

IN THE
Supreme Court of the United States

LEILA GREEN LITTLE, ET AL.,
Petitioners,

v.

LLANO COUNTY, ET AL.,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

REPLY BRIEF FOR THE PETITIONERS

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TABLE OF CONTENTS

	Page
INTRODUCTION	1
A. Respondents Acknowledge That The Question Presented Is Worthy Of This Court’s Review	2
B. Respondents Cannot Persuasively Deny The Existence Of A Circuit Conflict.....	7
C. Respondents Offer No Sound Defense Of The Fifth Circuit’s Decision.....	10
CONCLUSION.....	12

TABLE OF AUTHORITIES

	Page
Cases	
<i>ACLU v. Miami-Dade Cnty. Sch. Bd.</i> , 557 F.3d 1177 (11th Cir. 2009)	8
<i>Bicknell v. Vergennes Union High Sch.</i> <i>Bd. of Dirs.</i> , 638 F.2d 438 (2d Cir. 1980).....	9
<i>Bd. of Educ. v. Pico</i> , 457 U.S. 853 (1982)	1, 5, 8, 11
<i>Cornelius v. NAACP Legal Def. & Educ.</i> <i>Fund, Inc.</i> , 473 U.S. 788 (1985)	10
<i>Crookshanks as next friend of C.C. v.</i> <i>Elizabeth Sch. Dist.</i> 775 F. Supp. 3d 1160 (D. Colo. 2025)	6
<i>Doe v. City of Albuquerque</i> , 667 F.3d 1111 (10th Cir. 2012)	9, 10
<i>GLBT Youth in Iowa Schs. Task Force v.</i> <i>Reynolds</i> , 114 F.4th 660 (8th Cir. 2024).....	3, 5, 7
<i>Hazelwood Sch. Dist. v. Kuhlmeier</i> , 484 U.S. 260 (1988)	6, 8
<i>Iancu v. Brunetti</i> , 588 U.S. 388 (2019)	11

TABLE OF AUTHORITIES—Continued

	Page
<i>Kreimer v. Bureau of Police</i> , 958 F.2d 1242 (3d Cir. 1992)	9
<i>Legal Servs. Corp. v. Velazquez</i> , 531 U.S. 533 (2001)	11
<i>Matal v. Tam</i> , 582 U.S. 218 (2017)	11, 12
<i>Minarcini v. Strongsville City Sch. Dist.</i> , 541 F.2d 577 (6th Cir. 1976)	9
<i>Nat’l Endowment for the Arts v. Finley</i> , 524 U.S. 569 (1998)	10
<i>Neinast v. Bd. of Trs. of Columbus Metro. Libr.</i> , 346 F.3d 585 (6th Cir. 2003)	9
<i>Parnell v. Sch. Bd. of Escambia Cnty.</i> , 2025 WL 2957001 (Sep. 30, 2025).....	6
<i>Penguin Random House LLC v. Robbins</i> , 774 F. Supp. 3d 1001 (S.D. Iowa 2025).....	5, 6
<i>Pleasant Grove City v. Summum</i> , 555 U.S. 460 (2009)	11
<i>Rust v. Sullivan</i> , 500 U.S. 173 (1991)	11
<i>Shurtleff v. City of Boston</i> , 596 U.S. 243 (2022)	3, 4

TABLE OF AUTHORITIES—Continued

	Page
<i>Texas v. Johnson</i> , 491 U.S. 397 (1989)	3
Other Authorities	
Mitch Borden, <i>A West Texas City Is Seeing a Tense Battle of Book Censorship and Bans</i> , NPR (Sep. 21, 2023).....	4
Claire Grunewald, <i>Librarians Reading 30,000 Books in Livingston Parish to Check for Explicit Material</i> , The Advocate (Feb. 23, 2025)	4
Jay Valle, <i>‘Heartstopper’ Books Temporarily Removed from Mississippi Public Library</i> , NBC News (Aug. 10, 2023).....	4
Trenton Whiting, <i>Local Parent Group Celebrates Reported Book Removals</i> , Crossroads Today (Oct. 23, 2025)	4

INTRODUCTION

The Free Speech Clause applies when the government removes a book from a public library because it disagrees with the book’s message. That has been the law for over forty years, dating back to *Board of Education v. Pico*, 457 U.S. 853 (1982). The Fifth Circuit nonetheless erroneously held that the Free Speech Clause has no application to a public library’s book-removal decisions—even when those decisions are grounded in viewpoint discrimination. The Fifth Circuit’s decision defies this Court’s precedents, conflicts with cases from other circuits, and upends the status quo at a time when governmental censorship has reached record levels.

Respondents acknowledge (at 1) the importance of the question presented and concede that “[t]he Court will eventually have to resolve” it. But they ask the Court to wait “another year or two,” *id.* at 30, because of three pending appeals in other circuits. This Court should reject that request for delay because all of those appeals involve the removal of books from *school* libraries—which implicates legal issues distinct from book removals in public libraries that serve the whole community. And the vital First Amendment interests at stake weigh heavily against postponing review.

Respondents also cannot deny a circuit conflict. In four circuits, plaintiffs can successfully challenge public libraries’ book-removal decisions on viewpoint-discrimination grounds. And three circuits expressly recognize a First Amendment right to access information from public libraries. In contrast, the Fifth Circuit en banc majority held that no such right exists and therefore categorically exempted viewpoint-discriminatory book-removal decisions

from Free Speech Clause scrutiny. Only this Court can resolve that conflict. Accordingly, the Court should grant the petition and reverse the Fifth Circuit’s outlier decision.¹

A. Respondents Acknowledge That The Question Presented Is Worthy Of This Court’s Review

The petition demonstrates (at 30-33) that the Fifth Circuit’s en banc decision warrants review. The court sharply departed from settled First Amendment principles following *Pico*. And that departure is especially alarming because “[e]fforts across the country to remove books from public libraries to deny access to particular ideas ... have increased in recent years.” Amici Br. of Penguin Random House LLC et al. 13. Consequently, numerous amici—from authors, to publishers, to libraries—urge this Court to intervene now. *See id.* at 10-20; Amicus Br. of PEN Am. 10-20; Amici Br. of Am. Libr. Ass’n et al. 12-16.

Respondents concede (at 1) that lower courts need guidance given “confusion and uncertainty” about the Free Speech Clause’s application here and acknowledge (at 28) that the Court will “eventual[ly]”

¹ Respondents assert (at 7) that the County’s librarian simply “weed[ed] the 17 books” at issue and that her actions “had nothing to do with the content or viewpoints expressed in the books.” But the district court found that the book removals were *not* “simply part of the library system’s routine weeding process” and instead “were likely motivated by a desire to limit access to [particular] viewpoints.” Pet. App. 222a-223a. The Fifth Circuit did not disagree with those factual findings, and respondents cannot relitigate them in this Court. In any event, petitioners ask this Court to review only the Fifth Circuit’s absolute rule precluding *any* First Amendment scrutiny. If the Court were to reject that rule, it could remand for further proceedings applying the correct standard to the facts.

need to “tak[e] up the constitutionality of library book removals.” But they argue (at 30) that “[t]he Court should allow this issue to further percolate before granting certiorari.” That bid to avoid review fails for multiple reasons.

To start, it ignores that the question presented has been ventilated by a lengthy panel majority, panel dissent, en banc majority, en banc plurality, and en banc dissent. In addition, the Eighth Circuit has squarely considered—and rejected—respondents’ argument that “the removal of books from public school libraries constitutes government speech.” *GLBT Youth in Iowa Schs. Task Force v. Reynolds*, 114 F.4th 660, 667 (8th Cir. 2024). This Court frequently grants certiorari to review important First Amendment issues even where (unlike here) there is no circuit conflict. *See* Pet. 30-31 (citing cases). In those cases, the Court had no trouble resolving a “difficult and challenging” question. Br. in Opp. 28. Respondents offer no good reason why this case warrants heightened caution—particularly since the Court already has the benefit of “multiple competing perspectives,” *id.*

In fact, the gravity of the constitutional issue here counsels strongly in favor of immediate review. This case turns on the “bedrock principle underlying the First Amendment”: “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). If this Court were to postpone review, state and local governments in the Fifth Circuit could freely deploy public libraries as instruments of “[n]aked censorship” during that period of delay. *Shurtleff v. City of Boston*, 596 U.S. 243, 269 (2022) (Alito, J., concurring). Leaving such a

system in place—even for “another year or two,” Br. in Opp. 30—is antithetical to our Nation’s most cherished constitutional values. Respondents’ claim (at 29) that “there is no downside to denying certiorari and waiting” to grant review highlights just how much their position is divorced from those values.

Respondents contend (at 29) that delaying review creates no cause for concern because libraries in the Fifth Circuit have not yet attempted “inappropriate or questionable book removals.” That is wrong: Libraries in the Fifth Circuit have done precisely that both before and after the Fifth Circuit’s en banc decision.² And they have removed books while knowing that this Court could grant certiorari. If this Court were to deny review—thus leaving the Fifth Circuit’s categorical ruling in place—library censorship within the Fifth Circuit would presumably accelerate.

Respondents fail (at 29) to minimize the First Amendment harm by observing that “Llano Library has made each of the 17 disputed books available for the petitioners to read and check out through its in-house library system.” Absent this Court’s intervention, those books need not be in the catalog or on the shelves in Llano Library—meaning that patrons will not know they are available. And

² E.g., Trenton Whiting, *Local Parent Group Celebrates Reported Book Removals*, Crossroads Today (Oct. 23, 2025), <https://perma.cc/M5CH-CG6H>; Claire Grunewald, *Librarians Reading 30,000 Books in Livingston Parish to Check for Explicit Material*, The Advocate (Feb. 23, 2025), <https://perma.cc/Y47X-ZLJE>; Mitch Borden, *A West Texas City Is Seeing a Tense Battle of Book Censorship and Bans*, NPR (Sep. 21, 2023), <https://perma.cc/6R2B-NJJ5>; Jay Valle, *‘Heartstopper’ Books Temporarily Removed from Mississippi Public Library*, NBC News (Aug. 10, 2023), <https://perma.cc/8UQQ-ADW3>.

respondents omit that their counsel of record personally “donate[d]” the disputed books for use in the in-house system. D. Ct. Doc. 148, at 182. The County did not independently procure the books, and nothing would stop the County from discarding them tomorrow. For that reason, respondents’ counsel conceded that his gambit did “not moot [petitioners’] claim” and that petitioners suffer “injury ... because they can’t get the book off the shelf.” *Id.* at 81.

Contrary to respondents’ suggestion (at 28), the pending Eighth, Tenth, and Eleventh Circuit appeals do not offer better vehicles for this Court’s review. Just the opposite: Those cases all arise in the school-library context, where book removals present distinct issues compared to book removals by public libraries that serve the whole community and lack a curricular mission. *See Pico*, 457 U.S. at 910 (Rehnquist, J., dissenting) (“[A]ctions by the government as educator do not raise the same First Amendment concerns as actions by the government as sovereign.”). This Court should first consider whether the First Amendment applies to public libraries’ book removals before grappling with the separate questions that arise in the school setting.

The arguments being advanced in the school-library cases demonstrate the point. The Eighth Circuit case involves a challenge to an Iowa law “that requires the removal of books from public school libraries if those books contain a ‘description’ of a ‘sex act.’” *Penguin Random House LLC v. Robbins*, 774 F. Supp. 3d 1001, 1007 (S.D. Iowa 2025). In a prior iteration of the same case, the Eighth Circuit rejected the argument that library curation decisions are government speech. *GLBT Youth*, 114 F.4th at 667. On remand, the State did not renew its government-

speech argument, and the district court did not address it. *See Penguin Random House*, 774 F. Supp. 3d 1001. That argument is therefore waived and unlikely to be reconsidered by the Eighth Circuit. *See* Br. of Appellees 46, No. 25-1819, Doc. 5543835 (8th Cir. 2025). Instead, the parties’ arguments largely focus on how to assess a facial (as opposed to as-applied) challenge to the Iowa law in the school-library context—a different issue than the one here.

Similarly, the school district in *Crookshanks v. Elizabeth School District* has argued that the First Amendment analysis “must proceed under the rubric for curricular-related speech established in *Hazelwood [School District v. Kuhlmeier]*, 484 U.S. 260 (1988).” 775 F. Supp. 3d 1160, 1177 (D. Colo. 2025). If the Tenth Circuit were to assume the First Amendment applies and uphold the book removals under that deferential standard, it would not need to resolve the distinct question here. Moreover, the school district is represented by the same counsel representing respondents—so for any overlapping issues, the Tenth Circuit will likely not encounter “arguments or nuances that lawyers for both sides in this case have overlooked.” Br. in Opp. 29.

Finally, the school board litigating in the Eleventh Circuit likewise has pressed arguments focused specifically on “school library curation.” *Parnell v. Sch. Bd. of Escambia Cnty.*, 2025 WL 2957001, at *2 (Sep. 30, 2025). And because the district court issued its decision only a month ago, the Eleventh Circuit is unlikely to resolve the appeal until late 2026. This Court likely could not resolve the school-library question that case presents until October Term 2027—an intolerable delay given the First Amendment rights at stake.

B. Respondents Cannot Persuasively Deny The Existence Of A Circuit Conflict

The Fifth Circuit’s decision conflicts with decisions of multiple other circuits.

a. If petitioners had raised their First Amendment claims in the Second, Sixth, Eighth, or Eleventh Circuits, those claims would have been resolved on the merits—rather than reflexively dismissed on the ground that book-removal decisions are entirely immune from Free Speech Clause scrutiny. *See* Pet. 27-28. Respondents’ efforts to distinguish those circuits’ decisions lack merit.

In *GLBT Youth*, the Eighth Circuit held that the plaintiffs could “pursue their First Amendment claim” challenging an Iowa book-removal law. 114 F.4th at 668. Here, conversely, the Fifth Circuit en banc majority held that petitioners “cannot challenge the [Llano County] library’s decision to remove the 17 books” at issue. Pet. App. 31a. The two decisions squarely conflict: In the Eighth Circuit, plaintiffs can challenge libraries’ book removals on First Amendment grounds; in the Fifth Circuit, they cannot.

Respondents nonetheless assert that “no conflict” exists because the Eighth Circuit rejected only “the idea that a public-school library’s book-removal decisions qualify as government speech,” without “consider[ing] or resolv[ing]” whether library patrons lack a First Amendment right to access books in the first place. Br. in Opp. 15-16. But at oral argument in the Fifth Circuit, respondents’ counsel took the opposite position—acknowledging that “there’s no way to overrule [the Fifth Circuit’s longstanding precedent in] *Campbell v. St. Tammany Parish*

School Board, 64 F.3d 184 (5th Cir. 1995)] without creating a circuit split with the Eighth Circuit.” Pet. App. 94a n.14 (Higginson, J., dissenting) (quoting oral argument recording). Respondents’ counsel was correct the first time. After all, the Fifth Circuit “majority’s ‘no right to receive’ holding collapses into [the plurality’s] ‘government speech’ position,” *id.*, because under either rationale, the fundamental point is the same: The government may “remov[e] library books for any reason, without First Amendment restraint.” *Id.* at 95a-96a.

The Fifth Circuit’s categorical rule likewise diverges from the Eleventh Circuit’s decision in *ACLU v. Miami-Dade County School Board*, 557 F.3d 1177 (11th Cir. 2009). There, the court held that a parent and student could “pursue [a] First Amendment ... claim[] against [a] School Board for removing [a particular book] from the district’s libraries.” *Id.* at 1195. The court proceeded to “examine the likelihood of success on the merits” of that claim. *Id.* at 1199-1227. It is true that the court did not definitively “resolve” the “question of what *standard* applies to school library book removal decisions.” *Id.* at 1202 (emphasis added). But the two standards it considered—the *Pico* plurality’s test “or the test from *Hazelwood*,” *id.* at 1200—both require some First Amendment scrutiny. See *Pico*, 457 U.S. at 870-871 (plurality opinion); *Hazelwood*, 484 U.S. at 273. Accordingly, unlike the Fifth Circuit, the Eleventh Circuit does not categorically bar First Amendment challenges to book-removal decisions. *Contra* Br. in Opp. 16-17.

In addition, the Second and Sixth Circuits allowed First Amendment challenges to library book-removal decisions pre-*Pico*; eight Justices in *Pico*

confirmed that such challenges were available in certain circumstances; and those circuits have not reconsidered their law since *Pico*. See *Bicknell v. Vergennes Union High Sch. Bd. of Dirs.*, 638 F.2d 438, 441 (2d Cir. 1980); *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577, 582 (6th Cir. 1976). Respondents acknowledge that the Second and Sixth Circuits “reject the notion that the Speech Clause gives government-owned libraries unfettered discretion to remove books,” Br. in Opp. 21—which plainly conflicts with the Fifth Circuit’s holding here. Respondents nonetheless speculate that the Second and Sixth Circuits could reconsider their precedent “given this Court’s intervening decision in *Pico*.” *Id.* But there is no reason to presume that those circuits would suddenly reconsider their precedent now—when they have not done so in the 43 years since *Pico* and when *Pico* only *supports* the current state of their law.

b. In addition, the Third, Sixth, and Tenth Circuits have all “specifically recognized” a First Amendment “right to receive information in the context of restrictions involving public libraries.” *Doe v. City of Albuquerque*, 667 F.3d 1111, 1119 (10th Cir. 2012); see *Neinast v. Bd. of Trs. of Columbus Metro. Libr.*, 346 F.3d 585, 591 (6th Cir. 2003); *Kreimer v. Bureau of Police*, 958 F.2d 1242, 1255 (3d Cir. 1992). The Fifth Circuit, by contrast, held that library patrons have no First Amendment “right to receive information from the government” in a public library. Pet. App. 2a. Only this Court can resolve that disagreement.

Respondents observe (at 23) that *Doe*, *Neinast*, and *Kreimer* involved libraries denying certain patrons access to their premises. But the legal rule that undergirds those circuits’ decisions—that the

First Amendment guarantees a “right to receive information in ... public libraries,” *Doe*, 667 F.3d at 1119—would logically preclude those circuits from embracing the Fifth Circuit’s holding that the “First Amendment acknowledges no” “right to receive information from the government in the form of taxpayer-funded library books.” Pet. App. 2a-3a. Respondents therefore cannot deny a circuit conflict.

C. Respondents Offer No Sound Defense Of The Fifth Circuit’s Decision

As the petition explains (at 13-27), certiorari is also warranted because the Fifth Circuit’s decision is wrong. Before the decision below, no other court had held that public libraries’ book-removal decisions are categorically immune from Free Speech Clause scrutiny—even where those decisions stem from clear viewpoint discrimination. That is for good reason: This Court’s precedents consistently hold that when the government facilitates private expression, it may not seek “to drive ‘certain ideas or viewpoints from the marketplace.’” *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998) (citations omitted). Indeed, the government is barred from viewpoint discrimination even in the context of “nonpublic forum[s].” *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985). Recognizing that bedrock prohibition against viewpoint discrimination, eight Justices in *Pico* agreed that the First Amendment constrains a school library from removing books to suppress disfavored views. Pet. 16-17.³

³ In suggesting that Justice White was “agnostic on whether the First Amendment imposes *any* constraints on book-removal decisions,” Br. in Opp. 35, respondents disregard his

Respondents would (at 33) instead allow the government to engage in “viewpoint discrimination when[it] subsidizes or facilitates private speech.” But such a rule would transgress “a core postulate of free speech law: The government may not discriminate against speech based on the ideas or opinions it conveys.” *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019). Respondents identify no other context in which the government may suppress disfavored viewpoints when facilitating private expression. Instead, they rely (at 31) exclusively on cases involving *government* speech. See *Pleasant Grove City v. Summum*, 555 U.S. 460, 464 (2009); *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 541 (2001) (characterizing *Rust v. Sullivan*, 500 U.S. 173 (1991), as resting on a “governmental speech” rationale). In so doing, respondents wrongly seek to “pass[] off” regulation of private speech as government speech and thereby “silence or muffle the expression of disfavored view[s].” *Matal v. Tam*, 582 U.S. 218, 235 (2017).

A library’s collection decisions are not government speech. The petition explains (at 23-27) how each of the *Shurtleff* factors cuts against a government-speech finding here. Yet respondents do

determination to remand the case for adjudication of the “*reasons* underlying the school board’s removal of the books,” *Pico*, 457 U.S. at 883 (White, J., concurring in the judgment) (emphasis added). Those reasons would be irrelevant if the First Amendment imposed no constraints. Similarly, Justice Rehnquist “cheerfully concede[d]” that a school board would violate the Constitution by removing books to effectuate “the official suppression of *ideas*.” *Id.* at 907 (citation omitted). Respondents speculate (at 36) that Justice Rehnquist may have been referencing a “constitutional provision” other than “the Speech Clause.” But they do not say what provision that might be.

not even mention those factors. Respondents thus provide no reason to override the “great caution” this Court exercises “before extending [its] government-speech precedents.” *Tam*, 582 U.S. at 235. This Court should grant certiorari and reverse the Fifth Circuit’s decision below.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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