FIRST AMENDMENT — GOVERNMENT SPEECH IN SCHOOLS — EIGHTH CIRCUIT HOLDS THAT STUDENTS LACK RIGHT TO RECEIVE INFORMATION IN CURRICULUM. — *Walls v. Sanders*, 144 F.4th 995 (8th Cir. 2025).

Government speech doctrine can be a silver bullet for government defendants facing First Amendment free speech claims.[1] If the government is speaking, its regulation of that speech does not infringe on the rights of private speakers.[2] But what effect government speech doctrine has on the rights of recipients, particularly where recipients' presence is mandated, is underdetermined. Recently, in *Walls v. Sanders*,[3] the Eighth Circuit applied government speech doctrine to school curricula to hold that students cannot invoke a First Amendment right to receive information to challenge curricular decisions.[4] In denying students this right, the court ignored the special context of public schools — where students constitute "a captive audience"[5] — and risks allowing political interests to supersede pedagogical ones in the design of school curricula.

The Arkansas state legislature passed the LEARNS Act[6] in March 2023, which included an "anti-indoctrination" provision aimed at prohibiting the teaching of Critical Race Theory (CRT) in the state's classrooms.[7] Alongside the Arkansas State Conference of the NAACP, two public school teachers and two students filed suit in the United States District Court for the Eastern District of Arkansas to challenge the law's constitutionality.[8] In their motion for a preliminary injunction, the teacher plaintiffs claimed that section 16 of the LEARNS Act was unconstitutionally vague, violating their right to due process and chilling their curricular speech.[9] In turn, the student plaintiffs argued that section 16's lack of "any legitimate pedagogical" basis, combined with teachers' self-censorship in the classroom, amounted to a violation of their First Amendment right to receive information.[10]

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[1] *See* Caroline Mala Corbin, Essay, *The Government Speech Doctrine Ate My Class: First Amendment Capture and Curriculum Bans*, 76 STAN. L. REV. 1473, 1477 (2024); G. Alex Sinha, *The End of Government Speech*, 44 CARDOZO L. REV. 1899, 1901–03 (2023).

[2] *See* Pleasant Grove City v. Summum, 555 U.S. 460, 467 (2009).

[3] 144 F.4th 995 (8th Cir. 2025).

[4] *Id.* at 1000.

[5] Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 684 (1986).

[6] Act 237, 2023 Ark. Acts 975 (codified in scattered sections of ARK. CODE ANN.).

[7] *Id.* § 16 (codified at ARK. CODE ANN. § 6-16-156 (2026)); Antoinette Grajeda & Tess Vrbin, *Central High Families, Teacher File Federal Lawsuit over Arkansas LEARNS Act "Indoctrination" Ban*, ARK. ADVOC. (Mar. 26, 2024, at 05:00 ET), https://arkansasadvocate.com/2024/03/26/central-high-families-teacher-file-federal-lawsuit-over-arkansas-learns-act-indoctrination-ban [https://perma.cc/3ZM2-UKWX].

[8] Walls v. Sanders, 733 F. Supp. 3d 721, 724 (E.D. Ark. 2024).

[9] *Id.* at 724, 739 & n.139.

[10] *Id.* at 724.

In the district court, Judge Rudofsky "granted a preliminary injunction to the students but denied one to the teachers."[11] As to the teacher plaintiffs, Judge Rudofsky ruled they were unable to show a likelihood of irreparable harm under their due process vagueness claim.[12] Because teachers "speak[] and act[] on behalf of the State" when teaching,[13] the court held that any self-censorship by teachers resulting from the law's vagueness would censor only government speech, not teachers' own personal speech.[14] Consequently, the teacher plaintiffs could not show their "First Amendment speech rights . . . [were] at risk of being chilled," and the "vague law [wa]sn't actually harming the Teacher Plaintiffs."[15] Additionally, Judge Rudofsky cited "the year-long delay between when Section 16 became law and when Plaintiffs asked for a preliminary injunction" as further justification for finding a lack of irreparable harm.[16]

For the student plaintiffs, the district court granted a "quite narrow" preliminary injunction,[17] holding that the students had shown a likelihood of success on their free speech claim.[18] The decision followed a circuit precedent from 1982, *Pratt v. Independent School District No. 831*,[19] in issuing the injunction.[20] In *Pratt*, the Eighth Circuit held that the removal of materials from classroom curricula "intended to suppress the ideas expressed" therein without a "substantial and reasonable governmental interest" violated "students' right to receive information," a right granted by the Free Speech Clause.[21] The right to receive information derives not solely from a speaker's free speech right to disseminate his ideas, but also from "the *recipient's* meaningful exercise of his own rights of speech."[22] Applying *Pratt* to section 16, the court found that Arkansas did "not even attempt[] to show a legitimate pedagogical reason to withhold material" relating to CRT, so the student plaintiffs had successfully demonstrated their likelihood to prevail on their right-to-receive-information claim.[23] The injunction was drawn such that section 16 could not be used to punish the two teacher plaintiffs[24] "for merely teaching about, referencing, or using" CRT, a scope that would

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[11] *Walls*, 144 F.4th at 1001.

[12] *Walls*, 733 F. Supp. 3d at 741.

[13] *Id.* at 739.

[14] *Id.* at 740.

[15] *Id.* The court acknowledged the circuit split on whether teachers possess any First Amendment interest in their curricular speech, an issue on which "[t]he Eighth Circuit has yet to weigh in." *Id.* at 739 n.144.

[16] *Id.* at 741.

[17] *Id.* at 752.

[18] *Id.* at 750.

[19] 670 F.2d 771 (8th Cir. 1982).

[20] *Walls*, 733 F. Supp. 3d at 750.

[21] *Id.* at 745 (quoting *Pratt*, 670 F.2d at 776–77).

[22] Bd. of Educ. v. Pico *ex rel.* Pico, 457 U.S. 853, 867 (1982) (plurality opinion).

[23] *Walls*, 733 F. Supp. 3d at 750.

[24] *See id.* at 752.

cause "no concrete harm to State Defendants," who had argued these practices were outside of section 16's prohibition anyway.[25]

In his opinion, Judge Rudofsky emphasized he would have decided the case for the defendants were he "writing on a clean slate" because "*Pratt* is something akin to zombie precedent."[26] Reasoning that government speech includes the "selection and implementation of curricula" and that modern First Amendment doctrine immunizes government speech from any Free Speech Clause scrutiny,[27] Judge Rudofsky hinted that the Eighth Circuit could reconsider *Pratt*.[28] The state defendants appealed the injunction granted to the student plaintiffs, but the teacher plaintiffs did not cross-appeal the denial of their requested injunction.[29]

The Eighth Circuit unanimously vacated the preliminary injunction granted to the student plaintiffs.[30] Writing for the panel, Judge Grasz[31] explained that the students could not show a likelihood of success on the merits because "the Free Speech Clause does not give . . . the right to compel the government to say something it does not wish to."[32] Because the teacher plaintiffs did not cross-appeal, the panel did not address the merits of their vagueness claim and instead foreclosed the argument that the students' injunction might be "alternatively affirm[ed]"[33] on that ground.[34]

In vacating the preliminary injunction, Judge Grasz first established that "classroom materials and instruction . . . constitute the government's own speech," a proposition that the student plaintiffs conceded.[35] Since "the government is permitted to engage in viewpoint discrimination when it speaks,"[36] the Eighth Circuit then concluded that Arkansas is free to prohibit teaching CRT through section 16.[37] While clarifying that curricula as government speech are "not immune from all constitutional challenges," the court reasoned that the Free Speech Clause is not an available tool to "constrain government speech."[38] Consequently, students cannot "require the government to provide a message it no longer is willing to say"[39] in its curriculum because the school context

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[25] *Id.* at 751. Defendants argued that the statute captures only "compelling student agreement with a theory" like CRT. *Id.* at 747. The court also noted that the defendants would likely be "judicially estopped from [later] changing their position on the reach of Section 16." *Id.* at 752.

[26] *Id.* at 745.

[27] *Id.* at 745–46 (citing, inter alia, Pleasant Grove City v. Summum, 555 U.S. 460, 467 (2009)).

[28] *See id.* at 746.

[29] *Walls*, 144 F.4th at 1001.

[30] *Id.* at 1000.

[31] Judge Grasz was joined by Judges Loken and Gruender.

[32] *Walls*, 144 F.4th at 1000.

[33] *Id.* at 1006.

[34] *Id.* at 1006–07.

[35] *Id.* at 1002.

[36] *Id.* at 1004 (citing Pleasant Grove City v. Summum, 555 U.S. 460, 467–68 (2009)).

[37] *See id.* at 1005–06.

[38] *Id.* at 1003.

[39] *Id.* at 1002.

does not grant "[s]tudents . . . a supercharged right to receive information."[40] The court ultimately declared *Pratt* to be "abrogated by" more recent Supreme Court government speech cases because "*Pratt* omitted the crucial step of considering whether the speech at issue was the government's."[41]

In place of the right to receive information, the Eighth Circuit proposed that "the political process" serve as a democratic check on decisions concerning public school curricula.[42] The court reasoned that "treat[ing] government speech in schools differently" from other government speech contexts would "make the school curriculum uniquely static and unaccountable."[43] While acknowledging the students' counterargument that the government may freely "prioritiz[e] ideological interests over educational ones" in the design of school curricula under this holding, Judge Grasz framed such choices as "mere policy disagreements" outside of the court's authority to second-guess.[44]

The Supreme Court has not squarely addressed government speech in the public school context, but it "exercise[s] great caution before extending [its] government-speech precedents"[45] and declined in *Garcetti v. Ceballos*[46] to hold that its government employee speech analysis "appl[ies] in the same manner to . . . teaching."[47] Nevertheless, the Eighth Circuit's decision falls in line with some other circuits' holdings that curricular choices are government speech.[48] But even if school curricula are facially captured within the Court's most recent government speech tests,[49] thus precluding teachers' First Amendment suits as speakers, the Eighth Circuit took a step further in holding that government speech doctrine *also* eliminates students' right to receive information as recipients of curricula, a step not fully mirrored in other circuits. The resulting approach ignores the special context of schools and removes an important judicial safeguard for public education.

The decision in *Walls* was not as predetermined by government speech precedent as the Eighth Circuit suggested.[50] The application of government speech to bar teachers' free speech claims is separable from "a student's right to receive information and ideas," which "necessarily implicates the delicate balance between a student's First Amendment

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[40] *Id.* at 1003.
[41] *Id.* at 1005–06.
[42] *Id.* at 1006.
[43] *Id.*
[44] *Id.*
[45] Matal v. Tam, 582 U.S. 218, 235 (2017).
[46] 547 U.S. 410 (2006).
[47] *Id.* at 425.
[48] *See, e.g.*, Evans–Marshall v. Bd. of Educ., 624 F.3d 332, 340 (6th Cir. 2010) (quoting *Garcetti*, 547 U.S. at 421); Chiras v. Miller, 432 F.3d 606, 616 (5th Cir. 2005).
[49] *See* Shurtleff v. City of Boston, 142 S. Ct. 1583, 1589–90 (2022).
[50] *See Walls*, 144 F.4th at 1005 (quoting Bd. of Regents of the Univ. of Wis. Sys. v. Southworth, 529 U.S. 217, 235 (2000)).

rights and a state's authority in educational matters."[51] The Supreme Court has yet to address how the right to receive information might be balanced with government speech generally, but its public education precedents indicate that attempts to impose "political orthodoxy" through schools should be treated as constitutionally suspect.[52] This suspicion is in part due to "the potentially coercive nature of classroom instruction" on controversial topics,[53] but also has roots in the Court's recognition of the vital role public schools play in fostering a diverse "marketplace of ideas" among young citizens.[54] While the right to speak and the right to receive information are both housed in the Free Speech Clause,[55] these rights should be weighed separately where the latter serves to mitigate coercion and promote a robust range of ideas for classroom discussion.[56]

Moreover, the Court has shown a willingness to balance the government's interest in controlling school curricula with other First Amendment rights. In *Mahmoud v. Taylor*,[57] the Court found that the government's interest in crafting a curriculum "safe and conducive to learning"[58] must yield to the Free Exercise Clause's protection of religious liberty.[59] Similarly, in *West Virginia State Board of Education v. Barnette*,[60] the Court held that "[n]ational unity" cannot be achieved by political "compulsion" of students' speech.[61] Both *Mahmoud* and *Barnette* highlighted the compulsory nature of school attendance,[62] which generates captive audience concerns, and noted particular apprehension with the classroom context.[63] Together, these cases show that "state action calculated to suppress novel ideas or concepts is fundamentally antithetical to the values of the First Amendment" regardless of whether religion is involved,[64] as free speech and free exercise rights both safeguard individual liberty and "freedom of mind."[65] Given the

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51 Arce v. Douglas, 793 F.3d 968, 982 (9th Cir. 2015).

52 Bd. of Educ. v. Pico *ex rel.* Pico, 457 U.S. 853, 875 (1982) (plurality opinion); *see also* Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 511 (1969) ("In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate.").

53 Mahmoud v. Taylor, 145 S. Ct. 2332, 2355 (2025).

54 Keyishian v. Bd. of Regents, 385 U.S. 589, 603 (1967) ("The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth . . . .").

55 *See* Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc., 425 U.S. 748, 756 (1976).

56 *See* Note, *Reimagining the Schoolhouse Gate: Children's Right to Receive Information in the Age of Curriculum Censorship*, 139 HARV. L. REV. 776, 787–88 (2026) [hereinafter *Reimagining*].

57 145 S. Ct. 2332 (2025).

58 *Id.* at 2362.

59 *Id.* at 2362–63; *see id.* at 2357–58.

60 319 U.S. 624 (1943).

61 *Id.* at 640.

62 *See id.* at 632; *Mahmoud*, 145 S. Ct. at 2359.

63 *See Barnette*, 319 U.S. at 637; *Mahmoud*, 145 S. Ct. at 2355.

64 Bd. of Educ. v. Pico *ex rel.* Pico, 457 U.S. 853, 880 (1982) (Blackmun, J., concurring in part and concurring in the judgment); *see Barnette*, 319 U.S. at 634.

65 *Barnette*, 319 U.S. at 637; *see* William P. Marshall, *Solving the Free Exercise Dilemma: Free Exercise as Expression*, 67 MINN. L. REV. 545, 546–47 (1983).

importance of these First Amendment values in the special context of public schools,[66] it is not obvious why students *should* lack "a supercharged right to receive information."[67]

Although the Eighth Circuit's holding limits students' ability to bring right-to-receive-information claims, curricula as government speech remain constrained by other constitutional provisions, including the Religion Clauses and the Equal Protection Clause.[68] For example, *Epperson v. Arkansas*,[69] which "invalidated an Arkansas statute that prohibited the teaching of evolution,"[70] would remain good law because the decision relied on the Religion Clauses to hold that curriculum cannot be "proscribe[d] for the sole reason that it is deemed to conflict with a particular religious doctrine."[71] Likewise, a law facially prohibiting the teaching of Black history would likely trigger Equal Protection Clause scrutiny.[72]

However, more moderated or concealed attempts to impose a political orthodoxy may fail to create a federal constitutional cause of action.[73] As a result, the hypothetical deemed an easy case in *Board of Education v. Pico ex rel. Pico*[74] — that "[i]f a Democratic school board, motivated by party affiliation, ordered the removal of all books written by or in favor of Republicans, few would doubt that the order violated the constitutional rights of the students"[75] — may now fail under the Eighth Circuit's analysis. Similarly, if lobbyists for oil and gas companies convinced a state legislature to prohibit the teaching of climate science,[76] the resulting law would not implicate religion or equal protection

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[66] *See* Keyishian v. Bd. of Regents, 385 U.S. 589, 603 (1967) ("[T]he First Amendment . . . does not tolerate laws that cast a pall of orthodoxy over the classroom. 'The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'" (quoting Shelton v. Tucker, 364 U.S. 479, 487 (1960))).

[67] *Walls*, 144 F.4th at 1003.

[68] *See* Pleasant Grove City v. Summum, 555 U.S. 460, 468 (2009); *id.* at 482 (Stevens, J., concurring); *Walls*, 144 F.4th at 1003 (citing *Summum*, 555 U.S. at 467–68).

[69] 393 U.S. 97 (1968).

[70] Molleen Matsumura & Louise Mead, *Ten Major Court Cases About Evolution and Creationism*, NAT'L CTR. FOR SCI. EDUC. (June 6, 2016), https://ncse.ngo/ten-major-court-cases-about-evolution-and-creationism [https://perma.cc/BM6U-2CRD].

[71] *Epperson*, 393 U.S. at 103.

[72] *See* Steven Siegel, *Ethnocentric Public School Curriculum in a Multicultural Nation: Proposed Standards for Judicial Review*, 40 N.Y.L. SCH. L. REV. 311, 336–40 (1996) (arguing that "teaching violates the Equal Protection Clause [when] the government through its curriculum is . . . making invidious race-based classifications in the absence of a compelling state interest," *id.* at 336–37, regardless of whether government speech doctrine applies, *id.* at 339).

[73] *Cf.* Rucho v. Common Cause, 139 S. Ct. 2484, 2502–03 (2019) ("A permissible intent — securing partisan advantage — does not become constitutionally impermissible" when it "predominates." *Id.* at 2503.).

[74] 457 U.S. 853 (1982).

[75] *Id.* at 870–71 (plurality opinion). Justice Rehnquist's dissent "cheerfully concede[d]" that in this hypothetical, the state's "discretion may not be exercised in a narrowly partisan or political manner." *Id.* at 907 (Rehnquist, J., dissenting) (quoting *id.* at 870 (plurality opinion)).

[76] *See* Chiras v. Miller, 432 F.3d 606, 610 (5th Cir. 2005) (quoting Gaiutra Bahadur, *Mineral Industry's Support Keeps Text Alive*, AUS. AM.-STATESMAN, Nov. 21, 2001, at 7.).

concerns. As these examples suggest, allowing political interests to predominate over educational ones in the prescription of curricula is in tension with the role of public education in a democratic society.

Some undefined right to education, free from undue political influence, was contemplated by the *Pico* Court, as well as by Justice Thomas's more recent concurrence in *Mahmoud*.[77] Yet the Supreme Court has declined to specify education as a fundamental interest,[78] so if a curriculum-banning statute comports with the Religion Clauses and the Equal Protection Clause, it is unclear under *Walls* what constitutional hook remains to challenge the law in federal court. In such cases, *Walls* has removed students' best avenue for judicial review of pedagogically suspect curricular decisions.

The *Walls* court addressed this concern by pointing to the political process as the proper means for "regulating government speech."[79] However, because "local control of education involves democracy in a microcosm,"[80] it is vulnerable to the same political process failures that other democratic institutions face.[81] Rather than provide a marketplace of ideas for students to engage with, a government can "maintain power and entrench itself" by screening out alternative viewpoints with curriculum bans.[82] Even if supported by a majority of voters, such a move weaponizes the coercive nature of the classroom to instill partisan values, thereby undercutting both "the mission of public schools . . . [and] the mission of the Free Speech Clause itself."[83] Instead of allowing government speech to bar students' right-to-receive-information claims, courts should use this right to provide "a counter-majoritarian check on the political process" when a government's curricular decision threatens First Amendment values.[84]

Although government speech doctrine may ultimately allow the government to alter the content of museum displays[85] and public-

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[77] 145 S. Ct. 2332, 2377–78 (2025) (Thomas, J., concurring) (citing approvingly to Pierce v. Soc'y of Sisters, 268 U.S. 510, 530, 535 (1925), a case "not decide[d] . . . on free exercise grounds," *Mahmoud*, 145 S. Ct. at 2377 (Thomas, J., concurring), as evidence that "attempt[s] at state-enforced uniformity" through education-related laws are "antithetical to our Nation's 'fundamental theory of liberty,'" *id.* at 2378 (quoting *Pierce*, 268 U.S. at 535)).

[78] *See* S.A. Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973).

[79] *Walls*, 144 F.4th at 1006.

[80] *Pico*, 457 U.S. at 891 (Burger, C.J., dissenting).

[81] *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, 307–08, 307 n.182 (2024) (citing United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938)).

[82] Corbin, *supra* note 1, at 1505.

[83] *Id.*

[84] Cassaro, *supra* note 81, at 308.

[85] *See, e.g.*, Samantha Chery et al., *Smithsonian Removes Trump Impeachment Text as It Swaps His Portrait*, WASH. POST (Jan. 10, 2026), https://www.washingtonpost.com/entertainment/art/2026/01/10/national-portrait-gallery-trump-photo [https://perma.cc/4LBC-FX4G].

information websites,[86] "the unique environment of the school . . . makes it particularly important that *some* limits be imposed" in the public education context.[87] Consequently, a First Amendment right to receive information should serve as a constitutional hook to balance the rights of students against the interests of the government in making curricular changes. The resulting judicial review need not be stringent or automatically assume that any change made by "a democratically elected government entity" represents "a 'partisan or political' choice," as the *Walls* court feared,[88] but it should ensure that changes serve a "legitimate pedagogical concern[]"[89] rather than a political one. In practice, a government can readily defend its curricular choices "with materials school systems already generate" in making pedagogically sound decisions.[90]

Other circuits considering student right-to-receive-information claims have set varied standards in light of government speech developments,[91] yet together these decisions show that courts can feasibly supplement the political process to ensure public schools are not enlisted by the state to promote a political orthodoxy. The Seventh Circuit, though setting "a relatively high threshold" for constitutional claims, still engages in "a balance of legal interests" as a backstop in case "local authorities begin to substitute rigid and exclusive indoctrination for . . . pedagogic choices."[92] The Fifth Circuit, while denying a student's claim "to compel the Board to select textbooks of her choosing" in the case before it,[93] left a potential escape for future student plaintiffs who can "plead . . . specific facts" that school board curricular decisions were "motivated by 'narrowly partisan or political' considerations."[94] Compared to circuits like the Ninth,[95] these "[c]ircuits give the government greater scope in curtailing school curricula" without foreclosing students' right-to-receive-information claims as a matter of course.[96] Rather than treating the government speech designation as dispositive,

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[86] *See, e.g.*, Jeff Brady, *Far More Environmental Data Is Being Deleted in Trump's Second Term than Before*, NPR (Aug. 8, 2025, at 10:57 ET), https://www.npr.org/2025/08/08/nx-s1-5495338/climate-change-environment-websites-trump [https://perma.cc/5Y9T-R2EW].

[87] Bd. of Educ. v. Pico *ex rel.* Pico, 457 U.S. 853, 879 (1982) (Blackmun, J., concurring in part and concurring in the judgment).

[88] *Walls*, 144 F.4th at 1005.

[89] Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988); *see also* Arce v. Douglas, 793 F.3d 968, 983 (9th Cir. 2015) (holding that "the state may not remove materials otherwise available in a local classroom unless its actions are reasonably related to legitimate pedagogical concerns" (citing *Kuhlmeier*, 484 U.S. at 273)); Virgil v. Sch. Bd. of Columbia Cnty., 862 F.2d 1517, 1522–23 (11th Cir. 1989) (similar).

[90] *Reimagining*, *supra* note 56, at 796.

[91] *See Arce*, 793 F.3d at 982–83 (reviewing circuit approaches and setting its own).

[92] Zykan v. Warsaw Cmty. Sch. Corp., 631 F.2d 1300, 1306 (7th Cir. 1980).

[93] Chiras v. Miller, 432 F.3d 606, 621 (5th Cir. 2005).

[94] *Id.* at 620 (quoting Bd. of Educ. v. Pico *ex rel.* Pico, 457 U.S. 853, 870 (1982) (plurality opinion)).

[95] *See Arce*, 793 F.3d at 983.

[96] *Id.*

the Eighth Circuit can similarly perform balancing as a backstop for students' free speech challenges to curricular decisions.

Ultimately, section 16 may have withstood a "legitimate pedagogical concern" analysis, especially as cabined by the state's interpretation of the law's scope elicited during litigation. But, ironically, the Eighth Circuit opinion upholding the "anti-indoctrination" provision may lay the groundwork for future curricular changes to advance political indoctrination in public schools, immune from constitutional challenge.