

No. 25-284

IN THE
Supreme Court of the United States

LEILA GREEN LITTLE, *et al.*,

Petitioners,

v.

LLANO COUNTY, TEXAS, *et al.*,

Respondents.

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

**BRIEF OF *AMICI CURIAE*
AMERICAN LIBRARY ASSOCIATION,
FREEDOM TO READ FOUNDATION,
AND TEXAS LIBRARY ASSOCIATION,
IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	iv
IDENTITY AND INTEREST OF AMICI CURIAE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT.....	5
I. Since our Nation’s founding, public libraries have been—and should remain—havens of freewheeling inquiry, where patrons may explore both controversial and quotidian ideas	5
A. At the nation’s founding, libraries were envisioned as citadels of democracy	5
B. In the 1939, the ALA “Library Bill of Rights” expressed the profession’s commitment to oppose library censorship.....	7
C. Professional librarians are guided by well-established ethical canons and standards that favor no party, subject, or viewpoint	9

Table of Contents

	<i>Page</i>
D. Libraries curate collections to meet the ever-changing informational needs of the community, but do not base collection decisions on community caprices.	11
E. The Fifth Circuit majority misconceived the role of a public library	12
1. Libraries are not child-care centers . . .	13
2. Libraries are not museums.	15
II. “Weeding” library collections is an objective, viewpoint-neutral process—not a tool for ideological suppression of disfavored content or viewpoints	17
A. Weeding guidelines provide an objective framework for maintaining library collections	18
B. Professional weeding standards do not require libraries to retain materials that are outdated, misleading, or no longer circulating	21
C. The Llano County officials’ actions bore no resemblance to standard weeding practices	22

Table of Contents

	<i>Page</i>
III. For decades, the <i>Pico</i> standard has guided professional library practices without the “nightmare” forecasted by the Fifth Circuit.....	23
CONCLUSION	26

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico,</i> 457 U.S. 853 (1982)	4, 23, 24
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<i>Campbell v. St. Tammany Par. Sch. Bd.,</i> 64 F.3d 184 (5th Cir. 1995)	24
<i>Fayetteville Pub. Libr. v. Crawford Cnty., Ark.,</i> 684 F. Supp. 3d 879 (W.D. Ark. 2023)	2, 5, 6
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<i>Little v. Llano Cnty.,</i> 138 F.4th 834 (5th Cir. 2025)	3
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	<i>Page</i>
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<i>W. Va. Bd. of Educ. v. Barnette</i> , 319 U.S. 624 (1943).....	4, 24
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Constitutional Provisions

U.S. Const. amend. I.....	1, 3, 4, 14, 18, 24, 25, 26
---------------------------	-----------------------------

Statutes, Rules and Regulations

13 TEX. ADMIN. CODE § 1.71(9).....	9
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Carnegie Library of Pittsburgh, Penn. (https://www.carnegielibrary.org/about/policies/american-library-association-ala-bill-of-rights-and-equity-of-access/) (last visited Oct. 12, 2025)	8
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IDENTITY AND INTEREST OF AMICI CURIAE

Pursuant to Supreme Court Rule 37.5, the American Library Association, Freedom to Read Foundation, and Texas Library Association respectfully submit this brief as amici curiae in support of Petitioners Leila Green Little, Jeanne Puryear, Kathy Kennedy, Rebecca Jones, Richard Day, Cynthia Waring, and Diane Moster.¹

Founded in 1876, the American Library Association (ALA) is a nonprofit, educational organization representing libraries and librarians throughout the United States. ALA's membership includes over 5,000 organizational members and more than 44,000 individual members. Members work in public libraries, academic libraries, special libraries, and school library media centers. For nearly 150 years, the ALA has been committed to the preservation of the library as a resource indispensable to the intellectual, cultural, and educational welfare of the nation.

The Freedom to Read Foundation (FTRF) is a nonprofit organization established to foster libraries as institutions that fulfill the promise of the First Amendment; support the ability of libraries to create

1. Pursuant to Supreme Court Rule 37.2, counsel of record for all listed parties received notice at least ten days prior to the due date of the Amici Curiae's intention to file this brief.

Pursuant to Supreme Court Rule 37.6, Amici Curiae affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

collections with a broad array of authors and viewpoints; establish legal precedent for the freedom to read for all citizens; and protect the public against efforts to suppress or censor speech.

The Texas Library Association (TLA) was established in 1902 and has a membership of more than 4,000 public, academic, school, and special librarians around the state. TLA's core values include the promotion of literacy, lifelong learning, and intellectual freedom for all Texans.

The foundational tenet of the library profession is the commitment to providing equal access to a broad array of diverse information at the library, free of viewpoint discrimination or the imposition of official orthodoxy. Censoring books from public libraries violates this shared value and thus these amici have a strong interest in the outcome of this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

At the center of this dispute is the institution of the American public library, that quiet, “ubiquitous fixture[] in American cities and towns,” where members of the public may browse, read, and think according to their own interests. *Fayetteville Pub. Libr. v. Crawford Cnty., Ark.*, 684 F. Supp. 3d 879, 890 (W.D. Ark. 2023). Guided by highly trained professional librarians, public libraries have one goal: to provide books and other materials “for the interest, information, and enlightenment of all people of the community the library serves” by selecting materials “presenting all points of view on current or

historical issues.”² Essential to this mission is the promise that library materials will not be “proscribed or removed because of partisan or doctrinal disapproval.”³

The ruling by a majority of the Fifth Circuit en banc breaks this promise. *See Little v. Llano Cnty.*, 138 F.4th 834 (5th Cir. 2025) (en banc); Pet. App. 1a. According to the majority, a government official may order the removal of books from the shelves of a public library for any reason, including that the official does not like the author or viewpoint of the book. And the government official may do so free from any First Amendment scrutiny. Pet. App. 61a-62a.

In reaching this conclusion, the majority recast the fundamental role of public libraries, not as gateways to information, but as arbiters of acceptable thought. The opinion states:

That is what it means to *be* a library—to make judgments about which books are worth reading and which are not, which ideas belong on the shelves and which do not.

Pet. App. 6a (emphasis in original).

This is incorrect. The purpose of public libraries is not to determine which books are “worth reading” or which ideas or viewpoints “belong.” It is rather to create

2. LIBRARY BILL OF RIGHTS, AM. LIBR. ASS’N §§ I & II, <https://www.ala.org/advocacy/intfreedom/librarybill> (last visited Oct. 12, 2025).

3. *Id.* § II.

a locus of “freewheeling inquiry,” where the people, not the government, choose which ideas to read, consider, or reject. *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 915 (1982) (Rehnquist, J., dissenting).

The Fifth Circuit majority’s ruling is therefore anathema to the role of public libraries in American civic life. It is also anathema to longstanding First Amendment principles, chief among them the “fixed star” that “no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (Jackson, J.), *quoted in Pico*, 457 U.S. at 870 (plurality op.). These principles have guided libraries for decades without encountering the unworkable “nightmare” imagined by the Fifth Circuit majority. Pet. App. 3a.

Seven citizens of Llano County, Texas, have petitioned this Court to review and reverse the Fifth Circuit en banc majority ruling. Amici curiae ALA, FTRF, and TLA fully support their petition. In doing so, amici offer the Court additional background regarding the history of libraries in the United States, what it means to curate a library collection, and the implications of the en banc majority’s radical and deeply troubling ruling.

ARGUMENT

I. Since our Nation’s founding, public libraries have been—and should remain—havens of freewheeling inquiry, where patrons may explore both controversial and quotidian ideas.

For as long as there has been an America, its residents have desired to expand their knowledge and freely share their ideas. And, for just as long, libraries have provided space and resources for patrons to fulfill those goals. At its core, a public library is “a gathering pool of narratives and of the people who come to find them.”⁴ As patrons’ preferences and needs change over time, libraries change along with them, all the while remaining steadfast to their commitment to provide “a place of knowledge, that is nonjudgmental, inclusive, and fundamentally kind.”⁵

A. At the nation’s founding, libraries were envisioned as citadels of democracy.

The American public library predates the nation itself. In 1731, Benjamin Franklin—“the ultimate bibliophile”—was a founder of the country’s first lending library, the Library Company of Philadelphia.⁶ Franklin hoped that by having equal access to books, Americans would be “better

4. SUSAN ORLEAN, *THE LIBRARY BOOK* 11-12 (2018).

5. *Id.* at 267.

6. Carrie McBride, *Ben Franklin: The Ultimate Bibliophile*, NEW YORK PUBLIC LIBRARY BLOG (Jan. 17, 2020), <https://www.nypl.org/blog/2020/01/17/ben-franklin-library-lover>. See generally *Fayetteville Pub. Libr.*, 684 F. Supp. 3d at 889-90 (discussing history of American public libraries).

instructed and more intelligent.”⁷ Built on this foundation, “that all people deserve free, open access to our shared culture and heritage, which they can use to any end they see fit,” America’s libraries blossomed.⁸

Public libraries proliferated in the nineteenth century. *See* Pet. at 23-25 (discussing history of public libraries). “By the latter part of the 1800s, most major metropolitan cities in the country had a public library.” *Fayetteville Pub. Libr.*, 684 F. Supp. 3d at 889. The American Library Association (ALA) was founded in 1876 and accredits library academic programs in the United States.⁹

As time passed, the role of libraries—and their collections—expanded. The Fifth Circuit en banc majority noted that, for a time, libraries did not contain novels as a significant portion of their collections. Pet. App. 52a-54a. According to the majority, this was because the government was expressing itself by offering books that would “educate and edify” rather than “trashy novels.” Pet. App. 54a. But there were myriad reasons why libraries of the 1800s offered few novels—limited budgets and space, elitist class bias, and the thinking that fiction was ephemeral and likely to fall out of fashion, to name a

7. Jared Gibbs, “*For Tomorrow Will Worry About Itself*”: *Ivan Illich’s Deschooling Society and the Rediscovery of Hope*, 34 W. NEW ENG. L. REV. 381, 394 (2012) (citation omitted)).

8. ERIC KLINENBERG, *PALACES FOR THE PEOPLE* 37 (2018).

9. *See About ALA & Our Mission*, AM. LIBR. ASS’N, <https://www.ala.org/aboutala> (last visited Oct. 12, 2025); *Accreditation Frequently Asked Questions*, AM. LIBR. ASS’N, <https://www.ala.org/educationcareers/accreditedprograms/faq> (last visited Oct. 12, 2025).

few.¹⁰ Further, as acknowledged by the en banc majority, some libraries—circulating libraries—did fill the gap and offered novels as more significant portions of their collections. Pet. App. 52a.

B. In the 1939, the ALA “Library Bill of Rights” expressed the profession’s commitment to oppose library censorship.

In the twentieth century, the role of public libraries continued to evolve. Having witnessed pyres of burned books kindling the rise of totalitarian regimes in Europe, American librarians embraced a “basic position in opposition to censorship.” See *United States v. Am. Libr. Ass’n, Inc.* (“ALA”), 539 U.S. 194, 238-39 (2003) (Souter, J., dissenting) (citation omitted); see also LOUISE S. ROBBINS, CENSORSHIP AND THE AM. LIBR. 9 (1996) (“As Hitler’s forces rolled across Europe, American libraries began to respond by articulating the role of libraries in a democracy . . .”).

In 1939, the American Library Association (ALA) adopted its “Library Bill of Rights,” which confirms the essential role of public libraries: to serve as “forums for information and ideas” that are available to “all people

10. See, e.g., Catherine Oliver, *Cozies, Capers, and Other Criminal Endeavors*, 64 LIBR. RES. & TECH. SERVS. 152, 153 (2020), <https://www.journals.ala.org/index.php/lrts/article/viewFile/7455/10277>; see also Jennifer Elaine Steele, *A History of Censorship in the United States*, 5 J. INTELL. FREEDOM & PRIV. 6, 10 (2020) <https://journals.ala.org/index.php/jifp/article/view/7208/10294>.

of the community.”¹¹ The Library Bill of Rights reflects “the public library’s mission as an ‘institution to educate for democratic living’ and, therefore, as guardian of the freedom of expression essential to the interchange of ideas that democracy requires.”¹²

Under the Bill of Rights, libraries “should provide materials and information presenting all points of view on current and historical issues” with no prohibition on materials “because of partisan or doctrinal disapproval.”¹³ Public libraries are therefore not (and have never been) places to “coerce the taste of others,” but rather serve as “a mighty resource in the free marketplace of ideas.”¹⁴ Libraries around the country—including in Llano County, Texas—support or have adopted ALA’s Bill of Rights. Pet. at 3-4.¹⁵

11. LIBR. BILL OF RIGHTS, *supra* note 2, preamble & § I.

12. ROBBINS, CENSORSHIP AND THE AM. LIBR. 14.

13. LIBR. BILL OF RIGHTS, *supra* note 2, § II.

14. Krug & Harvey, *ALA and Intellectual Freedom: A Historical Overview*, Intellectual Freedom Manual xi, xv (Am. Libr. Ass’n 1974), *quoted in ALA*, 539 U.S. at 239 (Souter, J., dissenting); *Minarcini v. Strongville City Sch. Dist.*, 541 F.2d 577, 582 (6th Cir. 1976).

15. *See, e.g.*, Carnegie Library of Pittsburgh, Penn. (<https://www.carnegielibrary.org/about/policies/american-library-association-ala-bill-of-rights-and-equity-of-access/> (last visited Oct. 12, 2025)); Streator Public Library, Ill. (<https://www.streatorpubliclibrary.org/alabillofrights> (last visited Oct. 12, 2025)); Timberland Regional Library in Washington (<https://trl.org/wp-content/uploads/sites/140/2023/05/ALA-Library-Bill-of-Rights.pdf>) (last visited Oct. 12, 2025); Preble County Library, Ohio (<https://staff.preblelibrary.org/wp-content/uploads/2024/07/>

C. Professional librarians are guided by well-established ethical canons and standards that favor no party, subject, or viewpoint.

These principles—of free, wide-ranging inquiry among diverse voices, perspectives, and opinions—govern the library profession. Librarians must satisfy rigorous academic requirements; in Texas, every public library serving a population of more than 25,000 people must employ one or more “professional librarians” who hold a master’s degree or comparable certification in library or information studies from an accredited program. 13 TEX. ADMIN. CODE §§ 1.71(9), 1.76(h). The ALA accredits 68 academic programs at 64 institutions in the United States, Canada, and Puerto Rico.¹⁶ Accreditation “assures that . . . programs meet appropriate standards of quality and integrity.”¹⁷

As part of their training, librarians agree to adhere to the ALA’s Code of Ethics, which “guide[s] the work of librarians” with a focus on “the values of intellectual freedom that define the profession of librarianship.”¹⁸ Relevant here, the librarian is expressly obligated not to

Library-Bill-of-Rights-ALA.pdf) (last visited Oct. 12, 2025); Kansas City Library, Mo. (<https://kclibrary.org/policies/100-public-services>) (last visited Oct. 12, 2025)).

16. See *Accreditation Frequently Asked Questions*, AM. LIBR. ASS’N, <https://www.ala.org/educationcareers/accreditedprograms/faq> (last visited Oct. 12, 2025).

17. *Id.*

18. CODE OF ETHICS, AM. LIBR. ASS’N, <https://www.ala.org/tools/ethics> (last visited Oct. 12, 2025).

limit access to information based on viewpoint. Librarians agree that they will:

1. “uphold the principles of intellectual freedom and resist all efforts to censor library resources”;
2. “distinguish between [their] personal convictions and professional duties”; and
3. “not allow[] personal beliefs to interfere” with providing access to library information.¹⁹

Professional librarians therefore must distinguish between their personal beliefs and their professional responsibilities, ensuring that their own viewpoints do not interfere with providing access to information.²⁰ As a result, librarians do not favor any party, subject, or viewpoint; instead, they strive to provide materials and information reflecting all perspectives, in line with their commitment to serving the entire community.²¹

19. *Id.* ¶¶ 2, 7.

20. *Id.*

21. *Id.*

D. Libraries curate collections to meet the ever-changing informational needs of the community, but do not base collection decisions on community caprices.

Today, there are over 17,000 public library outlets around the country.²² Libraries are hubs of community activity, offering a broad array of services to all facets of the local community. Book clubs and classes covering topics ranging from art to technology allow residents of all ages to engage with each other and with ideas.²³ Young people can find “books and stories that would otherwise be inaccessible,” and provide a shared social space for young families, offering parenting-skills classes and an opportunity to connect with other new parents.²⁴ For many communities, “the library is among the most critical forms of social infrastructure” they have.²⁵ In a 2016 study by Pew Research Center, over 90% of respondents said that closing the public library would have an impact on their community, with a full two-thirds of respondents stating that the impact would be “major.”²⁶

22. NAT’L CTR. FOR EDUC. STATS., DIGEST OF EDUC. STATS., Table 701.60, Number of public libraries (for FY 2019-20) n.1, https://nces.ed.gov/programs/digest/d22/tables/dt22_701.60.asp (last visited Oct. 12, 2025). Worldwide, there are over 300,000 public libraries, including traditional library buildings and a variety of other outlets, such as bookmobiles, boats, vending machines, and camel-drawn carts. ORLEAN, *supra* note 4, at 291-92.

23. KLINENBERG, *supra* note 8, at 37-39.

24. *Id.* at 38-39.

25. *Id.* at 32.

26. John B. Horrigan, *Libraries 2016*, PEW RESEARCH CENTER 6 (2016), https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2016/09/PI_2016.09.09_Libraries-2016_FINAL.pdf.

But while libraries serve an integral role in the community, they are not simply a mirror that reflects only a community’s mainstream viewpoints or those of any political body or official. As discussed, in keeping with ALA’s “Library Bill of Rights,” libraries should present “all points of view on current and historical issues,” and material should not be removed “because of partisan or doctrinal disapproval.”²⁷ So libraries—in their own, quiet way—“challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.”²⁸ This role includes combatting “heckler’s veto” policies that would allow a complaining individual to cause the removal of books containing “lawful, fully protected expression” from a library simply because they found the books’ content to be objectionable. *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 549 (N.D. Tex. 2000) (citations omitted).

E. The Fifth Circuit majority misconceived the role of a public library.

It is important to distinguish what libraries are from what they are not. As discussed, the Fifth Circuit en banc majority erroneously viewed libraries as arbiters of acceptable reading material—those books that are “worth reading.” At least two other misconceptions about the function of a public library animate the majority opinion. Neither is consistent with professional library practice.

27. LIBR. BILL OF RIGHTS, *supra* note 2, § II.

28. *Id.* § III.

1. Libraries are not child-care centers.

The first misconception stems from a misplaced concern about protecting children. The Llano County officials purported to act out of concern that children visiting Llano’s public library branches might be exposed to books that are “inappropriate” or worse. Pet. App. 221a-222a. But lost in the defense of these actions is an unspoken assumption: that children roam libraries alone and unguided. That is not the case.

First, public libraries operate on the common-sense premise that parents and guardians will help shepherd their children’s learning experiences. In its “Access to Library Resources and Services for Minors,” the ALA “affirm[s] *the responsibility and the right of all parents and guardians to guide their own children’s use of the library* and its resources and services.”²⁹

Second, public libraries do not act *in loco parentis*. For this reason, many libraries have policies about minors in the library. In Texas and across the country, libraries often require parental supervision of young children (e.g., under ages 8 or 10).³⁰

29. *Access to Library Resources and Services for Minors: An Interpretation of the Library Bill of Rights*, AM. LIBR. ASS’N, <https://www.ala.org/advocacy/intfreedom/librarybill/interpretations/minors> (emphasis added) (last visited Oct. 12, 2025).

30. *See, e.g.*, POTTSBORO LIBRARY POLICIES, <https://pottsborolibrary.com/wp-content/uploads/2025/09/Pottsboro-Library-Unattended-Child-Policy.pdf> (requiring children 10 and younger to be accompanied by an adult over 18) (last visited Oct. 12, 2025); CARTER COUNTY CHILDREN’S LIBRARY POLICY, <https://cartercountylibrary.org/wp-content/uploads/2017/12/Childrens->

So parents can—and do—take an active role in selecting the best book for their children. When a parent encounters a book she does not want her child to read, she is not entitled to a “heckler’s veto,” demanding that the book be removed altogether, so no one else may read it. Instead, “if a parent wishes to prevent her child from reading a particular book, that parent can and should accompany the child to the Library” and choose another book. *Sund*, 121 F. Supp. 2d at 551. This common-sense approach is neither a “nightmare” to implement nor incompatible with legitimate concerns about parental choice. To the contrary, libraries empower parents to make their own decisions about what is appropriate for their own children.

This practice is also consistent with the Court’s precedent. As the Court has explained, even when attempting to “assist[] concerned parents” in protecting children from certain content to which the parent objects, the government may not “abridge[] the First Amendment rights of young people whose parents...think that violent video games”—or, as here, books about race, adolescent sexuality, or potty humor—“are a harmless pastime.” *Brown v. Ent. Merch. Ass’n*, 564 U.S. 786, 804-05 (2011). Doing so is “seriously overinclusive” because while the “effect may indeed be in support of what some parents... actually want, [the] entire effect is only in support of what

Library-Policy.pdf (in Missouri, children 8 and older may use the library without supervision) (last visited Oct. 12, 2025); FERGUS FALLS LIBRARY USE POLICY, <https://ffpubliclibrary.org/wp-content/uploads/2025/04/Library-Use-Conduct-Children-Volunerable-Adults-Policy-1.pdf> (in Minnesota, “[r]esponsibility for the behavior...of children using the library rests with [a] parent, guardian, or caregiver”) (last visited October 12, 2025).

the [government] thinks parents *ought to want*.” *Id.* at 804 (emphasis in original). *See also id.* at 794 (rejecting the notion that the government has “a free-floating power to restrict the ideas to which children may be exposed”).

2. Libraries are not museums.

In support of its novel government-speech theory (which gained only plurality support), the en banc majority also erred in analogizing public libraries to museums. According to the majority, just as a museum sends an implied message that its displayed works are “worth viewing,” a library sends a similar message that its offered books are “worth reading.” Pet. App. 38a. This analogy proves too much. If the governmental “message” is that a library’s books are “worth reading,” that message is so amorphous it could mean anything (or nothing). Such a malleable standard could transform virtually any regulation into “government speech.”

Further, the analogy overlooks basic differences between libraries and museums. As discussed, a public library “provide[s] resources and services in a variety of media” to meet the education, information, personal development, and leisure needs of its patrons by providing access to “a wide and varied range of knowledge, ideas and opinions.”³¹ Most libraries also offer the vast majority of their collections for circulation, with generally only a few items being held in reserve or as part of a special

31. *The Public Library Service: IFLA/UNESCO Guidelines for Development*, INT’L FED’N OF LIBR. ASS’NS & INST. 2 (2001), available at <https://www.ifla.org/wp-content/uploads/2019/05/assets/hq/publications/archive/the-public-library-service/publ97.pdf>.

collection because of their market value, rarity, or other characteristics, none of which are viewpoint based.³²

By contrast, a museum “researches, collects, conserves, interprets and exhibits tangible and intangible heritage.”³³ Museums often do not display their entire collections, with larger institutions displaying less than 1%.³⁴ Because of its highly selective display curation, a museum’s “expressive activity” exerts a great deal of influence over what items from its collection the public can interact with or view.

Libraries, on the other hand, are not telling patrons that the books on the shelf are or are not worthwhile reading; they are instead “presenting all points of view on current and historical issues” to fulfill their “responsibility to provide information and enlightenment.”³⁵ Rather than merely collecting and displaying books and other materials for hands-off observation, libraries allow patrons to touch the books and take them home for weeks at a time. The National Portrait Gallery would not do the same with the Landsdowne portrait of George Washington.

32. *Guidelines on the Selection and Transfer of Materials from General Collections to Special Collections*, AM. LIBR. ASS’N, ASS’N OF COLL. & RSCH. LIBRS., <https://www.ala.org/acrl/standards/selctransfer> (last visited Oct. 12, 2025).

33. INT’L COUNCIL OF MUSEUMS, <https://icom.museum/en/resources/standards-guidelines/museum-definition/> (last visited Oct. 12, 2025).

34. SMITHSONIAN COLLECTIONS, <https://www.si.edu/newsdesk/factsheets/smithsonian-collections> (last visited Oct. 12, 2025).

35. LIBR. BILL OF RIGHTS, *supra* note 2, §§ II & III.

II. “Weeding” library collections is an objective, viewpoint-neutral process—not a tool for ideological suppression of disfavored content or viewpoints.

The Fifth Circuit en banc majority opinion homed in on the curation of a library collection and what it means to remove books from the collection. When librarians remove books, they do so using objective, standardized criteria, known as “weeding,” to ensure that collections remain current, relevant, and accessible.³⁶ The district court found that the Llano County officials had invoked this procedure as a pretext for targeting books with content and views the officials deemed “inappropriate.” Pet. App. 202a. The Fifth Circuit en banc majority saw nothing wrong with this practice. In its view, there is no workable way to curate a library collection in a neutral way and “weeding” must “unmistakably” and “[b]y definition” involve “viewpoint discrimination.” Pet. App. 26a. So prohibitions on viewpoint discrimination need not apply.

The en banc majority misconceived the nature of “weeding” and curating a library collection. Weeding is not a tool for censorship: it is a neutral, evidence-based practice rooted in professional ethics.³⁷

36. See *Collection Maintenance & Weeding*, AM. LIBR. ASS’N, <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/weeding> (last visited Oct. 12, 2025).

37. See CODE OF ETHICS, *supra* note 18.

A. Weeding guidelines provide an objective framework for maintaining library collections.

In its discussion of “weeding,” the en banc majority questioned whether, under the First Amendment, any workable standard could exist for determining which books may be removed from a collection and which must remain:

May a library remove a book because it dislikes its ideas? Because it finds the book vulgar? Sexist? Inaccurate? Outdated? Poorly written? Heaven knows.

Pet. App. 3a. But a court need not consult the heavens—it need only consult a professional librarian. Librarians do not weed books based on ideological preferences.³⁸ They follow a professional, objective approach designed to maintain the integrity and relevance of library collections.

One widely used framework is the “CREW” method—Continuous Review, Evaluation, and Weeding³⁹—which provides standardized criteria under the acronym “MUSTIE”:

Misleading: factually inaccurate

Ugly: beyond mending or rebinding

Superseded by a new edition or by a much better book on the subject

38. *Id.*

39. *Collection Maintenance & Weeding*, *supra* note 36.

Trivial: of no discernible literary or scientific merit

Irrelevant to the needs and interests of the library's community

Elsewhere: the material is easily obtainable from another library.⁴⁰

The goal is not to suppress minority viewpoints, but to ensure collections remain current and useful.⁴¹ The ALA has consistently endorsed a viewpoint-neutral approach to weeding: “Library workers shouldn’t exclude materials just because others find the content or creator offensive or controversial.”⁴² Similarly, a weeding manual makes clear that “[w]hile weeding is essential to the collection development process, it should not be used as a deselection tool for controversial materials.”⁴³

The en banc majority’s reference to the absence of a “Holocaust Denial Section” or a “Flat Earth Section” in public libraries misunderstands the role of librarians

40. Jeanette Larson, *CREW: A Weeding Manual for Modern Libraries* at 57-59, Tex. State Libr. & Archives Comm’n (2012), at 11, https://yln.libguides.com/ld.php?content_id=72690387 (last visited Oct. 12, 2025).

41. *Id.* at 11.

42. *Diverse and Inclusive Collections, An Interpretation of the Library Bill of Rights*, AM. LIBR. ASS’N, <https://www.ala.org/advocacy/intfreedom/librarybill/interpretations/diversecollections> (last visited Oct. 12, 2025).

43. *Collection Maintenance & Weeding*, *supra* note 36.

and the standards they apply. Pet. App. 6a, 26a. Library shelves often contain books regarding disputed historical events like the Civil War or the Holocaust or contentious social issues like the efficacy of vaccines. It is not the librarian’s role to referee—let alone resolve—such conflicts. Instead, librarians focus on procuring materials that will interest patrons, such as award-winning literary works, entertaining fiction that will circulate widely, or “potty humor” books that young children will want to borrow. Eventually materials are weeded out when they are no longer circulating, they are damaged, they are rapidly outdated (such as annual tax guides), or they become obsolete (such as a 1980s-era atlas showing “USSR”).

To bolster its view that “weeding” is really just code for viewpoint-based discrimination, the en banc majority also invoked excerpts from *The Weeding Handbook* by Rebecca Vnuk, which suggests removal of Dr. Seuss books “due to their racist content.” Pet. App. 26a, 56a-57a. But a book by an independent author—even one published by ALA’s media arm—is not an official policy statement. The ALA does not endorse every word written by independent authors in the books it publishes. ALA’s formal guidance consistently outlines objective criteria for deselection—such as currency, usage, and subject relevance—not ideological alignment.⁴⁴

44. *Collection Maintenance & Weeding*, *supra* note 36.

B. Professional weeding standards do not require libraries to retain materials that are outdated, misleading, or no longer circulating.

The en banc majority was not satisfied with a viewpoint-neutrality standard, either. The majority suggested that such a standard would prevent libraries from removing “even the most noxious racist screed,” including the “collected works of the Ku Klux Klan.” Pet. App. 25a. Again, this argument mischaracterizes both the legal standard and the professional practices librarians use to manage collections. Libraries are not required to retain every viewpoint ever published in equal amounts; they could not do so because of budget and space constraints.⁴⁵ And as discussed, the weeding framework provides objective criteria for deselection, including irrelevance, obsolescence, and damage.

Books about the Ku Klux Klan—those that document its history, examine its ideology, or analyze its impact—are consistent with a library’s mission to provide access to historical and educational materials of interest to patrons. (Indeed, that is the topic of one of the books at issue in Llano County.) Professional library practice applies objective criteria to curate collections with materials for patrons with wide-ranging interests, even if some of those interests are offensive to other patrons. Again, these collections should reflect the likely interest of patrons, such as bestsellers, award winners, and books with positive reviews, regardless of the viewpoint expressed in those materials. While ALA’s guidance on controversial topics affirms that libraries must provide

45. *Diverse and Inclusive Collections*, *supra* note 42.

access to materials that some patrons may find offensive, it is equally clear that the selection and deselection must be grounded in objective, professional criteria, not ideological agreement or disagreement.⁴⁶

In short, professional weeding ensures that library collections remain useful and consistent with the library's mission to provide a wide array of materials of interest to a community with varied interests, opinions, and information needs. The majority's hypotheticals misconceive how this process works.

C. The Llano County officials' actions bore no resemblance to standard weeding practices.

After a two-day evidentiary hearing, the district court found that the removals of the books in Llano County were likely motivated by a desire to suppress particular viewpoints and that the justification of routine weeding was pretextual. Pet. App. 78a. The removal of the books was prompted by complaints from community members and directives from government officials, targeting books based on their perceived viewpoints. *Id.* None of the books had been slated for review under the library's standard weeding schedule, and many other books that met objective criteria for removal were left untouched. *Id.* at 71a-79a (Higginson, J., dissenting).

This selective targeting of books diverged sharply from the professional standards librarians are trained to apply, such as the CREW guidelines, which prioritize

46. *Policies on Selecting Materials on Controversial Topics*, AM. LIBR. ASS'N, <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/controversial> (last visited Oct. 12, 2025).

relevance, condition, and usage, not ideological alignment. Testimony from library staff confirmed that the books were removed in response to public controversy and political pressure, not because they were outdated, misleading, or irrelevant. *Id.* Notably, the Fifth Circuit did not rule that any of the district court’s factual findings were erroneous or unsupported by sufficient evidence.

Amici do not dispute that some of the targeted books are controversial—and even offensive to some readers. A number of the same books are also well-regarded, award-winning titles in good condition and regularly circulated in the Llano County library system. *Id.* All the removed books are “worth reading” and “belong” on the shelves because they were of value and interest to the patrons of the library. In any event, the role of the library to “provide materials and information presenting all points of view on current and historical issues.”⁴⁷ It is up to library patrons—not government officials—to choose for themselves whether to read a given book.

III. For decades, the *Pico* standard has guided professional library practices without the “nightmare” forecasted by the Fifth Circuit.

Finally, the Fifth Circuit majority’s concerns about the workability of content and viewpoint-neutral library practice—and the standard announced in this Court’s opinion in *Pico*—are misplaced.

First, as Petitioners have ably discussed, while *Pico* may have been a “fractured” opinion, a clear majority

47. LIBR. BILL OF RIGHTS, *supra* note 2, § II.

of the justices (including then-Justice Rehnquist in his dissent) embraced the bedrock principle that books may not be targeted from public library shelves because officials “dislike the ideas contained in those books.” *See* Pet. at 16-17 (quoting *Pico*, 457 U.S. at 872) (plurality op.)). *Pico* also embraced Justice Jackson’s admonition that “no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” *Pico*, 457 U.S. at 870 (plurality op.) (quoting *Barnette*, 319 U.S. at 642). Courts, including the Fifth Circuit, adopted these principles. *See Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 188-89 (5th Cir. 1995). *See also* Pet. at 27 & n.2 (citing cases).

Second, as the en banc dissent noted, the majority offered a series of “rhetorical questions” aimed at exposing the purported “nightmare” of trying to run a library while complying with the First Amendment. Pet. App. 83a-85a (Higginson, J., dissenting). But libraries around the United States managed just fine under the *Pico* standard “for decades” without significant litigation or any consensus that doing so was a “nightmare.” *Id.* at 85a-87a. Indeed, in amici’s real-world experience, it has—until recently—been an utterly unremarkable feature of library practice that collections be curated without trying to pick and choose among preferred viewpoints—or, as the en banc majority put it, those books that are “worth reading” and “belong.”

Third, a system is not unworkable because it requires analysis of a defendant’s subjective motives, such as the motives of the Llano County officials here. Analyzing someone’s subjective state of mind is not new to the First

Amendment.⁴⁸ The en banc majority’s alternative—to give government officials unchecked authority to purge books based on content or viewpoint—is far worse.

Nor is such a system unworkable because the original Fifth Circuit panel diverged as to the treatment of the “butt and fart” books in Llano County. The protections of the First Amendment encompass books that both inform and entertain: “[t]he line between the informing and the entertaining is too elusive for the protection of that basic right.” *Winters v. New York*, 333 U.S. 507, 510 (1948); *see also Mahanoy Area Sch. Dist. v. B.L. by and through Levy*, 594 U.S. 180, 193 (2021) (the First Amendment protects both “the superfluous” and “the necessary”). Nor does it matter whether *Larry the Farting Leprechaun* has an easily identified viewpoint or message. “[A] narrow, succinctly articulable message is not a condition of constitutional protection” *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston, Inc.*, 515 U.S. 557, 569 (1995).

Librarians do not remove silly books because they do not find them funny or children’s books because they do not discern a clear moral to the story. Librarians have been trained to include in their collections a wide variety of books that entertain because, among other things, these materials encourage patrons to visit the library and—of

48. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280 (1964) (public officials must demonstrate actual malice to recover for defamation); *St. Amant v. Thomas*, 390 U.S. 727, 731 (1968) (actual malice requires evidence the defendant “entertained serious doubts as to the truth of his publication”).

particular importance for young people—to read.⁴⁹ While the humor of *Larry* may not be for everyone, the First Amendment applies anyway, even if some grown-ups don’t get the joke.

CONCLUSION

In amici’s view, the only “nightmare” would be for the Fifth Circuit en banc majority opinion to stand. Under that regime, a public library is not a locus of “freewheeling inquiry,” but a decidedly less free place, where the opinion, bias, or whim of a local official dictates which books are made available to the general public. It is no answer, as the majority assumed, that someone might “order [a book] online, buy it from a bookstore, or borrow it from a friend.” Pet. App. 5a. Libraries are different: they are a resource for everyone, including those without the extra cash to buy a book or a friend who happens to own it. Under the en banc majority’s view, libraries might as well not exist at all. Amici hope that is not the point.

Amici curiae American Library Association, Freedom to Read Foundation, and Texas Library Association therefore respectfully request that this Court grant the petition for certiorari and reverse the ruling of the Fifth Circuit en banc majority.

49. A well-known example of this phenomenon is the *Harry Potter* book series. See Wynne Davis, *How Harry Potter Has Brought Magic to Classrooms For More Than 20 Years*, NAT’L PUBLIC RADIO (Dec. 31, 2018), <https://www.npr.org/2018/12/31/678860349/how-harry-potter-has-brought-magic-to-classrooms-for-more-than-20-years> (last visited Oct. 12, 2025).

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