

THE RIGHT TO READ: WHY RESTRICTING PUBLIC LIBRARY CATALOGUES HURTS NORTH DAKOTA

ABSTRACT

A recent trend in “book-banning” or targeted book removals has overtaken public schools and public libraries across the nation. In *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, the United States Supreme Court rendered a plurality opinion regarding the constitutional implications of removing books from public school libraries. Since this decision, many states have attempted to limit the materials public libraries can maintain, particularly for children. However, the First Amendment of the United States Constitution protects the right to receive information and ideas. As this pattern of state legislation continues to develop, courts are faced with questions about the constitutional implications. These cases have given way to a circuit split as to whether public libraries removing books from their own catalogues constitutes government speech, and thus an exception to First Amendment protections.

Three bills relating to public library catalogues have been introduced in the last two sessions of the North Dakota Legislative Assembly. In 2023, House Bill 1205 (“H.B. 1205”), which was passed and became North Dakota Century Code Section 12.1-27.1-03.5, prohibits libraries from maintaining books containing explicit sexual material in children’s sections. That same year, Senate Bill 2360 (“S.B. 2360”) was proposed, which would have established criminal penalties for employees who failed to comply with mandated online catalogue safety policies in public libraries. At the next legislative session in 2025, Senate Bill 2307 (“S.B. 2307”) was proposed, which aimed to broaden Section 12.1-27.1-03.5 by mandating a similar online safety policy to S.B. 2360 and authorizing State’s Attorneys’ offices to prosecute violations of the statute.

The two senate bills were ultimately passed by the legislature but vetoed by the respective governors of North Dakota in 2023 and 2025. North Dakota should embrace these vetoes and allow libraries, school districts, parents, and children to govern their own reading lists, as prohibiting certain library materials implicates readers’ First Amendment rights and sets an uncertain precedent as to the future of public libraries and their local autonomy. These spaces are more essential than ever as the rate of people reading continues to decline in the United States—making it increasingly important for North Dakota legal practitioners, whose work depends on careful reading, critical analysis, and informed judgment, to support and engage with environments that sustain strong literacy skills.

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I. INTRODUCTION

*“Books were only one type of receptacle where we stored a lot of things we were afraid we might forget. There is nothing magical in them, at all. The magic is only in what books say, how they stitched the patches of the universe together into one garment for us.”*¹

In recent years, American public libraries have seen an increased trend in “book-banning” or targeted book removals.² Libraries are described

1. RAY BRADBURY, *FAHRENHEIT 451*, at 79 (Simon & Schuster Paperbacks 2018) (1951) (emphasis added).

2. See Casey Kuhn, *Library Book Ban Attempts Are at An All-Time High. These Librarians Are Fighting Back*, PBS NEWS (Apr. 15, 2024, at 13:32 ET),

throughout literature as being “full of ideas—perhaps the most dangerous and powerful of all weapons.”³ These spaces hold endless opportunities for people of all ages to lose themselves in a good book or movie, find educational online databases, borrow board or video games, and engage in various community programs and events.⁴

No uniform legal standard exists as to whether and how restricting items within a library’s catalogue affects First Amendment rights.⁵ This unsettled precedent has led to numerous attempts by state legislators, school boards, and various organizations to “ban” or remove select books from library collections throughout the United States.⁶ These attempts have only increased in recent years, and North Dakota is no exception.⁷ In the last two legislative sessions, the North Dakota Legislature has proposed three bills relating to the restriction of library catalogues.⁸ As a form of potentially restricting access to information, these bills implicate the First Amendment and further affect North Dakotans’ rights.

<https://www.pbs.org/newshour/arts/attempts-to-ban-books-are-at-an-all-time-high-these-librarians-are-fighting-back> [<https://perma.cc/G6E9-L3PP>]; *Book Ban Data*, AM. LIBR. ASS’N, <https://www.ala.org/bbooks/book-ban-data> [<https://perma.cc/3799-UCDH>] (last visited Mar. 24, 2026).

3. SARAH J. MAAS, *THRONE OF GLASS 56* (Bloomsbury Publishing 2023) (2012); *see also Banned Author List 2025: Stephen King, Sarah J. Maas, Jodi Picoult*, PEN AM. (Oct. 27, 2025), <https://pen.org/banned-author-list-2025/> [<https://perma.cc/M5K5-89VM>] (naming Maas as the third “[m]ost banned author[] of the 2024-2025 [s]chool [y]ear” with “162 instances of book bans”).

4. *See generally, e.g., Services Offered by the Fargo Public Library*, CITY OF FARGO, <https://fargond.gov/city-government/departments/library/services> [<https://perma.cc/WBB2-93XS>] (last visited Feb. 1, 2026) (“In addition to lending books, media, e-books and more, the library offers many additional services.”).

5. *See* Noah T. Holloway, Comment, *Incombustible Ideas: Evaluating the Impact of Federal Court Opinions Regarding Book Banning in Public-School Libraries*, 11 IND. J. L. & SOC. EQUAL. 265, 266-67 (2023).

6. *See Book Ban Data*, *supra* note 2.

7. *See id.*; Mitch Smith, *North Dakota Lawmakers Pass Bill Restricting Library Books Deemed Obscene*, N.Y. TIMES (Apr. 14, 2025), <https://www.nytimes.com/2025/04/14/us/north-dakota-books-obscene.html> [<https://perma.cc/U2C7-WX5X>].

8. *See* H.B. 1205, 68th Legis. Assemb., Reg. Sess. (N.D. 2023); S.B. 2360, 68th Legis. Assemb., Reg. Sess. (N.D. 2023); S.B. 2307, 69th Legis. Assemb., Reg. Sess. (N.D. 2025); *see also* N.D. CENT. CODE § 12.1-27.1-03.5 (2023) (codifying H.B. 1205).

II. LEGAL BACKGROUND

*“If you only read the books that everyone else is reading, you can only think what everyone else is thinking.”*⁹

A. WHAT IS MODERN “BOOK-BANNING”?

Libraries, bookstores, and online resources often compile lists of the most frequently “banned books.”¹⁰ These lists show that the books being “banned” go beyond the commonly considered “classic” novels, such as George Orwell’s *1984*, and include modern classics like Art Spiegelman’s *Maus* and Margaret Atwood’s *The Handmaid’s Tale*.¹¹ The fact that these sources list books as banned denotes that, at some public school or library across the nation, they have been removed from the shelves, not that they are banned at the national level.¹²

Additionally, there is a difference between challenging a book and removing it.¹³ A challenge is an objection by a person or entity with the hope that a source is removed or restricted, while “banning” is the actual removal from shelves.¹⁴ This “banning” is more accurately described as a “targeted removal” that “occurs when officials single out one or more volumes for review and removal based on complaints about their content or viewpoint.”¹⁵ While “[a] ban signals a total prohibition,” akin to classic censorship, the less-pervasive targeted removal is “a more limited incursion on the ideas in circulation.”¹⁶ This vocabulary difference is important because courts have “critiqued the use of ‘overwrought rhetoric,’” declaring that “the term ‘book ban’ is only appropriate in limited circumstances,” where the government specifically prohibits individuals from having a book from any source.¹⁷

9. HARUKI MURAKAMI, *NORWEGIAN WOOD* 31 (Vintage Books 2000) (1987) (emphasis added).

10. See generally *Banned Books*, BARNES & NOBLE, https://www.barnesandnoble.com/b/banned-books/_/N-rtm [<https://perma.cc/4ERP-GSVM>] (last visited Feb. 1, 2026).

11. See *id.*

12. See generally *Book Bans Frequently Asked Questions*, PEN AM., <https://pen.org/book-bans/book-bans-frequently-asked-questions/> [<https://perma.cc/95JA-6PAE>] (last visited Feb. 1, 2026) (“PEN America defines a school book ban as any action taken against a book based on its content and as a result of parent or community challenges, administrative decisions, or in response to direct or threatened action by lawmakers or other government officials . . .”).

13. See *Banned Book FAQ*, AM. LIBR. ASS’N, <https://www.ala.org/bbooks/banned-books-qa> [<https://perma.cc/ERW9-K8BN>] (last visited Feb. 1, 2026).

14. *Id.*

15. Catherine J. Ross, *Are “Book Bans” Unconstitutional? Reflections on Public School Libraries and the Limits of Law*, 76 *STAN. L. REV.* 1675, 1683 (2024).

16. *Id.*

17. *Id.* at 1684 (citations omitted).

The American Library Association (ALA) notes that most challenges are made “with the best intentions—to protect others, frequently children, from difficult ideas and information.”¹⁸ The ALA’s Office for Intellectual Freedom documented 1,247 attempts to limit access to 4,240 unique titles in 2023, and “821 attempts to censor library materials and services” targeting 2,452 unique titles in 2024.¹⁹ The total number of challenges in 2024 is the third highest since the ALA started tracking in 1990.²⁰ Furthermore, in 2024, the organization noted that advocacy groups and government entities “initiated 72% of demands to censor books in school and public libraries,” with parents accounting for only 16% of demands.²¹ This data depicts the modern phenomenon of increased book removals in public libraries.²²

B. FIRST AMENDMENT IMPLICATIONS

The First Amendment of the United States Constitution relays that “Congress shall make no law . . . abridging the freedom of speech or of the press.”²³ While the freedom of speech is considered a fundamental right, not all forms of speech are protected according to the Supreme Court of the United States.²⁴ Activities the Court has deemed not protected include “obscenity, defamation, fraud, incitement, fighting words, true threats, speech integral to criminal conduct, and child pornography.”²⁵

Among the rights protected under the First Amendment is the “right to receive information and ideas.”²⁶ This right flows directly from the freedom to speak without restriction, and “is a necessary predicate to the recipient’s meaningful exercise of his own rights of speech.”²⁷ In other words, if an

18. See *Banned Book FAQ*, *supra* note 13.

19. *Book Ban Data*, *supra* note 2 (acknowledging that these numbers may reflect under-reporting because “[m]any book challenges are not publicly reported or covered by the press”).

20. *American Library Association Kicks Off National Library Week with the Top 10 Most Challenged Books of 2024 and the State of America’s Libraries Report*, AM. LIBR. ASS’N (Apr. 7, 2025), <https://www.ala.org/news/2025/04/american-library-association-kicks-national-library-week-top-10-most-challenged-books> [<https://perma.cc/8RH3-V2YG>].

21. *Id.*

22. See *id.*

23. U.S. CONST. amend. I.

24. VICTORIA L. KILLION, CONG. RSCH. SERV., IF11072, *THE FIRST AMENDMENT: CATEGORIES OF SPEECH* (2024).

25. *Id.*

26. Bd. of Educ., *Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 866-67 (1982) (plurality opinion); see also John C. Berner, Comment, *Library Book Removals and Government Speech: A Proportional Approach to the Circuit Split*, 100 TUL. L. REV. 169, 173 (2025) (citing *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)).

27. *Pico*, 457 U.S. at 867; see also *Stanley*, 394 U.S. at 564 (“This freedom (of speech and press) necessarily protects the right to receive.” (citation modified)).

individual speaker is truly to have free speech, they must have access to a plethora of information to inform this speech.²⁸ To support the necessity of this right, the Court, in *Pico*, quoted James Madison as saying, “[k]nowledge will forever govern ignorance: [a]nd a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”²⁹ Additionally, for this right to apply, the worth of the received idea is irrelevant.³⁰ When it comes to restrictions on public library catalogues, there is no uniform standard for addressing these First Amendment implications.³¹ While the right to receive may be curtailed by the government speech doctrine, there is limited case law to guide the way.³²

1. *Board of Education, Island Trees Union Free School District No. 26 v. Pico*

The single United States Supreme Court “book-banning” case is the plurality decision in *Board of Education, Island Trees Union Free School District No. 26 v. Pico*.³³ In *Pico*, several members of a New York school district’s Board of Education attended a conference where they obtained a list of “objectionable” books.³⁴ The members discovered that ten of these “objectionable” books were available at the District schools’ libraries and unofficially directed that they be temporarily suspended so that the members could review them.³⁵ Later, the members appointed a “Book Review Committee,” comprising four parents and four members of staff, to read the books

28. See Note, *Reimagining the Schoolhouse Gate: Children’s Right to Receive Information in the Age of Curriculum Censorship*, 139 HARV. L. REV. 776, 779 (2026).

29. *Pico*, 457 U.S. at 867 (quoting 9 JAMES MADISON, *Aug. 13, 1822 Letter to Thomas Ritchie*, in THE WRITINGS OF JAMES MADISON (Gaillard Hunt ed. 1910)).

30. *Stanley*, 394 U.S. at 564 (holding individual possession of obscene materials is protected under the right to receive information regardless of society’s value in this material).

31. Berner, *supra* note 26, at 173 (“The constitutional status of library book removals is, at present, unsettled. Largely to blame is the relevant case law, which relies on plurality opinions, emerging doctrines, and murky legal categories.”).

32. *Id.* at 189 (“Government speech doctrine . . . threatens to trump the right to receive information and ideas in American libraries.”).

33. See 457 U.S. 853; see also *Glossary – U.S. v. Alvarez*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/educational-resources/educational-activities/first-amendment-activities/us-v-alvarez/glossary-us-v-alvarez> [<https://perma.cc/C2CS-6G83>] (last visited Feb. 1, 2026) (“A plurality opinion is an appellate opinion without enough judges’ votes to constitute a majority of the court. The plurality opinion is the opinion that received the greatest number of votes of any of the opinions filed. Because a majority could not reach a common view, a plurality opinion is not binding.”).

34. *Pico*, 457 U.S. at 856.

35. *Id.* at 856-57 (explaining that when the removal later became public knowledge “the Board issued a press release . . . characteriz[ing] the removed books as ‘anti-American, anti-Christian, anti-Semitic, and just plain filthy,’” and concluded that a moral obligation existed to remove the books (second alteration in original)).

and make recommendations as to whether they should be retained.³⁶ The committee determined that five of the books should be kept, two should be removed, one should be kept available with parental consent, and reached no recommendation on the others.³⁷ The Board later overturned this decision and ordered that all of the books be removed except for two, one of which was to be retained without restriction and the other to be retained with restriction.³⁸ A group of students then brought suit claiming the books were removed for personal beliefs and not because they lacked educational value, and thus violated their First Amendment rights.³⁹

The plurality of the Court conceded that the Board had “significant discretion to determine the content of their school libraries,” but rejected the idea that there is absolute discretion to remove books from these spaces.⁴⁰ Instead, the plurality determined that “whether petitioners’ removal of books from their school libraries denied respondents their First Amendment rights depends upon the motivation behind petitioners’ actions.”⁴¹ The plurality noted that if the decisive motivation to remove books was based on the suppression of certain ideas, it would be unconstitutional, but it would not be unconstitutional if the motivation was to remove “pervasively vulgar” books or books unsuitable for education.⁴² Notably, this decision only affects the removal of books, not decisions to add books.⁴³

Pico remains important because it depicts the First Amendment implications involved in removing books from public school library catalogues.⁴⁴ While this case specifically dealt with public school libraries, the plurality commented that “[a] school library, no less than any other public library, is ‘a place dedicated to quiet, to knowledge, and to beauty.’”⁴⁵ This comparison supports the applicability of the right to receive information in both school

36. *Id.* at 857; *see also id.* at 921 n.3 (noting the books being reviewed included: *Slaughterhouse Five* by Kurt Vonnegut, Jr., *Down These Mean Streets* by Piri Thomas, and *A Reader for Writers* edited by Jerome Archer).

37. *Id.* at 858.

38. *Id.* (“The Board gave no reasons for rejecting the recommendations of the Committee that it had appointed.”).

39. *Id.* at 858-59.

40. *Id.* at 870-71.

41. *Id.* at 871.

42. *Id.*

43. *Id.* at 871-72.

44. *Id.* at 870-72; *see also* Berner, *supra* note 26, at 175 (“Justice Brennan’s plurality opinion in *Pico*, though not binding precedent, functionally established First Amendment guardrails on library book removal.”).

45. *Pico*, 457 U.S. at 868 (quoting *Brown v. Louisiana*, 383 U.S. 131, 142 (1966)).

and public libraries.⁴⁶ However, the lack of a majority opinion in the case creates weak, unbinding precedent and leaves a legally unsettled approach to the removal of books among lower courts.⁴⁷

2. *Evaluating Obscenity*

As put forth in *Pico*, removing books that are “pervasively vulgar” or “educationally unsuitable” is permissible.⁴⁸ However, as noted by the dissent, these phrases are “standardless,” and the degree of pervasiveness needed remains unclear.⁴⁹ Today, an often-cited reason for removing books is their obscenity or sexual content.⁵⁰ While not the same as “pervasively vulgar,” obscenity is a clear exception to First Amendment protections, and the definition of obscene material is relevant for book removal cases.⁵¹

The Supreme Court initially held that obscenity was an exception to the First Amendment in *Roth v. United States* in 1957.⁵² The Court in *Roth* defined obscene material as “material which deals with sex in a manner appealing to prurient interest,” not necessarily the “portrayal of sex” itself.⁵³ The Court further affirmed that the “proper standard” for obscenity was “whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.”⁵⁴

Then, in 1968 in *Ginsberg v. New York*, the Supreme Court held that states could restrict the sale of obscene material to minors beyond the *Roth* definition of obscenity without violating the First Amendment.⁵⁵ Brought before the Court was a New York criminal obscenity statute, which provided a “three-pronged test . . . for judgment [of] the obscenity of material sold to

46. Caroline Puryear, Comment, *Books for Me but Not for Thee: How Modern Book Banning in Public Libraries Will Broadly Disenfranchise First Amendment Liberties*, 62 HOU. L. REV. 211, 227 (2024); see also Berner, *supra* note 26, at 174 (“Justice Brennan’s reasoning applies to public libraries generally, not just public school libraires . . .”).

47. See Holloway, *supra* note 5, at 267 (“Only three Justices—Justices Brennan, Marshall, and Stevens—agreed that students have a right to access information under the First Amendment that limits the discretion of public schools to remove books from the public-school library.”).

48. See *Pico*, 457 U.S. at 871.

49. *Id.* at 890 (Burger, J., dissenting).

50. Marlena Mareno, Comment, *A Comparative Analysis of Book Banning and Video Games: Should There Be A Difference under the First Amendment?*, 84 ALB. L. REV. 537, 540 (2020).

51. See *Roth v. United States*, 354 U.S. 476, 485 (1957) (holding that obscenity is not protected by the First Amendment).

52. *Id.*

53. *Id.* at 487.

54. *Id.* at 489.

55. *Ginsberg v. New York*, 390 U.S. 629, 641-43 (1968).

minors under 17.”⁵⁶ This “harmful to minors” standard was framed similarly to the *Roth* analysis with slight modification:

‘Harmful to minors’ means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it: (i) predominantly appeals to the prurient, shameful or morbid interest of minors, and (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (iii) is utterly without redeeming social importance for minors.⁵⁷

Thus, a new test for obscenity was created when applicable to minors.⁵⁸

Later, in *Miller v. California* in 1973, the Court laid out narrower determinations necessary to establish obscenity to sufficiently limit state statutes.⁵⁹ The Court confined “the permissible scope of such regulation to works which depict or describe sexual conduct,” and mandated the conduct to be “specifically defined by the applicable state law.”⁶⁰ The Court went on to outline “basic guidelines for the trier of fact,” which include:

(a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest, (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.⁶¹

Building upon both *Roth* and *Ginsberg*, the Court’s opinion in *Miller* continued the “contemporary community standard” approach over a national standard and left the regulation of obscene material to the purview of the states.⁶²

3. *Circuit Split on Government Speech: Little v. Llano County*

The modern trend in “book-banning” has led contemporary courts to attempt to navigate previously established legal standards, particularly those of

56. *Id.* at 631, 635.

57. *Id.* at 646 (quoting N.Y. PENAL LAW § 484(1)(f) (1965)); *see also id.* at 635 (“The three-pronged test of subsection 1(f) for judgment [of] obscenity of material sold to minors under 17 is a variable from the formulation for determining obscenity under *Roth* . . .”).

58. *See id.* at 635, 641-43, 646.

59. *Miller v. California*, 413 U.S. 15, 23-24 (1973).

60. *Id.* at 24.

61. *Id.* at 24-25 (citation modified) (rejecting the “utterly without redeeming social value” test).

62. *See id.* at 37. *See generally supra* text accompanying notes 52-58.

the *Pico* Court.⁶³ In 2025, the Fifth Circuit Court of Appeals addressed the issues of whether a library’s removal of books from its own catalogue “implicates a patron’s right to receive information” and if the removal constitutes government speech in a plurality opinion.⁶⁴ The plurality held that the removal of books by a public library does not invoke the First Amendment’s right to receive information, as it instead constitutes government speech.⁶⁵ Whether a library’s removal of books counts as government speech is important because “when the government speaks for itself, the First Amendment does not demand airtime for all views.”⁶⁶ In other words, “[t]he Free Speech Clause . . . does not regulate government speech.”⁶⁷

In *Little v. Llano County*, several library patrons sued officials, alleging that they removed books based on their objectionable viewpoints.⁶⁸ The defendants testified that the removal of these books was “a result of a standard ‘weeding’ method known as ‘Continuous Review, Evaluation, and Weeding’ or ‘CREW.’”⁶⁹ However, the plaintiffs asserted that this weeding reasoning was pretextual and the removals really stemmed from the complaints of a select few.⁷⁰

The plurality explained that a library’s collection is the government acting as a curator for a compilation of third-party speech, which the Supreme Court has held constitutes expression as a speaker under the First Amendment.⁷¹ The Court further reasoned that the government acts as a curator through its selection of books for the library, not the books themselves.⁷² Thus, the removal or addition of books to the government’s curation of library catalogues is government speech.⁷³

63. See generally *Little v. Llano Cnty.*, 138 F.4th 834, 843 (5th Cir. 2025).

64. *Id.* at 842.

65. See *id.* at 843, 850-51, 865 (asserting that while the “First Amendment limits the government’s power to prevent one person from receiving another’s speech,” no caselaw suggests the government is obligated “to provide information to anyone”).

66. *Id.* at 852 (quoting *Shurtleff v. City of Boston*, 596 U.S. 243, 247-48 (2022)).

67. *Id.* (quoting *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009)).

68. *Id.* at 838 (stating the defendants included the local library director, “the commissioners court, County Judge Ron Cunningham, and the library board”).

69. *Id.* at 839 (according to the CREW approach, books could be removed for being “inaccurate (‘misleading’), damaged (‘ugly’), outdated (‘superseded’), silly (‘trivial’), seldom checked out (‘irrelevant’), or available at another branch (‘elsewhere’)”).

70. See *id.*; see also *id.* at 872 (Higginson, J., dissenting) (revealing that while the library director testified the removals were “based on standard justifications for weeding library books,” the head librarian testified that these removals actually violated the weeding guidelines of the county).

71. *Id.* at 854 (citing *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024)); see also *Summum*, 555 U.S. at 472-74 (holding that a city selecting which monuments to display in a public park constitutes government speech).

72. *Little*, 138 F.4th at 837, 854 (comparing public libraries to public museums as the curations say to the public: “[t]hese works are worth viewing”).

73. *Id.* at 854.

The plurality further supported its holding by evaluating the case in light of the Supreme Court's recently established government speech factors in *Shurtleff v. City of Boston*.⁷⁴ The three *Shurtleff* factors are: “[1] the history of the expression at issue; [2] the public’s likely perception as to who (the government or a private person) is speaking; [3] and the extent to which the government has actively shaped or controlled the expression.”⁷⁵ The Circuit Court reasoned that libraries have a steep history of tailoring their collections to offer books they deem worthy of reading.⁷⁶ Additionally, this selection of books clearly depicts government speech, as a complaint about the collection would be filed with the government entity, not a private author.⁷⁷ Finally, the Circuit Court asserted this government control over collections has existed since the beginning of libraries and continues today.⁷⁸ This analysis established for the court that all three government speech factors weighed in favor of finding that book removals fall under this First Amendment exception.⁷⁹

The foundation of the plurality’s findings in *Little* stood on the fact that it deemed *Pico* to carry no “precedential weight.”⁸⁰ However, the dissent argued that *Pico* did establish binding precedent in that “a library’s ‘discretion may not be exercised in a narrowly partisan or political manner’ because ‘our Constitution does not permit the official suppression of ideas.’”⁸¹ The dissent also put forth that “[i]t is the Supreme Court’s primary prerogative, not ours, to revisit and modify its prior interpretations and applications of our Constitution,” highlighting that the Circuit Court went beyond its job “to apply those decisions . . . faithfully.”⁸²

The Fifth Circuit was not the first of the circuit courts to speak on whether libraries removing books from their collections constitutes government speech.⁸³ In *GLBT Youth in Iowa Schools Task Force v. Reynolds*, the Eighth Circuit Court of Appeals held that “the removal of books from public

74. *Id.* at 858-60.

75. *Id.* at 860 (quoting *Shurtleff v. City of Boston*, 596 U.S. 243, 252 (2022) (omissions in original)).

76. *Id.* at 861-63 (noting that libraries historically had educational missions and often did not include novels that at the time were deemed “trashy” by figures such as Thomas Jefferson).

77. *Id.* at 864.

78. *Id.* at 865.

79. *Id.*

80. *Id.* at 843.

81. *Id.* at 878 (Higginson, J., dissenting) (quoting *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 870-71 (1982) (plurality opinion)).

82. *Id.* at 879-80 (meaning the Circuit Court’s job is to decide “whether Defendants’ substantial motivation for removing books from the Llano County public library system was not to ‘weed’ according to routine, . . . but rather to censor what Defendants deemed ‘inappropriate’ ideas and information”).

83. *See* *GLBT Youth in Iowa Schs. Task Force v. Reynolds*, 114 F.4th 660 (8th Cir. 2024).

school libraries” did not constitute government speech for First Amendment purposes.⁸⁴ The Eighth Circuit similarly considered the *Shurtleff* factors for government speech and dissimilarly concluded that “the placement and removal of books” does not convey a government message, the public would not deem the books on library shelves to be government speech, and that no historical control existed.⁸⁵ The Fifth Circuit responded to the Eighth Circuit’s holding by finding that the Eighth Circuit’s flaw was assuming the government spoke through the actual books within a library, when in reality the government speaks through its selection of books for a library’s collection as a curator.⁸⁶

Notably, the Supreme Court recently denied the petition for a writ of certiorari in *Little*.⁸⁷ The denial occurred on December 8, 2025, and means the Supreme Court will not decide the issue of “[w]hether book-removal decisions motivated by a desire to censor particular viewpoints are subject to scrutiny under the free speech clause of the First Amendment.”⁸⁸ Furthermore, this means the Court will not weigh in on the government speech circuit split under the facts of *Little*.⁸⁹ This leaves the government speech issue ripe for review, though it may take other circuits weighing in for the Supreme Court to offer its ruling.⁹⁰

C. LAWS OF OTHER STATES

Cases like *Little* are being brought as a result of many states’ attempts to enact legislation regarding how objections to books should be handled, or what books should remain within libraries. States vary in their approaches and also differ in whether their laws apply to public-school libraries, public libraries, or both. The following section outlines select examples of this legislation.

Before *Reynolds* was brought into court, the Governor of Iowa “signed into law Senate File 496” in 2023, which amended Iowa’s law to “add[] regulations regarding books in Iowa’s public-school libraries.”⁹¹ This

84. *Id.* at 667-68.

85. *Id.* (applying the *Shurtleff* factors). *See generally supra* note 75 and accompanying text.

86. *Little*, 138 F.4th at 837; *Reynolds*, 114 F.4th at 668 (“[I]f placing these books on the shelf of public school libraries constitutes government speech, the State ‘is babbling prodigiously and incoherently.’” (quoting *Matal v. Tam*, 582 U.S. 218, 236 (2017))).

87. *Little v. Llano County*, SCOTUSBLOG (Dec. 8, 2025), <https://www.scotusblog.com/cases/case-files/little-v-llano-county/> [<https://perma.cc/8BBK-89ZK>].

88. *Id.*

89. *See id.*

90. *See id.*

91. *Reynolds*, 114 F.4th at 665. The law also “imposed additional regulations pertaining to public school classrooms and curriculum” and “require[d] public school districts to notify a child’s

amendment was to Iowa Code Section 256.11, which details, among other items, permissible books to have available.⁹² Section 256.11 requires school districts to “contain[] only age-appropriate materials” in their library programs.⁹³ If a school district or its employee is found to have violated these standards, they will be subject to “a written warning to the board of directors” for first-time violations and “a hearing conducted by the board of educational examiners” for “a second or subsequent” knowing violation.⁹⁴ These hearings could result in disciplinary action for the school district or its employees.⁹⁵ The law also requires the state board to establish standards for libraries to meet student needs, maintain a diverse collection, and update and replace materials.⁹⁶

While the Eighth Circuit confirmed the plaintiffs had standing to pursue their First Amendment claims, as the government speech doctrine was inapplicable, the court took issue with the district court’s preliminary injunction analysis and remanded the case for further proceedings.⁹⁷ This decision also applied to the case in *Penguin Random House, LLC v. Robbins* because the preliminary injunction on appeal had been consolidated at the district court level.⁹⁸ On remand in this related case, *Robbins*, the United States District Court for the Southern District of Iowa held that the amendments to Section 256.11 regarding the age-appropriateness of books were overbroad and likely unconstitutional.⁹⁹ As a result, the district court again granted a preliminary injunction, preventing Iowa from further enforcing the library provisions of Senate File 496 pending an appeal back to the Eighth Circuit.¹⁰⁰ The Eighth

parents if the child asks for the use of pronouns that do not match the school’s registration records or otherwise seeks an accommodation relating to gender identity.” *Id.* at 665-66.

92. *See generally* IOWA CODE § 256.11 (2025).

93. *Id.* § 256.11(9)(a)(2)-(3); *see also id.* § 256.11(19) (“‘Age-appropriate’ means topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group. ‘Age-appropriate’ does not include any material with descriptions or visual depictions of a sex act as defined in section 702.17.”); *id.* § 702.17 (2022) (defining “sex act”).

94. *Id.* § 256.11(9)(a)(3) (2025).

95. *Id.* § 256.11(9)(a)(3)(ii).

96. *Id.* § 256.11(9)(a)(3)(b)(ii)(b).

97. *See* GLBT Youth in Iowa Schs. Task Force v. Reynolds, 114 F.4th 660, 671 (8th Cir. 2024) (remanding to the district court for further proceedings).

98. *See id.* at 666.

99. *Penguin Random House, LLC v. Robbins*, 774 F. Supp. 3d 1001, 1025, 1036-37 (S.D. Iowa 2025) (acknowledging that “Iowa already had a law prohibiting the dissemination of obscene material to children” and this law attempted to go further); *see also* Iowa Safe Schs. v. Reynolds, 788 F. Supp. 3d 969, 983-84 (S.D. Iowa 2025) (granting plaintiff’s preliminary injunction request for the same reasons as *Penguin Random House, LLC v. Robbins*), *vacated*, 2026 WL 924136 (8th Cir. Apr. 6, 2026).

100. *Robbins*, 774 F. Supp. at 1037.

Circuit subsequently vacated this preliminary injunction and remanded for resolution on the merits.¹⁰¹

Another example arose from Florida's House Bill 1069, which amended Section 1006.28 of the Florida Statutes to require each district school board to have an easily accessible and readable objection form.¹⁰² These forms allow for any "parent or resident" to report any material that "[d]epicts or describes sexual conduct," unless the material is for an exempted course.¹⁰³ The section further required the removal of a challenged book within "5 school days" after the objection was received, and if the material met any statutorily enumerated categories, it was forcibly discontinued.¹⁰⁴ Several parents, publishers, and authors challenged this law in court, and the United States District Court for the Middle District of Florida found the section prohibiting material that "describes sexual conduct" to be "overbroad and unconstitutional."¹⁰⁵ The court reached this conclusion after determining no government speech exception existed.¹⁰⁶

More recently, Texas passed Senate Bill 13 in 2025, which allows parents to access their children's library list and gives them the ability to set restrictions for their child at the library.¹⁰⁷ This presents a more individual solution for parents to make personal decisions, rather than librarians attempting to follow broad definitions of objectionable material.¹⁰⁸ Furthermore, the new statutory language outlines when school districts should establish advisory councils to assist in creating new policies for adding library materials and reviewing submitted challenges.¹⁰⁹

There are also a number of states that have passed laws protecting library shelves by prohibiting certain removals from occurring.¹¹⁰ These states include Minnesota and Delaware, among others, where recently enacted laws

101. *Penguin Random House, LLC v. Robbins*, No. 25-1819, 2026 WL 924132, at *1 (8th Cir. Apr. 6, 2026) (holding that the district court abused its discretion because the plaintiffs did not show "a likelihood of success on the merits," and noting that "[t]he library restrictions are neither amorphous nor unreasonable"); *see also* *Iowa Safe Schs. v. Reynolds*, No. 25-2189, 2026 WL 923136, at *4 (8th Cir. Apr. 6, 2026) (vacating the preliminary injunction of the library restrictions for the same reasons as *Penguin Random House, LLC v. Robbins* (No. 25-1819)).

102. FLA. STAT. § 1006.28(2)(b) (2025).

103. *Id.*; *see also id.* § 847.001(19) (2022) (defining "[s]exual conduct").

104. *Id.* § 1006.28(2) (2025).

105. *Penguin Random House, LLC v. Gibson*, 796 F. Supp. 3d 1052, 1080-81 (M.D. Fla. 2025).

106. *See id.* at 1071 (warning that "[s]lapping the label of government speech on book removals only serves to stifle the disfavored viewpoints," which "the Supreme Court has warned" against).

107. *See* S.B. 13, 89th Leg., Reg. Sess. (Tex. 2025).

108. *See* TEX. EDUC. CODE §§ 26.004(b)(12), 33.023 (2025).

109. *See generally id.* § 33.025 (providing statutory guidance on establishing local advisory councils in school districts).

110. *See generally, e.g.*, MINN. STAT. § 134.51 (2025); H.B. 119, 153rd Gen. Assemb., Reg. Sess. (Del. 2025).

prohibit books from being removed solely based on dislike for their viewpoints or messages.¹¹¹ Some of these laws still allow for public library books to be challenged, but require the books to be kept available while under review and limit who can make objections and how many they can make.¹¹² For example, Delaware’s law requires public libraries to adopt policies that only permit “a resident, business owner, property owner of the area the public library serves, or a taxpayer of a library district financing a library” to submit an objection and limits an individual to “submit 1 objection to library material at a time.”¹¹³ Thus, aiming to ensure the objections of a few do not remove information for all.¹¹⁴

III. CURRENT ISSUE ANALYSIS IN NORTH DAKOTA

*“[T]ake my books away, and I should be desperate!”*¹¹⁵

North Dakota is not an exception to states that have passed laws regarding the removal of books from public libraries.¹¹⁶ However, North Dakota is unique in that its law and proposed bills specifically target public libraries rather than solely public school libraries.¹¹⁷ In 2023, the North Dakota State legislature passed two bills concerning this topic and another in 2025.¹¹⁸ One bill from 2023 remains within the North Dakota Century Code, while the other two bills were vetoed by the respective Governors in office during their proposals.¹¹⁹ These bills are further described in the sections below.

A. HOUSE BILL 1205 (2023)

To begin, H.B. 1205 was introduced to add a new section to the North Dakota Century Code “relating to prohibiting public libraries from

111. See Sarah Schwartz, *States Are Banning Book Bans. Will it Work?*, EDUC. WK. (Jan. 7, 2026), <https://www.edweek.org/policy-politics/states-are-banning-book-bans-will-it-work/2026/01> [<https://perma.cc/JG78-GKN9>] (“The policies—passed in California, Delaware, Illinois, Maryland, Minnesota, New Jersey, Rhode Island, and Washington—vary by jurisdiction, but most state that books can’t be excluded from a public school library solely because of the background or views of the author.”).

112. See H.B. 119, 153rd Gen. Assemb., Reg. Sess. § 8731(A)(c) (Del. 2025).

113. *Id.* § 8731(A)(c)(2)-(3).

114. See *id.* §§ 8731(A)(b)(2)-(3), (c)(2)-(3).

115. EMILY BRONTË, *WUTHERING HEIGHTS* 291 (Sterling Publishing Co. 2015) (1847) (emphasis added).

116. See generally, e.g., H.B. 1205, 68th Legis. Assemb., Reg. Sess. (N.D. 2023); S.B. 2360, 68th Legis. Assemb., Reg. Sess. (N.D. 2023); S.B. 2307, 69th Legis. Assemb., Reg. Sess. (N.D. 2025).

117. See generally sources cited *supra* note 116 and accompanying text.

118. See generally sources cited *supra* note 116 and accompanying text.

119. See sources cited *supra* note 8 and accompanying text.

maintaining sexually explicit books.”¹²⁰ As introduced, the bill sought to prohibit public libraries from “maintain[ing] in its inventory or promot[ing] books that make as their primary subject the study of explicit sexual material.”¹²¹ The bill further required libraries to remove books “within thirty days of receiving” an individual’s request based on their belief that the book violated the statute.¹²² The bill also mandated that libraries develop “polic[ies] and process[es] for reviewing library collections” to ensure compliance with the statute.¹²³

The bill was met with immense public response as dozens of pieces of written testimony, both for and against the bill, were submitted to the House Judiciary Committee by library staff members, parents, students, and organizations.¹²⁴ The testimonies opposing the bill largely reflected concerns regarding violating First Amendment rights, the overbreadth of the law, and the loss of local library autonomy.¹²⁵ On the other hand, testimony for the law concentrated on protecting local youth from obscene materials and maintaining the values of North Dakota.¹²⁶

The bill ultimately passed, after several amendments, and was signed into law as North Dakota Century Code Section 12.1-27.1-03.5.¹²⁷ The law, as passed, still prohibits public libraries from maintaining “books that contain explicit sexual material” in their children’s collections, but altered the definition of those materials from when originally introduced.¹²⁸ Modeled

120. See H.B. 1205, 68th Legis. Assemb., Reg. Sess. (N.D. 2023) (as introduced).

121. *Id.*

122. *Id.*

123. *Id.*

124. See generally N.D. STATE LEG., 2023 HOUSE JUDICIARY: H.B. 1205 (2023), <https://ndlegis.gov/files/resource/68-2023/library/hb1205.pdf> [<https://perma.cc/YL8J-6JN2>] (including written testimony submitted both in support and in opposition of H.B. 1205).

125. See *Relating to Prohibiting Public Libraries from Maintaining Sexually Explicit Books, Hearing on H.B. 1205 Before the H. Comm. on the Judiciary*, 68th Legis. Assemb., Reg. Sess. (N.D. 2023) (statement of Brian Kopp) (opposing H.B. 1205 and arguing it would violate First Amendment rights); *id.* (statement of Stephanie Baltzer, Former President, N.D. Libr. Ass’n) (opposing H.B. 1205 because of its overbreadth and alleging its interference with First Amendment rights); *id.* (statement of Patrick Sinner) (opposing H.B. 1205 and stating it would interfere with “the rights of local public libraries”).

126. See *id.* (statement of Judy Stahl) (supporting H.B. 1205 to “protect youth from pornographic and obscene materials in public libraries” and maintain North Dakota standards); *id.* (statement of Mark Jorritsma, Exec. Dir., N.D. Fam. All. Legis. Action) (supporting H.B. 1205 to protect “minors from harmful materials”).

127. N.D. CENT. CODE § 12.1-27.1-03.5 (2023) (codifying H.B. 1205).

128. See *id.* § 12.1-27.1-03.5(1)-(2). Compare *id.* § 12.1-27.1-03.5(1)(a) (defining “[e]xplicit sexual material”), with H.B. 1205, 68th Legis. Assemb., Reg. Sess. § 1(a) (N.D. 2023) (as introduced) (defining “[e]xplicit sexual material” to include “any pictorial, three-dimensional, or visual depiction, including any photography, picture, or computer-generated image, showing: (1) Human masturbation; (2) Deviant sexual intercourse; (3) Sexual intercourse; (4) Direct physical stimulation of genitals; (5) Sadoomasochistic abuse; (6) Postpubertal human genitals; (7) Sexual preferences; (8)

similarly to *Ginsberg*'s modified obscenity test for minors,¹²⁹ the statute defines explicit sexual material as:

any material which: (1) [t]aken as a whole, appeals to the prurient interest of minors; (2) [i]s patently offensive to prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable for minors; and (3) [t]aken as a whole, lacks serious literary, artistic, political, or scientific value for minors.¹³⁰

The bill therefore excludes obscene materials from children's collections which are not protected by the First Amendment.¹³¹ Furthermore, the law still requires public libraries to develop policies for conforming with the statute and "provide a compliance report" to legislative management.¹³²

B. SENATE BILL 2360 (2023)

At the same time the North Dakota legislature considered H.B. 1205, S.B. 2360 was introduced.¹³³ As with H.B. 1205, S.B. 2360 received numerous written testimonies, both for and against the bill, from the public.¹³⁴ Some of these testimonies even addressed both bills in the same testimonial.¹³⁵

S.B. 2360 sought to amend North Dakota Century Code Section 12.1-27.1-03.1, which renders a person "guilty of a class B misdemeanor" when the person willfully displays, to a minor, content that "is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion" in certain settings.¹³⁶ One such setting includes "[w]here minors are or may be invited as a part of the general

Sexual activity; (9) Sexual perversion; (10) Sex-based classifications; (11) Sexual identity; or (12) Gender identity" except for specified works of art or "materials used in science courses").

129. See *Ginsberg v. New York*, 390 U.S. 629, 645-46 (1968); *supra* text accompanying note 57.

130. N.D. CENT. CODE § 12.1-27.1-03.5(1)(a)(1)-(3) (2023).

131. See *id.*

132. *Id.* § 12.1-27.1-03.5(3)-(4) (requiring policies to include procedures for "remov[ing] or relocat[ing]" these materials, developing an age-appropriate collection, receiving public complaints, and periodically reviewing their collection to ensure compliance).

133. See S.B. 2360, 68th Legis. Assemb., Reg. Sess. (N.D. 2023).

134. See generally N.D. STATE LEG., 2023 SENATE JUDICIARY: S.B. 2360 (2023), <https://ndlegis.gov/files/resource/68-2023/library/sb2360.pdf> [<https://perma.cc/Q23J-9B5N>] (including written testimony submitted both in support and in opposition of S.B. 2360).

135. See generally *Relating to the Definition of a Public Library and Required Safety Policies and Technology Protection Measures; Relating to Obscenity Control; to Provide a Penalty; and to Provide an Effective Date, Hearing on S.B. 2360 Before the H. Comm. on the Judiciary*, 68th Legis. Assemb., Reg. Sess. (N.D. 2023) (statement of Joseph Rector, Dir., James River Valley Libr. Sys.) (opposing both H.B. 1205 and S.B. 2360).

136. S.B. 2360, 68th Legis. Assemb., Reg. Sess. § 3 (N.D. 2023); see also N.D. CENT. CODE § 12.1-27.1-03.1(1) (1977).

public,” but specifically excludes public libraries.¹³⁷ S.B. 2360 proposed amending the definition of this setting to include public libraries and public-school libraries.¹³⁸ Thus, creating a potential penalty for librarians or library staff.¹³⁹

The bill further proposed to create a new section of Chapter 12.1-27.1 titled “[s]afety policies and technology protection measures required.”¹⁴⁰ This section would require libraries with digital databases for children to provide safety policies that “[p]rohibit and prevent a user of the resource from sending, receiving, viewing, or downloading materials constituting an obscene performance or explicit sexual material; and [f]ilter or block access to explicit sexual material.”¹⁴¹ Again, this new section would have also created a punishment of a class B misdemeanor for employees “who willfully expose[] explicit sexual material to a minor.”¹⁴² Furthermore, a violation of this proposed section could result in withholding of funding and would require libraries to submit compliance reports.¹⁴³

Ultimately, the legislature passed this bill, but it was vetoed by former Governor Doug Burgum.¹⁴⁴ Governor Burgum agreed that “[p]rotecting children from explicit sexual material is common sense,” and cited H.B. 1205 as supporting this mission.¹⁴⁵ However, Governor Burgum was concerned that S.B. 2360 went “too far in criminalizing potential disagreements over what constitutes material that is harmful to minors, based on the bill’s subjectivity.”¹⁴⁶ Additionally, he presented concern about where the funding for these policies would come from, and the potential impact on the First Amendment.¹⁴⁷ Ultimately, S.B. 2360 was not passed into law.¹⁴⁸

137. N.D. CENT. CODE § 12.1-27-03.1(1), (2)(c).

138. S.B. 2360, 68th Legis. Assemb., Reg. Sess. (N.D. 2023) (as enrolled).

139. *See id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. Letter from Doug Burgum, Governor, N.D., to Tammy Miller, President, N.D. S. (Apr. 26, 2023), <https://www.sos.nd.gov/sites/www/files/documents/services/leg-bills/2023-68/senate-bills/2360.pdf> [<https://perma.cc/C3NG-N36U>].

145. *Id.*

146. *Id.*

147. *See id.* (noting that proposed S.B. 2360 would cost “\$300,000 initially and \$150,000 per year in annual, ongoing subscription costs”).

148. *Id.*

C. SENATE BILL 2307 (2025)

In 2025, the legislature attempted to pass a very similar bill to S.B. 2360 in the form of S.B. 2307.¹⁴⁹ S.B. 2307 proposed comparable amendments to North Dakota Century Code Section 12.1-27.1-03.1 as S.B. 2360.¹⁵⁰ The 2025 bill also proposed new amendments to Section 12.1-27.1-03.5, the section created in 2023 by H.B. 1205, which would add school districts to the places “prohibited from maintaining explicit sexual material.”¹⁵¹ As well as change the language regarding the place these materials were prohibited from “in its children’s collection inventory” to “in an area easily accessible to minors.”¹⁵² These amendments also included instructions for public libraries and school districts to relocate materials when requested by any individual, who could also call for a decisionmaking committee to hear their complaint.¹⁵³

The bill additionally proposed a new section of Chapter 12.1-27.1 entitled “[s]afety policies and technology protections measures required,” laid out very similarly to what S.B. 2360 proposed in 2023, but with additional compliance procedures and removal of the class B misdemeanor for failure to comply.¹⁵⁴ However, S.B. 2307 proposed an additional new section allowing those who had exhausted procedures laid out in the previous new section or Section 12.1-27.1-03.5 to contact the local state’s attorney for review.¹⁵⁵ This new section required a response within sixty days and allowed a state’s attorney who determined a violation had occurred to notify the violating institution.¹⁵⁶ If the institution did not correct the violation within ten days, the state’s attorney had to “notify the state treasurer” to withhold funds and could “prosecute for failure to comply with the law.”¹⁵⁷

149. *See* S.B. 2307, 69th Legis. Assemb., Reg. Sess. (N.D. 2025) (as enrolled).

150. *See id.* (adding public libraries and public school libraries to the definition of “[w]here minors are or may be invited as a part of the general public”).

151. *Id.*

152. *Id.*

153. *See id.*

154. *See id.*; S.B. 2360, 68th Legis. Assemb., Reg. Sess. (N.D. 2023) (as enrolled). *Compare id.* (requiring “an aggregate written report” about any provider compliance issues), *with* S.B. 2307, 69th Legis. Assemb., Reg. Sess. (N.D. 2025) (as enrolled) (requiring the same written report as well as all public libraries with online databases to “develop a policy and process for reviewing digital or online library database resources to ensure conformance with this section” including reporting mechanisms).

155. *See* S.B. 2307, 69th Legis. Assemb., Reg. Sess. (N.D. 2025) (as enrolled).

156. *Id.*

157. *Id.*

The public response to this bill was also extensive, and again passed through the legislature, only to be vetoed by Governor Kelly Armstrong.¹⁵⁸ In vetoing the bill, Governor Armstrong stated, “Senate Bill 2307 represents a misguided attempt to legislate morality through overreach and censorship,” and that it “imposes vague and punitive burdens on professionals and opens the door to a host of unintended and damaging consequences for our communities.”¹⁵⁹ Governor Armstrong noted these burdens came from *any* individual being able to complain and force committee consideration or review by a state’s attorney.¹⁶⁰ Governor Armstrong went on to explain that laws of this nature have targeted “*The Diary of a Young Girl by Anne Frank, Of Mice and Men, Slaughterhouse-Five, The Kite Runner, 1984, and To Kill a Mockingbird,*” and that he does not “pretend to know what the next literary masterpiece is going to be,” but that it should be available in libraries.¹⁶¹ Finally, the Governor highlighted that a bill of this nature would require “\$1.1 million of taxpayer money,” and that this money is best suited for other issues.¹⁶²

IV. WHY THE GOVERNORS’ VETOES WERE IMPORTANT FOR NORTH DAKOTA

“So now do you see why books are hated and feared? They show the pores in the face of life.”¹⁶³

Former Governor Burgum and current Governor Armstrong’s vetoes were not only the correct decision for North Dakota, but essential safeguards that remain important to protect North Dakotans’ First Amendment rights, as well as local library autonomy. Additionally, the concerns of a select few should not govern the reading lists of all, and parenting choices should remain personal not subject to a one-size-fits-all standard.¹⁶⁴ Public libraries

158. See generally N.D. STATE LEG., 2025 SENATE JUDICIARY: S.B. 2307 (2025), <https://ndlegis.gov/files/resource/69-2025/library/sb2307.pdf> [<https://perma.cc/9AJN-VHX8>] (presenting written testimony both in support of and in opposition to S.B. 2307); Letter from Kelly Armstrong, Governor, N.D., to Michelle Strinden, President, N.D. Senate (Apr. 22, 2025), <https://www.sos.nd.gov/sites/www/files/documents/services/leg-bills/2025-69/senate-bills/2307.pdf> [<https://perma.cc/GQ37-WMRP>] (vetoing S.B. 2307).

159. Letter from Kelly Armstrong, *supra* note 158.

160. *Id.* (adding that the proposed law does not even require the complaint to be made by a North Dakota resident).

161. *Id.* (explaining that “if a parent doesn’t think it is age appropriate for their child, that is a parenting decision”).

162. *Id.*

163. BRADBURY, *supra* note 1, at 79 (emphasis added).

164. See Letter from Doug Burgum, *supra* note 144.

are spaces that should be protected in order to encourage reading, especially in light of declining literacy rates across the country.¹⁶⁵

A. THE LOSS OF LIBRARY AUTONOMY

Proposed pieces of legislation like S.B. 2360 and S.B. 2307 have the potential to strip local libraries across North Dakota of their autonomy by creating statewide, burdensome standards based on a single individual's complaint.¹⁶⁶ Additionally, as noted by Governor Armstrong, the complaining individual need not be a North Dakota resident to do so, and can lodge a complaint toward *any* book.¹⁶⁷ North Dakota Century Code Section 12.1-27.1-03.5 already requires public libraries to "develop a policy and process for reviewing library collections," including policies for individuals to remove or relocate certain materials.¹⁶⁸ As a result of this statutory requirement, most public libraries in North Dakota have their own reporting policies, commonly referred to as reconsideration policies, in place for patrons to use if they have concerns with certain materials.¹⁶⁹ These libraries also have collection development policies in place as a result of this section to manage and maintain "the resources offered by the library" including online databases.¹⁷⁰

The reconsideration policies across the state often involve a form for patrons to fill out stating their concerns, and some libraries, like Ashley Public Library, include an appeal process if a patron's initial complaint is denied.¹⁷¹ Other libraries, like Fargo Public Library, do not allow for an appeal as the board's decision is final.¹⁷² Meanwhile, some libraries, like Beulah Public Library, even lay out a public hearing process for appeals of initial complaints.¹⁷³ These brief examples show variation throughout public libraries in

165. See Idress Kahloon, *America is Sliding Toward Illiteracy*, ATL (Oct. 14, 2025), <https://www.theatlantic.com/ideas/archive/2025/10/education-decline-low-expectations/684526/> [<https://perma.cc/TTP2-NEHU>].

166. See generally Letter from Kelly Armstrong, *supra* note 158 (expressing that S.B. 2307 is "redundant, overly burdensome, and places local librarians, school districts, and state's attorneys in an untenable situation"); Letter from Doug Burgum, *supra* note 144 (stating that S.B. 2360 creates "a de facto requirement that libraries conduct an expensive review of library materials that have already been through a screening process to protect young people from objectionable material").

167. See generally Letter from Kelly Armstrong, *supra* note 158.

168. N.D. CENT. CODE § 12.1-27.1-03.5(3) (2023); see also Letter from Kelly Armstrong, *supra* note 158 (highlighting that H.B. 1205 already restricts certain library materials "within a specific, defined scope").

169. See Mary Soucie, State Libr., North Dakota Public Library Collection Development Policies (Mar. 19, 2024), <https://ndlegis.gov/sites/default/files/committees/68-2023/25.5081.02000presentation1050.pdf> [<https://perma.cc/8YG8-3JLV>].

170. See *id.*

171. *Id.*

172. *Id.*

173. *Id.*

North Dakota—a variety that reflects the needs and abilities of particular localities.¹⁷⁴

Legislation akin to the vetoed bills would trample library autonomy by limiting the ability to shape its conforming policies in a manner that is best suited for a specific library’s needs.¹⁷⁵ As proposed legislation allows for any individual to “force the library to activate ‘a diverse decision-making committee’ to reconsider the location of [a] book in question.”¹⁷⁶ As it stands, some library policies omit language allowing for a committee to hear individual complaints, leaving most reconsideration requests to library boards.¹⁷⁷ Furthermore, if an individual is still unhappy with the result, they can request the state’s attorney to review the case.¹⁷⁸ This places an immense burden on public library staff, by compelling them to field individual complaints in order to avoid prosecution or loss of funding.¹⁷⁹ Therefore, these vetoes remain essential to protecting local library autonomy, given that they already have policies in place designed for compliance with existing statutory law.¹⁸⁰

B. THE COST TO NORTH DAKOTANS

Legislation like S.B. 2360 and S.B. 2307 would not only affect libraries themselves but would also impose significant costs on North Dakota residents. The economic burden of implementing these bills would fall directly on taxpayers, access to certain texts for certain individuals would be lost publicly, and the personal parenting decisions of a select group would dictate what all children may read at the library.¹⁸¹

As former Governor Burgum noted when vetoing S.B. 2360, implementing a bill like this would cost North Dakota “\$300,000 initially and \$150,000 per year in annual, ongoing subscription costs” as well as additional costs for more staff and software.¹⁸² Governor Armstrong predicted that implementing a bill similar to S.B. 2307 would cost \$1.1 million in taxpayer dollars.¹⁸³

174. *See id.* (including “policies collected from North Dakota Public Libraries related to collection development and reconsideration of library materials”).

175. *See* sources cited *supra* note 166 and accompanying text.

176. *See* Letter from Kelly Armstrong, *supra* note 158.

177. *See* Soucie, *supra* note 169.

178. *See* Letter from Kelly Armstrong, *supra* note 158.

179. *See id.* (“But the biggest problem is that many librarians and decision-makers will be resigned to simply accommodate the individual complaint. If something is even potentially controversial to some person, eliminating it will be easier than standing up a committee or getting the state’s attorney involved.”).

180. *See* Soucie, *supra* note 169; N.D. CENT. CODE § 12.1-27.1-03.5(3) (2023).

181. *See* Letter from Kelly Armstrong, *supra* note 158; Letter from Doug Burgum, *supra* note 144.

182. Letter from Doug Burgum, *supra* note 144.

183. Letter from Kelly Armstrong, *supra* note 158.

Moreover, North Dakotans would pay for extensive, burdensome policies that most libraries already have in place and are ready to effectuate.¹⁸⁴ Meanwhile, similar access concerns exist for children using social media, artificial intelligence, and streaming services, where these public funds could be better allocated.¹⁸⁵

These proposed laws also implicate readers' First Amendment rights as they are barred from receiving certain information when books are removed from libraries.¹⁸⁶ The unsettled caselaw at the Supreme Court level leaves the weight of this right questionable as the government speech doctrine could trample individuals' right to receive information in public library settings.¹⁸⁷ Regardless, as it stands, the Eighth Circuit has not applied the government speech doctrine to library curation, and North Dakota laws could be struck down for impeding citizens' right to receive information and ideas.¹⁸⁸

Furthermore, laws of this nature undercut parental decisions by attempting to impose "one-size-fits-all government mandates."¹⁸⁹ In fact, a 2022 survey revealed that seventy-one percent "of parents regardless of political affiliation oppose efforts to remove books from school libraries because some people find them offensive or inappropriate."¹⁹⁰ The same survey revealed that seventy-two percent of parents "distinguish between the rules they set for their own children and the right of other parents to decide what books are available to their children."¹⁹¹ One answer to this parental divide may be simply moving targeted books to library locations requiring parental consent; however, this may lead prohibited children to ask someone else to access the book for them, or lead children not prohibited to feel shame in asking for the book.¹⁹² Limiting access will only squander a child's wonder to learn or encourage use of alternative forums to access the same information, devaluing institutions like public libraries.

Solutions that would permit individual challenges to library materials while preventing viewpoint removals still exist for North Dakota public libraries. These solutions include enacting a statute preventing viewpoint

184. *See generally* Soucie, *supra* note 169 (including digital materials in collection policies).

185. *See* Letter from Kelly Armstrong, *supra* note 158.

186. *See* Bd. of Educ., *Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 870-72 (1982).

187. *See* Berner, *supra* note 26, at 189.

188. *See* *GLBT Youth in Iowa Schs. Task Force v. Reynolds*, 114 F.4th 660, 667-68 (8th Cir. 2024).

189. *See* Letter from Doug Burgum, *supra* note 144.

190. Ross, *supra* note 15, at 1706 (citation modified).

191. *Id.* (citation modified).

192. *Id.* at 1706-07.

discrimination in public library removals, limiting the number of challenges an individual can make at a time, or requiring a minimum number of individuals to challenge a title before a review committee is triggered.¹⁹³ These would allow for parents' voices to be heard without fear that certain voices will result in the removal of information for all.¹⁹⁴

However, Section 12.1-27.1-03.5 already exists and has faced no legal challenge within North Dakota to render it bad law.¹⁹⁵ Thus, North Dakota libraries could simply administer the proposed solutions within their required policies under this law.¹⁹⁶ Requiring local libraries to create more policies at a statewide level would simply create a higher burden on the public library system and take resources away from library patrons.¹⁹⁷ Leaving these solutions to localities is a more realistic solution.

C. THE PATH FORWARD

Instead of focusing on which books to remove from young readers' catalogues, the concern would be better placed in addressing children's trending disinterest in reading. In 2023, "only 14 percent of 13-year-olds reported reading for fun almost every day," compared to "30 percent in 2004 and 37 percent in 1992."¹⁹⁸ This lack of desire to read presents itself in 2025 test scores from the National Assessment of Educational Progress (NAEP), which highlighted "that 33 percent of eighth graders are reading at a level that is 'below basic'—meaning that they struggle to follow the order of events in a passage or to even summarize its main idea."¹⁹⁹ This is "the highest share of students unable to meaningfully read since 1992."²⁰⁰

The downward trend in reading ability and desire to read may be readily attributed to the unfettered access children now have to smartphones and the internet.²⁰¹ However, the social narrative surrounding the hobby of reading and how reading is presented in classrooms may also be a large

193. *See id.* at 1702-03; MINN. STAT. § 134.51 (2024); H.B. 119, 153rd Gen. Assemb., (Del. 2025).

194. *See* Ross, *supra* note 15, at 1706-07; Letter from Kelly Armstrong, *supra* note 158.

195. *See* N.D. CENT. CODE § 12.1-27.1-03.5(3) (2023).

196. *See id.* *See generally* Soucie, *supra* note 169 (compiling "policies collected from North Dakota Public Libraries related to collection development and reconsideration of library materials").

197. *See* Letter from Kelly Armstrong, *supra* note 158.

198. Niall Ferguson, *Without Books We Will Be Barbarians*, FREE PRESS (Oct. 10, 2025), <https://www.thefp.com/p/niall-ferguson-without-books-we-will-be-barbarians> [https://perma.cc/R6L9-KHZM].

199. Kahloon, *supra* note 165.

200. *Id.*

201. *Id.* (stating that by 2018, ninety-five percent of American teenagers had access to a smartphone, which has remained constant to today).

contributor.²⁰² Today, children “appear to be encountering fewer and fewer books in the classroom,” and when they are, it is often in sections and excerpts rather than full-length novels.²⁰³ Many of these selections are not literary at all, but short “informational texts” geared primarily toward preparing students for standardized testing.²⁰⁴ This results in students who “struggle to muster the attention or ambition required to immerse themselves in a substantial text,” as reading has been reduced to a transactional exercise rather than an opportunity to foster sustained attention, critical thinking, and interpretive skills.²⁰⁵

In this way, the pleasure of reading has been reframed to encompass simply mastering short passages to receive an adequate grade and check off another requisite skill.²⁰⁶ This way of learning was forewarned by Ray Bradbury in *Fahrenheit 451* when the main character learns, “[c]lassics [were] cut to fit fifteen-minute radio shows, then cut again to fill a two-minute book column, winding up at last as a ten- or twelve-line dictionary resume.”²⁰⁷ When children do not get to experience “the intrinsic pleasure of taking a narrative journey, making an emotional connection with a character,” and completing a full-length novel, they lose out on the joy of reading and wanting to start all over again with the next book.²⁰⁸ The lack of a narrative journey prevents young readers from engaging in critical thinking or analogical reasoning.²⁰⁹ Simply selecting certain passages to display to children does not allow them to appreciate the depth and breadth of a full-length story.²¹⁰ This is comparable to books being removed for select portions taken out of context and without understanding of the full story.²¹¹

202. See *id.*; Rose Horowitz, *The Elite College Students Who Can't Read Books*, ATL. (Oct. 1, 2024, at 10:57 ET), <https://www.theatlantic.com/magazine/archive/2024/11/the-elite-college-students-who-cant-read-books/679945/> [<https://perma.cc/H3QB-EXQU>].

203. See Horowitz, *supra* note 202 (noting “[t]eachers at many schools shifted from books to short informational passages”).

204. Elizabeth Ruiz Frost, *Reading is Dead: Can Law Schools Make Lawyers from Non-Readers?*, 104 NEB. L. REV. 293, 304-05 (2025).

205. See *id.*

206. See Katherine Marsh, *Why Kids Aren't Falling in Love with Reading*, ATL. (Mar. 22, 2023), <https://www.theatlantic.com/books/archive/2023/03/children-reading-books-english-middle-grade/673457/> [<https://perma.cc/L5KV-373Y>].

207. BRADBURY, *supra* note 1, at 52.

208. See Marsh, *supra* note 206.

209. See Frost, *supra* note 204, at 314.

210. See *id.*

211. Holloway, *supra* note 5, at 265-66 (presenting author John Green's assertion “that complete bans from public school libraries were the result of mere cursory reviews, such as parents pointing school administrators to a sexually charged scene without context” (citation omitted)).

Removing books from library shelves contributes to this downward trend by limiting access to certain books, ideas, and stories.²¹² This is significant because “[w]hen children are given the freedom to choose what they read, they are more likely to develop a love for reading.”²¹³ Removing certain books can “send[] a message that certain ideas are off-limits,” and cause librarians to stop recommending certain titles for fear of backlash.²¹⁴ When attempting to pass laws that further limit and restrict access to books, lawmakers should consider the negative impact they may have on children’s reading habits. Instead, time should be spent encouraging young learners to “read widely and often” and fall back in love with the act of reading.²¹⁵

Legal practitioners across the state should take special interest in the loss of reading from a young age because of the impact this has on lawyers to come.²¹⁶ Law students who read infrequently coming into law school are at a disadvantage when it comes to basic lawyering skills.²¹⁷ Especially in terms of writing, as reading from a young age leads to stronger, more sophisticated writing abilities.²¹⁸ Additionally, a love for reading and an ability to read deeply allows law students to approach and grapple with new legal topics in a more effective and empathetic manner.²¹⁹ The hobby of reading, and reading widely, should be preserved and encouraged to keep advancing the legal practice and prepare students for the rigors of law school and future practice.²²⁰

212. See Danielle V. Dennis, *Access Denied: How Banning Books Reduces Reading Volume and Achievement*, LITERACY TODAY, Oct.-Dec. 2025 at 8, 8.

213. *Id.* (“Choice empowers students to explore topics that interest them, discover new genres, and connect with characters who reflect their own experiences or introduce them to different perspectives.”).

214. *Id.*

215. *Id.* at 9.

216. See Frost, *supra* note 204, at 294-95.

217. *Id.*

218. See *id.* at 311-12.

219. See *id.* at 318-19.

220. See *id.* at 329 (encouraging law faculty to “support local libraries whose mission is to create lifelong readers”); see also Patricia Grande Montana, *Bridging the Reading Gap in the Law School Classroom*, 45 CAP. U. L. REV. 433, 434 (2017) (noting that reading ability influences a student’s ability to perform a variety of other needed legal skills).

V. CONCLUSION

*“There is more than one way to burn a book. And the world is full of people running about with lit matches.”*²²¹

Moving forward, it will be important for North Dakota lawmakers and legal practitioners to keep their fingers on the pulse of the changing legal landscape surrounding targeted book removals.²²² Whether the Supreme Court takes another case on this issue and is willing to answer the government speech circuit split or say more in terms of its *Pico* precedent remains to be seen.²²³ However, North Dakota already has a substantial law in place requiring public libraries to keep their collections and reconsideration policies up to date, and the state is not in need of stricter, more burdensome laws.²²⁴ The state should accept the two vetoes and work within the law that North Dakota has already developed.²²⁵ For legal practitioners, this issue is not merely academic; it implicates core First Amendment principles, shapes the contours of government authority, and influences how future generations develop the literacy and critical reasoning skills upon which the legal profession depends.²²⁶ As remarked by the named plaintiff in *Pico*, “I feel Americans should feel encouraged when a young person picks up any book to read.”²²⁷

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221. BRADBURY, *supra* note 1, at 209 (emphasis added).

222. *See generally* Little v. Llano Cnty., 138 F.4th 834 (5th Cir. 2025); GLBT Youth in Iowa Schs. Task Force v. Reynolds, 114 F.4th 660 (8th Cir. 2024); discussion *supra* Section II.B.

223. *See* Little v. Llano County, *supra* note 87.

224. *See generally* N.D. CENT. CODE § 12.1-27.1-03.5(3) (2023).

225. *See id.*

226. *See* Montana, *supra* note 220, at 434.

227. Debra Lau Whelan, *NCAC Talks to the Man Behind Pico v. Board of Ed, NAT’L COAL. AGAINST CENSORSHIP: BLOG* (July 9, 2013), <https://ncac.org/news/blog/ncac-talks-to-the-man-behind-pico-v-board-of-ed> [<https://perma.cc/MNY7-DQ5J>].

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