

ERASING IDENTITIES IN SCHOOL

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ABSTRACT

*Since 2022, the United States has witnessed an unprecedented surge of curriculum policies restricting the use and availability of LGBTQ-related materials in public schools. These laws affect subjects across the entire curriculum, impacting the classroom, school libraries, and extracurricular spaces, and create mechanisms that enable individuals to challenge or block LGBTQ-related content through notification requirements, opt-out provisions, and formal complaint processes. Legal challenges are proliferating nationwide, and, following the recent Supreme Court's decision in *Mahmoud*, endorsing a parental right to remove children from LGBTQ-affirming instruction, the stakes for young people's educational experiences could not be higher. At the heart of this national battle lies a core question: What is the law's legitimate role in shaping children's lived experience of identity exploration in schools?*

This Article offers a multifaceted analysis—doctrinal, conceptual, and normative—of this question. It begins by providing a comprehensive mapping of the regulation of LGBTQ curriculum policies in all 50 states and the District of Columbia. This novel typology indicates how these rapidly-evolving censorship laws are becoming systematically embedded in the daily life of public education through the interlocking actions of various stakeholders, including school districts, libraries, educators, suppliers of educational and instructional materials, parents, and state residents.

The Article then analyzes the respective limitations of the two constitutional doctrines most relevant to this terrain—the Free Speech Clause and the Equal Protection Clause—and identifies their shared conceptual blind spot: Neither centers students' present developmental needs. Free Speech doctrine frames children primarily as future citizens in need of civic preparation, sidelining their age-appropriate need for identity exploration. Equal Protection doctrine's reliance on static identity categories limits its ability to challenge exclusionary policies cloaked in neutral terms—again, overlooking the here-and-now needs of young people.

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In response, the Article advances a novel conceptual framework, grounded in three theoretical pillars distilled from socio-legal theories of childhood, to position identity exploration as a normative foundation for curriculum regulation. To demonstrate the framework's practical viability, the Article operationalizes it through several guiding principles and identifies multiple doctrinal entry points for its implementation. In doing so, the Article offers a principled yet workable pathway toward reimagining how constitutional law can facilitate identity exploration, while remaining attentive to the concerns—legal, pedagogical, or otherwise—that such a vision may raise.

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INTRODUCTION

A teacher in New Jersey quietly removes Pride rainbow stickers from her classroom walls.¹ A librarian in Iowa faces potential criminal charges for failing to remove books featuring LGBTQ characters.² In Texas, a school district's Pride Week activities draw warnings of state intervention and even death threats against school staff.³ These, and many more, widely-reported incidents exemplify the effects of what I term *the new curriculum laws*—a rapidly-expanding set of legislative efforts across multiple U.S. states in recent years that aim to restrict LGBTQ-related content being made available to children in public education.

The scope and speed of this expansion are unprecedented. In just three years, since 2022, no fewer than 22 U.S. states⁴ have enacted laws that either exclude LGBTQ educational content from the public school curriculum (or restrict it),⁵ or otherwise require parental notification before topics related

¹ Tina Kelley, *Rainbow Signs to be Replaced in N.J. Middle School*, NJ.COM (Jan. 4, 2023, at 11:04 ET), <https://www.nj.com/education/2023/01/rainbow-signs-to-be-replaced-in-nj-middle-school.html> [<https://perma.cc/4LB5-EQSQ>].

² Kelly Jensen, *Iowa Rushes, Advances Librarian Criminalization Bill*, BOOK RIOT (Feb. 19, 2025), <https://bookriot.com/iowa-rushes-advances-librarian-criminalization-bill/?utm> [<https://perma.cc/GM97-8S57>].

³ Chuck Lindell, *Pride Week at School District Breaks State Law, Says Texas AG*, USA TODAY (Mar. 24, 2022, at 14:39 ET), <https://www.usatoday.com/story/news/education/2022/03/24/texas-ag-pride-week-lgbtq-austin/7154530001/> [<https://perma.cc/4CSX-AUHK>]; Claire McNerny, *Doss Elementary School Administrators Threatened over Pride Week Activities*, KUT NEWS (Mar. 23, 2022, at 17:14 CT), <https://www.kut.org/education/2022-03-23/austin-isd-lgbtq-death-threats> [<https://perma.cc/4CSX-AUHK>].

⁴ At the time of writing, the states are: Alabama, Arizona, Arkansas, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Missouri, Montana, New Hampshire, North Carolina, Ohio, Tennessee, Texas, Utah, West Virginia, and Wyoming. See *infra* Appendices A & B.

⁵ This exclusion operates through multiple mechanisms. On the classroom level, see FLA. STAT. ANN. §1001.42(8)(c)(3) (2022); N.C. GEN. STAT. ANN. § 115C-76.55 (2023); IOWA CODE § 279.80(2) (2025); OHIO REV. CODE ANN. § 3313.473(E) (2025); KY. REV. STAT. ANN. § 158.1415(d)(2) (2023); ARK. CODE ANN. § 6-16-157(c) (2023); IND. CODE ANN. § 20-30-17-2 (2023); LA. STAT. ANN. § 17:412(A) (2024); ALA. CODE §16-40A-5(a) (2022); TEX. EDUC. CODE ANN. § 28.0043(A) (2025); OHIO REV. CODE ANN. § 3313.473(B)(1)(a) (2025). On the library level, see FLA. STAT. ANN. § 1006.28(2)(a)(2)(b) (2022); UTAH CODE ANN.

to sexual orientation or gender identity are discussed or mentioned in school.⁶ And this wave is far from over: At the time of writing, dozens of similar bills have been introduced, either to broaden restrictions within the same states or to enact them in new ones⁷—including in at least seven additional states.⁸

While part of broader restrictive curriculum legislation targeting race, gender, sexuality, and contested topics,⁹ LGBTQ-specific measures continue—and transform—the “no promo homo” statutes enacted mostly during the 1990s, reflecting dynamics that warrant focused analysis.¹⁰ Yet, much like earlier laws, these measures are often justified by the belief that acknowledging LGBTQ identities in schools will endanger children’s moral development.¹¹ Unlike earlier statutes that targeted sex education specifically,¹² the new

§§ 53G-10-103(2)(a)–(b) (2025) (prohibiting “sensitive materials” in any “school setting,” defined to include school libraries under *id.* § 53G-10-103(1)(g)(i)(B)); IOWA CODE ANN. § 256.11(9)(a)(2) (2025); GA. CODE ANN., § 20-2-324.6 (2024); T.C.A. § 49-6-3803(b)(1) (2024); S.C. CODE ANN. REGS. 43-170 (2024); TEX. EDUC. CODE ANN. § 35.002 (West 2024), *implementation enjoined by* *Book People, Inc. v. Wong*, 692 F. Supp. 3d 660 (W.D. Tex. 2023), *aff’d in part, vacated in part, and remanded*, 91 F.4th 318 (5th Cir. 2024); Act 372, 94th Gen. Assemb., Reg. Sess. (Ark. 2023), *invalidated by* *Fayetteville Pub. Libr. v. Crawford Cnty.*, 684 F. Supp. 3d 879 (W.D. Ark. 2023). On the student club level, see LA. STAT. ANN. § 17:412(A) (2024); TEX. EDUC. CODE ANN. § 33.0815 (2025); *infra* Appendix B.

⁶ ARK. CODE ANN. § 6-16-1006 (2025); ARIZ. REV. STAT. ANN. § 15-102(A)(6) (2021); FLA. STAT. ANN. § 1014.05(d) (2022); MONT. CODE ANN. § 20-7-120 (2021); N.H. REV. STAT. ANN. § 186:11 IX-c (2024); OHIO REV. CODE ANN. § 3313.473(B)(1)(b) (2025); WYO. STAT. ANN. § 21-3-135(a)(v) (2024); TENN. CODE ANN. §§ 49-6-1031, 49-6-1308 (2023); TEX. EDUC. CODE ANN. § 35.005 (2023); FLA. STAT. ANN. § 1014.05(d) (2022); GA. CODE ANN. § 20-2-324.6 (2022).

⁷ See, e.g., H.B. 244, 2025 Leg., Reg. Sess. (Ala. 2025); H.B. 2868, 56th Leg., 1st Reg. Sess. (Ariz. 2025) (vetoed May 13, 2025); H.B. 1045, 157th Gen. Assembly, Reg. Sess. § 1 (Ga. 2024) (to be codified at O.C.G.A. § 20-2-324.7(c)(1)); S.B. 74, 2025 Gen. Assembly, Reg. Sess. (Ga. 2025); S.B. 88, 2023–2024 Leg., Reg. Sess. (Ga. 2024); H.B. 2236, 2023 Leg., Reg. Sess. (Kan. 2023) (vetoed Apr. 24, 2023); S.B. 489, 2023–2024 Leg., Reg. Sess. (Wis. 2023) (introduced Oct. 16, 2023); H.B. 1201, 2025 Reg. Sess. (S.D. 2025); H.B. 3728, 125th Gen. Assembly, Reg. Sess. (S.C. 2023–2024); S.B. 397, 59th Leg., 1st Reg. Sess. (Okla. 2023); S.B. 30, 59th Leg., 1st Reg. Sess. (Okla. 2023); S.B. 2820, 2023 Reg. Sess. (Miss. 2023); S.B. 1024, 102d Gen. Assembly, 2d Reg. Sess. (Mo. 2024); H.B. 595, 2025 Gen. Assembly, Reg. Sess. (N.C. 2025).

⁸ At the time of writing, the states that have proposed, but not yet enacted, similar restrictions are: Kansas, South Dakota, South Carolina, Oklahoma, Minnesota, New Jersey, and Pennsylvania. See *infra* Appendix C.

⁹ See Jonathan Feingold & Joshua Weishart, *Discriminatory Censorship Laws*, 99 TUL. L. REV. 585, 592–615 (2025) (analyzing the scope and origins of this wave of laws).

¹⁰ See *infra* notes 68–78 and accompanying text.

¹¹ See *infra* notes 223–29 and accompanying text.

¹² For analyses of the earlier generation of “no promo homo” laws that have informed legal scholarship over the past decade, see, e.g., Ashley E. McGovern, Note, *When Schools Refuse to “Say Gay”: The Constitutionality of Anti-LGBTQ “No-Promo-Homo” Public School Policies in the United States*, 22 CORNELL J.L. & PUB. POL’Y 465, 467 (2012); Leora Hoshall, *Afraid of Who You Are: No Promo Homo Laws in Public School Sex Education*, 22 TEX. J. WOMEN & L. 219, 222 (2013); Jillian Lenson, *Litigation Primer Attacking State “No Promo Homo” Laws: Why “Don’t Say Gay” Is Not O.K.*, 24 TUL. J.L. & SEXUALITY 145, 149–50 (2015); Amanda Harmon Cooley, *Constitutional Representations of the Family in Public Schools: Ensuring Equal Protection for All Students Regardless of Parental Sexual Orientation or Gender Identity*, 76 OHIO ST. L.J. 1007, 1012–24 (2015); Ronny Hamed-Troyansky, *Erasing “Gay” from the Blackboard: The Unconstitutionality of “No*

curriculum laws operate more insidiously and on a far broader scale. They affect a wide range of subjects, extend censorship to include school libraries and extracurricular spaces, and impose civil—sometimes criminal—liability on various stakeholders in public education. They also establish multifaceted school governance mechanisms that empower parents to intervene directly in curriculum-content decisions.¹³ In this climate, the message to students is clear: Some identities are too controversial, illegitimate, or even dangerous, to be acknowledged in school.

For LGBTQ students and their families, the harms of these laws are direct and profound.¹⁴ But the consequences extend beyond these collectives. These laws deny *all* students opportunities for exploring diverse ways of being, beyond prescribed social roles, while cultivating empathy and the critical thinking that emerges when encountering marginalized perspectives—skills essential to both democratic citizenship and the experience of childhood itself.¹⁵ It is this broader impact—the law’s role in curbing children’s capacity for identity exploration in school—that this Article analyzes.

Legal challenges are rapidly unfolding across the country.¹⁶ In June 2025, the debate over LGBTQ-related content reached the Supreme Court, which,

Promo Homo” Education Laws, 20 U.C. DAVIS J. JUV. L. & POL’Y 85, 91–115 (2016); Clifford Rosky, *Anti-Gay Curriculum Laws*, 117 COLUM. L. REV. 1461, 1468–75 (2017); Kameron Dawson, *Teaching to the Test: Determining the Appropriate Test for First Amendment Challenges to “No Promo Homo” Education Policies*, 13 TENN. J.L. & POL’Y 407, 439–49 (2019). This Article extends that scholarly foundation to address the broader and more systematic restrictions that have emerged since 2022.

¹³ See *infra* Part I.

¹⁴ See, e.g., Nathaniel Frank, Opinion, *What the Science Says About ‘Don’t Say Gay’ and Young People*, N.Y. TIMES (Apr. 20, 2023), <https://www.nytimes.com/2023/04/20/opinion/dont-say-gay-bill-florida.html> [<https://perma.cc/BG9A-N3EL>] (citing studies demonstrating that LGB students experiencing school-based victimization report significantly higher rates of substance use, suicidal behavior, and sexual risk-taking; that LGB youth in unsupportive school environments are 20% more likely to attempt suicide than peers in supportive settings; and that a positive school climate and parental support reduce mental health risks among students, including those questioning their sexual orientation). For a similar argument, see Maxine Eichner, *Free-Market Family Policy and the New Parental Rights Law*, 101 N.C. L. REV. 1305, 1337–38 (2023).

¹⁵ See *infra* Part III.C.

¹⁶ See GLBT Youth in Iowa Schs. Task Force v. Reynolds, 709 F. Supp. 3d 664 (S.D. Iowa 2023), *rev’d and vacated*, 114 F.4th 660 (8th Cir. 2024); Smiley v. Jenner, 684 F. Supp. 3d 835 (S.D. Ind. 2023), *appeal docketed*, No. 23-2543 (7th Cir. Aug. 8, 2023) (argued Feb. 2024); Cousins v. Sch. Bd. of Orange Cnty., 687 F. Supp. 3d 1251 (M.D. Fla. 2022); Equal. Fla. v. Fla. State Bd. of Educ., No. 4:22-cv-134-AW-MJF, 2022 WL 19263602 (N.D. Fla. Sep. 29, 2022); M.A. v. Fla. State Bd. of Educ., No. 4:22-cv-134-AW-MJF, 2023 WL 2631071 (N.D. Fla. Feb. 15, 2022); PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd., 711 F. Supp. 3d 1325 (N.D. Fla. 2024); Penguin Random House LLC v. Gibson, No. 6:24-cv-01573 (M.D. Fla. filed Aug. 29, 2024); Fayetteville Pub. Libr. v. Crawford Cnty., 684 F. Supp. 3d 879 (W.D. Ark. 2023); Parnell v. Sch. Bd. of Lake Cnty., 731 F. Supp. 3d 1298 (N.D. Fla. 2024); Book People, Inc. v. Wong, 692 F. Supp. 3d 660 (W.D. Tex. 2023), *aff’d in part, vacated in part, and remanded*, 91 F.4th 318 (5th Cir. 2024); Cousins v. Grady, No. 6:22-cv-01312-WWB-LHP (M.D. Fla. Nov. 3, 2022); First Am. & Supp. Compl. for Declaratory & Injunctive Relief, Schools v. Reynolds, No. 4:23-cv-00474 (S.D. Iowa Oct. 18, 2024); EmpowerMT v. State, No. DV-25-2024-0000230-CR (Mont. 1st Jud. Dist. Ct. filed Apr. 9, 2024).

in *Mahmoud v. Taylor*, held that schools must allow parents the option to opt their children out of LGBTQ-affirming content.¹⁷ With national censorship emerging as a real possibility,¹⁸ the stakes of these new laws and the constitutional questions they raise have never been higher.

Despite the growing scholarly attention being paid to these questions,¹⁹ the literature has yet to fully account for the scope, structure, and normative logic of this emerging censorship regime.²⁰ This Article therefore offers a three-part intervention by (i) mapping the architecture of these new laws (based on the material presented in Appendix C);²¹ (ii) analyzing the limits of the two primary constitutional doctrines that govern today's curriculum regulation²²—the Free Speech Clause and the Equal Protection Clause;²³ and (iii) proposing a new jurisprudential framework, grounded in three theoretical pillars distilled from socio-legal theories of childhood, that operates within the two aforementioned constitutional doctrines while adapting them to better

¹⁷ *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025).

¹⁸ See Stop the Sexualization of Children Act, H.R. 9197, 117th Cong. (2022); Ending Radical Indoctrination in K-12 Schooling, Exec. Order No. 14190, 90 Fed. Reg. 8853 (Jan. 29, 2025) (directing withdrawal of federal funds for schools teaching “gender ideology” or critical race theory and empowering enforcement).

¹⁹ This Part situates itself within this body of scholarship by highlighting the limitations of the dominant constitutional doctrines—the Free Speech Clause and the Equal Protection Clause—when assessed through the lens of children’s distinctive developmental need for identity exploration. For notable works addressing these questions, see, e.g., Zachary A. Kayal, *He/She/They “Say Gay”: A First Amendment Framework for Regulating Classroom Speech on Gender and Sexuality*, 57 COLUM. J.L. & SOC. PROBS. 63, 105–11 (2023) (arguing that restrictions on incorporating LGBTQ issues in the classroom are constitutionally impermissible); Catherine J. Ross, *Are “Book Bans” Unconstitutional? Reflections on Public School Libraries and the Limits of Law*, 76 STAN. L. REV. 1675, 1711–22 (2024) (analyzing six potential constitutional paths for challenging targeted book removals); Dara E. Purvis, *Transgender Students and the First Amendment*, 104 B.U. L. REV. 435, 446–60 (2024) (showing that student speech doctrine affords schools substantial discretion in regulating school-sponsored student expression); Thomas M. Cassaro, *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, 287 (2024) (contending that curricular restrictions like anti-CRT and “Don’t Say Gay” laws likely violate students’ First Amendment rights). See generally Sarah Ryan, *Liberty and Equality Under the First Amendment: Scrutinizing Book Bans Through an Equal Protection Framework*, 90 BROOK. L. REV. 299 (2024) (arguing that courts should analyze the constitutionality of book bans under the Equal Protection framework).

²⁰ Cf. Feingold & Weishart, *supra* note 9, at 605–17 (focusing primarily on race-related censorship laws and diversity-related content, and offering a valuable, though distinct, typology of three *classroom*-focused regulatory modes). Other articles, while addressing the implications raised by these laws, tend to offer only general descriptions of them. See, e.g., Nicholas Serafin, *Born to Equality: Minor Children, Equal Protection, and State Laws Targeting LGBTQ+ Youth*, 75 UC LAW SF L.J. 411, 417 (2024) (arguing that these laws reflect “animus towards and impose a stigma upon LGBTQ+ minor children”).

²¹ See *infra* Part I.

²² See *infra* Part II.

²³ While other federal and state challenges, including Due Process claims, may be available, this Article focuses on Free Speech (particularly the right to receive information) and Equal Protection claims brought by or on behalf of students, as these doctrines’ strengths and limits form the foundation for the framework proposed here.

reflect the realities of childhood development.²⁴ Notably, this framework builds on these doctrines' core commitments but reinterprets their application through the lens of children's developmental need for identity exploration.²⁵

To map the architecture of these laws, this Article provides a comprehensive typological analysis of their infrastructure—outlining how this censorship structures students' access to identity-related content and conditions the possibilities for self-exploration throughout their journey in public education.²⁶ Based on a meticulous review of state statutes and bills, administrative policies, court decisions, litigation documents, and amicus briefs across all 50 states²⁷ (presented in Appendix C), this typology identifies two primary regulatory pathways: (a) mandates enacted by legislatures and carried out by school districts, school boards, and educators, along with vendors supplying educational materials to schools,²⁸ and (b) parent-driven mechanisms that enable individuals to challenge or block content through opt-out provisions, notification requirements, and formal complaint processes.²⁹ Juxtaposing these pathways illustrates how the new curriculum laws embed de facto state censorship into the operational life of public education centers—systemically, and through the interlocking actions of a variety of stakeholders.³⁰

²⁴ See *infra* Part III.

²⁵ While the analysis focuses on U.S. developments, reflecting its distinctive constitutional and sociopolitical landscape, the framework proposed in this Article is intended to achieve broader applicability for future comparative analysis into education disputes across other jurisdictions.

²⁶ This typological account builds on, and extends, foundational works by legal scholars such as Clifford Rosky and Nancy Tenney, who have focused primarily on sex education and classroom instruction. This Article interprets the recent expansion of LGBTQ-related school curriculum regulation as part of a broader and more integrated regime—one that reaches beyond sex education and operates through multifaceted but interconnected mechanisms of practitioner-delivered policies and parental oversight policies. See Nancy Tenney, *The Constitutional Imperative of Reality in Public School Curricula: Untruths About Homosexuality as a Violation of the First Amendment*, 60 BROOK. L. REV. 1599, 1641–43 (1995) (identifying three categories of curricular restrictions related to homosexuality: total bans on the topic, prohibitions on positive viewpoints, and mandates to present homosexuality as unacceptable). See generally Rosky, *supra* note 12 (proposing a five-category typology of anti-gay curriculum laws: “Don’t Say Gay”; “No Promo Homo”; “Anti-Homo”; “Promo Hetero”; and “Abstinence until Marriage”).

²⁷ Some policies are not easily identifiable, particularly those enacted at the local level by school boards. This is especially true for library censorship, where districts often rely on board-level complaint processes rather than explicit state-mandated content restrictions. See Eliot T. Tracz, *Censorship and Book Bans: Two Non-Constitutional Arguments Against Queer Erasure*, 52 HOFSTRA L. REV. 903, 913–15 (2024). See generally TAIFHA ALEXANDER ET AL., UCLA SCH. L., CRT FORWARD: TRACKING THE ATTACK ON CRITICAL RACE THEORY (2023), https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf [<https://perma.cc/T97K-B63H>] (noting a similar challenge in tracking race-related curriculum censorship policies). To mitigate this challenge, I draw on a wide range of formal and informal sources, including media reports and advocacy databases.

²⁸ See *infra* Part I.A.

²⁹ See *infra* Part I.B.

³⁰ See *infra* Part I.

Building on this analysis, the Article demonstrates how the two primary constitutional doctrines—Free Speech and Equal Protection—which have also been invoked in petitions challenging these restrictions, struggle to meaningfully constrain this emerging censorship regime. Each one advances foundational values—democratic participation³¹ and anti-subordination equality³²—yet, in their current doctrinal form, both are ill-equipped to adequately address the harms imposed by the new curriculum laws.

Notably, Free Speech jurisprudence suffers from substantial doctrinal uncertainty. Federal courts are divided over whether school curriculum decisions are subject to constitutional review or shielded as government speech, which, under the government speech doctrine, is not covered by the Free Speech Clause.³³ But, more importantly, even where review is permitted, courts apply deferential standards that too readily validate exclusion that is framed, for example, as a “legitimate pedagogical concern.”³⁴ This judicial position risks leaving curricular exclusions effectively immune. Equal Protection jurisprudence faces parallel constraints. While doctrinal uncertainty persists about whether curriculum restrictions constitute government speech (and, thus, are subject to Equal Protection review, even if not First Amendment review)³⁵ and about the appropriate level of scrutiny for LGBTQ discrimination,³⁶ the primary obstacle lies in formidable evidentiary requirements that, in practice, result in broad judicial deference.³⁷ Because the new curriculum laws increasingly rely on facially neutral language and pedagogical justifications to mask their underlying aims,³⁸ plaintiffs must demonstrate disparate impact and discriminatory intent—burdens that prove particularly difficult to satisfy in the current legal landscape.³⁹

The Article argues that these limitations should be understood as exemplifying deeper conceptual blind-spots—gaps that become especially consequential when it comes to children’s rights.⁴⁰ Free Speech doctrine is primarily motivated by the value of preparing students for future democratic citizenship,⁴¹ but it largely overlooks children’s present developmental needs—particularly, their need to explore and create a sense of identity during their formative years. Such concerns are frequently sidelined in the name of

³¹ See *infra* notes 186–92, 371–72 and accompanying text.

³² See *infra* notes 289–94 and accompanying text.

³³ See *infra* Part II.A.1.

³⁴ See *infra* Part II.A.2.

³⁵ See *infra* Part II.B.1.

³⁶ See *infra* Part II.B.1.

³⁷ See *infra* Part II.B.2.

³⁸ See *infra* notes 274–78 and accompanying text.

³⁹ See *infra* notes 268–73 and accompanying text.

⁴⁰ Throughout this Article, I use the term “child” to refer to a person under the legal age of majority and not fully emancipated under the law. While the presumptive age of majority is eighteen in all U.S. states, this threshold can vary depending on the legal context—for example, it may be higher for alcohol consumption or lower for consensual sexual activity. See Susan Frelich Appleton, *Restating Childhood*, 79 BROOK. L. REV. 525, 526–27 (2014).

⁴¹ See *infra* notes 186–92, 371–72 and accompanying text.

purportedly neutral pedagogical concerns.⁴² Equal Protection doctrine falls into a different, but equally persistent, conceptual trap: It operates from the premise that identity categories are rigid and stable reference points for legal analysis. This assumption underlies the two doctrines' competing prominent visions of equality: anti-classification theory, which regards any consideration of identity categories as inherently suspect and promotes formal neutrality, versus an anti-subordination theory, which aims to expose and remedy legal structures that reinforce social hierarchies by foregrounding those very categories.⁴³ As the Supreme Court has increasingly sidelined the anti-subordination theory,⁴⁴ the risk is that this doctrine will struggle to account for how curricular exclusions—especially when justified through neutral-sounding pedagogical aims—compromise equal access to educational opportunity.⁴⁵

In response, this Article proposes a legal framework that seeks to mitigate these shortcomings by working within the existing constitutional doctrines, and particularly their core commitments, but reinterpreting them so that they are attuned to students' diverse developmental realities.⁴⁶ The proposed approach draws on interdisciplinary dialogue between three interconnected theoretical pillars: child development theory, multiculturalism, and anti-essentialism. All these pillars foreground children's fundamental need for identity exploration and, together, form the normative foundation of the proposed framework for regulating school curricula.

To translate this foundation into actionable guidance, the Article sets out three guiding principles—scaffolded child agency,⁴⁷ balancing parental authority,⁴⁸ and doctrinal integration⁴⁹ (that is, interpreting Free Speech and Equal Protection in light of children's developmental needs)—that, together, offer a structured approach to creating the conditions necessary to support children's identity exploration. This orientation advocates repositioning the state's role to one of fostering structural conditions that support open-ended

⁴² See *infra* notes 222–32 and accompanying text.

⁴³ See *infra* notes 287–88 and accompanying text.

⁴⁴ See *infra* note 291 and accompanying text.

⁴⁵ See *infra* notes 279–86 and accompanying text.

⁴⁶ Some of the limitations discussed in this Article have led scholars to propose reforms to the standards governing the application of these constitutional doctrines in school settings more broadly. This Article, however, takes a different approach by reframing the normative underpinnings of these doctrines—interpreting and expanding them through the lens of the proposed conceptual understanding of developmental self-exploration. For notable contributions addressing these constitutional issues, see, e.g., Caroline Mala Corbin, *The Government Speech Doctrine Ate My Class: First Amendment Capture and Curriculum Bans*, 76 STAN. L. REV. 1473, 1506–10 (2024) (proposing a four-factor test to determine when students' rights as listeners should outweigh the government's typical immunity under the government speech doctrine); Dylan Salzman, *The Constitutionality of Orthodoxy: First Amendment Implications of Laws Restricting Critical Race Theory in Public Schools*, 89 U. CHI. L. REV. 1070, 1092–96 (2022) (arguing for heightened scrutiny when curriculum limits oppose ideological views).

⁴⁷ See *infra* Part III.B.1.

⁴⁸ See *infra* Part III.B.2.

⁴⁹ See *infra* Part III.B.3.

identity exploration—a formative process through which children engage with diverse ways of being without being confined to predetermined identity categories.

To demonstrate the practical viability of this approach, the Article identifies several doctrinal entry points for its operationalization—including reinterpretation of the right to information embedded in the Free Speech clause,⁵⁰ recalibration of judicial review standards applied in curriculum decisions,⁵¹ and a reframe of the legal debate over parental opt-out provisions.⁵² While promoting children's identity exploration through each of these pathways, the proposed framework remains attentive to children's developmental limits,⁵³ acknowledging that such openness must be supported by guidance⁵⁴ and seamlessly integrated into the existing constitutional structures through established doctrinal pathways.⁵⁵ This implementation strategy reflects the Article's methodology: supplementing the existing doctrines with conceptual insights that are grounded in this understanding of children's identity exploration, thereby proposing a shift in how these doctrines are applied to better reflect developmental realities.⁵⁶

Specifically, in response to the limitations of Free Speech jurisprudence, this framework broadens the current focus on future-oriented civic preparation to include present-tense developmental needs. This approach emphasizes the understanding that supporting such needs, including identity exploration, in educational environments is valuable in its own right, while also recognizing that such present-focused engagement naturally cultivates the capacities essential to democratic readiness.⁵⁷

In response to the internal tension within the Equal Protection jurisprudence—its reliance on fixed identity categories across both anti-classification and anti-subordination theories—the proposed framework advances an anti-essentialist inquiry into how legal regimes constrain children's capacity to explore selfhood.⁵⁸ This approach treats identity not as a fixed trait to be ignored or affirmed but as a dynamic and socially constructed process shaped by institutional conditions.⁵⁹ It advances a vision of equality that is neither oblivious to identity nor constrained by it. In doing so, it shares anti-subordination's concern with structural inequality and anti-classification's skepticism of rigid categorization, while ultimately departing from both by

⁵⁰ See *infra* Part III.C.1.

⁵¹ See *infra* Part III.C.2.

⁵² See *infra* Part III.C.3.

⁵³ See *infra* Part III.B.1.

⁵⁴ See *infra* Part III.B.2.

⁵⁵ See *infra* Part III.B.3.

⁵⁶ Indeed, this strategy reflects the view that legal reform is more feasible and effective when it is achieved through doctrinal adaptation—rather than by inventing complementary doctrine—while showing how existing legal tools, properly interpreted, can already serve children's developmental needs.

⁵⁷ See *infra* notes 375–76 and accompanying text.

⁵⁸ See *infra* Part III.A.3.

⁵⁹ See *infra* notes 332–39 and accompanying text.

centering the legal conditions that enable identity-in-formation rather than merely responding to existing group classifications.⁶⁰

Such conceptual reorientation is urgent at a time when educational content is increasingly weaponized against marginalized youth.⁶¹ As legislative restrictions multiply and constitutional challenges intensify, courts face mounting pressure to respond, yet lack the conceptual tools to do so adequately. While the framework proposed here is not equipped to resolve all doctrinal conflicts or settle every constitutional question at stake, it does offer a critical starting point: reframing the stakes of curriculum regulation in terms of children's developmental agency.⁶² This approach situates the current constitutional debate over curriculum laws within a wider socio-legal understanding of childhood. Furthermore, it advances a much-needed productive dialogue between Free Speech and Equal Protection doctrines,⁶³ uniting them through a shared inquiry that is informed by this understanding.⁶⁴ And the core question this analysis tackles—regarding what role public schools should play in shaping children's capacity for identity exploration—will only become more pressing as American society grows more diverse and politically polarized.⁶⁵

⁶⁰ See *infra* notes 329–31 and accompanying text.

⁶¹ See, e.g., Kristine L. Bowman, *The New Parents' Rights Movement, Education, and Equality*, 91 U. CHI. L. REV. 399, 402 (2024); Mary Ziegler, Maxine Eichner & Naomi Cahn, *Retrenchment by Division: The New Law and Politics of Parental Rights*, 123 MICH. L. REV. 669, 710 (2025).

⁶² Emily Buss has argued that the law should function as a developmental agent, structuring conditions that support children's healthy emotional and psychological growth. See generally Emily Buss, *Allocating Developmental Control Among Parent, Child, and the State*, 2004 U. CHI. LEGAL F. 27, 28 (making this argument). For scholars who adopt a similar lens in different areas including juvenile sentencing, social welfare, parentage matters, and custody, see, e.g., Anne C. Dailey, *Developing Citizens*, 91 IOWA L. REV. 431, 436 (2006); ELIZABETH SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 13–16 (2008); Anne C. Dailey, *Children's Constitutional Rights*, 95 MINN. L. REV. 2099, 2103–05 (2011); Susan Frelich Appleton, Deanna M. Barch & Anneliese M. Schaefer, *The Developing Brain: New Directions in Science, Policy, and Law*, 57 WASH. U. J.L. & POL'Y 1, 1–4 (2018); Clare Huntington & Elizabeth S. Scott, *Conceptualizing Legal Childhood in the Twenty-First Century*, 118 MICH. L. REV. 1371, 1397–1412 (2020); Barbara Bennett Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parents' Rights*, 14 CARDOZO L. REV. 1747, 1810–12 (1993); Anne L. Alstott, Anne C. Dailey & Douglas NeJaime, *Psychological Parenthood*, 106 MINN. L. REV. 2363, 2382–87 (2022). This Article builds on and amplifies this lens by focusing on one central developmental domain: identity formation—a process that, I argue, carries significant implications for contemporary debates over the public school curriculum.

⁶³ In doing so, this Article also contributes to the growing scholarship analyzing the intersection between Freedom of Speech and Equal Protection. For notable works in the context of LGBTQ rights, see, e.g., Timothy Zick, *The Dynamic Relationship Between Freedom of Speech and Equality*, 12 DUKE J. CONST. L. & PUB. POL'Y 13, 43–57 (2016); Luke A. Boso, *Anti-LGBT Free Speech and Group Subordination*, 63 ARIZ. L. REV. 341, 353–66 (2021).

⁶⁴ See *infra* note 297 and accompanying text.

⁶⁵ See, e.g., Levi Boxell, Matthew Gentzkow & Jesse M. Shapiro, *Cross-Country Trends in Affective Polarization*, 106 REV. ECON. & STAT. 557, 558 (2024) (finding that the United States has experienced the largest increase in affective polarization among the countries studied).

The Article is structured around three Parts. Part I provides a timely descriptive account of the emerging body of law governing curriculum content related to sexual and gender identities in the United States. It begins by mapping the regulatory trends documented by others (in sex- and health-related education).⁶⁶ It then outlines the new curriculum laws—the empirical core of the Article—using a typology that distinguishes key elements of these *de facto* censorship mechanisms.⁶⁷ Part II analyzes the prevailing constitutional doctrines applicable to these laws, highlighting their limitations, particularly in addressing the developmental needs of children. Against this backdrop, Part III proposes a new legal framework to re-imagine this landscape, informed by the limitations identified in the previous Part. It outlines the theoretical pillars of this framework and elaborates on its guiding principles for reconceptualizing educational rights and responsibilities. It then illustrates the framework’s practical implications by applying it to contemporary curriculum disputes and addresses the foreseeable objections to its implementation.

I. THE RISE OF THE NEW CURRICULUM LAWS

When it comes to sexual orientation and gender identity, the laws that govern school curricula in the U.S. have undergone a notable transformation over the past few decades. Early iterations, enacted between 1987 and 2001, typically adopted a narrow focus on restricting discussions of “homosexuality” within sex- and health-related school education. This targeted approach has since evolved into more comprehensive policies that reflect growing polarization among states. Over the years, some jurisdictions have not only repealed exclusionary provisions but implemented inclusive legislation encouraging LGBTQ-positive content in sex education classes, and a few have done so across all subject areas. Others have moved toward more extensive censorship, expanding restrictions beyond sex education to prohibit LGBTQ content throughout the entire curriculum.

To understand this increasingly fragmented terrain, this Part identifies and discusses two interconnected mechanisms intended to curtail LGBTQ content in U.S. schools: (1) practitioner-delivered provisions implemented by educational authorities, teachers, librarians, and booksellers; and (2) parental-oversight provisions that empower parents to have LGBTQ materials restricted or removed through notification systems, consent requirements, and formal complaint procedures.

⁶⁶ See *infra* Part I.A.1.i. The survey builds on prior analyses, *supra* note 26, and extends them by introducing updates to reflect recent legislative developments.

⁶⁷ See *infra* Parts I.A–B.

A. *Practitioner-Delivered Policies*

This Section surveys and maps three settings where discussion of LGBTQ-related topics is regulated: the classroom, the school library, and student clubs. While often treated as distinct, these sites function together to shape students' access to knowledge and identity-affirming content. The typology developed here captures how legal mandates, administrative policies, and informal deterrents, shaped by these laws, converge across these domains to form a cohesive regulatory architecture. What distinguishes this typology is not only its coverage of multiple regulatory domains but also its broader understanding of the curriculum—one that extends beyond classroom instruction to encompass the full range of educational materials and experiences that shape student learning and identity.⁶⁸

1. *Classroom*

The most direct form of LGBTQ-related curriculum regulation occurs at the classroom level, where state laws systematically control how—and whether—teachers can discuss LGBTQ-related topics during formal instruction. These regulations have proliferated across multiple states, creating a patchwork of restrictions that range from a blanket silence on such topics to what amounts to mandated stigmatization.

i. Sex- and Health-Related Contexts. Sex education constituted the initial regulatory focus for LGBTQ-related curriculum restrictions, and it remains the most heavily regulated. A review of state legislation reveals that these laws generally follow one of three approaches that can be characterized as: a no-mention policy; mandated condemnation; or an inclusive mandate.

a) No-Mention Policy. The State of Louisiana maintains a law, enacted in 1987, that prohibits public schools from including any materials depicting homosexual activity in their sex education programs.⁶⁹ South Carolina previously had a similar restriction⁷⁰

⁶⁸ Wiel Veugelaers, *Citizenship Education for a Diverse Europe*, in *HANDBOOK OF MORAL AND CHARACTER EDUCATION* 379, 382–83 (Larry Nucci, Tobias Krettenauer & Winston C. Thompson eds., 3d ed. 2024) (discussing the term “hidden curriculum”). Restrictions on library books, for example, not only limit access to information but also signal which identities—be they related to sexual orientation or gender—are considered legitimate. Though not part of formal instruction, library holdings serve a curricular function by supporting the school's pedagogical mission, and libraries face similar political pressures as the wider school, including parental objections. Student clubs, likewise, function as extensions of the curriculum by providing peer education, resources, and discussions that supplement classroom learning and student development.

⁶⁹ LA. STAT. ANN. § 17:281(A)(3) (1987).

⁷⁰ S.C. CODE ANN. § 59-32-30(A)(5) (1988).

that was repealed in 2020 following a lawsuit challenging it as unconstitutional.⁷¹

b) Mandated Condemnation. Several states have enacted provisions requiring schools to present homosexuality in a negative or condemnatory light within sex- or health-education contexts. Texas maintains statutory requirements compelling schools to characterize homosexuality as not an acceptable lifestyle and to classify it as “a criminal offense.”⁷² Similar laws previously existed in Mississippi,⁷³ Alabama,⁷⁴ and Utah,⁷⁵ though they have been repealed in response to judicial interventions. Oklahoma continues to mandate that schools present homosexuality as a primary vector for AIDS transmission,⁷⁶ a requirement that Arizona maintained until 2021.⁷⁷ Several states have adopted more subtle approaches to reinforce heteronormative standards. North Carolina⁷⁸ and Florida⁷⁹ maintain provisions that require schools to teach children that heterosexual marriage is the default standard for avoiding sexual health risks, with Florida’s recent law requiring that sex-ed materials teach that these reproductive roles are “binary, stable, and unchangeable.”⁸⁰ Illinois, too, followed similar policies, which were repealed only recently.⁸¹

c) Inclusive Mandates. In contrast to the two aforementioned approaches, a set of inclusive statutes in at least nine states—California, Colorado, Connecticut, New Jersey, Oregon, Illinois, Rhode Island, Maryland, and Washington—plus the District of Columbia—promote affirming instruction for LGBTQ youth and the discussion of sexual health education tailored to their needs.⁸² In some states, such as California, the Department of Education has adopted guidelines to support school districts in implementing these

⁷¹ See *Gender and Sexuality All. v. Spearman*, No. 2:20-CV-00847-DCN, 2020 WL 1227345 (D.S.C. Mar. 11, 2020).

⁷² TEX. HEALTH & SAFETY CODE ANN. § 163.002 (1991). This requirement compels schools to provide inaccurate information, as homosexual conduct has not been criminal anywhere in the U.S. since the Supreme Court’s decision in *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁷³ MISS. CODE ANN. § 37-13-171(2)(e) (1998).

⁷⁴ ALA. CODE § 16-40A-2(c) (1992) (repealed 2021).

⁷⁵ UTAH CODE ANN. § 53A-13-101(1)(c)(iii)(A) (2016). This law was repealed by Health Education Amendments, S.B. 196, 62d Leg., Gen. Sess. (Utah 2017), in response to Am. Compl. for Declaratory and Injunctive Relief at 1–4, Equal. Utah v. Utah State Bd. of Educ., No. 2:16-cv-01081-BCW, 2016 WL 9113536 (D. Utah Nov. 15, 2016).

⁷⁶ OKLA. STAT. ANN. tit. 70, § 11-103.3(D)(A) (1987).

⁷⁷ ARIZ. REV. STAT. ANN. § 15-716(C) (1991), *repealed* by H.B. 2184, 55th Leg., 1st Reg. Sess. (Ariz. 2021).

⁷⁸ N.C. GEN. STAT. ANN. § 115C-81.30(a)(5) (2017).

⁷⁹ FLA. STAT. ANN. § 1003.46 (2022).

⁸⁰ FLA. STAT. ANN. § 1003.46(2)(a) (2025).

⁸¹ 105 ILL. COMP. STAT. ANN. 5/27-9.1(c)(2) (1990).

⁸² SIECUS, SEX ED STATE LAW AND POLICY CHART 17–19 (2022), <https://siecus.org/wp-content/uploads/2023/12/2022-Sex-Ed-State-Law-and-Policy-Chart.pdf> [<https://perma.cc/M45W-EDN3>].

requirements.⁸³ Other states that do not prohibit these discussions (such as Massachusetts, Nevada, Montana, and Nebraska) leave decisions, vis-à-vis whether and how to include LGBTQ-related content in the curriculum, up to the local school boards instead.⁸⁴

ii. All Contexts

In recent years, several states have enacted laws that regulate classroom discussions about sexual orientation and gender identity in public school curricula, spanning from Kindergarten to 12th Grade.⁸⁵ These laws can be classified into three primary categories: (a) complete prohibitions; (b) developmentally conditioned restrictions; and (c) inclusive policies. Details of these categories are set out in Appendix C and summarized in Appendix A.

a) Complete Prohibition. Five states, Kentucky,⁸⁶ Louisiana,⁸⁷ Idaho,⁸⁸ West Virginia,⁸⁹ and Texas,⁹⁰ impose a blanket prohibition across all Grades, and similar legislation has been introduced in Alabama.⁹¹ Six states—Florida,⁹² North Carolina,⁹³ Iowa,⁹⁴ Ohio,⁹⁵

⁸³ See, e.g., HEALTH EDUCATION FRAMEWORK, CAL. DEP'T OF EDUC., at ch. 1, 14 (2019), <https://www.cde.ca.gov/ci/he/cf/> [<https://perma.cc/GR2A-FXTW>].

⁸⁴ SIECUS, *supra* note 82, at 17–19.

⁸⁵ In the U.S. education system, this spans elementary school (Kindergarten–5th Grade, ages 5–11), middle school (6–8th Grade, ages 11–14), and high school (9–12th Grade, ages 14–18).

⁸⁶ KY. REV. STAT. ANN. § 158.1415(d)(2) (2023).

⁸⁷ LA. STAT. ANN. § 17:412(A) (2024).

⁸⁸ IDAHO CODE ANN. § 33-6001(5) (2025).

⁸⁹ W. VA. CODE ANN. § 18-5-29 (2025) (including narrow exceptions for student questions, historical references, bullying, and instruction as part of Advanced Placement or dual enrollment courses).

⁹⁰ TEX. EDUC. CODE ANN. § 28.0043(A) (2025).

⁹¹ H.B. 244, 2025 Leg., Reg. Sess. (Ala. 2025) (engrossed version) (proposing to extend the ban to all pre-K-12 Grades and to prohibit related flags or symbols on school property), engrossed Apr. 17, 2025, died in Senate.

⁹² FLA. STAT. ANN. § 1001.42(8)(c)(3) (2022) (prohibiting classroom instruction on sexual orientation or gender identity in Kindergarten through 3rd Grade).

⁹³ N.C. GEN. STAT. ANN. § 115C-76.55 (2023) (prohibiting classroom instruction on sexual orientation or gender identity in Kindergarten through 4th Grade); see H.B. 595, 2025 Gen. Assemb., Reg. Sess. (N.C. 2025) (pending expansion to 6th Grade).

⁹⁴ IOWA CODE § 279.80(2) (2023) (prohibiting curriculum or instruction relating to gender identity or sexual orientation to students in Kindergarten through 6th Grade); see *GLBT Youth in Iowa Schs. Task Force v. Reynolds*, 709 F. Supp. 3d 664 (S.D. Iowa 2023) (partially granted a preliminary injunction, enjoining enforcement of the prohibition on instruction related to gender identity and sexual orientation), *rev'd and vacated*, 114 F.4th 660 (8th Cir. 2024), *on remand sub nom. Iowa Safe Schs. v. Reynolds*, 788 F. Supp. 3d 969, at 975–76 (S.D. Iowa 2025) (holding that the statute may constitutionally bar mandatory classroom instruction on these topics), *appeal docketed*, No. 25-02186 (8th Cir. June 13, 2025).

⁹⁵ OHIO REV. CODE ANN. § 3313.473(e) (2025) (prohibiting instruction that includes sexuality-related content to students in Kindergarten through 3rd Grade; “sexuality-related content” is defined as “any oral or written instruction, presentation, image, or description of sexual concepts or gender ideology provided in a classroom setting,” *id.* § 3313.473(g)(1)).

Arkansas,⁹⁶ and Indiana⁹⁷—prohibit such instruction only at Elementary level, with specific cutoffs. While differing in scope, these laws uniformly rely on facially neutral terms, such as sexual orientation” and “gender identity,” without explicit reference to LGBTQ content.⁹⁸

b) Developmentally Conditioned Prohibition. Other states have adopted, ostensibly, a more limited scope in this censoring of discussion. Alabama prohibits discussion of such content according to the age of the pupil, alluding to content that is “not age appropriate or developmentally appropriate.”⁹⁹ Florida and Ohio, which completely prohibit classroom discussions about sexual orientation and gender identity before Grade 3, allow such topics for older students as long as the conversations are “age-appropriate.”¹⁰⁰

The “age-appropriate” requirement sounds neutral in principle, but, in practice, it can both be confusing and exert a chilling effect. It does not clarify what qualifies as appropriate, and nor does it specify who is to make this determination. Faced with potential penalties and no clear guidance, many educators predictably err on the side of caution, avoiding even basic acknowledgment of LGBTQ families and their children or the displaying of supportive symbols in their classrooms.¹⁰¹

⁹⁶ ARK. CODE ANN. § 6-16-157(c) (2023) (prohibiting classroom instruction on gender identity, sexual orientation, or related topics pre-5th Grade).

⁹⁷ IND. CODE ANN. § 20-30-17-2 (2023) (prohibiting classroom instruction on human sexuality in pre-Kindergarten through 3rd Grade). *But see* Smiley v. Jenner, 684 F. Supp. 3d 835, 842 (S.D. Ind. 2023) (denying injunctive relief to an elementary school teacher challenging this law, stating that “informal conversation” and other “interactions, even when spontaneous and not part of official curriculum, are within the scope of [the] duties and responsibilities [of] an elementary school teacher and therefore not protected by the First Amendment”), *appeal pending*, No. 23-2543 (7th Cir. argued Feb. 2024).

⁹⁸ *See infra* Appendix A.

⁹⁹ ALA. CODE § 16-40A-5(a) (2024); *see* H.B. 244, 2025 Leg., Reg. Sess. (Ala. 2025).

¹⁰⁰ FLA. STAT. ANN. § 1001.42(8)(c)(3) (2022). Legal challenges to the law have been dismissed for lack of standing. *See generally* Equal. Fla. v. Fla. State Bd. of Educ., No. 4:22-cv-134-AW-MJF, 2022 WL 19263602 (N.D. Fla. Sep. 29, 2022); M.A. v. Fla. State Bd. of Educ., No. 4:22-cv-134-AW-MJF, 2023 WL2631071 (N.D. Fla. Feb. 15, 2022). While those dismissals were on appeal, the parties reached a settlement clarifying that this law applies only to “teaching,” not to mere discussion. Teachers may, for example, respond to student-initiated conversations about identity or family life and evaluate student work that references the prohibited topics. *See* Patricia Mazzei, *Legal Settlement Clarifies Reach of Florida’s ‘Don’t Say Gay’ Law*, N.Y. TIMES (Mar. 11, 2024), <https://www.nytimes.com/2024/03/11/us/florida-dont-say-gay-law-settlement.html> [<https://perma.cc/SN3D-MBD3>]; OHIO REV. CODE ANN. § 3313.473(B)(1)(a) (2025).

¹⁰¹ *See, e.g.*, GLBT Youth in Iowa Schs. Task Force v. Reynolds, 709 F. Supp. 3d 664, 677 (S.D. Iowa 2023) (discussing that in response to the new Iowa’s law “teachers are hesitant to purchase new books for students that even arguably might contain prohibited material . . . [they] have reduced or eliminated book collections in their classrooms out of fear of retaliation or discipline”); *see also* Corbin, *supra* note 46, at 1481 nn.34–37 (2024) (referring to Florida teachers who “are hesitant to discuss same-sex families or display LGBTQ symbols like pride flags or rainbows” or another school district who “took down a video about LGBTQ bullying”).

c) *Inclusive Policies*. This recent wave of prohibitive legislation stands in contrast to earlier—and, at times, concurrent—policies in certain states that have mandated LGBTQ-inclusive educational content. California led the way in 2012 by adding LGBTQ individuals to the list of historically underrepresented groups that must be accurately depicted in history and the social sciences.¹⁰² Following its lead, other states—including New Jersey,¹⁰³ Colorado,¹⁰⁴ Illinois,¹⁰⁵ Oregon,¹⁰⁶ Nevada,¹⁰⁷ and Washington¹⁰⁸—emphasize the inclusion of LGBTQ figures, events, and perspectives in history and social science curricula. Additionally, other states—including Massachusetts,¹⁰⁹ Vermont,¹¹⁰ Connecticut,¹¹¹ Delaware,¹¹² Maryland,¹¹³ Maine,¹¹⁴ and Michigan¹¹⁵—as well as the District of

¹⁰² CAL. EDUC. CODE § 51204.5 (2012).

¹⁰³ N.J. STAT. ANN. § 18A:35-4.35 (2019).

¹⁰⁴ COLO. REV. STAT. ANN. § 22-1-104 (2021). The Board approved the revised standards on November 10, 2022. See *Colorado State Board of Education Approves New Inclusive Social Studies Standards*, COLO. PUB. RADIO (Nov. 10, 2022, at 17:42 ET), <https://www.cpr.org/2022/11/10/colorado-state-board-of-education-approves-new-inclusive-social-studies-standards/> [<https://perma.cc/JBG7-WUEA>].

¹⁰⁵ 105 ILL. COMP. STAT. ANN. 5/27-21(a) (2019).

¹⁰⁶ OR. REV. STAT. ANN. § 329.045(1)(a) (2021). See generally OR. DEP'T OF EDUC., LGBTQ2SIA+ STUDENT SUCCESS PLAN (2020), <https://www.oregon.gov/ode/students-and-family/equity/Documents/LGBTQ2SIA+%20Student%20Success%20Plan.pdf> [<https://perma.cc/T85N-CXYE>] (state plan outlining strategies to support the safety, inclusion, and academic success of LGBTQ2SIA+ students in Oregon schools).

¹⁰⁷ NEV. REV. STAT. ANN. § 389.061(1)(b) (2021).

¹⁰⁸ WASH. REV. CODE ANN. § 28A.345.130 (2024).

¹⁰⁹ See MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., 2018 MASSACHUSETTS HISTORY AND SOCIAL SCIENCE CURRICULUM FRAMEWORK 41, 78, 136, 156, 159 (2018), <https://www.doe.mass.edu/frameworks/hss/2018-12.pdf> [<https://perma.cc/PN8N-874U>]; *Safe Schools Program for LGBTQ Students*, MASS. DEP'T OF ELEMENTARY AND SECONDARY EDUC. (Feb. 11, 2025), <https://www.doe.mass.edu/sfs/lgbtq/> [<https://perma.cc/Z66G-QWTZ>].

¹¹⁰ An Act Relating to Ethnic and Social Equity Studies Standards for Public Schools, No. 1, H.3, 2019 Leg., Reg. Sess. (Vt. 2019); Vt. State Bd. of Educ., *Rule Series 2000: Education Quality Standards* 12 (Apr. 17, 2024), <https://education.vermont.gov/sites/aoe/files/documents/edu-state-board-rule-series-2000.pdf> [<https://perma.cc/S5HZ-ZYHD>] (final rule adopted by the Vermont State Board of Education setting education quality standards, including requirements that students demonstrate proficiency in “ethnic and social equity studies”).

¹¹¹ 2021 CONN. PUB. ACTS 21-2 (June Spec. Sess.) § 374(b)(3)(D).

¹¹² *Culturally Responsive Resources*, DEL. DEP'T OF EDUC., <https://education.delaware.gov/educators/academic-support/standards-and-instruction/digital-de/instructional-resources/culturally-responsive-resources/> [<https://perma.cc/YC4R-YX2D>].

¹¹³ MD. STATE DEP'T OF EDUC., SAFE AND SUPPORTIVE SCHOOLS FOR ALL STUDENTS: CREATING INCLUSIVE SPACES FOR LGBTQIA+ YOUTH 9–20 (2024), <https://marylandpublicschools.org/about/Documents/DSFSS/SSSP/SafeSpaces/LGBTQ-Guidelines-for-Gender-Identity.pdf> [<https://perma.cc/VC5L-UZWC>].

¹¹⁴ *LGBTQ+ Studies*, ME. DEP'T OF EDUC., <https://www.maine.gov/doe/learning/content/socialstudies/resources/DEI/LGBTQ> [<https://perma.cc/9Q3L-63R3>].

¹¹⁵ Memorandum from Michael F. Rice, Mich. State Superintendent, to the Local and Intermediate School District Superintendents and Public School Academy Directors (Feb. 13, 2025), <https://www.michigan.gov/-/media/Project/Websites/mde/Year/2025/02/13/LGBTQ-Student-Guidance-Memo.pdf> [<https://perma.cc/J48P-E8PY>].

Columbia¹¹⁶—implemented similar but non-binding initiatives through State Education Agency guidance rather than mandatory legislation.

Despite their shared commitment to LGBTQ inclusion, these states' policies vary significantly in their implementation approaches across three key dimensions. First, states diverge in their grade-level implementation. Most target middle- and high-school curricula, as often explicitly specified in their statutory language.¹¹⁷ Nevada, though, stands out for mandating an inclusive curriculum beginning in Kindergarten—a bold policy choice in an area that typically generates the most controversy when implemented in early education.¹¹⁸

Second, governance approaches reveal different balances of state versus local control. While most states' laws mandate integration through official state curriculum content, they often defer to local districts regarding specific materials and implementation methods.¹¹⁹ This local discretion is likely to result in uneven compliance based on district priorities.¹²⁰ Washington's approach differs in this regard, exemplifying a top-down enforcement model that requires districts to adopt state-developed inclusive curriculum policies by a firm deadline.¹²¹

¹¹⁶ D.C. STATE BD. OF EDUC., SOC. STUD. STANDARDS ADVISORY COMM., SOCIAL STUDIES STANDARDS GUIDING PRINCIPLES 8 (2020), <https://sboe.dc.gov/sites/default/files/dc/sites/sboe/publication/attachments/2020-12-16-FINAL-SSSAC-Guiding-Principles.pdf> [<https://perma.cc/LPQ6-464W>].

¹¹⁷ See, e.g., N.J. STAT. ANN. § 18A:35-4.35 (2019) (“requiring that the . . . board of education shall include instruction on the political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people, in an appropriate place in the curriculum of middle school and high school students”); 105 ILL. COMP. STAT. ANN. 5/27-21(b) (2023) (“No pupils shall be graduated from the *eighth grade* of any public school unless the pupils have received instruction in the history of the United States as provided in this Section . . .”).

¹¹⁸ NEV. REV. STAT. ANN. § 389.061(1)(b) (2021). While Nevada requires early LGBTQ-related curriculum implementation, other states merely encourage it. See, e.g., 2021 CONN. PUB. ACTS 21-2 (June Spec. Sess.) § 374(b)(3)(D), at 592–93 (directing development of a K–8 model curriculum to include LGBTQ studies, though local adoption is not mandated). Although California does not mandate LGBTQ content specifically for primary Grades, in 2017, it approved LGBTQ-inclusive K–8 history textbooks to comply with the 2011 FAIR Education Act. See Michael Schaub, *California Will Be the First State to Use LGBT-Inclusive History Textbooks in Schools*, L.A. TIMES (Nov. 13, 2017, at 10:00 PT), https://www.latimes.com/books/jacketcopy/la-et-jc-lgbt-textbooks-20171113-story.html?utm_content=buffera1863&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer [<https://perma.cc/ZS7L-HUBM>].

¹¹⁹ The laws of California, New Jersey, Illinois, Oregon, Nevada, and Washington amended state standards to ensure that textbooks, materials, and instruction adequately reflect LGBTQ individuals. This is as opposed to policies, originating from the State Education Agency, that offer only guidance and optional materials.

¹²⁰ According to an Equality California survey, while 60% of districts had taken some steps toward implementation, fewer than one-third had fully adopted the mandated curriculum changes. See Matthew S. Bajko, *CA Schools Falling Short on Teaching LGBTQ Content*, BAY AREA REP. (Oct. 23, 2024), <https://www.ebar.com/story.php?ch=news&id=336057> [<https://perma.cc/PL7T-FY3F>].

¹²¹ WASH. REV. CODE ANN. § 28A.345.130 (2024).

Third, resource allocation varies considerably between states, directly affecting implementation quality. Most states provide only basic curriculum frameworks or resource repositories without dedicated funding,¹²² which can result in variable quality of implementation. Well-resourced districts or those with strong local commitment (sometimes partnering with nonprofits) and stronger funding or partnerships are more likely to deliver more robust programs.¹²³ Meanwhile, other states, such as Colorado¹²⁴ and Connecticut,¹²⁵ designate specific funds to help schools develop or acquire instructional materials and training resources.

2. School Libraries

Classroom textbooks and discussion are not the sole sources of student learning; libraries also constitute a critical forum where knowledge is curated. While book-bans in school libraries have historically reflected a pattern in which LGBTQ content is disproportionately censored, the wave of restrictions over the last three years or so marks an unprecedented escalation of this practice. Florida, a leading state in this censorship movement, requires school librarians to remove books containing anything that could be construed as “sexual conduct”¹²⁶—a standard that recently the Middle District of Florida struck down as unconstitutionally overbroad and vague.¹²⁷ Similarly, Iowa’s recent law requires libraries to contain only “age-appropriate materials,”¹²⁸

¹²² The state boards of education in Oregon, Illinois, and Colorado issued implementation guides aligning LGBTQ content with existing state standards. *See* 105 ILL. COMP. STAT. ANN. 5/27-21(c) (2023); OR. DEP’T OF EDUC., *supra* note 106. *See generally* COLO. DEP’T OF EDUC., COMMISSION ON LGBTQ+ INCLUSION (Nov. 9, 2022), <https://www.cde.state.co.us/standardsandinstruction/hb191192commissionreport> [<https://perma.cc/T3YE-KWC8>] (commission report recommending integration of LGBTQ+ history and contributions into state social-studies standards).

¹²³ For example, in New Jersey, the state’s partnership with advocacy groups like Garden State Equality led to the development and pilot implementation of an LGBTQ-inclusive curriculum across multiple subjects. *See* Garden State Equality & Make It Better for Youth, *LGBTQ-Inclusive Curriculum Media Kit*, INSIDERNJ.COM (2020), https://www.insidernj.com/wp-content/uploads/2020/01/Curriculum_Media_Kit.pdf [<https://perma.cc/RUY7-KYLW>].

¹²⁴ COLO. REV. STAT. ANN. § 22-1-104(5)(b) (2021).

¹²⁵ *Connecticut Funds K-8 Model Curriculum that Includes LGBTQ+ Studies*, GLISTEN (July 2, 2021), <https://glisten.org/news/connecticut-funds-k-8-model-curriculum-that-includes-lgbtq-studies/> [<https://perma.cc/EU2R-ZWJ8>].

¹²⁶ FLA. STAT. ANN. § 1006.28(2)(a)(2)(b) (2025). The District Court for the Northern District of Florida court has allowed a First Amendment challenge to proceed against Escambia County School Board for allegedly engaging in viewpoint-based removal of LGBTQ- and race-related books. *See* PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd., 711 F. Supp. 3d 1325, 1331 (N.D. Fla. 2024).

¹²⁷ *Penguin Random House LLC v. Gibson*, 796 F. Supp. 3d 1052, 1081 (M.D. Fla. 2025).

¹²⁸ IOWA CODE ANN. § 256.11(9)(a)(2) (2025). The term “age-appropriate” was amended to exclude “any material with descriptions or visual depictions of a sex act,” as defined by Iowa Code § 702.17, which lists six examples of qualifying sexual contact. *See id.* § 19(a)(1). The enforcement of this book-removal mandate was preliminarily

while Georgia allows local governments to censor books based on the criterion of “harmful to minors.”¹²⁹ A similar approach has been taken by Alabama,¹³⁰ Missouri,¹³¹ Indiana,¹³² Utah¹³³ and Idaho¹³⁴ (and by Arkansas, before its law was struck down in December 2024).¹³⁵ States employ varying enforcement

enjoined as facially unconstitutional under the First Amendment in *Penguin Random House LLC v. Robbins*, 774 F. Supp. 3d 1001, 1036 (S.D. Iowa 2025). On remand in a related case, the court in *Iowa Safe Schs. v. Reynolds*, 788 F. Supp. 3d 969, 994–95 (S.D. Iowa 2025), continued to enjoin enforcement of the library provision on similar grounds.

¹²⁹ GA. CODE ANN. § 20-2-324.6 (2024) (nullifying existing schoolbook challenge policies and mandating new complaint procedures; defining “harmful to minors” to include nudity, sexual conduct, sexual excitement, or sadomasochistic abuse but leaving “sexual conduct” undefined, allowing for subjective enforcement).

¹³⁰ Since May 2024, the Alabama Public Library Service has required all state-funded public libraries to adopt policies that restrict access to “obscenity, sexually explicit, or other material deemed inappropriate for children” in youth-designated sections. The rule itself did not define “sexually explicit,” and the Alabama Public Service board adopted a new definition following concerns of vagueness. See Press Release, Ala. Library Ass’n, Exec. Council Statement on the May 8th, 2025 APLS Meeting and May 12, 2025 APLS Memo (May 15, 2025), <https://www.allanet.org/alla-statement-state-library-board-decisions-and-actions-may-2025-> [https://perma.cc/A5GR-PZ9V]; Letter from John Wahl, Chair, Ala. Pub. Libr. Serv. Exec. Bd., to Pub. Libr. Dirs. (May 12, 2025), https://aplsws2.apls.state.al.us/Wahl_2025-05-12_memo_10_.pdf [https://perma.cc/PGF9-CC8H]; Ralph Chapoco, *Alabama Board Overseeing Local Libraries Further Defines Term “Sexually Explicit”*, ALA. REFLECTOR (May 9, 2025, at 7:01 ET), <https://alabamareflector.com/2025/05/09/alabama-board-overseeing-local-libraries-further-defines-term-sexually-explicit/> [https://perma.cc/XT62-3UGX]. This policy has prompted concerns that it will lead to over-zealous removal of LGBTQ-related books and create a chilling effect on access to diverse materials. See, e.g., Mike Cason, *Which Books Get Challenged in Alabama Libraries? See the List*, AL.COM (Mar. 7, 2024, at 14:07 ET), <https://www.al.com/news/2024/03/which-books-get-challenged-in-alabama-libraries-see-the-list.html> [https://perma.cc/2ZCX-59ZE].

¹³¹ MO. ANN. STAT. § 573.550 (2022); see Pet. for Injunctive and Declaratory Relief, Mo. Ass’n of Sch. Librs. v. Baker, No. 2316-cv-05732 (Mo. Cir. Ct. Jackson Cnty. filed Feb. 16, 2023) (challenging Missouri Revised Statute § 573.550 as unconstitutional; case was removed to federal court but subsequently remanded to state court, where it remains pending).

¹³² IND. CODE ANN. § 35-49-3-3 (2023).

¹³³ UTAH CODE ANN. §§ 53G-10-103(2)(a)–(b) (2025) (prohibiting “sensitive materials” in any “school setting,” defined to include school libraries under *id.* § 53G-10-103(1)(g)(i)(B)) and defining “sensitive material” to include instructional materials constituting “pornographic or indecent material” under Utah law). Though facially neutral, the statute’s implementation disproportionately affected LGBTQ-themed books: of thirty-nine titles removed by one district, eighteen (46%) featured LGBTQ characters. See *Banned in the USA: State Laws Supercharge Book Suppression in Schools*, PEN AM. (Apr. 20, 2023), <https://pen.org/report/banned-in-the-usa-state-laws-supercharge-book-suppression-in-schools/> [https://perma.cc/9DPU-5MFA].

¹³⁴ IDAHO CODE ANN. §§ 18-1514, 18-1517B(2) (2024) (requiring libraries to “take reasonable steps to restrict access by minors to materials [deemed] harmful to minors; incorporates Idaho Code § 18-1514’s definition of “sexual conduct,” which includes *homosexuality*); see Compl. for Injunctive and Declaratory Relief, *Penguin Random House LLC v. Labrador*, No. 1:25-cv-00061-DCN, 2025 WL 392456 (D. Idaho Feb. 4, 2025) (First Amendment challenge to Idaho’s book restriction law).

¹³⁵ Act 372, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (restricting access to materials in public libraries deemed “harmful to minors” and imposing liability on booksellers by requiring them to restrict or segregate such materials to prevent access by minors), *invalidated by Fayetteville Pub. Libr. v. Crawford Cnty.*, 684 F. Supp. 3d 879, 896–903 (W.D. Ark. 2023) (struck down as facially unconstitutional).

mechanisms. Some states, like Alabama, rely on budget enforcement by threatening to withhold funding from non-compliant libraries.¹³⁶ Others—Indiana,¹³⁷ Missouri,¹³⁸ and Georgia¹³⁹ (plus North Carolina,¹⁴⁰ which is considering new legislation)—are moving toward harsher penalties that would expose school staff to potential criminal liability.

Such sweeping and ill-defined language increases the disproportionate restrictions on LGBTQ content.¹⁴¹ Some libraries purge all or most LGBTQ-themed books,¹⁴² moving them to “adults-only” sections to deter access,¹⁴³ and some state review processes actively block parents from challenging such actions.¹⁴⁴ In the states that implement such policies, librarians shoulder the responsibility for implementing these unclear rules with little guidance,¹⁴⁵ faced with this unenviable task and the scrutiny that goes with it, they may

¹³⁶ See *supra* note 130.

¹³⁷ IND. CODE ANN. § 35-49-3-3 (2023) (violation of this law constitutes a Level 6 felony).

¹³⁸ MO. ANN. STAT. § 573.550 (2022) (violation of this law constitutes a Class A misdemeanor).

¹³⁹ S.B. 74, 2025 Gen. Assemb., Reg. Sess. (Ga. 2025) (effective July 1, 2025).

¹⁴⁰ H.B. 595, 2025 Gen. Assemb., Reg. Sess. (N.C. 2025).

¹⁴¹ According to PEN America, 41% of books targeted for bans between 2021 and 2022 contained LGBTQ themes, protagonists, or significant secondary characters. See *PEN America Index of School Book Bans – 2021-2022*, PEN AM., <https://pen.org/book-bans/banned-book-list-2021-2022/> [<https://perma.cc/24W3-9FRK>].

¹⁴² For Iowa, see, e.g., *GLBT Youth in Iowa Schs. Task Force v. Reynolds*, 709 F. Supp. 3d 664, 679 (S.D. Iowa 2023). For Florida, see, e.g., *Compl. at 45–46*, *PEN Am. Ctr. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 3d 1325 (N.D. Fla. 2024). In the case of Utah, in 2022, even prior to the law’s implementation, Utah’s Alpine School District removed fifty-two books from its libraries; 42% of these titles featured LGBTQ characters or themes. See Suzanne Trimel, *Utah School District’s Reversal on Decision to Remove 52 Books from School Libraries Is an Important Step in Recognizing Students’ Speech Rights*, PEN AM. (Aug. 12, 2022), <https://pen.org/press-release/utah-school-districts-reversal-on-decision-to-remove-52-books-from-school-libraries-is-an-important-step-in-recognizing-students-speech-rights/> [<https://perma.cc/ZB38-GJQZ>]. In Tennessee, following the enactment of new legislation, seven out of nine challenged books feature LGBTQ themes or authors. See ALY CHAPMAN, TENN. EQUAL PROJ., *BOOK CENSORSHIP IN TENNESSEE: ADVOCATES FOR PUBLIC SCHOOLS AND LIBRARIES: A TOOLKIT 2* (2024), https://assets.nationbuilder.com/tnep/pages/1239/attachments/original/1715613029/Final_Report_TEPBookBan_5_10_24.pdf?1715613029 [<https://perma.cc/LXVX-8LLV>].

¹⁴³ This mechanism existed under a previous Arkansas law, which, as the plaintiffs noted, was used—at least in Crawford County—to single out LGBTQ content. See *Compl. at 25–26*, *Fayetteville Pub. Libr. v. Crawford Cnty.*, No. 5:23-cv-05086 (W.D. Ark. June 2, 2023).

¹⁴⁴ For complaints challenging Florida’s library book review process as structurally biased toward removal (by making special-magistrate review available only when a district overrules an objection and retains a book, but not when it removes the book), see e.g., *Compl. at 26*, *Penguin Random House LLC v. Gibson*, No. 6:24-cv-01573 (M.D. Fla. Aug. 29, 2024); *PEN Am. Ctr.*, 711 F. Supp. 3d at 1330 (noting that the special magistrate process “cannot be used to challenge the board’s decision granting an objection and removing a book from the library”); see also *Parnell v. Sch. Bd. of Lake Cnty.*, 731 F. Supp. 3d 1298, 1314–15 (N.D. Fla. 2024) (allowing certain First Amendment claims challenging school library book removals to proceed).

¹⁴⁵ Georgia’s Senate Bill 74, for example, requires librarians to prove “good faith attempts” to remove “harmful” materials using vague criteria, while facing criminal charges for misjudgments. See S.B. 74, 2025 Reg. Sess. (Ga. 2025). Further, Arkansas law has also

tend toward excessive removal. This has contributed to a widespread chilling effect on the presence of LGBTQ-friendly books—a pattern reflected in reported library removals and legal challenges, even before these laws have fully taken effect.¹⁴⁶

Some states, like Ohio, pursue censorship indirectly by attaching restrictive provisions to budget legislation. A 2025 House proposal would have required public libraries to relocate LGBTQ-themed materials out of minors' view—imposing costly compliance burdens without additional funding and signaling that such content is inherently inappropriate.¹⁴⁷

Others go further by targeting the supply chain itself, imposing a preemptive censorship procedure on booksellers.¹⁴⁸ Texas law, for example, required booksellers to rate books sold to public schools based on the sexual references they contain—“sexually explicit,” “sexually relevant,” or “no rating”—in accordance with the state’s Penal Code definition of “sexual conduct,”¹⁴⁹ until federal courts recently blocked its enforcement.¹⁵⁰ Booksellers who refused to rate their books under this procedure or who misclassified them, deliberately or otherwise, risked being barred from selling them to Texas schools.¹⁵¹ Given the possible financial ramifications and the heavy burden placed on booksellers in having to rate these books in the first place,¹⁵² this system clearly holds the potential to incentivize the censorship of books that could be interpreted as “sexually relevant” even if they hold educational, historical, or literary value.

imposed this risk on booksellers. *See* Act 372, 94th Gen. Assemb., Reg. Sess. (Ark. 2023), *invalidated by Fayetteville Pub. Libr.*, 684 F. Supp. 3d at 896–903.

¹⁴⁶ *GLBT Youth*, 709 F. Supp. 3d at 667 (stating that more than “500 books . . . have been removed from at least one school library” in response to Iowa’s bill); *Am. Compl. at 59*, *PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, No. 3:23-cv-10385 (N.D. Fla. July 7, 2023) (arguing that “[o]f the 218 books that have been targeted for removal, approximately 40% have authors who are non-white and/or identify as LGBTQ, while approximately 60% address themes relating to race or LGBTQ identity”). This chilling effect has been especially tangible in Arkansas, where the law makes it a potential criminal offense for librarians who fail to comply with the new standards. *Act 372*, 94th Gen. Assemb., Reg. Sess. (Ark. 2023); *see Fayetteville Pub. Libr. v. Crawford Cnty.*, 760 F. Supp. 3d 811, 821 (W.D. Ark. 2024) (ruling that “[t]he vague and undefined terms . . . subject the librarian and bookstore Plaintiffs to a credible fear of prosecution, as they are uncertain what lengths they must go to in order to comply with the law”).

¹⁴⁷ Susan Tebben, *Ohio Library Systems, Advocates Push Back on House Provision to Hide Certain Materials*, *OHIO CAP. J.* (May 19, 2025, at 5:00 ET), <https://ohiocapitaljournal.com/2025/05/19/ohio-library-systems-advocates-push-back-on-house-provision-to-hide-certain-materials/> [<https://perma.cc/3CRU-54NB>].

¹⁴⁸ *See* TEX. EDUC. CODE ANN. § 35.002 (2023), *implementation enjoined by Book People, Inc. v. Wong*, 692 F. Supp. 3d 660, 672 (W.D. Tex. 2023), *aff’d in part, vacated in part, and remanded*, 91 F.4th 318 (5th Cir. 2024).

¹⁴⁹ TEX. EDUC. CODE ANN. § 35.002(c) (2023). Enforcement was enjoined. *Book People, Inc. v. Wong*, 692 F. Supp. 3d 660 (W.D. Tex. 2023), *aff’d in part, vacated in part, and remanded*, 91 F.4th 318 (5th Cir. 2024). The rating requirements in sections 35.001–35.003 were subsequently held unconstitutional and permanently enjoined. *Book People, Inc. v. Wong*, 807 F. Supp. 3d 677, 691–96 (W.D. Tex. 2025), *appeal filed* (5th Cir. Oct. 30, 2025).

¹⁵⁰ *See Book People*, 692 F. Supp. 3d at 672 n.1.

¹⁵¹ *See id.* at 684–85 (“Booksellers that fail to comply with TEA’s requirements are barred from doing business with public schools.”).

¹⁵² *Id.*

Even in states without explicit library bans, classroom restrictions have prompted large-scale removals of LGBTQ-themed books. In Kentucky, for instance, one district removed over 100 titles from its libraries based solely on its interpretation of the state's anti-LGBTQ curriculum law.¹⁵³

3. *Extracurricular Level*

Two states explicitly restrict or limit pro-LGBTQ discussions in student clubs. While Louisiana prohibits any discussion of sexual orientation or gender identity during extracurricular academic, athletic, or social activities,¹⁵⁴ Texas bans the formation or sponsorship of student clubs based on sexual orientation or gender identity, targeting association rather than discussion.¹⁵⁵

Other states create implicit barriers on the extracurricular level, albeit through broader legislation, such as *classroom* bans on LGBTQ-positive discussions. In other words, they effectively discourage pro-LGBTQ student organizations by creating a generalized environment of uncertainty and fear, despite not directly targeting extracurricular activities. Vaguely worded laws, such as that of Florida, have also created a chilling effect on LGBTQ clubs.¹⁵⁶ Similarly, Iowa's law, banning instruction on gender identity or sexual orientation in K-6 education (spanning from Kindergarten to 6th Grade), has led to LGBTQ alliances shutting down or limiting activities involving discussions of identity, relationships, or sexuality¹⁵⁷—paralleling the approach of restricting “human sexuality” discussions in student clubs.¹⁵⁸

¹⁵³ Jess Clark, *Kentucky School District Bans More than 100 Books, Citing Anti-LGBTQ + Law*, LOUISVILLE PUB. MEDIA (Oct. 19, 2023, at 15:50 ET), <https://www.lpm.org/news/2023-10-19/kentucky-school-district-bans-more-than-100-books-citing-anti-lgbtq-law> [<https://perma.cc/EKC8-E4JW>].

¹⁵⁴ LA. STAT. ANN. § 17:412(A) (2024).

¹⁵⁵ TEX. EDUC. CODE ANN. § 33.0815 (2025).

¹⁵⁶ FLA. STAT. § 1001.42(8)(c) (2021); see Second Am. Compl. at 3–4, 24–25, 44, *Cousins v. Grady*, No. 6:22-cv-01312-WWB-LHP, 2022 WL 19348704 (M.D. Fla. Nov. 3, 2022) (noting that students feared their GSAs would be disbanded due to retaliation against teachers who sponsored them, reduced participation among GSA advisors, and limitations on GSA activities as a result of the law's chilling effect on speech and school policies). A 2024 settlement clarified that the law does not prohibit student clubs like GSAs from operating. Students and faculty can participate in these clubs without violating the law. See, e.g., Nina Totenberg, *Settlement Clarifies Florida's "Don't Say Gay" Law, Allowing LGBTQ+ Student Clubs*, NAT'L PUB. RADIO (Mar. 11, 2024, at 19:16 ET), <https://www.npr.org/2024/03/11/1237730819/florida-dont-say-gay-law-settlement-lgbtq>. [<https://perma.cc/YAH4-6X9M>].

¹⁵⁷ IOWA CODE § 279.80(2) (2025); see First Am. & Supp. Compl. for Declaratory & Injunctive Relief, at 40–42, 44–46, *Schools v. Reynolds*, No. 4:23-cv-00474 (S.D. Iowa Oct. 18, 2024) (noting that the new law has led to the closure of some LGBTQ student alliances, imposed restrictions on their ability to advertise and recruit members, required parental permission for 7th- and 8th-Grade students to join, and created a chilling effect on student and teacher participation in such clubs).

¹⁵⁸ UTAH CODE ANN. § 53G-7-705(1)(b)(iii) (2019). While the *Equality Utah v. Utah State Board of Education* lawsuit challenged restrictions on LGBTQ student clubs (UTAH CODE ANN. § 53A-11-1206(1)(b)(iii)), the Utah Legislature did not repeal § 53A-11-1206. Instead, they renumbered it in 2018 as part of a general reorganization of the education code. Thus, the restriction remains in effect under the new code section.

B. Parental Oversight Policies

Recent legislative trends across multiple states have established increasingly robust mechanisms enabling parental control over LGBTQ-related content in schools. These mechanisms operate through two primary channels: notification systems for classroom instruction and student activities, and restrictions on library materials. While parents have historically maintained some oversight of their children's education, these new laws significantly expand both the scope of parental authority and the specific targeting of LGBTQ content.¹⁵⁹ Opt-out provisions, in particular, tend to accelerate censorship, as schools often preemptively avoid materials that might trigger objections.¹⁶⁰ Details of these categories are set out in Appendix C and summarized in Appendix B.

1. Classroom and Student Clubs

A number of states have recently enacted laws with mandatory parental options to control their child's exposure to LGBTQ-related content in schools, either in the classroom or in student clubs. Some states, including Arkansas,¹⁶¹ Florida,¹⁶² Montana,¹⁶³ New Hampshire,¹⁶⁴ Ohio,¹⁶⁵ and Idaho,¹⁶⁶ include opt-out options, whereby children are automatically enrolled but parents can request their removal from such instruction. Other states, including Arizona,¹⁶⁷ Wyoming,¹⁶⁸ Tennessee,¹⁶⁹ and, recently, Montana,¹⁷⁰ prefer *opt-in*

¹⁵⁹ See Bowman, *supra* note 61, at 402–33 (critiquing the expansion of parental control over curriculum and warning of its anti-egalitarian and fragmentary effects, particularly regarding race, gender, and sexuality).

¹⁶⁰ See Eileen AJ Connelly, *How Opt-Outs in Classrooms Create Educational Chaos and Advance Censorship*, PEN AM. (June 26, 2025), <https://pen.org/how-opt-outs-in-classrooms-create-educational-chaos-and-advance-censorship/> [<https://perma.cc/5JSN-GSCG>].

¹⁶¹ ARK. CODE ANN. § 6-16-1006 (2021).

¹⁶² FLA. STAT. ANN. § 1014.05(d) (2022).

¹⁶³ MONT. CODE ANN. § 20-7-120(1)(a) (2021); see Plaintiffs' First Am. Compl. at 33–41, *EmpowerMT v. State*, No. DV-25-2024-0000230-CR (Mont. 1st Jud. Dist. Ct. filed Apr. 9, 2024) (challenging the constitutionality of the statute on free speech, privacy, and equal educational opportunity grounds).

¹⁶⁴ N.H. REV. STAT. ANN. § 186:11 IX-c (2024). The legislature subsequently enacted a companion statute consolidating parental rights into a single enforceable framework, see *id.* § 189-B:4 (2025), which preserves the opt-out right by cross-reference to § 186:11, IX-b and IX-c, § 189-B:4(i), requires schools to establish procedures enabling parents to object to any classroom materials on grounds of morality, sex, or religion, *id.* § 189-B:5(c), and provides for civil enforcement through declaratory and injunctive relief and monetary damages, *id.* § 189-B:7(II).

¹⁶⁵ OHIO REV. CODE ANN. § 3313.473(B)(1)(b) (2025).

¹⁶⁶ IDAHO CODE ANN. §§ 33-6001(2)(c), (4) (2025). Although not specific to clubs, the law permits withdrawal from any activity conflicting with parental beliefs and may extend to LGBTQ extracurricular events if seen as educational or school-affiliated.

¹⁶⁷ ARIZ. REV. STAT. ANN. § 15-102(A)(6) (2021).

¹⁶⁸ WYO. STAT. ANN. § 21-3-135(a)(v) (2024).

¹⁶⁹ TENN. CODE ANN. §§ 49-6-1031, 1308 (2023).

¹⁷⁰ MONT. CODE ANN. § 20-7-120(1)(b) (2025). Subsection (1)(a), enacted in 2021, adopts an opt-out model for “human sexuality instruction.” Subsection (1)(b), added in

options, requiring explicit parental permission before students can participate in any lessons or activities containing LGBTQ-related content. These laws expand on existing state frameworks for parental notification regarding sex education,¹⁷¹ but are notably more expansive as they apply to all LGBTQ or sexuality-related materials across the curriculum, not just within dedicated sex education classes.¹⁷²

Further, some states provide parents with a private right of action to sue school staff for violations, such as a recent Idaho law that includes a provision for lawsuits seeking damages and injunctive relief.¹⁷³ Others, like North Carolina, have introduced legislation that would escalate enforcement by imposing criminal penalties and mandatory license revocation for noncompliant educators.¹⁷⁴

While often framed as neutral procedural safeguards, such mechanisms may produce chilling effects that distort school curricula in practice. As Justice Sotomayor cautioned in her dissent in *Mahmoud*, school districts—particularly those with limited resources—may preemptively censor LGBTQ-related materials to avoid the legal and administrative burdens created by opt-out requirements.¹⁷⁵ In this sense, opt-out and opt-in policies may function less as tools of parental empowerment than as backdoor instruments of content-suppression.

2. School Libraries

Library access has become another contested frontier for parental control over LGBTQ content. Texas law requires books rated as “sexually relevant” to be accessible to students only with explicit written parental consent and only “outside the school library,” thus creating an opt-in system

2025, imposes an opt-in requirement for “identity instruction,” thus placing identity-related instruction under a distinct parental-consent structure. *See* Plaintiffs’ Second Am. Compl. at 3, *Mont. Sch. Counselors Ass’n v. State*, No. DV 2024-230 (Mont. 1st Jud. Dist. Ct. filed Oct. 28, 2025) (alleging that the 2025 amendment expands prior restrictions and “aim[s] to further inhibit the discussion and curricula pertaining to sexual orientation, gender identity, and human sexuality” in Montana’s K–12 schools).

¹⁷¹ Melody Alemansour et al., *Sex Education in Schools*, 20 *GEO. J. GENDER & L.* 467, 476–78 (2019).

¹⁷² A few states, including Utah and Oregon, allow parents to opt their children out of required educational programs, not necessarily related to Sex Education (but may include sexual orientation or gender identity), on the grounds of religious beliefs, provided they submit written requests with proposed alternative learning activities that meet educational goals. *See* UTAH CODE ANN. § 53G-10-205 (2025); OR ADMIN. R. 581-021-0009 (2025).

¹⁷³ IDAHO CODE ANN. §§ 33-6001(10), (11) (2025).

¹⁷⁴ *See* H.B. 595, 2025 Gen. Assemb., Reg. Sess. (N.C. 2025) (requiring age-restricted access and imposing Class 1 misdemeanor penalties for exposing minors to “harmful material”).

¹⁷⁵ *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2394–95 (2025) (Sotomayor, J., dissenting, joined by Kagan & Jackson, J.J.) (dissenting from the Court’s holding that the school board’s refusal to allow religious opt-outs from LGBTQ-inclusive instruction violated the Free Exercise Clause).

that restricts access by default.¹⁷⁶ A similar approach has been taken recently by Idaho.¹⁷⁷

Beyond access restrictions, states have established varying procedures for challenging library materials. Georgia mandates expedited reviews, within strict timeframes, of any material deemed “harmful to minors” but limits complaint-filing to parents or permanent guardians of students enrolled in the local school system.¹⁷⁸ Other states, including Florida¹⁷⁹ and Indiana¹⁸⁰ (and currently pending in North Carolina),¹⁸¹ have expanded the authority to challenge the presence of books deemed “harmful to minors” or containing references to “sexual conduct”: Now, not only parents but any county resident may lodge a complaint. These broader challenge mechanisms require immediate removal of the material within a few school days—even before due evaluation and regardless of whether the objector has children in the school—enabling swift censorship with little oversight.

Similar to the classroom and student-club context, these laws are likely to create anticipatory censorship in school libraries.¹⁸² Faced with the threat of public challenges and the very real possibility of losing professional licensure or even imprisonment, many districts may choose to avoid acquiring or displaying books with LGBTQ content altogether.¹⁸³ The outcome transforms what appear to be procedural safeguards into mechanisms for wholesale library-content restriction.

The account provided in this Part underscores how contemporary LGBTQ-related curriculum laws operate across multiple layers of education—from classroom instruction and library holdings to extracurricular spaces and parental gatekeeping. Far from isolated policy initiatives, these measures form a cohesive regulatory landscape that constrains students’ access to LGBTQ-related knowledge. This regulatory backdrop sets the stage for the analysis that follows, which examines the constitutional doctrines governing such restrictions and assesses their capacity to protect students’ access to diverse perspectives on gender and sexuality.

¹⁷⁶ TEX. EDUC. CODE ANN. § 35.005 (2023).

¹⁷⁷ IDAHO CODE ANN. §§ 18-1514, 18-1517B (2024).

¹⁷⁸ GA. CODE ANN., § 20-2-324.6 (2022).

¹⁷⁹ FLA. STAT. ANN. § 1006.28(2)(a)(2)(b) (2022).

¹⁸⁰ IND. CODE ANN. § 20-26-5.5-1 (2023).

¹⁸¹ H.B. 595, 2025 Gen. Assemb., Reg. Sess. (N.C. 2025).

¹⁸² See, e.g., Hannah Natanson, *Objection to Sexual, LGBTQ Content Propels Spike in Book Challenges*, WASH. POST (June 9, 2023), <https://www.washingtonpost.com/education/2023/05/23/lgbtq-book-ban-challengers> [<https://perma.cc/2MPG-KXAN>] (reporting that a 2021–2022 study found most of the 1,000 book challenges analyzed stemmed from complaints by just eleven individuals, illustrating how removals often reflect the actions of a small minority rather than broad community interests).

¹⁸³ See *supra* notes 141–46.

II. THE PROMINENT CONSTITUTIONAL DOCTRINES AND THEIR LIMITATIONS

After charting the multi-layered landscape of the new curriculum laws, this Part turns to the constitutional doctrines most directly governing their legality: the Free Speech and Equal Protection Clauses. It highlights their promises but also their limitations, demonstrating how both fall short when it comes to meaningfully constraining the exclusionary new laws. Despite their differing doctrinal logics, both Clauses share a common conceptual shortcoming: They present insufficient recognition of the importance of developmental identity exploration among young people in school. By pinpointing this shortcoming, the present analysis lays the groundwork for the normative vision advanced in Part III.

A. *Free Speech Jurisprudence*

Current restrictions on LGBTQ-related curriculum content have direct implications for students' First Amendment right to receive information and ideas.¹⁸⁴ This right is founded on the principle that the dissemination of ideas becomes meaningless if willing recipients cannot freely access and consider them.¹⁸⁵ Granted, public schools represent a distinct First Amendment context where constitutional protections must be balanced against institutional functionality.¹⁸⁶ Schools require appropriate, though not unlimited, authority to regulate expression to fulfill their educational mission, including establishing curricular boundaries that prevent teachers from pursuing or promoting topics to satisfy personal interests. Nonetheless, the Supreme Court has repeatedly affirmed that students retain free speech rights within school settings,¹⁸⁷ as these rights remain fundamental to schools' core purpose of developing future citizens equipped with the knowledge and exposure needed for meaningful democratic participation.¹⁸⁸

In *Tinker*, the Court characterized the classroom environment as “peculiarly the ‘marketplace of ideas’” where “leaders are trained through wide exposure to that robust exchange of ideas which discovers truth out of

¹⁸⁴ The Supreme Court has recognized that the Free Speech Clause protects listeners as well as speakers. *See, e.g.,* *Martin v. Struthers*, 319 U.S. 141, 143 (1943).

¹⁸⁵ *Lamont v. Postmaster Gen.*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring).

¹⁸⁶ *See, e.g.,* Lee Goldman, *Student Speech and the First Amendment: A Comprehensive Approach*, 63 FLA. L. REV. 395, 406 (2011).

¹⁸⁷ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943). As later reinforced in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969), students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

¹⁸⁸ *Cf. Caitlin Millat, The Education-Democracy Nexus and Educational Subordination*, 111 GEO. L.J. 529, 529 (2023) (contending that the Supreme Court’s education jurisprudence has increasingly elevated consumer and private interests at the expense of democratic values, civic engagement, and equal opportunity).

a multitude of tongues.”¹⁸⁹ Similarly, in *Yoder*, the Court acknowledged that compulsory education is “necessary to prepare citizens to participate effectively and intelligently in our open political system.”¹⁹⁰ A plurality of the Court in *Pico* further declared that allowing access to a diversity of ideas in a school library context was an important aspect of preparing students “for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.”¹⁹¹ This understanding has remained central to the Supreme Court’s educational philosophy, as evidenced in recent decisions on free speech. In *Mahanoy*, the Court reaffirmed that schools serve as “nurseries of democracy,” highlighting their role as institutions for the unfettered exchange of ideas that teach the value of free speech.¹⁹²

The Supreme Court, despite emphasizing schools’ democratic function, has not yet addressed whether the Free Speech Clause permits students or teachers to challenge state-mandated curriculum restrictions in classroom settings.¹⁹³ The Court has opined on only two cases involving students’ First Amendment challenges to curriculum decisions outside the classroom—specifically regarding school libraries and student newspapers, in *Pico* and *Hazelwood*, respectively.¹⁹⁴ While these landmark decisions provide some guidance, they leave unresolved two distinct sources of judicial deference that now shape the lower courts’ approach. First, several circuits have treated curricular content as government speech, thereby removing it from First Amendment scrutiny altogether. Second, even in jurisdictions that recognize some First Amendment review, students face formidable legal obstacles. This is due to the standards developed in the judicial cases, which grant wide latitude to educational authorities and effectively insulates most curriculum-based exclusions from meaningful constitutional scrutiny. This Section discusses each of these concerns in turn.

1. *Doctrinal Uncertainties*

Although First Amendment jurisprudence recognizes an individual right to receive information without impediment, considerable ambiguity surrounds the application of these rights in educational contexts. The Supreme Court addressed the rights of students as information recipients in *Board of Education*,

¹⁸⁹ *Tinker*, 393 U.S. at 512 (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)).

¹⁹⁰ *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972).

¹⁹¹ *Bd. of Educ. v. Pico*, 457 U.S. 853, 867–68 (1982).

¹⁹² *Mahanoy Area Sch. Dist. v. B. L. ex rel. Levy*, 141 S. Ct. 2038, 2046 (2021).

¹⁹³ Grounded in a child-centric framework, this Article limits its analysis to students’ speech rights, setting aside claims asserted by teachers or creators of excluded content.

¹⁹⁴ *Pico*, 457 U.S. at 853; *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 260 (1988).

Island Trees Union Free School District No. 26 v. Pico,¹⁹⁵ but the decision's limited application has created substantial interpretative challenges.

In *Pico*, a school board removed nine books from its libraries, characterizing them as “anti-American, anti-Christian, anti-Semitic, and just plain filthy,” and citing a “moral obligation” to shield students from this perceived “moral danger.”¹⁹⁶ The Court held that, while school boards retain substantial discretion regarding library materials, they cannot remove books simply because officials disagree with the ideas expressed—when such actions are taken in a “narrowly partisan or political manner.”¹⁹⁷ Any removal must, instead, be grounded in legitimate educational objectives,¹⁹⁸ such as “educational suitability,” “relevance,” or “appropriateness to age and grade level.”¹⁹⁹

Crucially, *Pico* specifically addressed optional library resources rather than required curriculum materials, with the plurality explicitly noting that schools might justifiably assert greater control over mandatory curricular content.²⁰⁰ This distinction has produced significant disagreement among circuit courts regarding *Pico*'s reach.²⁰¹ The decision's precedential authority has been further diminished by its plurality status, with Justice Blackmun specifically criticizing the plurality for unnecessarily restricting its holding to library contexts.²⁰² Multiple circuits have subsequently questioned *Pico*'s precedential weight, with some explicitly declaring it non-binding.²⁰³

The second landmark case, *Hazelwood School District v. Kuhlmeier* (1988), established a more concrete standard than *Pico*'s “partisan or political manner” test. The case involved a school principal who had removed two articles addressing teen pregnancy and divorce from a student newspaper produced in a Journalism class.²⁰⁴ The Court ruled that school officials may exercise editorial control over school-sponsored expressive activities when their actions are “reasonably related to legitimate pedagogical concerns.”²⁰⁵ It found the school's decision justified on the grounds of maintaining age-appropriate content.²⁰⁶ Unlike *Pico*'s focus on optional library materials, *Hazelwood* established that administrators possess broad discretion to regulate student

¹⁹⁵ 457 U.S. 853 (1982) (plurality opinion).

¹⁹⁶ *Id.* at 856–58.

¹⁹⁷ *Id.* at 870–71.

¹⁹⁸ *Id.* at 871.

¹⁹⁹ *Id.* at 873.

²⁰⁰ *Id.* at 869.

²⁰¹ See *infra* notes 208–16 and accompanying text.

²⁰² *Pico*, 457 U.S. at 881.

²⁰³ See, e.g., *Griswold v. Driscoll*, 616 F.3d 53, 57 (1st Cir. 2010) (“*Pico*'s rule of decision, however, remains unclear.”); *Virgil v. Sch. Bd. of Columbia Cnty.*, 862 F.2d 1517, 1520–21 (11th Cir. 1989) (“Courts that have addressed the issue have failed to achieve a consensus on the degree of discretion to be accorded school boards to restrict access to curricular materials.”); *Am. C.L. Union of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1200 (11th Cir. 2009) (“*Pico* is of no precedential value as to the application of the First Amendment to these issues.”).

²⁰⁴ *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 263–64 (1988).

²⁰⁵ *Id.* at 273.

²⁰⁶ *Id.* at 274–75.

expression in curricular contexts, including internal newspapers and required coursework. Nevertheless, substantial uncertainty persists regarding *Hazelwood*'s application to today's curricular restrictions, including the critical question of whether the decision permits viewpoint discrimination—an issue on which federal circuits remain divided.²⁰⁷

In the decades following these two landmark cases, the First and Fifth Circuits have decided that textbook and curricular decisions are pure government speech and, therefore, immune to review for First Amendment purposes.²⁰⁸ Under the government speech doctrine, expression by the state lies outside the scope of the First Amendment and therefore triggers no Free Speech Clause scrutiny. A significant example is *Chiras v. Miller*, where the Fifth Circuit upheld the Texas School Board's refusal to approve a particular environmental science textbook.²⁰⁹ The court declined to apply *Pico*, emphasizing that that case specifically addressed school-library books while explicitly exempting classroom textbooks from its scope.²¹⁰ The court also thoroughly evaluated *Hazelwood*'s potential applicability, acknowledging the widespread disagreement among circuit courts regarding how First Amendment principles should apply to school boards' curricular material selections.²¹¹ Ultimately, the court refused to apply the *Hazelwood* standard as "the selection and use of textbooks in the public school classrooms constitutes government speech."²¹²

Conversely, the Eighth, Ninth, and Eleventh Circuits interpreted the Supreme Court precedents as permitting judicial review of certain curriculum decisions under the First Amendment.²¹³ In *Arce v. Douglas*, for example,

²⁰⁷ Emily Gold Waldman, *Returning to Hazelwood's Core: A New Approach to Restrictions on School-Sponsored Speech*, 60 FLA. L. REV. 63, 76 (2008) (arguing that "[t]he case law surrounding *Hazelwood*'s applicability to curriculum selection, as opposed to textbook selection, is murkier").

²⁰⁸ See *Griswold*, 616 F.3d at 58–59 (refusing to apply *Pico* to Massachusetts' curricular guidelines regarding Armenian Genocide materials); *Chiras v. Miller*, 432 F.3d 606, 614–20 (5th Cir. 2005) (holding that textbook selection is government speech and rejecting claims that students or authors have a First Amendment right to demand inclusion of specific curricular material). This approach mirrors the stance taken in pre-*Hazelwood* decisions by the Third, Sixth, and Seventh Circuits. See *Seyfried v. Walton*, 668 F.2d 214, 216–17 (3d Cir. 1981) (upholding administrators' authority to cancel a student theatrical performance, determining that such action did not constitute a significant infringement of students' constitutional freedoms); *Minarcini v. Strongsville City Sch. Dist.*, 541 F.2d 577, 578–80 (6th Cir. 1976) (upholding a school board's decision to reject specific textbooks, ruling that curricular selection remains within administrative discretion, absent evidence of imposing ideological conformity); *Zykan v. Warsaw Cmty. Sch. Corp.*, 631 F.2d 1300, 1306 (7th Cir. 1980) (rejecting a student complaint against removing certain books from English courses and the library of high school because it "nowhere suggests that in taking these actions defendants have been guided by an interest in imposing some religious or scientific orthodoxy or a desire to eliminate a particular kind of inquiry generally").

²⁰⁹ *Chiras*, 432 F.3d 606.

²¹⁰ *Id.* at 619.

²¹¹ *Id.* at 616.

²¹² *Id.*

²¹³ See, e.g., *Monteiro v. Tempe Union High Sch. Distr.*, 158 F.3d 1022, 1027–28 (9th Cir. 1998) (holding that *Pico* plurality extended to students' right to receive information in the context of the school curriculum, where a third-party—a parent or group of

the Ninth Circuit invalidated Arizona's ban on Mexican American Studies in school curricula, affirming that students maintain the First Amendment right to receive information and ideas in curricular contexts.²¹⁴ Applying *Hazelwood*'s "legitimate pedagogical concern" standard,²¹⁵ the court found that the state's enforcement actions were not reasonably related to legitimate educational objectives and, instead, stemmed from a racial and political animus.²¹⁶

The varying interpretations of *Pico*'s persuasive authority and *Hazelwood*'s applicability across the circuit courts create significant uncertainty in this area of law.²¹⁷ However, scholars have underscored an important pattern: States and school districts rarely, if ever, lose such cases.²¹⁸ Since *Pico* was decided in 1982, First Amendment jurisprudence has evolved considerably—including the development of the government speech doctrine and a series of Supreme Court rulings that have progressively narrowed the speech rights of public school students.²¹⁹ The Supreme Court has yet to clarify the degree to which curricular decisions are reviewable under the Free Speech Clause, resulting in an unsettled doctrinal landscape. In practice, then, this has left students vulnerable to unreviewed institutional control over what ideas they are permitted to encounter. As Professor Caroline Mala Corbin rightly contends, "[c]ourts disposed towards upholding these laws might find it easier to rely on the government speech reasoning instead, forgoing any review at all."²²⁰

2. Judicial Deference

Even in the few circuits (Ninth, Eleventh, and Eighth) that do recognize students' First Amendment claims regarding the curriculum, students still face substantial practical barriers to successful challenges. The application of *Pico* and *Hazelwood* precedents frequently produces diverging conclusions from identical factual scenarios, as evidenced by the stark disagreements

parents—attempts to limit the materials that a school furnishes to students and requires them to read); *Virgil v. Sch. Bd.*, 862 F.2d 1517, 1522–23 (11th Cir. 1989) (applying the *Hazelwood* standard to uphold a school board's decision to remove a textbook from the curriculum because the board's actions were reasonably related to legitimate pedagogical concerns regarding the book's sexual and vulgar content); *Pratt v. Indep. Sch. Dist. No. 831*, 670 F.2d 771, 777–79 (8th Cir. 1982) (requiring the return of films to the high school curriculum that had been removed by the school board over objections related to violence and potential influence on students' religious and familial beliefs). In *Pratt*, the Eighth Circuit formulated a standard akin to those later articulated in *Hazelwood* and *Pico*. *Id.* at 777–79.

²¹⁴ *Arce v. Douglas*, 793 F.3d 968, 985 (9th Cir. 2015).

²¹⁵ *Id.* at 982–83.

²¹⁶ *Id.* at 986.

²¹⁷ *Chiras*, 432 F.3d at 616 ("We note that there is no strong consensus among the circuit courts regarding the application of First Amendment principles to the selection of curricular materials by school boards.").

²¹⁸ See, e.g., Kristi L. Bowman, *The Government Speech Doctrine and Speech in Schools*, 48 WAKE FOREST L. REV. 211, 247 (2013); Corbin, *supra* note 46, at 1498.

²¹⁹ Bowman, *supra* note 218, at 247.

²²⁰ Corbin, *supra* note 46, at 1498 n.150.

among justices in the *Pico* decision itself.²²¹ Moreover, under the *Hazelwood* framework, courts require educational authorities to demonstrate that curriculum restrictions arise from “legitimate pedagogical concerns,” and only then do they assess whether such restrictions are “reasonably related” to those concerns. This standard still grants extraordinary deference to educational authorities’ judgment. As Catherine Ross explains, “[i]t is easier for schools to hide behind pretextual substantial and reasonable interests when the legal standard does not require courts to examine actual motives.”²²²

The broad failure to challenge curriculum restrictions based on the “legitimate pedagogical concerns” standard is especially pronounced in the context of LGBTQ-positive content. Proponents often justify these restrictions as serving the purportedly legitimate purpose of “protecting children’s innocence”—a rationale built on deeply entrenched cultural narratives portraying LGBTQ content as threatening to children’s moral development, supposedly indoctrinating them into a hyper-sexualized worldview and potentially encouraging them toward same-sex desire or gender-non-conforming behavior. This framing has been explicitly articulated by proponents of these curricular restrictions across multiple jurisdictions. In Florida and Alabama, legislative sponsors of their anti-LGBTQ-related curriculum laws have candidly acknowledged that preventing the “normalization” of LGBTQ identities and avoiding any semblance of “indoctrination” underpin these measures.²²³ Similarly, in Texas, when the Austin school district planned activities acknowledging Pride Week, Attorney General Ken Paxton intervened with formal objections, characterizing even basic inclusive educational content as inappropriate “human sexuality instruction” from which children must be protected.²²⁴ The characterization of age-appropriate LGBTQ-inclusive materials as unhealthy indoctrination was further amplified when Ronna McDaniel, then Republican National Committee Chair, published her view that children were “being indoctrinated with anti-American and sexually-explicit propaganda” in

²²¹ *Bd. of Educ. v. Pico*, 457 U.S. 853, 907 (1982) (Rehnquist, J., dissenting); see also *Chiras*, 432 F.3d at 620 (finding that *arguendo*—assuming for the sake of argument that *Pico* applies to curricular decisions—students “fail to plead any specific facts which demonstrate that the SBOE’s decision was motivated by ‘narrowly partisan or political’ considerations” despite allegations about board members’ comments regarding the rejected textbook).

²²² Ross, *supra* note 19, at 1694.

²²³ *From Gender Theory Guides to ‘Transition’ Questionnaires—Florida State Rep. Joe Harding on the Fight for Parental Rights in Education*, AM. THOUGHT LEADERS (Oct. 15, 2022) (Spotify); Patrick Darrington, *Opponents Speak Out in Public Hearing on Expansion of ‘Don’t Say Gay’ Law*, ALA. POL. REP. (May 25, 2023, at 9:28 CT), <https://www.alreporter.com/2023/05/25/opponents-speak-out-in-public-hearing-on-expansion-of-dont-say-gay-law/> [https://perma.cc/H2J9-PCRE].

²²⁴ Ken Paxton (@KenPaxtonTX), X (Mar. 22, 2022, at 20:18 ET), https://x.com/KenPaxtonTX/status/1506425186219929608?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1506425186219929608%7Ctwgr%5E09505bc1f1697339f99b81b7245f222358ad6ce7%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fglaad.org%2Fgap%2Fken-paxton%2F [https://perma.cc/RA79-8Y7Y].

schools discussing LGBTQ-related topics.²²⁵ Furthermore, the federal version of these bills, literally entitled the “Stop the Sexualization of Children Act,” objects to the simple acknowledgment of sexual minorities in educational materials, specifically lamenting that “[m]any newly implemented sexual education curriculums encourage discussion of sexuality, sexual orientation, transgenderism, and gender ideology as early as kindergarten.”²²⁶

These contemporary legislative efforts continue a decades-long campaign to “shield” children from exposure to homosexuality. This impulse has a substantial historical lineage, beginning with the “Save Our Children” campaigns of the late 1970s, led by anti-LGBTQ advocates such as Anita Bryant and John Briggs, who portrayed “homosexual schoolteachers” as “dangerous role models” intent on corrupting innocent children.²²⁷ This framing evolved into the “no promo homo” laws of the 1980s and 1990s, enacted amid the HIV/AIDS epidemic and widespread state-sanctioned homophobia.²²⁸ These earlier restrictions were justified by their proponents on the grounds of the same underlying fear that remains central to contemporary legislation: that any recognition of LGBTQ identities in schools poses a danger to children’s moral development and must be preemptively suppressed. Clifford Rosky eloquently described this anxiety a decade ago as “the fear of the queer child.”²²⁹

While mere moral discomfort with LGBTQ content may not be easily qualified as a legitimate pedagogical concern, the *Hazelwood* standard creates ample room for judicial deference to arguments framed around “shielding children’s innocence.”²³⁰ Because this narrative is deeply embedded in cultural and political discourse,²³¹ courts that are inclined toward restraint may find it persuasive, even when the asserted pedagogical rationale is pretextual. We should be mindful that *Hazelwood* itself upheld censorship of high school newspaper articles alluding to students’ experiences with pregnancy—content far less controversial than today’s debates over gender and sexuality. Given

²²⁵ Ronna McDaniel, Opinion, *Parental Rights Bill: Teach Kindergartners the ABCs, Not S-E-X*, FOX NEWS (Apr. 4, 2022, at 07:00 ET), <https://www.foxnews.com/opinion/parental-rights-bill-teach-abcs-not-sex-ronna-mcdaniel> [<https://perma.cc/A2RB-FFBH>].

²²⁶ Stop the Sexualization of Children Act, H.R. 9197, 117th Cong. (2022).

²²⁷ Rosky, *supra* note 12, at 1477–78 (citing ANITA BRYANT, *THE ANITA BRYANT STORY: THE SURVIVAL OF OUR NATION’S FAMILIES AND THE THREAT OF MILITANT HOMOSEXUALITY* 113–20 (1977)).

²²⁸ *Id.* at 1487–88.

²²⁹ See Clifford J. Rosky, *Fear of the Queer Child*, 61 BUFF. L. REV. 607, 608 (2013).

²³⁰ See generally *Safe Schs. v. Reynolds*, 788 F. Supp. 3d 969 (S.D. Iowa 2025) for a recent example of such judicial deference. There, the court upheld Iowa’s ban on LGBTQ content for elementary students by invoking *Hazelwood*’s language about protecting students from “material that may be inappropriate for their level of maturity,” stating that “reasonable minds may disagree about whether elementary school students are too young to study sexual orientation and gender identity as part of mandatory curriculum, but it is the job of state and local officials, not federal courts, to resolve that disagreement.” *Id.* at 992.

²³¹ See, e.g., Brief of Amici Curiae Advancing Am. Freedom et al. in Support of Petitioners at 3, *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025) (No. 24-297) (supporting parents challenging school curriculum and stating that “parents of diverse religious backgrounds sued to protect their elementary school-aged children from indoctrination into a hyper-sexualized worldview”).

that today's anti-LGBTQ restrictions often target much younger students—broadly, from pre-Kindergarten (typically ages 4–5) through to 8th Grade (generally ages 13–14), the doctrine's deferential posture makes it particularly easy for courts to treat LGBTQ-related content as presumptively inappropriate for those age groups.²³²

But courts' willingness to uphold curricular restrictions under the guise of neutrality obscures the structural harms inflicted on students. This outcome not only compromises the fundamental purpose of public education but also directly contradicts the core principles of the First Amendment itself. When teachers cannot discuss sexual orientation or gender identity in the classroom, students lose access to essential knowledge about the historical marginalization of LGBTQ people and their ongoing fight for equal rights. Even more perniciously, heterosexuality and cisgender identity are routinely affirmed—without being named as such—thereby reinforcing them not as one human experience among many, but as the only legitimate or intelligible norm. This outcome not only compromises the fundamental purpose of public education as a marketplace of ideas but also preserves existing power structures—the very abuse of authority that the Free Speech Clause was intended to prevent.

These dual deficiencies—first, doctrinal uncertainty, and second, persistent challenges in practical enforcement—are particularly concerning. This is especially the case if we consider that the democratic self-governance rationale is critical in relationships characterized by institutional power asymmetries in which the less powerful party is subject to mandatory authority.²³³ Under such circumstances, individuals require strong protections for their right—essential for democratic decision-making—to access information that they otherwise could not independently discover or comprehend. Importantly, the teacher–student relationship exemplifies this dynamic, as education is mandatory and educators exercise considerable authority over students, who depend on schools for knowledge they may otherwise be deprived of. As Professor Caitlin Millat recently argued, the state's increasing use of public education to advance a subordinating agenda—especially through the regulation of curricular content—risks transforming schools from sites of democratic preparation into instruments of ideological control.²³⁴ Rather than supporting students' critical engagement with systems of power, this trend suppresses identity-related

²³² While challenges to blanket bans on LGBTQ-related topics may succeed under the *Pico-Hazelwood* framework, laws restricting content based on asserted “age-appropriateness” pose greater challenges.

²³³ See, e.g., Francesca Procaccini, *(E)Racing Speech in School*, 58 HARV. C.R.-C.L. L. REV. 457, 472 (2023) (discussing the nature of this relationship vis-à-vis the First Amendment).

²³⁴ Millat, *supra* note 188, at 532; Caroline Mala Corbin, *A Critical Race Theory Analysis of Critical Race Theory Bans*, 14 U.C. IRVINE L. REV. 57, 57 (2024) (“Ultimately, critical race theory bans reinscribe racial inequalities. By chilling classroom discussions about the creation and maintenance of racial hierarchies, these bans leave unaddressed all the structural issues that critical race theory aims to uncover. It is a perfect vicious circle.”).

discourse and entrenches dominant hierarchies. In this context, education that raises students' awareness of structural heteronormativity—just as much as other social structures relating to identity—is *essential*. It equips students with the analytical tools necessary to recognize how norms surrounding gender and sexuality influence access to social, political, and economic resources—such as employment protections and housing policies. Equipped with this critical awareness, students can better navigate these systems when they encounter discrimination or exclusion. They will also be better placed to challenge and reshape them, when old enough to do so, thereby enabling them to more fully participate in the institutions that mold their everyday lives.

Yet, I argue, current Free Speech doctrine in schools, rooted primarily in preparing students for future democratic participation, inadequately accounts for students' present-day developmental interests in exploring fundamental questions of identity and belonging. By framing educational value primarily in future-oriented terms, it neglects students' present developmental need to explore questions of identity and belonging. This narrow temporal framing enables courts to defer to claims of pedagogical necessity without adequately weighing the immediate educational harms that curriculum restrictions impose on students' developmental processes.²³⁵ Building on this critique, this Article adds a developmental perspective that is attuned to students' present needs.²³⁶ It recognizes students not solely as future citizens requiring civic preparation but also as developing individuals needing to safely explore questions of identity, self-perception, and difference within educational settings. Before turning to this conceptual understanding, though, it is necessary to examine the promises and limitations of the other major constitutional doctrine governing curriculum law: Equal Protection jurisprudence.

B. *Equal Protection Jurisprudence*

The recent surge in LGBTQ-related curriculum laws implicates the Equal Protection Clause of the Fourteenth Amendment, which prohibits U.S. states from discriminating against individuals based on protected

²³⁵ This critique may also be understood in terms of scope rather than timing. Even if Free Speech doctrine's civic-preparation rationale is sound, it construes that mission too narrowly by excluding engagement with identity, difference, and belonging from the realm of "pedagogically appropriate" learning. Reframing those subjects as integral to democratic education would expand, rather than replace, the doctrine's civic focus.

²³⁶ In response to some of the deficiencies discussed here, scholars advanced proposals to recalibrate the standards underlying First Amendment application in school settings. See, e.g., Salzman, *supra* note 46, at 1092–96 (arguing for heightened scrutiny when a curriculum limits opposing political or ideological views); Corbin, *supra* note 46, at 1506–10 (proposing a four-factor test to determine when students' rights as listeners should outweigh the government's typical immunity). This Article, however, takes a different approach by reframing the normative underpinnings of this framework—interpreting it through the lens of the developmental self-exploration framework.

characteristics without adequate justification.²³⁷ Throughout history, the Equal Protection Clause has served as a significant pathway to addressing educational issues, including racial segregation and desegregation,²³⁸ language barriers,²³⁹ and sex discrimination,²⁴⁰ among others. Furthermore, the Clause has offered an important framework for LGBTQ rights in schools—compelling them to address, for example, harassment motivated by anti-LGBTQ sentiment with the same urgency as other forms of discriminatory abuse,²⁴¹ and to protect transgender students' access to restrooms aligned with their gender identity.²⁴²

This doctrinal foundation has led scholars to argue that the Equal Protection Clause offers a promising avenue for challenging curriculum restrictions.²⁴³ Yet, as this Section demonstrates, this scholarly optimism warrants closer scrutiny for two main reasons. First, the Supreme Court has never ruled on the constitutionality of anti-LGBTQ-related curriculum laws under the Equal Protection Clause, having addressed only Establishment Clause challenges in cases such as *Epperson* and *Edwards*.²⁴⁴ The uncertainty around both the Equal Protection Clause's applicability to curriculum laws and the appropriate standard of review leaves this area vulnerable to judicial inconsistency and interpretative debate. More fundamentally, however, even assuming

²³⁷ U.S. CONST. amend. XIV, § 1 (“[N]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”). Restrictions on extracurricular activities, such as student clubs and organizations that operate outside the formal curriculum, *see supra* notes 154–55 and accompanying text, may also implicate the Equal Access Act of 1984, 20 U.S.C. § 4071. This Act prohibits public secondary schools that receive federal funding from denying equal access to non-curricular student groups based on the content of their speech. State laws that ban or restrict LGBTQ student clubs may therefore violate federal law by denying students equal access to school facilities and resources, based on the clubs' expressive content.

²³⁸ *See, e.g., Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 495 (1954) (holding that racial segregation in public schools violated the Equal Protection Clause).

²³⁹ *See, e.g., Lau v. Nichols*, 414 U.S. 563, 563 (1974) (holding that denying non-English-speaking students meaningful access to education violates equal protection principles).

²⁴⁰ *See, e.g., Brenden v. Indep. Sch. Dist.* 742, 477 F.2d 1292, 1303 (8th Cir. 1973) (holding that excluding girls from school sports competitions violated the Equal Protection Clause).

²⁴¹ *See, e.g., Nabozny v. Podlesny*, 92 F.3d 446, 461 (7th Cir. 1996) (holding that a school violated the Equal Protection Clause by failing to protect a student from anti-gay harassment); *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1138 (9th Cir. 2003) (holding that school officials may be liable under Equal Protection for deliberate indifference to anti-gay harassment, requiring meaningful investigation and response).

²⁴² *See, e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 619–20 (4th Cir. 2020) (holding that the school board's policy prohibiting a transgender boy from using the boys' restroom violated both the Equal Protection Clause and Title IX), *cert. denied*, 141 S. Ct. 2878 (2021).

²⁴³ *See, e.g., Rosky, supra* note 12, at 1467 (contending that anti-gay laws violate the Constitution's equal protection guarantees “regardless of what level of scrutiny applies to them”).

²⁴⁴ *Epperson v. Arkansas*, 393 U.S. 97, 107–09 (1968) (holding states could not ban the teaching of Darwin's theory of evolution in public schools); *Edwards v. Aguillard*, 482 U.S. 578, 597 (1987) (holding that states could not require the teaching of creationism in public schools).

doctrinal hurdles are overcome, Equal Protection claims face steep evidentiary barriers in practice—barriers compounded by the standards that courts apply to curricular decisions, especially in light of the legislative rhetoric and broader campaign framing anti-LGBTQ-related curriculum laws as protecting parental rights or ensuring age-appropriateness. This Section elaborates on each of these concerns in turn.²⁴⁵

1. *Doctrinal Uncertainties*

Two key doctrinal uncertainties complicate Equal Protection analysis of LGBTQ-related curriculum laws.²⁴⁶ The first relates to whether curriculum-related laws, assuming they constitute government speech, are subject to review under the Equal Protection Clause. The Supreme Court has yet to clarify the extent to which government speech is constrained by Equal Protection principles, and lower courts have often declined to find that discriminatory government expression, alone, amounts to unequal treatment under the law.²⁴⁷

Furthermore, assuming anti-LGBTQ-related curriculum laws *are* subject to Equal Protection review, a second layer of ambiguity arises: What level of judicial scrutiny should apply to laws that discriminate on the basis of sexual orientation? Should courts invoke heightened scrutiny (intermediate review)²⁴⁸ or adhere to the more deferential rational-basis test?²⁴⁹

²⁴⁵ Highlighting these limitations is not intended to deter litigants from pursuing this avenue but, rather, to acknowledge its constraints—and to prompt a redirection of vision toward more expansive conceptions of substantive equality. Indeed, Equal Protection arguments have gained strategic value: States such as Utah, Arizona, South Carolina, and Florida repealed curriculum restrictions after their attorneys-general warned that continued enforcement would likely lead to costly litigation and constitutional defeat. See Clifford Rosky, *Don't Say Gay: The Government's Silence and the Equal Protection Clause*, 2022 U. ILL. L. REV. 1845, 1849. Yet, to some extent, these outcomes reflect political calculation more than judicial vindication of LGBTQ rights. The real stakes lie deeper: As contemporary LGBTQ-related curriculum laws adopt apparently neutral language while continuing to serve exclusionary functions through increasingly sophisticated mechanisms, the ground-level reality of marginalization that LGBTQ students have long faced remains. This underscores why more transformative conceptions of substantive equality are warranted.

²⁴⁶ As for book removals, courts have typically defaulted to the First Amendment framework established in *Pico*. One lower court—the District Court of Arizona—invalidated a state curriculum law that restricted discussion of race issues under the Equal Protection Clause. Yet the Ninth Circuit does not treat curriculum laws as government speech. See *González v. Douglas*, 269 F. Supp. 3d 948, 972–73 (D. Ariz. 2017) (treating the removal of books from school curricula as raising First Amendment concerns).

²⁴⁷ Johany G. Dubon, *Rereading Pico and the Equal Protection Clause*, 92 FORDHAM L. REV. 1567, 1597–98 (2024) (listing several circuit courts that have rejected Equal Protection challenges to government speech). Still, scholars have advanced arguments that such expression may, in specific contexts, trigger Equal Protection concerns. See, e.g., Nelson Tebbe, *Government Nonendorsement*, 98 MINN. L. REV. 648, 679 (2013); Joseph Blocher, *Viewpoint Neutrality and Government Speech*, 52 B.C. L. REV. 695, 752–54 (2011); HELEN NORTON, *THE GOVERNMENT'S SPEECH AND THE CONSTITUTION* 101, 124–25 (2019).

²⁴⁸ *Lyng v. Castillo*, 477 U.S. 635, 638 (1986).

²⁴⁹ *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 442 (1985).

The standard of review is critical: The more rigorous it is, the more likely the restriction will be found unconstitutional. Notably, to satisfy heightened scrutiny, which applies to classifications involving quasi-suspect classes (such as sex),²⁵⁰ the state must demonstrate that the classification serves “important governmental objectives” and is “substantially related” to achieving those ends.²⁵¹ In contrast, under the more deferential rational-basis review—applied to classifications that do not involve suspect or quasi-suspect classes—the government need only show that the law is “rationally related to a legitimate governmental interest.”²⁵² The Court has made clear that, under rational-basis review, it will uphold state action if any conceivable legitimate purpose can be imagined—even if the legislature did not articulate one or offered a justification the Court finds unpersuasive.²⁵³ Given the permissive nature of the rational-basis review, it often functions as a near-automatic validation of legislation.²⁵⁴

There are persuasive normative arguments for applying the heightened scrutiny to anti-LGBTQ-related curriculum laws.²⁵⁵ However, because the Court has neither recognized sexual orientation discrimination as a form of sex discrimination, nor classified LGBTQ individuals as members of a suspect or quasi-suspect class, nor treated education as a fundamental right triggering elevated scrutiny,²⁵⁶ the prevailing expectation is that such anti-LGBTQ-related curriculum laws will be evaluated under the more deferential rational-basis review. Arguments have been made for extending the reasoning applied in *Bostock*—where the Court held that discrimination “because of sex” includes LGBTQ employees²⁵⁷—to Equal Protection claims.²⁵⁸ Yet, such an extension is likely to face resistance from the current Conservative majority of the Court, as evidenced in recent cases relating to LGBTQ rights.²⁵⁹

²⁵⁰ *Castillo*, 477 U.S. at 638 (holding that “heightened scrutiny” applies to suspect and quasi-suspect classes—those which have been historically subject to discrimination, “exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group”).

²⁵¹ *Craig v. Boren*, 429 U.S. 190, 197 (1976).

²⁵² *City of Cleburne*, 473 U.S. at 440 (1985); *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976).

²⁵³ *See, e.g., Ry. Express Agency, Inc. v. New York*, 336 U.S. 106, 110 (1949); *Williamson v. Lee Optical, Inc.*, 348 U.S. 483, 487 (1955).

²⁵⁴ Kenji Yoshino, *The New Equal Protection*, 124 HARV. L. REV. 747, 755–56 (2011).

²⁵⁵ Some scholars argue that the constitutional inquiries involving education might carry special significance that can elevate the level of scrutiny. *See, e.g., Cooley, supra* note 12, at 1043–44; Ryan, *supra* note 19, at 307.

²⁵⁶ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 40 (1973).

²⁵⁷ *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1744 (2020).

²⁵⁸ *See, e.g., Erik Fredericksen, Note, Protecting Transgender Youth After Bostock: Sex Classification, Sex Stereotypes, and the Future of Equal Protection*, 132 YALE L.J. 1149, 1154 (2023).

²⁵⁹ *See, e.g., United States v. Skrmetti*, 145 S. Ct. 1816, 1829 (2025).

2. *Evidentiary Barriers and Judicial Deference*

The Equal Protection Clause presents significant hurdles for plaintiffs attempting to challenge state actions, primarily because it demands a fact-intensive inquiry. Plaintiffs must marshal concrete evidence rather than rely on abstract accusations. While a facially discriminatory law—one that invokes a suspect classification on its face—will trigger heightened scrutiny, a facially neutral law that produces a disparate impact often will not. This evidentiary burden becomes even more daunting when legislators deliberately craft laws using facially neutral language to obscure potentially discriminatory aims—a strategy increasingly evident in contemporary education policy. Unlike their predecessors, dubbed “any-gay” curriculum bans, some of the recent LGBTQ-related curriculum restrictions employ more neutral terminology, prohibiting discussions of sexuality broadly and limiting teaching about “gender identity” rather than specifically mentioning “transgenderism.” This linguistic shift toward ostensibly impartial terminology complicates Equal Protection claims and exemplifies what Reva Siegel has termed “preservation-through-transformation”—a process by which systems of inequality adapt under legal pressure by transforming their outward form while retaining exclusionary effects.²⁶⁰ In this context, neutrality functions as a legal shield: Where a law is not facially discriminatory, plaintiffs must meet two high evidentiary thresholds to prevail. First, they must demonstrate that the law has a disparate impact on a protected group; second, they must prove that it was enacted or maintained for a discriminatory purpose.²⁶¹ Only when both elements are satisfied will a court apply heightened scrutiny. Each of these requirements poses formidable challenges in the context of LGBTQ-related curriculum restrictions.

Proving disproportionate harm under the Equal Protection Clause is especially tricky when a law formally applies to all students equally.²⁶² In *PEN America v. Escambia County School District*, where the plaintiffs challenged Florida’s LGBTQ-related curriculum restriction, the court dismissed the Equal Protection count on other grounds,²⁶³ while implicitly leaving open *universal* restrictions. The net result of such a move, when *all* students (rather than certain groups) lose access equally to particular books,

²⁶⁰ Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status Enforcing State Action*, 49 STAN. L. REV. 1111, 1119 (1997).

²⁶¹ *Washington v. Davis*, 426 U.S. 229, 239 (1976).

²⁶² *See, e.g., Palmer v. Thompson*, 403 U.S. 217, 220–21 (1971) (holding that a city’s closure of all public pools, rather than integrating them, did not violate the Equal Protection Clause because access was denied equally to all races and there is no constitutional right to public swimming facilities); *Skrmetti*, 145 S. Ct. at 1827 (upholding the Sixth Circuit’s decision that a law restricting transition-related treatments for minors did not classify based on sex, as it applied equally to all minors by prohibiting them from “receiv[ing] puberty blockers or hormones or surgery in order to transition from one sex to another”).

²⁶³ *PEN Am. Ctr. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 3d 1325, 1332 (N.D. Fla. 2024).

is that disparate-impact claims are defeated.²⁶⁴ An Arkansas court took that step explicitly in *Walls v. Arkansas Dept. of Education*.²⁶⁵ When challenging Arkansas' LEARNS Act "anti-indoctrination" rule, which prohibits teachings on inherent racial superiority, the plaintiffs failed to offer data demonstrating that Black students bore a heavier curricular burden than their white peers. The court emphasized that "the generalized focus of the provision makes it nearly impossible to believe that the provision has a disparate impact on African Americans."²⁶⁶ Such broad statutory language deliberately dilutes statistical contrasts, making disparate-impact claims increasingly difficult to substantiate with empirical evidence.²⁶⁷

But perhaps the most formidable hurdle in Equal Protection challenges lies in proving discriminatory intent. Under the *Arlington Heights* precedent, a neutral law violates the Clause only if enacted *because of*, not merely *in spite of*, its adverse effect on a protected group.²⁶⁸ Courts examine impact, historical background, procedural anomalies, and legislative history²⁶⁹—but, without this robust factual foundation, Equal Protection claims could easily fail at the pleading stage. It is not enough for plaintiffs to show that lawmakers were aware of the disparate impact; rather, that impact must have served, as a minimum, as a partial motivation for the state action.

Cases involving curriculum restrictions illustrate how this high bar enables educational disparities to persist unremedied. In *Monteiro v. Tempe Union High School District*, a parent claimed that psychological harm was done to African-American students when they were required to read books containing racial slurs.²⁷⁰ Although none of the works assigned by the school similarly disparaged white students, the Ninth Circuit upheld dismissal due to the complaint's lack of specific evidence of discriminatory intent.²⁷¹ Likewise, in *California Parents for Equalization of Educational Materials*, the plaintiffs demonstrated that certain passages contained in mandatory textbooks negatively impacted Hindu students,²⁷² but they failed to produce evidence that the

²⁶⁴ See Dubon, *supra* note 247, at 1601 (arguing that schools may claim universal book removals defeat disparate impact claims by analogy to *Palmer v. Thompson*, 403 U.S. 217 (1971), where the Supreme Court held that closing all public pools rather than integrating them did not violate equal protection because access was denied to all groups equally).

²⁶⁵ *Walls v. Sanders*, 760 F. Supp. 3d. 766, 803 (E.D. Ark. 2024).

²⁶⁶ *Id.* at 802.

²⁶⁷ Indeed, even when a statute formally applies to all students, the exclusion of materials depicting LGBTQ characters may uniquely burden LGBTQ youth by erasing representations of their identities from the educational environment. Such differential impact may nonetheless signal a form of expressive or dignity-related harm that current equal protection doctrine should (but not necessarily does) recognize.

²⁶⁸ *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 270 (1977); see also *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

²⁶⁹ *Arlington Heights*, 429 U.S. at 266–68.

²⁷⁰ *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1024 (9th Cir. 1998).

²⁷¹ *Id.* at 1026.

²⁷² *Cal. Parents for Equalization of Educational Materials v. Noonan*, 600 F. Supp. 2d 1088, 1096–104 (E.D. Cal. 2009).

state board had adopted the reading materials that contained those passages with discriminatory intent.²⁷³

At the heart of this problem is the judiciary's tendency to treat facially neutral *pedagogical justifications* as sufficient to defeat claims of discriminatory purpose under the Equal Protection Clause. In *Walls*, for example, the Arkansas legislature justified its prohibition on teaching concepts such as inherent racial superiority by invoking the pedagogical goal of protecting students from ideological coercion and preserving educational neutrality.²⁷⁴ The court deferred to this "colorblind" rationale, concluding that the law was more plausibly aimed at viewpoint neutrality than racial exclusion.²⁷⁵ By contrast, in *California Parents*, Hindu parents objected to certain 6th-Grade history textbooks that, they alleged, portrayed Hinduism inaccurately and stereotypically, thereby placing disproportionate emphasis on caste and gender-related practices in ways, they argued, that stigmatized Hindu students.²⁷⁶ Because the plaintiffs could not show that the content was selected or retained for the *purpose* of harming this collective,²⁷⁷ the court deferred to the state's educational rationale regarding the materials' importance,²⁷⁸ thereby precluding any inference of animus toward Hindu students. In both of the aforementioned cases, courts relied on the presence of pedagogical justifications—whether to restrict (as in *California Parents*) or retain (as in *Walls*) contested material—to shield curricular decisions from Equal Protection scrutiny.

Such judicial deference to apparently neutral rationales creates a particularly troubling precedent for LGBTQ-related curriculum restrictions, whereby states frequently invoke ostensibly neutral objectives to justify what they know to be exclusionary policies. One prominent justification is parental authority over children's educational exposure. Proponents of this authority argue that LGBTQ-related curriculum restrictions simply protect parents' fundamental right to shield their children (or others' children) from content that conflicts with their values and beliefs.²⁷⁹ That this framing is strategic is evident in how these laws deliberately appropriate language from foundational Supreme Court parental rights precedents,²⁸⁰ positioning restrictions not as novel impositions but as extensions of established constitutional

²⁷³ *Id.* at 1113.

²⁷⁴ *Walls v. Sanders*, 760 F. Supp. 3d. 766, 807–08 (E.D. Ark 2024).

²⁷⁵ *Id.*

²⁷⁶ *Cal. Parents*, 600 F. Supp. 2d at 1096–104.

²⁷⁷ *Id.* at 1121.

²⁷⁸ *Id.* at 1120.

²⁷⁹ As an example, consider Governor Ron DeSantis's statement that parents do not "want their kids to have transgenderism or something injected into classroom instruction." *Florida Governor DeSantis Defends Controversial 'Don't Say Gay' Bill*, CBS News (Mar. 5, 2022, at 09:26 ET), <https://www.cbsnews.com/news/florida-governor-desantis-defends-dont-say-gay-bill/> [<https://perma.cc/84DD-M7YA>]. Yet, these laws often reach beyond the boundaries of parental authority as defined by the courts.

²⁸⁰ See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534 (1925).

principles.²⁸¹ Scholars have increasingly critiqued this rhetorical maneuver as a sophisticated attempt to weaponize parental rights against the equality interests of marginalized groups.²⁸² The underlying legal strategy becomes apparent: By characterizing anti-LGBTQ-related curriculum measures as merely protecting parents' existing constitutional prerogatives rather than creating new authorities, proponents establish a facially neutral justification that courts may find difficult to dismiss.²⁸³ Although the Supreme Court has not definitively addressed whether this justification legitimately supports comprehensive LGBTQ-discussion bans, its recent signals in *Mahmoud*—a case challenging the denial of parental opt-out rights from LGBTQ-inclusive instruction—suggest a growing receptivity to parental authority claims in this context.²⁸⁴ By indicating that constitutional protection of parental authority warrants opt-out provisions, the Court could be viewed as signaling that parental authority may broaden curricular restrictions in the future.

A second, potentially more constitutionally defensible, justification centers on ensuring “age-appropriateness” in educational materials. This rationale presents varying degrees of vulnerability to Equal Protection challenges, depending on implementation. In states imposing blanket LGBTQ-discussion bans across all Grade levels, this justification appears pretextual and unlikely to withstand meaningful scrutiny.²⁸⁵ However, states that establish graduated, developmentally-calibrated policies present more formidable targets for constitutional challenges.²⁸⁶ By implementing differentiated approaches based on student age and developmental readiness, these states more convincingly demonstrate reasonable pedagogical rationales tied to legitimate educational design principles rather than a discriminatory motivation.

The evidentiary standards and judicial deference described here reveal more than just pragmatic limits—they can be understood as exemplifying a fundamental tension between competing visions of equality in constitutional

²⁸¹ Several of these statutes explicitly invoke parental rights in their titles or opening provisions. *See, e.g.*, OHIO REV. CODE ANN. § 3313.473 (2025) (titled “Parent’s fundamental right to make decisions concerning upbringing, education, and care of child . . .”); FLA. STAT. § 1001.42(8)(c)(1) (2023) (referencing the “fundamental right of parents to make decisions regarding the upbringing and control of their children” as a basis for restricting classroom instruction on certain topics).

²⁸² *See, e.g.*, Bowman, *supra* note 61, at 402; Ziegler, *supra* note 61, at 710.

²⁸³ Sponsors of Ohio’s H.B. 8, for example, maintain that the bill does not confer any new authority on parents. Rather, they assert that the legislation merely codifies parents’ preexisting right to direct the upbringing and education of their children. *See* Representative D.J. Swearingen, Testimony on H.B. 8 Before the H. Primary & Secondary Educ. Comm., 135th Gen. Assemb., Reg. Sess. (Ohio 2023); *see* David Rees, *Crisis Calls from LGBTQ Youth in Ohio Surge After Outing Bill Signed into Law*, WTRF.COM (Jan. 14, 2025, at 03:47 ET), <https://www.wtrf.com/ohio/crisis-calls-from-lgbtq-youth-in-ohio-surge-after-outing-bill-signed-into-law/>, [https://perma.cc/YL8U-W6CN].

²⁸⁴ *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025).

²⁸⁵ *See infra* Appendix A.

²⁸⁶ *Id.*

law.²⁸⁷ This jurisprudence has been shaped by two principal theoretical commitments: anti-classification and anti-subordination.²⁸⁸ The anti-classification approach views the Equal Protection Clause as a mandate for formal neutrality, requiring the state to treat individuals without regard to their group belonging, emphasizing individualism alongside symmetrical treatment. In contrast, the anti-subordination approach interprets the Clause as a tool to dismantle systemic structures that entrench the inferior social standing of historically marginalized groups, prioritizing structural equality and redress of collective harms.²⁸⁹ Within school curriculum battles, these logics diverge. An anti-classification approach is likely to permit content restrictions that apply universally without explicit identity-based distinctions. In contrast, an anti-subordination stance would question even ostensibly neutral curriculum policies that disproportionately silence historically marginalized voices and experiences.

Justices have long disagreed over whether the Equal Protection Clause should be interpreted through a formal, colorblind lens or through a substantive lens attentive to group-based inequality.²⁹⁰ The Supreme Court's recent decisions, especially in *Students for Fair Admissions*, which found race-affirmative admission programs in college unconstitutional,²⁹¹ exemplify the growing dominance of the anti-classification approach. Yet, as many scholars have argued, anti-subordination values have historically coexisted with, and in some cases shaped, the application of anti-classification doctrine.²⁹² Further, this principle remains vital today, as anti-subordination reasoning continues to surface in lower federal courts²⁹³ and in influential dissents from the Supreme Court.²⁹⁴ That the Clause has moved away from this transformative vision in recent years does not render it obsolete—only in pressing need of reconceptualization.

²⁸⁷ See generally Siegel, *supra* note 260, at 1142–43 (criticizing Equal Protection's formalist fixation on intent and classification, and observing that courts defer to facially neutral laws while scrutinizing affirmative action, thereby perpetuating systemic inequality).

²⁸⁸ Jack M. Balkin & Reva B. Siegel, *The American Civil Rights Tradition: Anticlassification or Antisubordination?*, 58 U. MIAMI L. REV. 9, 10–11 (2003).

²⁸⁹ *Id.*

²⁹⁰ Reva B. Siegel, *Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles over Brown*, 117 HARV. L. REV. 1470, 1470–78 (2004).

²⁹¹ See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2176 (2023).

²⁹² See, e.g., Balkin & Siegel, *supra* note 288, at 10–11.

²⁹³ See, e.g., *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034, 1049–51 (7th Cir. 2017) (recognizing that policies targeting transgender students can constitute impermissible sex discrimination); *Republican Party v. Pritzker*, 973 F.3d 760, 771 (7th Cir. 2020).

²⁹⁴ *Students for Fair Admissions*, 143 S. Ct. at 2234 (Sotomayor, J., dissenting) (“Ignoring race will not equalize a society that is racially unequal. What was true in the 1860s, and again in 1954, is true today: Equality requires acknowledgment of inequality.”); *id.* at 2263 (Jackson, J., dissenting) (noting that “[g]ulf-sized race-based gaps exist with respect to the health, wealth, and well-being of American citizens” that “have indisputably been passed down to the present day through generations”).

One possible path out of this impasse is to move beyond the fixed identity categories that both approaches presuppose.²⁹⁵ Rather than viewing students as static members of identity categories requiring either formal neutrality or protective treatment, this Article argues for recognizing identity as a dynamic developmental process—one that is particularly salient during childhood when students are actively exploring and constructing their sense of self. The next Part elaborates on this reconceptualization and considers how it might transform constitutional approaches to curriculum law.

III. TOWARD A LEGAL FRAMEWORK OF DEVELOPMENTAL SELF-EXPLORATION

As demonstrated by the analysis provided in Part II, the main constitutional doctrines are ill-equipped to respond adequately to the harms of the new curriculum restrictions. Viewed together, they reveal their shared conceptual blind-spot: Neither centers students' *present* developmental need for experimentation during childhood itself, not merely in preparation for adulthood.²⁹⁶ Notably, the Free Speech Clause treats students primarily as future citizens in need of civic preparation, framing their educational interests around adult-defined visions of democratic participation. The Equal Protection Clause treats students as members of identity categories requiring equal treatment, thereby overlooking identity as a dynamic developmental *process*.²⁹⁷ Both doctrines thus conceptualize childhood merely as a transitional stage toward adulthood, undervaluing its present developmental importance as a critical period of identity formation.²⁹⁸ Yet, their underlying commitments—to democratic participation (as embedded in the Free Speech Clause) and to anti-subordination principles of equality (as per the Equal Protection Clause)—remain essential.

²⁹⁵ See *infra* notes 328–31 and accompanying text.

²⁹⁶ Philosophers of childhood distinguish between developmental or future-oriented needs and the intrinsic goods of childhood—present-tense goods that make childhood itself go well, such as play and being carefree. See Gareth Matthews & Amy Mullin, *The Philosophy of Childhood*, STAN. ENCYCLOPEDIA OF PHIL. (Jan. 31, 2023), <https://plato.stanford.edu/entries/childhood/> [<https://perma.cc/E58V-M76B>]. This Article employs the term “developmental needs” in this broader sense, encompassing both children’s immediate goods and the capacities they are in the process of developing. This broader usage reflects the main conceptual aim of the Article: to bridge distinctions between “being” and “becoming” by framing children’s present and future-oriented needs as mutually reinforcing rather than conceptually opposed. See, e.g., NOAM PELEG, *THE CHILD’S RIGHT TO DEVELOPMENT* 193–94 (2019).

²⁹⁷ I do not argue that identity exploration is exclusively a childhood phenomenon. However, while identity exploration certainly continues throughout adulthood, this Article focuses on young people due to their particular developmental vulnerability to the state’s insistence on shaping identity through mandatory education.

²⁹⁸ While identity formation could be understood as a forward-looking process directed toward adult selfhood, this Article conceives it as an open-ended process of becoming—one

Rather than discarding these foundations, the legal framework proposed in this Part builds on them to develop a more responsive and transformative approach to curriculum law.

At its heart, the proposed framework reimagines the school as a site for developmental self-exploration.²⁹⁹ Grounded in several theories of childhood and equality, it emphasizes the law's desirable—and feasible—role in cultivating structural conditions that support children's open-ended exploration with personal identity in its broadest sense in school. It foregrounds children's need for identity *exploration*—not merely identity-based recognition or democratic preparation—as a normative foundation for regulating curricula.³⁰⁰

As this Part further illustrates, the framework can serve as a jurisprudential lens through which to refine the application of the aforementioned constitutional doctrines by supplementing them with interpretive insights grounded in a developmental understanding of identity formation. Specifically, it offers interpretative guidance at multiple levels of analysis: refining the rationales underlying constitutional doctrines,³⁰¹ informing the standards of judicial review,³⁰² and addressing challenges surrounding opt-out provisions governing LGBTQ-inclusive curricula³⁰³—one of which, as noted earlier, recently came before the Supreme Court.³⁰⁴

A. Theoretical Pillars

My proposed framework draws on principles distilled from three complementary socio-legal approaches: child development theory, multiculturalism, and anti-essentialism. Rather than treating these approaches as discrete or competing foundations for curriculum law, I bring them into interdisciplinary dialogue to create a broader lens through which to analyze curriculum law—one grounded in the evolving capacities and lived experiences of children. This synthetic approach acknowledges that each theoretical strand both illuminates and compensates for the limitations of the others, generating a more balanced account of children's rights. Doing so could better address the law's fragmented nature—built upon layers of political compromise and competing values (a reality that is particularly pronounced in child-related

that holds intrinsic value in the present and constitutes a substantive part of children's lived experience of selfhood.

²⁹⁹ See *infra* Part III.A.

³⁰⁰ See *infra* Part III.B.

³⁰¹ See *infra* Part III.C.1.

³⁰² See *infra* Part III.C.2.

³⁰³ See *infra* Part III.C.3.

³⁰⁴ See *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025).

jurisprudence)³⁰⁵—and grounds arguments for legal reforms in diverse, overlapping, mutually-reinforcing perspectives.³⁰⁶

1. *Child Development Theory*

Child development theory, whose introduction to legal scholarship is widely attributed to a 2004 article by Emily Buss, shifts analysis from viewing children as passive subjects of the law to recognizing how it actively shapes their development.³⁰⁷ This theory highlights the state's special role—and duty—in cultivating children's ability to engage meaningfully in democratic life.³⁰⁸ Accordingly, when addressing legal questions involving children, we must evaluate how legal rules either support or constrain their evolving capacities.³⁰⁹ As a foundational premise, then, the law should attend not only to skills the children will need as adults but also to the active process of development itself—acknowledging that children are continually *becoming*, rather than already fully formed. In particular, legal doctrines or standards should embrace childhood experiences as important in their own right, not merely as stepping-stones toward adulthood, and should allow for the fact that meaningful development continues throughout childhood and beyond.³¹⁰

More specifically, in the context of public education, a developmental approach would recognize, on the one hand, the state's legitimate interest in preparing children for civic participation and economic self-sufficiency—for example, by helping them acquire knowledge and build intellectual capabilities needed for adulthood. On the other hand, this approach would equally

³⁰⁵ This is particularly pronounced in child-related jurisprudence. See, e.g., Martha Minow, *Rights for the Next Generation: A Feminist Approach to Children's Rights*, 9 HARV. WOMEN'S L.J. 1, 3–14 (1986) (including an excellent analysis of the “contradictions in the legal treatment of children”); Huntington & Scott, *supra* note 62, at 1373 (arguing that “[o]ver the past several decades, the law’s treatment of children has become increasingly complex and uncertain in ways that can seem to verge on incoherence”); Catherine E. Smith, Brown’s *Children’s Rights Jurisprudence and How It Was Lost*, 102 B.U. L. REV. 2297, 2300 (2022) (arguing that it is an area that “lacks focus, vision, substance, and unifying principles”).

³⁰⁶ Cf. Cass R. Sunstein, *Incompletely Theorized Agreements*, 108 HARV. L. REV. 1733, 1734–35 (1995) (“[P]erhaps government should seek an ‘overlapping consensus’ among reasonable people, thus allowing agreement to be made among Kantians, utilitarians, Aristotelians, and others. . . . [P]articipants in law may be unwilling to commit themselves to large-scale theories of any kind, and they will likely disagree with one another if they seek to agree on such theories.”).

³⁰⁷ Buss, *supra* note 62. For more recent contributions of developmental jurisprudence in various contexts, see generally Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448 (2018); PELEG, *supra* note 296; Ruth Zafran, *Children’s Rights as Relational Rights: The Case of Relocation*, 18 AM. U. J. GENDER & SOC. POL’Y & L. 163, 203 (2010); Pamela Laufer-Ukeles, *The Relational Rights of Children*, 48 CONN. L. REV. 741, 749, 783 (2016).

³⁰⁸ Buss, *supra* note 62, at 32.

³⁰⁹ *Id.* at 35.

³¹⁰ PELEG, *supra* note 296, at 193–94 (2019); Dailey & Rosenbury, *supra* note 307, at 1480.

acknowledge both the child's present need to explore their sense of self and to be allowed to encounter diverse human experiences during their formative years—diversity that can, in its own right, be seen as essential for fostering inclusive citizenship.

The child-development approach remains incomplete, though, if it presumes a uniform experience of childhood. By overlooking the heteronormative and other majoritarian ideologies that shape prevailing notions of childhood, it risks rendering invisible the needs and lived realities of children whose identities diverge from dominant expectations. To realize its transformative potential, developmental jurisprudence should adopt an intersectional lens—one that attends to how children's positions within overlapping systems of power shape their conditions. Such jurisprudence should also recognize that, beyond age-based metrics, children navigate complex matrices of identity—including sexuality, gender, class, race, ethnicity, and disability—that structure both the challenges they face and the support they can access.³¹¹

LGBTQ youth exemplify this intersectional reality: Their developmental experiences are simultaneously shaped by age-related vulnerability and sexual- and/or gender-minority status, resulting in disproportionate rates of homelessness, high rates of bullying in school, educational disruption, and mental health disparities that traditional age-focused frameworks fail to address adequately.³¹² Further, unlike many other minority groups, whose members often learn about their culture through their families, LGBTQ

³¹¹ The intersectional approach to children's rights has gained increasing attention in recent years. See, e.g., Katrien De Graeve, *Children's Rights from a Gender Studies Perspective: Gender, Intersectionality and Ethics of Care*, in ROUTLEDGE INTERNATIONAL HANDBOOK OF CHILDREN'S RIGHTS STUDIES 147 (Wouter Vandenhoe et al. eds., 2015); Sofia Frödén & Ann Quennerstedt, *The Child as a Gendered Rights Holder*, 27 CHILDHOOD 143, 145 (2020).

³¹² See, e.g., Daniel Bontempo & Anthony R. D'Augelli, *Effects of At-School Victimization and Sexual Orientation on Lesbian, Gay, or Bisexual Youths' Health Risk Behavior*, 92 AM. J. PUB. HEALTH 364, 372 (May 2002) (finding that LGB students who experienced anti-gay victimization at school reported significantly higher rates of substance use, suicidal behavior, and sexual risk-taking); Mark L. Hatzenbuehler, *The Social Environment and Suicide Attempts in Lesbian, Gay, and Bisexual Youth*, 127 PEDIATRICS 896, 896 (Apr. 2011) (reporting that LGB youth in unsupportive school environments were 20% more likely to attempt suicide than peers in supportive settings); Dorothy L. Espelage et al., *Homophobic Teasing, Psychological Outcomes, and Sexual Orientation Among High School Students: What Influence Do Parents and Schools Have?*, 37 SCH. PSYCH. REV. 202, 202 (2008) (finding that a positive school climate and parental support reduced mental health risks among high school students, including those questioning their sexual orientation); JOSEPH G. KOSCIW ET AL., THE 2021 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LGBTQ+ YOUTH IN OUR NATION'S SCHOOLS 10, 16, 19–20 (2022) (reporting a 2021 national survey of LGBTQ students found that 68% felt unsafe at school because of their sexual orientation, gender identity, and/or gender expression, and 76% had been verbally harassed, 31.5% had been physically harassed, and 12.5% had been physically assaulted at school in the past year based on sexual orientation, gender identity, and/or gender expression); Michelle Johns et al., *Strengthening Our Schools to Promote Resilience and Health Among LGBTQ Youth: Emerging Evidence and Research Priorities from the State of LGBTQ Youth Health and Wellbeing Symposium*, 6 LGBT HEALTH 146, 147 (2019) (demonstrating that transgender students "may be as much as four times more likely to experience bullying and harassment as cisgender students").

youth often receive no such cultural reinforcement or even adequate support at home.

This reality highlights the importance of incorporating a multicultural lens into the theoretical foundation of the proposed framework³¹³—one that recognizes the centrality of cultural belonging and communal recognition in the process of identity formation.³¹⁴

2. *Multiculturalism*

Community plays a central role in childhood identity formation, particularly for youth who may not find validation or belonging within their immediate families. This principle has received robust support from prominent psychosocial models of identity formation as well as other subsequent theories in psychology and the philosophy of childhood.

Erik Erikson, among the foundational psychologists of the twentieth century, was an early proponent of viewing identity formation as a life-long developmental process that begins in early childhood and continues through adolescence,³¹⁵ with adolescence representing one particularly intense period.³¹⁶ According to Erikson and later psychologists, identity extends beyond a personal notion of self; it is shaped through engagement with culturally embedded values and life goals tied to political ideology, gender, religion, sexuality, race, ethnicity, occupational roles, and other social structures.³¹⁷ Meaningful interactions beyond the family are thus essential for young people to consolidate a stable identity.³¹⁸ Urie Bronfenbrenner's "ecological systems" theory of childhood reinforces this community-centered approach, based on the idea that healthy development emerges through the

³¹³ The communitarian vision remains underemphasized in much of LGBTQ rights discourse, which often centers on individualist narratives such as the "born this way" trope. More than two decades ago, Carlos A. Ball called for the incorporation of this vision—though not specifically in relation to youth—as it situates sexual identity within shared cultural meanings, communal ties, and historical continuity. Carlos A. Ball, *Communitarianism and Gay Rights*, 85 CORNELL L. REV. 443, 447–49 (2000).

³¹⁴ Multiculturalism is one among several group-based approaches to bridging this gap. See Holning Lau, *Pluralism: A Principle for Children's Rights*, 42 HARV. C.R.-C.L. L. REV. 317, 320 (2007) (discussing the value of integrating pluralism into children's rights). While both pluralism and multiculturalism result in allowing children to explore and express identity-formative values, they differ in their underlying rationales: multiculturalism grounds this outcome primarily in the preservation of group-based cultural heritage and frames identity through the lens of collective political recognition, whereas pluralism emphasizes individual autonomy and the right to encounter diverse worldviews.

³¹⁵ ERIK H. ERIKSON, *IDENTITY: YOUTH AND CRISIS* 91–96 (1968).

³¹⁶ *Id.* at 128–34.

³¹⁷ See, e.g., James E. Marcia, *Identity in Adolescence*, in HANDBOOK OF ADOLESCENT PSYCHOLOGY 159–60 (Joseph Adelson ed., 1st ed. 1980); Yanghee Lee & Sangwon Kim, *Contemporary Children's Rights Issues in Adolescence*, in CHILDREN'S RIGHTS AND CHILDREN'S DEVELOPMENT: AN INTEGRATED APPROACH 255 (Jonathan Todres & Ursula Kilkelly eds., 2025).

³¹⁸ ERIK H. ERIKSON, *IDENTITY AND THE CYCLE OF LIFE* 109–10 (W.W. Norton & Co. 1980) (1959).

child's dynamic interconnections with diverse facets of their immediate settings: family, school, and community organizations.³¹⁹ These settings, and the relationships formed within them, provide the social infrastructure that supports or constrains this process of development, of which identity exploration is an essential part. Moreover, as the educational philosopher Kevin McDonough argues, autonomous practical reasoning requires children's ability to "imagine different possible futures" for themselves. Building this capacity, McDonough contends, depends on exposure to concrete communities, stories, and identities that provide expansive visions of future possibilities, particularly for marginalized youth who may lack such exposure in their immediate family and social environments.³²⁰

These theoretical insights become especially palpable for LGBTQ youth, who face distinctive developmental challenges. Unlike members of many minority groups who benefit from familial cultural transmission, LGBTQ youth may lack this resource if they are raised in heterosexual families that lack understanding of diverse sexual orientations and gender identities—understanding that child development theory identifies as crucial for healthy identity formation. Conversely, for LGBTQ youth who are fortunate to have supportive families, excluding books with LGBTQ characters from educational settings, for instance, would delegitimize these family structures and relationships in the school environment. Hence, whether exposure or opportunity *is* absent from the young person's family or caregiving setting, or whether it exists but is contradicted by institutional exclusion, this can limit their ability to imagine authentic futures beyond dominant heteronormative expectations. This, in turn, may render them more vulnerable to pressures to suppress core aspects of their identity in order to "fit in."³²¹ Such pressures can be particularly damaging during childhood, when identity is far from fully formed, making individuals especially susceptible to the psychological harms of forced assimilation³²² and further widening the developmental gap that supportive community connection becomes uniquely positioned to address.³²³

Given these developmental vulnerabilities, educational institutions emerge as critical sites where the supportive community connections LGBTQ youth need can be intentionally fostered. This potential reflects a communitarian vision that underscores the value of establishing safeguards for minority students, whose collective characteristics often leave them disproportionately

³¹⁹ See, e.g., Urie Bronfenbrenner, *Ecology of the Family as a Context for Human Development: Research Perspectives*, 22 DEV. PSYCHOL. 723, 723 (1986).

³²⁰ Kevin McDonough, *The "Futures" of Queer Children and the Common School Ideal*, 41 J. PHIL. EDUC. 795, 800–04 (2007).

³²¹ KENJI YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS 184–96 (2006).

³²² Lau, *supra* note 314, at 322–35 (discussing how the harms of coerced assimilation especially affect children).

³²³ While some degree of conformity may be necessary for children to internalize basic social norms and function within society, socialization becomes harmful when it demands the suppression of core aspects of identity. Such suppression can impose significant psychological burdens on children. *Id.* at 324.

vulnerable to systemic marginalization.³²⁴ Without such safeguards, schools risk perpetuating the very conditions that marginalize these students, while depriving them of the intellectual tools needed to understand and challenge those constraints as they progress toward adulthood.³²⁵ Adopting this communitarian ethic, therefore, requires actively cultivating institutional spaces where marginalized students can envision futures beyond the limitations imposed by their families or society. At the same time, inclusive educational environments serve a critical civic function for all students—including those from dominant identity groups—equipping them with the tools to engage with difference, challenge bias, and participate meaningfully in a pluralistic society.³²⁶ Indeed, this culturalism-centered vision of schools has already begun to find expression in state legislation. California, Illinois, and New Jersey, for instance, have all enacted laws requiring schools to teach children about LGBTQ histories and contributions, symbolically positioning LGBTQ individuals as integral to the collective civic identity.³²⁷

This communitarian vision, however, confronts a longstanding tension at the heart of Equal Protection jurisprudence. On the one hand, it resonates with anti-subordination theorists by affirming group-based belonging and seeking to redress historic erasure through the recognition of marginalized identities within shared cultural narratives. On the other hand, it raises concerns for anti-classification theorists, as it relies on the very identity categories that have historically structured exclusion and reinforced essentialist assumptions. From this standpoint, the emphasis on cultural recognition risks reifying the very categorical distinctions that equality law seeks to overcome, suggesting

³²⁴ This rationale echoes corrective justice principles, which justify special protections for historically disadvantaged groups as morally necessary responses to structural harms. The philosophical roots of this principle can be traced back to Aristotle's notion of corrective justice, as well as Robert Nozick's theory of rectification for past injustice. Ernest J. Weinrib, *Corrective Justice*, 77 IOWA L. REV. 403 (1991); ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA 152–53 (reprint ed. 2013).

³²⁵ See, e.g., Kevin G. Welner, *Locking Up the Marketplace of Ideas and Locking Out School Reform: Courts' Imprudent Treatment of Controversial Teaching in America's Public Schools*, 50 UCLA L. REV. 959, 973 (2003) (explaining that if schools “expose children only to values and ideas that buttress the status quo and legitimize the position of those in power, it is unlikely that those who are presently oppressed will learn the cause of their oppression or the means of overcoming it”).

³²⁶ Studies demonstrate that LGBTQ-inclusive curricula are beneficial to all youth. See V. Paul Poteat, Jillian R. Scheer & Ethan H. Mereish, *Factors Affecting Academic Achievement Among Sexual Minority and Gender-Variant Youth*, 47 ADVANCES IN CHILD DEV. & BEHAV. 261, 290 (2014) (“[A]n inclusive curriculum that promotes respect for [gender and sexual orientation] diversity stands to benefit all youth along indices of psychological and social well-being.”); Shannon D. Snapp et al., *Students' Perspectives on LGBTQ-Inclusive Curriculum*, 48 EQUITY & EXCELLENCE IN EDUC. 249, 251 (2015) (“[W]hen schools teach LGBTQ-inclusive curriculum, all students, including heterosexual . . . students felt safer, experienced less victimization, reported hearing fewer homophobic slurs, and experienced greater peer acceptance.”).

³²⁷ See *supra* notes 103–08 and accompanying text. Indeed, this approach to inclusive education can be justified on entirely liberal grounds as well.

the need for an approach that supports marginalized students without reinforcing the structures that have sustained their exclusion.

3. *Anti-essentialism*

In light of the theoretical tension, equality law scholars have proposed a third paradigm from which to promote the goals of equality law: anti-essentialism.³²⁸ Rather than treating identity categories as natural or fixed, this approach understands them as historically contingent, socially constructed, and open to transformation. It views group-based identities as emerging from social interaction and cultural processes rather than standing as fixed, internal properties that individuals simply possess.³²⁹ In this way, anti-essentialism shares anti-subordination theory's commitment to dismantling entrenched power structures and exposing how identity categories have been used as tools of marginalization. Yet, it also aligns with anti-classification critiques in its skepticism of rigid identity-based policymaking. While group membership remains critical for visibility and recognition, it represents only a partial and contingent dimension of personhood. From this perspective, promoting an anti-essentialist reading of equality means shifting the focus from identity-based recognition to challenging the *ideologies* that constrain how identity is regulated.³³⁰ This move reorients the legal inquiry away from affirming fixed identity categories and toward creating conditions that support ongoing processes of self-understanding.³³¹

Such an approach aligns with the child development theory, which frames this life-phase as a period of exploration and self-construction. This exploratory process benefits *all* children—not only those who challenge normative expectations—by cultivating authentic self-understanding. As Tamar Schapiro captures it, childhood is a time of experimentation aimed at creating a self,

³²⁸ See, e.g., Lauren Sudeall Lucas, *Identity as Proxy*, 115 COLUM. L. REV. 1605, 1613 (2015) (examining how equal protection law might be restructured to reflect the underlying values that identity categories are meant to serve, without relying on those categories to define the boundaries of permissible and impermissible discrimination); Karen Knop et al., *From Multiculturalism to Technique: Feminism, Culture, and the Conflict of Laws Style*, 65 STAN. L. REV. 589, 603 (2012) (discussing a strategic form of essentialism in which marginalized groups adopt generalized or essentialized community identities—such as “Indigenous”—to advance specific political goals); Lihi Yona, *Identity at Work*, 43 BERKELEY J. EMP. & LAB. L. 139, 140 (2022) (arguing that anti-essentialism can offer Title VII a stronger normative foundation, especially for liminally recognized groups—those still in the process of attaining legal recognition).

³²⁹ Jessica A. Clarke, *Protected Class Gatekeeping*, 92 N.Y.U. L. REV. 101, 145 (2017).

³³⁰ *Id.* at 148.

³³¹ Because of its skepticism toward the foundational categories of equality law, anti-essentialism might initially seem too blunt an instrument to guide legal reform. Yet, this Article does not engage with versions of anti-essentialism that deny the lived reality of group membership or seek to erase identity from social life. Rather, it draws on strands of anti-essentialist thought that recognize identity as both historically contingent and socially constructed, yet materially consequential and subjectively meaningful.

or voice, of one's own.³³² While identity formation is integral to this process, it is the ongoing *exploration*—rather than any predetermined outcome—that constitutes what is essential. Expressions of gender and sexuality—through clothing, personal pronouns, curriculum content, social affiliation, use of sex-segregated spaces, and more—are central to the process of becoming one's authentic gendered and sexual self.³³³ This approach therefore prioritizes creating conditions that support unhindered identity exploration—even experimentation—rather than imposing fixed categorical frameworks. It thus shifts the focus from mere inclusion to structural transformation—from simply recognizing (or tolerating) diverse identities to dismantling the ideological constraints that cast a shadow over how difference is perceived and validated within school settings. In doing so, it circumvents the familiar tensions in Equal Protection law between anti-classification and anti-subordination theories, redirecting attention from safeguarding discrete categories toward challenging the *structures* that constrain children's identity exploration—the *heteronormative fear* of the queer child being one such structure.³³⁴ The proposed approach thus offers a broader vision of childhood freedom—one that affirms every child's need to become.

The anti-essentialist reading is further understood—and supported—through queer approaches to childhood. Queer theorists, at least in the canonical sense, critique the fact that stable identity categories have historically maintained the binary of sex/gender and sexuality, and call for liberatory frameworks that free individuals from limiting scripts based on these categories.³³⁵ This body of literature underscores what might be called a “queer sensibility”:³³⁶ a mode of openness to varied ways of being that are not necessarily oppositional to heterosexual or cisgender norms, but are instead defined by a commitment to curiosity and to imagining what is not yet—but might someday be—possible outside these norms.³³⁷ This sensibility does not

³³² Anca Gheaus, *Unfinished Adults and Defective Children: On the Nature and Value of Childhood*, 9 J. ETHICS & SOC. PHIL. 8–14 (2015) (citing Tamar Schapiro, *What Is a Child?*, 109 ETHICS 729, 737 (1999)).

³³³ See, e.g., Florence Ashley, *Thinking an Ethics of Gender Exploration: Against Delaying Transition for Transgender and Gender Creative Youth*, 24 CLINICAL CHILD PSYCH. & PSYCHIATRY 223, 227 (2019).

³³⁴ See, e.g., *supra* notes 224–30 and accompanying text.

³³⁵ ANNAMARIE JAGOSE, *QUEER THEORY: AN INTRODUCTION* 106 (1996).

³³⁶ Brenda Cossman, *Queering Queer Legal Studies: An Unreconstructed Ode to Eve Sedgwick (and Others)*, 6 CRITICAL ANALYSIS L. 23, 24 (2019).

³³⁷ In their seminal work, *Gender Trouble* (1990), Judith Butler introduces the concept of “becoming” through performativity: gender is not something one is but something one does—an ongoing process that involves a continuous state of becoming rather than achieving a fixed identity. JUDITH BUTLER, *GENDER TROUBLE* 1–11 (1990). According to Sedgwick, “queer” is defined by “the open mesh of possibilities, gaps, overlaps, dissonances and resonances, lapses and excesses of meaning” regarding gender and sexuality. EVE KOSOF-SKY SEDGWICK, *TENDENCIES* 8 (1993). Similarly, Jack Halberstam, discusses how queer lives unfold outside the normative structures of time and space, emphasizing becoming in terms of exploring non-normative identities. JACK HALBERSTAM, *IN A QUEER TIME AND PLACE: TRANSGENDER BODIES, SUBCULTURAL LIVES* 4–7 (2005).

presuppose same-sex attraction or gender non-conformity; rather, it signals a broader openness to alternative ways of being in the world.

Building on these insights, queer theories of childhood focus on the idea of continuous identity experimentation that resists normative trajectories—experimentation that embraces the possibility of detours, pauses, and alternative paths.³³⁸ These theories highlight the harm inflicted on children by dominant cultural expectations when they show signs of becoming something other than what cultural norms would encourage—those who, in Kathryn Bond Stockton’s words, are “growing sideways,” developing in directions that challenge the cultural ideal.³³⁹ From this perspective, the value of childhood lies in its dynamic, unfolding nature, as a time in which self-exploration—with all its ambivalence, changeability, and uncertainty—is not merely tolerated but actively nurtured. Yet, despite being hallmarks of childhood more broadly, these qualities are often constrained when they fail to conform to culturally legible forms of development.

An anti-essentialist orientation has implications far beyond LGBTQ youth. When schools restrict what can be discussed, they limit all students’ ability to interrogate and understand the social categories that structure their lives. Suppressing LGBTQ content narrows the conceptual vocabulary available to every child, reducing their capacity for critical reflection. Just as importantly, it deprives children of opportunities to engage with diverse ways of life in ways that cultivate empathy, tolerance, and respect for difference. By contrast, an anti-essentialist approach fosters open-ended exploration—for those who resist dominant norms and for those who might otherwise never think to question them—while creating environments that promote healthy development through meaningful engagement with diversity.

B. Normative Principles

By synthesizing insights from child development theory, multiculturalism, and anti-essentialism, the proposed framework offers a new approach to regulating curriculum laws—one that de-emphasizes fixed identity recognition and fosters the structural conditions necessary for children’s open-ended processes of self-understanding. This framework calls for an environment in which every child can explore ideas of identity without fear of discipline, censure, or marginalization.

Central to this vision is the recognition that identity formation is a core developmental need—one that public education is well-positioned, and arguably institutionally obligated, to support. The centrality of school in children’s lives extends beyond its instructional function; school as an institution

³³⁸ See, e.g., KATHRYN BOND STOCKTON, *THE QUEER CHILD, OR GROWING SIDEWAYS IN THE TWENTIETH CENTURY* 1–8 (2009); JACK HALBERSTAM, *THE QUEER ART OF FAILURE* 2–3 (2011).

³³⁹ STOCKTON, *supra* note 338, at 11.

constitutes a structured public space where children encounter the broader social world³⁴⁰ and develop critical thinking skills.³⁴¹ This institutional role gives schools a formative influence that few other environments can replicate—particularly for students whose home contexts may lack familiarity with, or affirmation of, diverse identities. As education philosopher Joan Goodman highlights, public schools are uniquely charged with cultivating a sense of “we-ness” that places students in dialogue with norms beyond the particularistic values of the home.³⁴²

While peer networks, after-school activities, and online spaces may offer opportunities for self-exploration,³⁴³ they are often unstructured, unevenly accessible, and lacking the sustained adult guidance and legitimacy that formal schooling provides.³⁴⁴ In contrast, schools are not only universal in reach—they are also accountable. They operate under legal and pedagogical frameworks that entrust them with shaping the conditions under which children come to understand themselves and others.

Given their highly formative role, day after day, in children’s lives, schools bear a structural responsibility to create environments where those

³⁴⁰ See, e.g., *Ambach v. Norwick*, 441 U.S. 68, 77 (1979) (emphasizing the role of public education in bringing together “diverse and conflicting” constituencies “on a broad but common ground”); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986) (highlighting how public schools cultivate “tolerance of divergent political and religious views” as well as a “consideration of the sensibilities of others”).

³⁴¹ Legal scholars have long argued that courts have embraced the understanding that public schools are intended to help develop students into critical thinkers equipped to participate in the marketplace of ideas. See, e.g., Bruce C. Hafen, *Developing Student Expression Through Institutional Authority: Public Schools as Mediating Structures*, 48 OHIO ST. L.J. 663, 708 (1987) (suggesting that schools play a key role in providing students with opportunities for self-discovery, self-definition, and a robust exchange of views); Rosemary C. Salomone, *Common Schools, Uncommon Values: Listening to the Voices of Dissent*, 14 YALE L. & POL’Y REV. 169, 201 (1996) (explaining that “[t]he court implies that independent thought, i.e., critical thinking, is a permissible mode of analysis, and tolerance is a permissible value to be inculcated through the school curriculum, even when these offend the religious beliefs of some students and parents in the school”). Similarly, education scholars have called for a pedagogy of citizenship that fosters students’ critical consciousness by enabling self-determination and encouraging them to challenge systemic inequalities. See, e.g., PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 35–36 (1990); Joel Westheimer & Joseph Kahne, *What Kind of Citizen? The Politics of Educating for Democracy*, 41 AM. EDUC. RSCH. J. 237, 239, 264–65 (2004); Ralph Leighton, *Radical Citizenship Education*, 18 EDUC. CITIZENSHIP & SOC. JUST. 246, 249 (2023).

³⁴² Joan F. Goodman, *Should Schools Be in Loco Parentis? Cautionary Thoughts*, 16 ETHICS & EDUC. 407, 407 (2021).

³⁴³ Laura A. Rosenbury, *Between Home and School*, 155 U. PA. L. REV. 833, 834 (2007). This argument does not suggest that identity formation depends exclusively on public schooling; it highlights the distinctive civic obligations of public education as the only institution mandated to provide a shared social space for all children, making it a uniquely powerful site of identity development.

³⁴⁴ Of course, teachers’ structuring role is not uniformly benign. Educators bring their own ideological and moral commitments into the classroom; and, in some settings—including religious or conservative ones—this authority can constrain rather than support students’ identity development. Yet, this concern underscores the need for public accountability: precisely because schools wield such influence, they require legal and community oversight to navigate competing values.

in their care can encounter, question, and reflect upon multiple forms of difference. This obligation flows from both the state's interest in educational equity³⁴⁵ and the custodial authority schools hold under *in loco parentis*.³⁴⁶ Per this view, school curricula should not aim to predict or prescribe future identities but to support children's present engagement with difference—racial, sexual, gendered, or otherwise—as a vital component of their developmental well-being.

Translating this theoretical framework into actionable normative guidance requires addressing several foundational concerns that emerge when we consider its implementation. Each of these concerns illuminates a normative principle that should guide the framework's application.

1. *Scaffolded Child Agency*

One potential concern about the proposed framework may be that it presents the risk of endorsing *harmful* exploration in identity formation. Critics may worry that encouraging children—especially at young ages—to explore questions of gender and sexuality could expose them to ideological or social pressures they are not developmentally equipped to navigate.³⁴⁷ This concern engages with the framework's first guiding principle: Supporting exploration does not mean granting children full decisional autonomy. Rather, it means creating safe conditions in which children can, should they wish to, engage with difference—especially the unexpected or non-normative—without fear of marginalization or coerced conformity.

³⁴⁵ *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (explaining how “education is perhaps the most important function of state and local governments . . . [and] is a right which must be made available to all on equal terms”).

³⁴⁶ This long-standing doctrine has roots in early American case law and Blackstone's Commentaries, where the delegation of parental authority was expressly related to discipline and restraint. See 1 WILLIAM BLACKSTONE, COMMENTARIES *453; *State v. Pendergrass*, 19 N.C. 365, 365 (1837) (holding that teachers possess “analogous” authority to parents for “correction of their pupils”). The scope and application of *in loco parentis* have evolved significantly from its origins, generating considerable contestation in American jurisprudence. See, e.g., Susan H. Stuart, *In Loco Parentis in the Public Schools: Abused, Confused, and in Need of Change*, 78 U. CIN. L. REV. 969, 979–85 (2010) (criticizing courts for invoking the doctrine to justify violations of student rights, especially in the context of searches and seizures, while neglecting protections against harms such as bullying and harassment); Barbara Fedders, *The Constant and Expanding Classroom: Surveillance in K-12 Public Schools*, 97 N.C. L. REV. 1673, 1684–701 (2019) (documenting how districts invoke *in loco parentis* to justify expansive digital monitoring as parental power). Even so, recent case law continues to recognize the doctrine's relevance while also acknowledging its limitations. See, e.g., *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2046 (2021) (explaining that *in loco parentis* treats “school administrators as standing in place of students' parents under circumstances where the children's actual parents cannot protect, guide, and discipline them”). Properly understood, the doctrine's emphasis on schools' tutelary responsibilities supports their obligation to foster educational settings that serve students' developmental needs.

³⁴⁷ See, e.g., Ernie Walton, *Gender Identity Ideology: The Totalitarian, Unconstitutional Takeover of America's Public Schools*, 34 REGENT U. L. REV. 219, 261–62 (2022).

The principle draws on well-established developmental research showing that children become aware of their gender identity early in life,³⁴⁸ and that they may begin reproducing gender/sexual stereotypes and exclusionary behaviors as early as pre-school.³⁴⁹ These developmental realities underscore that deliberately delaying engagement with identity questions does not protect children—it often deprives them of the tools and support they need to make sense of the social world around them.³⁵⁰ Developmental research confirms that elementary school pertains to a critical period in children’s internalization of social norms and the emergence of early gender and identity awareness.³⁵¹ Schools, therefore, can scaffold identity development by fostering open-ended engagement while offering age-appropriate guidance and protection.

Like learning to walk, communicate, or engage in imaginative play, identity formation is an early expression of agency—one that develops not in isolation but through structured interaction with adults. The principle of scaffolded child agency recognizes this dynamic interplay between autonomy and dependency as fundamental to healthy development.³⁵² Rather than dismissing the legitimate concerns about children’s vulnerability or their need for protection, this principle rejects the false dichotomy between protection and autonomy that characterizes many current approaches.³⁵³ Pursuant to

³⁴⁸ See, e.g., Michael Zalitznyak, Catherine Bresee, & Maurice M. Garcia, *Age at First Experience of Gender Dysphoria Among Transgender Adults Seeking Gender-Affirming Surgery*, JAMA NETWORK OPEN, Mar. 16, 2020, at 1, 3 (“[G]ender identity typically becomes constant at ages 5-7 years.”); Michael Zalitznyak et al., *How Early in Life Do Transgender Adults Begin to Experience Gender Dysphoria? Why This Matters for Patients, Providers, and for Our Healthcare System*, SEXUAL MED., Sep. 17, 2020, at 1, 4 (finding that the average onset of gender dysphoria occurs before age 7).

³⁴⁹ See, e.g., Carol Lynn Martin & Diane N. Ruble, *Patterns of Gender Development*, 61 ANNUAL REV. PSYCH. 353, 357–61 (2010) (surveying studies demonstrating the tendency among preschoolers to feel more positively about their own sex and to respond negatively to gender norm violations).

³⁵⁰ See, e.g., Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 DUKE L.J. 75, 100–01 (2021) (distinguishing agency from autonomy and emphasizing that even young children possess agency—the capacity to express their will and engage with the world—while still relying on adults for support).

³⁵¹ See, e.g., Melissa J. Smith & Elizabeth Payne, *Binaries and Biology: Conversations with Elementary Education Professionals After Professional Development on Supporting Transgender Students*, 80 EDUC. F. 34, 37 (2016).

³⁵² The term “scaffolding” originates in the context of fostering children’s participation, referring to the process by which adults offer support during participatory experiences and gradually reduce their involvement as children gain competence and independence. Tali Gal, *An Ecological Model of Child and Youth Participation*, 79 CHILD. & YOUTH SERVS. REV. 57, 59 (2017) (reviewing the literature on scaffolding in the context of child participation).

³⁵³ See, e.g., Minow, *supra* note 305, at 3–5 (challenging rigid dichotomies in children’s rights discourse and advocating for recognition of children’s evolving capacity); Emily Buss, *Developmental Jurisprudence*, 88 TEMPLE L. REV. 741, 758 (2016) (discussing how legal frameworks that acknowledge children’s evolving capacities can provide appropriate protections while still respecting their growing autonomy); Shmueli Benjamin & Ayelet Blecher-Prigat, *Privacy for Children*, 42 COLUM. HUM. RTS. L. REV. 759, 763 (2011) (arguing for legal recognition of children’s independent privacy rights aligned with their developing autonomy interests).

this principle, the framework of developmental self-exploration directs us to consider how many school environments may hinder children's exploratory capacity, and, conversely, how they might be better attuned to nurture it. Reflecting on these questions ensures attentiveness to children's evolving capacities while affirming the intrinsic value of self-exploration as a vital dimension of healthy development.

2. *Balancing Parental Authority*

A second potential concern about the proposed framework involves the risk of state overreach, particularly regarding conservative families' values.³⁵⁴ Critics may worry that a framework emphasizing identity exploration in school could authorize unprecedented governmental intrusion into the family sphere, undermining parents' fundamental right to direct their children's upbringing as they see fit, including in matters of gender or sexuality.³⁵⁵

While constitutionally protected, parental rights are not absolute. As the Supreme Court has held, those rights may be limited where the state advances sufficiently weighty interests in protecting children's welfare³⁵⁶ and ensuring their preparation for democratic citizenship.³⁵⁷ In *Prince v. Massachusetts*, the Court established the state's "wide range of power for limiting parental freedom and authority in things affecting the child's welfare."³⁵⁸

This principle has guided educational jurisprudence for many years, leading courts to uphold curricular exposure to contested ideas, provided that such exposure does not rise to the level of coercion or indoctrination. In *Parker v. Hurley*, for example, the First Circuit reaffirmed that schools may expose students to diverse viewpoints, including those related to sexual orientation and gender identity, so long as participation is not coercive.³⁵⁹

³⁵⁴ See, e.g., Emily J. Brown, *When Insiders Become Outsiders: Parental Objections to Public School Sex Education Programs*, 59 DUKE L.J. 109, 135 (2009).

³⁵⁵ This tension is not unique to gender and sexuality; it lies at the core of liberal education. See, e.g., Jeffrey Shulman, *The Parent as (Mere) Educational Trustee: Whose Education Is It, Anyway?* 89 NEB. L. REV. 290, 319 (2010) (arguing that "this emphasis on education as a means for children to achieve intellectual and moral autonomy often conflicted with parental authority, as it encouraged children to question and potentially reject the beliefs and values held by their parents"). See generally MAXINE EICHNER, *THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICA'S POLITICAL IDEALS* REPRINT (2021) (addressing the challenge of maintaining both pluralism and parental autonomy within liberal democratic frameworks).

³⁵⁶ See, e.g., Dailey & Rosenbury, *supra* note 350, at 77.

³⁵⁷ Anne C. Dailey, *Developing Citizens*, 91 IOWA L. REV. 431, 458 (2006).

³⁵⁸ *Prince v. Massachusetts*, 321 U.S. 158, 167 (1944).

³⁵⁹ *Parker v. Hurley*, 514 F.3d 87, 106 (1st Cir. 2008) (rejecting parents' claims that public schools violated their constitutional rights by using books depicting same-sex relationships, holding that parents do not have a constitutional right to exempt their children from exposure to classroom materials—so long as the school acts within its legitimate educational mission and does not coerce belief or violate religious exercise). Whether *Parker v. Hurley* survives as good law following *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025), which seems to mark a departure from *Parker's* approach, remains an open question.

Parker's reasoning reflects the Supreme Court's longstanding recognition that, for public schools to function, it is inescapable that some students will be exposed to ideas and concepts that their parents may find objectionable.³⁶⁰ A parallel rationale appears in *Skrametti*, where the Supreme Court upheld a ban on gender-affirming care for minors, reasoning that parental consent alone cannot override the state's role in regulating decisions that have a bearing on children's long-term welfare.³⁶¹ Although the Court did not address parents' substantive due process claim, its reasoning nonetheless underscores a familiar theme in education and family-law jurisprudence: The state may regulate decisions affecting children's development even when parents object. Despite their opposite outcomes, *Parker* and *Skrametti* share a common premise—namely, that parental rights are made to yield when the state asserts its duty to safeguard child development.

The proposed framework builds on this constitutional logic in the context of identity-related curriculum content. It does not aim to abolish parental authority, but it does set limits on how far that authority extends within public schools.³⁶² Specifically, it proscribes parental control when exercised to deny children access to perspectives that are vital for identity exploration and democratic preparation. This is not intended to compel children to adopt any particular identity or to diminish the role of their families. Rather, it affirms the need for schools to remain open spaces for self-exploration, where children can encounter diverse ways of being and begin to make sense of who they are becoming. Properly structured, such environments support—not supplant—children's developing autonomy within a shared civic context.

3. Doctrinal Integration

A third concern that can be anticipated centers on whether the proposed framework aligns with prevailing constitutional norms. Critics may contend that a model that affirms children's right to identity exploration imposes positive duties on the state—duties that exceed the traditional boundaries of American constitutional law. Yet, integrating this framework into existing doctrine requires neither a repudiation of established principles nor the invention of wholly new rights.

³⁶⁰ See, e.g., *Lee v. Weisman*, 505 U.S. 577, 591 (1992) (observing students may be “expos[ed]” or “subjected during the course of their educations to ideas deemed offensive and irreligious”); cf. *Mahmoud*, 145 S. Ct. at 2381 (Sotomayor, J., dissenting, joined by Kagan & Jackson, J.J.) (stating that the Court's majority decision to require opt-out accommodations for LGBTQ-inclusive materials departs from this longstanding precedent permitting exposure to contested ideas in public education).

³⁶¹ 83 F.4th 460, 475 (2023), *aff'd*, *United States v. Skrametti*, 145 S. Ct. 1816 (2025).

³⁶² See Anne C. Dailey, *In Loco Reipublicae*, 133 YALE L.J. 419, 426 (2023) (arguing that parental duties include “allow[ing] children meaningful exposure to ideas outside the home, including ideas that might conflict with parental beliefs and values,” and that children's free speech rights exemplify “parental duties to ensure children's access to ideas outside the home”).

American constitutional law has long operated within a libertarian paradigm, viewing the Constitution primarily as a charter of negative liberties—one that imposes limits on government action rather than affirmatively obligating it.³⁶³ This orientation has shaped the limited legal recognition afforded to children³⁶⁴ and helps explain much of the U.S.’s resistance to ratifying the United Nations Convention on the Rights of the Child—a treaty that affirms children’s entitlements to have certain fundamental needs fulfilled, particularly with regard to nutrition, clothing, and housing.³⁶⁵

The proposed framework does not seek to overturn this normative structure but to supplement it.³⁶⁶ It offers a jurisprudential lens that operates within established doctrines while adapting them to reflect the realities of childhood development. This Dworkinian endeavor seeks to present existing constitutional doctrines in their best light,³⁶⁷ to reveal how they can better serve children’s developmental need for identity exploration within educational settings. As the next section demonstrates, this approach is not only normatively necessary but also feasible: The legal building blocks are already in place. What remains to be built is the commitment to bring them to life.

Still, convincing the current Court to advance children’s self-exploration will not be easy; recent decisions reflect a judiciary more inclined to expand parental religious rights than to recognize students’ in-school interests.³⁶⁸ Precisely for that reason, it becomes all the more crucial to consider how to frame aspects of the framework to resonate with traditional jurisprudential values. Further, advocates can pursue parallel strategies outside the federal courts. Although this Article does not elaborate on such state-level avenues, it is worth noting that several state constitutions, with their more explicit

³⁶³ See, e.g., Anne L. Alstott, *Neoliberalism in U.S. Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State*, 77 LAW & CONTEMP. PROBS. 25, 26–28 (2014).

³⁶⁴ The Supreme Court has affirmed that the U.S. Constitution does not confer affirmative entitlements on children. See *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 197–201 (1989).

³⁶⁵ G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989).

³⁶⁶ I acknowledge that fully realizing the potential of the framework requires moving beyond interpretative supplementation and recognizing a modest but affirmative duty on educational institutions to support identity exploration. While such a move may stretch the contours of current U.S. constitutional doctrines, it remains well within reach. As several scholars have shown, American jurisprudence already contains doctrinal seeds of positive entitlement for children—seeds that invite extension rather than invention. See, e.g., Tamar Ezer, *A Positive Right to Protection for Children*, 7 YALE HUM. RTS. & DEV. L.J. 1, 13–14 (2004) (arguing that, although courts have not explicitly framed protection as a positive right, the logic of existing precedents supports its recognition). For prominent recent scholarly accounts illustrating how such an extension might be developed, see, e.g., Buss, *supra* note 353, at 751–52 (contending that the law should serve as a developmental agent to promote children’s healthy growth); Huntington & Scott, *supra* note 62, at 1371 (reconceptualizing legal childhood to impose affirmative responsibilities on the state in areas such as education, caregiving, and protection); Dailey & Rosenbury, *supra* note 307, at 1448 (calling for a legal paradigm shift to recognize children’s agency, relational interests, and affirmative rights beyond dependency and autonomy).

³⁶⁷ RONALD DWORKIN, LAW’S EMPIRE 53–54, 90, 226, 338 (1986).

³⁶⁸ See, e.g., *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025).

commitments to education, offer fertile ground for advancing a developmental understanding of children's rights.³⁶⁹

C. *Application*

The proposed framework can be translated through multiple legal pathways, three of which I will identify here: (1) reinterpreting the existing rationales underpinning constitutional clauses; (2) reassessing the standards of judicial review used to evaluate these restrictions; and (3) rethinking the statutory framework governing parental opt-out provisions.³⁷⁰ While not exhaustive, these examples demonstrate how the framework can guide federal judicial analysis—addressing the two mechanisms of restriction previously identified in Part A, by working within existing constitutional doctrines while simultaneously adapting them to evolving understandings of childhood development.

1. *Reinterpreting the Rationales Underlying Constitutional Clauses*

Reinterpreting the rationales that underpin existing constitutional protections—such as the Free Speech Clause—would enable them to account for identity exploration as a core democratic value. This reinterpretation is particularly necessary, given the Supreme Court's prevailing emphasis on civic preparation, which largely overlooks children's present developmental needs.

The Court has primarily framed education—and, by extension, the justification for students' right to receive information—as a tool for preparing children for future citizenship.³⁷¹ Its repeated references to schools as “marketplaces of ideas”³⁷² and “nurseries of democracy”³⁷³ reinforce this forward-looking rationale. While such future-oriented goals are undoubtedly important, this vision offers only a partial account of what meaningful development requires. Realizing a child's fullest potential demands educational environments that affirm children's emerging identities or, at the very least, facilitate engagement with diverse perspectives throughout childhood—an

³⁶⁹ See, e.g., *Leandro v. State*, 488 S.E.2d 249 (N.C. 1997) (interpreting the North Carolina Constitution to guarantee each child the opportunity to attain a “sound basic education”); *Hoke Cnty. Bd. of Educ. v. State*, 599 S.E.2d 365 (N.C. 2004) (reaffirming and enforcing that duty).

³⁷⁰ While related, each legal path offers a distinct path toward a more developmentally responsive constitutional approach.

³⁷¹ See, e.g., *Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982) (“[A]ccess to ideas . . . prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.”).

³⁷² *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969) (acknowledging students' right to express personal views in schools).

³⁷³ *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2046 (2021) (recognizing schools' role in protecting student expression that facilitates identity development).

imperative that complements, rather than replaces, the future-oriented civic rationale.

Today's prevalent narrow focus, however, misses the deeper connection between identity development and democratic capacity. The right to receive information has traditionally been grounded in the idea that exposure to diverse viewpoints equips students for informed civic participation.³⁷⁴ But democratic readiness requires more than familiarity with competing political perspectives; it also entails developing the emotional, cognitive, and ethical capacities necessary for navigating pluralism.³⁷⁵

When students are allowed to explore questions of identity—including sexual orientation and gender identity—they develop precisely these capacities. Through such engagement, students gain knowledge about marginalized perspectives while learning to reflect critically on their own assumptions and recognize the legitimacy of others' self-understandings.³⁷⁶ This process equips them to participate in democratic life from a place of personal authenticity and respect for human diversity, rather than imposed conformity. From this perspective, identity exploration is an imperative that furthers the very rationale behind the right to information and its application in school.

2. *Reinterpreting Existing Standards of Judicial Review*

A second possible legal pathway involves rethinking the standards that courts apply to evaluate educational restrictions, particularly those justified on pedagogical grounds. Courts have routinely accepted curriculum restrictions framed in ostensibly neutral terms as sufficient to defeat claims under the Equal Protection Clause³⁷⁷ and to satisfy the "legitimate pedagogical concern" test under the Free Speech Clause.³⁷⁸

However, this deference becomes problematic when it obscures the developmental impact of exclusion on students' identity formation. The proposed framework challenges this deferential baseline by reconceptualizing education not merely as a vehicle for knowledge transmission but as a sphere where students encounter differences and learn to navigate moral complexity.

³⁷⁴ See *supra* notes 189–92 and accompanying text.

³⁷⁵ See, e.g., Emily Buss, *Developing the Free Mind*, in THE OXFORD HANDBOOK OF U.S. EDUCATION LAW 81, 87–88 (Kristine L. Bowman ed., 2021) ("Critical to the successful functioning of our democracy is the development, in our citizens, of the ability and inclination to share their views with one another . . . to fulfill the political duty [of] public discussion." (quoting *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring))).

³⁷⁶ Scholars have underscored the importance of a pedagogy that fosters critical awareness, affirms self-determination, and encourages active resistance to systemic inequalities. See, e.g., FREIRE, *supra* note 341; Westheimer & Kahne, *supra* note 341, at 239, 264–65; Leighton, *supra* note 341, at 249.

³⁷⁷ See *supra* notes 262–75 and accompanying text.

³⁷⁸ See *supra* notes 205, 230 and accompanying text.

Viewed through this lens, pedagogical justifications must therefore be assessed not only by their stated aims but also by their effect on students' developmental capacities. By positioning identity exploration as integral to the educational mission, this reframing raises the threshold for judicial scrutiny: Pedagogical claims must be evaluated in light of their contribution to—or obstruction of—students' capacity for pluralistic thinking, critical inquiry, and relational autonomy. A restriction can hardly be considered pedagogically legitimate if it systematically undermines these developmental functions—for example, by removing materials that allow students to see themselves reflected in the curriculum, prohibiting discussion of topics central to students' lived experiences, or creating measurably disparate impacts on student engagement based on identity.

While such an approach would require courts to evaluate potential developmental harms, it would counter the tendency to accept pedagogical rationales at face value. In doing so, it could help expose those cases in which such justifications—though cloaked in educational terms—are not pedagogically sound but, rather, inhibit the very developmental goals schools are meant to advance.

3. *Reconceptualizing the Debate Around Opt-Out Provisions*

Recent legal disputes have increasingly turned not only on whether LGBTQ content may appear in schools (practitioner-delivered policies) but also on whether parents have a constitutional right to prevent their children from being exposed to such content by the school (parental oversight policies). At the center of these disputes are opt-out provisions—statutory or administrative tools allowing parents to withdraw their children from specific instructional content.

Unlike earlier opt-out debates, which focused on discrete sex education learning units, today's discussions of sexual orientation and gender identity arise naturally across subject areas—when students read books with diverse families, discuss historical figures, or engage in classroom conversations. In this diffuse curricular landscape, selective exemptions are not only difficult to manage but also carry expressive harms: They reinforce stigma against LGBTQ topics, undermining schools' efforts to cultivate inclusive learning environments.

These tensions crystallized in the aforementioned *Mahmoud*, a case the Supreme Court decided very recently.³⁷⁹ There, the Montgomery County School Board declined to allow parents to exempt their children from classroom instruction using books that depict LGBTQ characters and families. The parents argued that this refusal infringes their First Amendment right to

³⁷⁹ *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025).

direct their children's religious and moral upbringing.³⁸⁰ The Board contended that mandated opt-outs would increase absenteeism, complicate administration, and stigmatize LGBTQ students.³⁸¹ While the District Court accepted the Board's argument, the Supreme Court reversed, holding that the Board's refusal to grant opt-outs imposed an unconstitutional burden on the parents' rights to the free exercise of religion.³⁸² Thus far, both courts have framed the issue narrowly, as a question of religious coercion,³⁸³ thereby failing to consider the constitutional interests of children.

Reframing the debate through the lens offered in this Article brings those overlooked interests—in particular, children's developmental need for identity exploration—into focus. From this perspective, both those students who are allowed to remain in classrooms and those whose parents seek to withdraw them possess independent constitutional interests—interests that courts have yet to fully address. The framework strengthens the case against opt-outs on two levels. First, it strengthens the school boards' current position by looking beyond administrative feasibility to highlight the *constitutional* harms that opt-outs may inflict—the infringement of students' First Amendment right to encounter a diversity of ideas, as discussed earlier,³⁸⁴ and the Fourteenth Amendment's guarantee of Equal Protection. By reinforcing harmful stereotypes about LGBTQ individuals, opt-outs constrain the space for identity exploration and mark certain identities as inherently undesirable to society, if not dangerous.³⁸⁵ Second, the framework draws attention to the often-ignored harm suffered by children whose parents demand exemptions. These children will grow up in a society shared with LGBTQ neighbors, coworkers, and peers. State-facilitated removal from the classroom curtails their ability to engage with diverse perspectives and may pressure them to suppress or disavow emerging understandings of identity. For children in unsupportive home environments, this not only weakens civic literacy but also deprives them of essential developmental resources that are made available to them only through inclusive public education.

³⁸⁰ *Mahmoud v. McKnight*, 102 F.4th 191, 201 (4th Cir. 2024).

³⁸¹ *Id.* at 220. Other arguments raised in response to the parents' constitutional claims emphasize that the asserted harm does not rise to the level of a constitutional violation. These include: (1) the absence of direct coercion of religious beliefs (*id.* at 198); (2) the continued ability of parents to teach their religious values at home (*id.* at 209); and (3) that mere exposure to differing viewpoints does not, in itself, constitute a constitutional burden (*id.* at 223).

³⁸² *Mahmoud*, 145 S. Ct. at 2360.

³⁸³ *McKnight*, 102 F.4th at 220–27; *Mahmoud*, 145 S. Ct. at 2381–402 (Sotomayor, J., dissenting).

³⁸⁴ See *supra* Part III.C.1.

³⁸⁵ Petitioners repeatedly framed LGBTQ characters and themes as inherently sexual and thus objectionable—invoking, for example, a “sacred duty” to teach “religiously grounded sexual ethics.” See *Mahmoud v. McKnight*, 688 F. Supp. 3d 265, 274–76 (D. Md. 2023). This framing reinforces reductive stereotypes that erase the complexity and full humanity of LGBTQ individuals, reducing their representation to sexual conduct in ways not applied to heterosexual or cisgender portrayals.

Current judicial analysis minimizes these harms by focusing narrowly on parental rights, producing doctrinal inconsistencies with established precedent. Under *Tinker*, the First Amendment prohibits restrictions on students' expression—or, by extension, students' right to receive information—unless it “materially and substantially disrupt[s]” the learning environment.³⁸⁶ By analogy, it is doubtful that parental rights—however sincerely held—may be exercised in ways that materially and substantially disrupt other students' educational experiences. Mandating opt-outs, however, *does* impose such disruption, effectively granting parents a veto over curricular inclusion. This is an authority that courts have not clearly recognized,³⁸⁷ and which risks fragmenting public education along ideological lines.³⁸⁸

Likewise, under the Fourteenth Amendment, mandatory opt-outs give legal effect to private beliefs that contravene constitutional anti-discrimination principles. As the Supreme Court emphasized in *Palmore v. Sidoti*, while private bias may lie beyond the law's reach, “the law cannot, directly or indirectly, give [such bias] effect.”³⁸⁹ Permitting opt-outs in this context allows discrimination to operate through state-sanctioned parental discretion, thereby circumventing Equal Protection guarantees.

Viewed through a developmental self-exploration lens, the opt-out dilemma reveals far more than a clash over parental authority. It brings into focus the full range of interests that courts should meaningfully consider when evaluating the legitimacy of opt-out provisions concerning identities in schools—whether related to sexual orientation, gender, or other characteristics that may arise in future disputes.

It is also important to consider the possibility that the open-ended identity-exploration framework could, itself, be invoked to justify opt-out policies. The concern is that progressive curricula might constrain children's

³⁸⁶ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969).

³⁸⁷ Numerous Circuit Courts of Appeals have consistently held that once parents enroll their children in public schools, they relinquish meaningful control over instructional content. Courts have repeatedly rejected the notion that parents possess a legal right—beyond participating in local school board elections—to direct or veto the curriculum used in public classrooms. See Rosenbury, *supra* note 343, at 869–70 (collecting cases illustrating this principle). Yet, courts have been inconsistent in applying this principle, sometimes subordinating students' own constitutional rights to parental consent requirements. See, e.g., Caroline Mala Corbin, *The Pledge of Allegiance and Compelled Speech Revisited: Requiring Parental Consent*, 97 IND. L.J. 967, 970 (2022) (analyzing the Eleventh Circuit's decision allowing Florida to require parental consent for students to exercise their *Barnette* rights against compelled speech and critiquing this doctrinal departure).

³⁸⁸ See Bowman, *supra* note 61, at 429–32.

³⁸⁹ *Palmore v. Sidoti*, 466 U.S. 429, 429–33 (1984) (invalidating a custody transfer based on concerns about societal bias toward interracial families and holding that although the Constitution cannot eliminate private prejudice, it must not allow the state to give that prejudice legal force). See also, in this regard, *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (holding that the government may not sidestep equal protection requirements by yielding to private objections or community prejudice); *Lawrence v. Texas*, 539 U.S. 558, 577–78 (2003) (rejecting the idea that moral disapproval, even if long-standing, is a constitutionally sufficient basis for legal restrictions on intimate conduct).

identity formation by exposing them only to pro-LGBTQ perspectives, thereby stigmatizing conservative religious values. This is a legitimate concern, but it misapprehends the framework's aim. The aim of open-ended exploration is to expand, not restrict, the range of ideas and experiences available to children. Opting-out, by contrast, constrains exploration by removing children from opportunities to encounter and critically engage with difference. This potential misinterpretation underscores the importance of clarifying the framework's normative coherence and practical feasibility—issues addressed in the following section.

D. Objections

The application of the framework advanced here may be met with skepticism by scholars who question either its normative coherence or its feasibility. This section addresses each of these objections.

1. Normative Coherence

The first possible objection, which includes several interrelated concerns, relates to the normative coherence of the framework. Critics may argue that an anti-essentialist approach to identity development creates internal contradictions—simultaneously rejecting fixed categories while still needing to recognize meaningful differences among children. This concern echoes a longstanding challenge in equality theory: what Professor Martha Minow called the “dilemma of difference”—the risk that treating individuals differently may reinforce stigma, while treating them the same may erase meaningful distinctions.³⁹⁰

This Article does not purport to resolve that tension. Instead, it offers courts and policymakers a means for understanding and navigating how legal categories—particularly within childhood development contexts—simultaneously enable and constrain children's identity formation. Rather than choosing between recognition and sameness, the framework proposed here seeks to provide a way forward that is responsive to children's present identities while fostering the ongoing process of exploration. This interplay between freely *being* (how the child currently understands themselves) and freely *becoming* (the child's evolving potential) reflects what child-rights scholars have emphasized as a desirable feature of meaningful child-oriented theory.³⁹¹

Some may contend that the framework, despite its anti-essentialist foundations, functionally resembles existing group-based approaches like multiculturalism, which recognize a broad range of differences in educational

³⁹⁰ MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW 20, 19–23 (1990).

³⁹¹ PELEG, *supra* note 296, at 193–94; Dailey & Rosenbury, *supra* note 307, at 1480.

settings. Yet, even where outcomes may converge, it differs fundamentally in its underlying rationale. As Professor Margaret Jane Radin notes, “different frameworks of analysis cannot reach the ‘same result.’”³⁹² The rationale for recognizing or denying rights *matters*—it shapes not only how we understand children’s needs but also how we craft legal and educational responses. Unlike frameworks that are outcome-driven or focused on affirming fixed-identity multiculturalism, for example, the approach I advance here is also process-oriented. It privileges open-ended exploration and the speculative dimensions of becoming over the affirmation of predetermined group membership. This may raise concerns particularly among parents who seek to preserve their children’s affiliation with particular cultural communities. But the framework does not seek to displace existing identities; rather, it creates space for critical reflection, allowing children to embrace inherited beliefs as informed choices rather than as passive legacies. It treats self-exploration not as a means to a predetermined outcome but as a moral good in itself.

2. *Legal Indeterminacy*

A second potential objection is that the proposed framework may be too conceptually diffuse to support legal action, given the indeterminacy of identity formation processes themselves. Without anchoring in stable identity classifications, some may say, courts and policymakers may struggle to articulate enforceable rights or identify actionable harms.³⁹³

Yet, the framework does not reject identity categories outright, nor does it propose that enforceable protections be eliminated. Instead, it reframes these identity categories as historically contingent and socially constructed tools—starting-points for interrogating the ideological structures that define and regulate identity, not end-points of legal analysis. Importantly, this framework is not intended to displace existing protections based on identity categories but to supplement them—by expanding the legal imagination to include the developmental conditions that facilitate identity formation itself. Per this view, identity categories are not discarded but situated within a broader inquiry into the structural conditions that enable or inhibit children’s capacity to engage in self-exploration.

This shift reorients legal scrutiny. Instead of requiring courts to define which identities deserve protection, one way to implement the proposed framework is to ask whether educational policies protect children’s developmental capacity to engage with diverse possibilities for selfhood. Courts

³⁹² Ayelet Blecher-Prigat, *Rethinking Visitation: From a Parental to a Relational Right*, 16 DUKE J. GENDER L. & POL’Y 1, 36 (2009) (citing Margaret Jane Radin, *Market Inalienability*, 100 HARV. L. REV. 1849, 1878–87 (1987)).

³⁹³ Cf. Yoshino, *supra* note 254, at 800 (acknowledging similar concerns about the enforcement challenges posed by individualized, liberty-based approaches as compared to categorical equal protection, but arguing that the practical “closure of the heightened scrutiny canon” has significantly diminished the effectiveness of categorical strategies).

can thus evaluate, for example, whether policies artificially constrain identity exploration, whether disciplinary policies disproportionately target gender-non-conforming or sexually diverse students, and whether school environments provide the *free* “marketplace of ideas” necessary for authentic identity formation.

Still, a persistent challenge remains: Identity exploration is culturally contingent and often contested. Policies justified on these grounds may reflect lawmakers’ implicit biases or political preferences. That is, even when the goal—supporting healthy development—is uncontested, the path to achieving it is not always clear. Furthermore, the vision behind the proposed framework carries practical implications for educational settings. What kinds of classroom discussions support identity exploration without overstepping into persuasion or undue influence? How can schools create pedagogically sound environments that support student self-discovery while maintaining sufficient neutrality to avoid accusations of ideological indoctrination? How should educators communicate with parents about identity exploration in ways that preserve both student development and family relationships? And, when students begin to explore identities that conflict with familial values, what protocols should guide teacher responses?

Such questions are already being actively addressed by education scholars, attesting to a growing recognition that identity formation in schools is not incidental but central to pedagogical responsibility.³⁹⁴ Yet, existing legal doctrine lacks the conceptual tools to engage fully with these implications. This is why a legal framework that translates the developmental conditions necessary for identity exploration into cognizable normative principles is needed.

CONCLUSION

The rapid expansion of new curriculum laws in recent years has already affected—and is poised to further affect—millions of children and young people. The teacher being asked to remove rainbow stickers from the classroom, the librarian facing criminal charges, and the school district threatened for holding Pride Week—these moments capture what is at stake when the law casts identity exploration as a threat rather than a developmental necessity.

This Article provides a novel typology of this legal trend, demonstrates where existing constitutional doctrines fall short in responding adequately to the harms of the new curriculum restrictions, and advances a new, complementary legal framework grounded in children’s developmental need for identity exploration. This framework builds on the core commitments underpinning these constitutional doctrines, while supplementing them with crucial insights into the developmental needs of children, informed by socio-legal theories

³⁹⁴ See generally Bethy Leonardi & Michele S. Moses, *Understanding Democratic Education Policy Queerly: Toward a Queer Democratic Framework*, 29 EDUC. POL’Y ANALYSIS ARCHIVES 1 (2021) for an example.

of childhood. By translating this theoretical understanding into an actionable legal framework and illustrating its operationalization through multiple entry points, the Article demonstrates that the normative vision behind this framework is not only desirable but also feasible. Equipped with this thicker understanding, advocates may be better positioned to challenge the surge in curriculum-related restrictions, working toward a more developmentally responsive interpretation of the principles and standards embedded in current constitutional doctrines.

The normative vision advanced here may hold more transformative potential than one might assume. It may ultimately guide policymakers and courts not only in curriculum decisions but also in the full spectrum of school policies that intersect with identity formation—pronoun use, dress codes, and facility access—creating a more coherent and developmentally informed jurisprudence across all domains of educational regulation. The breadth of this transformation, however, also potentially heightens the institutional resistance it may encounter. Yet, what I envision here offers a conceptual paradigm that does not seek to dictate endpoints. It does not necessarily call on schools to actively promote identity exploration; rather, the proposed framework would ensure that the opportunities for such exploration remain routine and accessible throughout all facets of school life and actively supported whenever children themselves seek them. And it calls for expanding this horizon of potential by cultivating spaces that facilitate exploration, while remaining attentive to the concerns—legal, pedagogical, or otherwise—that such a vision may raise in its implementation.

APPENDIX A: PRACTITIONER-DELIVERED POLICIES

This appendix summarizes the practitioner-delivered aspects of the new curriculum laws, as presented in Part I.A

Table A: Classroom

Table A summarizes the laws and administrative guidance regulating LGBTQ-related instruction at the classroom level. It categorizes them by their approach—ranging from complete bans to developmentally conditioned restrictions, inclusive mandates, or guidance—and indicates the applicable Grade levels.

Regulatory Approach	Complete Prohibition All Grades Elementary		Develop- mentally Conditioned Prohibition	Inclusive Ad- ministrative Guidance	Inclusive Statutory Mandate
State	- Kentucky - Louisiana - Idaho - West Virginia - Texas *Alabama (proposed 2025 expansion; died in Senate)	- Florida (K-3) - North Carolina (K-4) - Iowa (K-6) - Ohio (K-3) - Arkansas (K-5) - Indiana (K-3)	- Alabama - Florida (>3rd Grade) - Ohio (>3rd Grade)	- Massachu- setts - Vermont - Connecticut - Delaware - Maryland - Maine - Michigan - District of Columbia	- California - New Jersey - Colorado - Illinois - Oregon - Nevada - Washington

Table B: Library

Table B presents restrictions on library activities. Though focusing mostly on the state level,³⁹⁵ many, if not most, policies relating to libraries are regulated at the local level, particularly through school board regulations.³⁹⁶

Regulatory Approach	State
<i>Mandatory Restrictions</i> Restriction based on “age-appropriate materials” or “harmful to minors” standards.	Alabama, Florida, Iowa, and Idaho
<i>Mandatory Restrictions Subject to Criminal Liability</i> Restrictions based on “harmful to minors” or “explicit sexual material” standards.	Indiana, Missouri, North Carolina (<i>pending</i>) Georgia (<i>pending</i>)
<i>Pre-emptive Materials Rating System</i>	Texas (<i>enforcement has been blocked</i>)

³⁹⁵ Alabama’s restriction has been implemented through the Public Library Service Executive Council.

³⁹⁶ See *supra* note 27.

APPENDIX B: PARENTAL OVERSIGHT POLICIES

This Appendix summarizes the key parental oversight mechanisms of the new curriculum laws, discussed in Part I.B. It distinguishes between classroom/student club policies and library regulation.

Level of Curriculum	Regulatory Approach	State
Classroom & Student Clubs	Opt-out	Arkansas, Florida, Montana, New Hampshire, Ohio, and Idaho
	Opt-in	Arizona, Wyoming, Tennessee, and Montana
	Enforcement through Legal Sanctions	Idaho and New Hampshire (civil lawsuits) North Carolina (criminal penalties) (<i>pending</i>)
Library	Opt-in	Texas and Idaho
	Parent/Guardian Challenges	Georgia
	Public Challenge (including any county resident	Florida and Indiana (<i>pending</i> in North Carolina)

APPENDIX C: U.S. JURISDICTIONS WITH STATUTORY OR ADMINISTRATIVE MEASURES

This Appendix documents existing and proposed measures regulating LGBTQ-related content in all 50 states and the District of Columbia in public schools. It includes enacted and pending statutes, administrative guidance, and failed legislative proposals.³⁹⁷

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
Alabama (2022)	Age-based restriction conditioned on “appropriateness” (K-5) ³⁹⁸ <i>Proposed</i> expansion to complete prohibition (K-12); died in Senate (2025) ³⁹⁹	Mandatory restriction of material deemed “sexually explicit” ⁴⁰⁰	—	—	—
Alaska	—	—	—	—	—
Arizona (2021)	—	—	— ⁴⁰¹	Opt-in ⁴⁰²	—

³⁹⁷ The inclusion of failed bills illustrates the full scope of political efforts and the extent of legislative appetite for censoring identity-related content in schools.

³⁹⁸ ALA. CODE § 16-40A-5(a) (2024) (“An individual or group of individuals providing classroom instruction to students in kindergarten through the fifth grade at a public K-12 school shall not engage in classroom discussion or provide classroom instruction regarding sexual orientation or gender identity in a manner that is not age appropriate or developmentally appropriate for students in accordance with state standards.”).

³⁹⁹ H.B. 244, 2025 Leg., Reg. Sess. (Ala. 2025) (*engrossed version*) (proposing to extend the ban to all Grades pre-K-12 and to prohibit related flags or symbols on school property), engrossed Apr. 17, 2025; died in Senate.

⁴⁰⁰ Since May 2024, the Alabama Public Library Service has required all state-funded public libraries to adopt policies that restrict access to “obscenity, sexually explicit, or other material deemed inappropriate for children” in youth-designated sections. The rule itself did not define “sexually explicit,” and the Alabama Public Service board adopted a new definition following concerns of vagueness. *See* Ala. Library Ass’n Exec. Council, *supra* note 130; Letter from John Wahl, Chair, Ala. Pub. Libr. Serv. Exec. Bd., *supra* note 130; Chapoco, *supra* note 130.

⁴⁰¹ H.B. 2868, 56th Leg., 1st Reg. Sess. (Ariz. 2025) (proposed law that would have prohibited the use of public funds to promote content related to race, gender identity, or sexual orientation in educational institutions; vetoed by Governor Katie Hobbs).

⁴⁰² ARIZ. REV. STAT. ANN. § 15-102(A)(6) (2021) (schools must follow “procedures by which parents will be notified in advance of and given the opportunity to opt their children in to any instruction, learning materials or presentations regarding sexuality, in courses other than formal sex education curricula”).

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
Arkansas (2021, 2024)	Complete prohibition for K-4) ⁴⁰³	— ⁴⁰⁴	—	Opt-out ⁴⁰⁵	—
California (2012)	Legislatively mandated inclusive curriculum ⁴⁰⁶	—	—	—	—
Colorado (2019)	Legislatively mandated inclusive curriculum ⁴⁰⁷ (K-12) State-supported Programming for Students ⁴⁰⁸	—	—	—	—
Connecticut (2021)	Non-binding inclusive administrative guidance (K-8), ⁴⁰⁹ supported by state funding. ⁴¹⁰	—	—	—	—

⁴⁰³ ARK. CODE ANN. § 6-16-157(c) (2023) (prohibiting classroom instruction on gender identity, sexual orientation, and related topics before fifth Grade).

⁴⁰⁴ Act 372, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (restricted access to materials in public libraries deemed “harmful to minors” imposed liability on booksellers by requiring them to restrict or segregate such materials to prevent access by minors), *invalidated by* Fayetteville Pub. Libr. v. Crawford Cnty., 684 F. Supp. 3d 879, 896–903 (W.D. Ark. 2023) (struck down as facially unconstitutional).

⁴⁰⁵ ARK. CODE ANN. § 6-16-1006 (2021) (requiring schools to allow parental review and written opt-out for any content or activity addressing sex education, sexual orientation, or gender identity).

⁴⁰⁶ CAL. EDUC. CODE § 51204.5 (2012) (adding LGBTQ individuals to the list of historically underrepresented groups that must be accurately depicted in history and the social sciences). Although California does not mandate LGBTQ content specifically for primary Grades, in 2017, it approved LGBTQ-inclusive K–8 history textbooks to comply with the 2011 FAIR Education Act. *See* Schaub, *supra* note 118.

⁴⁰⁷ COLO. REV. STAT. ANN. § 22-1-104 (2019). The Board approved the revised standards on November 10, 2022. *See Colorado State Board of Education Approves New Inclusive Social Studies Standards*, *supra* note 104.

⁴⁰⁸ COLO. REV. STAT. ANN. § 22-1-104(5)(b) (2019) (allocating funds for educational materials and training in elementary and secondary schools).

⁴⁰⁹ 2021 CONN. PUB. ACTS 21-2 (June Spec. Sess.) § 374(b)(3)(D) (requiring the State Department of Education to develop a K-8 model curriculum that includes LGBTQ studies among other required topics, though schools are not mandated to use it).

⁴¹⁰ *Connecticut Funds K-8 Model Curriculum that Includes LGBTQ+ Studies*, *supra* note 125.

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
Delaware (2022)	Non-binding inclusive administrative guidance (7th–12th Grade) ⁴¹¹	—	—	—	—
Florida (2022)	Complete prohibition for pre-K–3 ⁴¹² Age-based prohibition conditional on “developmentally appropriate” standards (9th–12th Grade) ⁴¹³ (<i>partly enjoined</i>)	Removal of books containing anything construed as “sexual conduct” ⁴¹⁴	—	Opt-out ⁴¹⁵	Public challenge system ⁴¹⁶

⁴¹¹ *Culturally Responsive Resources*, *supra* note 112 (providing age-appropriate LGBTQ history lessons for Grades 7–12).

⁴¹² FLA. STAT. ANN. § 1001.42(8)(c)(3) (2021) (prohibiting classroom instruction on sexual orientation or gender identity in pre-K through 8th Grade, unless part of state standards or reproductive health instruction). Legal challenges to the law have been dismissed for lack of standing. *See generally* Equal. Fla. v. Fla. State Bd. Of Educ., No. 4:22-cv-134-AW-MJF, 2022 WL 19263602 (N.D. Fla. Sep. 29, 2022); M.A. v. Fla. State Bd. of Educ., No. 4:22-cv-134-AW-MJF, 2023 WL2631071 (N.D. Fla. Feb. 15, 2022). While those dismissals were on appeal, the parties reached a settlement clarifying that HB 1557 applies only to “teaching,” not to mere discussion. Teachers may, for example, respond to student-initiated conversations about identity or family life and evaluate student work that references the prohibited topics. *See Mazzei, supra* note 100.

⁴¹³ FLA. STAT. ANN. § 1001.42(8)(c)(3) (2022).

⁴¹⁴ FLA. STAT. ANN. § 1006.28(2)(a)(2)(b) (2022); *see* PEN Am. Ctr. v. Escambia Cnty. Sch. Bd., 711 F. Supp. 3d 1325, 1331 (N.D. Fla. 2024) (allowing a First Amendment challenge to proceed against the school board for allegedly removing LGBTQ- and race-related books based on viewpoint discrimination); Penguin Random House LLC v. Gibson, 796 F. Supp. 3d 1052, 1081 (M.D. Fla. 2025) (holding that § 1006.28’s prohibition on materials that “describe sexual conduct” is facially unconstitutional and overbroad in violation of the First Amendment).

⁴¹⁵ FLA. STAT. ANN. § 1014.05(d) (2022) (requiring each district school board to develop procedures for parents to object to instructional materials used in the classroom relating to sex education or sexuality; these objections can be based on beliefs regarding morality, sex, and religion).

⁴¹⁶ FLA. STAT. ANN. § 1006.28(2)(a)(2)(b) (2022) (any county resident can challenge books with “sexual conduct,” requiring removal within five days before evaluation). For complaints challenging Florida’s library book review process as structurally biased toward removal, *see e.g.*, Compl. at § 81, Penguin Random House LLC v. Gibson, No. 6:24-cv-01573 (M.D. Fla. Aug. 29, 2024); *PEN Am. Ctr.*, 711 F. Supp. 3d at 1330 (noting that the special magistrate process “cannot be used to challenge the board’s decision granting an objection and removing a book from the library”); *see also* Parnell v. Sch. Bd. of Lake Cnty., 731 F. Supp. 3d 1298, 1314–15 (N.D. Fla. 2024) (allowing certain First Amendment claims challenging school library book removals to proceed).

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
Georgia (2025, 2022)	—	Criminal liability for materials “harmful to minors” ⁴¹⁷	—	— ⁴¹⁸	Parental challenge system ⁴¹⁹
Hawaii (2021)	Principal approval required for “controversial” topics ⁴²⁰	—	—	Opt-out (triggered by controversial topics) ⁴²¹	—

⁴¹⁷ S.B. 74, 2025 Gen. Assemb., Reg. Sess. (Ga. 2025). The bill removes existing legal immunity for librarians and educators under Georgia’s obscenity law, thereby exposing them to potential criminal liability for knowingly distributing material deemed “harmful to minors,” subject only to a limited affirmative defense for good-faith efforts to restrict minors’ access to such materials.

⁴¹⁸ Several bills have been proposed in this regard. *See, e.g.*, H.B. 1045, 157th Gen. Assemb., Reg. Sess. § 1 (Ga. 2024) (would have required parental notification and opt-out for instruction on sexual orientation or gender identity in K–12 schools, among other restrictions); S.B. 88, 2023–2024 Leg., Reg. Sess. (Ga. 2024) (proposing to require parental notification and restrict instruction on gender identity and queer theory).

⁴¹⁹ GA. CODE ANN. § 20-2-324.6 (2022).

⁴²⁰ Memorandum from Christina M. Kishimoto, Superintendent, to all Department of Education Employees on Notice on Board of Education Policy 101-13 – Controversial Issues (May 3, 2021), <https://www.hsta.org/wp-content/uploads/2021/08/HIDOE-BOE-Policy-Controversial-Issues-050321.pdf> [<https://perma.cc/VH8F-HCJJ>] (administrative policy requiring teacher consultation with principals before addressing controversial issues in class).

⁴²¹ *Id.* (“Requir[ing] instructional staff or administration to notify parents or legal guardians of controversial issues discussed in the classroom or through other school activities.”).

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
Idaho (2025)	Complete prohibition for all Grades ⁴²²	Mandated removal of materials “harmful to minors” ⁴²³	—	Complaint and legal remedy ⁴²⁴ Opt-out for extra-curricular activities ⁴²⁵	Parental challenge system ⁴²⁶
Illinois (2019)	Legislatively mandated inclusive curriculum ⁴²⁷	—	—	—	—

⁴²² IDAHO CODE ANN. § 33-6001(5) (2025) (“A public school shall be required to adopt procedures and policies that prohibit classroom instruction by public school personnel on sexual orientation or gender identity from kindergarten through grade 12 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.”).

⁴²³ IDAHO CODE ANN. §§ 18-1514, 18-1517B(2) (2024) (requiring libraries to “take reasonable steps to restrict access by minors to materials [deemed] harmful to minors;” incorporates Idaho Code § 18-1514’s definition of “sexual conduct,” which includes homosexuality); *see* Compl. for Injunctive and Declaratory Relief, Penguin Random House LLC v. Labrador, No. 1:25-cv-00061-DCN (D. Idaho Feb. 4, 2025) (First Amendment challenge to Idaho’s book restriction law).

⁴²⁴ IDAHO CODE ANN. §§ 33-6001(10), (11) (2025) (parents can file complaints if their rights are violated; if unresolved, they may bring a “private cause of action for “injunctive relief, damages, and any other relief available under law”).

⁴²⁵ IDAHO CODE ANN. §§ 33-6001(2)(c), (4) (2025) (although not specific to clubs, the law permits withdrawal from any activity conflicting with parental beliefs and may extend to LGBTQ extracurricular events if seen as educational or school-affiliated).

⁴²⁶ IDAHO CODE ANN. §§ 18-1514, 18-1517B (2024) (requiring school and public libraries to move books deemed “harmful to minors”—including those depicting “homosexuality”—to an adult-only section within 60 days of complaint which can be submitted by parents; allowing parents or youth to sue libraries for noncompliance and mandates minimum \$250 in damages).

⁴²⁷ 105 ILL. COMP. STAT. ANN. 5/27-21(a) (2019).

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
Indiana (2023)	Complete prohibition for K-3 ⁴²⁸	Criminal liability for materials “harmful to minors” ⁴²⁹	—	—	Public challenge system ⁴³⁰
Iowa (2023)	Complete prohibition for K-6 ⁴³¹	“Age appropriate” materials only ⁴³² (<i>partly enjoined</i>)	—	—	—
Kansas	—	—	—	— ⁴³³	—

⁴²⁸ IND. CODE ANN. § 20-30-17-2 (2023) (prohibiting classroom instruction on “human sexuality” in pre-Kindergarten through 3rd Grade). *But see* Smiley v. Jenner, 684 F. Supp. 3d 835, 842 (S.D. Ind. 2023) (denying injunctive relief to an elementary school teacher challenging this law, stating that “informal conversation” and other “interactions, even when spontaneous and not part of official curriculum, are within the scope of [the] duties and responsibilities [of] an elementary school teacher and therefore not protected by the First Amendment”), *appeal pending*, No. 23-2543 (7th Cir. filed Aug. 2023; argued Feb. 2024).

⁴²⁹ IND. CODE ANN. § 35-49-3-3 (2023) (exposing school staff to criminal charges if they provide materials that are considered “obscene” or “harmful to minors,” eliminating prior protections for educational use).

⁴³⁰ *Id.* § 20-26-5.5-1 (requiring school boards to establish procedures for parents or community members to challenge library materials deemed “obscene” or “harmful to minors”).

⁴³¹ IOWA CODE § 279.80(2) (2023) (prohibiting curriculum or instruction relating to gender identity or sexual orientation to students in Kindergarten through 6th Grade); *see* GLBT Youth in Iowa Schs. Task Force v. Reynolds, 709 F. Supp. 3d 664 (S.D. Iowa 2023) (preliminarily enjoining the ban), *rev’d and vacated*, 114 F.4th 660 (8th Cir. 2024), *on remand*, Iowa Safe Schs. v. Reynolds, 788 F. Supp. 3d 969, 994–96 (S.D. Iowa 2025) (holding that the law may constitutionally bar mandatory classroom instruction on these topics).

⁴³² IOWA CODE ANN. § 256.11(9)(a)(2) (2025) (redefining “age-appropriate” to exclude any material describing or depicting a sex act). *But see* Penguin Random House LLC v. Robbins, No. 4:23-cv-00478, 2025 WL 1156545, at 24 (S.D. Iowa 2025) (holding that the book-removal mandate was preliminarily enjoined as facially unconstitutional); Iowa Safe Schs. v. Reynolds, 788 F. Supp. 3d 969, 994–96 (S.D. Iowa 2025) (continuing the injunction).

⁴³³ H.B. 2236, 2023 Leg., Reg. Sess. (Kan. 2023) (vetoed Apr. 24, 2023) (proposed legislation that would have permitted parents to opt their child out of any K–12 lesson or activity that “impairs the parent’s sincerely held beliefs, values or principles”).

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
Kentucky (2023)	Complete prohibition for all Grades ⁴³⁴	—	— ⁴³⁵	—	—
Louisiana (2024)	Complete prohibition for all Grades ⁴³⁶	—	Limits on GSA ⁴³⁷	—	—
Maine	Non-binding inclusive administrative guidance ⁴³⁸	—	—	—	—
Maryland	Non-binding inclusive administrative guidance ⁴³⁹	—	—	—	—
Massachusetts	Non-binding inclusive administrative guidance ⁴⁴⁰	—	—	—	—
Michigan	Non-binding inclusive administrative guidance ⁴⁴¹	—	—	—	—

⁴³⁴ KY. REV. STAT. ANN. § 158.1415(d)(2) (2023) (prohibiting instruction or presentations aiming to explore gender identity, gender expression, or sexual orientation “regardless of grade level”).

⁴³⁵ While there is no statewide library ban, local removals occurred through misapplied classroom restrictions. *See, e.g.,* Clark, *supra* note 153.

⁴³⁶ LA. STAT. ANN. § 17:412(A) (2024) (prohibiting K–12 school staff from discussing sexual orientation or gender identity in ways that “deviate” from state-approved standards or curricula).

⁴³⁷ *Id.* § 17:412(A)(2) (“bans discussion of sexual orientation or gender identity during any K–12 extracurricular academic, athletic, or social activity under school authority”).

⁴³⁸ *LGBTQ+ Resources for Maine Schools*, ME. DEP’T OF EDUC., <https://www.maine.gov/doe/learning/content/socialstudies/resources/DEI/LGBTQ> [<https://perma.cc/9Q3L-63R3>] (listing resources for teachers).

⁴³⁹ MD. STATE DEP’T OF EDUC., *supra* note 113 (providing non-binding administrative guidance on creating inclusive educational environments for LGBTQ students).

⁴⁴⁰ MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., *supra* note 109, at 41, 78, 136, 156, 159; *Safe Schools Program for LGBTQ Students*, *supra* note 109 (noting that this program “offer[s] newly-created curricula materials to help schools provide for LGBTQ-inclusive lessons,” aiming to “help students value the contributions of LGBTQ people and understand their place in history, literature, and other fields”).

⁴⁴¹ Memorandum from Michael F. Rice, *supra* note 115 (outlining practices for supporting LGBTQ students and encouraging inclusive environments).

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
Minnesota	___ ⁴⁴²	—	—	—	—
Mississippi	—	—	—	___ ⁴⁴³	—
Missouri (2022)	___ ⁴⁴⁴	Criminal liability for “explicit sexual material” ⁴⁴⁵	—	—	—
Montana (2021, 2025)	—	—	—	Opt-in + opt-out ⁴⁴⁶	—
Nebraska	—	—	—	—	—
Nevada	Legislatively mandated inclusive curriculum (pre-K-12) ⁴⁴⁷	—	—	—	—

⁴⁴² Minn. H.F. 3022, 93rd Leg., Reg. Sess. (2023–2024) (would have barred classroom instruction on sexual orientation or gender identity in K–4 and required any such instruction thereafter to be age- or developmentally appropriate; introduced Mar. 20, 2023).

⁴⁴³ Miss. S.B. 2820, 2023 Reg. Sess. (2023) (would have required parental opt-in for “identity curriculum,” including instruction on gender identity and sexual orientation; failed to pass).

⁴⁴⁴ S.B. 1024, 102d Gen. Assemb., 2d Reg. Sess. (Mo. 2024) (would have prohibited classroom instruction on gender identity or sexual orientation in Grades K–3 or in a manner deemed not age- or developmentally appropriate; did not advance beyond committee).

⁴⁴⁵ MO. ANN. STAT. § 573.550 (2022) (prohibiting providing or loaning “explicit sexual material” to students at public and private elementary and secondary schools; violations constitute a Class A misdemeanor; this law is limited to pictures and visual representations of sexual content only); *see* Pet. for Injunctive and Declaratory Relief at 1–2, Mo. Ass’n of Sch. Librs. v. Baker, No. 2316-cv-05732 (Mo. Cir. Ct. Jackson Cnty. filed Feb. 16, 2023) (challenging Missouri Revised Statute § 573.550 as unconstitutional; case was removed to federal court but subsequently remanded back to state court, where it remains pending).

⁴⁴⁶ MONT. CODE ANN. §§ 20-7-120(1)(b), (8)(a)(ii), (b) (2025) (retaining an opt-out model for human sexuality instruction (enacted in 2021), which includes sexual orientation and gender identity among other topics, but imposing a stricter opt-in requirement for “identity instruction”—defined as teaching about gender identity, gender expression, or sexual orientation—which students may not attend without written parental consent); *see* Plaintiffs’ Second Am. Compl. at 3, Mont. Sch. Counselors Ass’n v. State, No. DV 2024-230 (Mont. 1st Jud. Dist. Ct. filed Oct. 28, 2025) (alleging that the 2025 amendment expands prior restrictions and “aim[s] to further inhibit the discussion and curricula pertaining to sexual orientation, gender identity, and human sexuality” in Montana’s K–12 schools).

⁴⁴⁷ NEV. REV. STAT. ANN. § 389.061(1)(b) (2021).

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
New Hampshire (2024, 2025)	—	—	—	Opt-out (with professional sanctions; private cause of action) ⁴⁴⁸	— ⁴⁴⁹
New Jersey	Legislatively mandated inclusive curriculum (6th–12th Grade) ⁴⁵⁰	—	—	—	—
New Mexico	—	—	—	—	—
New York	—	—	—	—	—

⁴⁴⁸ N.H. REV. STAT. ANN. § 186:11 IX-c (2024) (requiring schools to notify parents two weeks in advance of instruction on sexual orientation or gender identity; parents may opt out in writing and request alternative materials at their own expense); *see also* N.H. REV. STAT. ANN. § 189-B:4 (2025), which preserves the opt-out right by cross-reference to § 186:11, IX-b and IX-c, § 189-B:4(i), requires schools to establish procedures enabling parents to object to any classroom materials on grounds of morality, sex, or religion, § 189-B:5(c), and provides for civil enforcement through declaratory and injunctive relief and monetary damages, § 189-B:7(II).

⁴⁴⁹ N.H. REV. STAT. ANN. § 189-B (2025) does not explicitly impose obligations or penalties on library staff. However, librarians could plausibly be indirectly affected, as the statute broadly applies to “school personnel,” defined to include “any teacher, administrator, employee, or other individual acting in furtherance of or on behalf of any public school,” § 189-B:2(V), and its parental disclosure requirements, § 189-B:4(e), could plausibly encompass library-related decisions, depending on how enforcement is interpreted.

⁴⁵⁰ N.J. STAT. ANN. § 18A:35-4.35 (2019) (referring to middle school and high school students).

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
North Carolina (2023, 2025)	Complete prohibition for K-4 ⁴⁵¹ <i>Pending</i> expansion to 6th Grade ⁴⁵²	<i>Pending</i> criminal liability for materials “harmful to minors” ⁴⁵³	—	<i>Pending</i> opt-in (7th–12th Grade) ⁴⁵⁴	<i>Pending</i> public challenge system ⁴⁵⁵ <i>Pending</i> opt-in system ⁴⁵⁶
North Dakota	—	—	—	—	—
Ohio (2023)	Complete prohibition for K-3 ⁴⁵⁷ “Developmentally appropriate” restriction for all Grades ⁴⁵⁸		—	Opt-out ⁴⁵⁹	—

⁴⁵¹ N.C. GEN. STAT. ANN. § 115C-76.55 (2023) (prohibiting classroom instruction on sexual orientation or gender identity in Kindergarten through 4th Grade).

⁴⁵² H.B. 595, 2025 Gen. Assemb., Reg. Sess. (N.C. 2025).

⁴⁵³ *Id.* (requiring public libraries to place library books containing material “harmful to minors” in an age-restricted portion of the library that is accessible only to those 18 years of age and older; exposing minors to “harmful material” is considered a Class 1 misdemeanor).

⁴⁵⁴ *Id.* (requiring students in Grades 7 through 12 to get prior written parental permission before receiving instruction on gender identity, sexual activity, or sexuality).

⁴⁵⁵ *Id.* (allowing parents and other individuals to submit objections to specific school library books; any book receiving 10 or more objection letters must be reviewed by the local board of education in a public meeting before it may be selected or retained).

⁴⁵⁶ *Id.* (establishing an opt-in requirement to access library materials deemed “harmful to minors”; written parental consent is required).

⁴⁵⁷ OHIO REV. CODE ANN. § 3313.473(e) (2025) (“No school district or third party acting on behalf of a district shall provide instruction that includes sexuality content to students in grades kindergarten through three; sexuality content is defined to “any oral or written instruction, presentation, image, or description of sexual concepts or gender ideology provided in a classroom setting,” *id.* § 3313.473(g)(1)).

⁴⁵⁸ *Id.* § 3313.473(B)(1)(a) (requiring the board of education to “ensure that any sexuality content is age-appropriate and developmentally appropriate for the age of the student receiving the instruction, regardless of the age or grade level of the student”).

⁴⁵⁹ *Id.* § 3313.473(B)(1)(b) (requiring parental notification and opt-out rights for any “sexuality content” instruction).

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
Oklahoma	___ ⁴⁶⁰	___ ⁴⁶¹	—	—	___ ⁴⁶²
Oregon (2021)	Legislatively mandated inclusive curriculum (K-12) ⁴⁶³	—	—	—	—
Pennsylvania	___ ⁴⁶⁴	—	—	—	—
Rhode Island	—	—	—	—	—
South Carolina	___ ⁴⁶⁵	___ ⁴⁶⁶	___ ⁴⁶⁷	—	—
South Dakota	___ ⁴⁶⁸	—	—	—	—
Tennessee	—	—	—	Opt-in ⁴⁶⁹	—

⁴⁶⁰ S.B. 30, 59th Leg., 1st Reg. Sess. (Okla. 2023) (would have prohibited classroom instruction on sexual orientation or gender identity in Grades K–6 and limited such instruction in Grades 7–12 to “age-appropriate or developmentally appropriate” content).

⁴⁶¹ S.B. 397, 59th Leg., 1st Reg. Sess. (Okla. 2023) (would have required libraries to rate materials by age group, restricted student access without parental consent; passed both chambers but failed to become law).

⁴⁶² *Id.*

⁴⁶³ OR. REV. STAT. ANN. § 329.045(1)(a) (2021) (requiring inclusive education aligned with the LGBTQ2SIA+ Student Success Plan). The state board of education issued implementation guides. *See* OR. DEP’T OF EDUC., *supra* note 106.

⁴⁶⁴ H.B. 319, 2023–2024 Gen. Assemb., Reg. Sess. (Pa. 2023) (would have banned instruction on sexual orientation and gender identity in K–5 and required parental notification; introduced Mar. 13, 2023, and died in committee).

⁴⁶⁵ S.C. H.B. 3728, 125th Gen. Assemb., Reg. Sess. (2023–2024) (would have prohibited mandatory gender or sexual diversity training unless part of a corrective action plan and required instructional, extracurricular, library, and media materials to be “age appropriate, grade appropriate, or appropriate to the academic grade level of the student”).

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.*

⁴⁶⁸ H.B. 1201, 2025 Reg. Sess. (S.D. 2025) (would have prohibited school employees from instructing students on gender identity or expression and required parental notification of gender-related disclosures).

⁴⁶⁹ TENN. CODE ANN. § 49-6-1031 (2023) (prohibiting students from joining any student club or organization without prior written parental consent); TENN. CODE ANN. § 49-6-1308 (2023) (requiring advance parental notice and written, informed consent before providing instruction on sexual orientation or gender identity).

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
Texas (2023, 2025)	Complete prohibition for all Grades ⁴⁷⁰	Bookseller rating system (<i>unconstitutional; enforcement enjoined</i>) ⁴⁷¹	Limits on GSA ⁴⁷²		Opt-in for books rated “sexually explicit” ⁴⁷³
Utah (2023, 2025)	Removal of books deemed “pornographic or indecent” from classroom ⁴⁷⁴	Removal of books deemed “pornographic or indecent” from public school libraries ⁴⁷⁵	—	Opt-out ⁴⁷⁶	—

⁴⁷⁰ TEX. EDUC. CODE ANN. § 28.0043(A) (2025) (prohibiting instruction, guidance, activities, or programming related to gender identity or sexual orientation in public schools pre-K–12).

⁴⁷¹ *Id.* § 35.002(c) (2023) (prohibiting booksellers from selling books rated as “sexually explicit” to schools, and allowing students to access books rated as “sexually relevant” only with written parental consent), *implementation enjoined by Book People, Inc. v. Wong*, 692 F. Supp. 3d 660 (W.D. Tex. 2023), *aff’d in part, vacated in part, and remanded*, 91 F.4th 318 (5th Cir. 2024). The rating requirements in sections 35.001–35.003 were subsequently held unconstitutional and permanently enjoined. *Book People, Inc. v. Wong*, 807 F. Supp. 3d 677, 691–96 (W.D. Tex. 2025), *appeal filed*, (5th Cir. Oct. 30, 2025).

⁴⁷² TEX. EDUC. CODE ANN. § 33.0815(b) (2025) (stating that “[a] school district or open-enrollment charter school may not authorize or sponsor a student club based on sexual orientation or gender identity”).

⁴⁷³ *Id.* § 35.005 (2023) (restricting access to books rated “sexually relevant” without written parental consent).

⁴⁷⁴ UTAH CODE ANN. §§ 53G-10-(2)(a)–(b) (2025) (prohibiting “sensitive materials” in any “school setting,” defined to include classroom under *id.* § 53G-10-103(1)(g)(i)(A); defining “sensitive material” to include instructional materials constituting “pornographic or indecent material” under Utah law).

⁴⁷⁵ *Id.* §§ 53G-10-(2)(a)–(b) (prohibiting “sensitive materials” in any “school setting,” defined to include school libraries under *id.* § 53G-10-103(1)(g)(i)(B); defining “sensitive material” to include instructional materials constituting “pornographic or indecent material” under Utah law). Under this law, once at least three school districts or two districts and five charter schools determine that a book constitutes “objective sensitive material,” the statute mandates its removal from student access statewide, requiring every remaining district and charter school to remove the material, unless the State Board votes to overturn the determination.

⁴⁷⁶ *Id.* § 53G-10-205 (2023) (allowing parents to opt their children out of required educational programs, not necessarily related to Sex Education (but may include sexual

	Practitioner-delivered Policies			Parental Oversight Policies	
State (Year of Enactment)	Classroom	Library	Extracurricular	Classroom and Student Clubs	Library
Vermont (2019; 2024)	Mandatory administrative inclusive curriculum (K-12) ⁴⁷⁷	—	—	—	
Virginia	—	—	—	—	—
Washington (2024)	Legislatively mandated inclusive curriculum (K-12) ⁴⁷⁸	—	—	—	—
West Virginia	Complete prohibition for all Grades ⁴⁷⁹	—	—	—	—
Wisconsin	—	—	—	— ⁴⁸⁰	—
Wyoming	—	—	—	Opt-in ⁴⁸¹	—

orientation or gender identity), on the grounds of religious beliefs, provided they submit written requests with proposed alternative learning activities that meet educational goals).

⁴⁷⁷ An Act Relating to Ethnic and Social Equity Studies Standards for Public Schools, No. 1, H.3, 2019 Leg., Reg. Sess. (Vt. 2019); Vt. State Bd. of Educ., *Rule Series 2000: Education Quality Standards* 12 (Apr. 17, 2024), <https://education.vermont.gov/sites/aoe/files/documents/edu-state-board-rule-series-2000.pdf> [<https://perma.cc/S5HZ-ZYHD>] (final rule adopted by the Vermont State Board of Education setting education quality standards, including requirements that students demonstrate proficiency in “ethnic and social equity studies”).

⁴⁷⁸ WASH. REV. CODE ANN. § 28A.345.130 (2024).

⁴⁷⁹ W. VA. CODE ANN. § 18-5-29 (2025) (prohibiting public school instruction related to sexual orientation or gender identity, with narrow exceptions for “responses to student questions,” “contextual references to the identity of historical or public figures,” “discussion necessary to address bullying or disciplinary matters,” and “instruction as part of AP or dual enrollment courses”).

⁴⁸⁰ Wis. S.B. 489, 2023–2024 Leg., Reg. Sess. (introduced Oct. 16, 2023) (failed Apr. 15, 2024) (prohibiting instruction on sexual orientation and gender identity unless parents receive advance written notice and consent and requiring notification to parents of student gender-identity accommodations).

⁴⁸¹ WYO. STAT. ANN. § 21-3-135(a)(v) (2024) (requiring schools to obtain written or electronic parental consent at least one day before providing instruction on sexual orientation or gender identity).