Camera: The Revenge Pornography Dilemma, California's Approach, and Its Constitutionality*, 42 HASTINGS CONST. L.Q. 443 (2015) (revenge porn).

4. *Dox*, OXFORD ENGLISH DICTIONARY, https://perma.cc/TVF8-ZR37 (archived May 9, 2024); *accord Dox*, MERRIAM-WEBSTER, https://perma.cc/LCY6-SY6L (archived May 9, 2024) (defining the verb as "to publicly identify or publish private information about (someone) especially as a form of punishment or revenge"). "Doxxing" (also spelled "doxing") stems from internet slang for "dropping documents"—or "dox"—about individuals, i.e., revealing information about their lives in the physical world to an online community. *See* Megan Garber, *Doxing: An Etymology*, ATLANTIC (Mar. 6, 2014), https://perma.cc/2CBU-Y5V5; Mat Honan, *What Is Doxing?*, WIRED (Mar. 6, 2014, 1:03 PM) ("The word dox is the modern, abbreviated form of 'dropping dox,' an old-school revenge tactic that emerged from hacker culture in 1990s.").

phenomenon; Part II introduces key principles which bear on the constitutionality of campus doxxing regulations; and Part III argues why universities should seek to eliminate doxxing on campus—in accordance with their commitments to freedom of expression and academic inquiry—before proposing how they can do so via thoughtful implementation of anti-doxxing policies.

I. The Problems of Doxxing

In recent years, doxxing has attracted increasing attention as a social phenomenon,[5] yet it remains relatively under-theorized as a legal one. This Part begins, therefore, by presenting some of the central "problems of doxxing" confronting legislatures, judges, and university administrators, before exploring how states and schools have thus far responded to these challenges. This context, in turn, will prove crucial in understanding both the legal and practical dilemmas posed by doxxing on campus, as laid out in Parts II and III.

Universities have become focal points for debates around doxxing, as viral campus controversies increasingly turn students into the unwilling focal points of online outrage.[6] The following hypothetical—based on recent reporting and the author's conversations with targets of doxxing—captures some of the difficulties in defining and responding to doxxing in schools:

> Ahead of a major election, Lenora, a sophomore at a well-known university, invites her classmates to an event her student group, Left of Liberal, is hosting: "The Cost of Voting Blue." Lenora, a vocal campus activist, hopes her event will convince her classmates to sit out the election, sending a message to the Democratic Party that they cannot take the youth vote for granted. Milton, president of Students for Responsible Progress, is incensed by Lenora's message and takes to his organization's social media accounts to denounce her event, writing in part: "For too long the Reasonable Middle has remained silent. Out-of-touch activists like @left_lenora are imperiling democracy and deserve to know how that makes us feel! Drop her a line at lenora@university.edu, and here is her picture in case she dares show her face on campus after this despicable stunt."[7]

5. *See Dox—Interest over Time*, GOOGLE TRENDS, https://perma.cc/2LTS-WPD8 (archived May 9, 2024) (showing considerable growth in internet searches for "dox" since 2010, with spikes in July 2017, June 2020, and October 2023).

6. Throughout this Essay, unless otherwise noted, variants of "university," "campus," and "school" refer to all postsecondary institutions of higher education in the United States, including colleges.

7. *See* Vimal Patel, *At UChicago, a Debate Over Free Speech and Cyberbullying*, N.Y. TIMES (updated July 5, 2023), https://perma.cc/8UXV-TZ4E (detailing how a student posted a lecturer's name, photo, and email address alongside criticism of a course she offered, resulting in harassment and threats severe enough to cause the lecturer to postpone the course and bring complaints for doxxing and harassment, ultimately dismissed, against the student).

> Milton's post strikes a chord and is circulated widely over the internet, inspiring many other posts and articles which contain fierce criticism of Lenora, alongside her photo, email, online handles, and even her home address. Soon enough, hateful messages—including death[8] and rape[9] threats—inundate Lenora's inboxes, and she becomes depressed and scared to leave her room. A national group, Mainstream Revolution, gets involved, too, chartering trucks which display criticisms of Lenora to drive around near her parents' house and her campus residence.[10]
>
> Lenora cancels her event, shuts down her online life, and moves in with a friend off-campus to complete the academic term online. Although she is never physically harmed, she becomes fearful of strangers[11] and worries she will struggle to get a job.[12] Milton, meanwhile, remains defiant, continuing to post about Lenora and writing in an op-ed: "Such is the price of public participation in a democratic society. It is unfortunate some people are so vicious online, but, at the end of the day, I feel justified in calling attention to this critical issue."

This hypothetical highlights several tricky issues. First, what, if anything, is sanctionable in Milton's conduct: publicizing Lenora's personally identifying information? Doing so in conjunction with fierce criticism of her? Continuing

8. *See, e.g.*, Alex Kane, *"It's Killing the Student Movement": Canary Mission's Blacklist of Pro-Palestine Activists Is Taking a Toll*, INTERCEPT (Nov. 22, 2018, 9:00 AM), https://perma.cc/J5RG-F8LB (cataloging instances of students receiving death threats after being targeted for speech on campus); Alex Kane, *A "McCarthyite Backlash" Against Pro-Palestine Speech*, JEWISH CURRENTS (Oct. 20, 2023), https://perma.cc/8A26-S5NX (same).

9. Doxxing has been described as a gendered and racialized form of communicative violence, as women and minorities suffer disproportionately from online attacks. *See* Briony Anderson & Mark A. Wood, *Doxxing: A Scoping Review and Typology*, *in* THE EMERALD INTERNATIONAL HANDBOOK OF TECHNOLOGY-FACILITATED VIOLENCE AND ABUSE 205, 214 (Jane Bailey, Asher Flynn & Nicola Henry eds., 2021); Stine Eckert & Jade Metzger-Riftkin, *Doxing*, *in* THE INTERNATIONAL ENCYCLOPEDIA OF GENDER, MEDIA, AND COMMUNICATION 1, 1 (Karen Ross ed. 2020); *see also* Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 71-74 (2009) (relating the disturbing details of an online harassment campaign targeting female law students).

10. *See* Anemona Hartocollis, *After Writing an Anti-Israel Letter, Harvard Students Are Doxxed*, N.Y. TIMES (Oct. 18, 2023), https://perma.cc/9UPF-KT3S ("[W]ithin days, students affiliated with [pro-Palestine] groups were being doxxed, their personal information posted online. Siblings back home were threatened. Wall Street executives demanded a list of student names to ban their hiring. And a truck with a digital billboard—paid for by a conservative group—circled Harvard Square, flashing student photos and names, under the headline, 'Harvard's Leading Antisemites.'").

11. *See* John B. Major, Note, *Cyberstalking, Twitter, and the Captive Audience: A First Amendment Analysis of 18 U.S.C. § 2261A(2)*, 86 S. CAL. L. REV. 117, 126 (2012) (explaining how harassment over the internet, even when not containing threats of violence, can lead to "post-traumatic stress disorder, depression, and serious emotional distress" (citations omitted)).

12. *See, e.g.*, Maureen Farrell, *A Prestigious Law Firm Rescinded Job Offers for Columbia and Harvard Students, but It May Reverse Itself*, N.Y. TIMES (updated Oct. 18, 2023), https://perma.cc/M22F-PLJZ (highlighting the employment consequences faced by some students for their political activity on campus).

to target her as she suffers intense reprisals from third parties? These questions of conduct interrelate closely with questions of intent: What *mens rea* can be inferred from Milton's actions? Could or should Milton have foreseen the results of his post? And, even if he did, should his publication nevertheless be protected as political speech? These are some of the quandaries facing university administrators, but they are far from alone. State legislatures, law enforcement officials, and judges, too, are increasingly called upon to define doxxing, and then identify it in messy real-world circumstances.

A. The State(s) of Doxxing Prohibitions

More than a dozen states have passed generally applicable laws prohibiting doxxing or targeting doxxing-like behavior, efforts which may be instructive to schools seeking to do the same.[13] Comparison of these state laws reveals that:[14]

- Most states define the *actus reus* for doxxing broadly. Missouri, for instance, outlaws posting the "name, home address, Social Security number, telephone number, or any other personally identifiable information of any person on the internet" under certain circumstances.[15] As for the means of communication, it appears that only Oregon's[16] and Virginia's[17] definitions of doxxing encompass

13. *See* ALA. CODE § 13A-11-38 (2024); ARIZ. REV. STAT. ANN. § 13-2916 (2024); CAL. PENAL CODE § 653.2(a) (West 2024); FLA. STAT. § 836.115(2)(b) (2024); 740 ILL. COMP. STAT. § 195/10 (2024); KY. REV. STAT. ANN. § 525.085 (West 2024); MICH. COMP. LAWS § 750.411s (2024); MO. REV. STAT. § 565.240 (2024); NEV. REV. STAT. § 41.1347 (2024); OR. REV. STAT. § 30.835 (2024); TEX. PENAL CODE ANN. § 42.074 (West 2024); UTAH CODE ANN. § 76-9-201(3)(a) (LexisNexis 2024); VA. CODE ANN. § 18.2-186.4 (2024); WASH. REV. CODE § 4.24.792 (2024). Another five states have anti-doxxing laws protecting certain classes of people, such as minors, public health officials, and law enforcement officers. *See* ARK. CODE ANN. § 5-27-610 (2024); COLO. REV. STAT. § 18-9-313 (West 2024); MINN. STAT. § 609.5151 (2024); OKLA. STAT. tit. 21, § 1176 (2024); W. VA. CODE § 5A-8-24 (2024).

14. This Essay does not survey potentially applicable federal laws. For treatment of federal law in this space, see Julia M. MacAllister, Note, *The Doxing Dilemma: Seeking a Remedy for the Malicious Publication of Personal Information*, 85 FORDHAM L. REV. 2451, 2466-75 (2017) (summarizing the strengths and weaknesses of three federal laws which might be used to prosecute doxxing). *See also* United States v. Sayer, 748 F.3d 425, 433-36 (1st Cir. 2014) (upholding a conviction under the federal interstate cyberstalking statute for online harassment and doxxing-like behavior following First Amendment challenges).

15. MO. REV. STAT. § 565.240(1). Texas, meanwhile, limits the scope of its anti-doxxing law to publishing "the residence address or telephone number of an individual." TEX. PENAL CODE ANN. § 42.074(a) (West 2024).

16. OR. REV. STAT. § 30.835 (2024).

17. VA. CODE ANN. § 18.2-186.4 (2024).

non-electronic publications, while Arkansas may be unique in limiting its definition to publications on social media.[18]

- States differ more widely in how they define doxxing's *mens rea* element, ranging from requiring intent merely to disrupt an "individual's electronic communication,"[19] all the way to threatening "great bodily harm or death."[20] Most state laws fall between those extremes, though, such as Florida's, which outlaws inciting third parties to "threaten or harass" someone such that they have "reasonable fear of bodily harm."[21] And Washington's intent standard for doxxing appears to be the most thoroughly defined.[22]
- Legislatures have not explicated in the text of these statutes how such restraints on speech are constitutional, though some include caveats such as Alabama's provision that its anti-doxxing law does not limit "[p]olitical speech protected by the First Amendment."[23]

Overall, California's approach to criminalizing doxxing is representative. The state's Penal Code Section 653.2 makes it a misdemeanor to:

> [W]ith intent to place another person in reasonable fear for his or her safety, or the safety of the other person's immediate family, by means of an electronic communication device . . . and for the purpose of imminently causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distribut[e] . . . personal identifying information, including, but not limited to, a digital image of another person . . . which would be likely to incite or produce that unlawful action . . . .[24]

Since its passage in 2008,[25] Section 653.2 has apparently never been challenged on First Amendment grounds, and *People v. Shivers* appears to be the only published

18. ARK. CODE ANN. § 5-27-610(a) (2024).

19. UTAH CODE ANN. § 76-9-201(3)(a) (LexisNexis 2024).

20. MO. REV. STAT. § 565.240(1) (2024).

21. FLA. STAT. § 836.115(2)(b) (2024); *accord* KY. REV. STAT. ANN. § 525.085(2) (West 2024).

22. *See* WASH. REV. CODE § 4.24.792(6)(c) (2024) ("'Doxing' means unauthorized publication of personal identifying information with intent or knowledge that the information will be used to harm the individual whose information is published, or with reckless disregard for the risk the information will be used to harm the individual whose information is published.").

23. ALA. CODE § 13A-11-38(d)(1) (2024).

24. CAL. PENAL CODE § 653.2(a) (West 2024).

25. *See* 2008 Cal. Stat. 4214 (A.B. 919). Before its passage, Section 653.2 was supported by Republican and law enforcement coalitions, *see California Bill Analysis, A.B. 919*, SEN. COMM. ON PUB. SAFETY (July 3, 2007), https://perma.cc/Q2KD-JDWM, and opposed by criminal justice reformers, *see California Bill Analysis, A.B. 919*, ASSEMBLY COMM. ON PUB. SAFETY (Apr. 24, 2007), https://perma.cc/95K7-YLHH, presenting a challenge to narratives that doxxing is primarily a concern of left-wing activists. *See also* Emma Grey Ellis, *Whatever Your Side, Doxing Is a Perilous Form of Justice*, WIRED (Aug. 17, 2017,

footnote continued on next page

case examining the statute in any depth.[26] In *Shivers*, a California court of appeals sustained the conviction of a defendant who published tweets about his ex-wife, falsely accusing her of threatening him, while encouraging people to call the police on her.[27] The court found that the defendant's intent could be ascertained from circumstantial evidence—including the nature of publishing public messages on a social media website—and therefore that he should have reasonably known that his posts "were likely to incite" others to contact, and potentially harm, his ex-wife.[28]

The facts of *Shivers* may differ from those likely to occur on campuses. But the case is still a useful—if rare—example of a court applying an anti-doxxing statute in a way that recognizes the power of the internet to transform a rash statement into a real reason for its target to have concern for her safety. Schools are not equipped with the same investigatory and judicial resources as states, however, and, perhaps as a result, have so far primarily sought to deal with doxxing without relying on state criminal or civil law analogues.

B. University Approaches to Doxxing

In the wake of highly publicized campus controversies, some universities have formed task forces and compiled resources to support members of their community impacted by doxxing and other forms of online harassment.[29] Professors,[30] university leaders,[31] and students[32] are also increasingly speaking

8:00 AM), https://perma.cc/BLT7-ZNDW (discussing the negative effects of doxxing as practiced by both left- and right-wing actors).

26. 186 Cal. Rptr. 3d 352 (2015).

27. *Id.* at 354-56.

28. *See id.* at 355-56.

29. *See, e.g.*, Minouche Shafik & Laura Ann Rosenbury, *Announcing Doxing Resource Group*, COLUMBIA UNIV.: OFF. OF THE PRESIDENT (Nov. 1, 2023), https://perma.cc/CUF6-HAKT; Michelle N. Amponsah, *Harvard Creates Task Force for Doxxed Students Amid Backlash Over Israel Statement*, HARV. CRIMSON (Oct. 25, 2023), https://perma.cc/B5FR-RG6R; *Resources for Prevention and Response to Online Harassment*, UC BERKELEY: INFO. SEC. OFF., https://perma.cc/T2MV-SE3G (archived May 9, 2024).

30. *See* Richard L. Abel, An Open Letter to the Deans of U.S. Law Schools (2023), https://perma.cc/TE82-KCE6 ("[I]n an era in which the boundaries between the university and the broader world are more permeable than ever, it is impossible to meaningfully vindicate the liberal values that are central to American legal education without taking steps to protect students against the kinds of institutional and professional threats and reprisals that your students are currently facing . . . .").

31. Erwin Chemerinsky, *Dean's Statement: Condemning Canary Mission*, UC BERKELEY SCH. OF L. (June 1, 2023), https://perma.cc/6U9R-EP5P ("I condemn this targeting of particular students because of their speech with the goal of harming their employment opportunities. It has caused great injury to our students and our community. This targeting of students because of their views undermines our desire to be a place where difficult issues can be debated and where students feel comfortable taking political positions.").

out against these deleterious campaigns. Such responses can be considered *reactive* efforts to change discursive norms on campus and protect students from the worst effects of internet infamy. While these are valuable—and potentially transformative—interventions, this Essay focuses on official university speech policies, on the theory that *proactive* prohibitions have a greater chance of deterring doxxing, thereby reducing the need to later ameliorate its harms.

There are more than 175 four-year, non-profit universities in California.[33] A review of all publicly accessible speech policies for these schools reveals that only one, Stanford University, has published an official anti-doxxing policy.[34] Stanford's policy was promulgated in 2022,[35] in response to an incident in which a journalist and Stanford alum was fired after being targeted by a student group for statements she made while an undergraduate.[36] The policy—which is modeled closely on California's anti-doxxing law, Section 653.2[37]—was passed by Stanford's Faculty Senate with near-unanimous support.[38]

Despite hewing closely to state law, Stanford's anti-doxxing policy could still be challenged in court on constitutional grounds because Stanford, like all universities in California, is subject to California Education Code Section 94367, better known as the Leonard Law.[39] The Leonard Law extends the protections of the First Amendment of the federal Constitution—and

32. Editorial Board, *Keeping Stanford's Speech Free*, STAN. DAILY (Oct. 29, 2023, 8:47 PM), https://perma.cc/D7NH-2VV7 ("[E]xposing personal information such as [a student's] email and home address . . . . chill[s] speech, as students rightfully fear for their safety and future prospects.").

33. For the purposes of this Essay, only speech policies at California universities were surveyed, as they are uniformly subject to First Amendment analysis due to the Leonard Law. *See infra* notes 39-42 and accompanying text.

34. *Anti-Doxxing Policy*, STANFORD UNIV., https://perma.cc/TH6B-MX46 (archived May 9, 2024). The California Institute of Technology also states doxxing is "in violation of Caltech's policies," but, as that school's definition is less detailed than Stanford's, it is not subject to analysis here. Caltech, Institute Policy: Unlawful Harassment and Abusive Conduct 2 (2023), https://perma.cc/BQ48-778S.

35. Chelcey Adami, *Faculty Senate Discusses DEI Survey, Faculty Diversity, and Anti-Doxxing Policy at Final Meeting of 2021-22 Year*, STANFORD REP. (June 9, 2022), https://perma.cc/5UM7-NXN2. The policy was not passed without any controversy, however. *See* Chelcey Adami & Amy Adams, *Faculty Senate Votes to Table Recommendations Aimed at Addressing Personal Attacks Designed to Silence Free Speech*, STANFORD REP. (Nov. 19, 2021), https://perma.cc/AN6L-2VDA (noting disagreements between faculty members over the ideological tilt and legal clarity of the proposed policy).

36. Georgia Rosenberg, *Alumna Fired from Associated Press Following SCR Targeted Social Media Attacks*, STAN. DAILY (May 20, 2021, 11:54 PM), https://perma.cc/2VAC-352W.

37. *Compare Anti-Doxxing Policy*, *supra* note 34, *with* CAL. PENAL CODE § 653.2(a) (West 2024).

38. Zoe Edelman, *Faculty Senate Votes in Support of Amendment to Establish Anti-Doxxing Policies*, STAN. DAILY (Jan. 27, 2022, 11:01 PM), https://perma.cc/CG2X-NXJK.

39. CAL. EDUC. CODE § 94367 (West 2024).

comparable protections in the state Constitution[40]—to all students facing speech-related discipline at universities in the state, including at private schools,[41] and has been used to strike down campus speech policies before.[42]

Fear of litigation costs may partly explain why other universities have not yet taken as proactive an approach to regulating doxxing as Stanford. Yet it is possible that doxxing is already sanctionable under campus speech policies which do not expressly contemplate it. Consider Pomona College's Speech Code, which lists harassment, incitement to lawless action, and true threats among categories of speech which may lead to discipline,[43] subject to the limitations of the First Amendment.[44] As will be explored in Part II, if an act of doxxing by a student falls into one of the categories, it could lead to punishment by Pomona, even absent an on-point policy.[45]

Because of the confidentiality of school disciplinary proceedings, it is not possible to know which, if any, university policies have been invoked to

40. The Ninth Circuit has noted that the "Liberty of Speech Clause [of California's Constitution] provides greater protection for expressive activity than does the First Amendment . . . ." L.A. All. for Survival v. City of Los Angeles, 157 F.3d 1162, 1165 (9th Cir. 1998). However, "California follows federal law for free expression claims arising in the school setting," Dariano v. Morgan Hill Unified Sch. Dist., 767 F.3d 764, 776 n.4 (9th Cir. 2014), so this Essay does not delve into the nuances of whether state and federal free speech guarantees should be interpreted in lockstep, in California or elsewhere.

41. CAL. EDUC. CODE § 94367(a) (West 2024) ("No private postsecondary educational institution shall make or enforce a rule subjecting a student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside the campus or facility of a private postsecondary institution, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution."). Note, however, that the Leonard Law does not apply to private religious schools, to the extent its application "would not be consistent with the religious tenets" of such universities. CAL. EDUC. CODE § 94367(c).

42. *See* Corry v. Leland Stanford Junior Univ., No. 740309, at *42 (Cal. App. Dep't Super. Ct. Feb. 27, 1995) (invalidating portions of Stanford University's speech code for violating the First Amendment).

43. *See Article IV: Speech Code*, POMONA COLL., https://perma.cc/GAW3-TVCV (archived Feb. 3, 2024).

44. *See id.* This language tracks closely with the Leonard Law's caveat that it "does not prohibit the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected." CAL. EDUC. CODE § 94367(e).

45. Several other California universities' policies contain similar lists of constitutionally unprotected speech acts. *See, e.g.*, UC Irvine, Policy & Procedure Manual, Sec 900-01: Free Speech at UCI Policy 2 (2023), https://perma.cc/J6DL-4VQJ ("UCI may restrict expression that . . . constitutes a genuine threat or harassment . . . or is otherwise directly incompatible with the functioning of the university."). Meanwhile, the University of California at Santa Barbara has gone as far as to warn students on its police department's website not to engage in speech which "infringe[s] on the rights of others." *Freedom of Expression: A Right with Responsibilities*, UC SANTA BARBARA: POLICE DEP'T, https://perma.cc/TB8V-WZRH (archived May 9, 2024).

restrain doxxing to date. Nor does it appear that any schools have yet been sued vis-à-vis their handling of doxxing complaints. To diminish the likelihood of such a suit succeeding, though, public universities throughout the nation (and private universities in California[46]) must be prepared to defend any discipline for doxxing as a constitutionally permissible restraint on speech.[47]

II. Free Speech: Online and On Campus

This Part considers three theories on which doxxing regulations might be constitutionally predicated, with extended discussion of the applicability of true threats doctrine. It ends with an argument for why—despite open questions about the legality of prohibitions on doxxing—schools are in a better position than states to defend such restraints on speech.

Speech may be legally abridged when its "slight social value" is "clearly outweighed by the social interest in order and morality."[48] Such categories of unprotected speech traditionally include obscenity, defamation, fraud, incitement, speech integral to criminal conduct, fighting words, and true threats.[49] It is crucial to determine which, if any, of these categories an anti-doxxing law or policy comports with; otherwise, the regulation is likely to be found facially unconstitutional. This is because the measure—as a content-based restriction on protected speech[50]—would then be subject to strict

46. Though not the focus of the rest of this Essay, private universities outside of California may have independent reasons to have their approaches to doxxing comport with the Constitution. *See, e.g.*, GEOFFREY R. STONE ET AL., UNIV. OF CHI., COMM. ON FREEDOM OF EXPRESSION AT UNIV. OF CHI., REPORT OF THE COMMITTEE ON FREEDOM OF EXPRESSION 2 (n.d.), https://perma.cc/A877-TYR5 ("Because the University [of Chicago] is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn."). For a contrasting perspective elsewhere in this Symposium issue, see generally Kenji Yoshino, Essay, *Reconsidering the First Amendment Fetishism of Non-State Actors: The Case of Hate Speech on Social Media Platforms and at Private Universities*, 76 STAN. L. REV. 1755 (arguing that private universities should not voluntarily submit to First Amendment doctrine which neither binds them nor advances their institutional objectives).

47. *See* Christian Leg. Soc'y v. Martinez, 561 U.S. 661, 686 (2010) ("[The Supreme Court] is the final arbiter of the question whether a public university has exceeded constitutional constraints, and we owe no deference to universities when we consider that question.").

48. Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942).

49. *See, e.g.*, United States v. Stevens, 559 U.S. 460, 468 (2010) (listing obscenity, defamation, fraud, incitement, and speech integral to criminal conduct as unprotected); Virginia v. Black, 538 U.S. 343, 359 (2003) (discussing fighting words and true threats).

50. *See* Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015) ("Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.").

scrutiny analysis, at which point it is nearly impossible for a restriction on speech to be upheld.[51]

The unprotected categories of speech which most readily might justify restraints on doxxing are incitement, speech integral to criminal conduct, and true threats.[52] To qualify as incitement, a speech act must lead to "imminent lawless action."[53] Some scholars view this imminence requirement as "fatal" in internet speech cases, "where there will almost always be a significant time delay between the speech and action."[54] Nonetheless, several states appear to have relied on incitement jurisprudence in constructing their anti-doxxing statutes. These states include Arizona, which outlaws online posts that "imminently . . . incite . . . unwanted physical contact, injury[,] or harassment."[55]

Closely related to incitement is speech constituting "an integral part of conduct in violation of a valid criminal statute."[56] Courts have relied on this category to uphold state[57] and federal[58] cyberstalking statutes.[59] But this theory may be of limited utility in the doxxing context. This is because a legislature cannot outlaw doxxing and then circularly justify that restraint on

51. *See, e.g.*, State v. Bishop, 787 S.E.2d 814, 820-22 (N.C. 2016) (striking down state cyberbullying statute as overly broad under strict scrutiny analysis for punishing speech without requiring an injury be identified); People v. Marquan M., 19 N.E.3d 480, 487-88 (N.Y. 2014) (similar).

52. Doxxing in cases of mistaken identity or false attribution may also lead to lawsuits or disciplinary proceedings for defamation. *See, e.g.*, Liam Knox, *Columbia Student Sues Over Doxing Truck*, INSIDE HIGHER ED (Nov. 15, 2023), https://perma.cc/8LYF-6JFV (reporting the filing of suit by a student—labeled as an antisemite online and via a mobile billboard—who was falsely identified by a conservative activist as having signed a controversial letter).

53. Brandenburg v. Ohio, 395 U.S. 444, 447 (1969) (per curiam).

54. Mary-Rose Papandrea, *The Free Speech Rights of University Students*, 101 MINN. L. REV. 1801, 1820 (2017).

55. ARIZ. REV. STAT. ANN. § 13-2916(A)(4) (West 2024).

56. Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 498 (1949).

57. *See* Buchanan v. Crisler, 922 N.W.2d 886, 899 (Mich. Ct. App. 2018) (concluding that speech which "leads to, and is intended to cause, unconsented contacts that terrorize, frighten, intimidate, threaten, harass, or molest" is not protected, while noting that "courts and scholars have cautioned against applying [the] speech-integral-to-criminal-conduct exception too broadly"). Because of the relative recency and rarity of anti-doxxing laws, cases analyzing cyberstalking and cyberharassment statutes are referenced as instructive, though not dispositive, in this Part.

58. *See, e.g.*, United States v. Osinger, 753 F.3d 939, 944-46 (9th Cir. 2014) (rejecting void-for-vagueness and as-applied challenges to 18 U.S.C. § 2261A(2), the federal cyberstalking statute).

59. And, again, there is evidence that some state laws are in part premised on this understanding. These laws include California's anti-doxxing statute, which refers to the consequences of doxxing—"unwanted physical contact, injury, or harassment, by a third party"—as "unlawful action[s]." CAL. PENAL CODE § 653.2(a) (West 2024).

speech because the newly criminalized "speech *is* the criminal act."[60] By extension, schools may not, for instance, be able to prohibit an act of doxxing as constituting harassment if harassment of that nature is not already recognized under applicable state or federal law.[61]

Because of such limitations in the applicability of these first two categories of unprotected speech, therefore, schools and states should additionally evaluate whether doxxing may be considered a threat.

A. Doxxing as Threat

A true threat is "a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."[62] Courts generally do not require true threats to include explicitly violent language; rather, even "subtle" indicators that the target of a threat might suffer "evil, injury, or damage" suffice.[63] There is also no requirement that the person who makes the threat actually intends to carry it out.[64] Instead, courts consider only whether the speaker intended the recipient to fear their threat. For instance, in the seminal case of *Virginia v. Black*, the Supreme Court examined the relevant history of racial terror to conclude that the Ku Klux Klan's message of a burning cross was intended to make its recipients "fear for their lives."[65]

Similar contextual inquiries could justify restraints on doxxing that causes its targets to worry for their safety. Such an argument (far from fully briefed here) might go as follows: Doxxing that widely disseminates personally identifying information enables, and often leads, untold numbers of people to

60. *Cf.* People v. Relerford, 104 N.E.3d 341, 352 (Ill. 2017) (declining to apply the speech-integral-to-criminal-conduct exception); State v. Billings, 287 A.3d 146 (Conn. App. Ct. 2022) (declining to apply the speech-integral-to-criminal-conduct exception because it was "clear that the defendant's Facebook posts were not integral to criminal conduct; they *were* the criminal conduct").

61. This Essay does not delve into the muddled literature on harassment, except to note here that a single publication is unlikely to be sufficiently "severe, pervasive, and objectively offensive," Davis *ex rel.* LaShonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 653 (1999), as to warrant sanction as harassment in itself. Future work may assess whether a doxxing publication that incites or enables already illegal third-party harassment or threats can be considered "integral" to those acts.

62. Virginia v. Black, 538 U.S. 343, 359 (2003).

63. Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. of Life Activists, 290 F.3d 1058, 1075, 1088 (9th Cir. 2002) (en banc) (first quoting United States v. Orozco-Santillan, 903 F.2d 1262, 1265 (9th Cir. 1990); and then quoting United States v. Gilbert, 884 F.2d 454, 457 (9th Cir. 1989)) (holding that an anti-abortion group publishing abortion providers' names and faces online in the wake of previous violence committed against other abortion providers constituted true "threat[s] of force").

64. *See id.* at 1075.

65. 538 U.S. at 357.

threaten or commit violence against its target.[66] The nature of the internet is such that these third-party actions are increasingly predictable, if not outright intended.[67] Ergo, it is reasonable to hold a perpetrator of doxxing accountable for the threats their publication unleashes. There are at least three difficulties, however, in squaring anti-doxxing laws and policies with true threats jurisprudence in this way.

First, as the syllogism above acknowledges, doxxing often leads to fear of what strangers might do, rather than fear of the speaker. Some courts may sanction online posts which encourage "unconsented contacts that terrorize, frighten, intimidate, [or] threaten" their target.[68] But other judges may yet be wary of punishing a speaker for threatening "violence or other harm that the speaker" does not control,[69] as this could risk creating a new category of unprotected speech,[70] turning true threats analysis into a disfavored "free-floating test,"[71] or collapsing incitement and threats analysis into one another.

Second, assessing intent is difficult. The Supreme Court recently held that proving a defendant's subjective recklessness is sufficient to sustain a conviction in true threats cases.[72] Though a lower threshold than

66. *See* Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc., 50 Cal. Rptr. 3d 27, 39 (Cal. Ct. App. 2006) (holding that "publishing targets [sic] home addresses" is a relevant factor in finding a true threat).

67. Speech occurring online is subject to similar First Amendment analysis as speech occurring in other contexts, even though its harms may manifest differently. *See* Reno v. ACLU, 521 U.S. 844, 879, 885 (1997); *In re* Anonymous Online Speakers, 661 F.3d 1168, 1173 (9th Cir. 2011) ("[O]nline speech stands on the same footing as other speech—there is 'no basis for qualifying the level of First Amendment scrutiny that should be applied' to online speech." (quoting *Reno*, 521 U.S. at 870)). Note, however, the criticism that some judges fail to understand the nature of internet-based harm. *See, e.g.*, Desai, *supra* note 3, at 455 (critiquing the court in *United States v. Cassidy*, 814 F. Supp. 2d 574, 585-86 (D. Md. 2011), for not appreciating that "online pages are ever-present and can be viewed and disseminated by millions of internet users," thereby causing harm even if the target of a post attempts to ignore it).

68. Buchanan v. Crisler, 922 N.W.2d 886, 899 (Mich. Ct. App. 2018); *see also id.* at 895-96 (discussing cases of "cyberstalking by proxy").

69. *Planned Parenthood*, 290 F.3d at 1089 (Kozinski, J., dissenting).

70. *See* United States v. Alvarez, 567 U.S. 709, 717 (2012) (plurality opinion) (explaining the Supreme Court's reluctance to invent a new rule in First Amendment jurisprudence).

71. United States v. Stevens, 559 U.S. 460, 470 (2010).

72. *See* Counterman v. Colorado, 143 S. Ct. 2106, 2117-18 (2023). This ruling came after much back and forth in the lower courts over what level of *mens rea* is required to sustain a conviction in true threats cases. *Compare, e.g.*, United States v. Clemens, 738 F.3d 1, 3 (1st Cir. 2013) (maintaining a tort-like "objective test of defendant's intent . . . from the defendant's vantage point"), *with Planned Parenthood*, 290 F.3d at 1107-08 (Berzon, J., dissenting) (arguing for the higher threshold of a subjective intent to communicate a threat).

purposefulness or actual knowledge,[73] a subjective recklessness standard imposes a higher prosecutorial burden than is required in some other speech contexts, where objective reasonableness standards apply.[74] If this standard were incorporated in the university context, then, it may be difficult to show that Milton subjectively understood the fear his post would cause Lenora to suffer, even if a reasonable observer could reach that conclusion.[75]

Third, the harms contemplated in some state anti-doxxing statutes are unlikely to be severe enough to constitute threats, which must implicate a risk of physical violence.[76] As a result, speech which is annoying[77] or embarrassing[78] is highly unlikely to be considered threatening.[79] Some courts may still be comfortable sanctioning speech which causes "significant mental suffering, anxiety, or alarm,"[80] but policing the boundaries between the anguish of being criticized en masse and genuine fear of violence is, at best, fraught.[81]

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73. *See Counterman*, 143 S. Ct. at 2117. Here, recklessness is defined as a conscious disregard of "a substantial risk that the conduct will cause harm to another." Voisine v. United States, 579 U. S. 686, 691 (2016).

74. *See Counterman*, 143 S. Ct. at 2134 (Barrett, J., dissenting) (noting that "nearly every [other] category of unprotected speech may be regulated using an objective test").

75. Note, however, that because schools' "administrative punishments are not criminal in nature," it is not necessarily the case that this intent standard would apply in the university context. *See* Papandrea, *supra* note 54, at 1822.

76. *See, e.g.*, United States v. Hart, 212 F.3d 1067, 1072 (8th Cir. 2000) (discussing how parking the types of trucks used in the Oklahoma City bombings outside an abortion clinic led a jury to reasonably find an implied threat of actual violence).

77. *See* Eugene Volokh, *Utah 'Anti-Doxxing' Bill Would Outlaw Mentioning a Person's Name Online 'with Intent to Offend,'* WASH. POST (Feb. 8, 2016, 9:39 AM EST), https://perma.cc/V3SZ-XG6X (arguing that criminalizing speech which is merely annoying to politicians does not comport with the First Amendment).

78. *Cf.* State v. Mireles, 482 P.3d 942, 950-51 (Wash. Ct. App. 2021) (severing the word "embarrass" as unconstitutionally overbroad from a Washington state cyberstalking statute).

79. Proposed federal legislation from Representative Katherine Clark abides by this principle. *Interstate Doxxing Prevention Act*, H.R. 6478, 114th Cong. (2016) (criminalizing the release of "personally identifiable information of another person" with "intent to threaten, intimidate, harass, stalk, or facilitate another" to do the same, thereby placing "that person in *reasonable fear of . . . death or serious bodily injury*" (emphasis added)).

80. *See, e.g.*, People v. Crawford, 158 N.E.3d 277, 287-89 (Ill. App. Ct. 2019) (harmonizing a state cyberstalking statute's prohibition on threats with the First Amendment, after a defendant was convicted for direct threats of violence and brought an overbreadth challenge to that provision); *see also* Elonis v. United States, 575 U.S. 723, 746 (2015) (Alito, J., concurring in part and dissenting in part) ("True threats inflict great harm and have little if any social value. . . . [and] may cause serious emotional stress . . . .").

81. *See* Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists, 290 F.3d 1058, 1086 (9th Cir. 2002) ("[T]he First Amendment does not preclude calling people demeaning or inflammatory names, or threatening social ostracism or vilification to advocate a political position."); *see also* People v. Relerford, 104 N.E.3d 341, 351 (Ill. 2017) ("The State offers no cogent argument as to how a communication to

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Though courts have not overturned anti-doxxing statutes on First Amendment grounds, this is likely because these laws have generated few cases so far, preventing potential constitutional infirmities from being fully aired. Schools should, as a result, remain vigilant against replicating these potential flaws in their speech policies. Yet, as the next Subpart surveys, universities should at the same time understand that their constitutional purview to restrict doxxing exceeds that of governments.

B. Regulating Campus Speech

Students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[82] Still, these rights are limited in educational settings, as K-12 school administrators are given greater latitude than legislatures to regulate behavior that "involves substantial disorder or invasion of the rights of others," given their unique educational mandate.[83] For example, the Ninth Circuit has held that public school children in California may be disciplined for their off-campus social media activity when such speech is "inconsistent with [the school's] basic educational mission."[84]

It is not clear, however, to what extent these principles hold in university settings, where most students are legal adults.[85] The Supreme Court has held that universities may sanction student activity which "substantially interfere[s] with the opportunity of other students to obtain an education."[86] And a federal district court has similarly found that colleges in California have a "compelling state interest" in regulating student speech to prevent "the substantial disruption of [the school's] orderly operation."[87] Debate remains, nonetheless, over how similarly students in universities and K-12 schools should be treated.[88]

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or about a person that negligently would cause a reasonable person to suffer emotional distress fits into the established jurisprudence on true threats.").

82. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969).

83. *Id.* at 513; *see also* Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986) (holding that a school may regulate "vulgar and lewd speech" which "undermine[s] the school's basic educational mission").

84. Chen *ex rel.* Chen v. Albany Unified Sch. Dist., 56 F.4th 708, 716 (9th Cir. 2022) (quoting LaVine v. Blaine Sch. Dist., 257 F.3d 981, 988 (9th Cir. 2001)).

85. *See* Papandrea, *supra* note 54, at 1849 ("[U]niversity students [assuming that they are over eighteen] enjoy the same full First Amendment rights as other adults.").

86. Healy v. James, 408 U.S. 169, 189 (1972).

87. Khademi v. S. Orange Cnty. Cmty. Coll. Dist., 194 F. Supp. 2d 1011, 1027 (C.D. Cal. 2002) (quoting CAL. EDUC. CODE § 76120 (West 2002) (setting out free expression standards for California community colleges)).

88. *Compare* Garner K. Weng, *Type No Evil: The Proper Latitude of Public Educational Institutions in Restricting Expressions of Their Students on the Internet*, 20 HASTINGS

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Another wrinkle is that university students are often caught somewhere between being private members of an educational community and recognizable participants in public debates, like Lenora, the vocal campus activist. Courts are less willing to restrain speech relating "to a public figure and an important public concern."[89] Thus, in the first case applying Oregon's anti-doxxing statute, a state appeals court dismissed a lawsuit brought by elected school board members, whose personal information was disseminated on Facebook after they supported a controversial measure, finding such conduct was "in furtherance of the exercise of [defendants'] constitutional right of free speech in connection with . . . an issue of public interest."[90]

Lenora, though not an elected official, engaged in a matter of great public concern: national electoral politics. As Milton points out, speaking on such topics often rightfully provokes strong reactions. At the same time, Lenora suffered a substantially higher price than just having her ideas criticized, and her university undoubtedly has an interest in its students feeling safe enough to remain on campus. These tensions highlight the difficulty and urgency of resolving two questions: Should universities intervene in these normative and legal debates around doxxing? And, if so, what is to be done?

III. Recommendations

Before answering those questions, it is important to acknowledge potential limitations of university anti-doxxing policies. Most prominently, schools cannot restrain the speech of unaffiliated actors. So Milton could have coordinated with Mainstream Revolution to have that group perpetrate the

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COMMC'NS. & ENT. L.J. 751, 773 (1998) ("The Court has been somewhat more vigilant in protecting First Amendment rights of students at the college and university level."), *with* Papandrea, *supra* note 54, at 1803 (arguing that universities should no longer retain *any* "broad institutional deference to restrict student speech in the name of improving the educational environment").

89. Buchanan v. Crisler, 922 N.W.2d 886, 900 (Mich. Ct. App. 2018); *see also* Connick v. Myers, 461 U.S. 138, 145 (1983) ("[S]peech on public issues occupies the 'highest rung of the hierarchy of First Amendment values,' and is entitled to special protection." (quoting NAACP v. Claiborne Hardware Co., 458 U.S. 886, 913 (1982))). *But see* Major, *supra* note 11, at 140 (arguing that the nature of the internet has "blurred the line as to what is of public concern," such that courts should revisit this doctrine to ensure it is still protecting a "functioning marketplace of ideas").

90. DeHart v. Tofte, 533 P.3d 829, 833 (Or. Ct. App. 2023). The court did suggest in dicta that the plaintiff public officials may have had a stronger case had other information been released, such as photos of their children or their home addresses, *see id.* at 848, which may be the first time a court has discussed the relative invasiveness of different sorts of public disclosures in a doxxing case.

initial doxxing of Lenora, thereby avoiding sanction.[91] Similarly, by posting via the social media accounts of Students for Responsible Progress, Milton's speech may not be easily traceable to him. Finally, a policy on the books which is neither publicized nor enforced will not have much of a deterrent effect. As a result, ongoing interest from university leadership in combatting doxxing is paramount. The rest of this Part summarizes why universities should care about preventing doxxing, before proposing guidelines for how to do so—legally and equitably—via limited yet impactful policy interventions.

A. Why Universities Should Prohibit Doxxing

Universities often hold themselves out as bastions of free expression and academic inquiry,[92] a role which occasionally clashes with their mission to ensure that students demonstrate "respect for order . . . and the rights of others."[93] The debate around doxxing does not neatly fit within the parameters of this narrative, however. In fact, curtailing doxxing can both ensure the safety and well-being of students and staff and promote a robust culture of debate and disagreement.

As has been emphasized throughout this Essay, the consequences of doxxing on targeted individuals can be highly distressing—and at times genuinely terrifying—such that they focus on protecting their safety and reputation, at the expense of speaking out on controversial issues.[94] This phenomenon alone should be enough to convince university administrators to take doxxing seriously. Yet there is even more reason to do so, given growing evidence that even the prospect of doxxing attacks chills speech on campus.[95]

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91. Although invasion of privacy issues are beyond the scope of this Essay, to address this concern, schools may additionally consider sanctioning students who enable doxxing by, for example, divulging campus residence or email addresses that are only visible to those with access to internal university databases.

92. *See, e.g.*, Richard Saller & Jenny Martinez, *Welcome Back Message to Students*, STANFORD REP. (Jan. 8, 2024), https://perma.cc/H9MQ-UCPS ("Stanford also should provide an intellectual environment that is challenging—one in which we encounter and engage with ideas that are different from our own.").

93. *The Fundamental Standard*, STANFORD UNIV.: OFF. OF CMTY. STANDARDS, https://perma.cc/4GNU-QMAW (last updated June 12, 2023).

94. *See* Jennifer Elrod, *Expressive Activity, True Threats, and the First Amendment*, 36 CONN. L. REV. 541, 552-53 (2004) (explaining how threats suppress speech).

95. Further empirical work would be useful here, but accumulated anecdotes suggest that, where doxxing is prevalent, only highly risk-tolerant students will choose to engage in public protest. *See, e.g.*, Jaiden McDaniel, *A Double-Edged Sword: How the Media Shapes Student Activism*, STAN. DAILY (Feb. 2, 2024, 11:42 AM), https://perma.cc/H5L6-63JJ (reporting that many participants in Stanford's Sit-In to Stop Genocide "have had sensitive personal information published online via doxxing websites, including names, pictures and even photos of their dorm room doors").

As students become more cautious about what they say out of concern for their safety,[96] scholars, too, feel pressure to self-censor.[97] And the risk of reputational damage alone may convince young people to not court controversy, lest their future careers be put in jeopardy.[98] If universities value fostering an atmosphere in which unpopular ideas can be aired, they should prioritize reducing the likelihood of doxxing attacks, starting with those perpetrated by their own students.

As schools develop best practices, they will hopefully see the need for anti-doxxing policies rapidly diminish. And accordingly, they may need to expend fewer resources on doxxing investigations, administrative adjudications, threat assessments, psychological support services, and campus safety interventions.[99] But none of these improvements to campus culture will be possible if an anti-doxxing policy is struck down by a court for violating the First Amendment.

B. How Universities Should Prohibit Doxxing

To avoid that outcome, universities should carefully consider both the language and execution of any doxxing-related reforms to their speech codes. Below are guidelines for how schools might do so, though these suggestions should still be understood as incipient attempts to navigate a complex yet pressing problem.

As a starting point, universities subject to the First Amendment should argue that doxxing which causes an individual "reasonable fear for their own

96. *See, e.g.*, Claudia Villalona, *'Extremely Charged Atmosphere' at Columbia; Administration Reaches Out to Both Sides amid Student Fears and Frustrations*, W. SIDE RAG (Nov. 2, 2023, 12:58 PM), https://perma.cc/ULL8-58VQ ("For my own safety, I am much more careful about how I express myself online, on campus, and in class." (quoting an unidentified student)).

97. *See, e.g.*, Manuela López Restrepo, *'Fear Rather than Sensitivity': Most U.S. Scholars on the Mideast Are Self-Censoring*, NPR (Dec. 15, 2023, 12:41 PM ET), https://perma.cc/KU33-S2EQ (detailing results from a poll of 936 professors and graduate students which found that more than half of the 82% who self-censored when talking about the Middle East cited "concern about pressure from external advocacy groups").

98. *See, e.g.*, Natasha Lennard, *Harvard Law Review Editors Vote to Kill Article About Genocide in Gaza*, INTERCEPT (Nov. 21, 2023, 10:25 PM), https://perma.cc/AE2R-BXFT (detailing how fears of online harassment and professional consequences led some student law review editors to vote to pull a piece for publication).

99. *See, e.g.*, Saller & Martinez, *supra* note 92 ("Our campus must always be physically safe for students. We have taken additional measures to provide for that safety and will continue to do so.").

or their family's safety"[100] makes little, if any, contribution to the "marketplace of ideas."[101] This is not, however, the end of the constitutional inquiry.

Of the recognized categories of unprotected speech, neither incitement nor speech integral to criminal conduct will cleanly cover all, or even most, instances of doxxing.[102] This Essay additionally proposes, therefore, that doxxing may constitute a true threat. There are reasons, though, to question the viability of this theory, too, including whether the injuries inflicted by doxxing are severe enough; difficulties in ascertaining intent; and the idea that a threat should emanate from an individual speaker, not their proxies.[103] Schools, however, can counter each of these objections.

First, university anti-doxxing policies should not contemplate the harms of mere annoyance or embarrassment but instead focus on fears of "unwanted physical contact [or] injury."[104] Although the effects of doxxing vary, this standard should leave policies with teeth when they are most needed. For instance, Lenora could reasonably report that numerous death and rape threats—and the trucks outside her residence and home—have caused her to fear for her and her family's safety. Thus, the existence of Milton's post (and his doubling down on its message) is threatening to her.[105]

Next, contra the broad *mens rea* standards found in some state anti-doxxing statutes, schools should embrace the Supreme Court's standard for intent in criminal threats cases: subjective recklessness.[106] By utilizing this

100. *See Anti-Doxxing Policy*, *supra* note 34.

101. *See* United States v. Alvarez, 567 U.S. 709, 732 (2012) (Breyer, J., concurring in the judgment) (arguing for intermediate scrutiny in cases where low value speech does not contribute to the "marketplace of ideas").

102. *See supra* Part II.

103. *See supra* Part II.A.

104. *See Anti-Doxxing Policy*, *supra* note 34. Elsewhere, Stanford's anti-doxxing policy may come up short by defining harassment as behavior that "a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing," though this latter invocation of "terror[]" should still suffice. *See id.*

105. Of course, once a doxxing publication has been widely circulated, its deletion will not make its target whole, even as they may feel relief that the underlying cause of their distress has been removed, and its author potentially deterred from acting similarly in the future.

106. *See* Counterman v. Colorado, 143 S. Ct. 2106, 2117-18 (2023). Previous work has suggested the tort of intentional infliction of emotional distress and its negligence standard for intent may accommodate doxxing claims. *See* Victoria McIntyre, Comment, *"Do(x) You Really Want to Hurt Me?": Adapting IIED as a Solution to Doxxing by Reshaping Intent*, 19 TUL. J. TECH. & INTELL. PROP. 111, 132 (2016) ("This Comment proposes that when hearing a doxing claim of IIED, courts consider and balance the totality of five factors equally: the prior relationship between parties, whether the personal information is accompanied by other inflammatory information or calls to action, where the information is posted, the amount of personal information included, and whether the information is a matter of public importance."). Such an approach

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standard, Milton's university would leave "'breathing space' for protected speech" by refusing to punish him for mere negligence,[107] while reserving the right to sanction speech which exhibits conscious disregard of "a substantial risk" of harm.[108] Making this latter finding will still be difficult, however, because perpetrators of doxxing will rarely admit that they are directing angry strangers toward an individual's inbox—or home—with the intent of causing them fear. Accordingly, universities will need to clarify that intent can be inferred from context in doxxing cases.[109] Failure to do so could render their policies effectively unenforceable.

Finally, courts hearing challenges to anti-doxxing laws or policies may need to be persuaded that doxxing—a noxious form of speech-based harm peculiar to the internet age—can be threatening in itself.[110] Schools are in a stronger position than states to make this argument, given courts' tendency to defer to their compelling interest in executing their educational mission.[111] Lenora's university, for example, can argue its interest not only in keeping her in classes, but in assuring her peers that they need not fear the intervention of unknown outside actors. Though administrators may not always be perfectly in tune with campus dynamics, they are surely better positioned than courts to assess when certain speech acts threaten their ability to educate; as the Supreme Court has recently cautioned, "judges lack the on-the-ground expertise and experience of [university] administrators."[112]

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could provide targets of doxxing with an avenue for relief via civil litigation where criminal statutes, or school policies, fall short.

107. *Counterman*, 143 S. Ct. at 2119 (quoting Elonis v. United States, 575 U.S. 723, 748 (2015) (Alito, J., concurring in part and dissenting in part)).

108. *See* Voisine v. United States, 579 U.S. 686, 691 (2016) (citing Farmer v. Brennan, 511 U.S. 825, 836-37 (1994)). This *mens rea* standard is closely mirrored by the "reckless disregard" language in Washington's anti-doxxing statute. *See* WASH. REV. CODE § 4.24.792(1) (2024).

109. Such a practice would be in line with *People v. Shivers*, 186 Cal. Rptr. 3d 352 (Cal. App. Dep't Super. Ct. 2015), where the court credited circumstantial evidence that the defendant intended—by posting false and inflammatory information publicly on social media—for strangers to harass and threaten his ex-wife. *Id.* at 355-58; *accord Counterman*, 143 S. Ct. at 2123 (Sotomayor, J., concurring in part and concurring in the judgment) ("[T]he internet has also made stalking and harassment even easier.").

110. One implication of this argument is that even if Milton's post had *not* gone viral, Lenora may still have a claim that its potential to do so constitutes a threat; whether sanction in these circumstances would constitute an impermissible restraint on speech is beyond the scope of this Essay.

111. *See, e.g.*, Khademi v. S. Orange Cnty. Cmty. Coll. Dist., 194 F. Supp. 2d 1011, 1027 (C.D. Cal. 2002) (finding a "compelling state interest in preventing . . . 'the substantial disruption of the orderly operation of the community college'" (quoting CAL. EDUC. CODE § 76120 (West 2002))).

112. Christian Legal Soc'y v. Martinez, 561 U.S. 661, 686 (2010) (upholding a law school's accept-all-comers policy that prevented a religious organization from excluding LGBT+

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In addition to these legal choices, there are pragmatic steps that schools can take to allay concerns that an anti-doxxing policy might chill protected speech, not be narrowly tailored, or otherwise run counter to the principles of the First Amendment. First, universities should be clear that their speech policies are viewpoint-neutral and enforceable against students across the ideological spectrum. Next, administrators should publish guidelines demonstrating how engaging in core political speech (e.g., criticizing the positions of Lenora and Left of Liberal) is separable from the act of doxxing (e.g., doing the same while publishing Lenora's email and photo).[113] And, relatedly, schools should follow the lead of states in broadly defining what constitutes a release of personally identifying information, while ensuring it means more than just naming someone, or referencing their already public statements.[114] This will help limit interventions to circumstances in which it is the act of doxxing—and not, say, a student's decision to publish an op-ed under their name—that leads directly to the harm.[115] Finally, to avoid unnecessarily or unfairly punishing students,[116] universities can use a graduated system of discipline. For example, consequences for first offenses should be clement, such as requiring the offending publication(s) to be removed.

Taken together, the above steps outline a path, albeit a narrow one, by which schools can prohibit doxxing in accordance with the First Amendment.

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members). *But see* Papandrea, *supra* note 54, at 1828-29, 1832-34 (criticizing the Court in *Martinez* and other cases for sending "mixed messages" about when it is "appropriate [for courts] to defer to university administrators[']" judgment vis-à-vis restrictions on student expression).

113. In other words, the mere fact that speech is political in nature should not provide a perpetrator of doxxing *carte blanche* "to immunize a private harassment campaign as a matter of public concern." *See* Buchanan v. Crisler, 922 N.W.2d 886, 901 (Mich. Ct. App. 2018).

114. *See supra* Part I.A. Universities may also find it advantageous to follow the majority of states in restricting their anti-doxxing policies to electronic publications, so as to ensure internal campus discourse, e.g., via classroom discussions and physical media, remains unimpeded. *See supra* notes 16, 17 and accompanying text.

115. Distinguishing between these situations is crucial because "debate on public issues should be uninhibited, robust, and wide-open." N.Y. Times Co. v. Sullivan, 376 U.S. 254, 270 (1964). Caustic discussion of Lenora's campus event should be protected, therefore, even as she retains as much interest as any private citizen in not being doxxed.

116. *See, e.g.*, Neil Vigdor, *A Law Student Mocked the Federalist Society. It Jeopardized His Graduation.*, N.Y. TIMES (June 3, 2021), https://perma.cc/9UHX-QWYJ (demonstrating the dangers of universities taking overly hasty action against protected speech). Stanford's anti-doxxing policy includes the additional safeguard that no "formal disciplinary process" will commence until the Office of General Counsel and Provost determine application of the policy would not "substantially chill protected First Amendment activity in violation of the Leonard Law." *Anti-Doxxing Policy*, *supra* note 34. Other schools should consider following this approach, while keeping in mind that excessive administrative delays can allow the effects of doxxing to compound.

It is incumbent upon university leaders to forge ahead on this path because the threats posed by doxxing to both safety and speech are already all too real. Without forthright action on doxxing, no one on this nation's campuses can be fully assured of their rights to bodily integrity and freedom of expression.

Conclusion

The problems presented by doxxing on campus are vexing. Students and staff are increasingly fearful of speaking out on controversial issues, as dissemination of their personally identifying information can impose an enormous cost on their public participation. Yet there is no set playbook for how universities can protect members of their educational community from doxxing-related threats to their safety and well-being within the strictures of the First Amendment. State statutes and limited case law provide some guidance for how to define and identify doxxing, but they do not resolve all the constitutional issues which may arise when schools seek to sanction student speech. This Essay introduces several legal and normative arguments that university administrators and legal counsel may build upon as they seek to promulgate balanced and enforceable anti-doxxing policies. Doing so will require experimentation and dedication on the part of university leadership. Action in this arena is necessary, though, if our nation's "public quads" are to remain spaces for vigorous debate and academic inquiry.