REIMAGINING THE SCHOOLHOUSE GATE: CHILDREN'S RIGHT TO RECEIVE INFORMATION IN THE AGE OF CURRICULUM CENSORSHIP

INTRODUCTION

In recent years, various legislative and school board actions have sought to restrict or censor educational content related to race, gender, sexuality, and identity.[1] One prominent example is Florida's Parental Rights in Education Act[2] — the "Don't Say Gay" law — which prohibits classroom instruction on sexual orientation and gender identity in certain grades.[3] Though varying in scope, these legislative efforts share a common aim: to regulate what information students may access in school and thereby teach what is — and is not — acceptable to discuss.

Plaintiffs have challenged these restrictions in federal courts, with varying outcomes.[4] Some courts have struck down these restrictions as unconstitutional viewpoint discrimination,[5] some have upheld them under deferential standards such as *Hazelwood School District v. Kuhlmeier*,[6] while other courts have characterized curriculum decisions as government speech beyond First Amendment review.[7] What emerges is a patchwork of approaches that leaves unresolved the central question: Amid disputes over teachers' speech rights, parental authority, and state control of curriculum, *what direct rights, if any, do students have to receive information in public schools?*

Despite the Supreme Court's assurance that students do not "shed their constitutional rights . . . at the schoolhouse gate,"[8] the Court has

---

[1] *See* Jonathan Friedman, *Banned in the USA: The Growing Movement to Censor Books in Schools*, PEN AM. (Sep. 19, 2022), https://pen.org/report/banned-usa-growing-movement-to-censor-books-in-schools [https://perma.cc/6KUH-XDHD]; Sarah Schwartz, *Map: Where Critical Race Theory Is Under Attack*, EDUC. WK. (July 22, 2025), https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06 [https://perma.cc/L673-B82M].

[2] FLA. STAT. § 1001.42 (2022); *see* Press Release, Exec. Off. of Governor Ron DeSantis, Governor Ron DeSantis Signs Historic Bill to Protect Parental Rights in Education (Mar. 28, 2022), https://www.flgov.com/eog/news/press/2022/governor-ron-desantis-signs-historic-bill-protect-parental-rights-education [https://perma.cc/RC96-BUDU].

[3] NAT'L EDUC. ASS'N, WHAT YOU NEED TO KNOW ABOUT FLORIDA'S "DON'T SAY GAY" AND "DON'T SAY THEY" LAWS, BOOK BANS, AND OTHER CURRICULA RESTRICTIONS 2 (2023) (quoting H.R. 1557, 2022 Gen. Assemb., Reg. Sess. (Fla. 2022)), https://www.nea.org/sites/default/files/2023-06/30424-know-your-rights_web_v4.pdf [https://perma.cc/75KU-82FF].

[4] *See, e.g.*, Naaz Modan, *Book Ban Lawsuits One Step Closer to Supreme Court*, K–12 DIVE (June 13, 2024), https://www.k12dive.com/news/book-ban-lawsuits-supreme-court-appeals-circuit/718851 [https://perma.cc/2UKJ-4LG7].

[5] *See, e.g.*, Iowa Safe Schs. v. Reynolds, 788 F. Supp. 3d 969, 994–96 (S.D. Iowa 2025).

[6] 484 U.S. 260 (1988); *see, e.g.*, Virgil v. Sch. Bd. of Columbia Cnty., 677 F. Supp. 1547, 1553–54 (M.D. Fla. 1988) (quoting *Hazelwood*, 484 U.S. at 271) (holding that removing two books with sexually suggestive material was not unreasonable under the *Hazelwood* standard).

[7] *See, e.g.*, Chiras v. Miller, 432 F.3d 606, 620 (5th Cir. 2005); Griswold v. Driscoll, 616 F.3d 53, 59 n.6 (1st Cir. 2010).

[8] Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969).

steadily narrowed those rights, deferring to institutional authority.[9] Courts and policymakers often cast curriculum fights as adult disputes — parents versus the state — leaving students' own interests in the background.[10] This omission is constitutionally significant. Students are not passive vessels into which information is poured; they are emerging citizens entitled to form, challenge, and refine their beliefs.[11] They are also the ones most directly affected by choices about what is taught, yet their perspectives have been largely absent from jurisprudence governing educational content and censorship.[12]

This Note acknowledges that teachers, school administrators, and parents all have at least some constitutional interest in education, but it seeks to recenter the student in constitutional analysis by developing a robust theory of students' First Amendment right to receive information. That right, though long recognized as a corollary of free expression, remains underdeveloped in education law.[13] The First Amendment should not merely shield schools from state overreach or protect parents from ideological discomfort; it must also safeguard the rights of students to encounter diverse ideas, explore contested subjects, and engage critically with the world around them.[14]

The stakes of this debate are high. In a democracy, education functions not simply to transmit facts but to prepare students for informed citizenship.[15] As the Court declared in *West Virginia State Board of Education v. Barnette*,[16] "[t]hat [schools] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual."[17] Although later cases narrowed that principle,

---

[9] *See* Scott A. Moss, *The Overhyped Path from* Tinker *to* Morse*: How the Student Speech Cases Show the Limits of Supreme Court Decisions — For the Law and for the Litigants*, 63 FLA. L. REV. 1407, 1422–32 (2011) (describing how the Supreme Court reined in *Tinker* in subsequent cases).

[10] *See* Martha Minow, *Children's Rights: Where We've Been, And Where We're Going*, 68 TEMP. L. REV. 1573, 1583 (1995) (describing a "pervasive tendency to treat children as symbols of adult concerns").

[11] Anne C. Dailey, *Developing Citizens*, 91 IOWA L. REV. 431, 450 (2006) (quoting *Tinker*, 393 U.S. at 512). This idea was also espoused by Justices Brennan, Marshall, and Stevens. *See* Bd. of Educ. v. Pico, 457 U.S. 853, 868 (1982) (plurality opinion) ("[J]ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation . . . .").

[12] *See generally* Caroline Mala Corbin, Essay, *The Government Speech Doctrine Ate My Class: First Amendment Capture and Curriculum Bans*, 76 STAN. L. REV. 1473 (2024) (contending that framing curricula as government speech has captured the First Amendment in schools by excluding student and teacher claims from scrutiny and enabling ideological censorship of classroom content).

[13] *See* Thomas M. Cassaro, Note, *A Student's First Amendment Right to Receive Information in the Age of Anti-CRT and "Don't Say Gay" Laws*, 99 N.Y.U. L. REV. 280, 286–87 (2024).

[14] This Note concerns students' rights in public schools. Private schools involve a separate set of constitutional considerations, particularly the parental liberty interests recognized in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and developed in later jurisprudence.

[15] *See* Mahanoy Area Sch. Dist. v. B.L., 141 S. Ct. 2038, 2046 (2021) ("America's public schools are the nurseries of democracy.").

[16] 319 U.S. 624 (1943).

[17] *Id.* at 637.

particularly in the First and Fourth Amendment contexts,[18] its core insight remains: Schools are civic institutions entrusted with shaping the next generation. To fulfill that mission, courts must recognize students as rights holders and confront how censorship of topics such as race and sexuality undermines their constitutional and civic development.

Ultimately, this Note argues that students must have a constitutional right to access a broad range of ideas in public schools, even when those ideas conflict with the political or moral beliefs of the state or their parents. While schools must inevitably select what to teach, that process cannot be distorted by viewpoint-based censorship. Nor do parental rights justify such suppression: Parenting is a practice of guidance, not ownership, and *Pierce v. Society of Sisters*[19] and *Wisconsin v. Yoder*[20] stop short of granting parents plenary control over their children's intellectual development.[21] Courts have long presumed that parents act in their children's best interests,[22] but that presumption creates inevitable tension with the student's own constitutional interests. The First Amendment protects the individual[23] — not the family unit — and students possess a meaningful constitutional right to encounter diverse ideas, a right central to their emergence as civic participants in a democratic society.

This Note proceeds in four parts. Part I establishes the foundations and contours of the student's right to receive information, tracing its roots in First Amendment doctrine and its partial recognition in cases such as *Tinker v. Des Moines Independent Community School District*,[24] *Barnette*, and *Board of Education v. Pico*.[25] Part II builds the normative case for recognizing students as constitutional listeners, drawing on First Amendment theory, democratic education, and historical traditions of civic learning. Part III develops a student-centered framework for adjudicating curricular disputes, walking through how a court would analyze a curriculum-ban claim. Part IV applies this framework to several examples to show how a listener-rights analysis can guide courts in practice.

---

[18] *See, e.g.*, Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988); Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986); New Jersey v. T.L.O., 469 U.S. 325, 341 (1985); Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 664–65 (1995).

[19] 268 U.S. 510 (1925).

[20] 406 U.S. 205 (1972).

[21] *Pierce*, 268 U.S. at 534–35 (holding that a state law requiring all children to attend public schools violated the Due Process Clause because parents have a liberty interest in directing the upbringing and education of their children, but stopping short of granting absolute parental authority); *Yoder*, 406 U.S. at 232–34 (holding that compulsory high school attendance violated Amish parents' free exercise rights, but recognizing limits on parental control where children's health, safety, or public welfare is at stake).

[22] *See, e.g.*, Troxel v. Granville, 530 U.S. 57, 68–69 (2000) (plurality opinion) (quoting Parham v. J.R., 442 U.S. 584, 602 (1979)).

[23] Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos., Inc., 515 U.S. 557, 573 (1995).

[24] 393 U.S. 503 (1969).

[25] 457 U.S. 853 (1982).

I. THE ORIGINS AND CONTOURS OF THE RIGHT TO RECEIVE INFORMATION

A. Listener Rights in First Amendment Jurisprudence

The First Amendment is conventionally cast as a charter for speakers,[26] yet the Supreme Court has recognized that it protects listeners as well as speakers.[27] The freedom of speech does not secure expression in a vacuum; it secures a communicative process in which ideas can be transmitted and received, contemplated, and contested. Justice Marshall put the point succinctly when he wrote that "the Constitution protects the right to receive information and ideas[,] . . . regardless of their social worth,"[28] thereby underscoring that First Amendment protection attaches to the act of reception even when the content itself is controversial or unsettling. That understanding reflects a structural intuition about self-government: If the citizenry cannot hear competing views, it cannot engage in meaningful deliberation. In this way, listener rights complement speaker rights and together define the constitutional space in which public discourse occurs.

The Court first gave listener rights doctrinal visibility in cases involving handbill distribution and door-to-door canvassing. In *Martin v. City of Struthers*,[29] the Court invalidated a municipal ordinance that prohibited door-to-door dissemination of literature on nuisance and crime-prevention grounds, explaining that the First Amendment "embraces the right to distribute literature . . . and necessarily protects the right to receive it."[30] The constitutional harm in *Martin* was not merely that a pamphleteer had been silenced, but that households were disabled from deciding for themselves which messages to accept at their own thresholds. Under the Court's precedents, therefore, listener rights were a necessary predicate to the effective exercise of speech and press.[31] By viewing the transaction from both sides — the speaker and the audience — the Court linked expressive freedom to audience autonomy in a single analytic frame. That frame would recur across later disputes about how, where, and by whom ideas may be encountered.

The Warren Court further entrenched listener rights in First Amendment doctrine. In *Lamont v. Postmaster General*,[32] the Court invali-

---

[26] *See* Robert Post & Amanda Shanor, Commentary, *Adam Smith's First Amendment*, 128 HARV. L. REV. F. 165, 170 (2015).

[27] *See* Lamont v. Postmaster Gen., 381 U.S. 301, 305, 307 (1965) (holding that a statute requiring addressees of "communist political propaganda" to affirmatively request delivery was unconstitutional because it burdened the right to receive information, *id.* at 305).

[28] Stanley v. Georgia, 394 U.S. 557, 564 (1969) (citations omitted).

[29] 319 U.S. 141 (1943).

[30] *Id.* at 143 (citation omitted); *see also id.* at 144–45 (citation omitted); Schneider v. State, 308 U.S. 147, 164 (1939) (invalidating bans on leafleting in streets and parks without a police permit, emphasizing that convenience to the government cannot justify suppression of distribution).

[31] *See, e.g.*, Bd. of Educ. v. Pico, 457 U.S. 853, 867 (1982) (plurality opinion).

[32] 381 U.S. 301 (1965).

dated a statute requiring individuals to return a reply card before receiving materials labeled "communist political propaganda," finding that the requirement discouraged recipients from obtaining such messages and therefore burdened First Amendment rights.[33] Justice Brennan underscored the point in his concurrence: "The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them."[34] During the same era, the Court described the "right of the viewers and listeners" as "paramount" in the unique context of broadcast regulation, making audience access a constitutional anchor for shaping doctrine in a regulated medium.[35] The Court also extended protection to the public's right to receive truthful price information, confirming that even commercial speech implicates the audience's entitlement to hear what sellers wish to say.[36] Across these domains — mail, airwaves, and the marketplace — the Court recognized that the freedom to receive information is an essential complement to the freedom to speak.

The Court then articulated its most sweeping statement of listener rights in a case far afield from public forums: the private home. In *Stanley v. Georgia*,[37] the Court invalidated a conviction for possession of obscene films discovered in a domestic search, distinguishing between the state's power to regulate public dissemination of obscenity and its lack of authority to criminalize the mere reception and private contemplation of ideas.[38] "It is now well established," Justice Marshall wrote, "that the Constitution protects the right to receive information and ideas."[39] By applying the right to access materials that lay outside the protective core of speech doctrine, the opinion severed listener rights from any normative evaluation of the content's value, insisting that the act of receiving — of reading, watching, and thinking — was itself constitutionally significant. Other cases reinforced the theme by recognizing derivative audience interests, including the qualified right to receive ideas of foreign speakers in *Kleindienst v. Mandel*,[40] which, even while deferring to immigration judgments, acknowledged that domestic listeners claimed a cognizable First Amendment stake.[41] Across a wide variety of settings, the Court treated audience access not as an incidental effect of a speaker's liberty but as a distinct constitutional interest that shapes doctrinal outcomes. The upshot is a throughline: The First Amendment protects a two-sided exchange.

---

[33] *Id.* at 305.
[34] *Id.* at 308 (Brennan, J., concurring).
[35] Red Lion Broad. Co. v. FCC, 395 U.S. 367, 390 (1969) (citations omitted).
[36] Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, 425 U.S. 748, 757 (1976).
[37] 394 U.S. 557 (1969).
[38] *Id.* at 565–66.
[39] *Id.* at 564.
[40] 408 U.S. 753 (1972).
[41] *Id.* at 762–63 (quoting *Stanley*, 394 U.S. at 564).

B. Recognition of Listener Rights in Schools

With regard to classrooms and libraries, however, the Court becomes more tentative and qualified in its recognition of listener rights. Discussions of the First Amendment in schools often begins with *Tinker*, where the Court affirmed the right of high school students to wear black armbands in protest of the Vietnam War.[42] Although *Tinker* concerned student expression rather than audience access, its premise — that students are constitutional persons within public schools[43] — provides the doctrinal doorway through which listener rights might enter the building. The Court's framing of the school as a marketplace of civic learning and debate underscores the logic of audience protection: A community charged with preparing citizens must allow students to encounter and engage with competing ideas.[44] Even so, *Tinker* stopped short of articulating a right to receive information.[45] Instead, the Court emphasized that students are entitled to participate in public debate, so long as their expression does not substantially disrupt the educational environment.[46]

In *Pico*, the Court directly considered the listener's right to receive speech in a school setting. A school board decided to remove a set of books from the high school library because members found them "anti-American, anti-Christian, anti-Sem[i]tic, and just plain filthy."[47] The Court fragmented, producing a plurality opinion by Justice Brennan, joined by Justices Marshall, Stevens, and Blackmun in relevant part, and concluded that, while school boards retain considerable discretion over curricular matters, they may not excise library books simply to suppress disfavored ideas.[48] The plurality stressed the distinctive nature of the library as a site of voluntary inquiry rather than compulsory instruction, and it characterized viewpoint-motivated removals as "an official suppression of ideas" incompatible with the First Amendment.[49] In language echoing previous cases recognizing listener rights, the opinion rejected the notion that students may be treated as "closed-circuit recipients of only that which the State chooses to communicate."[50] Although no single rationale garnered a majority, *Pico* stands as the Court's most direct recognition that students hold a constitutional interest in receiving information, at least in *some* school contexts.[51] The decision,

---

[42] Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 514 (1969).

[43] *Id.* at 506.

[44] *Id.* at 512 (quoting Keyishian v. Bd. of Regents, 385 U.S. 589, 603 (1967)).

[45] *See* Erwin Chemerinsky, *Students Do Leave Their First Amendment Rights at the Schoolhouse Gates: What's Left of* Tinker*?*, 48 DRAKE L. REV. 527, 535 (2000) (explaining that *Tinker* emphasized "safeguarding students' freedom of expression," required proof of substantial disruption to justify regulation, and stressed judicial oversight in reviewing school restrictions).

[46] *Tinker*, 393 U.S. at 506, 509 (quoting Burnside v. Byars, 363 F.2d 744, 749 (5th Cir. 1966)).

[47] Bd. of Educ. v. Pico, 457 U.S. 853, 857 (1982) (plurality opinion) (alteration in original).

[48] *Id.* at 855, 871–72.

[49] *Id.* at 871.

[50] *Id.* at 868 (quoting *Tinker*, 393 U.S. at 511).

[51] *See id.* at 867–68.

in short, planted a doctrinal flag without mapping the surrounding terrain.

Lower courts have treated that flag cautiously, often cabining *Pico* to its facts while acknowledging its core insight that students have some right to receive information.[52] Some courts have relied on *Pico* to invalidate library restrictions that were transparently viewpoint-based, reasoning that the plurality's prohibition on ideological purges applies when school authorities target a defined set of ideas for removal.[53] Other courts, however, have declined to extend *Pico* beyond libraries to classroom content or pedagogical selections, emphasizing the compulsory and teacher-directed nature of instruction as a basis for broader administrative control.[54] The upshot is a patchwork: Libraries sometimes receive the mantle of listener protection, classrooms far less so. Even where courts invoke *Tinker*'s language about student rights, they frequently resolve disputes over access by deferring to school administrators under separate doctrines[55] or by reframing the question as one about the school's own speech.[56] The result is that listener rights in school-curriculum cases are recognized in principle, yet rarely made dispositive outside the narrow setting of voluntary choices of reading material. That pattern sets the stage for the deeper reasons why schools have been treated differently.

C. Why Schools Have Been Treated Differently

The judiciary's reluctance to recognize student-listener rights in the classroom stems from a set of intersecting doctrinal currents that prioritize adult authority and institutional control over student autonomy. Together, these currents create structural headwinds that help explain why listener rights have never been consolidated into a stable body of doctrine in the school context.

The first current is the parental-liberty tradition, grounded in cases such as *Meyer v. Nebraska*[57] and *Pierce*, which recognized parents'

---

[52] *See, e.g.*, Campbell v. St. Tammany Par. Sch. Bd., 64 F.3d 184, 188–89 (5th Cir. 1995) (holding that *Pico* spoke only to library removals and emphasizing school boards' broad discretion, but recognizing that removals motivated by viewpoint discrimination could be unconstitutional), *overruled by*, Little v. Llano County, 138 F.4th 834, 837 (5th Cir. 2025) (en banc).

[53] *See, e.g.*, Case v. Unified Sch. Dist. No. 233, 908 F. Supp. 864, 876–77 (D. Kan. 1995) (quoting *Pico*, 457 U.S. at 872) (holding that a school board violated the First Amendment by removing a book about a fictional lesbian romance from the library, finding it to be viewpoint-based and thus impermissible under *Pico*).

[54] *See, e.g.*, Chiras v. Miller, 432 F.3d 606, 619–21 (5th Cir. 2005) (holding that school board decisions regarding textbook selection constitute government speech and are not subject to *Pico*'s First Amendment limits).

[55] *See infra* section I.C, pp. 782–84.

[56] *See, e.g.*, Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 270–73 (1988) (distinguishing *Tinker* and holding that school-sponsored student speech in a curricular newspaper may be regulated if "reasonably related to legitimate pedagogical concerns," *id.* at 273).

[57] 262 U.S. 390 (1923); *id.* at 399–403.

constitutional substantive due process interest in directing a child's upbringing and education.[58] Courts frequently invoke these decisions to support parental objections to curricular content, especially in areas where families' religious or moral convictions diverge from public-school offerings.[59] The presumption underlying *Meyer* and *Pierce* — that parents, not schools or the state, are the default decisionmakers — was later reinforced in *Troxel v. Granville*,[60] which articulated a presumption that fit parents act in their child's best interests, thus shaping how school-based conflicts are framed and whose preferences carry presumptive weight.[61] In practice, these principles have often supplied rhetorical and doctrinal leverage to adult claimants, even when the dispute's immediate effect is to restrict what students may encounter. The result is that parental liberty tends to occupy constitutional space that a listener-rights analysis might otherwise fill.

A second current is the tradition of deferring to school administrators' judgments about pedagogy. In *Hazelwood*, the Court upheld a principal's decision to remove pages of a student newspaper addressing divorce and teen pregnancy.[62] Distinguishing *Tinker*, the Court explained that schools are authorized to regulate school-sponsored student expression so long as the regulation is "reasonably related to legitimate pedagogical concerns,"[63] establishing a deferential standard that entrenches administrative control over the content of school-affiliated speech. That same rationale carries over when disputes are framed in terms of student access to information: If schools may censor what students write in the name of pedagogy, they may also control what students read or are taught on the same grounds.[64] In this way, listener-rights claims are effectively reframed as disputes about educational discretion, with the effect of removing audience interests from the analysis.

A third current is the limited scope of teacher speech rights in the schoolhouse, which diminishes the likelihood that listener rights will be vindicated via a teacher's right to disseminate information. *Garcetti v. Ceballos*[65] makes clear that when employees speak pursuant to their

---

[58] Issac J.K. Adams, Note, *Growing Pains: The Scope of Substantive Due Process Rights of Parents of Adult Children*, 57 VAND. L. REV. 1883, 1893–94 (2004).

[59] *E.g.*, Mahmoud v. Taylor, 145 S. Ct. 2332, 2345–46, 2363 (2025) (holding that parents were entitled to notice and opt-out opportunities when public elementary students introduced LGBTQ+-inclusive storybooks and subsequently "rescinded parental opt outs," *id.* at 2346).

[60] 530 U.S. 57 (2000).

[61] *Id.* at 68–69 (plurality opinion).

[62] Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 274 (1988).

[63] *Id.* at 270–71, 273.

[64] *See* Chemerinsky, *supra* note 45, at 538–39 (quoting *Hazelwood*, 484 U.S. at 270) (arguing that *Hazelwood*'s "legitimate pedagogical concerns" test, alongside Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986), provides "minimal protection for student speech," Chemerinsky, *supra* note 45, at 539); CATHERINE J. ROSS, LESSONS IN CENSORSHIP: HOW SCHOOLS AND COURTS SUBVERT STUDENTS' FIRST AMENDMENT RIGHTS 113–15 (2015) (criticizing applications of *Hazelwood* as so deferential that they considerably chill free classroom discussion).

[65] 547 U.S. 410 (2006).

official duties, they ordinarily have no First Amendment claim against disciplinary action from their employer.[66] Lower courts have extended that principle to classroom instruction. In *Mayer v. Monroe County Community School Corp.*[67] and *Evans-Marshall v. Board of Education*,[68] for example, teachers' decisions about reading assignments and pedagogical methods were treated as matters of administrative supervision rather than protected speech.[69]

Because teachers frequently serve as the channel through which information reaches students, constraining teachers truncates a significant avenue through which listeners' interests might be vindicated. The upshot is structural: When teachers cannot object on constitutional grounds, courts are less likely to engage the student's parallel claim to receive ideas.

A final current arises from the broader trajectory of student constitutional rights, which have contracted over time in ways that make it difficult for new rights — like a right to receive information — to take hold. Even outside the speech context, the Court has repeatedly narrowed the scope of student protections. In *New Jersey v. T.L.O.*,[70] for example, the Court permitted school searches on less than probable cause, holding that reasonable suspicion was sufficient in light of the school environment.[71] Similarly, in *Goss v. Lopez*,[72] the Court recognized that students facing suspension are entitled to some due process, but reduced the entitlement to a minimal notice-and-hearing requirement, far less than what adults would receive in comparable situations.[73] These cases reflect an ambient skepticism about the full constitutional personhood of students and a willingness to treat schools as exceptional spaces where rights are more limited, more fragile, and more easily overridden.

D. An Unresolved Question

These currents together produce a messy constitutional anomaly: Despite the First Amendment's settled protection for audiences across a wide array of settings, the contours of any analogous protection for students inside public schools remain underspecified and irregularly applied. *Tinker* confirmed that students are rights holders, yet its test

---

66 *Id.* at 421.

67 474 F.3d 477 (7th Cir. 2007).

68 624 F.3d 332 (6th Cir. 2010).

69 *See Mayer*, 474 F.3d at 480 (holding that a teacher had no First Amendment claim after being dismissed for expressing her opposition to the Iraq War during class); *Evans-Marshall*, 624 F.3d at 340–41 (holding that a teacher had no First Amendment right to select particular books for instruction).

70 469 U.S. 325 (1985).

71 *Id.* at 341–42.

72 419 U.S. 565 (1975).

73 *Id.* at 581, 583 (explaining the process for notice-and-hearing requirements and noting that the procedures do not have to be as robust as the procedures available to adults).

concerned student expression rather than access to ideas.[74] *Pico* recognized a student's interest in receiving information,[75] yet it did so with a fractured opinion tied to the library context.[76] Meanwhile, doctrines emphasizing parental prerogative, managerial deference, and government speech have furnished courts with tools to decide disputes without addressing whether students, as listeners, possess a freestanding constitutional interest in the content made available to them.[77]

Consequently, the outcome in similar controversies can turn on threshold issue framing — library versus classroom, teacher versus student claim, or pedagogy versus viewpoint.[78] Variability, rather than a coherent account of listener rights in schools, describes the present landscape. Nothing in the Court's broader First Amendment jurisprudence forecloses a school-specific right to receive information; at the same time, nothing in the Court's school cases has squarely announced such a right or supplied administrable boundaries for it. This unresolved patchwork is not a sign of stability but of drift. That very instability underscores the need to articulate a normative account: If the Court has left the field muddled, we must ask what role listener rights in schools *should* play in sustaining a democracy committed to constitutional principles.

II. THE NORMATIVE CASE FOR STUDENT-LISTENER RIGHTS

The unresolved status of listener rights in school matters because the schoolhouse is the one institution where the state most comprehensively structures citizens' exposure to ideas at a formative stage.[79] Adults can choose which newspapers to buy and which broadcasts to tune in to or turn off; students, by contrast, are a captive audience whose daily access to ideas is shaped almost entirely by curricular choices and library holdings. When courts categorize those choices as matters of managerial discretion or as government speech without further analysis, they risk

---

[74] Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 511 (1969).

[75] Bd. of Educ. v. Pico, 457 U.S. 853, 867 (1982) (plurality opinion).

[76] *Pico* has been described as fractured because there were seven separate opinions in the case. *See* Johany G. Dubon, Note, *Rereading* Pico *and the Equal Protection Clause*, 92 FORDHAM L. REV. 1567, 1578–81 (2024); *see also Pico*, 457 U.S. at 883 (White, J., concurring in the judgment).

[77] *See, e.g.*, Mayer v. Monroe Cnty. Cmty. Sch. Corp., 474 F.3d 477, 480 (7th Cir. 2007).

[78] *Compare* Virgil v. Sch. Bd. of Columbia Cnty., 677 F. Supp. 1547, 1550 (M.D. Fla. 1988) (upholding decision to remove textbook containing sexual themes from class use as permissible exercise of curricular discretion), *with* Little v. Llano County, 103 F.4th 1140, 1144, 1157 (5th Cir. 2024) (holding unconstitutional removal of books containing sexual themes from library as viewpoint discrimination), *rev'd en banc*, 138 F.4th 834 (5th Cir. 2025).

[79] Meira Levinson, *The Civic Empowerment Gap: Defining the Problem and Locating Solutions*, *in* HANDBOOK OF RESEARCH ON CIVIC ENGAGEMENT IN YOUTH 315, 316, 331, 334–35 (Lonnie Sherrod et al. eds., 2010) (arguing that schools have the capacity to play a central role in shaping the civic capacities of young people).

treating the school as a transmitter of orthodoxy rather than as a civic institution dedicated to inquiry.[80]

This Part makes the normative case for recognizing student-listener rights. It begins with *Tinker*'s recognition of students as constitutional persons and its marketplace-of-ideas metaphor. It then draws on democratic education theory to show why pluralism and exposure to dissent are indispensable civic values. Next, it explains how a listener-rights framework fits comfortably within existing First Amendment doctrine and historical traditions. Finally, it responds to objections that such a right would destabilize schools, arguing instead that it would provide a modest but vital safeguard against ideological censorship while preserving professional judgment.

A. Tinker*'s Enduring Core*

Although later cases have narrowed its reach, *Tinker* remains the most compelling starting point for recognizing student-listener rights because it anchors two propositions the Court has never repudiated: Students are constitutional persons, and schools may not suppress ideas merely because they are unpopular.[81] Dean Erwin Chemerinsky captures the point crisply, calling *Tinker* "the most important Supreme Court case in history protecting the constitutional rights of students," often discussed "for its ringing pronouncement" that students do not shed their First Amendment rights at the schoolhouse gate.[82] And *Tinker* itself — through Justice Fortas's canonical passage — states the constitutional truth that keeps the case alive: "Students in school as well as out of school are 'persons' under our Constitution . . . [and] may not be regarded as closed-circuit recipients of only that which the State chooses to communicate . . . no[r] . . . confined to the expression of those sentiments that are officially approved."[83]

What makes *Tinker* distinctive is that it articulated a rule of principle, while later cases are context-specific carveouts. *Bethel School District No. 403 v. Fraser*[84] permitted a school to discipline vulgar speech at a school assembly.[85] *Hazelwood* upheld restrictions on school-sponsored student expression under a "legitimate pedagogical concerns" test.[86] *Morse v. Frederick*[87] allowed suppression of free speech

---

[80] *See* Dylan Salzman, Comment, *The Constitutionality of Orthodoxy: First Amendment Implications of Laws Restricting Critical Race Theory in Public Schools*, 89 U. CHI. L. REV. 1069, 1091–109 (2022) (suggesting a new framework that would combat the imposition of orthodoxy in government schools).

[81] *See* Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 509, 511 (1969); Jamin B. Raskin, *Student Speech: The Enduring Greatness of* Tinker, 35 HUM. RTS., Summer 2008, at 2, 5.

[82] Chemerinsky, *supra* note 45, at 527.

[83] *Tinker*, 393 U.S. at 511.

[84] 478 U.S. 675 (1986).

[85] *Id.* at 685.

[86] Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273–74 (1988).

[87] 551 U.S. 393 (2007).

reasonably understood as promoting illegal drug use.[88] Even *Pico*, the only decision to foreground listener rights, resulted in no majority opinion[89] and was limited to library removals.[90] Each case has significance, but none displaces *Tinker*'s insistence that schools cannot exclude ideas simply because they provoke disapproval. As Professor Jamin Raskin observes, even after these rulings, "*Tinker* is still good law. . . . [T]he reasoning of the case seems ever more visionary and relevant."[91]

Tinker is normatively superior to subsequent cases because it reflects the civic role of schools as "marketplace[s] of ideas."[92] The Court's metaphor underscores that the schoolhouse is not an information vacuum but a site where students must learn to engage with various ideas. Later cases have chipped away at the breadth of protected student expression, but none have directly overruled *Tinker*.[93] In this way, *Tinker* provides not only the doctrinal foundation but also the constitutional insight that points toward listener rights: If schools are marketplaces of ideas, then safeguarding access to those ideas is essential to schools' democratic mission.

B. Democratic Education and the Constitutional Value of Critical Thinking

If *Tinker* supplies the doctrinal foundation for recognizing student-listener rights, democratic education provides the normative justification.[94] As countless thinkers on education have expounded over the years, public schools are not simply delivery mechanisms for basic literacy and numeracy; they are civic institutions whose central mission is to prepare young people for democratic self-rule.[95] Professor Meira Levinson has emphasized this point by arguing that young people must practice learning about and debating societal issues to avoid civic disempowerment, for without early opportunities to engage in critical thinking, they risk entering adulthood ill-equipped for democratic decisionmaking.[96]

First Amendment doctrine's manifest distrust of viewpoint discrimination dovetails with this civic purpose. Outside of K-12 schools,

---

[88] *Id.* at 403.

[89] *See* Dubon, *supra* note 76, at 1578.

[90] *See* Bd. of Educ. v. Pico, 457 U.S. 853, 872 (1982) (plurality opinion).

[91] Raskin, *supra* note 81, at 5.

[92] Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 512 (1969) (quoting Keyishian v. Bd. of Regents, 385 U.S. 589, 603 (1967)).

[93] Chemerinsky, *supra* note 45, at 529.

[94] *See* Edda Sant, *Democratic Education: A Theoretical Review (2006–2017)*, 89 REV. EDUC. RSCH. 655, 657 (2019).

[95] *See, e.g.*, JOHN DEWEY, DEMOCRACY AND EDUCATION 100–02 (1916) (describing democracy as a "mode of associated living," *id.* at 101); AMY GUTMANN, DEMOCRATIC EDUCATION 50–52 (rev. ed. 1999) (insisting that democratic education requires deliberate exposure to contested values so that students develop the skills of critical engagement).

[96] *See* MEIRA LEVINSON, NO CITIZEN LEFT BEHIND 34–36, 43–44, 56–57 (2012).

courts have long treated viewpoint-based exclusions as presumptively unconstitutional.[97] Yet within K-12 schools, curricular bans often do exactly what the First Amendment forbids elsewhere: They silence categories of ideas because they are contested, controversial, or discomforting to majorities. This inconsistency matters because schools have often been described as "marketplace[s] of ideas,"[98] yet in practice, they function as the most pervasive channel through which the state determines which ideas children will encounter. This dual role heightens the risk of ideological capture. When courts permit curricular or library exclusions to stand on managerial rationales, such as in the post-*Tinker* cases, they effectively allow the state to shape civic identity through silence as much as through speech. The danger is not simply that students miss certain viewpoints, but that they internalize the lesson that some perspectives are unfit for civic consideration.

The justification for listener rights, then, is not merely doctrinal consistency but the preservation of democratic education itself. Democratic education cannot flourish when certain perspectives are systemically excluded; it requires that students encounter dissent, weigh competing claims, and learn the skills of respectful disagreement.[99] Shielding students from unpopular or contested ideas not only distorts their civic preparation but also undermines the very principle of pluralism on which constitutional democracy depends.[100] Recognizing that students must be free to receive ideas — just as they must be free to express them — ensures that schools remain institutions of inquiry rather than instruments of orthodoxy.

C. Historical Value of Education and the Relationship to the Republic

If democratic education theory explains why listener rights matter in practice, history illuminates why extending them to students is consistent with our constitutional tradition. This is not an argument that the right is "deeply rooted" in the *Washington v. Glucksberg*[101] sense; the

---

[97] *E.g.*, Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 828–29, 837 (1995) (holding that denial of student activity funds to a religious publication constituted impermissible viewpoint discrimination).

[98] *See* Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 509, 512 (1969) (describing classrooms as "peculiarly the 'marketplace of ideas,'" *id.* at 512 (quoting Keyishian v. Bd. of Regents, 385 U.S. 589, 603 (1967))); Bd. of Educ. v. Pico, 457 U.S. 853, 868–69 (1982) (plurality opinion) (emphasizing that school libraries are "the principal locus of . . . freedom" for students "to inquire, to study and to evaluate" (quoting *Keyishian*, 385 U.S. at 603)).

[99] LEVINSON, *supra* note 96, at 44–45.

[100] *E.g.*, Abigail Dallmann, *Preserving Viewpoint Pluralism and Democratic Principles: Florida's "Divisive Concepts" Law and Strategies for Challenging the Law's Enforcement in K-12 and Higher Education*, J.L. & EDUC., Spring 2024, at 41, 43 (arguing that "Florida's divisive concepts legislation . . . is an assault on pluralism in public school classrooms").

[101] 521 U.S. 702, 721 (1997) (quoting Moore v. City of East Cleveland, 413 U.S. 494, 503 (1977) (plurality opinion)) (explaining that the Court protects, under the Due Process Clause, only those rights historically rooted and essential to the structure of ordered liberty).

Court has already made clear that the right to receive information is a fundamental First Amendment entitlement.[102] The point instead is that American political thought has long understood the diffusion of knowledge to the young as indispensable to republican government, and that this recognition undermines any claim that parental authority or administrative control should foreclose students' access to contested ideas.

At the Founding, children were often seen as under parental authority, and public schools routinely imposed curricular and moral limits.[103] One might argue that this demonstrates a tradition of communal control over what information children could access.[104] But this critique misstates both the nature of the tradition and the principle at stake. Of course, all curricular judgments are normative; selection always entails exclusion. The critical distinction is not between "value-free" and "value-laden" choices, but between pedagogical structuring — decisions grounded in age-appropriateness, accuracy, and curricular coherence applied evenhandedly — and ideological censorship — purposeful exclusion of ideas because officials disapprove of their viewpoint.

The First Amendment treats the latter as "an egregious form of content discrimination," impermissible "when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."[105] *Hazelwood*'s deference extends only to decisions "reasonably related to legitimate pedagogical concerns," not to suppressing disfavored ideas under pedagogical pretext.[106] And *Tinker* flatly rejects restrictions justified by "a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."[107] On this understanding, categorical, subject-wide bans triggered by ideological discomfort are suspect precisely because they target viewpoint rather than pedagogical fit.[108]

The deeper historical-tradition current, by contrast, runs toward the diffusion of knowledge as essential to republican government. Thomas Jefferson's *Bill for the More General Diffusion of Knowledge* called for universal schooling to guard against tyranny by ensuring children had access to knowledge beyond the home, not to license governments to

---

[102] *See, e.g.*, Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, 425 U.S. 748, 756–57 (1976).

[103] Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 654–55 (1995) (noting school officials' historic *in loco parentis* role and corresponding deference to school discipline).

[104] *See* Morse v. Frederick, 551 U.S. 393, 410–12 (2007) (Thomas, J., concurring) (arguing that Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969), was wrongly decided because, historically, "[t]eachers commanded, and students obeyed," *Morse*, 551 U.S. at 412).

[105] Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 829 (1995).

[106] Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988).

[107] *Tinker*, 393 U.S. at 509.

[108] *See, e.g.*, Arce v. Douglas, 793 F.3d 968, 982, 986 (9th Cir. 2015) (striking down Arizona's Mexican American Studies restrictions due to viewpoint discrimination).

dictate orthodoxy.[109] His proposal envisioned broad access to civic knowledge as a safeguard against concentrated power, a vision that the Court has echoed in rejecting efforts to regulate what can be taught in schools.[110] Likewise, the Massachusetts Constitution of 1780 and the Northwest Ordinance of 1787 imposed affirmative obligations on legislatures to encourage the growth of schools because knowledge, in addition to religious and moral goals, was "necessary to good government and the happiness of mankind."[111] These enactments did not enshrine a right of censorship; they enshrined a duty of diffusion.

To be sure, terms like "morality" and "virtue" appeared alongside "knowledge" in those provisions, and they reflected the republican vocabulary of the Founding era.[112] But in that context, "morality" and "virtue" referred not to ideological purification but to civic responsibility and habits of self-government.[113] The point was to cultivate citizens capable of deliberation, not to shield them from contested perspectives. Categorical bans on ideas because they discomfort majorities invert that logic: They teach students that certain views are unfit for civic engagement, undermining the very preparation those provisions sought to secure.

This tradition carried into the nineteenth century. James Madison warned that "[a] popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy."[114] Reformers like Horace Mann made the same case in practical terms, portraying common schools as "the great equalizer" necessary to prepare all children for democratic participation.[115] By 1868, the vast majority of state constitutions included explicit mandates for public education,[116] confirming that access to knowledge was a right owed to children as

---

[109] Thomas Jefferson, *A Bill for the More General Diffusion of Knowledge* (1778), *reprinted in* 2 THE PAPERS OF THOMAS JEFFERSON 526–35 (Julian P. Boyd ed., 1950) (arguing that public education was necessary to prevent tyranny and ensure that children acquired civic knowledge independent of parental control).

[110] *See* Keyishian v. Bd. of Regents, 385 U.S. 589, 603 (1967). While Jefferson's bill was never enacted, courts have long drawn on the writings of Founders even when those writings did not produce positive law. *See, e.g.*, Reynolds v. United States, 98 U.S. 145, 164 (1879) (relying on Thomas Jefferson's 1802 letter to the Danbury Baptist Association describing "a wall of separation between church and State" as evidence of the original understanding of the First Amendment).

[111] An Act to Provide for the Government of the Territory Northwest of the River of Ohio, art. III, 1 Stat. 50, 52 n.a (1789); *see also* MASS. CONST. of 1780, pt. II, ch. V, § 2.

[112] *See* An Act to Provide for the Government of the Territory Northwest of the River of Ohio, art. III; *see also* MASS. CONST. of 1780, pt. II, ch. V, § 2.

[113] *See, e.g.*, MASS. CONST. of 1780, pt. I, art. III (declaring that the happiness of citizens and preservation of civic government depend on public instruction in religion, morality, and piety); *see also* Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 WM. & MARY L. REV. 2105, 2197 (2003).

[114] Letter from James Madison to W.T. Barry (Aug. 4, 1822), *in* 9 THE WRITINGS OF JAMES MADISON 103, 103 (Gaillard Hunt ed., 1910).

[115] HORACE MANN, *Report for 1848*, *in* ANNUAL REPORTS ON EDUCATION 640, 669 (1872).

[116] *See* Derek W. Black, *The Constitutional Compromise to Guarantee Education*, 70 STAN. L. REV. 735, 792 & n.303 (2018).

future citizens rather than a discretionary favor.[117] This trajectory — from Jefferson's proposals, to Madison's warnings, to Mann's reforms — marks a consistent recognition that students must be exposed to ideas if the Republic is to endure.

III. Implementing a New Student-Listener Rights Test

This brings the analysis to its practical inflection point. If listener rights are doctrinally grounded in *Tinker*, normatively justified by democratic education, and historically consistent with support for the diffusion of knowledge, the question becomes how courts should implement those rights when disputes over pedagogy arise. Schools are not monoliths; teachers, administrators, school boards, and legislatures may approach curricular decisions through different lenses — developmental science, community values, or political priorities. This Part articulates a framework rooted in students' baseline entitlement to receive contested ideas in school and then specifies three limits on state restriction: The state may restrict only on substantial, pedagogically-grounded proof of age-specific developmental harm or a recognized low-value category; must use the least restrictive educational alternative that preserves exposure; and receives no deference in review of viewpoint-discriminatory bans.

A. Building on Cassaro's Reasonableness Framework

Recent scholarship has begun to recognize the importance of establishing student-listener rights beyond the library and into the classroom. Most notably, Thomas Cassaro argues that the Ninth Circuit's decision in *Arce v. Douglas*[118] offers the most appropriate doctrinal framework for evaluating curricular restrictions.[119] In his view, *Arce* properly applied *Pico*'s reasoning by holding that the ban on Mexican American Studies in Arizona schools was unconstitutional because it lacked any "legitimate pedagogical concern" and was not reasonably related to educational objectives.[120] Cassaro urges other courts to follow this approach, contending that it strikes the right balance by requiring school officials to articulate real, nonpretextual justifications for curricular choices while still preserving space for educational discretion.[121]

This balance, however, ultimately relies on reasonableness as the operative lens. Reasonableness is a forgiving lens that can allow viewpoint

---

117 *Id.* at 743, 746.
118 793 F.3d 968 (9th Cir. 2015).
119 Cassaro, *supra* note 13, at 306.
120 *Id.* at 314.
121 *Id.* at 305–06.

discrimination to be relabeled as pedagogy.[122] A legislature might bar instruction that presents structural racism as a current social reality and defend the measure as promoting civic cohesion and age-appropriate civics. A district might bar texts that portray same-sex relationships as equal while invoking a desire to avoid controversy in early grades. On a record collecting parent complaints and episodic classroom conflict, a court applying a legitimate-concern/reasonable-relation test could accept those aims at face value and sustain the prohibition as a reasonable means to promote harmony or manage maturity-related concerns. Against that reasonableness frame, Supreme Court precedent counsels more exacting scrutiny of viewpoint-based curricular restrictions and rejects speculative justifications for limiting students' access to ideas.[123]

The framework advanced here reorients the analysis to meet those concerns while remaining inside the existing doctrine. It begins from a student's baseline entitlement to receive contested ideas and permits restriction only upon a showing — supported by substantial, pedagogically-grounded evidence — that exposure at the relevant grade level would cause developmental harm or that the material falls within long-recognized low-value categories. Even with such a showing, officials would have to adopt the least restrictive educational alternative — placement, scaffolding, accurate substitution, or sequencing — that preserves exposure.[124] Measures that are facially or demonstrably viewpoint-based receive no deference. This approach applies settled law — *Rosenberger v. Rector & Visitors of University of Virginia*'s[125] viewpoint rule, *Pico*'s listener right, and *Tinker*'s bar on speculation — while channeling *Hazelwood*'s discretion to the mode of instruction and requiring *Brown v. Entertainment Merchants Ass'n*'s[126] evidentiary showing for claimed harms to minors.

---

[122] *See, e.g.*, Emily Gold Waldman, *Returning to* Hazelwood*'s Core: A New Approach to Restrictions on School-Sponsored Speech*, 60 FLA. L. REV. 63, 65, 75–76, 112 (2008) (arguing *Hazelwood*'s reasonableness test has become elastic, "muddl[ing]" whether viewpoint-based restrictions are permitted, *id.* at 65).

[123] *See* Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 829 (1995) (describing viewpoint discrimination as "an egregious form of content discrimination"); Bd. of Educ. v. Pico, 457 U.S. 853, 871–72 (1982) (plurality opinion) (condemning "official suppression of ideas" and directing inquiry to purpose and effect, *id.* at 871); Brown v. Ent. Merchs. Ass'n, 564 U.S. 786, 804–05 (2011) (invalidating minors' speech restriction for lack of substantial evidence of harm and inadequate fit).

[124] *See Developmentally Appropriate Practice in Early Childhood Programs Serving Children from Birth Through Age 8*, NAT'L ASS'N FOR THE EDUC. OF YOUNG CHILD. 19 (2009), https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDFs/resources/position-statements/PSDAP.pdf [https://perma.cc/972A-SLKV] (endorsing scaffolded and context-sensitive instruction rather than content omission).

[125] 515 U.S. 819 (1995).

[126] 564 U.S. 786 (2011).

B. Defining the Contours of the Student-Listener Right

All curricular decisions involve some exclusion; schools must choose sequencing, developmental appropriateness,[127] and coherence. Those structuring decisions do not undermine the First Amendment's core commitment because they are tied to education's developmental project rather than orthodoxy. What the First Amendment forbids is a different kind of exclusion: categorical bans or content restrictions imposed because authorities disapprove of an idea's viewpoint.[128] As the Court has emphasized in other contexts, viewpoint-based suppression is "an egregious form of content discrimination" that is "presumptively unconstitutional."[129]

The analysis, therefore, begins from a baseline entitlement to receive ideas in school. A plaintiff would state a claim by identifying the excluded perspective and plausibly alleging viewpoint targeting — on the face of the rule, in purpose, or in operation — while ruling out the narrow, historically recognized low-value categories of First Amendment speech (for example, obscenity to minors,[130] lewd and vulgar school speech,[131] and promotion of illegal drug use[132]). This threshold reflects *Pico*'s inquiry into suppressive purpose[133] and *Tinker*'s refusal to credit "undifferentiated fear or apprehension."[134]

Once that threshold is met, the burden shifts. The government then must prove with substantial, pedagogically-grounded evidence that exposure to the perspective at the relevant grade band would cause developmental harm or that the material falls within a low-value category of speech. Conclusory invocations of "age appropriateness," controversy, or community discomfort would be insufficient; the showing must rest on age-band benchmarks, cognitive development research keyed to the topic, demonstrable inaccuracy or methodological defects not remediable by substitution, or course maps evidencing genuine readiness concerns.[135] *Brown*'s insistence on evidence and fit in minors' speech regulation supplies the evidentiary discipline, while *Hazelwood* permits

---

[127] The qualifier "developmental appropriateness" should not serve as a euphemism for excluding disfavored ideas. Pedagogical literature cautions that developmentally appropriate practice consists of sequencing instruction based on research into children's cognitive and social growth — not silencing content altogether. *See* Hillary G. Conklin et al., *Pedagogical Practices and How Teachers Learn*, *in* EDUCATING FOR CIVIC REASONING AND DISCOURSE 353, 359 (Carol D. Lee, Gregory White & Dian Dong eds., 2021), https://files.eric.ed.gov/fulltext/ED611951.pdf [https://perma.cc/EVD6-PB98] (emphasizing the importance of exposing students to civic issues in developmentally responsive ways).

[128] It is possible that a court could view a ban on discussing systemic racism as both content-based discrimination and viewpoint discrimination.

[129] Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 829–30 (1995).

[130] *See, e.g.*, Ginsberg v. New York, 390 U.S. 629, 636–43 (1968) (variable obscenity to minors).

[131] *See, e.g.*, Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 683–85 (1986).

[132] *See, e.g.*, Morse v. Frederick, 551 U.S. 393, 403 (2007).

[133] Bd. of Educ. v. Pico, 457 U.S. 853, 871–72 (1982) (plurality opinion).

[134] Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 508 (1969).

[135] *See* Brown v. Ent. Merchs. Ass'n, 564 U.S. 786, 799–801, 805 (2011) (rejecting speculative social-science claims as insufficient).

consideration of maturity and accuracy as mode constraints rather than licenses to suppress ideas.[136]

Even where a valid developmental concern is shown, under this test, the state may not leap from concern to prohibition. Courts would require the least restrictive educational alternative that preserves exposure, such as scaffolding and contextual framing, teacher training, or accurate substitution. If officials cannot demonstrate that such tools would not suffice, a categorical ban would likely be enjoined and set aside, with declaratory relief and restoration of student access to the excluded perspective (as applied, or facially where the prohibition is viewpoint-defined).[137]

C. Addressing Concerns

Concerns about the scope of this framework begin with a misconception of what "curriculum" is. State legislatures are not the only actors; state agencies, working through expert commissions, generally promulgate standards while local districts elaborate courses and teachers design lessons, assignments, and assessments.[138] That layered, expert-driven process is reflected in case law: Courts describe statewide advisory guides refined through multiple revisions, implemented locally — not statutes dictating line-by-line content.[139] The recent wave of categorical bans marks a departure from that norm.[140] When curricular restrictions originate through ordinary, layered processes of educational expertise — teachers designing lessons within state standards, informed by subject-matter specialists and developmental research — courts have little reason to intervene. But when legislatures or political actors override that process with categorical edicts from above, skepticism is warranted. Such interventions disturb precisely the system of professional judgment that has long earned public trust: the iterative, evidence-based methods by which educators calibrate what to teach, when, and how. As *Pico* underscores, it is not the act of structuring curriculum that raises First Amendment concerns but the act of purging ideas to enforce orthodoxy — a danger heightened when political actors dress that orthodoxy in the language of "age appropriateness" or "civics," a pretext that scholars have long warned invites precisely the suppression *Pico* forbids.[141]

---

136 Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 271 (1988).

137 *See* Arce v. Douglas, 793 F.3d 968, 976 (9th Cir. 2015) (noting possibility of injunction as remedy for viewpoint discrimination).

138 Catherine J. Ross, Essay, *Are "Book Bans" Unconstitutional? Reflections on Public School Libraries and the Limits of Law*, 76 STAN. L. REV. 1675, 1684–88 (2024).

139 *See, e.g.*, Griswold v. Driscoll, 616 F.3d 53, 55–59 (1st Cir. 2010) (describing iterative state advisory curriculum guide revised through several rounds before adoption, implemented locally).

140 *See, e.g.*, Friedman, *supra* note 1.

141 *See* Ross, *supra* note 138, at 1691; Corbin, *supra* note 12, at 1476–83, 1491.

That institutional account also clarifies why government speech is a poor fit. Public education is not a single mouthpiece. Legislatures, executive branch education agencies, local boards, and classroom professionals "speak" with distinct roles and competencies;[142] even decisions most receptive to government speech treat the doctrine cautiously in this setting and acknowledge space for listener claims.[143] The framework here accepts that schools may structure their own message while rejecting the use of that authorship to suppress rival perspectives because of viewpoint. That distinction is not novel; it tracks *Rosenberger*'s viewpoint rule,[144] *Pico*'s suspicion of "official suppression of ideas,"[145] and *Hazelwood*'s linkage of school control to mode, not ideological agreement.[146] By anchoring curricular disputes in entitlement rather than authority, student-listener rights are less a radical innovation than a modest correction — one that aligns doctrine with constitutional principles and with the lived reality that schools are the primary, and often exclusive, site where children encounter civic ideas.[147]

A related worry asks whether the standard collapses into the very discretion it critiques: If officials may exclude material irrelevant to the curricular goals, how does that differ from *Hazelwood*'s "legitimate pedagogical concerns"?[148] The difference is twofold. First, "irrelevance" is discipline-internal and evidence-based, not a proxy for discomfort with a viewpoint;[149] *Arce* itself invalidated enforcement where pedagogical rationales were a pretext for suppressing Mexican American Studies.[150] Second, expulsion is a last resort: Where relevance is in doubt, the framework turns first to education-specific tools that preserve exposure to the perspective. That least restrictive education alternative requirement reflects both First Amendment doctrine and ordinary pedagogy, which favors contextualization over omission.[151]

---

[142] *See* Richard Briffault, *The Role of Local Control in School Finance Reform*, 24 CONN. L. REV. 773, 780–81 (1992) (describing state boards and their oversight of local districts).

[143] *See, e.g.*, Chiras v. Miller, 432 F.3d 606, 618 (5th Cir. 2005) (treating textbook selection as government speech while noting the ruling "does not necessarily preclude" students' asserted right to receive information).

[144] Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 829 (1995).

[145] Bd. of Educ. v. Pico, 457 U.S. 853, 871 (1982) (plurality opinion).

[146] Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 271–73 (1988).

[147] JUSTIN DRIVER, THE SCHOOLHOUSE GATE: PUBLIC EDUCATION, THE SUPREME COURT, AND THE BATTLE FOR THE AMERICAN MIND 12–13 (2018) (highlighting the Court's recognition of schools as a vital site for children to encounter constitutional ideas and civic values).

[148] *Hazelwood*, 484 U.S. at 273.

[149] *See id.* at 271–73 (tying school control to maturity and quality of research, not ideological agreement); Conklin, *supra* note 127, at 354–56 (emphasizing inquiry-oriented curricula, authentic controversies, and scaffolded exposure to civic issues, rather than content omission).

[150] Arce v. Douglas, 793 F.3d 968, 986 (9th Cir. 2015).

[151] *See, e.g.*, Sable Commc'ns of Cal., Inc. v. FCC, 492 U.S. 115, 128 (1989) (holding that the government may not "reduce the adult population . . . to . . . only what is fit for children" but instead must employ narrower means (alteration in original) (quoting Bolger v. Youngs Drug Prods.

Finally, fears of floodgates can be overstated. The threshold is narrow: Plaintiffs must identify a viewpoint-targeted exclusion, outside the settled low-value categories. And even when that showing is made, the government can satisfy its burden with materials school systems already generate — grade-band standards, expert guidance, curricular maps[152] — without inviting line-by-line judicial edits.[153] Courts have navigated comparable neutrality requirements in adjacent school contexts without institutional collapse, enforcing viewpoint rules while leaving broad room for educational structure.[154]

IV. Applying the Student-Listener Framework

A. Florida's Parental Rights in Education

Florida's statute provides that "[c]lassroom instruction . . . on sexual orientation or gender identity . . . may not occur" in early elementary grades, and for later grades, "must be age-appropriate or developmentally appropriate" under state standards.[155] Say a district reads this as a blanket bar on teacher-initiated discussion in K-3 and discourages brief, accurate answers to student questions. A student might challenge the exclusion of materials acknowledging same-sex families and the directive not to answer questions.

The claim identifies excluded perspectives on matters of public concern and plausibly alleges viewpoint targeting, thereby triggering an inquiry into the official suppression of ideas. The burden should then shift. The State would have to offer substantial, pedagogically-grounded evidence that exposure to accurate, nongraphic acknowledgment itself causes developmental harm in K-3, or that proposed materials are disciplinarily inaccurate, not conjecture about controversy or parental discomfort. It also must show that less restrictive educational alternatives would not preserve exposure. On this record, the statute and guidance function as topic-and-viewpoint bans rather than mode regulations; they neither present grade-band evidence nor preserve exposure through placement, scaffolding, accurate substantiation, or the

---

Corp., 463 U.S. 60, 73 (1983))); *see also* Conklin, *supra* note 127, at 368–69 (discussing how omitting context about racism, sexism, and similar topics in history can distort how students view the world and themselves).

152 *E.g.*, Tex. Educ. Code Ann. § 28.002(a)–(c) (West 2025).

153 *E.g.*, 20 U.S.C. § 6311(b)(1)(A)–(D) (requiring states to "adopt[] challenging academic content standards" with grade-level expectations, *id.* § 6311(b)(i)(A)).

154 *See* Good News Club v. Milford Cent. Sch., 533 U.S. 98, 107–12 (2001) (holding that excluding a religious club from a school's after-hours limited public forum constituted viewpoint discrimination); Bd. of Educ. v. Mergens, 496 U.S. 226, 246–47 (1990) (holding the Equal Access Act requires neutral access for religious clubs).

155 Fla. Stat. § 1001.42(8)(c)(3) (2025).

recognized safe harbor of brief answering and redirection.[156] The likely result is an injunction as applied to accurate acknowledgment and Q&A, with application to later grades turning on grade-band evidence and narrow tailoring.

B. Removal of "Colorblind Constitution" Readings

The student-listener right is not a vehicle for privileging progressive materials; it applies neutrally across political lines. A U.S. history unit on the Constitution's drafting illustrates how the framework protects legitimate ideological diversity while rejecting orthodoxy masquerading as pedagogy.

An eleventh-grade unit examines the Founders' understanding of freedom and equality. The teacher committee proposes a set of readings, including primary sources on the Constitution's ideals, critical essays that highlight their limits, and two conservative commentaries. The first conservative commentary defends colorblind constitutionalism, arguing that the Founders' philosophy, though imperfectly realized, expressed a universal moral principle that transcends race. The second commentary, sponsored by a local advocacy group, claims that critiques of the Founders' racial blind spots are revisionist attacks that undermine Western civilization and insists that civic education must affirm the Founding as morally unassailable. After community backlash, the board removes both commentaries as "too divisive."

Under the student-listener framework, those exclusions require distinct treatment. Removing the colorblind constitutionalism commentary fails constitutional scrutiny because the perspective is historically grounded, age-appropriate, and aligned with the unit's civic objectives. Its exclusion rests solely on ideological discomfort, which *Tinker* and *Pico* forbid, and lacks the pedagogical or evidentiary basis that *Hazelwood* demands. Without proof of developmental harm or factual inaccuracy, the board cannot carry its burden, and the likely result would be restoration of the essay.

The second commentary, however, could be removed by the board. Its claim that questioning the Founders' racial views undermines Western civilization crosses from interpretation into indoctrination. It departs from legitimate historical interpretation into dogma, asserting that civic education must affirm national virtue and rejecting any critical engagement as disloyal. That claim substitutes indoctrination for inquiry and denies students the very capacity for deliberation that democratic education would encourage. The State could meet its burden with evidence showing that such materials violate standards of critical reasoning and curricular coherence. That justification relies on pedagogy,

---

[156] *See* Iowa Safe Schs. v. Reynolds, 788 F. Supp. 3d 969, 993 (S.D. Iowa 2025) (explaining that Iowa's restriction could not "be applied in such a manner as to forbid even the lightest explanation" in response to student questions).

not viewpoint. The distinction is decisive: The framework protects ideological pluralism but not the imposition of civic orthodoxy. Public schools are constitutionally forbidden to present national mythology as unquestionable truth. The right to receive information guarantees access to contested ideas, not to dogma dressed as education.

CONCLUSION

For decades, courts have resolved curriculum controversies by privileging institutional authority and parental control, too often at the expense of students' constitutional rights. Yet children are not merely extensions of their families or objects of state pedagogy; they are emerging citizens with First Amendment claims of their own. To deny that status is to overlook what *Barnette*, *Tinker*, and *Pico*, each, in their own way, recognized: that the Constitution's distrust of prescribed orthodoxy applies with special force where the state monopolizes access to knowledge. Recognizing students' right to receive information, even when it unsettles parents or defies community norms, is not judicial innovation or intrusion but fidelity to those principles and to the civic mission of public education.

The student-listener framework proposed in this Note provides courts with a judicially manageable, historically grounded, and normatively urgent method for evaluating curricular bans. It prohibits ideological censorship, respects professional judgment, and restores students to their rightful place as constitutional subjects. If democracy depends on an informed citizenry, then students cannot be treated as passive objects of others' rights. They must be recognized as constitutional listeners whose access to contested ideas is not incidental, but indispensable, to the survival of liberty itself.