
CONTROLLING THE NARRATIVE: GOVERNMENT SPEECH AND BOOK BANS IN THE PUBLIC LIBRARY

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Let us dare to read, think, speak and write.

—John Adams¹

INTRODUCTION

Books bring personal joy and potential for individual growth. “The right book put in the right hands at the right time, could change the course of a life or many lives.”² But access to books is not just a matter of personal enrichment: books are essential sources of knowledge, and free access to that knowledge is fundamental to a successful, thriving democracy. Michael J. Barsanti, the former director of the Library Company, the first American library, pointed out that the Founders “knew that democracies were inherently fragile and that the only way you could sustain a democracy was by having an educated populace.”³

Access to literature thus empowers individuals to engage thoughtfully in public life and fosters critical thinking and informed decision-making. Sociological studies have identified that literature introduces students to current cultural issues, which can help them develop global awareness.⁴ Further, when readers vicariously experience the lives of others through literature, they gain the ability to look critically at the world by engaging with other points of view.⁵ The saying “knowledge itself is power,” first published in 1597,⁶ has endured over the centuries because its truth is undeniable—and it is precisely this truth that drives some individuals in governments and communities to fight to keep certain books, and the power books hold, out of the public’s hands in an effort to control public discourse.

1. John Adams, *VI. A Dissertation on the Canon and the Feudal Law, No. 4*, NAT’L ARCHIVES: FOUNDERS ONLINE (reprinted from the BOS. GAZETTE) (Oct. 21, 1765), <https://founders.archives.gov/documents/Adams/06-01-02-0052-0007> [https://perma.cc/4SM8-WBZH].

2. EVAN FRISS, THE BOOKSHOP: A HISTORY OF THE AMERICAN BOOKSTORE 6 (2024).

3. Elizabeth Webster, *How Ben Franklin Invented the Library as We Know It*, SMITHSONIAN MAG. (Apr./May 2024), <https://www.smithsonianmag.com/history/how-ben-franklin-invented-library-as-we-know-it-180983983> [https://perma.cc/RP6J-D37Z].

4. Marianne Grasso, *The Importance of Multicultural Literature*, CONNECTIONS, 2016, at 4, 4.

5. *Id.*

6. Leonard Azamfirei, *Knowledge Is Power*, 2 J. CRITICAL CARE MED. 65, 65 (2016).

Libraries have become battlegrounds for partisan agendas. The concerted effort by State legislatures and citizen “activist” groups to ban certain books in schools⁷ is no longer confined to school classrooms but is spilling over into public libraries.⁸ This expansion of book bans from schools to libraries reflects an increasing desire to control public discourse and limit the availability of ideas that challenge the status quo. And by limiting access to certain books, these groups aim to control the public narrative and prevent the spread of ideas they perceive as threatening.

Efforts to ban books are rooted in fear—fear of ideas that challenge the status quo, of diverse perspectives, and of the power knowledge gives individuals to question public discourse, think critically about societal issues, and advocate for change.⁹ They are at the center of an ongoing culture war around “woke” ideology, and it is a serious constitutional concern.¹⁰ J.B. Pritzker, Governor of Illinois, has stated, “There are few perils to our democracy as dangerous as book bans” because “[t]hey threaten the very freedom of thought and speech that underpin our republic.”¹¹ Book bans and censorship, therefore, threaten more than a personal freedom to read: they undermine the foundation of our democratic society by stifling an exchange of ideas that stem from the freedom to engage with diverse selections of ideas held within books.

This freedom of thought and speech is guaranteed by the First Amendment of the Constitution, which not only enshrines the rights to speak and publish, but also protects a wide range of mediums, including books, newspapers, art, music, clothing, and online content from political interference.¹² The U.S. Supreme Court and other lower courts have also

7. See Mary Ellen Flannery, *Book Bans Are ‘Common and Rampant.’ So Are Educators and Parents Fighting Them.*, NEATODAY (Oct. 3, 2025), <https://www.nea.org/nea-today/all-news-articles/book-bans-are-common-and-rampant-so-are-educators-and-parents-fighting-them> [https://perma.cc/AW4H-6CUX].

8. See Casey Kuhn, *Library Book Ban Attempts Are at an All-Time High. These Librarians Are Fighting Back*, PBS SOCAL (Apr. 11, 2024), <https://www.pbs.org/newshour/arts/attempts-to-ban-books-are-at-an-all-time-high-these-librarians-are-fighting-back> [https://web.archive.org/web/20251006144007/https://www.pbs.org/newshour/arts/attempts-to-ban-books-are-at-an-all-time-high-these-librarians-are-fighting-back].

9. See generally Paul T. Jaeger, Allison Jennings-Roche, Natalie Greene Taylor, Ursula Gorham, Olivia Hodge & Karen Kettmich, *The Urge to Censor: Raw Power, Social Control, and the Criminalization of Librarianship*, 6 *POL. LIBR.* (2023) (providing an overview of the current landscape of censorship and motivations that drive such censorship).

10. Ishena Robinson, *How Woke Went From “Black” To “Bad.”* LEGAL DEF. FUND (Aug. 26, 2022), <https://www.naacpldf.org/woke-black-bad> [https://perma.cc/A5Z8-9Y83].

11. Press Release, JB Pritzker, Governor, Illinois, Gov. Pritzker Signs Bill Making Illinois First State in the Nation to Outlaw Book Bans (June 12, 2023), <https://www.illinois.gov/news/press-release.26575.html> [https://perma.cc/9HJG-UHX6].

12. *First Amendment and Censorship*, AM. LIBR. ASS’N (Oct. 2021), <https://www.ala.org/advo/cacy/intfreedom/censorship> [https://perma.cc/K3ML-PMY4].

established that the right to receive information is a fundamental extension of the right to free speech.¹³ Book bans, which directly restrict access to ideas and information, therefore warrant close examination under the First Amendment.

This Note will focus on cases that have addressed book bans, including the 2025 Fifth Circuit case of *Little v. Llano County* and the 2024 Eighth Circuit case of *GLBT Youth in Iowa Schools Task Force v. Reynolds*. These cases are critically important because they are two of the first cases to make their way to federal courts of appeal amid a recent surge in litigation surrounding the proliferation of book bans. In addition, the defendants in both cases argued that library book curation constitutes government speech, which would render the government immune from First Amendment claims.

Little is particularly important due to its potential to severely limit First Amendment protections in the context of public libraries—spaces that historically play a vital role in providing access to diverse ideas and expression. The case is notable because after the Fifth Circuit panel originally ruled in favor of the plaintiffs and granted them an injunction due to the likelihood that they would prevail on the merits of a First Amendment violation, the decision was vacated to be heard *en banc*,¹⁴ with a plurality of the panel ruling on May 23, 2025, that library book curation is indeed government speech.¹⁵ The *Little* ruling created a circuit split on the issue, as the Eighth Circuit held in *GLBT Youth* that such an action is not government speech.¹⁶ The Fifth Circuit is widely viewed as one of the most conservative circuits in the nation that is willing to overturn longtime precedents,¹⁷ and in reaching its decision in *Little*, it has overturned *Campbell v. St. Tammany Parish School Board*, a thirty-year precedent that held books cannot be removed from libraries solely due to disagreement with the ideas they contain.¹⁸

With *Little* poised to make its way to the Supreme Court after plaintiffs petitioned the case for review, this Note will argue why the Supreme Court

13. *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (“It is now well established that the Constitution protects the right to receive information and ideas.”).

14. On Petition for Rehearing En Banc, *Little v. Llano Cnty.*, 106 F.4th 427, 427 (5th Cir. 2024).

15. *Little v. Llano Cnty.*, No. 23-50224, 2025 U.S. App. LEXIS 13121, at *3 (5th Cir. May 23, 2025).

16. *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, 111 F. 4th 660, 667–68 (8th Cir. 2024).

17. For example, *Dobbs* originated from the Fifth Circuit before the Supreme Court granted *certiorari*. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 234 (2024); Jeevna Sheth & Devon Ombres, *The 5th Circuit Court of Appeals Is Spearheading a Judicial Power Grab*, CTR. FOR AM. PROGRESS (May 15, 2024), <https://www.americanprogress.org/article/the-5th-circuit-court-of-appeals-is-spearheading-a-judicial-power-grab> [https://perma.cc/R78Z-SWQB].

18. *Little*, 2025 U.S. App. LEXIS at *13.

should grant *certiorari* and hold that library book curation is not government speech. The Supreme Court has not heard a book banning case since its 1982 non-binding, plurality decision in *Board of Education v. Pico*.¹⁹ This Note explores how the *Pico* decision could be strengthened. Specifically, it will advocate for distinguishing the important difference between public libraries and public-school libraries, confirming that book removal cannot be motivated by viewpoint discrimination, and providing guidance for determining when an action is motivated by viewpoint. This Note will then examine *Little*, arguing that the actions at issue in *Little* are, in fact, motivated by viewpoint discrimination. Finally, this Note will address the serious concerns and dangerous consequences of holding that library book curation is government speech—a new issue not presented in the *Pico* case—and will argue that the Court should clearly assert that it is not government speech.

This Note will refer to terminology including “bans” and “censors.” A book being “banned” traditionally and commonly refers to a book as being “removed from school curriculums [or] public libraries.”²⁰ Censor, used as a verb, means to “examine in order to suppress” or “delete anything considered objectionable”; further, censor, used as a noun, is “a person who supervises conduct and morals.”²¹ There are various methods in which a censor can censor or ban a book: (1) redaction, (2) restriction, and (3) relocation.²² Redaction refers to removing information within a book but keeping the book available for patrons. Restriction refers to removing the book altogether. Relocation refers to requiring a book to be shelved in a separate area that often requires permission to access.²³ Overall, this Note will use the term “ban” to refer to a combination of restriction and relocation but does not focus on instances in which books have been redacted.

19. *Bd. of Ed. v. Pico*, 457 U.S. 853 (1981). The Court has recently heard *Mahmoud v. Taylor*, holding that parents may opt their children out of being present for instruction involving books related to LGBTQ+ themes; however, despite being similar, *Mahmoud* is not precisely a book banning case. *Mahmoud v. Taylor*, 606 U.S. 522, 528–30 (2025).

20. David Oliver, *What Happens to Our Culture When Books Are Banned: ‘A Chilling Effect.’* USA TODAY (Mar. 1, 2023, 11:25 A.M. ET), <https://www.usatoday.com/story/life/health-wellness/2023/02/22/book-bans-what-happens-culture/11262643002> [https://perma.cc/6B74-33RW].

21. *Censor*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/censor> [http://perma.cc/6JKB-CGLV].

22. Smith College, *Book Banning and the Culture Wars*, YOUTUBE (Oct. 3, 2023), <https://www.youtube.com/watch?v=GNSPJQOxTDc> [https://perma.cc/7X3L-EK72].

23. *Id.*

I. *BOARD OF EDUCATION V. PICO*

Although the Supreme Court has heard numerous First Amendment challenges, those addressing the restriction of access to books are limited.²⁴ The Court's 1982 decision in *Pico* is the only opinion in which the Court has directly addressed the issue of book banning in libraries—particularly a school library.

The case revolves around a decision by the Island Trees school board to remove several books from its middle and high school libraries after obtaining a list of “objectionable” books from an organization called Parents of New York United (“PONYU”).²⁵ PONYU was a conservative organization of parents focused on education legislation in New York State.²⁶ The “objectionable” books included popular titles such as *Slaughterhouse-Five* by Kurt Vonnegut and *Go Ask Alice*.²⁷ The school board characterized these books as “anti-American, anti-Christian, anti-[semitic], and just plain filthy,” and concluded that it was the board’s “moral obligation” to “protect the children in [their] schools from this moral danger as surely as from physical and medical dangers.”²⁸ Several students in the district, led by Steven Pico, challenged the removal of these books, arguing that the school board violated students’ First Amendment rights. They contended that the desire to suppress ideas that were politically and socially controversial was a form of viewpoint discrimination.

In its 5-4 plurality decision, the Court held that a school board’s removal of books could not be based on a desire to suppress ideas.²⁹ The Court did reason, however, that school boards have significant discretion in regulating the content of materials in their schools,³⁰ although this discretion was not unlimited.³¹ The *Pico* decision was narrow in several respects: notably, it lacks the establishment of a standard to determine when book

24. See generally Suzanne Eckes, *Where the Supreme Court Stands on Banning Books*, FREE SPEECH CTR. AT MIDDLE TENN. ST. U. (Oct. 4, 2023), <https://firstamendment.mtsu.edu/post/where-the-supreme-court-stands-on-banning-books> [https://perma.cc/VQD4-J359]. Other examples of cases involving books include *A Quantity of Copies of Books*. *A Quantity of Copies of Books v. Kansas*, 378 U.S. 205, 208 (1963) (“[T]he procedures followed in issuing the warrant for the seizure of the books, and authorizing their impounding pending hearing, were constitutionally insufficient because they did not adequately safeguard against the suppression of nonobscene books.”).

25. Bd. of Ed. v. Pico, 457 U.S. 853, 856 (1981) (plurality opinion).

26. *Id.*

27. *Id.* at 856–57 n.3.

28. *Id.* at 857.

29. *Id.* at 853, 871–72.

30. *Id.* at 869.

31. See *id.* at 870 (“Petitioners rightly possess significant discretion to determine the content of their school libraries. But that discretion may not be exercised in a narrowly partisan or political manner.”).

removals are in violation of the First Amendment because of viewpoint-based restriction. The Court left open the vague possibility that books could be removed for reasons such as vulgarity or lack of educational value, without offering guidance on how those reasons could be distinguished from pretextual justifications. While *Pico* was important for affirming that students have the constitutional right to receive information, and that school boards do not have unlimited authority to remove books, it leaves unanswered questions about when book removals violate the First Amendment.

Additionally, the case leaves open questions about whether the *Pico* school board's actions—which closely resemble the actions Llano County took in its public library in *Little*—did in fact violate the First Amendment, given that the case was remanded and then settled with no holding based on the facts. Despite these limitations, *Pico* is an important precedent in the ongoing debate over book banning. Lower courts that have decided on similar issues have closely followed the *Pico* holding.³² For example, in the Fifth Circuit case *Campbell v. St. Tammany Parish School Board*, in which a school board removed books such as Kurt Vonnegut's *Slaughterhouse-Five*, the Court held that public schools cannot censor books merely because they contain controversial or offensive content.³³

Considering the increasing number of book bans in the United States, there is a growing reason for strengthening the *Pico* decision. This Note will argue, as detailed above, that to strengthen the holding of *Pico*, the Court must distinguish the important difference between public libraries and public-school libraries. Additionally, given that *Pico* was a plurality opinion, the Court must reaffirm that book removal cannot be motivated by viewpoint discrimination in the context of libraries, and it must more clearly define the types of actions that constitute a violation of the First Amendment principle on viewpoint-based discrimination.

II. THE FIRST AMENDMENT

The First Amendment has been greatly revered over the course of American history and is considered by many to be the most influential and important amendment in the Bill of Rights.³⁴ The First Amendment

32. See Petition for Writ of Certiorari at 13, *Little v. Llano Cnty.*, No. 23-50224 (5th Cir. May 23, 2025) (No. 25-284).

33. *Campbell v. St. Tammany Parish Sch. Bd.*, 64 F.3d 184, 185, 189–90, *overruled by Little v. Llano Cnty.*, No. 23-50224, 2025 U.S. App. LEXIS 13121 (5th Cir. May 23, 2025) (petition for cert. pending).

34. Linda R. Monk, *The First and Second Amendments*, PBS SOCAL, <https://www.pbs.org/tpt/constitution-usa-peter-sagal/rights/first-and-second-amendments> [https://perma.cc/PE6X-VH7P].

guarantees “the people” freedom from government intervention in their right to free speech, which ensures the exchange of free ideas.³⁵ As with all rights, the First Amendment is not absolute; however, its central purpose lies in protecting the expression of unpopular ideas.³⁶

One of the key rationales behind vigorously protecting various forms of expression, including unpopular ideas, is the “marketplace of ideas.”³⁷ The phrase was first popularized by Justice Oliver Wendell Holmes in his 1919 dissent in *Abrams v. United States*.³⁸ The concept is grounded in the belief that for society to progress, “truth” will emerge only from the free exchange of ideas, which necessarily includes unpopular ones.³⁹ Ensuring that society can critically engage with competing viewpoints is therefore essential for individuals to evaluate the merits of different ideas and ultimately arrive at a better understanding of these “political truth[s].”⁴⁰

Importantly, the marketplace only functions when there is open debate and a free flow of information.⁴¹ Holmes argued that the government should not have the power to suppress speech on the grounds that the speech is controversial or unpopular. In his view, the government should only step in when the speech poses a clear and imminent danger to the public or national security.⁴² Nearly a decade after his *Abrams* dissent, Justice Holmes joined Justice Brandeis in the latter’s concurring opinion for the famous 1927 case *Whitney v. California*, highlighting why the Founders believed strongly in protecting free speech:

[The Founders] believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.⁴³

35. U.S. CONST. amend. I.

36. *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”).

37. David Schultz, *Marketplace of Ideas*, FREE SPEECH CTR. AT MIDDLE TENN. ST. U. (July 9, 2024), <https://firstamendment.mtsu.edu/article/marketplace-of-ideas> [<https://perma.cc/5WFB-3F9Q>].

38. *Id.*; see also *Abrams v. United States*, 250 U.S. 616, 630 (1919).

39. See Schultz, *supra* note 37.

40. *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring), overruled on other grounds by *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

41. See Schultz, *supra* note 37.

42. *Abrams*, 250 U.S. at 627–28.

43. *Whitney*, 274 U.S. at 375.

Book bans are fundamentally incompatible with Holmes's marketplace of ideas theory and the First Amendment protections that safeguard the right to create, distribute, and access written works without government interference. Public libraries play an important role in maintaining an open marketplace of ideas. Because libraries are institutions that provide knowledge and information to "the people," they must contain a wide range of ideas available for exploration, free from government interference based on ideological or political preferences. Unchecked government interference in the marketplace of ideas will manipulate the flow of knowledge and ensure that only certain ideas are permitted to reach "the people."

A. VIEWPOINT DISCRIMINATION

Part of the First Amendment's speech-protecting safeguards is the protection against efforts to restrict speech based on the speech's content or viewpoint.⁴⁴ The government is, in nearly all circumstances, prohibited from engaging in viewpoint discrimination.⁴⁵ In 1989, the Court held in *Texas v. Johnson* that "[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."⁴⁶

A law is considered viewpoint-based if it restricts speech due to a specific ideology, opinion, or perspective expressed by its speaker, rather than regulating speech based on content-neutral criteria.⁴⁷ Viewpoint discrimination is particularly dangerous because if permitted, the government is able to silence certain viewpoints based solely on subjective disapproval, which undermines the foundational prohibition on government censorship of speech with which the government disagrees.

In the context of book bans, viewpoint discrimination occurs when government actors remove or restrict access to books because they disagree with the ideas those books express, rather than because of neutral concerns such as age-appropriateness or educational relevance. This often happens when books are targeted for addressing topics that some find controversial, such as race, politics, or sexuality. For example, the removal of books that discuss LGBTQ+ identities or systemic racism reflects viewpoint

44. U.S. CONST. amend I; *Amdt1.7.3.1: Overview of Content-Based and Content-Neutral Regulation of Speech*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/amdt1-7-3-1/ALDE_00013695 [https://perma.cc/8YVF-JPLN].

45. See Joseph Blocher, *Viewpoint Neutrality and Government Speech*, 52 B.C. L. REV. 695, 695–96 (2011).

46. *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

47. U.S. CONST. amend I; *Amdt1.7.3.1: Overview of Content-Based and Content-Neutral Regulation of Speech*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/amdt1-7-3-1/ALDE_00013695 [https://perma.cc/8YVF-JPLN].

discrimination when those books are excluded specifically to suppress those perspectives, while books expressing more politically favored viewpoints remain available.

B. GOVERNMENT SPEECH

Despite the Court interpreting the First Amendment to prohibit viewpoint discrimination, the government-speech doctrine exempts the government from the usual First Amendment restrictions on content- and viewpoint-based speech limitations, allowing it to engage in such discrimination.⁴⁸ The concept of government speech was articulated in the 1991 case *Rust v. Sullivan*, even though the term “government-speech” was not utilized in the opinion.⁴⁹

In *Rust*, the Court upheld a government regulation that any healthcare professional receiving Title X funding was prohibited from providing information about abortion, consequently limiting what healthcare professionals were permitted to say to their patients about abortion.⁵⁰ The Court reasoned that because the government is not obligated to fund all viewpoints, and because it has the ability to select which programs to fund (here, family-planning that excluded abortion), the government’s actions would inevitably conflict with the perspectives of other programs it chooses to promote.⁵¹ Essentially, the government should be able to communicate its own messages or express its own policies and particular viewpoints without violating the First Amendment.⁵² Two decades later, in the 2009 case *Pleasant Grove City v. Summum*, the Court identified government speech when actions are “meant to convey and have the effect of conveying a government message.”⁵³ In 2022’s *Shurtleff v. City of Boston*, the Court applied various factors to determine if governmental action is in fact government speech: (1) “the history of the expression at issue”; (2) “the public’s likely perception as to who (the government or a private person) is speaking”; and (3) “the extent to which the government has actively shaped or controlled the expression.”⁵⁴

48. G. Alex Sinha, *Government-Speech Doctrine*, FREE SPEECH CTR. AT MIDDLE TENN. ST. U. (Sept. 12, 2024), <https://firstamendment.mtsu.edu/article/government-speech-doctrine> [https://perma.cc/43V2-EV8F].

49. *Id.*

50. *Id.*

51. *Rust v. Sullivan*, 500 U.S. 173, 193 (1990) (“The Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the same problem in another way.”).

52. Sinha, *supra* note 48.

53. *Id.*

54. *Shurtleff v. City of Boston*, 596 U.S. 243, 252 (2022) (citation omitted).

While there may be some truth to the idea that effective governance would be impossible if the government were unable to support or oppose certain viewpoints when implementing programs,⁵⁵ scholars have noted an inherent contradiction between the government speech doctrine and the First Amendment:

To satisfy traditional First Amendment tests, the government must show that it is *not* discriminating against a viewpoint. And yet if the government shows that it *is* condemning or supporting a viewpoint, it may be able to invoke the government speech defense and thereby avoid constitutional scrutiny altogether. Government speech doctrine therefore rewards what the rest of the First Amendment forbids: viewpoint discrimination against private speech.⁵⁶

Seemingly for this reason, the Court has warned that courts should “exercise great caution before extending . . . government-speech precedents.”⁵⁷

C. MINOR’S RIGHT TO FREE SPEECH

An individual’s status as a minor cannot serve as a blanket justification for censorship. The Supreme Court has recognized that minors enjoy a degree of expressive liberty under the First Amendment, although it is not as expansive as that of adults.⁵⁸ In *Tinker v. Des Moines Independent Community School District*, the Court famously held that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”⁵⁹ Also, in *Erznoznik v. City of Jacksonville*, the Court held that lawmakers cannot suppress speech for the sole purpose of shielding minors from ideas they do not find appropriate.⁶⁰

III. HISTORY AND PURPOSE OF PUBLIC LIBRARIES

Libraries have long stood as pillars of American civic life, serving the public as “forums for information and ideas.”⁶¹ Founding Father Benjamin

55. U.S. CONST. amend I; *Amdt1.7.8.2: Government Speech and Government as Speaker*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/amdt1-7-8-2/ALDE_00013545 [https://perma.cc/8YVF-JPLN].

56. Blocher, *supra* note 45, at 695.

57. *Matal v. Tam*, 582 U.S. 218, 235 (2017).

58. Memorandum from Jenner & Block on Minors’ Rights to Receive Information Under the First Amendment, AM. LIBR. ASS’N (Feb. 2, 2004), <https://www.ala.org/Template.cfm?Section=jennerblockmemo&Template=/ContentManagement/ContentDisplay.cfm&ContentID=67542> [https://perma.cc/3PRX-VNMB].

59. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1968).

60. Memorandum, *supra* note 58 (citing *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213-14 (1975)).

61. *Library Bill of Rights*, AM. LIBR. ASS’N, <https://www.ala.org/advocacy/intfreedom/librarybill> [https://perma.cc/AQV9-C2ZZ].

Franklin championed the first iteration of the American library system in 1731 with the founding of the Library Company of Philadelphia, which permitted individuals to borrow books for a fee.⁶² By 1800, this concept grew in popularity, and there were over forty fee-based libraries established across the United States.⁶³ In his autobiography, Franklin highlighted the important role libraries play in the furtherance of democracy, noting how the Library Company “improved the general conversation of the Americans” and “made the common tradesmen and farmers as intelligent as most gentlemen from other countries.”⁶⁴

Today, there are more than 9,000 libraries in the United States.⁶⁵ Although libraries had long served a public civic role, the role was formally embedded in public life through tax-funded libraries, beginning in 1833, when the Peterborough Town Library in New Hampshire became the first such institution in the United States.⁶⁶ While the libraries of Franklin’s era were far from the inclusive institutions we strive for today, the heart and soul of the library’s purpose has remained and grown. Libraries serve our society as equalizers, ensuring access to knowledge for all regardless of background or circumstances while strengthening the democratic foundation of society.⁶⁷

For instance, consider libraries in the mid-19th century. As industrialization and urbanization took shape during this period, there was a significant expansion of subscription libraries and public library systems, fueled in part by demand from the working class and their employers for self-education.⁶⁸ Employers funded libraries as investments in an “efficient . . . working class,” and trade-specific libraries such as the Mechanics’ Institute opened to “stretch the mind and teach new skills.”⁶⁹ One such proponent of expanding libraries to the working class was Andrew Carnegie, who provided an employee library at one of his steel plants in Pennsylvania.⁷⁰ Carnegie became one of the richest men in the world for his role in oil, steel, and railroads, and used much of his wealth for philanthropic

62. Webster, *supra* note 3; *A History of US Public Libraries*, DIGIT. PUB. LIBR. AM., <https://dp.la/exhibitions/history-us-public-libraries/beginnings> [<https://perma.cc/UT2X-SS9X>].

63. Webster, *supra* note 3.

64. *Id.*

65. Tom McGrath, *Why We Need Public Libraries Now More than Ever*, BOS. MAG.: CITY LIFE (Nov. 12, 2023, 7:00 A.M.), <https://www.bostonmagazine.com/news/2023/11/12/public-libraries-boston> [<https://perma.cc/BJR6-RQWY>].

66. *Early History*, PETERBOROUGH TOWN LIBR., <https://peterboroughtownlibrary.org/history-and-renovation-9330/location/peterborough> [<https://perma.cc/T768-VSMX>].

67. *Palaces for the People*, AIA PITTSBURGH: COLUMNS (Sept. 12, 2019), <https://aiapgh.org/palaces-for-people-review> [<https://perma.cc/4BWU-T9NG>].

68. *The Library in America*, L.A. PUB. LIBR. (Mar. 29, 2024), <https://www.lapl.org/collections-resources/blogs/lapl/library-america> [<https://perma.cc/XJ3K-QTWC>].

69. *Id.*

70. *Id.*

endeavors⁷¹—one of which was the creation of a free public library system. He referred to libraries as “palaces for the people”⁷² and spent more than \$56 million to create more than 2,500 libraries.⁷³ He worked with local governments to establish government-funded libraries, for which he donated buildings through a grant. Localities then instituted taxes to fund the libraries’ operations and acquisitions of books.⁷⁴

Emily Knox, a professor at the University of Illinois Urbana-Champaign who researches censorship and library science, has stated that a guiding principle embraced by librarians is the “right of every individual to both seek and receive information from all points of view without restriction.”⁷⁵ This commitment to receiving information has been evident for more than a century. In a brief *New York Times* article from 1918 titled *Not a Public Library Ban*, the director of the New York Public Library (“NYPL”) sought to dispel any suggestion of censorship by responding to claims cited in an earlier article that a patron had been denied access to *The Unpardonable Sin*. He clarified that the book was available and requested identifying information about the individual who had suggested otherwise.⁷⁶ This early defense of open access underscores the long-standing dedication of libraries to resisting censorship and ensuring the public’s right to access information. Later, in response to “growing intolerance, suppression of free speech, and censorship affecting the rights of minorities and individuals,” the American Library Association adopted its first Library Bill of Rights in 1939, emphasizing that libraries are neutral spaces for the free exchange of ideas.⁷⁷ David Leonard, President of the Boston Public Library (the third largest library behind the Library of Congress and the NYPL) states that “Free to All”—as is inscribed on many of the library buildings—“encapsulates what we [are] all about.”⁷⁸

The evolution of libraries from small lending collections to vast public institutions reflects a commitment to ensuring that information remains accessible to all, without government interference or ideological gatekeeping. At their core, libraries represent a belief in the power of

71. *Philanthropy of Andrew Carnegie*, COLUM. U. LIBRS.: RARE BOOK & MANUSCRIPT LIBR., <https://library.columbia.edu/libraries/rbml/units/carnegie/andrew.html> [<https://perma.cc/923Y-695G>].

72. *Palaces for the People*, *supra* note 67.

73. *Philanthropy of Andrew Carnegie*, *supra* note 71.

74. *The Library in America*, *supra* note 68.

75. Smith College, *supra* note 22.

76. E.H. Anderson, *Not a Public Library Ban*, N.Y. TIMES (Sept. 4, 1918), at 10 (accessible via THE N.Y. TIMES TimesMachine at <https://timesmachine.nytimes.com/timesmachine/1918/09/04/issue.html> [<https://perma.cc/ND83-W3C5>]).

77. *First Library Bill of Rights?*, AM. LIBR. ASS’N, <https://www.ala.org/tools/first-library-bill-rights> [<https://perma.cc/2TWZ-Q4S5>].

78. McGrath, *supra* note 65.

knowledge to uplift individuals and strengthen society. However, this very openness and inclusivity have made them a target for those who seek to control the flow of information. The ongoing battle over book removals and censorship in libraries threatens to undermine these fundamental principles that have endured since this country's founding. The fight to keep libraries truly "free to all" is not just about books—it is about preserving the foundational freedoms on which this country was built.

IV. HISTORY OF BOOK BANS AND CENSORSHIP

The banning of books and the censorship of ideas are not new phenomena. Both have persisted throughout the course of human history. In 213 B.C., Chinese emperor Qin Shi Huang ordered various books of poetry and history to be burned;⁷⁹ Ovid, a Roman poet, was banished from Rome in A.D. 8 for his *The Art of Love*; in 1526 England, thousands of copies of the *New Testament* were burned; for more than 400 years from 1564 to 1966, the Catholic Church maintained the *Index Librorum Prohibitorum*—Index of Prohibited Books—that forbade Catholics from reading books by authors such as Victor Hugo, John Locke, and Jean-Paul Sartre; and from 1788 to 1820, King George banned Shakespeare's *King Lear* from stage performance.⁸⁰ In modern times, book banning has steadily continued. In 1939, John Steinbeck's novel *The Grapes of Wrath* was removed from a Kansas City library for being "indecent";⁸¹ during the Nazi regime, thousands of books including Jack London's *The Call of the Wild* and numerous Ernest Hemmingway titles were banned and burned;⁸² in the 1980s, Beatrix Potter's *The Tale of Peter Rabbit* was banned from schools in London County, England; in 1987, at a North Carolina high school, Maya Angelou's *I Know Why the Caged Bird Sings* was removed from the required reading list;⁸³ lastly, Toni Morrison's *Beloved* has been included in the American Library Association's top ten most challenged books of the year

79. Lorraine Boissoneault, *A Brief History of Book Burning, From the Printing Press to Internet Archives*, SMITHSONIAN MAG. (Aug. 31, 2017), <https://www.smithsonianmag.com/history/brief-history-book-burning-printing-press-internet-archives-180964697> [https://web.archive.org/web/20251001164331/https://www.smithsonianmag.com/history/brief-history-book-burning-printing-press-internet-archives-180964697].

80. *Modern History Sourcebook: Index Librorum Prohibitorum, 1557–1966 [Index of Prohibited Books]*, FORDHAM U., <https://origin-rh.web.fordham.edu/Halsall/mod/indexlibrorum.asp> [https://perma.cc/YJJ4-74TT]; *Bannings and Burnings in History*, BOOK & PERIODICAL COUNCIL: FREEDOM TO READ, <https://www.freedomtoread.ca/resources/bannings-and-burnings-in-history> [https://perma.cc/ZXZ6-9GQS].

81. *Library Bans Steinbeck Book*, N.Y. TIMES (Aug. 19, 1939), at 8 (accessible via THE N.Y. TIMES TimesMachine at <https://timesmachine.nytimes.com/timesmachine/1939/08/19/issue.html> [https://perma.cc/G8FN-PQYP]).

82. *Bannings and Burnings in History*, *supra* note 80.

83. *Id.*

list seven times since 2006.⁸⁴ While justifications for banning books may evolve to reflect the politics and ideologies of a particular time, those who seek to control what others can read share similar claims of acting in the interest of morality, public order, or protecting children as their reasons for book banning.

Although bans are not new, “[they are] definitely getting worse.”⁸⁵ The American Library Association’s Office for Intellectual Freedom documented 4,240 unique titles challenged in 2023, making it a 65% increase from 2,571 titles in 2022.⁸⁶ This was the highest level since the organization began tracking twenty years ago.⁸⁷ Comparatively, the number of unique titles challenged in 2014, just over 10 years ago, was 235.⁸⁸ In 2020, the number of unique titles was still less than 300, but that number shot up to 1,858 in 2021 and has been growing since.⁸⁹ Between July 2021 and June 2023, PEN America reported that 5,894 books have been banned across 41 states.⁹⁰ The trend is most prominent in “Republican-leaning” states—Florida and Iowa had the most book bans from 2023 to 2024⁹¹—reflecting an increasingly organized and politically motivated effort to control access to literature.

The motivations behind banning books often stem from deeply rooted psychological and sociological factors—“an act of control[] driven by . . . fear.”⁹² Emily Knox, who studies book banning and censorship, reported that communities try to ban books because words have power, and words can change who an individual is.⁹³ Throughout history, censorship has been a tool for controlling narratives.⁹⁴ Economic and social turmoil often

84. *Top 10 and Frequently Challenged Books Archive*, AM. LIBR. ASS’N, <https://www.ala.org/bbooks/frequentlychallengedbooks/top10/archive> [https://perma.cc/ZX74-3E27].

85. Claire Armitstead, “It’s A Culture War That’s Totally Out of Control”: The Authors Whose Books Are Being Banned in US Schools, GUARDIAN (Mar. 22, 2022, 2:00 P.M.), <https://www.theguardian.com/books/2022/mar/22/its-a-culture-war-thats-totally-out-of-control-the-authors-whose-books-are-being-banned-in-us-schools> [https://perma.cc/ER4L-GRB3].

86. *Censorship by the Numbers*, AM. LIBR. ASS’N, <https://www.ala.org/bbooks/censorship-numbers> [https://perma.cc/U4C7-ECW8].

87. *Id.*

88. *Id.*

89. The 2024 analysis is pending, but to see an interactive map that shows the progression of total censorship attempts, total books challenged, and number of unique books challenged from 2014 to 2023, see the American Library Association’s website. *Id.*

90. Elizabeth Sanders, *State Laws on Book Bans*, FREE SPEECH CTR. AT MIDDLE TENN. ST. U. (Sept. 20, 2024), <https://firstamendment.mtsu.edu/article/state-laws-on-book-bans-and-challenges> [https://perma.cc/WA23-VFCJ].

91. Anna Merod, *New Jersey Becomes Latest State to Prohibit Book Bans*, K-12DIVE (Dec. 11, 2024), <https://www.k12dive.com/news/new-jersey-latest-state-prohibit-book-bans/735230> [https://perma.cc/3R52-2JR7].

92. Paul T. Jaeger et al., *supra* note 9.

93. Smith College, *supra* note 22.

94. JLG Marketing, *Banned Book Week: The Psychology of Book Censorship*, JUNIOR LIBR. GUILD (Oct. 3, 2023), <https://www.juniorlibraryguild.com/blog/post/banned-book-week-the-psych>

lead to widespread efforts to restrict the rights of marginalized individuals,⁹⁵ and silencing their voices by restricting their access to books is a powerful tool for accomplishing this goal. There is a desire to preserve societal norms, and restricting books keeps them away from readers whom censors fear might be “changed” by their content.⁹⁶ Encountering ideas that may conflict with an individual’s deeply held beliefs can create a mental discomfort that many avoid by challenging books that challenge their worldview.⁹⁷ “Activist” groups pushing for parents to challenge books often use the term “indoctrination” to describe book content they object to—instead of the word “education”—to emphasize that their worldview does not comport with the worldview expressed by the challenged book.⁹⁸ Because books introduce unfamiliar and challenging ideas that may be uncommon in certain communities or regions, the differing views and lives represented in the pages of the challenged book are often seen as a threat.⁹⁹ Thus, individuals justify restricting these ideas as a desire to protect readers from radical ideas.¹⁰⁰

V. PROLIFERATION OF BANS AND LEGISLATION

The rise in book bans has become a significant national issue, sparking debate regarding parental rights and minors’ First Amendment rights. As of 2022, more than one-hundred bills have been proposed for various forms of book banning at the state level.¹⁰¹ Florida’s HB 1557, also known as the “Parental Rights in Education” law and referred to by opponents as the “Don’t Say Gay” law, restricts discussions of sexual orientation and gender identity in certain grade levels.¹⁰² With respect to book banning, the Florida law increases the ease with which parents, or any resident, can object to books used in classrooms and school libraries.¹⁰³ It requires school districts to house an “objection form” on the school district’s homepage website, and directs districts to remove books objected to as “pornographic” within five

ology-of-book-censorship [<https://perma.cc/P5C8-68W7>].

95. Paul T. Jaeger et al., *supra* note 9.

96. Smith College, *supra* note 22.

97. JLG Marketing, *supra* note 94.

98. Smith College, *supra* note 22.

99. Paul T. Jaeger et al., *supra* note 9.

100. JLG Marketing, *supra* note 94.

101. Oliver, *supra* note 20.

102. Sanders, *supra* note 90.

103. WHAT YOU NEED TO KNOW ABOUT FLORIDA’S LAW ON CLASSROOM INSTRUCTION ON SEXUAL ORIENTATION AND GENDER IDENTITY, BOOK BANS, AND OTHER CURRICULUM RESTRICTIONS, NAT’L ED. ASS’N (Apr. 25, 2025), <https://www.nea.org/sites/default/files/2024-06/fl-kyr-updated-apr2024.pdf> [<https://web.archive.org/web/20250214084322/https://www.nea.org/sites/default/files/2024-06/fl-kyr-updated-apr2024.pdf>].

days of receiving an objection.¹⁰⁴ Charlotte County school district, acting on the law, prohibited books with LGBTQ+ characters in all schools with limited exceptions for high schools; Charlotte's superintendent and school attorney stated, "These characters and themes cannot exist."¹⁰⁵ Two years after the enactment of this law, Florida was required through a settlement to provide direction to schools regarding the scope of the legislation; subsequently, it has been clarified that the law does not apply to libraries in which no educational instruction is taking place.¹⁰⁶

In addition, Texas' HB 900, the READER Act, attempted to enact stringent guidelines on educational materials by requiring school book vendors to rate books that contain "sexually explicit" or "sexually relevant" content in order to restrict access to these books.¹⁰⁷ Specifically, the Act required book publishers, bookstores, and internet-based book retailers to rate books in active use that they sold to public schools.¹⁰⁸ These independent, private entities received minimal guidance on how to implement the ratings despite the fact that books labeled by the sellers as "sexually explicit" would consequently be removed from public school libraries.¹⁰⁹ In May of 2024, the Fifth Circuit in *Book People v. Wong* upheld a district court injunction that held the READER Act to be unconstitutionally vague and compelled speech.¹¹⁰ The legislation in Florida and Texas have served as models for similar measures in other states such as Arizona, Missouri, Tennessee, and Idaho, signaling a broad trend.¹¹¹

Much of the book banning debate has focused on public school libraries and academic curriculum choices, but there has been a growing trend in regulation and litigation regarding public community libraries. For instance, Llano County in Texas and Pasco County in Florida have begun expanding book banning efforts from school libraries to community libraries. For example, in September of 2024, Pasco County removed 130 children's books

104. *Id.*

105. Terry Spencer, *Florida School District Orders Removal of All Books with Gay Characters Before Slightly Backing Off*, AP NEWS (Sept. 27, 2023, 1:14 P.M. PST), <https://apnews.com/article/lgbtq-florida-dont-say-gay-books-bed1a412f3faa0f371da8e8c89f4975> [https://perma.cc/N9Q7-XSEX].

106. Ronald K. L. Collins, *Moms for Liberty: The Anti-Liberty Book Banning Group*, FIRE: FIRST AMEND. NEWS (Mar. 13, 2024), <https://www.thefire.org/news/blogs/ronald-kl-collins-first-amendment-news/moms-liberty-anti-liberty-book-banning-group> [https://perma.cc/U3TN-UV2T].

107. Sanders, *supra* note 90.

108. Laura Prather, *Fifth Circuit Court of Appeals Affirms That Texas Book Rating System is Unconstitutional*, HAYNES BOONE (May 15, 2024), <https://www.haynesboone.com/news/publication/s/fifth-circuit-court-of-appeals-affirms-that-texas-book-rating-system-is-unconstitutional> [https://perma.cc/38GT-3MAV].

109. *Id.*

110. *Id.*

111. Collins, *supra* note 106.

with LGBTQ+ content from its community library.¹¹² In January of 2025, South Carolina introduced a bill in its state senate requiring libraries to certify each quarter that they “do not offer books or materials in children’s, youth, or teen sections that might be considered sexually inappropriate” in order to receive state funding they need.¹¹³ In April of 2024, Idaho passed House Bill 710 to require that books deemed harmful to children be relocated to “adult only” areas in public community libraries,¹¹⁴ causing some rural libraries to respond by prohibiting children’s access to libraries altogether because their libraries are too small for a separate section.¹¹⁵

Critics of the laws that restrict access to books contend that they infringe upon First Amendment rights, including the right to receive information. They argue that these regulations constitute censorship and limit readers’ exposure to diverse perspectives. The debate centers on whether a state government’s interest in shielding children from content it deems inappropriate outweighs a broader societal commitment to the free exchange of ideas.¹¹⁶ States that are traditionally more liberal are responding to this increase in bans by enacting “anti-book ban” laws for both school and community libraries.¹¹⁷ California, Illinois, Minnesota, Maryland, and New Jersey have all enacted protective laws,¹¹⁸ and in June of 2023, Illinois became the first state to enact legislation that outlaws book bans.¹¹⁹ The Illinois law requires libraries to create formal policies or adopt the American Library Association’s Bill of Rights that asserts books could not be removed because of partisan disapproval.¹²⁰ More states are beginning to introduce protective measures. In February of 2025, for example, a bill was introduced in the New York State Assembly to prohibit libraries from banning books based on “partisan or doctrinal disapproval.”¹²¹

112. Jeffrey S. Solocheck, *Pasco Libraries “Suppress” More than 100 Children’s Books with LGBTQ+ Themes*, TAMPA BAY TIMES (Sept. 13, 2024), <https://www.tampabay.com/news/education/2024/09/13/pasco-libraries-suppress-more-than-100-childrens-books-with-lgbtq-themes> [https://perma.cc/J44S-SN5P].

113. *SC S0104 Library Funding*, BILL TRACK 50, <https://www.billtrack50.com/billdetail/1757977> [https://perma.cc/BJH5-A8AK].

114. Kyle Pfaffenstiel & Mia Maldonado, “*We Are Not Getting Rid of Books*”: How Libraries Across Idaho Are Implementing New Materials Law, IDAHO CAP. SUN (July 15, 2024, 4:30 A.M.), <https://idahocapitalsun.com/2024/07/15/we-are-not-getting-rid-of-books-how-libraries-across-idaho-are-implementing-new-materials-law> [https://perma.cc/8QJ3-XJ4Y].

115. *Id.*

116. Sanders, *supra* note 90.

117. Merod, *supra* note 91.

118. *Id.*

119. Naaz Modan, *Democratic-Leaning States Move to Curb Book Bans*, K-12DIVE (Apr. 10, 2024), <https://www.k12dive.com/news/freedom-to-read-divisive-concepts-anti-crt-book-bans/712805> [https://perma.cc/V45R-P2AG].

120. Press Release, *supra* note 11.

121. *NY A05995*, BILL TRACK 50, <https://www.billtrack50.com/billdetail/1845127> [https://perma.

This proliferation of legislation and regulation has received federal attention, with hearings in both the House Committee on Oversight and Reform in 2022 (entitled “Free Speech Under Attack”) and in the Senate Committee on the Judiciary in 2023 (called “Book Bans: Examining How Censorship Limits Liberty and Literature”).¹²² Supporters of states’ legislation and regulation limiting access to books argue that governments have the authority to regulate access to content deemed inappropriate and to protect children from material they consider harmful.¹²³ These arguments often frame the issue as one of parental rights.¹²⁴ In the 2023 Senate Judiciary hearing, the committee heard from five “witnesses” with varying points of view on the issue. Nicole Neily, one of the hearing’s witnesses and President of “Parents Defending Education,” stated before the committee that “families’ concerns about books in schools is not ‘book banning.’ ”¹²⁵ She indicated that their concern with “age appropriate[ness]” is not “radical,”¹²⁶ and stated that the debate around book banning “is a manufactured crisis that distracts from families’ valid concerns about the quality of their children’s education and whether students are safe from drugs, assaults, and bullying in schools today.”¹²⁷ Neily, betraying her own argument that this is about children’s safety and not her own disapproval of LGBTQ+ content, concluded, “Please listen to the concerns of families who want their children to learn basic grammar, *rather than be policed on pronouns.*”¹²⁸

On the other hand, those against the book ban legislation and regulation argue that it is a violation of First Amendment rights and a threat to democracy. Illinois Secretary of State Alexi Giannoulias spoke about his initiation of House Bill 2789, which proposed that Illinois libraries will not receive funding if they ban books:

This legislation is important because both the concept and the practice of “banning books” contradicts the very essence of what our country stands for and what our democracy was founded on. It also defies what education is all about: [t]eaching our children to think for themselves. If the book banners care to, they can go to our libraries and check out the Federalist

cc/EFH5-76RK].

122. Sanders, *supra* note 90.

123. *Id.*

124. *Free Speech Under Attack: Book Bans and Academic Censorship Before the H. Oversight and Reform Subcomm. on Civil Rights and Civil Liberties*, 117th Cong. (2022); *Book Bans: Examining How Censorship Limits Liberty and Literature Before the U.S. S. Comm. on the Judiciary*, 118th Cong. (2023).

125. *Book Bans: Examining How Censorship Limits Liberty and Literature Before the U.S. S. Comm. on the Judiciary*, 118th Cong. (2023) (statement of Nicole Neily, President Parents Defending Education).

126. *Id.*

127. *Id.*

128. *Id.* (emphasis added).

Papers, the U.S. Constitution and even Supreme Court cases on the First Amendment. What they will learn is that our democracy depends on the “marketplace of ideas.” That “marketplace of ideas” will not function if we ban books—because we will be banning ideas and preventing our children from thinking for themselves and having the ability to debate [and] learn [and] understand different perspectives.

[. . .]

I could never imagine a world where I would tell another family what books their kids should or should not be allowed to read.¹²⁹

This surge in book bans is an extension of broader culture wars currently gripping the nation, particularly around issues of “wokeism,” so-called “traditional” family values, and the targeting of transgender individuals by conservative politicians.¹³⁰ These bans reflect a systematic effort to reshape public discourse by restricting access to materials that address topics such as LGBTQ+ identities, systemic racism, or gender diversity. On January 24, 2025, the U.S. Department of Education’s Office for Civil Rights announced the elimination of its book ban coordinator position, which had been established in June of 2023 to investigate complaints regarding school removals of books claimed to be “racially divisive.” Along with eliminating the position, the department dismissed eleven related complaints, stating that the concerns over book bans were a “hoax” and a “false narrative” perpetuated by then-President Biden.¹³¹ Additionally, on February 7, 2025, the Department of Defense (“DoD”) announced that it would be reviewing books “potentially related to gender ideology or discriminatory equity ideology topics” in DoD-funded schools located in seven states and eleven countries.¹³² The DoD removed books from these school classrooms and libraries, including titles such as *Freckleface Strawberry* written by actress Julianne Moore about a young girl learning to accept her freckles and *No Truth Without Ruth*, a biography about Justice Ruth Bader Ginsburg.¹³³

129. *Book Bans: Examining How Censorship Limits Liberty and Literature Before the U.S. S. Comm. on the Judiciary*, 118th Cong. (2023) (statement of The Honorable Alexi Giannoulias, Secretary of State of the State of Illinois) (emphasis omitted).

130. See Robinson, *supra* note 10.

131. Press Release, U.S. Dept. of Ed., U.S. Department of Education Ends Biden’s Book Ban Hoax (Jan. 24, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-ends-bidens-book-ban-hoax> [https://perma.cc/YDU6-V3N9].

132. Ed Pilkington, *Pentagon Schools Suspend Library Books for “Compliance Review” Under Trump Orders*, GUARDIAN (Feb. 13, 2025, 1:24 P.M. EST), <https://www.theguardian.com/us-news/2025/feb/13/pentagon-schools-closed-libraries-trump> [https://perma.cc/S3MM-ZFJM].

133. Julianne Moore’s “Freckleface Strawberry” and JD Vance’s ‘Hillbilly Elegy’ Among Books Caught in Defense Department Review, PEN AMERICA (Feb. 19, 2025), <https://pen.org/julianne-moore-freckleface-strawberry> [https://perma.cc/WW5H-42VG].

One of the activist groups leading the charge on book restrictions is Moms for Liberty.¹³⁴ Moms for Liberty was founded in 2021 and began by speaking out against mask mandates and COVID vaccination requirements in schools. It later shifted gears to focus on the ways in which topics related to LGBTQ+ individuals, racism, and religion are presented in schools.¹³⁵ The group is similar to that of PONYU discussed earlier in regard to the *Pico* case, and the Southern Poverty Law Center has compared Moms for Liberty to “pro-segregationist parent groups that flourished in the wake of . . . *Brown v. Board of Education*.¹³⁶ The group’s influence, for example, led to a parent in South Carolina sending a list of ninety-seven books to her child’s school district for removal in early 2024. The list of books was obtained from a site called “Book Looks,” which was created by a former member of Moms for Liberty to enable parents to “find out what objectionable content may be in [their] child’s book before they do.”¹³⁷ The school librarian was subjected to numerous threats from parents who wanted to turn the librarian in to the police and the FBI for distributing pornography, despite the school having a program in which parents could fill out an opt-out form so their children would not be able to access the book.¹³⁸ Similarly, in the year preceding the enactment of the Idaho House Bill 710 discussed earlier, the Idaho Falls Library received twenty-one complaints from a group called “Parents Against Bad Books.”¹³⁹

Although framed by supporters and activist groups as measures to protect children and uphold parental rights, these laws reflect fears that exposure to certain ideas undermine “traditional” family values. Critics argue that these actions amount to censorship, threaten and violate First Amendment rights by limiting access to diverse perspectives, and politicize public spaces like libraries that are supposed to function as neutral fora for freedom of thought and expression. Art Spiegelman, a Pulitzer Prize winner

134. Although the desire to ban books typically comes from more conservative states and “activist” groups like Moms for Liberty, it is important to note that some human rights organizations associated with liberal causes have also called for censorship of books in schools and public libraries. For example, in 2019, the NAACP proposed a resolution in which several works by Dr. Seuss were to be censored, not just in school curriculums but in public libraries as well. *NAACP Calls for Censorship of all Dr. Seuss Books/Works in all Public Schools/Institutions and Public Libraries*, NAACP (2019), <https://naacp.org/resources/naacp-calls-censorship-all-dr-seuss-bookswoks-all-public-schoolsinstiutions-and-public> [https://perma.cc/7NPK-54VG].

135. Collins, *supra* note 106.

136. *Id.*

137. Scott Pelley, Aliza Chasan, Henry Schuster & Sarah Turcotte, *See the Full List of 97 Books Parents Tried to Ban from Beaufort, South Carolina School Library Shelves*, CBS NEWS (Mar. 3, 2024, 7:00 P.M. EST), <https://www.cbsnews.com/news/beaufort-south-carolina-97-books-ban-attempt-full-list> [https://perma.cc/VS6J-9Y5F]; BOOKLOOKS, <https://booklooks.org> [https://perma.cc/C59Q-N8ND].

138. Pelley et al., *supra* note 137.

139. Pfannenstiel & Maldonado, *supra* note 114.

and author of widely banned book *Maus*, a graphic novel depicting his father's survival of the Holocaust, says of the current situation, "It [i]s a culture war that [i]s totally out of control."¹⁴⁰

VI. PROLIFERATION OF LAWSUITS

There have been numerous legal challenges to legislation and book removals in schools and libraries. However, this Note focuses on two cases that have specifically raised government speech arguments and have gone before the appellate courts: the Eighth Circuit case of *GLBT Youth in Iowa Schools Task Force v. Reynolds* and the Fifth Circuit case of *Little v. Llano County*. Notably, a newer case, *PEN America Center, Inc. v. Escambia County School District*, has been ongoing in front of the Northern District of Florida, in which the school district is also advancing a government speech argument.¹⁴¹ This represents a possibility for this argument to now make its way through the Eleventh Circuit.

A. EIGHTH CIRCUIT: *GLBT YOUTH IN IOWA SCHOOLS TASK FORCE V. REYNOLDS*

In 2023, Iowa enacted Senate File 496 ("SF496"), a contentious law that reshaped policies governing public school libraries and classrooms.¹⁴² The legislation introduced significant restrictions and prohibitions such as requirements to remove books deemed age-inappropriate from school libraries.¹⁴³ Two lawsuits emerged in response to SF496. The first was brought by GLBT Youth in Iowa Schools Task Force, a group of students who asserted that SF496 violated the First Amendment. The second lawsuit was brought by Penguin Random House, authors, and educators, who raised similar First Amendment violations. Because "both cases related to the same legislation . . . and had considerable overlap such that the cases would benefit from joint administration," the District Court for the Southern District of Iowa consolidated the cases.¹⁴⁴

In response to the plaintiffs, the State argued that the removal of books from school libraries constituted government speech, which is not subject to First Amendment viewpoint-neutrality requirements when the government

140. Armitstead, *supra* note 85.

141. *PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 1325, 1331 (N.D. Fla., 2024); *PEN America v. Escambia County School District*, PEN AM. (Oct. 9 2024), <https://pen.org/pen-america-v-escambia-county> [https://perma.cc/5EKT-J27Z].

142. *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, 111 F. 4th 660, 665 (8th Cir. 2024).

143. *Id.* at 666.

144. *Id.*

speaks on its own behalf.¹⁴⁵ The District Court then issued a preliminary injunction on SF496 due to the likelihood that the law violated the First Amendment.¹⁴⁶ On appeal, the Eighth Circuit Court of Appeals overturned the district court's injunction but, importantly, rejected the application of the government speech doctrine while noting that the Supreme Court has not held that library curation is government speech.¹⁴⁷ Also, applying the *Shurtleff* factors, discussed earlier in Section II.B, the Eighth Circuit stated that the public does not typically associate this activity with government action, as the library usually hosts a broad and diverse set of materials instead of a curated set of government-endorsed messages.¹⁴⁸ Additionally, Iowa has not historically exercised significant control over the selection and removal of books from libraries, and the Supreme Court has directed the use of caution when extending the doctrine of government speech.¹⁴⁹

B. FIFTH CIRCUIT: *LITTLE V. LLANO COUNTY*

In August of 2021, three Llano County, Texas, residents, Rochelle Wells, Eva Carter, and Jo Ares, filed complaints with Judge Ron Cunningham, head of Llano County Commissioners Court, which supervises the Llano County library system, about children's library books that they found to be "pornographic and overly sexual."¹⁵⁰ Wells, in order to prevent others in the community from checking out books she deemed unacceptable, checked them out continuously for months. Cunningham then directed the librarian to remove these books from Llano County library shelves.¹⁵¹

Several months later, another community member sent Cunningham a list of books that she found objectionable, calling them "pornographic filth."¹⁵² Cunningham further instructed the librarian to remove these additional books. In total, the library removed seventeen books by the end of 2021, and these books became accessible only if an individual asked the librarian for them. However, the books were not listed in the catalog system, making it impossible to know if the books were available for checkout.¹⁵³

145. *Id* at 667.

146. *Id.*

147. *Id* at 667, 671.

148. *Id* at 668.

149. *Id.*

150. *Little v. Llano Cnty.*, 103 F.4th 1140, 1144 (5th Cir. 2024), *overruled by* On Petition for Rehearing En Banc, *Little v. Llano Cnty.*, 106 F.4th 427 (5th Cir. 2024).

151. The books in question were described as "butt and fart books" and included titles such as *I Broke My Butt!* and *Larry the Farting Leprechaun*. *Little*, 103 F.4th at 1144.

152. *Id.*

153. *Id.*

In 2022, the library board dissolved, and Cunningham appointed Wallace and Wells to the new board. The new board prohibited the Llano County librarian from attending the board's meetings and required her to obtain approval for any new books she sought to include in the library.¹⁵⁴ Subsequently, plaintiffs brought suit in the United States District Court for the Western District of Texas and alleged that their First Amendment rights had been violated because the book removals occurred based on the defendants' disagreement with the content of the books.

In March of 2023, Judge Robert Pittman of the United States District Court for the Western District of Texas issued a preliminary injunction, concluding that the plaintiffs were likely to succeed on the merits of their First Amendment claim based on viewpoint discrimination. The Court mandated the return of the book titles in question and prohibited further removal of books while the case proceeded.¹⁵⁵ The decision was initially affirmed by a 2-1 Fifth Circuit panel but was quickly vacated and ordered to be heard *en banc*.¹⁵⁶ Notably, the panel dissent endorsed the government speech argument.¹⁵⁷

Oral arguments before the *en banc* court took place in September of 2024 and opened with the lawyer for Llano County, Jonathan Mitchell, arguing that the Court should overturn *Campbell v. St. Tammany Parish School Board*, previously discussed in this Note's Section I. *Campbell* held that the constitutionality of removing books from a library hinges on the substantial motivation of officials involved. Specifically, *Campbell* ruled that decisions driven by a desire to suppress certain viewpoints or ideas violate the First Amendment. This holding closely aligns with the plurality's reasoning in *Pico*.

Mitchell and the County argued that library decisions to acquire, retain, or remove books are choices that should be categorized as government speech—and thus should be exempt from restrictions on viewpoint discrimination.¹⁵⁸ Drawing on *Moody v. NetChoice LLC*,¹⁵⁹ the County compared the library's book collection to “speech that belongs to the

154. *Id.* at 1145.

155. Andrew Albanese, *On Appeal, Llano County Seeks Book Ban Ruling That Would Upend Public Libraries*, PUBLISHERS WKLY. (Sept. 25, 2024), <https://www.publishersweekly.com/pw/by-topic/industry-news/libraries/article/96015-on-appeal-llano-county-seeks-book-ban-ruling-that-would-upend-public-libraries.html> [https://perma.cc/9H6J-CG8R].

156. *Id.*

157. *Little*, 103 F.4th at 1161 (Duncan, J., dissenting).

158. Oral Argument at 0:48–2:11; *Little v. Llano County* (2024) (No.23-50224), (downloaded from courtlistener.com, <https://www.courtlistener.com/audio/94137/little-v-llano-county> [https://perma.cc/C2ER-8FMG]).

159. *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024).

curator,” asserting that the inclusion or exclusion of particular materials is expression.¹⁶⁰ They compared the content selected in libraries to a curated broadcast or a social media page, which is deemed expressive activity.¹⁶¹ The defendants argued that by exercising discretion over library content, the government is communicating its own message about what is appropriate for the community it serves. Under this framework, the decision regarding the removal of books would be insulated from a First Amendment challenge.

Plaintiffs countered that holding library curation to be government speech would “recast government censorship as protected affirmative speech” and “expand the government’s power to extinguish controversial ideas.”¹⁶² They argued that the act of curating library books is not government speech because it does not meet the Supreme Court’s test from *Shurtleff v. Boston*. Specifically: (1) the county has not historically censored books based on viewpoint; (2) the public does not perceive the government to be speaking because the books provide for conflicting views; and (3) the county has not engaged in viewpoint curation for every book in the library.¹⁶³

The *en banc* panel overruled *Campbell* and a plurality held that library book curation is government speech in their final ruling on May 23, 2025.¹⁶⁴ On September 9, 2025, the attorneys for plaintiffs, now notably including Elizabeth Prelogar, the former Solicitor General of the United States, filed a petition for a writ of *certiorari*.¹⁶⁵

VII. BOOK BANNING CASES ARE HEADED TO THE SUPREME COURT

The Supreme Court should grant *certiorari* in *Little* because of the unresolved legal questions stemming from *Pico*, the steady rise in legislation targeting book removals, and the newly divided circuits on government speech. *Pico* established that school boards cannot remove books solely

160. Oral Argument, *supra* note 158, at 2:15.

161. Attorneys for the plaintiffs, in their petition for *certiorari*, distinguished *Little* from *NetChoice* by arguing that a “[p]ublic library is fundamentally different from [a] social media platform[]”: First, a public library is not a “private entity offering an expressive product,” and second, the library has not previously curated its book selection by “preferring certain viewpoints and suppressing others.” Petition for Writ of Certiorari, *Little v. Llano Cnty.*, No. 23-50224, 2025 U.S. App. LEXIS 13121, at *3 (5th Cir. May 23, 2025) (No. 25-284).

162. En Banc Suppl. Br. for Pls.-Appellees at 1, *Little v. Llano Cnty.*, No. 23-50224 (5th Cir. Aug. 3, 2024).

163. *Id.* at *2.

164. *Little v. Llano Cnty.*, No. 23-50224, 2025 U.S. App. LEXIS 13121, at *3 (5th Cir. May 23, 2025).

165. Petition for Writ of Certiorari, *Little v. Llano Cnty.*, No. 23-50224, 2025 U.S. App. LEXIS 13121 (5th Cir. May 23, 2025) (No. 25-284).

because they disagree with their ideas, but the fractured nature of the ruling left room for interpretation—especially regarding the distinction between school and public libraries. Now, with a circuit split on whether library book curation constitutes government speech, the need for Supreme Court clarification is even greater. The Fifth Circuit’s decision in *Little* directly contradicts the Eighth Circuit’s ruling in *GLBT*, which held that library curation is not government speech. If courts allow the government to claim that book removals are a form of government speech, it will fundamentally reshape public libraries by transforming them from spaces of free inquiry into spaces of government-endorsed messages. Given the implications for First Amendment rights and the increasing legal battles over library censorship, the Supreme Court will likely need to resolve these critical constitutional issues.

A. DECADES-OLD NONBINDING SUPREME COURT PLURALITY OPINION IN *PICO*, REVISITED

As previously discussed in Section I, *Pico* involved the removal of several books from a public school library, in which the school board argued that the books were “anti-American” and “vulgar.”¹⁶⁶ In its plurality opinion, the Court held that there was a genuine issue of material fact as to whether the school board’s removal of the books violated the First Amendment.¹⁶⁷ Justice Brennan, joined by Justice Marshall and Justice Stevens, held that the books could not be removed solely because of the government’s disagreement with the ideas contained in the books. A plurality of the Justices also reaffirmed that students have a right to receive information protected by the First Amendment, even in a school setting.¹⁶⁸ However, the *Pico* decision left room for discretion on the part of the schools, in that they could remove books deemed educationally unsuitable. As in, removal would be permissible if it was based on educational suitability rather than ideological disapproval.

The Justices differed on the legal standard for determining when a school could remove books. Justice Blackmun concurred in the judgment but did not agree that the right to receive information was a necessary consideration.¹⁶⁹ Justice White concurred in the judgment only and would have held that there was a genuine issue of material fact without identifying the viewpoint limitation on school boards.¹⁷⁰ As mentioned throughout this

166. Bd. of Ed. v. Pico, 457 U.S. 853, 857 (1981).

167. *Id.* at 872.

168. *Id.* at 868.

169. *Id.* at 878 (Blackmun, J., concurring).

170. *Id.* at 883 (White, J., concurring).

Note, the fractured nature of the *Pico* ruling—in addition to the rise in legislation on book banning—indicates that lower courts will now need clarification from the Supreme Court on the standards of book removal in school and public libraries.

B. THE SUPREME COURT HAS NOT YET DIFFERENTIATED BETWEEN SCHOOL LIBRARIES AND PUBLIC LIBRARIES

School libraries and public libraries both play essential roles in supporting free speech, but they differ in scope when it comes to book removal challenges. Public libraries are community institutions that serve people of all ages and provide access to a vast array of viewpoints and information. In contrast, school libraries function within an educational setting, where materials are evaluated based on curricular goals and suitability for students. Because of this distinction, parents have a greater influence over school libraries as they have a recognized right to direct their children’s upbringing.¹⁷¹ However, this parental right does not extend to controlling what is available in a public library, where individuals—children and adults alike—retain personal autonomy over what they choose to read.

Public libraries operate on the principle of voluntary access. Unlike schools, in which students may be required to engage with certain materials, public library users have complete discretion over what they may choose to check out. If a parent does not want their child reading a particular book, they can simply prevent their child from borrowing it without imposing that decision on the rest of the community. This opt-in nature of public libraries makes government-imposed book removals particularly troubling, as these removals do not merely reflect an effort to structure a child’s education, but also limit access to information for everyone in the community.

Pico narrowly addressed book removals in school libraries, but the differences between school and public libraries demand a more nuanced legal approach. The dissent in *Pico* expressed concerns about a school board’s ability to maintain control over the educational environment, but that is not relevant here.¹⁷² How might the dissent have ruled had this been a community library? The fact that *Pico* left these unresolved questions highlights the need for clearer guidance from the Supreme Court on how book removal standards apply to public libraries. Furthermore, the Supreme Court should uphold an even stronger determination against viewpoint discrimination than it did in *Pico*, given the dangers posed by an expanded

171. *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923) (recognizing the “power of parents to control the education of their own [children]”).

172. *Pico*, 457 U.S. at 885 (Burger, J., dissenting).

understanding of the government speech doctrine, as discussed in Section D below.

C. LLANO COUNTY'S BOOK REMOVALS ARE VIEWPOINT DISCRIMINATION

Although *Pico* held that books cannot be removed from school libraries solely because of disagreement with the ideas they contain, the case was remanded for further proceedings, and subsequent proceedings never determined whether the school board's actions constituted viewpoint discrimination. After the remand, the school board faced pressure from 1,200 parents who petitioned to end the case and return the books to the library shelves.¹⁷³ In response, the board reinstated the books and implemented a parental notification requirement for checking out these books. However, the Civil Liberties Union challenged this notification policy, arguing that it violated laws protecting confidentiality of library records.¹⁷⁴ Facing continued public pressure, with some parents even leaving the district over the issue, the school board eventually abandoned its efforts and restored all books to the shelves.¹⁷⁵

Book bans are unconstitutional when they are based on viewpoint discrimination.¹⁷⁶ The Supreme Court, however, has yet to articulate a clear standard for identifying when book removals cross the constitutional line. Supporters of book bans often claim that they are motivated by concerns about age appropriateness, but modern challenges overwhelmingly focus on specific themes and perspectives—particularly those related to race, gender, and sexuality¹⁷⁷—suggesting they are driven by ideological opposition rather than neutral educational concerns. For instance, in Georgia, a challenger criticized a book featuring a same-sex couple, stating, “Books like this [are] where teens get the idea that [same-sex relationships are] okay”¹⁷⁸—a clear expression of disagreement with the viewpoint that same-sex relationships are acceptable. Similarly, in Tennessee, a branch of Moms for Liberty opposed a book detailing the story of civil rights activist Ruby Bridges,

173. Michael Winerip, *L.I. School Board Ends Its Fight to Ban Books*, N.Y. TIMES (Jan. 31, 1983), at B7 (accessible via THE NEW YORK TIMES TimesMachine at <https://timesmachine.nytimes.com/timesmachine/1983/01/31/issue.html> [https://perma.cc/87ZT-LGGF]).

174. *Id.*

175. *Id.*

176. *Pico*, 457 U.S at 854.

177. Alex Eble, Sonya Douglass, Michael Rebell, & Ansley Erickson, *What You Need to Know About the Book Bans Sweeping the U.S.*, COL. U. TCHR. COLL., (Sept. 6, 2023), <https://www.tc.columbia.edu/articles/2023/september/what-you-need-to-know-about-the-book-bans-sweeping-the-us> [http://perma.cc/D3ES-Q52Y].

178. Hannah Natanson, *Objections to Sexual, LGBTQ Content Propels Spike in Book Challenges*, Wash. Post. (June 9, 2023) <https://www.washingtonpost.com/education/2023/05/23/lgbtq-book-ban-challengers> [https://perma.cc/BWJ4-Z5XD].

written by Bridges herself, as teaching “anti-American values.”¹⁷⁹ In Idaho Falls, most of the twenty-one complaints that its public library received in 2023 were for books that dealt with LGBTQ+ characters or race.¹⁸⁰ LGBTQ+ books are frequently mischaracterized as being about sex, even when the content is entirely age-appropriate—such as the children’s picture book *And Tango Makes Three*, which tells the true story of two male penguins raising a chick together.¹⁸¹

The rapid rise of book bans over the past several years is directly connected to the broader political efforts used to suppress discussions of race and gender. This trend is underscored by Donald Trump’s executive orders targeting diversity, equity, and inclusion (“DEI”) initiatives, which frequently incorporate books on these subjects. DEI programs are being vilified as promoting “antiwhite racism” and undermining “national unity.”¹⁸² Schools that receive federal funding are being threatened with withholding of those funds if they do not abandon their DEI programs.¹⁸³ The 2025 DoD directive to remove books from DoD schools based on “gender” and “discriminatory equity” ideologies makes explicit the political-and viewpoint-based motivations behind the legislation targeting books in schools and libraries. The directive, echoing the Trump administration’s hostility toward DEI, is obviously rooted in content- and viewpoint-based discrimination. It is difficult to justify restricting access to children’s picture books about a girl with freckles or the life of Ruth Bader Ginsburg as anything but obvious partisan viewpoint censorship.

The same viewpoint-based targeting is evident in *Little v. Llano County*, making it an ideal case for the Supreme Court to clarify when book removals constitute unconstitutional viewpoint discrimination. The books removed from Llano County libraries overwhelmingly focus on LGBTQ+ identities and racial equity. County officials referred to these books as “pornographic filth” and “disgusting.” Similar to the school board defendants in *Pico* who used a list of books from an outside source to recommend books for removal because they disagreed with the contents, here, the defendants in *Little* created a list of books they “personally opposed,” including books that had

179. *Moms For Liberty*, S. POVERTY L. CTR., <https://www.splcenter.org/resources/extremist-files/moms-liberty/#:~:text=Moms%20for%20Liberty%20was%20originally,that%20the%20organization%20deems%20inappropriate> [https://perma.cc/83ND-Q8LQ].

180. Pfannenstiel & Maldonado, *supra* note 114.

181. Smith College, *supra* note 22.

182. Paul M. Collins Jr. & Rebecca Hamlin, *Anti-DEI Guidance from Trump Administration Misinterprets the Law and Guts Educators’ Free Speech Rights*, CONVERSATION (Feb. 26, 2025, 3:24 P.M.), <https://theconversation.com/anti-dei-guidance-from-trump-administration-misinterprets-the-law-and-guts-educators-free-speech-rights-250574> [https://perma.cc/M2LA-CAMG].

183. *Id.*

been identified by an outside party as about “politics, race, sexuality, and gender.”¹⁸⁴ These books included *Caste: The Origins of Our Discontents*, *They Called Themselves the KKK: The Birth of an American Terrorist Group*, *Being Jazz: My Life as a (Transgender) Teen*, and *Freakboy*, among others.¹⁸⁵

Several factors in *Little* make clear that the book removals were based on viewpoint discrimination. First, the targeted books overwhelmingly dealt with themes that have been politically contentious, indicating the removals were not neutral but ideological. Second, officials ignored standard library weeding procedures and instead relied on personal opposition and lists of objectionable books obtained from outside sources to justify removals.¹⁸⁶ Third, internal emails show that librarians did not agree with several of the removals and thought they might be “illegal.”¹⁸⁷

The Supreme Court has long recognized that the government cannot suppress speech simply because it disagrees with its message. Yet, the rise of book bans driven by ideological opposition demonstrates the need for a more explicit and enforceable standard. *Little* may present the Court with an opportunity to provide that clarity and reaffirm that viewpoint-based censorship in public libraries is unconstitutional. The Court must make clear that the specific targeting of LGBTQ+ and racial equity themes is a constitutional violation, and that not all books containing these themes are inherently age-inappropriate.

D. THE DANGEROUS RISE OF THE GOVERNMENT SPEECH ARGUMENT

An issue that was not raised in the *Pico* case, but remains a serious and dangerous argument gaining prominence, is that of government speech. Should the Supreme Court grant *certiorari* to *Little*, affirm the Fifth Circuit’s decision to overrule *Campbell*, and hold that library book selection is government speech, the outcome of *Little* could have profound consequences. Holding that library book curation is government speech would fundamentally distort the marketplace of ideas, which is a fundamental building block of our country’s democracy.

As mentioned, the Eighth Circuit held in *GLBT* that library book curation is not government speech. Therefore, the Fifth Circuit’s plurality holding in *Little* that library book curation is government speech and its

184. En Banc Suppl. Br. for Pls.-Appellees, *supra* note 162, at 17.

185. *Little v. Llano Cnty.*, 103 F.4th 1140, 1144 (5th Cir. 2024), *overruled by* On Petition for Rehearing En Banc, *Little v. Llano Cnty.*, 106 F.4th 427 (5th Cir. 2024).

186. En Banc Suppl. Br. for Pls.-Appellees, *supra* note 162, at 20.

187. *Id.*

overturning of *Campbell*, which closely aligns with the *Pico* holding, make it very likely that the Supreme Court will grant *certiorari*. In the original Fifth Circuit opinion that was vacated, dissenting Judge Stuart Kyle Duncan wrote, “There is a simple answer to the question posed by this case: [a] public library’s choice of some books for its collection, and its rejection of others, is government speech.”¹⁸⁸ This split with the Eighth Circuit and divergence from *Pico*, the latter of which has been adhered to across circuits, requires clarification from the Court.

Seventeen states signed onto an amicus brief on behalf of Llano County endorsing defendants’ argument that library book curation is government speech. The states wrote, “The county’s decisions over which books to offer its patrons in its public libraries, at its own expense, are its own speech.”¹⁸⁹ In April of 2024, Florida made the government speech argument in *PEN America v. Escambia County School District*, in which a district judge held that whether library curation decisions are government speech is an unsettled matter.¹⁹⁰ Florida, one of the states to sign the amicus in *Little*, traveled to the Fifth Circuit to make the argument for government speech after Llano County yielded some of its speaking time to Florida.¹⁹¹ In a social media post, The Florida Freedom to Read Project alerted followers to “pay attention” to the *Little* case; it stated that Florida would keep presenting this argument “until they find a friendly court.”¹⁹²

Legal scholars have raised concerns about the ambiguous scope of the government speech doctrine and its potential to undermine First Amendment rights.¹⁹³ Cases such as *Little* and *GLBT* are prime examples illustrating these scholars’ justified fears. The consequences of states characterizing library book curation as government speech would turn spaces dedicated to the free exploration of ideas into “silos of partisanship.”¹⁹⁴ Government speech is particularly serious in this context because, in the case of libraries, there are few other places where individuals can access such a breadth of ideas freely. Libraries are physical manifestations of the marketplace of ideas, where people can go to find information on nearly any topic they might think of with little to no cost. Allowing the government to pick and choose what ideas

188. *Little*, 103 F.4th at 1159 (Duncan, J., dissenting).

189. Douglas Soule, *Florida Attorney General’s Office Heading Out of State to Defend Texas Library Book Bans*, TALLAHASSEE DEMOCRAT (Sept. 19, 2024, 5:11 A.M. ET), <https://www.tallahassee.com/story/news/politics/2024/09/19/florida-to-argue-for-texas-book-bans-in-federal-court-out-of-state/75251546007> [https://perma.cc/VX3A-ERW4].

190. *PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 3d 1325, 1331 (N.D. Fla. Jan. 12, 2024).

191. Soule, *supra* note 189.

192. *Id.*

193. Sinha, *supra* note 48.

194. En Banc Suppl. Br. for Pls.-Appellees, *supra* note 162, at 13.

line the shelves based on viewpoint is directly removing those ideas from the marketplace. For instance, while *Rust v. Sullivan* (previously discussed in Section B of this Note) allowed the government to restrict healthcare professionals from putting information about abortion into the marketplace, families could still turn to other sources—like libraries—to find information on abortion. For many members of the public, the library is the last stop to gather information on these politically restricted ideas.

Libraries are unique in that they offer a wide array of materials, often without any cost or significant barriers to access. Bookstores and online research can be expensive, and in many areas, libraries are the only option for communities to obtain information. For seniors or those who might not be tech-savvy, the library is a place where they can easily access ideas that may not be readily available elsewhere. Calling library book curation government speech is therefore particularly risky because it grants the state power to limit the flow of information in spaces dedicated to public knowledge, thereby undermining the core purpose of that space.¹⁹⁵

Further, library book curation is not government speech as analyzed by the test in *Shurtleff*. The *Little* plaintiff pointed out that Llano County has not historically engaged in viewpoint-based censorship and echoed *GLBT* in that the government “has not historically spoken by censoring books at public libraries.”¹⁹⁶ Libraries have historically stood in contrast to censorship, providing the public with free access to ideas.¹⁹⁷ Defendants, in response, focused on “curation,” which they argued has “always been the prerogative of government employees.”¹⁹⁸

The *Little* defendants’ argument is wrong. Curation does not equal government speech in the context of libraries. One aspect of a librarian’s job duties is to review the library collection. Many libraries, including those in Llano County, follow a standardized process of “Continuous Review, Evaluation and Weeding” (“CREW”).¹⁹⁹ Librarians are tasked with removing—weeding—books deemed outdated or duplicated. This removal is subject to neutral criteria, most typically by following “MUSTIE” factors.²⁰⁰ MUSTIE stands for: (1) “misleading” (factually inaccurate); (2) “ugly” (worn out and unfixable); (3) “superseded” by a new edition (or

195. Heidi Kitrosser, *The Government Speech Doctrine Goes to School*, KNIGHT FIRST AMEND. INST. AT COLUM. UNIV. (Oct. 11, 2024), <https://knightcolumbia.org/content/the-government-speech-doctrine-goes-to-school> [https://perma.cc/4LWA-UATP].

196. En Banc Suppl. Br. for Pls.-Appellees, *supra* note 162, at 34 (emphasis omitted).

197. *See supra* discussion at Section III.

198. En Banc Reply for Def.-Appellants at 20, *Little v. Llano Cnty.*, No. 23-50224 (5th Cir. Aug. 3, 2024).

199. *Id.*

200. En Banc Suppl. Br. for Pls.-Appellees, *supra* note 162, at 18.

better source); (4) “trivial” (of no literary or scientific merit); (5) “irrelevant” to the needs and interest of the community; and (6) “elsewhere” (material can be easily borrowed elsewhere).²⁰¹

A book satisfying one factor alone would likely not be weeded; instead, it would require meeting a combination of these factors for removal. In fact, Llano county required two MUSTIE factors to be met before removal.²⁰² Libraries engage in MUSTIE practices to weed out certain library books, and of course, such weeding involves making some selection choices because libraries do not have unlimited physical space. However, MUSTIE relies on relevance, demand, and educational value to make removal decisions and include various (and likely opposing) viewpoints. These choices are not made to represent a government-endorsed message. As *Little* plaintiffs pointed out in their brief, “any regulation of speech could be reframed as the government” if choices about quality are considered government messages.²⁰³

Second, the public does not perceive the government to be presenting a message or speaking through the combination of books they are presented with in a library. Libraries are meant—and understood by the public—to facilitate access to a diverse range of perspectives, not to endorse or suppress ideas. As plaintiffs in *Little* argued, the public does not perceive the government to be endorsing the messages of each book in the library.²⁰⁴ They point to the Eighth Circuit decision in *GLBT* to highlight that libraries contain books with a “wide range of conflicting views”²⁰⁵ and that it is not possible for the public to believe the government is endorsing them all. Otherwise, the government would be “babbling prodigiously and incoherently.”²⁰⁶ Defendants in *Little* countered this argument by insisting that the issue in *GLBT* is not about the endorsement of the speech within the library books, but rather about the status of the person who selected them (i.e., a government employee or a private citizen).²⁰⁷ They argue that it is “inconceivable” that anyone would attribute this speech to the actions of a private citizen.²⁰⁸ While it is likely true that the public would view a librarian as acting in their scope of employment, rather than acting as a private citizen, defendants’ argument is dangerous and greatly expands the reach of the government speech doctrine, contrary to the U.S. Supreme Court’s warning

201. *Id.*

202. *Id.* at 19.

203. *Id.* at 37.

204. *Id.* at 38.

205. *Id.* at 39.

206. *Id.*

207. En Banc Reply for Def.-Appellants, *supra* note 198, at 22.

208. *Id.* at 21.

in *Matal v. Tam* that government speech should be applied with caution.²⁰⁹

The mere fact that government employees are involved in a process does not automatically transform the process into one of government speech. For example, contrary to *Little*'s majority opinion, just because museum curators choose exhibits does not mean their actions are viewed and understood by the public as government messaging.²¹⁰ Shifting the debate from the public perception of government endorsement of a message to that of the identity of the selector would give the government near immunity from First Amendment violations. When the government issues a press release or policy, it is widely recognized as an official message because it comes from a government employee and explicitly communicates the government's position. Unlike an official government-issued report or press release, a library's collection does not serve as a direct communication of any particular message.²¹¹ Further, when a person checks out a book from the library, they do not view the book as a message from the government. Library patrons do not understand the selection of books in a library to be a message from the government saying, "we think this is a good book" or "we approve of this book." While it is understood that the librarians have selected the book for inclusion in the library's collection, the message is not the librarian's personal endorsement of the viewpoints contained in the book, but rather of the ideas presented by the author. The library's role is not to act as a representative for government messages, but to facilitate access to diverse ideas. Thus, the public sees the speech within the book as belonging to the author, not as a government-endorsed message.

Third, libraries do not extensively engage in viewpoint discrimination when selecting books for their library shelves. *Little* plaintiffs correctly argue that the weeding process that libraries engage in is based on a neutral set of criteria and is not an effort to remove books based on viewpoint.²¹² The plaintiffs analogized this work to that of maintenance, not intentional control of specific content.²¹³ Again, here, the defendants argue that this is based on the public status of the librarian's employment, stating that the selection and removal decisions "will always be shaped and controlled by . . . government employees."²¹⁴ Defendants missed the point here. Per aforementioned

209. *Matal v. Tam*, 582 U.S. 218, 235 (2017).

210. See *Little v. Llano County*, No. 23-50224, 2025 U.S. App. LEXIS 13121, at 43, (5th Cir. May 23, 2025) (Duncan, J., stating that curation of a museum's collection is a government message of "[t]hese works are worth viewing").

211. See Petition for Writ of Certiorari at 24–25, *Little v. Llano Cnty.*, No. 23-50224, 2025 U.S. App. LEXIS 13121 (5th Cir. May 23, 2025) (No. 25-284).

212. En Banc Suppl. Br. for Pls.-Appellees, *supra* note 162, at 11.

213. *Id.* at 43.

214. En Banc Reply for Def.-Appellants, *supra* note 198, at 22.

reasons, there is no viewpoint discrimination involved in the weeding process and the point of weeding is not to shape a particular expression.

The Court should make it unequivocally clear that the curation of public library collections by professional librarians is not government speech. Librarians are trained professionals guided by ethical standards. Their role in selection and curation of books is fundamentally about serving the public's needs by providing them with unrestricted access to diverse perspectives. Libraries follow the principles of the Library Bill of Rights, which was created in *response* to censorship. Librarians are not curating a government message; they are curating a space where individuals can "seek and receive information from all points of view without restriction."²¹⁵

CONCLUSION

The First Amendment serves as a foundation of democracy, protecting access to information and the free exchange of ideas. Throughout the nation's history, it has been vigorously defended as a means of fostering an informed citizenry. Democracy thrives when individuals can explore, challenge, and expand their understanding of the world around them through exposure to wide-ranging perspectives. This right is not reserved for adults alone—children, as future stewards of our society, are also entitled to these fundamental protections.

Community libraries embody the First Amendment's principles in their purest form. Libraries are not merely collections of books, but institutions dedicated to providing neutral spaces where people of all backgrounds can engage with a variety of perspectives, free from political bias or government interference. Politicizing libraries by framing the curation of their collections as government speech would fundamentally undermine the heart of the marketplace of ideas exemplified and provided by libraries.

The Supreme Court's plurality decision in *Pico* rightly recognized that students have a constitutional right to access information. However, given the increasing frequency of book bans and the evolving legal landscape, the Court must reaffirm and strengthen the *Pico* decision. Librarians are trained professionals who adhere to ethical standards, and their role in curating books is centered on ensuring unrestricted access to knowledge, not advancing political agendas. Treating library curation as government speech would open the door to political ideological control over library collections and erode public trust in government institutions.

215. Smith College, *supra* note 22.

Upholding the First Amendment's protection over access to library books is essential to maintaining a society that values open inquiry and free expression. Libraries are not arenas for partisan agendas, but sanctuaries for knowledge and intellectual growth. As the Foundation for Individual Rights and Expression put it, "Regardless of whether book banning campaigns target the Bible or Judy Blume, politicized efforts to restrict access to information cannot be reconciled with the Founders' faith in the free exchange of ideas and our national commitment to freedom of expression."²¹⁶

216. Br. of Amicus Curiae Foundation for Individual Rights and Expression in Supp. of Pl.-Appellees at 33–34, *Little v. Llano Cnty.*, 103 F.4th 1140, 1144 (5th Cir. 2024).