

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 FOR *AMICI CURIAE* FIRST
AMENDMENT LAW PROFESSORS IN
SUPPORT OF PETITIONERS AND REVERSAL**

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INTEREST OF AMICI CURIAE

Amici are professors of law who study the First Amendment.¹ *Amici* are First Amendment Scholars and experts who teach and research the Free Speech Clause. Collectively, amici have written scholarly books and dozens of academic articles on freedom of expression and access to information. Amici write to urge the court to grant certiorari and reverse the Fifth Circuit, which misconstrued core principles of First Amendment doctrine.

SUMMARY OF ARGUMENT

Petitioner seeks review of a sharply divided *en banc* decision of the U.S. Court of Appeals for the Fifth Circuit, in which the majority held that book removal decisions do not implicate the First Amendment. That ruling deepens an existing circuit split rooted in confusion over the scope of this Court's decision in *Board of Education, Island Trees Union Free School District No. 26. v. Pico*, 457 U.S. 853 (1982). As First Amendment professors, amici urge this Court to reaffirm that the Constitution imposes limits on the government's ability to suppress access to ideas, particularly in libraries that serve as vital forums for inquiry and learning. Amici's interest lies in ensuring that lower courts faithfully apply this Court's First Amendment precedents, rather than narrowing them in ways that censor the right to receive.

1. Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.3, the parties were given notice of this filing.

This case concerns something foundational to our social, educational, and democratic functioning: the ability of public libraries to serve as forums for the broad exchange of ideas. Libraries are among the most important democratic resources in our nation, providing equitable access to information and cultivating the informed citizenry that underpins self-government. To allow government officials to wield unchecked discretion over library collections, as the Fifth Circuit's decision would, permits censorship over activity at the very heart of the democratic process. The First Amendment plays a critical role in ensuring that these institutions remain open and inclusive spaces for diverse ideas.

Without correction by this Court, the Fifth Circuit's decision would severely erode the First Amendment rights of public library patrons, granting government officials unchecked power to suppress disfavored viewpoints. By collapsing the distinction between government speech and government facilitation of private speech, the decision destabilizes this Court's government speech jurisprudence and licenses libraries to engage in blatant viewpoint discrimination. For these reasons, this Court should grant certiorari and reverse the Fifth Circuit's ruling.

REASONS FOR GRANTING THE WRIT

I. THE FIFTH CIRCUIT'S HOLDING CONTRIBUTES TO A PRE-EXISTING CIRCUIT SPLIT, CAUSED BY CONFUSION REGARDING THIS COURT'S PLURALITY OPINION IN *PICO*.

This Court should grant certiorari to resolve confusion among the circuits regarding what constitutional

standards apply to public library decisions—a question that surfaces with increasing regularity and cuts to the core of First Amendment protections. Given the lack of binding precedent on public library book removals, only this Court’s establishment of a uniform principle can create necessary clarity. Though the Supreme Court has spoken on how courts should evaluate school libraries in First Amendment cases, lower courts need further clarification from this Court to sufficiently guide lower courts in their application.

Board of Education, Island Trees Union Free School District No. 26. v. Pico remains this Court’s sole examination of how the First Amendment governs library book removal decisions. In *Pico*, a plurality of the Supreme Court concluded that school boards could not, given the nature and purpose of school libraries, order books removed from library shelves to deny students “access to ideas” with which board members disagreed. *Pico*, 457 U.S. at 871–72. A majority believed that such removal decisions implicate First Amendment rights. *Id.* at 866. *Pico* is the only Supreme Court case in the last forty-three years to consider the First Amendment implications of book removal.

Because of this confusion in Supreme Court precedent, a circuit split has emerged. Since the decision was issued, *Pico* has been cited hundreds of times by lower courts, reflecting its standalone status as guidance on this important doctrine. See *Serra v. United States General Servs. Admin.*, 847 F.2d 1045 (2nd Cir. 1988); *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022 (9th Cir. 1998); *Kreimer v. Bureau of Police*, 958 F.2d 1242, 1255 (3d Cir. 1992).

In *Kreimer v. Bureau of Police*, the Third Circuit relied on the *Pico* plurality opinion to analyze the right to receive information. See *Kreimer*, 958 F.2d at 1255. Similarly, the Eleventh Circuit applied the *Pico* standard in *Miami-Dade County School Board*, notwithstanding its view that “*Pico* is a non-decision so far as precedent is concerned. It establishes no standard.” *ACLU of Fla.*, 557 F.3d at 1200. In *Case*, a district court in Kansas applied *Pico* to justify scrutinizing the actual motivations in removing books. Although *Pico* was only a plurality opinion, the court in *Case* stated that it nonetheless relied on *Pico* in the absence of additional case law in the Tenth Circuit or the Supreme Court. *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp 864, 874 (D. Kan. 1995).

Some circuits have repudiated this precedent and applied standards antithetical to *Pico*, such as the government speech doctrine, in evaluating library removal decisions. *Pico*’s critics (including respondent, in the Fifth Circuit) assert that its plurality opinion cannot stand for much, yet they neglect to acknowledge that the Supreme Court has not repudiated its logic in the intervening decades despite ample opportunities to do so.

Other circuits have not adopted or acknowledged *Pico* as holding precedential value. In 2009, the Eleventh Circuit deemed *Pico* “a nondecision so far as precedent is concerned.” *Am. C.L. Union of Fla. v. Mia.-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1200 (11th Cir. 2009). In this case, the Fifth Circuit similarly declared *Pico* to be of “no precedential value as to the application of the First Amendment.” *Little v. Llano Cnty.*, 138 F.4th 834, 843 (5th Cir. 2025) (citing *Muir v. Ala. Educ. Television Comm’n*, 688 F.2d 1033, 1045 n. 30 (5th Cir. 1982) (en banc)) (“[W]e

conclude that the Supreme Court [in *Pico*] decided neither the extent nor, indeed, the existence vel non, of First Amendment implications in a school book removal case.”).

Recently, in *GLBT Youth in Iowa Schools Task Force v. Reynolds*, the Eighth Circuit rejected the application of the government speech doctrine to public libraries and instead applied a holistic inquiry based on the factors in *Shurtleff*, discussed further *infra* Part III.B. *GLBT Youth in Iowa Schs. Task Force v. Reynolds*, 114 F.4th 660 (8th Cir. 2024) (citing *Shurtleff v. Bos.*, 596 U.S. 243, 252 (2022)). The Sixth Circuit has entirely ignored this area in the law in the wake of *Pico*; pre-*Pico* precedent continues to govern the contents of public libraries in that Circuit. *See Minarcini v. Strongville City Sch. Dist.*, 541 F.2d 577 (6th Cir. 1976).

The Fifth Circuit relied on *Pico* when it issued its ruling in *Campbell* thirty years ago, but the *Little* court discarded and repudiated that precedent without any valid justification. By overruling *Campbell*, the Fifth Circuit not only destabilized its own settled law but also severed its jurisprudence from the Supreme Court’s guidance. *See Little*, 138 F.4th 834. Employing reasoning from *Pico*, the Fifth Circuit in *Campbell* had permitted plaintiffs to bring First Amendment challenges by showing viewpoint discrimination. *Campbell v. St. Tammany’s Parish School Bd.*, 64 F.3d 184, 189 (5th Cir. 1995).

While the Fifth Circuit possesses the authority to revisit and overrule its own precedent, the magnitude of the error presented here is especially grave because *Campbell* rests squarely on Supreme Court authority. Disregarding such guidance would not simply unsettle

prior circuit law—it would directly contravene stare decisis and undermine circuit court uniformity with Supreme Court precedent. In *Little*, the Fifth Circuit further denigrated *Pico* by stating that the reasoning in *Campbell* “was based on a mistaken reading of precedent, and since decided, has played no role in similar controversies in our circuit.” *Little*, 138 F.4th at 837. This wholesale dismissal of *Pico* and the line of cases that rightfully relied on the only governing standard issued by the Court exemplifies the urgent need for Supreme Court intervention.

Without a definitive standard delineated by the Supreme Court, and with ambiguity surrounding the weight of *Pico*, this area of law remains uncertain. Lower courts need clarity and clear, authoritative guidance: clarity which can only be provided by this Court. The Court should therefore grant certiorari to provide a clear, guiding principle for lower courts by reaffirming *Pico* and defining its scope.

II. THE FIFTH CIRCUIT’S REFUSAL TO ACKNOWLEDGE THE IMPLICATION OF THE RIGHT TO RECEIVE IN PUBLIC LIBRARIES IS INCORRECT AND OVERLOOKS SUPREME COURT PRECEDENT.

This Court should grant review to affirm its precedent that the right to receive information is implicated in book removal cases and correct the Fifth Circuit’s contrary holding. The First Amendment guarantees the right to freely express ideas and the right for others to receive them. *Martin v. Struthers*, 319 U.S. 141, 143 (1943) (holding that the right to receive information and ideas is fundamental to a free society); see also *Lamont v. Postmaster Gen.*,

381 U.S. 301, 308 (1965) (Brennan, J., concurring) (“The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.”). The Supreme Court has explicitly held that First Amendment protections include access to information; freedom of expression is only fully realized when all members of society have access and the ability to read the information that others seek to express. *First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 783 (1978); *see also Pico*, 457 U.S. at 867 (“More importantly, 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.”); *Stanley v. Georgia*, 394 U.S. 557, 565 (1969) (“This right to receive information and ideas, regardless of their social worth, is fundamental to our free society.”).

As a literal manifestation for equal access to learn and read, public libraries are essential to individuals’ ability to express their First Amendment rights. *See Kreimer v. Bureau of Police*, 958 F.2d 1242, 1261 (3d Cir. 1992). Some courts have specifically recognized the right to receive information in cases involving public libraries. *See id.* at 1255 (finding that the right to receive information includes the right to access to a public library); *Sund v. City of Wichita Falls*, 121 F. Supp. 2d 530, 547 (N.D. Tex. 2000) (stating that “the right to receive information is vigorously enforced in the context of a public library...”).

Contrary to the Fifth Circuit’s opinion, restrictions on books within public libraries implicate the First Amendment. Courts have established that removal of books by school libraries for reasons not tied to

pedagogical or legitimate education concerns constitute a First Amendment violation. *See Pico*, 457 U.S. at 866 (1982); *see also ACLU of Fla.*, 439 F. Supp. 2d at 1272. In *Escambia County School Board*, a district court in the Northern District of Florida held that the right to receive information was implicated when a school board removed specific books from the school library because the removals were based on ideological disagreements and not legitimate pedagogical concerns. *Pen Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 3d 1325, 1329 (N.D. Fla. 2024). Given that such protections apply to school libraries, they must certainly apply to public libraries as well.

In school libraries, the right to receive information is limited by reasonable considerations like curriculum and obscenity. *Pico*, 457 U.S. at 890 (1982) (“The plurality concedes that permissible factors are whether the books are ‘pervasively vulgar,’...or educationally unsuitable.”) (Burger, J., dissenting). This principle emphasizes that students have the right to access diverse ideas; any removal unrelated to curriculum or obscenity is subject to strict scrutiny. Therefore, because in *Little* the removal of the books was neither based on curricular considerations nor due to obscenity, the removal is subject to strict scrutiny. *Fayetteville Pub. Libr. v. Crawford Cty.*, 760 F. Supp. 3d 811, 833 (W.D. Ark. 2024) (finding that Section 5, an initiative to remove books, was unconstitutional because it unnecessarily imposed content-based restrictions on protected speech).

As the plurality in *Pico* observed, the same characteristics that implicate the right to receive ideas when removing books from school libraries exists within

public libraries. *Pico*, 457 U.S. at 868 (stating that a school library, not less than any other public library, is “a place dedicated to quiet, to knowledge, and to beauty.”). Both school and public libraries afford the public access to “discussion, debate, and dissemination of information and ideas.” *Id.* at 866. Public libraries do not have the restrictions that school libraries do. School libraries must take into consideration the K-12 curriculum and what is appropriate to advance learning goals. In contrast, public libraries take on a more facilitative role in providing resources without dictating what patrons should read and learn. Therefore, First Amendment principles apply even more strongly in the context of removing books from public libraries.

III. THE FIFTH CIRCUIT’S DECISION ALSO CONTRIBUTES TO THE LOWER COURTS’ CONFUSION BY TAKING AN EXTREMELY EXPANSIVE VIEW OF THE GOVERNMENT SPEECH DOCTRINE TO APPLY TO PUBLIC LIBRARIES.

A plurality of the Fifth Circuit reasoned that public libraries fall within the government speech doctrine. The Court should grant review in this case to firmly reject this argument, which multiple government entities have propounded in school library and public library cases in recent years. This Court has cautioned that government speech is a narrow category and should not be expanded lightly. Library collections are not government speech because they do not represent a government message, the public is not likely to perceive these collections as conveying a government message, and the government does not exercise extensive control of library collection

decisions. Public libraries are also not third-party curations that would fall under the government speech doctrine. To hold that public libraries are government speech would be to collapse the distinction between government speech and censorship.

A. Government speech is a narrow category.

“When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says.” *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 207 (2015). This is the crux of the government speech doctrine, and while it serves a limited purpose, it is, as Justice Alito cautioned in *Matal v. Tam*, “susceptible to dangerous misuse.” 582 U.S. 218, 235 (2017). An overbroad government speech doctrine risks the government manipulating or censoring private speech. By passing off government interference with First Amendment rights as government speech, the government could silence disfavored viewpoints. As Justice Kennedy discussed in his concurrence in *Tam*, the government speech doctrine, when applied improperly, “might silence dissent and distort the marketplace of ideas.” *Id.* at 235.

When the government engages in policymaking, it necessarily takes a particular perspective and rejects others. The Free Speech Clause does not require the government to abide by the First Amendment when its officers speak about the action. However, while the doctrine allows the government to speak to “promote a program, to espouse a policy, or to take a position,” as Justice Breyer observed in *Walker*, its scope must be carefully limited to prevent it from becoming a tool of censorship. *Walker*, 576 U.S. at 211. Importantly, the

government speech doctrine only applies to programs in which the government conveys an official message that the public would recognize as such. *Id.* at 216.

The threat of censorship is manifest here. If the government speech doctrine applied to public libraries, the state could purge entire categories of books—civil rights history, religious texts, political philosophy, conservative or liberal publications—under the guise of “choosing its own message.” A plurality of the Fifth Circuit reasoned that because libraries must make content judgments when selecting books, they cannot be required to remain viewpoint neutral—a requirement the plurality dismissed as “absurd.” *Little*, 138 F.4th at 859. But that framing mistakes professional selection for unconstitutional suppression. Librarians necessarily make content-based judgments, such as choosing works that are reliable, relevant, or useful to their patrons; that is permissible under the First Amendment.

In *Pico*, the plurality did not create an “affirmative obligation to provide students with information” but a right against “state discrimination *between* ideas... the State may not act to deny access to an idea simply because state officials disapprove of that idea for partisan or political reasons.” 457 U.S. at 878–879 (Blackmun, J., concurring). Thus, what the First Amendment forbids is removing or excluding works because the government disfavors the viewpoint expressed. As Justice Brennan stated in *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, “[v]iewpoint discrimination is censorship in its purest form and government regulation that discriminates among viewpoints threatens the continued vitality of ‘free speech.’” 460 U.S. 37, 62 (1983) (Brennan, J., dissenting).

B. Public library collection decisions are not government speech under the *Shurtleff* factors.

Public library collection decisions are not government speech because libraries have not historically conveyed a government message, the public is not likely to perceive library collection decisions as government speech, and the government does not extensively control library collection decisions. In *Shurtleff*, this Court described how to analyze whether government engagement with the public constitutes government speech. *Shurtleff v. City of Boston, Massachusetts*, 596 U.S. 243, 252 (2022). *Shurtleff* held that a holistic inquiry into three categories of contextual evidence determines whether the expression is government speech: (1) the history of the challenged expression; (2) the public’s likely perception of who is speaking, and; (3) the extent to which the government shapes or controls the expression. *Id.*

1. Libraries are not historically government speech.

The Government has not historically used libraries to convey messages to the public; while they may be government entities, they do not communicate policies but rather serve as a public resource. *See Tam*, 582 U.S. 218, 237 (finding that trademarks have not been used historically to communicate government messages). In contrast, public facing items such as license plate slogans and monuments in public parks have historically been used to communicate messages from the government. *Walker*, 576 U.S. at 211 (noting that states have traditionally depicted symbolic wildlife; state slogans; and statements promoting tourism, health, and other government

interests on license plates), *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 470 (2009) (“Governments have long used monuments to speak to the public”).

Unlike their practice with license plates, states do not use public libraries to convey government slogans or policies. *See Walker*, 576 U.S. at 211. This is similarly distinct from the government’s use of monuments to commemorate events of civil importance, convey some particular thought, or instill a feeling in those who observe them. *See Summum*, 555 U.S. at 470. Much like the trademark system in *Tam*, expressing a particular government message has not been the historical purpose of public libraries. Rather, public libraries generally aim to “facilitate research, learning, and recreational pursuits by furnishing materials of requisite and appropriate quality.” *See U.S. v. Am. Lib. Ass’n, Inc.*, 539 U.S. 194, 195 (2003). They do not communicate the government’s *own* message.

2. The public is not likely to perceive libraries as government speech.

Public library patrons are not likely to perceive the content of library books as government speech. Monuments on public land are routinely and reasonably interpreted as conveying a government message. *Summum*, 555 U.S. at 472. But unlike monuments, library books are not selected to convey a particular message about the city based on aesthetics, history, or the local culture. *See Summum*, 555 U.S. at 472, *U.S. v. Am. Lib. Ass’n, Inc.*, 539 U.S. at 195. Library books are similarly distinct from license plate slogans because they are not produced by the government or used by the government for any administrative purpose. *Walker*, 576 U.S. at 212. Like the trademark registry,

public libraries carry thousands of books with a wide range of contradictory messages, which would render any government message incoherent from the public's perspective.

Libraries routinely carry broad selections of religious and philosophical texts that contradict one another, books with a wide variety of contradictory political messages, and even extremist manifestos used for educational purposes. Neither the content of these books nor their selection and retention are likely to be perceived by the public as a singular message from the government. Libraries themselves do not even attempt to espouse a unitary message through the books they carry. Instead, they aim to “facilitate research, learning, and recreational pursuits by furnishing materials of requisite and appropriate quality.” *See Am. Lib. Ass’n, Inc.*, 539 U.S. at 195.

3. The government does not exercise extensive control over library collection decisions.

The government does not exercise extensive control over books available in the library, nor does it shape the messages sent by the books. Monuments placed in a city park are government speech partially because the city selected which monuments it would place in the park based on the message their selection would send. *Summum*, 555 U.S. at 472-73. Similarly, states directly control which messages are allowed on license plates. *Walker*, 576 U.S. at 212. Conversely, the PTO registers all marks and does not consider their message, thereby not exercising control over the message conveyed by the trademark roll. *Tam*, 582 U.S. at 237. In *Shurtleff*, the “most salient feature” was that Boston did not exercise control over the content

and meaning of the flags, so they were not government speech. *Shurtleff*, 596 U.S. at 256.

Unlike monuments in public parks and license plates, public libraries do not curate their collections based on a coherent message regarding local or state culture or history. Public libraries aim to achieve viewpoint neutral objectives like facilitating general education and entertainment and do not exercise control over the messages in books they select. *See Am. Lib. Ass’n, Inc.*, 539 U.S. at 195. The control exercised by public libraries is more similar to the control exercised by Boston in *Shurtleff*, since both Boston and the library do not aim to convey a coherent message through the flags flown and the books provided. *See Shurtleff*, 596 U.S. at 256. Public libraries cannot constitute government speech.

Public library collection decisions are not government speech because they are not historically government speech, the public is not likely to perceive library books as government speech, and the government does not exercise extensive control over the messages conveyed by public library books.

C. Public libraries are not third-party curations that constitute government speech.

In addition, public libraries are not third-party curations that constitute government speech. The Fifth Circuit plurality argued that public libraries are third-party curations, and the government, through the library, “expresses itself by deciding how to shape its collection.” *Little*, 138 F.4th at 837. This is incorrect and warrants correction by this Court.

In *Moody v. NetChoice, LLC*, the Supreme Court held that “expressive activity includes presenting a curated compilation of speech originally created by others.” 603 U.S. 707, 728 (2024). In that case, the Court found that social media companies’ filtering, prioritizing, and organization of content constituted expressive activity. *Id.* at 707. Millions of decisions were made each day to exclude, organize, and prioritize content through algorithms. *Id.* The Supreme Court compared these decisions to the judgments of traditional book publishers that “select and shape others’ expression” into their own third-party curations. *Id.* at 717.

The platforms’ decisions as described in *NetChoice* are wholly unlike the managing of public library collections. The social media companies made decisions over what content to recommend to their users, which is inherently expressive. *Id.* at 734. Libraries, however, do not recommend books, they stock shelves. Libraries do include and exclude books, but not on the basis of viewpoint. This is unlike social media sites or traditional publishers who include or exclude third-party speech based on their specific views. Importantly, *NetChoice* also held that it was a goal of the First Amendment to preserve the public’s “access to a wide range of views,” and the government could not further this goal by “tilting public debate in a preferred direction.” *Id.* at 741. Allowing the government to tilt public debate in a preferred direction in public libraries would limit the public’s access to a wide range of views, contrary to this Court’s holding in *NetChoice*.

Finally, it would be antithetical to the mission and purpose of public libraries to engage in the kind of viewpoint discrimination that social media companies do. There is no organized theme or message that public

libraries are expressing when they stock their shelves. Library collections are made to provide for the “interest, information, and enlightenment of all people of the community the library serves...[l]ibraries should provide materials and information presenting all points of view on current and historical issues.” American Library Association, *Library Bill of Rights*, <https://www.ala.org/advocacy/intfreedom/librarybill>. This cuts against the Fifth Circuit’s argument that public libraries convey a message of which books are worth reading. Because libraries reflect the interest of the community and are meant to provide a wide range of viewpoints, the library is not saying that their books are worth reading. Instead, they merely fulfill their content and viewpoint-neutral mandate. If a library is saying anything, it is at most saying “these books are a few of many (not all included here) that meet our standards.”

IV. THE FIFTH CIRCUIT’S DECISION COLLAPSES THE DISTINCTION BETWEEN CURATION AND VIEWPOINT DISCRIMINATION.

Because public libraries do not engage in government speech, this Court should grant review to clarify that they cannot engage in viewpoint discrimination. The Fifth Circuit’s analysis collapses the distinction between curation and viewpoint discrimination. The lower court reasoned that because libraries must make content judgments when selecting books, they cannot be required to remain viewpoint neutral—a requirement the court dismissed as “absurd.” *Little*, 138 F.4th at 859. But that framing mistakes professional selection for unconstitutional suppression. Libraries necessarily make content-based judgments, such as choosing works that are reliable, relevant, or useful to their patrons.

The Supreme Court made this distinction clear in *Legal Services Corp. v. Velazquez*. There, the government sought to justify restrictions on legal aid attorneys as mere “program definition.” *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 538 (2001). The Court rejected that argument, holding that when the government sets up a forum for non-governmental speech, viewpoint-based restrictions are unconstitutional. *Id.* at 542 (citing *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 834 (1995)). The Court warned that to allow the government to disguise viewpoint suppression as mere “program design” would “reduce the First Amendment to a simple semantic exercise.” *Id.* at 547.

In *Matal v. Tam*, 582 U.S. 218 (2017), the Court struck down the Lanham Act’s disparagement bar because it singled out speech that offended, a classic viewpoint restriction. *Id.* at 243 (plurality opinion); *id.* at 248–49 (Kennedy, J., concurring). All eight Justices participating declared that the provision constituted unconstitutional viewpoint-based discrimination, and all eight agreed that the provision did not constitute government speech immune from the bar against viewpoint discrimination. *Id.* That principle applies with equal force to public libraries. Like the legal aid program in *Velazquez*, libraries are not vehicles for transmitting a governmental message. Rather, they exist to encourage a diversity of ideas and facilitate access to knowledge. Just as Congress could not condition legal aid on attorneys avoiding certain disfavored arguments, libraries cannot condition access to information on whether the government approves of the viewpoint expressed in a book.

Likewise, in *Iancu v. Brunetti*, the Court invalidated the bar on “immoral” or “scandalous” trademarks because it suppressed only one side of moral debate. 588 U.S. 388,

393–94 (2019). All nine Justices agreed that the ban on “immoral” marks constituted unconstitutional viewpoint discrimination. Justice Kagan, writing for six Justices, invalidated the ban on “scandalous” marks as well as forbidden viewpoint-based discrimination. *Id.* at 395.

So too here: distinguishing between permissible content-based selection and impermissible viewpoint-based exclusion is essential. The Fifth Circuit’s failure to honor that distinction risks granting libraries license to do precisely what the First Amendment forbids—exclude speech not because of its subject matter, but because of the perspective it represents.

CONCLUSION

For the foregoing reasons, this Court should grant review to correct the Fifth Circuit’s decision and to clarify the scope of First Amendment analysis in public library cases.

Respectfully submitted,

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APPENDIX

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