No. 25-284

# In The
# Supreme Court of the United States

LEILA GREEN LITTLE, *et al.*,
*Petitioners*,

*v.*

LLANO COUNTY, *et al.*,
*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

## BRIEF OF *AMICUS CURIAE* FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION IN SUPPORT OF PETITIONERS AND REVERSAL

Robert Corn-Revere
*Counsel of Record*
William Creeley
FOUNDATION FOR
INDIVIDUAL RIGHTS
AND EXPRESSION
700 Pennsylvania Ave. SE
Suite 340
Washington, DC 20003
215-717-3473
bob.corn-revere@thefire.org

*Counsel for* Amicus Curiae

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

## QUESTION PRESENTED

At the urging of a handful of private citizens, government officials in Llano County, Texas, removed seventeen books from the county library's shelves. A district court found that those book-removal decisions were motivated by a desire to censor particular viewpoints. The question presented is:

Whether those book-removal decisions are subject to scrutiny under the Free Speech Clause of the First Amendment.

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

*Page*

**Cases**

*Table of Authorities*

*Page*

*Table of Authorities*

*Page*

*Page*



**Statutes**



**Constitutional Provisions**



**Other Authorities**

*Page*

*Page*

## INTEREST OF *AMICUS CURIAE*[1]

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit that defends the rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended freedom of expression without regard to the speakers' views through public advocacy, strategic litigation, and participation as *amicus curiae* in cases implicating First Amendment rights.

After decades of experience combating campus censorship—including vigilante book-burning[2]—FIRE is all too familiar with the constitutional, pedagogical, and societal problems posed by silencing minority or dissenting viewpoints. FIRE strongly opposes attempts to ban books based on personal or partisan disagreement, whether on campus or beyond. Informed by our unique history, FIRE has a keen interest in ensuring the censorship we have long fought on campus does not take hold in society at large or on our public library shelves.

---

1. Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part, and that no person other than *amicus* or its counsel contributed money intended to fund preparing or submitting this brief.

2. Adam Steinbaugh, *Author's Appearance at Georgia Southern University Cancelled After Students Burn and Shred books*, Foundation for Individual Rights and Expression (Oct. 11, 2019), https://www.thefire.org/news/authors-appearance-georgia-southern-university-cancelled-after-students-burn-and-shred-books [https://perma.cc/FH7Z-86RL].

## SUMMARY OF ARGUMENT

This case presents the vital question of whether the First Amendment limits governmental power to remove books from a public library for arbitrary or political reasons. The record and the decision below illustrate the danger of placing public libraries at the mercy of political culture wars where the winners take all.

Public libraries are not playthings of politicians and political appointees. They are, as governmental institutions, part of a system expressly predicated on limiting state power, especially the power to control ideas. This is because "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). As guardians of the people's freedom to read, public libraries exist to preserve the widespread, nonpolitical dissemination of knowledge.

The Framers would have been aghast at the abuse of governmental power to interfere with public libraries. The status of public libraries as nonpolitical repositories of public knowledge emerged out of hard lessons of history. Censorship was the expected norm for millennia, and as civilizations rose and fell throughout human history, one recurring theme was censorship of the works of religious and political enemies—often with extreme prejudice. Our Framers endeavored to end this vicious cycle, both in their words and deeds. They adopted a Bill of Rights with a First Amendment guarantee that "Congress shall make no law … abridging the freedom of speech, or of

the press," U.S. Const. amend. I, and created libraries to ensure widespread dissemination of information on all subjects. To be sure, book censorship continued after the Constitution's ratification. But over time, First Amendment jurisprudence arose from those controversies to preclude the type of censorship now occurring in Llano County and elsewhere.

While the government may choose whether or not to establish a library in the first place, that power does not authorize transient officeholders to impose their personal political, religious, or philosophical preferences on the community. As this Court has noted, libraries cannot be run in "a narrowly partisan or political manner" because "[o]ur Constitution does not permit the official suppression of *ideas*." *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 870–71 (1982) (plurality op.). Thus, "if a Democratic school board, motivated by party affiliation, ordered the removal of all [library] books written by or in favor of Republicans, few would doubt that the order violated the constitutional rights of the students denied access to those books." *Id.* at 870–71. This is even truer of community libraries like that in Llano County. *Sund v. City of Wichita Falls*, 121 F. Supp. 2d 530, 548 (N.D. Tex. 2000).

The First Amendment's protection of our "right to receive information and ideas" has long been "well established." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). In particular, a "bedrock principle underlying the First Amendment" is that officials cannot limit expression "simply because society finds [it] offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). These principles not only limit the government's ability to restrict speech generally, but

they also govern the institutions the government creates for purposes of disseminating knowledge.

The government cannot create a repository of information—dedicated to serving all members of the community and designed to include even unorthodox and unpopular views—then leave it to the unbounded discretion of political decisionmakers who "distort its usual functioning." *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 543 (2000). Just as the government "could not elect to use a broadcasting network or a college publication structure in a regime which prohibits speech necessary to the proper functioning of those systems," *id.* at 544, the First Amendment prevents it from leaving a public library's book removal decisions to the vagaries of political whims.

But the *en banc* Fifth Circuit saw fit to allow just such a partisan takeover, with a majority holding Respondents' viewpoint-based book removals did not implicate the First Amendment. *Little v. Llano Cnty.*, 138 F.4th 834, 845 (5th Cir. 2025). In so doing, the Fifth Circuit rejected longstanding precedent and granted Respondents unfettered authority to remake the holdings of Llano County's public library in their preferred political image.

Compounding the damage, a plurality endorsed the radical notion that the partisan removal of books from a public library's shelves is an exercise of "government speech and therefore not subject to Free Speech challenge." *Id.* at 837. But this Court has wisely called for the "exercise of great caution" against expansive interpretations of government-speech doctrine. *Matal v. Tam*, 582 U.S. 218, 235 (2017). If not strictly policed, the doctrine would permit the

government to "silence or muffle the expression of disfavored viewpoints" by "simply affixing a government seal of approval" to a given set of speech no one would understand to be communicating the government's own message. *Id*.

The "dangerous misuse" of the government-speech doctrine the Court has warned against is squarely presented here. *Id*. The government does not "speak" through the books available on public library shelves, nor does it directly control the message those volumes contain. *See Shurtleff v. City of Boston*, 596 U.S. 243, 262 (2022) (government speaks when "when an official gives a speech in a representative capacity or a governmental body issues a report") (Alito, J., concurring). Transposing the government speech doctrine to the library setting with its diverse array of reading materials would only mean "the State 'is babbling prodigiously and incoherently.'" *GLBT Youth in Iowa Schs. Task Force v. Reynolds*, 114 F.4th 660, 668 (8th Cir. 2024) (quoting *Matal*, 582 U.S. at 236); *see Shurtleff*, 596 U.S. at 272–73 ("a dizzying and contradictory array of perspectives … cannot be understood to express the message of a single speaker") (Alito, J., concurring).

The only message government officials send by removing library books containing ideas they dislike is that they have little understanding of how either the First Amendment or libraries are supposed to work. *See Shurtleff*, 596 U.S. at 267 ("This cannot be the right way to determine when governmental action is exempt from the First Amendment.") (Alito, J., concurring). Unfortunately, however, some lower courts are beginning to follow the Fifth Circuit's lead, expanding the doctrine and granting the government

power to exert control over speech in troubling new contexts. *See Parnell v. Sch. Bd. of Escambia Cnty.*, No. 4:23-cv-414-AW-MAF, slip op. at 10 (N.D. Fla. Sept. 30, 2025) (citing *Little* plurality's "persuasive explanation"); *see also Simon v. Ivey*, No. 2:25-cv-00067-RDP, 2025 WL 2345845, at *58–59 (N.D. Ala. Aug. 13, 2025) (holding classroom instruction of public university faculty is government speech). *But see Reynolds*, 114 F.4th at 668 (rejecting argument that library book removals constitute government speech). This Court must provide clarity to prevent further abuse.

The Fifth Circuit's decision betrays the historical purpose of our public libraries and allows partisan actors to distort their venerable function by removing books on the basis of viewpoint. To prevent further governmental power grabs—and to protect our public institutions from being dragooned by politicians into the culture wars—this Court should accept review and reverse.

## ARGUMENT

### I. THE FRAMERS UNDERSTOOD THE IMPORTANCE OF LIBRARIES TO MAINTAIN AN INFORMED PUBLIC.

The Framers of our Constitution were lovers of learning who recognized the democratic necessity of an informed citizenry. "Knowledge will for ever govern ignorance," explained James Madison, so "people who mean to be their own Governours, must arm themselves with the power which knowledge gives."[3]

3. Letter from James Madison to William T. Barry (Aug. 4, 1822), *reprinted by* Nat'l Archives: Founders Online,

The Framers placed profound faith in the then-radical notion that "the best test of truth is the power of the thought to get itself accepted in the competition of the market." *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). Upon that belief rests "the theory of our Constitution." *Id.*

So when government officials like Respondents abuse their power to impose ideological blinders on the public's access to ideas on library shelves, they betray the Framers' plan. As Thomas Jefferson put it, "where the press is free and every man able to read, all is safe."[4]

This was not just some utopian vision. As students of history, the Framers were acutely aware that arbitrary government authority over expression and the freedom to read was the root of tyranny—and that efforts to control what we may read have existed for nearly as long as the written word itself.

From 212 BCE, when China's first emperor Qin Shi Huang destroyed "countless poetry, history, and philosophy texts,"[5] to AD 303, when the Emperor Diocletian ordered the public burning of Christian

---

https://founders.archives.gov/documents/Madison/04-02-02-0480 [https://perma.cc/RK8L-BXSN].

4. Letter from Thomas Jefferson to Charles Yancey (Jan. 6, 1816), *reprinted by* Nat'l Archives: Founders Online, https://founders.archives.gov/documents/Jefferson/03-09-02-0209 [https://perma.cc/U6NL-Q26N].

5. Eric Berkowitz, *Dangerous Ideas: A Brief History of Censorship in the West, from the Ancients to Fake News* 2 (2021). Two millennia later, Mao bragged he had "surpassed Qin Shihuang a hundredfold." *Id.* at 3.

writings,[6] empires rose and fell, but books remained targets. And our founding generation knew it: The widespread banning and burning of books continued throughout the Enlightenment, and works by Voltaire, Rousseau, and other thinkers who shaped the Framers' plans were put to the torch across Europe.[7]

Our nation's forefathers designed the Constitution "to avoid these ends by avoiding these beginnings." *Barnette*, 319 U.S. at 641. Well aware of the long, bleak history of repression, the Founders rejected state censorship. Instead, they believed in letting truth and falsehood "grapple"—because, in John Milton's classic formulation, "who ever knew Truth put to the wors[e], in a free and open encounter?"[8] Milton's paean to the freedom to write, publish, and read had scant impact in Caroline England, but found an eager audience a century later across the Atlantic in readers like John Adams and Thomas Jefferson.[9]

---

6. Hans J. Hillerbrand, *On Book Burnings and Book Burners: Reflections on the Power (and Powerlessness) of Ideas*, 74 J. Am. Acad. Religion 593, 596 (2006).

7. *See, e.g., id*. at 601.

8. John Milton, *Areopagitica; A Speech of Mr. John Milton for the Liberty of Unlicenc'd Printing, to the Parlament of England* (Nov. 23, 1644), *reprinted by* The John Milton Reading Room, https://milton.host.dartmouth.edu/reading_room/areopagitica/intro/text.shtml [https://perma.cc/NA3G-VGMZ].

9. *See* John S. Tanner & Justin Collings, *How Adams and Jefferson Read Milton and Milton Read Them*, 40 Milton Q. 207 (2006) (describing how both Adams and Jefferson "read Milton throughout their lives").

So did John Locke—a foundational influence on Madison, author of the First Amendment.[10] Locke recognized the enriching power of what he called the "necessary diversity of opinions," and urged humanity to "commiserate our mutual ignorance, and endeavor to remove it in all the gentle and fair ways of information."[11] Madison enshrined Locke's understanding of the power of free expression in our Bill of Rights—and, as practical men, the Founders built libraries to help realize it in their daily lives.

"Books and libraries were essential to America's founding generation," and the Founders demonstrated their commitment to the free flow of information—and libraries in particular—in both word and deed.[12] Benjamin Franklin, for one, founded America's first successful lending library[13] in Philadelphia because, as he put it, "there was not a good bookseller's shop in any of the colonies to the southward of Boston."[14] The library provided

---

10. *See* John O. McGinnis, *The Once and Future Property-Based Vision of the First Amendment*, 63 U. Chi. L. Rev. 49, 60–71 (1996).

11. John Locke, *An Essay Concerning Human Understanding* (c. 1689), *reprinted by* Project Gutenberg, https://www.gutenberg.org/cache/epub/10616/pg10616-images.html [https://perma.cc/B4AK-HTYG].

12. *History of the Library of Congress*, Libr. of Cong., https://www.loc.gov/about/history-of-the-library [https://perma.cc/FRL9-592L] (last visited Oct. 6, 2025).

13. *About LCP*, Libr. Co. of Phila., https://librarycompany.org/about-lcp [https://perma.cc/RU7F-HC84] (last visited Oct. 6, 2025).

14. Benjamin Franklin, *The Autobiography of Benjamin Franklin* (Frank Woodworth Pine ed., Henry Holt & Co. 1916), *reprinted by* Project Gutenberg,

Franklin "the means of improvement by constant study."[15] Madison believed such improvement necessary for our democratic experiment to succeed. "A popular Government, without popular information, or the means of acquiring it, is but a prologue to a Farce or a Tragedy; or perhaps both," he wrote in 1822.[16]

Like Madison and Franklin, John Adams believed in the necessity of libraries for an informed citizenry. "[L]iberty cannot be preserved without a general knowledge among the people," Adams argued, and "the preservation of the means of knowledge, among the lowest ranks, is of more importance to the public, than all the property of all the rich men in the country."[17] To that end, as President, Adams signed legislation creating the Library of Congress in 1800.

After the British torched the Library and its 3,000 volumes during the War of 1812, Thomas Jefferson—who named the first two Librarians of Congress, and recommended works for inclusion—sold his entire personal collection of 6,487 books to Congress to restart it.[18] Jefferson's commitment to maintaining a

---

https://www.gutenberg.org/files/20203/20203-h/20203-h.htm [https://perma.cc/4DS8-KNJ8].

15. *Id*.

16. Letter from James Madison to William T. Barry, *supra* note 3.

17. John Adams, *V. "A Dissertation on the Canon and the Feudal Law," No. 3* (Sept. 30, 1765), *reprinted by* Nat'l Archives: Founders Online, https://founders.archives.gov/documents/Adams/06-01-02-0052-0006 [https://perma.cc/M2EQ-Q883].

18. *History of the Library of Congress*, *supra* note 12.

diversity of accessible knowledge still guides the Library's broad principle of acquisition.

Franklin, Adams, Jefferson, Madison, and their fellow Founders believed that when Americans "possess the means of being acquainted with the arts and sciences, it may justly be expected that important enquiries will be prosecuted, and the good of society increased."[19] And libraries made such common possession of knowledge possible. Their proliferation, wrote Franklin, "improved the general conversation of the Americans, made the common tradesmen and farmers as intelligent as most gentlemen from other countries, and perhaps have contributed in some degree to the stand so generally made throughout the colonies in defense of their privileges."[20]

The founding generation created libraries to facilitate "the advancement & diffusion of Knowledge, which is the only Guardian of true liberty."[21] So the Framers would apprehend the danger of governmental restrictions on the free flow of knowledge—here, in the form of partisan control of a library's inventory. They were intensely familiar, for example, with the jailing, trial, and ultimate acquittal of the proto-revolutionary printer John Peter Zenger

---

19. E. V. Lamberton, *Colonial Libraries of Pennsylvania*, 42 Pa. Mag. Hist. & Biography 193, 213 (1918) (quoting *Charter of the Library Co. of Phila.* (1770) at 3).

20. *The Autobiography of Benjamin Franklin*, *supra* note 14.

21. Letter from James Madison to George Thompson (June 30, 1825), *reprinted by* Nat'l Archives: Founders Online, https://founders.archives.gov/documents/Madison/04-03-02-0562 (https://perma.cc/B4J5-FLFW).

for criticizing New York's colonial governor.[22] They would be no more tolerant of petty bureaucrats suppressing access to books—and thus knowledge—along partisan lines than of the historical examples of censorship by torch that helped inspire the Revolution.

## II. THE FIRST AMENDMENT EXTENDS PROTECTION TO PUBLICLY CREATED EXPRESSIVE INSTITUTIONS.

In striving to ensure an informed public, the Framers sought to ensure public access to more than just government-approved ideas. They understood "it is hazardous to discourage thought, hope and imagination"—and so, cognizant of "the occasional tyrannies of governing majorities," the Framers "amended the Constitution so that free speech and assembly should be guaranteed." *Whitney v. California*, 274 U.S. 357, 375–76 (1927) (Brandeis, J., concurring). This history suggests public libraries should not be confined to books communicating the State's message. If that were permissible, the contents of public libraries would change with the political winds. But that's never been the case. A public library exists to give citizens access to a wide range of ideas and perspectives, which is impossible if the government proscribes or limits materials "in a narrowly partisan or political manner." *Pico*, 457 U.S. at 870.

---

22. Doug Linder, *The Trial of John Peter Zenger: An Account* (2001), http://law2.umkc.edu/faculty/projects/ftrials/zenger/zengeraccount.html [https://perma.cc/4K2Y-FES2].

### A. The History, Function, and Purpose of Expressive Institutions Determine What First Amendment Rules Govern Their Operation.

Government involvement in expressive activities can take many forms—either as speaker, regulator, custodian of a public forum, or sponsor of knowledge-generating institutions—and that form determines the applicable constitutional framework. *See generally* Randall P. Bezanson & William G. Buss, *The Many Faces of Government Speech*, 86 Iowa L. Rev. 1377, 1384–87 (2001).

Where the government is the speaker and delivers its own message, the First Amendment does not constrain the resulting "government speech." *E.g.*, *Rust v. Sullivan*, 500 U.S. 173, 193–94 (1991); *Pleasant Grove City v. Summum*, 555 U.S. 460, 481 (2009). Where government property is an open forum for citizen speech, either by tradition or by designation, the First Amendment obliges the state to respect the purpose of the forum. *E.g.*, *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45–46 (1983). And where the government creates institutions vested with independent academic, curatorial, or editorial judgment, or a mandate to make information widely available to the public, it cannot then arbitrarily limit access to information "necessary to the proper functioning of those systems." *Velazquez*, 531 U.S. at 543–44 ("Where the government uses or attempts to regulate a particular medium, we have been informed by its accepted usage in determining whether a particular restriction on

speech is necessary for the program's purposes and limitations.").

Certain institutions the government owns and operates—such as universities, public broadcast stations, independently edited publications, and libraries—are imbued with a "First Amendment aura" that limits political machinations concerning those bodies. Frederick Schauer, *Principles, Institutions, and the First Amendment*, 112 Harv. L. Rev. 84, 116 (1998). State universities exemplify this principle. The government has never been obliged to create institutions of higher education, but in doing so it acts "against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 835 (1995).

Based on that history, function, and purpose, this Court has long recognized that "[t]he essentiality of freedom in the community of American universities is almost self-evident." *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). The First Amendment conditions government control over these state-run institutions because of the understanding that "impos[ing] any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation." *Id.* Accordingly, "[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us" because "[t]he Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, (rather) than through any kind of authoritative selection.'"

*Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (citations omitted).

A similar analysis determines the constitutional status of public broadcasting stations, which are licensed as an alternative programming source to promote "freedom, imagination, and initiative on both local and national levels" with programming decisions insulated from political control. Public Broadcasting Act of 1967, 47 U.S.C. §§ 396(a), 398(c). Such stations may be owned by government entities and receive funding (at least in part) from certain government sources, but they are licensed to exercise "the 'widest journalistic freedom' consistent with their public responsibilities," and their constitutional status is defined by that purpose. *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 672–73 (1998) (citation omitted).

For such institutions, the First Amendment bars the government from imposing restrictions contrary to their traditional mission, such as prohibiting public broadcasters from running editorials. *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 375–76, 395 (1984). Likewise, measures that grant politicians an oversight role, allowing them to second-guess broadcasters' programming choices, are unconstitutional. *See Cmty.-Serv. Broad. of Mid-America, Inc. v. FCC*, 593 F.2d 1102, 1108–09 (D.C. Cir. 1978) (*en banc*).

For similar reasons, the government cannot censor publications it has sponsored and vested with independent editorial judgment. *E.g.*, *Stanley v. Magrath*, 719 F.2d 279, 280 (8th Cir. 1983) (cutting

student newspaper's funding because of disfavored content violates the First Amendment); *Kincaid v. Gibson*, 236 F.3d 342, 355 (6th Cir. 2001) (*en ba*nc) (confiscation of student yearbook violated the First Amendment).

The common denominator for each of these examples is that the history and purpose of each institution determines the constitutional analysis that must be applied. As this Court observed in *Velazquez*, the First Amendment does not permit the government "to suppress speech inherent in the nature of the medium" or to "distort its usual functioning." 531 U.S. at 543.

### B. The First Amendment Insulates Public Libraries From Political Manipulation.

The government established public libraries to advance the spread of knowledge free from political interference. *See Library Bill of Rights*, Am. Libr. Ass'n, https://www.ala.org/advocacy/intfreedom/librarybill [https://perma.cc/4RBW-Y8QX] (last visited Oct. 6, 2025) (first adopted June 19, 1939, by the ALA Council). Like public universities and public broadcast stations, libraries' historic and institutional purpose defines the constitutional rules under which they operate. The government cannot create a repository of information designed to include diverse ideas and dedicate it to serving all members of the community, then leave it to the arbitrary discretion of political decisionmakers who may "distort its usual functioning." *Velazquez*, 531 U.S. at 543.

From the earliest days of the Republic, public libraries were created as nonpolitical repositories of diverse collections to inform and entertain the citizenry. Although the government may not be required to establish a library in the first instance, once it does so it is bound by its institutional purpose. In this regard, designated forum cases provide a useful analogy: When the government designates property as a public forum it must follow constitutional rules appropriate to that forum. *See Widmar v. Vincent*, 454 U.S. 263, 267–68 (1981) ("The Constitution forbids a State to enforce certain exclusions from a forum generally open to the public, even if it was not required to create the forum in the first place.").

This Court applied the same logic in its analysis of speech restrictions imposed by the Legal Services Corporation in *Velazquez*, where it held the First Amendment does not permit the government "to suppress speech inherent in the nature of the medium" or to "distort its usual functioning." 531 U.S. at 543. In reaching this conclusion it found the public forum cases "do provide some instruction" even if they "may not be controlling in a strict sense." *Id*. at 544.[23] Likewise, here: The government cannot create a repository of books for the general dissemination of knowledge, and then arbitrarily limit access to information based on the political whims of transient officeholders. That's not how libraries work. *Pico* addressed the same essential question here—whether "the First Amendment impose[s] *any* limitations upon

23. This is not to suggest that libraries should be considered public forums or that forum analysis is necessary to analyze this case.

the discretion of [the government] to remove library books." *Pico*, 457 U.S. at 863 (plurality op.).

Although the resulting decision was splintered, almost all justices agreed it would violate the First Amendment "[i]f a Democratic school board… ordered the removal of all books written by or in favor of Republicans" or "an all-white school board, motivated by racial animus, decided to remove all books authored by blacks or advocating racial equality and integration." *Id.* at 870–71; *see also id.* at 879 ("[O]ur precedents command the conclusion that the State may not act to deny access to an idea simply because state officials disapprove of that idea for partisan or political reasons.") (Blackmun, J., concurring); *id.* at 907 ("cheerfully conced[ing]" that such partisan book removals would violate the First Amendment) (Rehnquist, J. dissenting). So, contrary to the Fifth Circuit's reasoning below, this Court *has* found that the First Amendment has a role to play in limiting library book censorship.

Equally as important, most justices in *Pico* analyzed the First Amendment question in terms of the government's position in relation to the expressive institutions it controls. Because the case focused on public school libraries, the plurality observed notwithstanding the government's substantial discretion to control education at the K-12 level, that authority "must be exercised in a manner that comports with the transcendent imperatives of the First Amendment." *Id.* at 864. And it observed that a school library, "no less than any other public library, is 'a place dedicated to quiet, to knowledge, and to beauty.'" *Id.* at 868 (quoting *Brown v. Louisiana*, 383 U.S. 131, 142 (1966)).

Justice Blackmun was even more direct, calling it "beyond dispute that schools and school boards must operate within the confines of the First Amendment." *Id.* at 876 (Blackmun, J., concurring). He observed that "schools, *like other enterprises operated by the State*, may not be run in such a manner as to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *Id.* (emphasis added) (quoting *Barnette*, 319 U.S. at 642). And he wrote that this derived from a general principle, that "the State may not suppress exposure to ideas—for the sole *purpose* of suppressing exposure to those ideas—absent sufficiently compelling reasons." *Id.* at 877. In his view, "surely difficult constitutional problems would arise if a State chose to exclude 'anti-American' books from its public libraries—even if those books remained available at local bookstores." *Id.* at 881.

Even the *Pico* dissenters acknowledged that their constitutional analysis depended on the "role" the government was playing, whether as sovereign, employer, or educator. *Id.* at 908–09 (Rehnquist, J., dissenting). They contrasted the state's authority as educator with its role as sovereign and noted that in this context the government was not proscribing disfavored subjects "as to the citizenry in general, but [was] simply determining that [they] will not be included in the curriculum or school library." *Id.* at 910; *see also id.* at 921 ("[T]he plurality's analysis overlooks the fact that in this case the government is acting in its special role as educator") (O'Connor, J., dissenting). And to complete the thought, the dissenters explained that "[u]nlike university or public libraries, elementary and secondary school libraries are not designed for freewheeling inquiry;

they are tailored, as the public school curriculum is tailored, to the teaching of basic skills and ideas." *Id.* at 915 (Rehnquist, J., dissenting).

Accordingly, there was near-unanimous agreement on the *Pico* Court that subjecting public libraries to political or partisan whims would distort that government institution's "usual functioning." *Velazquez*, 531 U.S. at 543.

## III. ONLY THIS COURT CAN RESOLVE THE CURRENT DOCTRINAL CONFUSION.

For the narrow question this case presents—whether the First Amendment applies *at all* to politically-motivated book removals from a public library—this Court could resolve the case easily by granting review, vacating the decision below, and remanding with instructions to respect what most justices in *Pico* concluded: that the First Amendment governs such decisions. *Little*, 138 F.4th at 879 ("It is the Supreme Court's primary prerogative, not ours, to revisit and modify its prior interpretations and applications of our Constitution.") (Higginson, J., dissenting). "The authority to adjust *Pico*—whether to extend it further or to change course—lies with the Supreme Court alone." *Id.*

But the doctrinal fractures at issue extend far beyond the Fifth Circuit's closely divided seventeen judges. Other circuits have reached contrary conclusions regarding the First Amendment's application, *e.g., Reynolds*, 114 F.4th at 667–68, and district courts are divided as well. *Compare PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 3d 1325, 1331 (N.D. Fla. 2024), *and Virden v. Crawford*

*Cnty.*, No. 2:23-CV-2071, 2024 WL 4360495, at *5 (W.D. Ark. Sept. 30, 2024), and *Fayetteville Pub. Libr. v. Crawford Cnty.*, 684 F. Supp. 3d 879, 909 (W.D. Ark. 2023), *with Parnell*, slip op. at 10.

This Court should grant review to break the deadlock between the lower courts and to establish a coherent First Amendment framework for analyzing the question presented here. In doing so, it should clearly identify what is at issue here, and what is not.

***First***, this case presents only the question of what First Amendment standard governs *the removal* of books from a public library that previously were acquired based on the librarian's professional judgment. Much of the Fifth Circuit's analysis stemmed from falsely equating book acquisition and removal decisions as if they presented the same constitutional question. *Little*, 138 F.4th at 846 ("[O]nce courts arm plaintiffs with a right to contest book removals, there is no logical reason why they cannot contest purchases too."). They don't. In the context of a university, for example, the decision to hire a particular faculty member would not normally raise a constitutional issue, but the First Amendment clearly would be implicated if that person were fired over a lecture that offended the Governor. *Sweezy*, 354 U.S. at 250–51. And so it is with the decision to remove a library book that has been placed on the shelves based on the librarian's professional judgment. As Justice Blackmun observed in *Pico*, "removal, more than failure to acquire, is likely to suggest that an impermissible political motivation may be present." 457 U.S. at 878 n.1 (Blackmun, J., concurring) (citation omitted). Accordingly, review of this case must focus on the First Amendment

standard applicable to politically motivated book censorship.

***Second***, once focused on the specific question of book removals, this Court should determine whether the government speech doctrine is even implicated by this case as the plurality below assumed. Its analysis turned largely on the framing that "Llano County shapes its library collection [by] choosing some books but not others" and that "government may express itself by crafting and presenting a collection of third party speech." *Little*, 138 F.4th at 852. But nothing about this case involves book acquisition or selection. It involves only the removal of books, largely based on demands by outside activists. The decision to remove certain books in the actual context of this case is hardly the government "speaking." *See Shurtleff*, 596 U.S. at 271 ("T]he government-speech doctrine does not extend to private-party speech that is merely subsidized or otherwise facilitated by the government.") (Alito, J., concurring in the judgment) (first citing *Velazquez*, 531 U.S. at 542; and then citing *Rosenberger*, 515 U.S. at 833–34).

The plurality's brief history of public (and private) libraries suffers from the same problem, describing government speaking "through the unsubtle act of including some books and excluding others." *Little*, 138 F.4th at 861–62. It can only articulate a government speech theory by inappropriately broadening the question to include book acquisition.

But this reveals a bigger problem. This selective review of library history-and-tradition might aptly be described as "the equivalent of entering a crowded cocktail party and looking over everyone's heads to

find your friends." *Vidal v. Elster*, 602 U.S. 286, 327–28 (2024) (Sotomayor, J., concurring); *see also Shurtleff*, 596 U.S. at 264 (noting how the British Licensing Act of 1737 cannot be cited to justify censorship posing as "government speech") (Alito, J., concurring). In the nineteenth century, librarians who founded and led the American Library Association defined their institutional mission as being patron-focused resources of information. ALA's first president, Justin Winsor, commonly considered in 1876 to be "the nation's leading librarian," eschewed the role of dictating community tastes.[24] John Cotton Dana, another late nineteenth century ALA leader, described the function of libraries as not to "set unformed minds on any predetermined path to wisdom, but rather to expose them to a 'multitude of opinions.'"[25]

It is small wonder then, that when ALA adopted its first Library Bill of Rights in 1939, it provided that "[l]ibraries should provide materials and information presenting all points of view on current and historical issues" and that "[m]aterials should not be proscribed or removed because of partisan or doctrinal disapproval." *Library Bill of Rights, supra*. It likewise provided that libraries "should challenge censorship in the fulfillment of their responsibility to provide

---

24. Marc Jonathan Blitz, *Constitutional Safeguards for Silent Experiments in Living: Libraries, the Right to Read, and a First Amendment Theory for an Unaccompanied Right to Receive Information*, 74 UMKC L. REV. 799, 838–39 (2006).

25. *Id*. at 839 ("Even near the beginning of public library history in America … one finds evidence of the individualism and respect for reader autonomy that would later become a hallmark of the profession.").

information and enlightenment." *Id*. It is this institutional purpose that should inform constitutional analysis, just as it does with other knowledge-creating institutions, like public universities.

The decision below is antithetical to these institutional purposes. And the government speech doctrine is a particularly poor jurisprudential lens through which to view the issue presented. *Matal*, 582 U.S. at 235; *Shurtleff*, 596 U.S. at 267 ("[G]overnment speech occurs if—but only if—a government purposefully expresses a message of its own through persons authorized to speak on its behalf, and, in doing so, does not rely on a means that abridges private speech.") (Alito, J., concurring). As Judge Higginson wrote in dissent, the decision below uses the government-speech doctrine as a "Trojan Horse" and a "sleight of hand" to hold "that the public has no First Amendment right to challenge the government's removal of public library books, no matter the reason." *Little*, 138 F.4th at 881–82 (Higginson, J., dissenting). It cannot be permitted to stand.

## CONCLUSION

Based on the foregoing, *amicus* FIRE asks this Court to grant the petition for certiorari, vacate the decision below, and remand for further proceedings consistent with the decision in *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982). In the alternative, the Court should grant review limited to the specific question Petitioners raise and use this case as an opportunity to more carefully define and limit the government-speech doctrine.

Respectfully Submitted,

Robert Corn-Revere
*Counsel of Record*
FOUNDATION FOR
INDIVIDUAL RIGHTS
AND EXPRESSION
700 Pennsylvania Ave. SE
Suite 340
Washington, DC 20003
(215) 717-3473
bob.corn-revere@thefire.org

*Counsel for* Amicus Curiae

October 7, 2025