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 THE NATIONAL COALITION AGAINST CENSORSHIP AND STEVEN PICO AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Constitutional Provision

Other Authorities

INTERESTS OF *AMICI CURIAE*[1]

The National Coalition Against Censorship (NCAC) is an alliance of more than 60 national non-profit literary, artistic, religious, educational, professional, labor, and civil liberties groups. The NCAC's mission is to protect freedom of thought, inquiry, and expression and to oppose censorship in all its forms. NCAC engages in direct advocacy and education to support free expression rights of authors, readers, publishers, booksellers, teachers, librarians, artists, students, and others. NCAC is dedicated to defending robust First Amendment protections of the public's access to art, literature, and culture. The positions advocated in this brief do not necessarily reflect the views of NCAC's member organizations.

Steven Pico is a prominent American advocate for the constitutionally protected right of academic freedom. In 1978, at age 19, Mr. Pico served on the Board of Trustees at Island Trees Public Library and, in 1979, was elected as a New York State delegate to the First White House Conference on Libraries. Mr. Pico was the 1982 recipient of the Immroth Award from the Intellectual Freedom Round Table of the American Library Association "for strong commitment and defense of the principles of intellectual freedom and the freedom to read," and in

[1] Counsel for *amici curiae* certify, pursuant to Rule 37.6, that this brief was not authored in whole or part by counsel for any of the parties; no party or party's counsel contributed money for the brief; and no one other than *amici* and their counsel have contributed money for this brief. Counsel for *amici* provided notice to counsel of record on September 30, 2025, pursuant to S. Ct. R. 37.2.

2023 Pico was honored by the New Press, a non-profit publisher, "for a lifetime of fighting against censorship." Prior recipients include Toni Morrison and Alice Walker. Drawing on his Quaker faith, Mr. Pico has lectured on freedom of expression and non-violent activism for more than four decades, including at the Columbia University School of Library Service, and is presently a Visiting Lecturer at Augustana College in Illinois. As a plaintiff, Steven Pico initiated the critically important book banning case *Board of Education, Island Trees v. Pico*, adjudicated by the U.S. Supreme Court in 1982.

SUMMARY OF ARGUMENT

Since their inception, libraries have stood as places of individual learning and independent inquiry, representing the seminal institution where Americans exercise their right to receive information and ideas. If left uncorrected, the en banc Fifth Circuit's holding that the right to receive does not apply to the removal of disfavored viewpoints from a public library would enable the government to convert libraries into "silos of partisanship." Recording of Oral Argument at 7:26, *Little v. Llano Cnty., Tex.*, No. 23-50224 (5th Cir. Sept. 24, 2024) (en banc).[2]

Over the past few years, federal, state, and local governments have increasingly targeted books for removal from library shelves because of disagreement with the viewpoints they espouse. In 2024 alone, NCAC recorded numerous instances

[2] https://www.ca5.uscourts.gov/OralArgRecordings/23/23-50224_9-24-2024.mp3 (last accessed Oct. 12, 2025).

across the country in which book challenges or removals were based on the works' discussion of LGBTQ and racial justice issues.[3] When the government acts to control library collections based on political viewpoint rather than the trained judgment of library professionals, it undermines the very purpose of the library—to provide the public with access to a wide breadth of information, including differing opinions and perspectives. That is precisely what happened in Llano County, Texas, where public library and county officials directed the removal of 17 books because of their depictions of race, sexuality, and other "inappropriate" material. Pet. App. 70a-79a (Higginson, J., dissenting).

This Court has repeatedly recognized that the First Amendment encompasses the right to receive information and ideas. Nowhere is that right more salient than in libraries, the beating heart of the so-called marketplace of ideas. In holding that "plaintiffs cannot invoke the right to receive information to challenge the library's removal of the challenged books," the en banc Fifth Circuit all but eviscerated this well-established right and eliminated the ability for library patrons in three states to bring constitutional claims against book removals. Pet. App. 20a. Left standing, this ruling would bless the government's denial of access to a variety of

[3] *See* Youth Censorship Database, Nat. Coal. Against Censorship (2025), https://ncac.org/youth-censorship-database. PEN America tracks book banning within schools and found 10,046 instances of individual books banned during the 2023–2024 school year. PEN America Index of School Book Bans – 2023–2024, PEN America (2025), https://pen.org/book-bans/pen-america-index-of-school-book-bans-2023-2024/.

literature, including award-winning books such as *In the Night Kitchen* by Maurice Sendak, *It's Perfectly Normal* by Robie H. Harris, and *Caste* by Isabel Wilkerson, recipient of the Pulitzer Prize for Literature. Just as the First Amendment "does not tolerate laws that cast a pall of orthodoxy over the classroom," nor should it permit such a perversion of the library. *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

In *Board of Education v. Pico*, the central case on school library book removals, a majority of this Court agreed that a school library's removal of books based on viewpoint discrimination may violate the First Amendment. *See* 457 U.S. 853, 871 (1982) (plurality opinion); *id.* at 878 (Blackmun, J., concurring in part and concurring in the judgment); *id.* at 907 (Rehnquist, J., joined by Justices Burger and Powell, dissenting). For four decades, lower courts—including the Fifth Circuit—have followed *Pico* in evaluating the removal of books from publicly funded libraries.

The en banc Fifth Circuit's decision in *Little v. Llano County* is a radical departure from the core tenets of *Pico*. The court claims that *Pico* creates an unworkable standard that requires judges to engage in the supposedly impossible task of discerning the intent of government officials in removing books. *See* Pet. App. 21a–23a. Forty years of federal courts' successful application of *Pico* say otherwise—as do numerous areas of First Amendment doctrine that require courts to glean intent. The Fifth Circuit's decision would deprive patrons of their First Amendment right to receive information and ideas

from public libraries. This Court should grant certiorari to clarify that *Pico* provides the correct standard for viewpoint-based book removals and to reaffirm the principle that government suppression of ideas is the third rail of the First Amendment. *See Iancu v. Brunetti*, 588 U.S. 388, 399 (2019) (Alito, J., concurring) ("Viewpoint discrimination is poison to a free society.").

ARGUMENT

I. THE RIGHT TO RECEIVE INFORMATION IS WELL ESTABLISHED UNDER THE FIRST AMENDMENT

A. The right to receive information and ideas has an extensive history in this Court's jurisprudence, dating back over eight decades.

The plain text of the First Amendment prohibits the government from making any law "abridging the freedom of speech," U.S. Const. amend. I. This Court has long recognized that this restriction creates an inherent right to receive information and ideas. *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (noting the right was already "well established"). The Court recognized this right over eighty years ago, encapsulating the understanding of the drafters of the First Amendment that the right was necessary "if vigorous enlightenment was ever to triumph over slothful ignorance." *Martin v. City of Struthers*, 319 U.S. 141, 143 (1943).

Consequently, "the right of the public to receive suitable access to social, political, esthetic, moral, and

other ideas and experiences" is "crucial." *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 390, 392 (1969) (upholding regulations imposed on broadcasters requiring that discussion of public issues include equal coverage of each side because of the interest in creating an "informed public capable of conducting its own affairs"). That right does not depend on the idea's perceived value; the "right to receive information and ideas, regardless of their social worth … is fundamental to our free society." *Stanley*, 394 U.S. at 564 (citation omitted). But "the dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them … [for] [i]t would be a barren marketplace of ideas that had only sellers and no buyers." *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring). Speech is meant to be heard, to be wrestled with, and to challenge and break down our beliefs so that we can in turn build them back stronger.

For over forty years, the right to receive has guided lower courts in evaluating the constitutionality of book removals from libraries. *See Pico*, 457 U.S. 853, 872 (1982) (plurality opinion). In *Pico*, a local school board removed books from school libraries that they considered "anti-American, anti-Christian, anti-Sem[i]tic, and just plain filthy." *Id.* at 857. While a majority of Justices in *Pico* agreed that the school board's actions could pose a First Amendment violation, the Court disagreed on how precisely to "reconcile the schools' 'inculcative' function with the First Amendment's bar on 'prescriptions of orthodoxy.'" *Id.* at 879 (Blackmun, J., concurring in part and concurring in the judgment).

Nonetheless, a majority of Justices—including those in dissent—agreed that the First Amendment includes within it the right to access information and ideas from a public library. The debate lay not in whether the right exists, but in its *scope*.

Justice Brennan wrote for the plurality that "the right to receive ideas is a necessary predicate to the *recipient's* meaningful exercise of his own rights of speech, press, and political freedom," and "students too are beneficiaries of this principle." *Id.* at 867–68 (emphasis in original). Justice Blackmun's concurrence declined to "suggest that the State has any affirmative obligation to provide students with information or ideas," but made no contention that the right to receive does not apply to a public library. *Id.* at 878 (Blackmun, J., concurring in part and concurring in the judgment). Without reaching the issue of the applicability of the right to receive in schools, Justice Blackmun agreed with the plurality that "[t]he State may not act to deny access to an idea simply because state officials disapprove of that idea for partisan or political reasons." *Id.* at 879. Justice Rehnquist's dissent similarly questioned the presence of a right to receive information in *school* settings without protesting the right generally. *Id.* at 910 (Rehnquist, J., dissenting); *see also id.* at 915 (distinguishing between "university or public libraries," and "elementary and secondary school libraries").

In sum, this Court's plurality held that when books are removed from the shelves of a school library because of disagreement with the viewpoints they express, the government infringes upon the First

Amendment rights of students. Lower courts have followed suit. *Pico*, 457 U.S. at 867–68; *see Case v. Unified School Dist. No. 233, Johnson County, Kansas*, 908 F. Supp. 864, 874 (D. Kan. 1995) ("The constitutional right to challenge the removal of a book from a school library appears to be held by the student who is denied access to the book"); *see also Campbell v. St. Tammany Parish Sch. Bd.*, 64 F.3d 184, 190 (5th Cir. 1995) ("[T]he key inquiry in a book removal case is the school officials' substantial motivation in arriving at the removal decision"). When the government controls the availability of knowledge by picking and choosing among favored viewpoints, people deprived of the opportunity to receive the information or ideas have standing to challenge that interference with ideas under the First Amendment.[4]

[4] The case law on the right to receive largely involves government interference with access to *private* speech. In contrast, the government-speech doctrine applies when the government itself chooses to speak, in which case the Free Speech Clause of the First Amendment does not apply. *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009). As the Eighth Circuit explained in declining to apply the government-speech doctrine to library curation, placing books on a library shelf would merely indicate that "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 v. Tam*, 582 U.S. 218, 236). This Court has cautioned that the government-speech doctrine "is susceptible to dangerous misuse" that risks permitting the government to "silence or muffle the expression of disfavored viewpoints"—a concern that has acutely manifested in the removals challenged in this very case. *Matal*, 582 U.S. at 235. The purpose of a public library is for the government to provide a forum for private speakers to disseminate their speech to listeners. It is for this reason that challenges to library book removals are situated squarely within the realm of the First Amendment right to receive, rather than

See Penguin Random House LLC v. Robbins, 774 F. Supp. 3d 1001, 1014 (S.D. Iowa 2025) (student plaintiff had standing to challenge a law "directly limit[ing] the books and materials she can obtain from the school library," which in turn "blocks [her] access to new ideas and viewpoints, as well as information about history, politics, and science") (internal quotations omitted).

B. The right to receive information and ideas applies to public libraries.

A plurality in *Pico* found that this right applies in the context of school libraries, even as First Amendment analysis is often modified for the curricular setting. *Pico*, 457 U.S. at 868 ("But the special characteristics of the school *library* make that environment especially appropriate for the recognition of the First Amendment rights of students") (emphasis in original); *see*, *e.g.*, *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503, 509 (1969) (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966) (asking whether "the forbidden conduct would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school'")). From that standpoint, *Pico* is even more clearly the appropriate standard for a *public* library—an institution unconstrained by the special considerations of the school environment, and whose existence epitomizes the First Amendment's purpose of protecting and facilitating the free

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impervious to constitutional challenge under the inapplicable government-speech doctrine.

exchange of ideas. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (noting our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open"). It is for that reason this Court has emphasized that "the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge." *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965).

In the decades since *Pico*, federal courts have applied the right to receive information in the context of both school *and* public libraries. In *Kreimer v. Bureau of Police for Town of Morristown*, the Third Circuit upheld a First Amendment challenge to public library rules forbidding patrons from engaging in behavior purportedly disturbing to other visitors. 958 F.2d 1242, 1262–65 (3d Cir. 1992). The court acknowledged that although "*Pico* signifies that, consistent with other First Amendment principles, the right to receive information is not unfettered and may give way to significant countervailing interests," the right nonetheless "includes the right to some level of access to a public library, the quintessential locus of the receipt of information." *Id.* at 1255. Other federal courts have similarly agreed that the right to receive is especially strong in the context of public libraries. *See*, *e.g.*, *Neinast v. Bd. of Trs. of Columbus Metro. Libr.*, 346 F.3d 585, 591 (6th Cir. 2003) (stating that "the First Amendment protects the right to receive information," including public library access) (citing *Stanley*, 394 U.S. at 564; *Kreimer*, 958 F.2d at 1255); *Armstrong v. Dist. of Columbia Pub. Libr.*, 154 F. Supp. 2d 67, 75 (D.D.C. 2001) (acknowledging the "long-standing precedent supporting plaintiff's First

Amendment right to receive information and ideas, and this right's nexus with access to public libraries"); *England v. Jackson Cnty. Pub. Libr.*, 596 F. Supp. 3d 1164, 1173–74 (declaring that "there is no question" that "the right to receive information through continued use of the [public] [l]ibrary" is "protected under the First Amendment") (citing *Stanley*, 394 U.S. at 564; *Pico*, 457 U.S. at 867; *Hill v. Colorado*, 530 U.S. 703, 728 (2000)). Public libraries embody our commitment to the First Amendment's ideal of self-governance and free inquiry; if the right to receive information applies in any locale, it must protect the right of library patrons to seek knowledge without the interference of the government.

II. DENYING ACCESS TO A PUBLIC BENEFIT ON THE BASIS OF VIEWPOINT IS FATAL IN FIRST AMENDMENT ANALYSIS

The right to receive is violated, as is any other right in the First Amendment canon, when the government picks and chooses based on the viewpoint of private speakers. "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." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). To that end, "viewpoint discrimination is … an egregious form of content discrimination" and when it occurs, "the violation of the First Amendment is all the more blatant." *Rosenberger v. Rectors and Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995); *see also City Council v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984) ("There are some purported interests—such as a

desire to suppress support for a minority party or an unpopular cause, or to exclude the expression of certain points of view from the marketplace of ideas—that are so plainly illegitimate that they would immediately invalidate the rule"); *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 84 (1983) (Stevens, J., concurring) ("Governmental suppression of a specific point of view strikes at the core of First Amendment values").

This principle has been consistently reaffirmed in nearly every area of the Court's First Amendment jurisprudence. *See*, *e.g.*, *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 564 (2011) (applying strict scrutiny to a law that "on its face burdens disfavored speech by disfavored speakers"); *Rosenberger*, 515 U.S. at 827–31 (1995) (prohibiting viewpoint discrimination in funding of student newspapers); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 393–96 (1992) (prohibiting viewpoint discrimination in enforcement of city ordinance banning symbolic hate speech); *Johnson*, 491 U.S. at 420 (1989) (invalidating conviction for flag desecration for targeting disfavored viewpoint). This includes cases where the government is offering a discretionary program or benefit. *See*, *e.g.*, *Matal v. Tam*, 582 U.S. 218, 243–44 (2017) (prohibiting viewpoint discrimination in federal trademark registration); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 102 (2001) (prohibiting viewpoint discrimination in granting access to limited public forum).

This case is no different. Nowhere in the Constitution is it written that the government *must* establish or fund libraries, school or public; doing so is

an act of discretion. But once the government chooses to do so, the First Amendment's prohibition on viewpoint discrimination remains in full effect. The Court's treatment of student admissions, public employment, and government grant programs is illustrative. In each of those contexts, as with public libraries, the government seeks to perform a specialized function within its discretionary power, such as providing education, employment, or public benefits. Trained professionals in these areas exercise judgment to ensure the institution achieves its objective. Student admissions officers identify applicants who will likely contribute to a robust educational environment; hiring managers select employees who they believe will fulfill their job duties and advance the employer's mission; and grant administrators allocate funds to individuals and entities most qualified to serve the government's objective. In none of these contexts, however, has this Court ever held that the discretion afforded to the government to accomplish its aims then permits it to engage in viewpoint discrimination. To the contrary, each of these doctrines rigidly protects against government censorship of disfavored views or speakers.

In the student admissions context, for example, universities may consider an applicant's individual life experiences or viewpoints to cultivate a diverse student body, just as public librarians consider the merits of a book when cultivating a diverse collection. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230–31 (2023) (emphasizing that public universities may still consider an applicant's individual attributes to

cultivate diversity on campus). But once a university admits an applicant, it may not then expel that student for a disfavored opinion. *See Papish v. Bd. of Curators of Univ. of Mo.*, 410 U.S. 667, 670–71 (1973) (prohibiting expulsion of a graduate student based on school's disapproval of news content the student distributed).

Public employment jurisprudence is also instructive because, as with libraries, it involves the government's conferral of a benefit: employment. This Court has made clear that once the government has provided that benefit, it may not then withdraw it for viewpoint-discriminatory reasons. *See Rankin v. McPherson*, 483 U.S. 378, 380–84 (1987) (prohibiting dismissal of public employee for offensive speech). As the Court said in *Rankin*, an employee cannot be fired "for exercising her constitutional right to freedom of expression," even if the employee could otherwise have been fired "for any reason or no reason at all." *Id.* at 383–84. Just as the government may not hire someone based on his skill set and then proceed to fire him for, say, voting for a certain political party, nor may the government shelve a book because of its value and then later remove it due to disagreement with its point of view.

Government grant jurisprudence also supports the conclusion that the First Amendment does not tolerate viewpoint discrimination in book removal decisions. *See Matal*, 582 U.S. at 223; *see also Iancu*, 588 U.S. at 390. In *Matal v. Tam*, for example, the Court held that a provision of the Lanham Act barring federal registration of disparaging trademarks amounted to viewpoint discrimination and reaffirmed

that "[s]peech may not be banned on the ground that it expresses ideas that offend." 582 U.S. at 223. Because application of the disparagement clause reflected the government's "disapproval of a subset of messages it finds offensive," the Court struck it down. *Id.* at 247–49 (Kennedy, J., concurring). Likewise, in *Legal Services Corp. v. Velazquez*, this Court held that the First Amendment does not "permit Congress to define the scope of the litigation it funds to exclude certain vital theories and ideas." 531 U.S. 533, 548 (2001). As with the government funding program at issue in *Velazquez*, libraries are "designed to facilitate private speech, not to promote a governmental message." *Id.* at 542.

Librarians are professionally trained to advance the purpose of a library—"provid[ing] materials and information presenting all points of view on current and historical issues." *Library Bill of Rights*, Am. Libr. Ass'n (first adopted June 19, 1939, by the ALA Council).[5] Just as the government may make viewpoint-based judgments when considering the merits of an applicant in student admissions, employment, or grant funding, librarians may consider the merits of a book when working to achieve a library's purpose of providing access to a diverse array of ideas. However, once a book has been shelved, the Constitution does not permit its removal because of naked disapproval of its views, in the same way it forbids the expulsion of a student, cancellation of a grant, or termination of an employee for such reasons. This is true even if the book could be removed for other

[5] https://www.ala.org/advocacy/intfreedom/librarybill (last visited Oct. 10, 2025).

reasons, such as physical damage or outdated material. *See, e.g., Rankin*, 483 U.S. at 383–84. Thus, when evidence shows that the government removed a book from library shelves because of disapproval of its perspective, as the district court found in this case, the book removal amounts to unconstitutional viewpoint discrimination. *See* Pet. App. 220a–227a.

As First Amendment jurisprudence amply demonstrates, the government's discretion in offering a fund, a benefit, or a program does not give license for officials to engage in viewpoint discrimination to later deny or limit access to those public goods. Nor should this Court deviate from this rule in the context of public libraries, where our cultural commitment to open inquiry should be at its zenith.

III. THIS COURT SHOULD RATIFY *PICO* AS AN ESTABLISHED AND ADMINISTRABLE DOCTRINE IN LIBRARY FIRST AMENDMENT CLAIMS

A. *Pico* provides the appropriate test for evaluating right to receive claims in library book removal cases.

Once the government chooses to operate a library and selects which books to shelve, it may not then engage in viewpoint discrimination by singling out books which it disfavors for removal. This is the crux of *Pico*—that removal of a book from a school library because of the viewpoint it expresses is subject to First Amendment scrutiny—which was embraced by a majority of this Court and has flourished in the lower courts.

In *Pico*, a four-justice plurality concluded that while schools retain broad discretion to curate their own libraries, the removal of books for the purpose of suppressing ideas violates the First Amendment. *Id.* at 872. Justice Rehnquist, joined by Justices Burger and Powell, "cheerfully concede[d]" that the school library could not remove books "in a narrowly partisan or political manner." *Id.* at 907 (Rehnquist, J., dissenting). Justice White, whose vote provided the narrowest basis for a majority, determined it was necessary to remand the case for further factfinding regarding the school board's motivation in removing the books, tacitly indicating his agreement that viewpoint-based book removal decisions would violate the First Amendment. *Pico*, 457 U.S. at 883 (White, J., concurring).

The en banc Fifth Circuit nonetheless held that *Pico* has "no precedential weight" in this case because the opinions there were "highly fractured." Pet. App. 17a (citing *Chiras v. Miller*, 432 F.3d 606, 619 n.32 (5th Cir. 2005)). That oversimplifies the source of the disagreement among the Justices and ignores the key areas of *Pico* that garnered agreement from a majority. For one, the *Pico* Justices were divided over a *public school's* obligation to provide students with certain information or ideas. But out of that disagreement, eight of the Justices nonetheless agreed that a public school still could not remove books simply because it dislikes the ideas those books expressed. *Pico*, 457 U.S. at 872 (Brennan, J., joined by Justices Marshall, Stevens, and Blackmun, plurality opinion); *id.* at 883 (White, J., concurring); *id.* at 907 (Rehnquist, J., joined by Justices Burger and Powell, dissenting) (1982). The vast majority of

the Court therefore endorsed the core tenet that viewpoint discrimination is unconstitutional, even in a school library setting. *Id.*

Pico applies to public libraries with "even greater force." Pet. App. 108a (Higginson, J., dissenting). To fulfill their "traditional mission" as a forum for "learning and cultural enrichment," both school and public libraries must have discretion to curate their collections, *United States v. Am. Libr. Assn., Inc.*, 539 U.S. 194, 195 (2003), and must provide access to a multitude of opinions and viewpoints in order to facilitate "freewheeling inquiry." *Pico*, 457 U.S. at 915 (Rehnquist, J., dissenting) (recognizing this imperative in the context of "university or public libraries"). *Pico*'s admonition against viewpoint discrimination in book removal decisions is thus a vital safeguard against the possibility that these public institutions could be turned into "enclaves of totalitarianism." *Tinker*, 393 U.S. at 511.

B. The *Pico* standard is judicially administrable.

Since *Pico* was decided forty-three years ago, the lower courts have applied it with little difficulty.[6] Those courts—including the Fifth Circuit before overruling itself—have assessed the intent

[6] Even before *Pico*, courts settled on a similar standard. In *Pratt*, the Eighth Circuit noted that "courts have generally concluded that a cognizable First Amendment claim exists if the book was excluded to suppress an ideological or religious viewpoint with which the local authorities disagreed." *Pratt v. Indep. Sch. Dist. No. 831, Forest Lake, Minn.*, 670 F.2d 771, 776 (8th Cir. 1982).

behind removal decisions and managed to determine whether or not they were motivated by hostility to a book's viewpoint. *See Campbell*, 64 F.3d 184; *ACLU of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177 (11th Cir. 2009); *see also GLBT Youth in Iowa Schs. Task Force*, 114 F.4th at 669–70.

Pico acts as a simple check on the government's power to administer a public library in ways at odds with its very purpose. A rule prohibiting viewpoint discrimination in book removal decisions would hardly constitute a unique burden on public officials—who must abide by that prohibition in almost every other area of government administration. Nor would that rule burden courts, contrary to the en banc majority's claim that rooting out viewpoint discriminatory intent "would tie courts in endless knots." Pet. App. 23a.

It certainly didn't tie the district court here in knots. *See* Pet. App. 220a–227a. Nor did it trip up the court in *Campbell*.[7] Nor has it confused the many other courts to address these issues since *Pico*. *See, e.g.*, *Case v. Unified Sch. Dist. No. 233, Johnson Cnty., Kan.,* 895 F. Supp. 1463, 1469 (D. Kan. 1995); *Mainstream Loudoun v. Bd. of Trs. of the Loudoun*

[7] Though that court could not find, on a summary judgment motion, that public officials had removed books because of their viewpoint, the court did what all courts are obligated to do under the circumstances—remand for a jury to make its own determinations on viewpoint animus. *Campbell*, 64 F.3d at 190*; see Heaney v. Roberts*, 846 F.3d 795, 802 (5th Cir. 2017). This underscores another reason why a *Pico*-like intent rule would have limited impact on the courts—as the ultimate question of official motivation is a question for the trier of fact. *Id.*

Cnty. Libr., 2 F. Supp. 2d 783, 792–96 (E.D. Va. 1998); *Sund v. City of Wichita Falls, Tex.,* 121 F. Supp. 2d 530, 548 (N.D. Tex. 2000); *Counts v. Cedarville Sch. Dist.*, 295 F. Supp. 2d 996, 1004 (W.D. Ark. 2003); *Parents, Fams. & Friends of Lesbians & Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F. Supp. 2d 888, 900–01 (W.D. Mo. 2012); *PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 3d 1325, 1331 (N.D. Fla. 2024); *Crookshanks as next friend of C.C. v. Elizabeth Sch. Dist.*, 775 F. Supp. 3d 1160, 1179–85 (D. Colo. 2025); *Penguin Random House*, 774 F. Supp. 3d at 1032–35.

For example, in *ACLU of Florida, Inc. v. Miami-Dade County School Board*, the Eleventh Circuit applied *Pico* to determine whether the school board removed a book about Cuba because it was "factually inaccurate," or because they had "a desire to promote political orthodoxy." 557 F.3d at 1221, 1227. Because the Eleventh Circuit held that the removal decision was motivated by "a preference in favor of factual accuracy," the court concluded the school board did not violate the First Amendment in removing the book. *Id.* at 1222. It was undisputed that the book in question, which was considered "non-fiction," contained factual inaccuracies. *Id.* at 1207. The Eleventh Circuit determined that regardless of one's political stance or opinions on the Cuban government, the book misrepresented daily life in Cuba. *Id.* at 1221. Thus, the school, which required non-fiction books to be "correct, recent, and objective," had an ostensibly legitimate reason to remove it. *Id.*

The Eleventh Circuit's analysis demonstrates that it is entirely possible and reasonable for a court

to interrogate the intent behind the removal—and that a removal decision may in fact survive the kind of constitutional scrutiny that a limited rule like *Pico* would impose. Applying that rule, libraries still maintain wide discretion to remove books for all sorts of reasons—including, as the Eleventh Circuit held, for factual inaccuracy. The principle at the heart of *Pico* is simple: curation is allowed; censorship is not.

C. *Little* is an outlier in holding viewpoint discrimination to be an unworkable analysis in the library context.

The en banc majority in *Little* rejected wholesale the right to receive information and ideas in the library context. But the embrace of this right by *Pico* and its progeny indicates that it is, in fact, entirely administrable. *See* Pet. App. 20a–23a. The en banc majority held that Llano County Public Library patrons "cannot invoke a right to receive information to challenge a library's removal of books," even when the removal is a result of viewpoint discrimination. Pet. App. 2a. *See id.* at 26a ("By definition, libraries must have discretion to keep certain ideas—certain viewpoints—off the shelves."). It reasoned that allowing such a claim would "transform" this Court's right to receive precedent "into a brave new right to receive information from the government in the form of taxpayer-funded library books." Pet. App. 2a–3a. But, as previously discussed, the Petitioners do not assert a positive right to demand what books are housed on public library shelves. Rather, they merely argue that the government cannot interfere with the exchange of speech between private speakers and

listeners based on viewpoint once it has already provided a forum to access that speech.

The Fifth Circuit itself embraced the *Pico* plurality decision long before the en banc majority reversed course this past spring in *Little*. *See Campbell*, 64 F.3d at 190. Applying *Pico* in *Sund v. City of Wichita Falls, Tex.*, the District Court for the Northern District of Texas permanently enjoined the City Council of Wichita Falls from enforcing a resolution removing certain books from the children's section of the library and placing them in the adult section. 121 F. Supp. 2d at 532. In so doing, the court acknowledged that "[t]he right to receive information is vigorously enforced in the context of a public library." *Id.* at 547. Logically following the applicability of that right, "[t]he principles set forth in *Pico*—a school library case—have even greater force when applied to public libraries." *Id.* at 548. The court cited *Campbell*, among other cases, in its explanations of both the applicability of the right to receive and the standard set by *Pico*. *See id.* at 547–48.

The en banc Fifth Circuit's rejection of *Pico* and *Campbell* also precluded more fulsome consideration of the extensive evidentiary record of the district court below. The district court found that Plaintiffs were entitled to a preliminary injunction because the evidence showed that Defendants would otherwise continue to limit or prohibit access to the books in question. Pet. App. 230a. The en banc majority opines about the unworkability of any standard that requires the court to consider the government's motivation in its removal of books. *See* Pet. App. 23a. But as the district court found, the brief period between the

receipt of complaints advocating removal and relocation of a list of books labeled "pornographic filth" and "CRT and LGBTQ books," and their subsequent removal from Llano County Public Library shelves, "strongly suggests that the actions were in response to each other." Pet. App. 221a–223a. Nothing in the preliminary injunction record suggests that the district court struggled to parse the government's motivations. Overruling *Campbell* thus enabled the en banc majority to skirt the ample evidentiary record of viewpoint animus in order to reach the outcome here: doing away with the *Pico* standard.

CONCLUSION

Allowing the Fifth Circuit's decision to stand threatens to make public libraries a doctrinal oxymoron—institutions with a proud historical tradition of providing access to the widest possible range of ideas would become one of the *only* areas where the government could openly censor private viewpoints. To allow viewpoint discrimination in a library context is to undermine the very purpose of libraries. This Court should grant the petition for certiorari, vacate the decision below, and remand for further proceedings consistent with the decision in *Pico*.

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