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A Pleasure to Burn: How First Amendment Jurisprudence on Book Banning Bolsters White Supremacy

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**A PLEASURE TO BURN: HOW FIRST AMENDMENT
JURISPRUDENCE ON BOOK BANNING BOLSTERS WHITE
SUPREMACY**

Amy Anderson

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I. INTRODUCTION

Public school libraries are facing an unprecedented number of attempts to ban books from their shelves.¹ The mounting pressure levied by parents, community members, and political groups against school administrators threatens to overwhelm attempts to enhance students' access to information—particularly information that does not fit within the framework of assumed “community values.”² The majority of challenged titles are written by LGBTQ+ authors and authors of color, and typically cover topics including race, sexuality, and counternarratives to the traditional middle-class white America experience that is often portrayed in literature written for young audiences.³

This Article will discuss efforts to ban books from public school libraries and how such bans violate students' First Amendment rights. Specifically, it will discuss how book banning restricts students' rights to free speech and to receive information, and it will argue that current jurisprudence allows for book bans motivated by political and performative objections made in bad faith in an attempt to dictate what a “proper” school community looks and thinks like.⁴ This construction of the “proper” student body champions a white, straight, cisgender, and homogenous learning environment as normative and preferable while it perpetuates the subjugation of Black, Indigenous, and other Persons of Color (“BIPOC”) and the LGBTQ+ community.⁵

This Article argues book bans are one of many tools used to uphold tenets of white supremacy that are inherent in the American public school system and posits that access to diverse texts is critical to upholding the ideals of the First Amendment while also dismantling systemic harms that

¹ National Library Week Kicks off with State of America's Libraries Report, Annual ‘Top 10 Most Challenged Books’ List and a New Campaign to Fight Book Bans, AM. LIBR. ASS'N (Apr. 4, 2022), <https://www.ala.org/news/press-releases/2022/04/national-library-week-kicks-state-america-s-libraries-report-annual-top-10> [https://perma.cc/RR84-7R7M].

² Richard Dahl, *Book Banning Efforts Are on the Rise. What Does the Law Say?*, FINDLAW (Jan. 6, 2022), <https://www.findlaw.com/legalblogs/law-and-life/book-banning-efforts-are-on-the-rise-what-does-the-law-say/> [https://perma.cc/2DCX-RXXT]. The term “community values” appears within quotation marks several times throughout this Article. This is because value systems within white-normative communities are never fixed and react fluidly to impose white supremacy however current events may require. They are inarticulate until the values are weaponized to reinforce white supremacy and repress what is perceived as inappropriate behavior of the Other threatening existing power structures. Readers are encouraged to be cautious when considering “community values” as a concrete concept, and instead can use the term in quotation marks as a road sign throughout this Article to remind themselves that the values of a predominantly white, straight, western community are primarily geared toward maintaining existing power structures and do not represent fixed ideals. *See generally* Part IV.

³ Alison Flood, *Sharp Rise in Parents Seeking to Ban Anti-Racist Books in US Schools*, THE GUARDIAN (Apr. 6, 2021), <https://www.theguardian.com/books/2021/apr/06/sharp-rise-in-parents-seeking-to-ban-anti-racist-books-in-us-schools> [https://perma.cc/2NN9-HDQW]; Kara Yorio, *“George” Tops Most Challenged List for Third Year in a Row: “Stamped” Takes No. 2 Spot*, SCH. LIBR. J. (Apr. 5, 2021), <https://www.schoollibraryjournal.com/story/george-tops-most-challenged-list-for-third-year-in-a-row-stamped-takes-no-2-spot> [https://perma.cc/8DKP-HDWV].

⁴ *Infra* Part IV.
⁵ *Infra* Part IV.

disproportionately impact BIPOC communities.⁶ It begins in Part II with a brief review of precedent regarding free speech in public schools and then, in Part III, discusses the standard of review proposed by the plurality decision in *Pico*.⁷ Part IV reviews the malleability of the standard proposed by the *Pico* plurality, and as adopted by lower courts, related to book bans from public schools.⁸ Part IV further discusses how ill-defined precedent regarding book bans permits school boards and lower courts to contort their supposed justifications for removing a book from the school library.⁹

These justifications and removals of text are how white supremacy maintains control in the public school system.¹⁰ Part V concludes that it is essential to defend students' access to diverse texts in the school library to resist racial violence inherent in the public school system and proposes a pragmatic (if imperfect) approach to a review of challenged books.¹¹

II. THE PARAMETERS OF STUDENTS' FREEDOM OF SPEECH IN PUBLIC SCHOOLS

While a student does not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,”¹² the Supreme Court has historically recognized that schools and local boards of education have “important, delicate, and highly discretionary functions.”¹³ The important functions that public schools and school officials play in the lives of students, in part, contributes to the deference granted to officials to “prescribe and control” permissible conduct in schools.¹⁴ The Court has frequently noted that the special characteristics of schools often justify the regulation of student speech.¹⁵ Two of these important characteristics are the role of the school acting *in loco parentis* to its students and the position of schools as “nurseries of democracy.”¹⁶

School officials act *in loco parentis* when they are stand-ins for a student's parents in instances when their actual parents “cannot protect, guide, and discipline them.”¹⁷ Indeed, the Supreme Court has fully endorsed that “there is a legitimate and substantial community interest in promoting respect for authority and traditional values be they social, moral, or political,” which public schools are best suited to fulfill because of their

⁶ *Infra* Parts IV–V.

⁷ *Infra* Parts II–III.

⁸ *Infra* Part IV.

⁹ *Infra* Part IV.

¹⁰ *Infra* Parts IV–V.

¹¹ *Infra* Part V.

¹² *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

¹³ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943).

¹⁴ *Tinker*; 393 U.S. at 507.

¹⁵ *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2044–45 (2021); *see* *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 687 (1986) (holding schools may regulate the use of vulgar or indecent speech at a school assembly on school grounds); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271–73 (1988) (finding schools may regulate student speech in a school newspaper that others may interpret as “bear[ing] the imprimatur of the school”); *Morse v. Frederick*, 551 U.S. 393 (2007) (concluding schools may regulate student speech that promotes illegal drug use during a school-sponsored event).

¹⁶ *Mahanoy Area Sch. Dist.*, 141 S. Ct. at 2046.

¹⁷ *Id.*

positions as surrogate parents while students are on school property.¹⁸ School officials standing *in loco parentis* generally have parental authority implicitly delegated to them by a student's actual parents or guardians during the school day.¹⁹ The Court has held that this delegation includes the authority to limit students' exposure to materials that run counter to the values of their community.²⁰

The Court has further recognized that public schools are instrumental in preparing students to participate in society as citizens and "inculcating fundamental values necessary to the maintenance of a democratic political system."²¹ The classroom is often a student's first experience with the marketplace of ideas championed by First Amendment advocates.²² Exposure to the marketplace of ideas in a classroom setting has been credited by the Court as critical to the development of a student's morals and principles and the preparation of students for participation in American society.²³ "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."²⁴

As such, the Court has held that judicial precedent and state legislative history both lend themselves to an endowment of broad discretion to local school boards when formulating educational policy.²⁵ According to the Court, school boards must retain the authority to "establish and apply their curriculum in such a way as to transmit community values."²⁶ Schools have a particularly special interest in regulating student speech that could "materially and substantially interfere with" the operation of a school and, by extension, their ability to fulfill the important characteristics attributed to the school environment.²⁷

Despite the deference afforded to school administrators to determine how best to fulfill the important characteristics of schools, the Court has carved out exceptions that protect students' First Amendment right to free speech.²⁸ The Court has held that First Amendment rights are "available" to students, albeit in a diminished capacity, when considering the special characteristics of the school environment.²⁹ For example, schools

¹⁸ Bd. of Educ., *Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 864 (1982) (plurality opinion). *But see Mahanoy Area Sch. Dist.*, 141 S. Ct. at 2050-59 (Alito, J., concurring) (analyzing Court precedent regarding the regulation of free speech by schools under a theory of parental consent and interrogating the limits on the authority parents delegate to school administrators on behalf of their children).

¹⁹ *Mahanoy Area Sch. Dist.*, 141 S. Ct. at 2047 (majority opinion).

²⁰ *Fraser*, 478 U.S. at 684.

²¹ *Pico*, 457 U.S. at 864 (citing *Ambach v. Norwick*, 441 U.S. 68, 76-77 (1979)).

²² *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969).

²³ *Id.* "That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943).

²⁴ *Tinker*, 393 U.S. at 512 (citing *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

²⁵ *Pico*, 457 U.S. at 859 (citing *President's Council, Dist. 25 v. Cmty. Sch. Bd. No. 25*, 457 F.2d 289 (2d Cir. 1972) and *E. Hartford Educ. Assn. v. Bd. of Educ.*, 562 F.2d 838 (2d Cir. 1977) (en banc)) (referring to courts' historical deference to state legislative initiatives as they relate to public education).

²⁶ *Id.* at 864 (internal citations omitted).

²⁷ *Tinker*, 393 U.S. at 509.

²⁸ *Pico*, 457 U.S. at 864; *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986).

²⁹ *Pico*, 457 U.S. at 866.

may not coerce particular student speech,³⁰ and they may not prohibit expression that does not “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.”³¹ More relevant to this Article, the Court has also evaluated a student’s right to receive information as it relates to optional texts available in the school library.³² The Supreme Court has held that a corollary to the freedom to express ideas is the freedom to receive those ideas.³³ In *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, the plurality argued that the right to receive information also extended to students taking advantage of the school library.³⁴ How far that right extends, and any exceptions to that right that may exist, still remains to be seen.

III. CAN THEY BAN A BOOK FROM THE SCHOOL LIBRARY?: THE *PICO* CASE

A. Facts

In 1975, three members of the school board for Island Trees Union Free School District, Number 26, attended a conference hosted by Parents of New York United, a conservative group focused on education legislation in New York.³⁵ During the conference, the school board members received a list of books deemed inappropriate for public school students because they were “objectionable” and “improper fare for school students.”³⁶ The school board members returned from the conference determined to keep the questionable books out of the reach of minor students in school libraries.³⁷

After a review of the library collections in the district, the board discovered that ten of the books included in the list from the conference were available in the district libraries.³⁸ Nine were part of the high school library collection, and one was part of the junior high school collection.³⁹

³⁰ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641-42 (1943).

³¹ *Tinker*, 393 U.S. at 509.

³² *Pico*, 457 U.S. at 866-72. See *infra* Section III.B.

³³ *Pico*, 457 U.S. at 866-67 (citing the right to receive information and ideas affirmed in previous decisions); see *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978) (holding that the First Amendment fosters individual self-expression as well as public access to “discussion, debate, and the dissemination of information and ideas”); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (affirming that the Constitution protects a “right to receive information and ideas”); *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) (arguing that the First Amendment prohibits the government from “contract[ing] the spectrum of available knowledge”).

³⁴ *Pico*, 457 U.S. at 866-67.

³⁵ *Id.* at 856.

³⁶ *Id.*

³⁷ *Id.* at 856-57.

³⁸ *Id.* at 856.

³⁹ *Id.* (“The nine books in the High School library were: *Slaughter House Five*, by Kurt Vonnegut, Jr.; *The Naked Ape*, by Desmond Morris; *Down These Mean Streets*, by Piri Thomas; *Best Short Stories of Negro Writers*, edited by Langston Hughes; *Go Ask Alice*, of anonymous authorship; *Laughing Boy*, by Oliver LaFarge; *Black Boy*, by Richard Wright; *A Hero Ain’t Nothin’ But A Sandwich*, by Alice Childress; and *Soul On Ice*, by Eldridge

The board members “unofficially” pushed for the immediate removal of the texts from the library collections for an independent evaluation of their value to students compared to the possible harm caused by exposure to the language or subjects of the texts.⁴⁰ In response to negative public reaction to the removal of the books, the school board issued a press release justifying its actions because the books were “anti-American, anti-Christian, anti-Semitic, and just plain filthy.”⁴¹ The board members argued that school officials have a duty to protect students from “this moral danger as surely as from physical and medical dangers.”⁴²

The school board then appointed an independent “Book Review Committee” to review the books in question and make a recommendation as to whether the books should remain on the library shelves, “‘taking into account the books’ ‘educational suitability,’ ‘good taste,’ ‘relevance,’ and ‘appropriateness to age and grade level.’”⁴³ After its review, the committee recommended that five of the listed books be kept on library shelves, two be permanently removed from the school libraries, and one remain available to students only with a parent’s approval.⁴⁴ The committee was unable to agree on a recommendation for two of the books and took no position on the remaining book.⁴⁵

Despite the findings and recommendations of the Book Review Committee, the school board elected to permanently remove all but two of the books in question from the library collections.⁴⁶ One of the remaining books would remain available to students on library shelves, but the second would only be available to students with parental approval.⁴⁷ The school board did not provide any rationale for why the recommendation from the committee was not adopted or why certain books were permanently removed from circulation and why others were permitted to remain in the school libraries.⁴⁸

Students from the district sued under 42 U.S.C. § 1983, alleging the removal of the books from the school library constituted an infringement of their First Amendment rights.⁴⁹ They asked for an injunction on the permanent removal of the books from the public school libraries and also

Cleaver. The book in the Junior High School library was *A Reader for Writers*, edited by Jerome Archer. Still another listed book, *The Fixer*, by Bernard Malamud, was found to be included in the curriculum of a twelfth-grade literature course.” *Id.* at n.3. BIPOC authors wrote more than half of the materials in question.

⁴⁰ *Id.* at 857.

⁴¹ *Id.*

⁴² *Id.* The Court wholeheartedly agreed with the argument that school boards have the discretion to design their curriculum to best “transmit community values” to their students. *Id.* at 864.

⁴³ *Id.* at 857.

⁴⁴ *Id.* at 858.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* *Laughing Boy* by Oliver LaFarge (a fictional novel examining how traditional Navajo culture and practices conflict with and struggle to survive in the face of dominant American cultural influences) was the book permitted to return into circulation, and *Black Boy* by Richard Wright (an autobiography recounting the author’s youth in southern parts of the United States and eventual move to Illinois, detailing his many encounters with racism throughout the country) was made available only with parental approval. *Id.* at nn.10–11.

⁴⁸ *Id.* at 858.

⁴⁹ *Id.*

requested an order from the Court barring the school board's "interfer[ence] with the use of those books in the schools' curricula."⁵⁰ The argument was that the school board had impermissibly imposed content-based restrictions on reading materials based on their personal "social, political and moral tastes, and not because the books, taken as a whole, were lacking in educational value."⁵¹

B. The Plurality Opinion

The United States Supreme Court has only weighed in on removing books from public school libraries once.⁵² Further complicating jurisprudence on the subject, *Board of Education, Island Trees Union Free School District No. 26 v. Pico* was decided on a 5-4 plurality opinion.⁵³ No firm precedent was established for lower courts to draw from.⁵⁴

Additionally, the plurality went to great lengths to narrow the constitutional question before it.⁵⁵ The Court limited its decision to the removal of books that are optional reading from school libraries, while avoiding a decision regarding textbooks or required readings for school courses.⁵⁶ The Court was adamant that it would not insert itself into the "difficult terrain" of determining the constitutional limits on a school board's authority to make curriculum decisions.⁵⁷ Further, the plurality also limited the scope of its decision to the removal of books from school libraries that were "originally placed there by the school authorities, or without objection from them."⁵⁸ The Court did not question the school administrators' broad discretion when making decisions about whether a book will be added to library shelves in the first place.⁵⁹

Writing for the plurality, Justice Brennan recognized the broad discretion that local school boards have in establishing curricula and managing school affairs.⁶⁰ School boards are free to inculcate "fundamental values necessary to the maintenance of a democratic political system" and establish curricula as a way of imparting "community values" to their

⁵⁰ *Id.* at 859.

⁵¹ *Id.* at 858-59.

⁵² Katherine Fiore, Note, *ACLU v. Miami-Dade County School Board: Reading Pico Imprecisely, Writing Undue Restrictions on Public School Library Books, and Adding to the Collection of Students' First Amendment Right Violations*, 56 VILL. L. REV. 97, 103 (2011).

⁵³ *Pico*, 457 U.S. at 853-54.

⁵⁴ Fiore, *supra* note 52, at 106.

⁵⁵ *Pico*, 457 U.S. at 861-62.

⁵⁶ *Id.*

⁵⁷ *Id.* "Our adjudication of the present case thus does not intrude into the classroom, or into the compulsory courses taught there." *Id. Contra id.* at 892 (Burger, C.J., dissenting) ("It is not clear, however, why this distinction requires *greater* scrutiny before 'optional' reading materials may be removed. It would appear that required reading and textbooks have a greater likelihood of imposing a 'pall of orthodoxy' over the educational process than do optional reading.").

⁵⁸ *Id.* at 862 (plurality opinion).

⁵⁹ *Id. Contra id.* at 892 (Burger, C.J., dissenting) ("It does not follow that the decision to *remove* a book is less 'official suppression' than the decision not to acquire a book desired by someone.").

⁶⁰ *Id.* at 863 (plurality opinion).

students.⁶¹ However, the discretion granted to school boards must be “exercised in a manner that comports with the transcendent imperatives of the First Amendment.”⁶² School officials must still operate within the limits of the First Amendment and cannot infringe upon students’ First Amendment rights out of fear that students may express unpopular or divisive ideas.⁶³

The Supreme Court generally hesitates to signal that courts may insert themselves in the daily operation of schools unless “basic constitutional values” are “directly and sharply [implicated].”⁶⁴ In the *Pico* case, the plurality argued that students’ First Amendment rights were so implicated by the removal of books from school library shelves.⁶⁵ In particular, the plurality focused on the role of the First Amendment in “affording the public access to discussion, debate, and the dissemination of ideas.”⁶⁶ The Court has historically recognized that the Constitution protects a right to receive information and that the government may not “contract the spectrum of available knowledge” while adhering to the ideals of the First Amendment.⁶⁷ The core concern with this protection is that it operates in tandem with the right to speak or to deliver ideas.⁶⁸ The plurality maintained that the right to receive ideas is in fact a “necessary predicate to the *recipient’s* meaningful exercise” of their right to free speech.⁶⁹

The plurality determined that the right to receive information is a protected right for students in school libraries as well.⁷⁰ While Justice Brennan acknowledged the importance of considering First Amendment rights for students “in light of the special characteristics of the school environment,” he argued on behalf of the plurality that “the special characteristics of the school *library* make that environment especially appropriate” for recognizing those rights.⁷¹ According to the plurality, the

⁶¹ *Id.* at 864. “There is a legitimate and substantial community interest in promoting respect for authority and traditional values be they social, moral, or political.” *Id.*

⁶² *Id.*; see *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 507 (1969). Justice Brennan also recounted several previous cases before the Court that had “reaffirmed the duty of federal courts ‘to apply the First Amendment’s mandate in our educational system where essential to safeguard the fundamental values of freedom of speech and inquiry.’” *Pico*, 457 U.S. at 865 (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)).

⁶³ *Pico*, 457 U.S. at 865–66; *Tinker*, 393 U.S. at 508–09 (“Any departure from absolute regimentation may cause trouble. Any variation from the majority’s opinion may inspire fear. Any word spoken . . . that deviates from the views of another person may start an argument or a disturbance. But our Constitution says we must take this risk . . . it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength . . .”).

⁶⁴ *Pico*, 457 U.S. at 866 (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)).

⁶⁵ *Id.*

⁶⁶ *Id.* (citing *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978)).

⁶⁷ *Id.* (citing *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) and *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)).

⁶⁸ *Id.* at 867.

⁶⁹ *Id.*

⁷⁰ *Id.* at 868 (citing *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969)).

⁷¹ *Id.* “A school library, no less than any other public library, is ‘a place dedicated to quiet, to knowledge, and to beauty.’” *Id.* (quoting *Brown v. Louisiana*, 383 U.S. 131, 142 (1966)).

school library functions as “the principal locus” of a student’s freedom “to inquire, to study and to evaluate, to gain new maturity and understanding.”⁷²

While the school board argued that it needed absolute discretion to “transmit community values” to its students, which included the right to remove books from the school libraries, the plurality was unconvinced.⁷³ Justice Brennan dismissed the school board’s argument as a “sweeping claim” that failed to address the “unique role” of the school library.⁷⁴ He distinguished school officials’ unfettered right to design education policy and establish curriculum, which includes compulsory lessons for students, from the voluntary nature of the school library.⁷⁵ The voluntary nature of the school library is what lends itself as an opportunity for “self-education and individual enrichment,” and school officials could not expect to be granted the same level of discretion outside of the “compulsory environment of the classroom.”⁷⁶ The plurality conceded, however, that school officials may have “a substantial legitimate role to play in the determination of school library content.”⁷⁷

The amount of discretion endorsed by the *Pico* plurality regarding the authority of school officials to regulate the content of school libraries is murky at best.⁷⁸ While school authorities “rightly possess significant discretion” to determine what texts may be on the shelves of school libraries, that discretion may not “be exercised in a narrowly partisan or political manner.”⁷⁹ Whether that discretion is exercised inappropriately depends on the intent of school officials when electing to remove a book from the school library shelves.⁸⁰ If school officials intend for the removal of texts to deny students access to certain ideas, and that intent is the decisive factor in electing to remove the texts from the library, then the officials have acted in

⁷² *Id.* at 868–69. The plurality chose not to discuss which characteristics of the school library make it distinct from other parts of the school environment or provide clarity around how the characteristics of a school might overlap with those of a school library. *See id.* at 893 (Burger, C.J., dissenting).

⁷³ *Id.* at 869 (plurality opinion).

⁷⁴ *Id. Contra id.* at 914 (Rehnquist, J., dissenting) (“The unique role referred to appears to be one of Justice Brennan’s own creation. No previous decision of this Court attaches unique First Amendment significance to the libraries of elementary and secondary schools.”).

⁷⁵ *Id.* at 869 (plurality opinion).

⁷⁶ *Id.*

⁷⁷ *Id.* The plurality refused to extend any of the arguments made against the discriminatory *removal* of books from library shelves to the decisions school officials make regarding which books will be *added* to their libraries. *Id.* at 871–72. The argument was that because the Court was concerned only with the suppression of ideas, the decision only would apply to the discretion to remove books. *Id. Contra id.* at 892 (Burger, C.J., dissenting) (“Yet if the First Amendment commands that certain books cannot be *removed*, does it not equally require that the same books be acquired? Why does the coincidence of timing become the basis of a constitutional holding?”). *See* Raizel Liebler, *Institutions of Learning or Havens for Illegal Activities: How the Supreme Court Views Libraries*, 25 N. ILL. U. L. REV. 1, 25–26 (2004) (highlighting the dissenting Justices’ concerns with the rationale of the plurality opinion); Anne Klinefelter, *First Amendment Limits on Library Collection Management*, 102 L. LIBR. J. 343, 352, 358 (2010) (suggesting that the acquisition of materials and the removal of materials could be distinguished based on the more substantial trail of evidence that the latter creates regarding why the particular decision was made).

⁷⁸ *Pico*, 457 U.S. at 889–93 (Burger, C.J., dissenting).

⁷⁹ *Id.* at 870 (plurality opinion).

⁸⁰ *Id.* at 871.

violation of the Constitution.⁸¹ The plurality held that “local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’”⁸² Materials may be removed from libraries without running afoul of the First Amendment if the decision is made because the books in question are “pervasively vulgar” or they are lacking in “educational suitability.”⁸³

The Court ultimately held there was a genuine issue of material fact regarding the school board’s motivations behind its decision to remove the identified books from school libraries and left the final determination of the constitutionality of the decision to the district court upon remand.⁸⁴

IV. THE MALLEABILITY OF THE *PICO* STANDARD

While the Supreme Court has not heard another case specific to book banning in public schools since *Pico*, lower courts have been left to grapple with the challenge of determining how to apply the plurality decision to their own cases.⁸⁵ The malleability of the standard proposed in *Pico* leaves a wide field for interpretation and permits politically motivated and performative challenges with suspect justifications for removing texts from library shelves.⁸⁶ The lack of definition put forward by the plurality in *Pico*

⁸¹ *Id.*

⁸² *Id.* at 872 (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)). Justice Blackmun rejected the plurality’s argument that the issue of the case involved a right to receive information and also disagreed that the issue implicated “the peculiar nature of the school library.” *Id.* at 878 (Blackmun, J., concurring in part and concurring in the judgment). “If schools may be used to inculcate ideas, surely libraries may play a role in that process.” *Id.* Rather, he argued that the removal of the books at issue in *Pico* had to do with state discrimination between particular ideas. *Id.* at 878–79. He would have established a standard that a school board must be able to show the decision to remove materials from school libraries was “caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany [] unpopular viewpoint[s].” *Id.* at 880. The appropriate balance, he wrote, would be a holding that “school officials may not remove books for the *purpose* of restricting access to the political ideas or social perspectives discussed in them, when that action is motivated simply by the officials’ disapproval of the ideas involved.” *Id.* at 879–80. Justice White, concurring in the judgment, believed it was inappropriate to decide a constitutional question in *Pico* and argued that the material questions of fact at issue were enough of a justification to remand. *Id.* at 883 (White, J., concurring in the judgment).

⁸³ *Id.* at 871 (plurality opinion).

⁸⁴ *Id.* at 875. The Island Trees Board of Education elected to return the books in question to library shelves after the order for remand was delivered to avoid further litigation. Klinefelter, *supra* note 77, at 359.

⁸⁵ See Fiore, *supra* note 52, at 108–12 (detailing how lower courts have applied the *Pico* standard to attempted book bans from public schools); Shane Morris, *The First Amendment in School Libraries: Using Substantial Truth to Protect a Substantial Right*, 13 DREXEL L. REV. 787, 812–14 (2021) (distinguishing when the *Pico* standard was applied based on asserted factual inaccuracies instead of censoring a viewpoint); Klinefelter, *supra* note 77, at 359.

⁸⁶ See Morris, *supra* note 85, at 818–22 (considering the vagueness of what is considered “educationally suitable” and how *Pico* can be circumnavigated to ban a book based on viewpoint); Flood, *supra* note 3; Yorio, *supra* note 3 (“Librarians shouldn’t expect challenges

has already allowed for challenges to materials in school libraries based on ideology to flourish under the guise of a concern for academic suitability, vulgarity, and excessive controversy.⁸⁷ Ultimately, *Pico*'s own ambiguity has undermined the First Amendment protections the plurality intended to reinforce.⁸⁸

Under *Pico*, challenged books can be removed from library shelves in a manner consistent with the First Amendment if the texts are considered “pervasively vulgar” or lacking “educational suitability.”⁸⁹ Because the plurality decision declined to define those terms, the judgment of vulgarity or educational suitability of a challenged book requires decisionmakers to make a subjective, personal evaluation of the material in question.⁹⁰ This means the ultimate determination of whether a challenged book is appropriate for school library shelves falls to individual judges and their interpretations of the texts.⁹¹ Judges who likely have little experience in education, library management, or literary study may easily misunderstand how valuable having a particular book on library shelves can be.⁹² Further, the judiciary is predominantly composed of wealthy, white, heterosexual men.⁹³ This position of privilege in a social group that has power granted to it by structures founded on white supremacy invokes white normativity in decision-making and frequently encourages decisionmakers to approach

to only come from one side of the political divide. ‘There’s sort of the traditional view of censorship is that conservatives want to censor books, and liberals want you to be able to read everything . . . We’ve actually seen a lot of progressive voices, or people who would consider themselves liberal, pushing to ban books Censorship is an equal opportunity issue.’”); Kiara Alfonseca, *Authors of Color Speak Out Against Efforts to Ban Books on Race*, ABC NEWS (Dec. 3, 2021), <https://abcnews.go.com/US/authors-color-speak-efforts-ban-books-race/story?id=81491208> [<https://perma.cc/F3PM-WUV4>] (“Falsely claiming that these works are subversive, immoral, or worse, these groups induce elected and non-elected officials to abandon constitutional principles, ignore the rule of law, and disregard individual rights to promote government censorship of library collections.”).

⁸⁷ See Flood, *supra* note 3; Alfonseca, *supra* note 86; Yorio, *supra* note 3; *All Things Considered: Censorship Scholar on Book Bans and Critical Race Theory*, NPR (Jul. 25, 2021), <https://www.npr.org/2021/07/25/1020488416/censorship-scholar-on-book-bans-and-critical-race-theory> [<https://perma.cc/7HCZ-W9KL>].

⁸⁸ Ryan L. Schroeder, *How to Ban a Book and Get Away with It: Educational Suitability and School Board Motivations in Public School Library Book Removals*, 107 IOWA L. REV. 363, 379–82 (2021).

⁸⁹ *Pico*, 457 U.S. at 871.

⁹⁰ *Id.* at 890 (Burger, C.J., dissenting) (“‘Educational suitability,’ however, is a standardless phrase. This conclusion will undoubtedly be drawn in many—if not most—instances because of the decisionmaker’s content-based judgment that the ideas contained in the book or the idea expressed from the author’s method of communication are inappropriate [W]hy must the vulgarity be ‘pervasive’ [to implicate educational suitability and thus] be offensive?”).

⁹¹ *Id.* (“What the plurality views as valid reasons for removing a book at their core involve partisan judgments. Ultimately the federal courts will be the judge of whether the motivation for book removal was ‘valid’ or ‘reasonable.’ Undoubtedly the validity of many book removals will ultimately turn on a judge’s evaluation of the books.”).

⁹² Liebler, *supra* note 77, at 47–48; Richard Delgado & Jean Stefancic, *Failed Revolutions: Social Reform and the Limits of Legal Imagination* 40 (1994).

⁹³ Danielle Root, Jake Faleschini & Grace Oyenubi, *Building a More Inclusive Federal Judiciary*, CTR. FOR AM. PROGRESS (Oct. 3, 2019), <https://www.americanprogress.org/article/building-inclusive-federal-judiciary/> [<https://perma.cc/5EBK-XACG>].

subjects in a “racially neutral” framework.⁹⁴ This necessarily places certain books at a disadvantage when evaluated by even the most forward-thinking courts.⁹⁵

When we consider civil and political liberties we must avoid the pleasant illusions of abstractions and get down to cases. We must look to the meaning of our freedoms in their present-day context . . . rights and liberties do not mean the same thing to all of us: “The rule of law is a principle with a fairly long history behind it. And if the burden of that history has one outstanding lesson it is that, over the social process as a whole, the rule of law is only equally applied as between persons . . . whose claim on the state power is broadly recognized as equal. The rule of law is not an automatic principle of action which operates indifferently as to time and place and the persons to whom, as judges, its application is entrusted.”⁹⁶

Contemporary book banning activists in favor of restricting materials available in schools have primarily focused book challenges on materials covering LGBTQ+ topics and those allegedly discussing anti-racism.⁹⁷ Critics argue that the inclusion of these texts in school libraries contributes to the spread of “radical and racist ideologies” and “demean[s] our nation and its heroes, revise[s] our history, and divide[s] us as a people.”⁹⁸ Seemingly driven by political movements opposed to teaching Critical Race Theory in public schools,⁹⁹ the texts facing the greatest

⁹⁴ T. Anansi Wilson, *Furtive Blackness: On Blackness and Being*, 48 HASTINGS CONST. L. Q. 141, 152 (2020).

⁹⁵ See DELGADO & STEFANCIC, *supra* note 92, at 109 (“The ‘objective’ approach is not inherently better or more fair. Rather, it is accepted because it embodies the sense of the stronger party, who centuries ago found himself in a position to dictate what permission meant. Allowing ourselves to be drawn into reflexive, predictable arguments about administrability, fairness, stability, and ease of determination points us away from what really counts: The way in which stronger parties have managed to inscribe their views and interests into external culture, so that we are now enamored with that way of judging action. First, we read our values and preferences into the culture; then we pretend to consult that culture meekly and humbly in order to judge our own acts. A nice trick if you can get away with it.”); Edward Taylor, *Critical Race Theory and Interest Convergence in the Desegregation of Higher Education*, in RACE IS...RACE ISN'T 181, 183 (Laurence Parker, Donna Deyhle & Sofia Villenas eds., 1999).

⁹⁶ Henry Steele Commager, *Free Enterprise in Ideas*, FREEDOM, LOYALTY, DISSENT 72, (1954), reprinted in THE FIRST FREEDOM 230, 230 (Robert B. Downs ed., 1960).

⁹⁷ Flood, *supra* note 3; Alfonseca, *supra* note 86.

⁹⁸ Alfonseca, *supra* note 86.

⁹⁹ At the substantial risk of oversimplifying this diverse field of academic study: broadly, Critical Race Theory is a field of legal scholarship that considers how presumptively race-neutral concepts, like “the rule of law” and “equal protection,” reinforce white supremacy and have different applications based on a person’s race. Daria Roithmayr, *Introduction to Critical Race Theory in Educational Research and Praxis*, in RACE IS...RACE ISN'T 1, 1 (Laurence Parker, Donna Deyhle & Sofia Villenas eds., 1999). Contemporary norms encourage color blindness and race neutrality among “enlightened” citizens and imply that racism is an irrational bias based on the color of a person’s skin. *Id.* We have been taught that the civil rights movement achieved its goal “to eradicate these instances of race-

objections today include any that even broadly refer to race or discussions of racial subjects.¹⁰⁰ The American Library Association’s list of most challenged books shows book challenges in the twenty-first century are disproportionately made against books written by LGBTQ+ and BIPOC authors and books discussing LGBTQ+ subjects and race.¹⁰¹ The removal of these materials causes unique harm to BIPOC students and embraces white normativity, and ultimately white supremacy, in the American school system.

The use of “educational suitability” and “pervasive vulgarity” as justifications for the removal of these texts demonstrates the prioritization of white, straight, cisgender, and Western culture and values in American public schools.¹⁰² This section discusses how a “racially neutral” application of these standards necessarily disadvantages texts that contradict the prioritized (that is, white) ideals of public schools and limits students’ access to diverse counternarratives that challenge white normativity.¹⁰³ Access to these counternarratives, which are rooted in the experiential knowledge of BIPOC communities that American society is “deeply structured by racism” and are contradictory to contemporary conceptions of race, are often a

consciousness in social decision-making, leaving behind an otherwise race-neutral way of distributing opportunities and resources.” *Id.* at 1–2. Critical race theorists, however, posit that race is still a determinative factor in a person’s access to legal rights. Gloria Ladson-Billings, *Just What is Critical Race Theory, and What’s It Doing in a Nice Field like Education?*, in *RACE IS...RACE ISN’T* 7, 8 (Laurence Parker, Donna Deyhle & Sofia Villenas eds., 1999). Racism is considered normal and deeply ingrained into American political and legal structures and it informs how we conceptualize rights and legal duties. Eleanor Marie Brown, *Confronting Racelessness*, reprinted in *CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR* 644, 644 (Richard Delgado & Jean Stefancic eds., 1997). This subject is not taught as part of K–12 curriculum and is generally considered graduate-level theory for law students. Alfonseca, *supra* note 86; *Last Week Tonight with John Oliver: Critical Race Theory*, YOUTUBE, at 4:24–5:57 (Feb. 21, 2022), https://youtu.be/EICp1vGlh_U [<https://perma.cc/45FY-EPT5>].

¹⁰⁰ Alfonseca, *supra* note 86.

¹⁰¹ AM. LIBR. ASS’N, *supra* note 1.

¹⁰² See Jason D. Salisbury, *Creating Diverging Opportunities in Spite of Equity Work: Educational Opportunity and Whiteness as Property*, 6 *WHITENESS & EDUC.* 200, 201–02 (2021).

¹⁰³ Taylor, *supra* note 95, at 184 (“CRT [Critical Race Theory] notes that color blindness makes no sense in a society in which people, on the bases of group membership alone, have historically been, and continue to be, treated differently. The danger of color blindness is that it allows us to ignore the racial construction of whiteness and reinforces its privileged and oppressive position. Thus, whiteness remains the normative standard and blackness remains different, other, and marginal. Even worse, by insisting on a rhetoric that disallows reference to race, blacks can no longer name their reality or point our racism.”); DELGADO & STEFANCIC, *supra* note 92, at 15 (“Racism is woven into the warp and woof of the way we see and organize the world. It is one of the many preconceptions we bring to experience, use to construct and make sense of our social world. Racism forms part of the dominant narrative, the group of received understandings and basic principles that form the baseline from which we reason. How could these be in question? The dominant narrative changes very slowly, resisting alteration. We interpret new stories in light of the old. Ones that deviate too markedly from our pre-existing stock are dismissed as extreme, coercive, political, and wrong. The only stories about race we are prepared to condemn, then, are the old ones giving voice to the racism of an earlier age, ones that society has already begun to reject.”).

student's only opportunity to consume material that reflects their reality and how they interact with the world around them.¹⁰⁴

A. A Racial Disparity in Determining "Educational Suitability"

An application of *Pico* to challenged books permits the removal of certain texts from public school libraries if they are deemed educationally unsuitable for students.¹⁰⁵ *Pico* and the cases that followed it, however, never established the qualities that make a text educationally suitable for students.¹⁰⁶ In part, this is because the standards used to determine educational suitability are based upon normative presumptions that a worthwhile education adheres to traditional, white, Western storytelling and ideals.¹⁰⁷ This approach to education necessarily results in further subjugation of "Other" students that do not fit within the definition of an "ideal" academic.¹⁰⁸

[S]chools teach students of color that what they learn in their homes is primitive, mythical, and backward but what they learn in their classrooms is objective, historically accurate, and universal. Students attend class in an atmosphere of "professionalism," which as the measure of their enlightenment, devalues what they bring to the classroom from their homes and neighborhoods as backward, deprived, and deficient.¹⁰⁹

The public school environment does not offer a standard, universal experience for all students, despite the efforts of administrators.¹¹⁰ Public school curricula is "grounded in white epistemological practices," which necessarily creates "meaningful educational opportunities for white students" while also "reduc[ing] educational opportunities for students of

¹⁰⁴ Roithmayr, *supra* note 99, at 15; DELGADO & STEFANCIC, *supra* note 92, at 108 ("It is now almost a commonplace that we construct the social world. We do this through stories, narratives, myths, and symbols—by using tools that create images, categories, and pictures. Over time, through repetition, the dominant stories come to seem true and natural, 'the way things are.'").

¹⁰⁵ Bd. of Educ., *Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 871 (1982).

¹⁰⁶ Morris, *supra* note 85, at 803.

¹⁰⁷ See Ladson-Billings, *supra* note 99, at 9; Salisbury, *supra* note 102, at 201.

¹⁰⁸ See William F. Tate IV, *Conclusion*, in RACE IS...RACE ISN'T 251, 263 (Laurence Parker, Donna Deyhle & Sofia Villenas eds., 1999) ("The predominant theories in education related to people of color have been premised on political, scientific, and religious interpretations that characterize people of color as inferior.").

¹⁰⁹ Roithmayr, *supra* note 99, at 4.

¹¹⁰ Dolores Delgado Bernal, *Chicana/o Education from the Civil Rights Era to the Present*, in THE ELUSIVE QUEST FOR EQUALITY 77, 93 (José F. Moreno ed., 1991) ("Chicanas/os and other high school students of color continue to report that they feel their teachers, school staff, and peers neither like nor understand them, and many of their teachers admit to not always understanding ethnically diverse students."); Lena Domyung Choe, *Negotiating Borders of Consciousness in the Pursuit of Education: Identity Politics and Gender of Second-Generation Korean American Women*, in RACE IS...RACE ISN'T 205, 211 (Laurence Parker, Donna Deyhle & Sofia Villenas eds., 1999) ("If the cultural values and behaviors at home are not necessarily recognized or valued among peers or at school, children and youth may experience daily conflict and stress.").

colour because they are colorblind and grounded in racist epistemologies.”¹¹¹ Seemingly “objective” standards for academic achievement align with white normativity and force BIPOC students to either abandon or modify their identities or face the risk of being deemed academically deficient and left behind.¹¹²

Schools function as sites “where knowledge is constructed, organized, produced, and distributed” and are therefore central to the “construction of social and racial power.”¹¹³ If challenged, the likelihood that counternarratives speaking to the experiences of BIPOC students will be considered academically unsuitable is high because these counternarratives do not fit within standardized understandings of history, society, and “quality education.”¹¹⁴

[T]his kind of attack is an effort to mute and erase the experiences of people of color by controlling the curriculum. One strategy to minimize the study of people of color is to associate such inquiry with the relaxation of academic and professional standards. Further, this argument is often coupled with the myth that the study of people of color is not of value in our capitalistic democracy.¹¹⁵

As such, the imposition of ostensibly “neutral” values like academic merit or educational value is a way of rationalizing the continued oppression of BIPOC communities.¹¹⁶ Given the individualized decision-making required of judges to determine educational suitability post-*Pico*, texts that are contrary to dominant narratives of what is considered “educationally

¹¹¹ Salisbury, *supra* note 102, at 201; Roithmayr, *supra* note 99, at 3 (“CRT authors noted also how merit standards, which are purported to be race-neutral and objective, are actually race-specific because they were constructed in a context of racial exclusion, by elites who had acquired social power by explicitly excluding people of color.”).

¹¹² Salisbury, *supra* note 102, at 203 (“[W]ithin classroom spaces, student behaviours that align with white norms of communication and authority are rewarded and normalised while behaviours that align with the cultural norms and wealth of communities of colour are seen as deviant.”); Choe, *supra* note 110, at 219 (“Educators need to be aware, as some already are, of the multiple identities that their students are sustaining. Although some students do not appear cognizant of such identities, educators should still assume that these students are required to *shift consciousness*.”); Ladson-Billings, *supra* note 99, at 22 (“[C]urrent instructional strategies presume that African American students are deficient. As a consequence, classroom teachers are engaged in a never-ending quest for ‘the right strategy or technique’ to deal with (read: control) ‘at-risk’ (read: African American) students. Cast in a language of failure, instructional approaches for African American students typically involve some aspect of remediation.”).

¹¹³ Roithmayr, *supra* note 99, at 4.

¹¹⁴ Ladson-Billings, *supra* note 99, at 9.

¹¹⁵ Tate, *supra* note 108, at 253.

¹¹⁶ Ladson-Billings, *supra* note 99, at 16. (“Finally, naming one’s own reality with stories can affect the oppressor. Most oppression, as was discussed earlier, does not seem like oppression to the perpetrator. Delgado argues that the dominant group justifies its power with stories, stock explanations that construct reality in ways to maintain their privilege. Thus, oppression is rationalized, causing little self-examination by the oppressor. Stories by people of color can catalyze the necessary cognitive conflict to jar dysconscious racism.”).

suitable” are at a much higher risk of removal from public school library shelves.¹¹⁷

B. The Racial Undertones of “Vulgarity”

The Supreme Court has recognized the restriction of “vulgar” speech in public schools as an appropriate exercise of discretion afforded to school administrators.¹¹⁸ The Court has repeatedly noted that the constitutional rights of students in public schools “are not automatically coextensive with the rights of adults in other settings.”¹¹⁹ The special characteristics of schools, which involve inculcating community values to students, lends administrators broad discretion to prohibit “certain modes of expression.”¹²⁰ The Court has held that “[i]t does not follow . . . simply because the use of an offensive form of expression may not be prohibited to adults . . . the same latitude must be permitted to children in a public school.”¹²¹ With these considerations in mind, the conclusion of the plurality in *Pico* that schools may remove books that are “pervasively vulgar” from library shelves at their discretion without infringing on First Amendment rights was a natural, predictable application of precedent.¹²²

Throughout this section, the term “vulgarity” is broadly considered to refer to crude, rude, or offensive language or themes generally deemed by dominant cultural standards inappropriate or offensive if uttered in public.¹²³ In the context of challenged books, the term “vulgarity” may also encompass depictions of graphic, violent, and/or sexual subjects.¹²⁴ A more precise definition of “pervasive vulgarity” in Supreme Court jurisprudence remains elusive.¹²⁵

¹¹⁷ See Taylor, *supra* note 95, at 183–84 (“Whites don’t see their understanding of reality as a specific perspective but as the truth.”).

¹¹⁸ Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 682–84 (1986).

¹¹⁹ *Id.* (citing New Jersey v. T.L.O., 469 U.S. 325, 340–42 (1985)); Thomas v. Bd. of Educ., Granville Cent. Sch. Dist., 607 F.2d.1043, 1057 (2d Cir. 1979) (“In short, the First Amendment gives a high school student the classroom right to wear Tinker’s armband, but not Cohen’s jacket.”).

¹²⁰ *Fraser*, 478 U.S. at 683.

¹²¹ *Id.* at 682 (comparing students’ rights to those of adults discussed in Cohen v. California, 403 U.S. 15 (1971)).

¹²² See Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 871 (1982).

¹²³ “Well, we have more ways to describe dirty words than we actually have dirty words. That seems a little strange to me. It seems to indicate that somebody was awfully interested in these words. They kept referring to them. They called them bad words, dirty, filthy, foul, vile, vulgar, coarse, in poor taste, unseemly, street talk, gutter talk, locker room language, barracks talk, bawdy, naughty, saucy, raunchy, rude, crude, lewd, lascivious, indecent, profane, obscene, blue, off-color, risqué, suggestive, cursin’, cussin’, swearin’. And all I could think of was shit, piss, fuck, cunt, cocksucker, motherfucker, and tits.” George Carlin, *7 Words You Can’t Say on TV*, YOUTUBE (Feb. 13, 2014), <https://www.youtube.com/watch?v=kyBH5oNQOS0> [<https://perma.cc/N57F-ZB9Y>]; see also F.C.C. v. Pacifica Found., 438 U.S. 726, 751–55 (1978) (including the transcript of Carlin’s radio-broadcast monologue in the appendix of the Court opinion).

¹²⁴ AM. LIBR. ASS’N, *supra* note 1.

¹²⁵ *Pico*, 457 U.S. at 890 (Burger, C.J., dissenting) (“But why must the vulgarity be ‘pervasive’ to be offensive? Vulgarity might be concentrated in a single poem or a single chapter or a

Presumably, the process of identifying vulgarity is related in some way to our understanding of how the Court identifies obscenity: works with descriptions of sexual content that “appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.”¹²⁶ Supreme Court precedent regarding students’ First Amendment rights in public schools has adopted a more restrictive, modified interpretation regarding vulgarity that does not seem to require that a piece of work lack “serious literary, political, or scientific value” to be lawfully prohibited.¹²⁷ The determination of whether certain material is considered vulgar is left to school administrators acting in consideration of “community values.”¹²⁸

The imposition of ambiguous “community values” as a baseline for determining whether or not a work contains “pervasive vulgarity” permits dominant groups to impose restrictions on those without power.¹²⁹ In particular, the use of white cultural values as the norm when considering vulgarity inevitably leads to the silencing of BIPOC voices and the erasure of representation.¹³⁰ The use of an allegedly “color-blind” standard, such as “community values,” ultimately “represses and renders irrelevant the ways in which race shapes social relationships” and ignores the cultural context around “vulgarity” that can affect its meaning in different circumstances.¹³¹

Indeed, BIPOC students experience excessive vulgarity every day in both subtle and overt ways that are never condemned by the dominant cultural narrative as “offensive.”¹³² The standards for what is “appropriate”

single page, yet still be inappropriate. Or a school board might reasonably conclude that even ‘random’ vulgarity is inappropriate for teenage school students.”); see Walter Gellhorn, *Restraints on Book Reading, reprinted in THE FIRST FREEDOM*, 20, 22 (Robert B. Downs ed., Am. Libr. Ass’n 1960) (1956) (“Those who urge increased repression of allegedly obscene books are of course convinced that ‘obscenity’ can be identified. In reality, however, the word does not refer to a thing so much as to a mood. It is a variable. Its dimensions are fixed in part by the eye of the individual beholder and in part by a generalized opinion that shifts with time and place.”).

¹²⁶ *Miller v. California*, 413 U.S. 15, 24 (1973).

¹²⁷ *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986) (arguing that the fundamental values instilled by schools must include “consideration of the sensibilities of others” and “the boundaries of socially appropriate behavior.”).

¹²⁸ *Id.* at 681; *Pico*, 457 U.S. at 872–83 (conceding that permissible reasons to remove books from the school library may include an evaluation of the texts’ “good taste,” and whether they contain “obscenities, blasphemies, brutality, and perversion beyond description.”).

¹²⁹ See Gellhorn, *supra* note 125, at 21 (“In this view censorship rests in one or another degree upon the belief that those who are qualified to identify evil and mistake should be empowered to prevent their dissemination.”).

¹³⁰ Ladson-Billings, *supra* note 99, at 21; Marlia Banning, *Race, Class, Gender, and Classroom Discourse, in RACE IS...RACE ISN’T*, 155, 156 (Laurence Parker, Donna Deyhle & Sofia Villenas ed., 1999).

¹³¹ Roithmayr, *supra* note 99, at 2.

¹³² Wilson, *supra* note 94, at 145 (“In this way, my analytic and archive are formed by a constellation of deadly police encounters alongside hair and dress codes; anti-sagging laws passed throughout the South; the perception of Black joy or displeasure as loud and disruptive even when silent; the violent reactions to Black protests and testimonies regarding anti-Black policies or wrongs from emancipation to the present; the instances of scenarios like ‘BBQ Becky’ and other episodes where the performance, assertion or detection of Black

and “inappropriate” in white community discourse inevitably fall along racial lines.¹³³ Coded language “marked by mainstream and dominant white, middle-class codes around control, conflict, and power” are leveraged under the guise of neutrality while simultaneously communicating to BIPOC youth that they are disruptive to the learning environment by merely entering the classroom.¹³⁴ Under white normativity, there is a presupposition that non-white bodies carry an inherent vulgarity simply by existing.¹³⁵ They are considered “always, already suspect and marked as stealthily—furtively—planning, preparing, or engaging in some action that is untoward and sinister.”¹³⁶

Laws and customs helped to create “races” out of a broad range of human traits. In the process of creating races, the categories came to be filled with meaning: whites were characterized one way and associated with normatively positive characteristics, whereas blacks were characterized another way and became associated with the subordinate, even aberrational characteristics.¹³⁷

In schools, students are encouraged to conform to white norms and discouraged from engaging in practices that are contrary to those norms and are often threatened with exclusion from school experiences if they refuse to modify their behavior or abandon their cultural identities.¹³⁸ Normative

being is marked as criminal and social offense.”); Last Week Tonight, *supra* note 99, at 24:12-25:57; see Choe, *supra* note 110, at 215 (“[I]t can contribute to feelings of alienation and isolation in addition to the typical teenage angst.”); Brown, *supra* note 99, at 645 (“Others have the choice to operate in a paradigm of racelessness, for their racial features constitute society’s norms.”).

¹³³ Ladson-Billings, *supra* note 99, at 9 (“Our notions of race (and its use) are so complex that even when it fails to ‘make sense’ we continue to employ and deploy it. I want to argue, then, that our conceptions of race, even in a postmodern and/or postcolonial world, are more embedded and fixed than in a previous age. However, this embeddedness or ‘fixedness’ has required new language and constructions of race so that denotations are submerged and hidden in ways that are offensive though without identification ‘[S]chool achievement,’ ‘middle classness,’ ‘maleness,’ ‘beauty,’ ‘intelligence,’ and ‘science’ become normative categories of whiteness, while categories like ‘gangs,’ ‘welfare recipients,’ ‘basketball players,’ ‘the underclass’ become the marginalized and de-legitimated categories of blackness.”).

¹³⁴ Banning, *supra* note 130, at 159.

¹³⁵ Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STA. L. REV. 1241 (1991), reprinted in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 357, 369 (Kimberlé Crenshaw, Neil Gotanda, Gary Peller, & Kendall Thomas ed. 1995).

¹³⁶ Wilson, *supra* note 94, at 145.

¹³⁷ Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, reprinted in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 103, 113 (Kimberlé Crenshaw, Neil Gotanda, Gary Peller, & Kendall Thomas ed. 1995). Crenshaw included a comparison of cultural dualities established in American history that reflect a negative image of Black people against a positive image of white people, including the following: industrious (white) and lazy (Black), intelligent (white) and unintelligent (Black), moral (white) and immoral (Black), law-abiding (white) and criminal (Black), and virtuous (white) and lascivious (Black). *Id.*

¹³⁸ Richard A. Orozco, *‘It Certainly is Strange...’: Attacks on Ethnic Studies and Whiteness as Property*, 26 J. OF EDU. POL. 819, 822 (2011) (noting that academic tracking, the establishment of honors and gifted programs, and the use of Advanced Placement classes have contributed to a consistent exclusion of BIPOC students from learning opportunities enjoyed by their white peers); Salisbury, *supra* note 102, at 203 (“[W]hite students openly

white community values are more likely to reject and deem vulgar works written by BIPOC authors or discussing how race influences one's interaction with society, in particular if the material includes examples of cultural violence experienced by BIPOC communities every day.¹³⁹

V. THE IMPORTANCE OF ACCESS TO DIVERSE TEXTS AND A PROPOSAL

This Article adopts the position that students are endowed with the same right to access information as adults and that this right is not extinguished upon arriving on school grounds.¹⁴⁰ It does not presume that library curation can, or ever will, be completely viewpoint neutral.¹⁴¹ With that in mind, the ability to access diverse texts and counternarratives in a school library is critical to a student's ability to take advantage of their First Amendment right to access information. Access to these texts is valuable to the development of BIPOC students in the public school context and to the deconstruction of white supremacy in education. What follows is a brief description of how school librarians determine which books to add to a library collection and an explanation of why the school library's special characteristics make it a key access point to diverse texts for students.¹⁴²

The value of access to counternarratives for BIPOC students cannot be overstated, and this Article offers an alternative approach schools can take when materials are challenged on the grounds that they are vulgar or educationally unsuitable.¹⁴³ The proposed approach would permit parents to limit access to specific texts by their own children but would not necessarily result in limiting access for all students in the school district or the removal of books from library shelves. While this approach is not without its own shortcomings and challenging constitutional questions, it offers a practical step away from limiting access to information and towards exposure to diverse texts for students.

A. A Brief Description of the Collection Management Process

While decisions regarding the curation of materials are not identical across all libraries, many adhere to similar broad industry standards when making decisions as to which books to acquire. As part of managing their library collection, librarians frequently select new materials on a title-by-title

discussed which classes were for students of color and saw those as classes to avoid Advanced Placement admission standards [] work to segregate learning spaces and exclude students of colour from rigorous learning spaces . . . when schools . . . add remedial course work to 'catch' students of colour up, they are excluding students of colour from enrolling in college preparatory classes or desirable electives.").

¹³⁹ See Joyce E. King, *Dysconscious Racism: Ideology, Identity, and the Miseducation of Teachers*, 60 J. OF NEGRO EDU. 133, 133-34 (1991).

¹⁴⁰ See Catherine J. Ross, *An Emerging Right for Mature Minors to Receive Information*, 2 U. PA. J. CONST. L. 223 (1999) for a thoughtful assessment of a minor's right to access information.

¹⁴¹ See Klinefelter, *supra* note 77, at 347.

¹⁴² *Infra* Sections V.A-B.

¹⁴³ *Infra* Sections V.C-D.

basis.¹⁴⁴ This often involves “complex comparative assessments” of the materials in question along with an evaluation of patron needs.¹⁴⁵ The assessment may include consulting published book reviews, nominations for children’s book awards, recommended reading or best-seller lists, or requests from a student or other community member to add a particular book to the collection.¹⁴⁶ Librarians also review the popularity of books that are currently in the collection to determine whether or not to add more books by a popular author or about a popular subject to the shelves.¹⁴⁷ Ordering replacement copies of damaged or out-of-date books is also common.¹⁴⁸ The decision process regarding which texts to add to shelves inherently requires selectivity on the part of library staff and runs an unavoidable risk of perceived viewpoint discrimination.¹⁴⁹ Yet, the majority of American parents trust the librarians at their child’s school when it comes to acquiring materials.¹⁵⁰ Once a book is made available on library shelves, its removal must not run counter to First Amendment privileges, and it is presumed that the text was appropriately acquired.¹⁵¹

The judiciary often struggles to communicate the important role that a professional librarian plays in the curation of materials.¹⁵² Librarians typically operate independently from administrators and teachers but also adhere to a particular model that informs the selection and retention of materials.¹⁵³ Librarians, particularly in public schools, are sensitive to the age-appropriateness of materials added to library shelves.¹⁵⁴ The straw-man argument that librarians will fill school libraries with vulgar, pornographic, or excessively violent material if school boards do not have the flexibility to

¹⁴⁴ Klinefelter, *supra* note 77, at 352.

¹⁴⁵ *Id.*

¹⁴⁶ Jessica Chamberlain, *How Books Are Chosen for the Library*, NORFOLK DAILY NEWS (Dec. 16, 2019), https://norfolkdailynews.com/blogs/news/library/how-books-are-chosen-for-the-library/article_abd39334-3d35-11ea-be83-8f81f18f10e5.html [<https://perma.cc/ZZ27-8BH9>]; *Selection Criteria*, AM. LIBR. ASS’N (Jan. 2018), <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/criteria> [<https://perma.cc/7PP6-KAUM>].

¹⁴⁷ Chamberlain, *supra* note 146.

¹⁴⁸ *Id.*

¹⁴⁹ Klinefelter, *supra* note 77, at 347. “Selectivity in library collections, though, is unavoidable given the scarcity of resources for collections, staffing, facilities, and technology.” *Id.* See Chamberlain, *supra* note 146 (noting a statistic from Stephen Hawking’s 2018 book *Brief Answers to Big Questions* that “if you stacked the new books being published next to each other, at the present rate of production, you would have to move at 90 miles an hour just to keep up with the end of the line.”).

¹⁵⁰ AM. LIBR. ASS’N, *supra* note 1.

¹⁵¹ Klinefelter, *supra* note 77, at 351.

¹⁵² See Liebler, *supra* note 77 at 27 (“[Justice O’Connor] also failed to appreciate the concept of professional librarians, who also work within a model for selecting and retaining items for their school’s libraries. This was a lost opportunity to demonstrate an understanding of librarians’ role as separate from administrators and teachers, but also as parties interested in insuring [sic] that students learn.”).

¹⁵³ *Id.* at 27.

¹⁵⁴ See *id.* at 32 (arguing that repeated second-guessing of librarian collection development decisions creates a culture “where librarians are treated as glorified babysitters instead of as professionals.”); see also Chamberlain, *supra* note 146 (“Selecting books for the library is a fun part of a librarian’s job, but it is also an important one that is taken seriously. Our goal is always to make sure that our community has high-quality information and literature that meets our community’s needs, reflects who we are and opens up a world of possibilities to all ages.”).

remove books from the collection at any time disregards the methodical curation process undertaken by library professionals. School librarians must be trusted to make the right curation decisions if there is to be any hope of a robust collection of materials and an informed student body.¹⁵⁵

B. Why Alternatives to School Libraries Are Insufficient

The dissenting opinions to the *Pico* decision included arguments that the removal of a book from school libraries does not completely close off access to the material for students.¹⁵⁶ Chief Justice Burger wrote that “even if parents and students cannot convince the school board that book removal is inappropriate, they have alternative sources to the same end. Books may be acquired from bookstores, public libraries, or other alternative sources unconnected with the unique environment of the local public schools.”¹⁵⁷ Developments in technology have also created more opportunities for students to seek out specific information, materials, or texts.¹⁵⁸ The rise in the use of e-books by public libraries has arguably created greater access to library materials than when materials were restricted to physical texts, and the amount of information available on the internet often seems infinite.¹⁵⁹

However, while a student may, in theory, access a particular text from multiple alternative sources, the existence of these sources is an insufficient justification for removing a book from the school library.¹⁶⁰ In reality, access to the alternative sources of information proffered by the dissenting opinions in *Pico* is out of reach for many students.¹⁶¹ Many communities lack access to a public library and reliable internet.¹⁶² Alternatively, students with access to public libraries, bookstores, and e-books do not necessarily enjoy the benefit of a collection curated with their age and emotional maturity in mind.¹⁶³

¹⁵⁵ *But see*, Mahanoy Area Sch. Dist. v. B.L., 141 S. Ct. 2038, 2050–59 (2021) (Alito, J., concurring) (discussing what limits a parent may or may not be able to impose on the delegation of authority to school librarians).

¹⁵⁶ Liebler, *supra* note 77, at 30.

¹⁵⁷ Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 891–92 (1982) (Burger, C.J., dissenting). Justice Rehnquist also offered public libraries as alternative sources for banned materials, as well as university libraries, bookstores, and borrowing texts from friends. *Id.* at 915 (Rehnquist, J., dissenting).

¹⁵⁸ Dahl, *supra* note 2 (“In the Internet age, taking books off shelves is not likely to close access to them.”).

¹⁵⁹ *See id.*

¹⁶⁰ Liebler, *supra* note 77, at 30.

¹⁶¹ *Id.*; Ross, *supra* note 140, at 234 (“It is not, however, always practicable for parents to provide direct access to materials, even where the parents support the young person’s efforts to obtain information . . . [M]aterials may be far more expensive . . . which may make the communication inaccessible for all practical purposes. Schools and public libraries, for example, frequently refuse to allow young people unrestricted access to the Internet, and, in many instances, limit what adults, including parents, can see as well.”).

¹⁶² Ross, *supra* note 140, at 234 nn. 49–50 (arguing “many individuals and families lack access to traditional materials” because a public library is not available to them and that low-income homes are less likely to be able to afford access to computers or the internet at home).

¹⁶³ Liebler, *supra* note 77, at 44–46.

Further, the school library offers a unique learning environment and opportunity to explore simply because it is in the school itself.¹⁶⁴ Students have the opportunity to discuss novel ideas and texts with their peers in real time, expanding on lessons they may or may not have learned in the classroom. The Supreme Court noted that the public school library, in particular, is “a place to test or expand upon ideas presented to [students], in or out of the classroom.”¹⁶⁵ The plurality decision in *Pico* argued that the school library is the “principal locus” of students’ freedom “to inquire, to study and to evaluate, to gain new maturity and understanding.”¹⁶⁶ A student’s ability to meaningfully exercise their First Amendment rights is predicated on the right to receive information and form independent opinions and skepticisms.¹⁶⁷ The public school library is the safest, most accessible entry point for all students into the marketplace of ideas, and it is impossible to recreate the special characteristics of the public school library in any other forum.

C. The Importance of Access to Diverse Texts

The value of representation in school media for BIPOC and LGBTQ+ students cannot be overstated. Access to narratives that challenge white normativity is critical for students to become agents of change in society.¹⁶⁸ “The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, rather than through any kind of authoritative selection.’”¹⁶⁹

An education system that embraces traditional white, Western value systems as normative poses a particular threat to the cultural rejection

¹⁶⁴ Fiore, *supra* note 52, at 101.

¹⁶⁵ Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 869 (1982) (plurality opinion). “Use of . . . school libraries is completely voluntary on the part of the students. Their selection of books from these libraries is entirely a matter of free choice; the libraries afford them an opportunity at self-education and individual enrichment that is wholly optional.” *Id.*

¹⁶⁶ *Id.* at 868 (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)).

¹⁶⁷ *Id.* at 867. “[A] people who mean to be their own Governors, must arm themselves with the power which knowledge gives” *Id.* (quoting 9 *Writings of James Madison* 103 (G. Hunt ed. 1910)).

¹⁶⁸ See Commager, *supra* note 96, at 235 (“Government and society have a paramount interest in independence, originality, heterodoxy, criticism, nonconformity, because all experience teaches that it is out of these that come new ideas, and because every society needs a continuous re-examination of old ideas and a continuous flow of new ideas. And it is relevant to remember, too, that it is nonconformity that needs encouragement.”); Joyce E. King, *Dysconscious Racism: The Cultural Politics of Critiquing Ideology and Identity* (1991), reprinted in *CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR*, 640, 640–41 (Richard Delgado & Jean Stefancic ed., 1997) (“[E]ducation is not neutral; it can serve various political and cultural interests including social control, socialization, assimilation, domination, or liberation . . . Students who have lived for the most part in relatively privileged cultural isolation can only consider becoming liberatory, social-reconstructionist educators if they have both an adequate understanding of how society works and opportunities to think about the need for fundamental social change.”).

¹⁶⁹ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969).

of racism.¹⁷⁰ However, student access to diverse texts in the school library can function as a preliminary step to deconstructing oppression and reclaiming liberty.¹⁷¹ The discovery of counternarratives to traditional white interpretations of history and literature may help students develop a more nuanced understanding of America and their position in American society.¹⁷² It may inspire them to pursue self-actualization, become more politically engaged, and drive fundamental social change.¹⁷³ The accessibility of diverse texts enables BIPOC students to change the cultural narratives that have repressed them: “Placing an arresting, novel piece of outsider literature in the canon is obviously one step in improving the chance of the message’s being heard.”¹⁷⁴

In an important sense, we *are* our current store of narratives, and they us. We subscribe to a stock of explanatory scripts, plots, narratives, and understandings that enable us to make sense of—to construct—our social world. Because we then live in that world, it begins to shape and determine *us*, who we are, what we see, how we select, reject, interpret, and order subsequent reality.¹⁷⁵

A concentrated effort on the part of librarians to acquire books with “seriously oppositional accounts of race—for example, counterstories that challenge the conventional take on integration as a universalizing move to equalize education for all races” can feed racial empowerment and academic liberation.¹⁷⁶ Challenges to the dominant, white narrative of how American society functions and how a “proper” American citizen behaves expose the cracks in the foundation of white normativity to BIPOC students and their white peers.¹⁷⁷ These challenges can empower BIPOC students to “name their own reality,” draw upon their personal experiences, and disrupt the current white-normative education system.¹⁷⁸ An examination of

¹⁷⁰ See Richard Delgado, *Precious Knowledge: State Bans on Ethnic Studies, Book Traffickers (Librotraficantes), and a New Type of Race Trial*, 91 N.C.L. REV. 1513, 1529–30 (2013).

¹⁷¹ *See id.* at 1533, 1535–36.

¹⁷² *Id.* at 1540–41.

¹⁷³ *See King, supra* note 168, at 640–41; Delgado, *supra* note 170, at 1544 (“Interest group politics require that citizens understand their own self-interest. But a Latino or black deprived of the opportunity to know her own history lacks the tools for asserting that self-interest vigorously or knowledgeably.”).

¹⁷⁴ DELGADO & STEFANCIC, *supra* note 92, at 39.

¹⁷⁵ *Id.* at 15–16.

¹⁷⁶ Roithmayr, *supra* note 99, at 5.

¹⁷⁷ *Id.* (encouraging “the idea of counter-storytelling—challenging the stock story on merit or academic tracking or standardized testing by redescribing an experience or a social phenomenon from an outsider’s perspective.”).

¹⁷⁸ *Id.* at 15–16. “A second reason for the ‘naming one’s own reality’ theme . . . is the psychic preservation of marginalized groups. A factor contributing to the demoralization of marginalized groups is self-condemnation. Members of minority groups internalize the stereotypic images that certain elements of society have constructed in order to maintain their power. Historically, storytelling has been a kind of medicine to heal the wounds of pain caused by racial oppression. The story of one’s condition leads to the realization of how one came to be oppressed and subjugated, thus allowing one to stop inflicting mental violence on oneself.” *Id.* at 16.

counternarratives in the library may encourage students to note the lack of counternarratives in other areas of their education.¹⁷⁹

The language we use in thinking and talking about something often has real-world consequences. It marshals opinion, constructs images, contributes to a culture in which certain ideas and persons have high prestige and validity and others have less. The terms and images we use also reflect our attitudes and sense of things—they provide a mirror into our collective consciousness.¹⁸⁰

The presence of counternarratives in the school library challenges the dominant white, middle-class, homogenous construction of BIPOC identities and demands acknowledgement and respect for the experiences of the oppressed.¹⁸¹ Absent these texts, it is impossible to challenge or reform the current cultural narrative that perpetuates white normativity through racially “neutral” standards.¹⁸²

D. A Proposal for Future Decisionmakers Regarding Challenged Books

This Article’s proposal for how school administrators should manage challenges to books on library shelves is minor, and much more innovative changes are necessary in schools to ensure the addition and maintenance of diverse texts in school libraries. While censorship is championed as a means of preventing “‘bad’ reading . . . it never creates opportunities for ‘good’ reading. Its proponents think it reduces the chances that individuals will develop antisocially; but it embodies no features that might actively enlarge their chances of developing healthily.”¹⁸³ Diverse texts are opportunities for “good” reading for students. As an incremental step toward maintaining access to diverse texts, school administrators should adopt library policies that permit parents to limit access to books for their own children but not permit parents to impose those restrictions on other students.

There should be a presumption that books placed on library shelves by library staff are appropriate for the student body.¹⁸⁴ If a concerned parent wishes to limit their child’s access to specific books, books about particular subjects, or particular authors, then the school should put forth its best effort to accommodate those wishes.¹⁸⁵ However, a parent’s

¹⁷⁹ See DELGADO & STEFANCIC, *supra* note 92, at 49 (“A skeptical examination of what exists may sometimes prompt a researcher to ask why something else does *not* exist.”).

¹⁸⁰ *Id.* at 115.

¹⁸¹ *Id.* at 110 (“Small wonder that the recent legal-storytelling movement has had such appeal to people of color, women, gays, and lesbians. Stories inject a new narrative into our society. They demand attention; if aptly told, they win acceptance or, at a minimum, respect.”).

¹⁸² *Id.* at 143 (“If one lesson emerged from our study, it is that the task of social reform is more difficult than we like to think. Our imaginative capacities are often not up to the task of visualizing a better world. Our very language and tools of thought stand in the way, preventing us from hearing or appreciating what an outsider group is saying. We overlook evidence in front of us or translate claims into safer, tamer versions.”).

¹⁸³ Gellhorn, *supra* note 125, at 40.

¹⁸⁴ See *supra* Section V.A.

¹⁸⁵ Ross, *supra* note 140, at 263–64.

sensitivities should not dictate access to materials for all students.¹⁸⁶ This administrative approach to managing a collection in public school libraries is admittedly simplistic: let librarians do what they do best. Librarians need ongoing support from school administrators to feel empowered to perform their work and should not be personally subjected to campaigns attempting to ban books.¹⁸⁷ Elected school board members who do not have experience in library management or literature should have limited authority to influence the review of a challenged book.

Admittedly, this approach is idealistic considering the authority granted to local school boards and the broad discretion of school administrators.¹⁸⁸ It requires that school officials and local politicians act in good faith and without influence by outside political groups.¹⁸⁹ Even if those requirements hold true, there are still constitutional questions regarding how much a parent can limit a child's access to books in the school library against the child's wishes.¹⁹⁰ This Article unfortunately is limited in the breadth and depth of topics it can adequately and succinctly cover. There is no detailed policy analysis in this Article or assessment of who should prevail when a child's right to access information confronts a parent's right to raise their child as they see fit. These discussions are left for analysis by experts in education policy and constitutional jurisprudence in other writings.

VI. CONCLUSION

Efforts to ban books from school libraries are at an all-time high, and books challenging deeply held beliefs that America and its government are race-neutral and that all citizens are equal under the law are particularly at risk for removal from library shelves.¹⁹¹ BIPOC students do not have the advantage of definitive Supreme Court precedent to combat the removal of materials that challenge dominant narratives of a traditional, middle-class, white America.

When presented with the opportunity to clearly define the parameters of a student's right to access information in the school library, the Court instead provided ill-defined criteria for determining the constitutionality of book removal without any precedential value. The decision left lower courts to make individualized determinations of whether challenged books are "educationally unsuitable" or "pervasively vulgar" based on their own interpretation of these terms. The biases and presumptions of white normativity within the American educational system and the judiciary inevitably places materials written by BIPOC authors and materials that challenge white value systems at a disadvantage under these

¹⁸⁶ See Commager, *supra* note 96, at 235 ("A society that attempts to put education and science and scholarship in strait jackets will find that in strait jackets there can be no movement, and that the result will be intellectual atrophy.")

¹⁸⁷ See Liebler, *supra* note 77, at 41-43.

¹⁸⁸ See *generally*, Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 863 (1982) (plurality opinion) (noting the Court "has long recognized that local school boards have broad discretion in the management of school affairs" and that local authorities control decisions about public education).

¹⁸⁹ Last Week Tonight with John Oliver, *supra* note 99, at 0:00-3:11.

¹⁹⁰ Ross, *supra* note 140, at 246-52, 265-66.

¹⁹¹ AM. LIBR. ASS'N, *supra* note 1.

standards. Community standards tend to be reference points for educational suitability and vulgarity, but they carry a long history of unchallenged racism. Works that do not fall under the traditional interpretations of what is educationally valuable and what is appropriate for students to read and discuss are presumed vulgar and unsuitable at the outset.

Considering these inherent biases, it is imperative that diverse texts are available to BIPOC and LGBTQ+ students in their school libraries so they can achieve self-actualization and learn how to challenge the tenets of white supremacy. Diverse texts that contradict traditional American history and social studies courses give students the tools to advocate for themselves in the classroom and in the future. At a minimum, librarians should be trusted to manage their collections and navigate the book acquisition process. Restrictions to accessing particular books should be limited on a student-by-student basis in order to circumvent a parent or community member imposing their own sensitivities onto the student body as a whole.

White supremacy is the foundation of public education in America, but challenges to oppressive assumptions are made in children's books each day. Access to materials that challenge white supremacy and white normativity are critical to effect change in education for all students. Depriving students access to those texts under the guise of concern for "educational suitability" and "pervasive vulgarity" reiterates white normativity and resists necessary change. "Books—all kinds of books, expressing all kinds of views—are not a luxury but a necessity. They contribute to the strength of America. . . . challenge our convictions and our settled ways of thought and make us learn not only what we believe but why we believe it."¹⁹² American public schools are long overdue for a challenge to settled ways of thought, and diverse texts with counternarratives are exactly the challenge public schools need.

¹⁹² Charles G. Bolte, *Security Through Book Burning*, 300 ANNALS AM. ACAD. POL. & SOC. SCI. 87, 91 (1955).