No. 24-1990

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RUTHIE WALLS, et al.

Plaintiffs-Appellees,

v.

JACOB OLIVA, et al.

Defendants-Appellants

On Appeal from the United States District Court
for the Eastern District of Arkansas
Case No. 4:24-CV-270 (Hon. Lee. P. Rudofsky)

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION, PEN AMERICA, AMERICAN CIVIL LIBERTIES UNION OF ARKANSAS, AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA, AMERICAN CIVIL LIBERTIES UNION OF IOWA, AMERICAN CIVIL LIBERTIES UNION OF NEBRASKA, AMERICAN CIVIL LIBERTIES UNION OF MISSOURI, AMERICAN CIVIL LIBERTIES UNION OF SOUTH DAKOTA, NORTH DAKOTA, AND WYOMING IN SUPPORT OF PLAINTIFFS-APPELLEES FOR AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the amici curiae here, American Civil Liberties Union, PEN America, American Civil Liberties Union of Arkansas, American Civil Liberties Union of Minnesota, American Civil Liberties Union of Iowa, American Civil Liberties Union of Nebraska, American Civil Liberties Union of Missouri, and American Civil Liberties Union of South Dakota, North Dakota, and Wyoming, state that they do not have a parent corporation and that no publicly held corporation owns 10% or more of its stock.

Dated: August 22, 2024

By: */s/ Emerson Sykes*
Emerson Sykes

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STATEMENT OF INTEREST OF AMICI[1]

The American Civil Liberties Union ("ACLU") is a nationwide, non-partisan, non-profit organization dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The ACLU has represented the students in all five of the Supreme Court's cases regarding student free speech, including *Mahanoy Area School District v. B. L. by & through Levy*, 594 U.S. 180 (2021), and *Tinker v. Des Moines*, 393 U.S. 503 (1969). As an organization committed to protecting the rights to freedom of speech, as well as students' rights to receive an education, the ACLU has a strong interest in the proper resolution of this case.

PEN American Center, Inc. ("PEN America") is a non-partisan, non-profit organization working at the intersection of literature and human rights. PEN America advocates for free expression and the interests of writers in the United States and abroad. Its membership includes more than 5,000 writers and literary professionals, including over 100 members in the states comprising the Eighth Circuit. As an advocate for free expression, PEN America has a particular

[1] Pursuant to Federal Rule of Appellate Procedure Rule 29(c), *amici curiae* certify that no person or entity, other than *amici curiae*, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part. The parties have consented to the filing of this brief.

interest in opposing the suppression of ideas in literature and education. As educational censorship has ballooned in recent years, PEN America has actively monitored efforts like the LEARNS Act to censor education, believing that any such effort is damaging to a flourishing democracy.

The American Civil Liberties Union of Arkansas ("ACLU of Arkansas"), an affiliate of the national ACLU, has been a defender of free expression in public schools since 1969. It was founded in the wake of *Epperson v. Arkansas*, 393 U.S. 97 (1968), in which the United States Supreme Court held that states may not outlaw the teaching of evolution. The affiliate's first case successfully challenged a state statute prohibiting "offensive talk" on school property. Later cases successfully challenged laws requiring that creationism be taught in schools and prohibiting employment of teachers who hold and discuss in the classroom heterodox political views. The ACLU of Arkansas is committed to the free-speech and equality rights of all people.

The American Civil Liberties Union of Minnesota ("ACLU-MN") is a non-partisan, non-profit organization dedicated to protecting the liberties guaranteed by the U.S. Constitution, the Minnesota Constitution, and state and federal civil rights laws. The ACLU-MN is an affiliate of the national ACLU and has over 21,000 members and supporters in the state of Minnesota. The ACLU-MN has a particular interest in ensuring that the legal and constitutional rights of public-school students

are fully protected and has participated as counsel and amicus curiae in numerous student's rights cases, including *Pratt v. Independent School District No. 831, Forest Lake, Minnesota*, 670 F.2d 771 (1982).

The American Civil Liberties Union of Iowa ("ACLU of Iowa") is a statewide non-profit and non-partisan organization dedicated to the principles of liberty and equality embodied in the Constitution. Founded in 1935, the ACLU of Iowa is the fifth oldest state affiliate of the national American Civil Liberties Union. The ACLU of Iowa works in the courts, legislature, and through public education and advocacy to safeguard the First Amendment rights of everyone in Iowa and has long prioritized work to protect the free speech rights of Iowa public school students. Its cases include the landmark case *Tinker* and the recently decided case *GLBT Youth in Iowa Schools Task Force v. Reynolds*, No. 24-1075, 2024 WL 3736785 (8th Cir. 2024). The proper resolution of this case is a matter of substantial interest to the ACLU of Iowa and its members.

The American Civil Liberties Union of Nebraska ("ACLU Nebraska") is a non-profit, non-partisan organization that has worked for over fifty years to defend and strengthen the individual rights and liberties guaranteed in the United States and Nebraska Constitutions through policy advocacy, litigation, education, and community empowerment. The ACLU Nebraska represents thousands of members and supporters in Nebraska. Speech on campus has often been the epicenter of

modern conversations on the First Amendment in Nebraska. The interest of ACLU Nebraska in this case is to continue to advocate for students' First Amendment rights free from government entanglement.

The American Civil Liberties Union of Missouri ("ACLU of Missouri") is a nonprofit, non-partisan organization with more than 19,000 members dedicated to defending the principles embodied in the United States Constitution and our nation's civil rights laws. Since 1920, the ACLU of Missouri and its predecessor entities have been devoted to the protection of constitutional rights, including free speech, writing, publication, assembly, and thought. Through direct representation and as amicus curiae, the ACLU of Missouri regularly engages in state and federal litigation to protect the rights embodied in the First Amendment.

The American Civil Liberties Union of North Dakota, South Dakota, and Wyoming is a non-profit, non-partisan membership organization devoted to protecting basic civil rights and civil liberties for all Americans. The ACLU of North Dakota, South Dakota, and Wyoming regularly litigates questions involving civil liberties in state and federal courts, helping to establish constitutional jurisprudence. Among the liberty interests crucial to the ACLU of North Dakota, South Dakota, and Wyoming and its members are the First Amendment freedoms of students and their right to receive information. Preserving these rights is essential to the preservation

of our democracy and a core mission of the ACLU of North Dakota, South Dakota, and Wyoming.

INTRODUCTION AND SUMMARY OF ARGUMENT

Since 2021, twenty-one states have passed laws that attempt to censor what students may learn about in public schools.[2] Arkansas joined this fray in 2023 when it passed Section 16 of the LEARNS Act. The LEARNS Act and other bans on inclusive education have sown confusion nationwide, with educators unsure what they are allowed to teach and what is forbidden.[3] At least three federal courts have stepped in to block, in whole or in part, similar laws in Florida, New Hampshire, and Oklahoma.

In this case, Plaintiffs challenge the vagueness of Section 16 as well as its implications for students' First Amendment rights. Defendants and their *amici* ask this court to deny any student First Amendment protections against politicized

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[2] Press Release, PEN America, *New Report: Legislatures Introduce 110 Educational Gag Orders in 2023* (November 9, 2023), https://perma.cc/S4DQ-WYVH.

[3] Notably, Defendants concede that the LEARNS Act does not prohibit "ordinary, non-compulsory teaching about Critical Race Theory" or other topics. Appellant's Br. at 32. If this Court sees fit to avoid the constitutional question at hand, it could accept the State's concession and clarify that Plaintiffs may receive the instruction they want without fear of violating the law. *See Lombardo v. City of St. Louis*, 38 F.4th 684, 690 (8th Cir. 2022) ("Courts should think hard, and then think hard again before deciding a constitutional question that need not be resolved to dispose of a case.").

school curriculum, disregard this court's binding precedent in *Pratt v. Independent School District No. 831, Forest Lake, Minnesota*, 670 F.2d 771 (8th Cir. 1982), and open the floodgates to politicized censorship and indoctrination. This brief focuses on the importance of recognizing public-school students' First Amendment rights and preserving this court's sound reasoning in *Pratt*. First Amendment rights, including as they relate to classroom curriculum, ensure a judicial guardrail against the imposition of a "pall of orthodoxy" over public-school classrooms. *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967). This court's precedent appropriately balances students' and state interests, providing appropriate deference to state and local officials to create curricula while protecting students' right to be free from ideological censorship. Defendants' view that the state's authority is plenary, and students' rights non-existent, would spell the end of quality public education across the country.

The district court opined that while *Pratt* remains binding law, this court should abandon it to "the dustbin of history." R. Doc. 25, at 35.[4] Defendants and *amici* states go even further – suggesting that *Pratt* has already been discarded without a word from this court. Appellant's Br. at 21; States Amicus Br. at 21-22.

[4] Presumably, the court would need to go *en* banc to actually overrule *Pratt*. *See Jackson v. Ault*, 452 F.3d 734, 736 (8th Cir. 2006) ("Our long standing rule is that one panel may not overrule an earlier decision by another.").

Precedent is not so easily dispatched. This court should unequivocally reject Defendants' view that inapposite government-speech caselaw precludes First Amendment claims in public schools. This court recently rejected exactly this argument in *GLBT Youth in Iowa Schools Task Force v. Reynolds*, No. 24-1075, 2024 WL 3736785 (8th Cir. 2024), in holding that government-speech doctrine does not apply to public-school libraries. It would flagrantly undermine *stare decisis* if a court were to adopt Defendants' argument that tangentially relevant cases can silently overrule long-standing precedent.

ARGUMENT

I. Students Have a First Amendment Right to Receive Information

Five and a half decades ago, it was already "well established that the Constitution protects the right to receive information and ideas." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). The Supreme Court has underscored the importance of upholding the "right to receive information and ideas, regardless of their social worth." *Id.* (citation omitted). And the Court has stated that "[t]he vigilant protection of constitutional rights is 'nowhere more vital' than in our schools and universities." *Tinker*, 393 U.S. at 512 (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)). "In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate." *Id.* at 511. Rather, they have a right to

express their own opinions, and to formulate those opinions through exposure to a diversity of information and ideas.

A. Students Have a First Amendment Interest in Public-School Curriculum

The district court correctly held that "the First Amendment right at issue—the right to receive information—is truly personal to [the Student Plaintiffs]. That is, if the State is withholding classroom materials and instruction from students in violation of the First Amendment, it is the students as private individuals who are actively harmed." R. Doc. 25, at 33. This holding is firmly rooted in Supreme Court precedent. Indeed, it is axiomatic that "[n]either students [n]or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker*, 393 U.S. at 506. The *Tinker* court emphasized that this conclusion had already been "the unmistakable holding of this Court for almost 50 years," *id.*, and the same has been true for the 55 years since.

In *Board of Education Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982), the Supreme Court explicitly recognized that public school students' First Amendment "right to receive ideas is a necessary predicate to the *recipient's"*—that is, the student's—"meaningful exercise of his own rights of speech, press, and political freedom." *Id.* at 867. The Court held that it had "long recognized certain constitutional limits upon the power of the State to control even

the curriculum and classroom." *Id*. at 861. *See Meyer v. Nebraska*, 262 U.S. 390 (1923) (striking down a state law that prohibited the teaching of modern foreign languages in public and private schools); *Epperson v. Arkansas*, 393 U.S. 97 (1968) (declaring unconstitutional a state law that banned teaching the Darwinian theory of evolution in public schools).

This court's decision in *Pratt* vindicated students' First Amendment right to receive information after a film and its commentary were removed from the curriculum to protect "religious and family values." 670 F.2d at 773. *Pratt* held that 1) students have "a right to be free from official conduct that was intended to suppress the ideas expressed in these films," *id*. at 776, and 2) to pass constitutional muster, "the board must establish that a substantial and reasonable governmental interest exists for interfering with the students' right to receive information." *Id*. at 777. This holding is sound and has never been abrogated directly or by implication.[5]

The facts and evidence presented in *Pratt* included a film adaptation of the short story "The Lottery" and accompanying trailers, as well as complaints about the

[5] The district court held, and Defendants do not dispute, that "[t]here has been no specific repudiation of *Pratt's* basic public-school-student-right-to-receive-information holding by the Supreme Court or by the Eighth Circuit." R. Doc. 25, at 35. As a result, the district court reached the obvious conclusion that it was "bound to apply the basic holding of *Pratt*." *Id.*

films raised by some parents in various fora. Those complaints "centered on the films' alleged violence and impact on the religious and family values of students." *Id.* at 774. Subsequently, "the school board acceded to their demands and voted to remove the films from the District's curriculum," *id.* at 773, though "[t]he board gave no reasons for its decision." *Id.* at 774. The board cited the films' "exaggerated and undue emphasis on violence and bloodshed" as justification for their removal. *Id*. at 775. However, the district court held that the board had "failed to produce any cognizable, credible evidence as to any legitimate reason for excluding this film," leading to the conclusion that the board removed the films because they "considered the films' ideological and religious themes to be offensive." *Id*. at 778. In light of these facts, this court held that "the students here had a right to be free from official conduct that was intended to suppress the ideas expressed in these films." *Id.* at 776.

Despite Defendants' and *amici* states' depictions, *Pratt* is not an "outlier," Appellant's Br. at 9, or "zombie precedent." R. Doc. 25, at 36. *Pratt* is consistent with *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 271 (1988), the Supreme Court's most recent framework for evaluating students' First Amendment rights "as part of the school curriculum." In that case, the Court considered a school's authority to edit or censor students' writing in a school newspaper. The Court held that "educators do not offend the First Amendment … so long as their [restrictions

on school-sponsored student speech] are reasonably related to legitimate pedagogical concerns." *Id*. at 273.

Several other districts in the Eighth Circuit have also recently cited *Pratt* as precedent. *See GLBT Youth in Iowa Sch. Task Force v. Reynolds*, No. 4:23-cv-00474, 2023 WL 9052113 at *14 (S.D. Iowa 2023) (holding that "based on *Pico* and *Pratt* … [s]tudent [p]laintiffs have a First Amendment right not to have books and materials removed from the school library" for impermissible reasons), *rev'd on other grounds by GLBT Youth in Iowa Sch. Task Force v. Reynolds*, 2024 WL 3736785 (8th Cir. 2024); *see also C.K.-W. v. Wentzville R-IV Sch. Dist.*, 619 F. Supp. 3d 906 (E.D. Mo. 2022) (applying *Pico* and *Pratt arguendo* in denying a preliminary injunction); *L.H. v. Indep. Sch. Dist.*, 4:22-cv-00801-RK, 2023 WL 2192234 (W.D. Mo. Feb. 23, 2023) (adopting the same approach as the E.D. Mo. in *C.K.-W. v. Wentzville R-IV Sch. Dist.*) *aff'd,* No. 23-2326, 2024 WL 3630112 (8th Cir. 2024).

Two other federal courts of appeals, the Ninth and Eleventh Circuits, have affirmed public-school students' right to receive information as part of classroom curriculum. In *Arce v. Douglas*, 793 F.3d 968, 981 (9th Cir. 2015), the Ninth Circuit recognized that the First Amendment "extended to students' right to receive information in the context of the development of a school curriculum." In that case, the court considered whether portions of an Arizona statute prohibiting a Mexican American Studies curriculum violated students' First Amendment right to receive

information, among other claims. The Ninth Circuit, citing *Tinker* and *Pico,* held that "the state may not remove materials otherwise available in a local classroom unless its actions are reasonably related to legitimate pedagogical concerns." *Id.* at 983 (quoting *Kuhlmeier*, 484 U.S. at 273). Likewise, the Eleventh Circuit in *Virgil v. School Board of Columbia County, Florida*, 862 F.2d 1517 (11th Cir. 1989) recognized high-school student plaintiffs' First Amendment interest in the removal of a textbook from the curriculum, and therefore applied *Kuhlmeier*. *See also Pernell v. Florida Bd. of Governors*, 641 F. Supp. 3d 1218, 1244 (N.D. Fla. 2022) (recognizing public college and university students' independent right to receive information in class curriculum, citing *Pico*).

Tellingly, Defendants and state amici cannot cite a single court that has taken their extreme position that *Pratt* or any other caselaw regarding school curriculum has been tacitly overruled by the development of government-speech caselaw in other contexts.

B. This Court's First Amendment Precedent Appropriately Balances Student and State Interests

This court must consider students' First Amendment right not to have a "pall of orthodoxy" cast over the classroom, *Pratt*, 670 F.2d at 776 (quoting *Keyishian*, 385 U.S. at 603), alongside the government's "comprehensive powers and substantial discretion" to create curricula and regulate speech in public schools. *Id*.

at 775. In *Pratt*, this court affirmed that "[b]y and large, public education in our Nation is committed to the control of state and local authorities." *Id*. But, "[n]otwithstanding the power and discretion accorded them, school boards do not have an absolute right to remove material from the curriculum." *Id*. at 776.

In *Pratt*, this court held that students had a "right to be free from official conduct that was intended to suppress the ideas expressed" in the films at issue. *Id.* This first part of the test established in *Pratt* focuses on plaintiffs showing censorial intent and is consistent with the Supreme Court's holding in *Pico* that "[o]ur Constitution does not permit the official suppression of *ideas.*" *Pico*, 457 U.S. at 871. This prohibition on intentional suppression of disfavored speech pervades First Amendment jurisprudence. To be clear, this principle, when applied to public schools, does not interfere with the state and local authorities' prerogative to create curriculum according to their expertise, but it does provide a safeguard against ideological censorship.

The second part of the *Pratt* test provides that if student plaintiffs can show that the government is engaging in decision-making that is "ideological," the burden shifts to the government to show a legitimate pedagogical purpose for its decision. *Pratt*, 670 F.2d at 776. "[T]o avoid a finding that it acted unconstitutionally, the board must establish that a substantial and reasonable governmental interest exists for interfering with the students' right to receive information." *Id.* at 777. In *Pratt*,

this court held that no "substantial and reasonable" government interest existed for removing the films, only the ideological and religious complaints of a few parents. *Id.*

By all accounts, under both *Pratt* and *Kuhlmeier* courts must consider the unique characteristics of public schools and the broad powers that the government has to regulate speech therein. In fact, even under *Pratt*, under normal circumstances when education officials are guided by research and expertise, they will have no difficulty in showing that curricular changes are not directed at suppressing speech, and that a substantial and reasonable government interest justified the changes. To succeed under *Pratt*, courts have required plaintiffs to show that officials "intended by their removal decision to deny students access to ideas with which the officials disagreed, and . . . this intent was the decisive factor in their decision." *C.K.-W*, 619 F. Supp. 3d at 915 (citation omitted); *see also L. H.*, 2023 WL 2192234.

Defendants' and state *amici*'s worst fears about the implications of preserving *Pratt* are unfounded. *Amici* claim that if this court remains bound by *Pratt,* "[s]tudents could force the State to require classes on underwater basket weaving." States Amicus Br. at 14. This absurd hypothetical misunderstands the basis of the right to receive information. It does not give the listener control over the speech, whether it's a magazine reader or an audience member at a lecture. Nor do Plaintiffs assert an affirmative right to control curriculum: legitimate pedagogical choices are

left to school officials. Plaintiffs simply assert that under *Pratt*, *Kuhlmeier*, and *Pico*, students have a First Amendment interest in their public education being free from political and ideological censorship. Student plaintiffs demand and deserve to gain a "deeper understanding of how past events inform their current experience" in their public educations, in line with Arkansas's academic standards and their teacher's expertise. R. Doc. 21, at 32.

II. Government-Speech Doctrine Does Not Preclude Students' Rights

Over the last three decades, the Supreme Court has articulated a government-speech doctrine, holding that under specific circumstances when the government itself is the *speaker*, the First Amendment does not preclude it from conveying its own message. These cases mark a notable development in First Amendment caselaw, but they do not address the rights of *listeners* or the unique characteristics of the right to receive information, and therefore do not control here. And the Supreme Court has specifically warned that judges "must exercise great caution before extending our government-speech precedents." *Matal v. Tam*, 582 U.S. 218, 235 (2017).

The district court correctly held that "contrary to Defendants' protestations, *Pratt* is not clearly irreconcilable with the subsequent Supreme Court precedent" developing the government-speech doctrine in other contexts. R. Doc. 25, at 35. The

district court rightly pointed out that "[n]one of the cases cited by Defendants involved in-class speech." *Id.* at fn. 193 (citing *Rust* v. *Sullivan*, 500 U.S. 173, 177-78 (1991) (government programs); *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 464 (2009) (public monuments); *Pico*, 457 U.S. at 855-56 (school libraries); *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 822-23 (1995) (college student activities fees); and *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 669 (1998) (political candidate debate invitations)). More precisely, the court held that "[n]one of the[se] cases did anything to directly undermine a student's First Amendment right to receive information." *Id*.

Among the many reasons the government-speech doctrine does not apply, government-speech cases address only the rights of the *speaker*, focusing on whether it is the government or a private entity speaking. Cases that address a plaintiffs' First Amendment right to receive information, by contrast, focus squarely on the rights of the *listener*. Government-speech doctrine is therefore a bad fit for student claims because it is designed to answer a different question. In *Stanley v. Georgia*, for example, the Supreme Court was laser focused on the readers' right to possess pornographic materials, not on the pornographers' or distributors' speech rights. *See* 394 U.S. at 558-68.

Likewise, in *Pico*, the Court only had before it the question of students' rights; it did not consider writers, publishers, or school librarians' rights. Circuit court

decisions in *Arce*, *Pratt*, and *Virgil* similarly focus on students' right to receive information and ideas, not the rights of the speaker. *Arce*, which post-dates *Rust*, rejected defendants' assertion that school curriculum is "considered government speech and [is] therefore immune from a forum or viewpoint-discrimination analysis." 793 F.3d at 982. The court observed that the government-speech cases cited by defendants did not "involve[] a *student's* First Amendment rights, and are accordingly inapplicable to the instant case." *Id*. (emphasis in original).

And as this court recent pointed out in *GLBT Youth in Iowa Schools Task Force v. Reynolds*, "the Supreme Court has not extended the government speech doctrine to the placement and removal of books in public school libraries," the purpose of which "is to advance the school curriculum." 2024 WL 3736785 at *5. Moreover, this court found, public-school library curation did not satisfy the "holistic inquiry" for government speech outlined in *Shurtleff v. City of Boston, Massachusetts,* 596 U.S. 243, 252 (2022). This court has followed wise counsel from the Supreme Court, which recognizes that "while the government-speech doctrine is important—indeed, essential—it is a doctrine that is susceptible to dangerous misuse … [to] silence or muffle the expression of disfavored viewpoints." *Matal*, 582 U.S. at 235. Extending government-speech doctrine to public-school classrooms creates just that risk. Likewise, the district court correctly held that despite Defendant's

assertion that government-speech doctrine applies to public-school curriculum, "no Supreme Court or Eighth Circuit case has said so yet." R. Doc. 25, at 36.

But the "government speech" question with regard to public-school curriculum does not end the First Amendment inquiry in this case, because it is about the rights of the listener, not the supposed government speaker. The Supreme Court has made clear that the fundamental right to receive information exists even when the speakers are not themselves protected by the First Amendment. *See Lamont v. Postmaster General*, 381 U.S. 301, 307 (1965) (striking down a restriction on mail containing "communist political propaganda from foreign countries" to vindicate "the addressee's First Amendment rights"); *see also Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972) (recognizing the independent First Amendment right of U.S. citizens to hear in-person lectures from a desired guest, an "unadmitted and nonresident alien").

If public-school curricula were deemed completely unsusceptible to any First Amendment review, there would be no guardrail against states racing to ideological extremes in their curricula. Indeed, there is evidence that this race among states may be underway, with many facing challenges under the First Amendment. For example, Louisiana's H.B. 71 requires every elementary, secondary, and postsecondary public school in the state to permanently display the biblical Ten Commandments in every classroom, and a group of students and their families immediately filed suit. *See Rev.*

Roake v. Brumley, No. 3:24-cv-517 (M.D. La. 2024). At the same time, a California community-college requirement that all professors incorporate "anti-racism" into their classroom instruction has prompted at least two legal challenges. *See Palsgaard v. Christian*, No. 1:23-cv-01228-ADA-CDB (E.D. Cal. 2023), and *Johnson v. Watkin*, No. 1:23-cv-00848-CDB, 2023 WL 5103237 (E.D. Cal. 2023).

Given this risk, federal courts can and do step in to address viewpoint discrimination and undefined restrictions on speech in the classroom. Laws similar to Section 16 have been enjoined in part or in full in Oklahoma, New Hampshire, and Florida. *See BERT v. Drummond*, No. CIV-21-1022-G, 2024 WL 3015359 (W.D. Okla. 2024) (granting a partial preliminary injunction against the implementation of Oklahoma's H.B. 1775 on vagueness grounds), *appeal pending*; *Local 8027 v. Edelblut*, No. 21-cv-1077-PB, 2024 WL 2722254 (D.N.H. 2024) (granting a permanent injunction against the implementation of New Hampshire's H.B. 2 on vagueness grounds), *appeal pending*; and *Pernell*, 641 F. Supp. 3d at 1288 (granting a preliminary injunction against the implementation of H.B. 7 in public higher education on vagueness and First Amendment grounds).

In summary, accepting Appellants' position in this case would diminish if not eradicate the free exploration of ideas that should occur in a classroom. If Appellants were correct, the classroom would be a venue not for the exchange and exploration of ideas but for the receipt of official history and official literature. Official histories

cannot be questioned or probed, whatever the political valence of the government's viewpoint. First Amendment doctrine cannot condone this sort of closed-off education system, on that would be unfitting for American democracy.

Under *Pratt* and relevant Supreme Court precedent, when the state tries to censor ideas its disagrees with, the First Amendment requires it to have a legitimate pedagogical reason for doing so. That approach strikes the proper balance between state and local officials' authority to run their schools, and public-school students' right to have their education be free from ideological censorship.

CONCLUSION

To preserve students' First Amendment right to receive a public-school education shaped by legitimate pedagogical concerns in the face of partisan and ideological censorship, this court should confirm that *Pratt* remains good law.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32

Pursuant to Fed. R. App. P. 32(g), I certify as follows:

1. This Brief of Amici Curiae in Support of Plaintiffs-Appellees complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 4,848 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365, namely 14-point Times New Roman font.

Dated: August 22, 2024

By: */s/ Emerson Sykes*
Emerson Sykes

Counsel of Record for Amici Curiae

CERTIFICATION OF COMPLIANCE WITH EIGHTH CIRCUIT RULE 28A(H)

Pursuant to this Court's Rule 28A(h), I hereby certify that the electronic version of this Brief of Amici Curiae in Support of Plaintiffs-Appellees has been scanned for viruses and is virus-free.

Dated: August 22, 2024

By: */s/ Emerson Sykes*
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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system, pursuant to Eighth Circuit Rule 25A.

Dated: August 22, 2024

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RE: 24-1990 Ruthie Walls, et al v. Jacob Oliva, et al

Dear Counsel:

The amicus curiae brief of the American Civil Liberties Union, American Civil Liberties Union of Arkansas, American Civil Liberties Union of Iowa, American Civil Liberties Union of Minnesota, American Civil Liberties Union of Missouri, American Civil Liberties Union of Nebraska, American Civil Liberties Union of South Dakota, North Dakota and Wyoming and PEN American Center, Inc., has been filed. If you have not already done so, please complete and file an Appearance form. You can access the Appearance Form at www.ca8.uscourts.gov/all-forms.

Please note that Federal Rule of Appellate Procedure 29(g) provides that an amicus may only present oral argument by leave of court. If you wish to present oral argument, you need to submit a motion. Please note that if permission to present oral argument is granted, the court's usual practice is that the time granted to the amicus will be deducted from the time allotted to the party the amicus supports. You may wish to discuss this with the other attorneys before you submit your motion.

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Acting Clerk of Court

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Enclosure(s)

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District Court/Agency Case Number(s): 4:24-cv-00270-LPR