

I. INTRODUCTION

1. Plaintiffs, a coalition of booksellers, publishers, and authors, bring this action to enjoin the enforcement of H.B. 900,¹ a recently enacted law that bans books deemed “sexually explicit” and restricts access to books deemed “sexually relevant” in public schools (the “Book Ban”). The Book Ban, which is scheduled to take effect on September 1, 2023, violates the First and Fourteenth Amendments to the U.S. Constitution because it is an overbroad and vague content-based law that targets protected speech and is not narrowly tailored to serve a compelling state interest. The Book Ban compels Plaintiffs to express the government’s views, even if they do not agree, and operates as a prior restraint, two of the most egregious constitutional infringements.

2. If allowed to take effect, the Book Ban would (1) require Plaintiffs to rate books based on subjective and vague standards; (2) punish Plaintiffs in retaliation for refusing to rate books or adopt the government’s own ratings; and (3) establish a licensing regime that blocks the distribution of and access to books deemed “sexually explicit” or “sexually relevant” in public schools. Indeed, the Book Ban’s passage has already led to school districts halting the purchase of school library books. The full implementation of the Book Ban will cause a recall of many books in K-12 public schools, bans of even more, and the establishment of an unconstitutional—and unprecedented—state-wide book licensing regime that compels private companies and individuals to adopt the State’s messages or face government punishment.

¹ The text of H.B. 900, known as the Restricting Explicit and Adult-Designated Educational Resources (“READER”) Act, is attached as Exhibit A. H.B. 900 is codified as proposed Tex. Educ. Code §§ 33.021, 35.001-002, 35.0021, 35.003-008.

3. The Book Ban first compels each “library material vendor”² to separately review and rate all “library material”³ previously sold to a “school district or open-enrollment charter school”⁴ that remains in “active use” and is not part of the required curriculum *and* all books it seeks to sell to public schools that are not part of the required curriculum as “sexually explicit,” “sexually relevant,” or “no rating” based on unclear and arbitrary government criteria.⁵ Books rated “sexually explicit” may not be sold to public schools and must be recalled by booksellers if they are in active use by a public school. Books rated “sexually relevant” may only be used by a student “outside the school library” with written parental consent. Booksellers must submit to the Texas Education Agency (“TEA”) a list of their ratings, which will be posted on TEA’s website. If booksellers do not rate their books and submit a list of their ratings to TEA, the State sanctions them by prohibiting them from selling *any* books to public schools (not only books deemed “sexually explicit”).

4. Although the Book Ban compels booksellers to establish an initial rating for each book, the Book Ban vests final decision-making power with the State to ultimately determine a book’s rating. The Book Ban empowers TEA to review and overrule the booksellers’ ratings, which, in turn, grants the government unchecked licensing authority to dictate which books are allowed in public schools and which booksellers can conduct business with public schools. If TEA disagrees with a bookseller’s rating, it can overrule the bookseller’s determination without

² A “library material vendor” is defined as “any entity that sells library material to a public primary or secondary school in this state.” § 35.001(1) (hereinafter, “bookseller”). This definition could apply broadly to wholesalers, distributors, independent bookstores, online retailers, e-book sellers, publishers, authors, and others.

³ “Library material” is not defined in the Book Ban. Read literally, “library material” could include an expansive collection of items, such as books, reference works, magazines, newspapers, and audio and audiovisual materials, in both physical and digital formats (hereinafter, “books”).

⁴ Hereinafter, “public schools.”

⁵ The State does not provide *any* funding to help booksellers complete this onerous task.

explanation, regardless of whether the bookseller agrees with TEA’s conclusion. Booksellers that refuse to adopt TEA’s “corrected rating” are blocked from selling *any* books to public schools and are publicly shamed on TEA’s website as booksellers that have disobeyed the government’s wishes. The law does not require TEA to provide an explanation for changing a bookseller’s rating or provide any right to appeal to a bookseller (or publisher or author).

5. The Book Ban precludes booksellers from bringing claims against school districts, open-enrollment charter schools, or their employees for any damages caused by the law.

6. The Book Ban establishes an unconstitutional regime of compelled speech, retaliation, and licensing that violates clear First Amendment precedent and this country’s history of fostering a robust marketplace of ideas. The Court should thus issue preliminary and permanent injunctive relief under 42 U.S.C. § 1983 and block the enforcement of this patently unconstitutional law.

II. PARTIES

A. Plaintiffs.

7. Plaintiff Book People, Inc. (originally named Grok Books) (“BookPeople”), Texas’ largest independent bookstore, has been a staple in the Austin community since 1970. *See* Declaration of Charley Rejsek, CEO of BookPeople, attached as Exhibit B (“Rejsek Decl.”) ¶ 3. BookPeople has been voted the Best Bookstore in Austin for over 20 years and was named *Publisher’s Weekly’s* bookstore of the year in 2005. It sells books and other library materials to schools and teachers for school use in response to RFQs from school contacts, in response to online orders, in the bookstore, and at offsite events, festivals (including the Texas Book Festival co-founded in 1995 by former First Lady, Laura Bush), school events, and conferences. *Id.* ¶¶ 5-6. BookPeople is an authorized vendor to many school districts. *Id.* ¶ 4. It has no complete record of books and library materials sold for school use since 1970. *Id.* ¶¶ 9-10.

8. Plaintiff VBK, Inc. d/b/a Blue Willow Bookshop (“Blue Willow Bookshop”) has served Texas from its West Houston location since 1996. It sells books and other library materials for school use in response to RFPs and RFQs from schools; to librarians and teachers who are reimbursed; and as a result of arranging for author visits at schools. *See* Declaration of Valerie Koehler, owner of Blue Willow Bookshop, attached as Exhibit C (“Koehler Decl.”) ¶ 3. In addition to school visits, Blue Willow Bookshop arranges three large festivals for young readers every year, each with a goal of promoting literacy and fostering lifelong readers: TeenCon, Tweens Read, and Bookworm. *Id.* ¶ 4. During those festivals, schools and teachers purchase books for students and classrooms. *Id.* Blue Willow Bookshop is an authorized vendor to many school districts. *Id.* ¶ 5. Blue Willow Bookshop has no complete record of books and library materials sold for school use since 1996. *Id.* ¶ 7.

9. Plaintiff American Booksellers Association (“ABA”) was founded in 1900 and is a national not-for-profit trade organization that works to help independently owned bookstores grow and succeed. *See* Declaration of David Grogan, Director of the American Booksellers for Free Expression, Advocacy and Public Policy, a division of the ABA, attached as Exhibit D (“Grogan Decl.”) ¶ 3. ABA represents over 2,100 member companies operating in over 2,500 locations. *Id.* ¶ 4. ABA’s core members are key participants in their communities’ local economy and culture. *Id.* To assist them, ABA provides education, information dissemination, business products, and services; creates relevant programs; and engages in public policy, industry, and local-first advocacy. *Id.* The ABA has 156 members located in Texas who are vendors to school districts subject to the Book Ban. *Id.* ¶ 5.

10. Plaintiff Association of American Publishers (“AAP”), a not-for-profit organization, represents the leading book, journal, and education publishers in the United States

on matters of law and policy, advocating for outcomes that incentivize the publication of creative expression, professional content, and learning solutions. *See* Declaration of Matthew Stratton, Deputy General Counsel of AAP, attached as Exhibit E (“Stratton Decl.”) ¶ 3. AAP’s members range from major commercial book and journal publishers to small, non-profit, university, and scholarly presses, as well as leading publishers of educational materials and digital learning platforms. *Id.* AAP’s members publish a substantial portion of the general, educational, and religious books produced in the United States in print and digital formats, including critically acclaimed, award-winning literature for adults, young adults, and children. *Id.* AAP represents an industry that not only depends upon the free exercise of rights guaranteed by the First Amendment, but also exists in service to our Constitutional democracy, including the unequivocal freedom to publish, read, and inform oneself. *Id.* The AAP has many members that do business in Texas who are vendors to school districts and are subject to the Book Ban. *Id.* ¶ 4. Many AAP members only have partial records of books and library materials sold to public schools. *Id.* ¶ 5.

11. Plaintiff Authors Guild, Inc. (“Guild”) was founded in 1912 and is a national non-profit association of more than 13,000 professional, published writers of all genres, 483 of whom are located in Texas. Declaration of Mary E. Rasenberger, CEO of the Guild, attached as Exhibit F (“Rasenberger Decl.”) ¶ 3. The Guild counts historians, biographers, academicians, novelists, journalists, and other writers of non-fiction and fiction as members; many write for children or young adults, and are frequent contributors to the most influential and well-respected publications in every field. *Id.* ¶ 4. The Guild works to promote the rights and professional interest of authors in various areas, including copyright, freedom of expression, antitrust, fair contracts and artificial intelligence. *Id.* Many Guild members earn a substantial portion of their livelihoods through their

writing, and the ability to write freely and distribute their work is vital to their incomes, as well as to the culture. *Id.* Guild members and their works are subject to the Book Ban. *Id.*

12. Plaintiff Comic Book Legal Defense Fund (“CBLDF”) is a nonprofit organization dedicated to protecting the legal rights of the comic arts community. *See* Declaration of Jeff Trexler, Executive Director of the CBLDF, attached as Exhibit G (“Trexler Decl.”) ¶ 3. With a membership that includes creators, publishers, retailers, educators, librarians, and fans, CBLDF has participated in dozens of First Amendment cases in courts across the United States and led important educational initiatives promoting comics literacy and free expression. *Id.* The CBLDF has members located in Texas subject to the Book Ban. *Id.* ¶ 5.

B. Defendants.

13. Defendant Martha Wong (“Wong”) is sued in her official capacity as the Chair of the Texas State Library and Archives Commission (“TSLAC”).

14. Defendant Keven Ellis (“Ellis”) is sued in his official capacity the Chair of the Texas State Board of Education (“SBOE”).

15. Defendant Mike Morath (“Morath”) is sued in his official capacity as the Commissioner of the Texas Education Agency (“TEA”).

16. On information and belief, Defendants will each exercise their discretion and legal authority to implement and enforce the Book Ban.

III. JURISDICTION AND VENUE

17. The Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this action is brought under 42 U.S.C. § 1983 and seeks to vindicate civil rights protected by the First and Fourteenth Amendments to the U.S. Constitution.

18. The Court has personal jurisdiction over Defendants because they are residents of Texas.

19. Venue is proper under 28 U.S.C. § 1391(b) because any Defendant resides in this District and Defendants are residents of Texas, and a substantial part of events or omissions giving rise to Plaintiffs' claims occurred in this District.

20. This Court has jurisdiction to issue declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983, and Fed. R. Civ. P. 65.

21. This Court has authority to award costs and attorney's fees under 42 U.S.C. § 1988.

IV. LIST OF EXHIBITS

Exhibit A	H.B. 900 (eff. September 1, 2023)
Exhibit B	Declaration of Charley Rejsek, CEO of BookPeople
Exhibit C	Declaration of Valerie Koehler, owner of Blue Willow Bookshop
Exhibit D	Declaration of David Grogan, Director of the American Booksellers for Free Expression, Advocacy and Public Policy, a division of the ABA.
Exhibit E	Declaration of Matthew Stratton, Deputy General Counsel of AAP
Exhibit F	Declaration of Mary E. Rasenberger, CEO of the Guild
Exhibit G	Declaration of Jeff Trexler, Executive Director of the CBLDF

V. STATEMENT OF FACTS

A. The history of failed government censorship of expressive works demonstrates that the Book Ban conflicts with established U.S. Supreme Court precedent and this country's tradition of a robust marketplace of ideas.

22. Plaintiffs reallege all paragraphs above.

23. A century ago, state and local governments actively used bodies known as "censorship boards" to dictate the dissemination of books and other expressive works, such as newspapers, magazines, and movies. Between 1923 and 1925, more than 34 states introduced censorship legislation, and by the end of the 1920s, eight states and nearly 100 municipalities had

developed censorship regimes.⁶

24. Some of the earliest legal challenges to censorship regimes were frustrated, *see, e.g., Mutual Film Corp. v. Indus. Comm'n of Ohio*, 236 U.S. 230, 244 (1915) (upholding state film licensing regime and holding that states and local governments had the right to grant or withhold film licenses), but for the past 70 years courts have not hesitated to strike down censorship regimes and other laws that seek to punish the distribution of expressive works in the United States.

25. In 1952, the U.S. Supreme Court overturned *Mutual Film* and held, 9-0, that the banning of a film by a New York censorship board for being “sacrilegious” was an unconstitutional prior restraint on speech. *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 505 (1952). Seven years later, the U.S. Supreme Court found that a New York censorship board violated the U.S. Constitution for denying a license because a film contained “immoral” content. *Kingsley Int’l Pictures Corp. v. Regents of Univ. of State of N.Y.*, 360 U.S. 684, 688–89 (1959) (banning an expressive work because it “advocates an idea” that may be considered immoral strikes “at the very heart of constitutionally protected liberty”). In *Smith v. People of the State of California*, the U.S. Supreme Court overturned the conviction of a bookstore owner for distributing allegedly obscene books. 361 U.S. 147, 155 (1959). And in *Interstate Circuit, Inc. v. City of Dallas*, the U.S. Supreme Court held that a Dallas ordinance that created the “Motion Picture Classification Board,” which rated films as “not suitable for young persons,” was unconstitutional. 390 U.S. 676 (1968).⁷

26. In 1981, Maryland became the last state to shut down its censorship board.⁸ Despite the end of government censorship boards (decades ago), the Texas Legislature turned the clock

⁶ See Samantha Barbas, [How the Movies Became Speech](#), 64 RUTGERS L. REV. 665, 676 (2012).

⁷ As explained below in § V.C.1., the Book Ban applies to films.

⁸ See Ben A. Franklin, [Last Board of Censors Fades Away After 65 Years](#), THE NEW YORK TIMES, June 29, 1981.

back more than a century by enacting the Book Ban, which functions as a modern-day censorship regime. Like the Ohio State Board of Censors in *Mutual Film Corp.*, the Book Ban establishes its own censorship board—the Texas Education Agency. Even worse, Texas seeks to force private actors, the booksellers, to do the—uncompensated and extremely onerous—heavy labor of establishing ratings for every book it has sold, which the state may overrule anyway if it believes they did the job incorrectly.

27. The Book Ban harkens back to dark days in our nation’s history when the government served as licensors and dictated the public dissemination of information. The lessons from our history should be learned, not ignored, and the constitutional prohibitions against censorship regimes should be respected, not rebuffed. This Court should heed the warnings of the past and enjoin the enforcement of the Book Ban. As guided by history and U.S. Supreme Court precedent, the government should not dictate what is allowed in the marketplace of ideas. *See Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”).

B. The Texas Legislature adopts the Book Ban, ignoring its practical implications and constitutional concerns.

28. The Book Ban grew out of a 2021 inquiry by former state Rep. Matt Krause to many Texas school districts asking if their libraries contained any of [850 books](#) related to race, sexuality, and innocuous subjects.⁹

⁹ See Bill Chappell, [A Texas lawmaker is targeting 850 books that he says could make students feel uneasy](#), NPR, October 28, 2021; Danika Ellis, [All 850 Books Texas Lawmaker Matt Krause Wants To Book Ban: An Analysis](#), BOOK RIOT, November 5, 2021.

29. That list inspired Rep. Jared Patterson to seek removal of approximately three dozen books from his own school district that he identified as personally offensive.¹⁰ Rep. Patterson became the primary author of the Book Ban, which removes local control over school libraries (where libraries choose suitable books for their students subject to parental and community input) in favor of a statewide regulatory regime. That regime compels booksellers to make initial determinations regarding a book’s suitability, although ultimate authority is vested in the State.

30. During debate on the Book Ban, proponents ignored a variety of practical and constitutional concerns about how the legislation would operate and the books that could be banned from public school libraries as a result.

31. Legislators expressed concern that the overbroad language of the Book Ban could result in the banning or restricting of access to many classic works of literature, such as *Twelfth Night*, *A Midsummer Night’s Dream*, *Romeo and Juliet*, *Of Mice and Men*, *Ulysses*, *Jane Eyre*, *Jane Eyre*, *Maus*, *Anne Frank’s Diary: The Graphic Adaptation*, *The Canterbury Tales*, *I Know Why the Caged Bird Sings*, and even the Bible.¹¹ Rep. James Talarico, a former school teacher, said the Book Ban would likely even prohibit school libraries from offering the quintessential Texas novel *Lonesome Dove*.¹²

32. The Book Ban’s authors similarly ignored concerns about requiring book vendors to rate the sexual content of library materials based on undefined community standards of decency. In the Senate Education Committee, Sen. Pete Flores questioned whether booksellers—many of

¹⁰ See [Debate on Tex. H.B.900 in the House Committee on Public Education](#), 88th Leg. (Mar. 21, 2023) (“H.B. 900 House Debate”).

¹¹ *Id.*; see Trexler Decl. ¶¶ 8-9.

¹² *Id.*; see also Christopher Hooks, [Jared Patterson’s School-Library Bill Would Book Ban Larry McMurtry’s Novel](#), TEXAS MONTHLY (Mar. 22, 2023).

whom are not based in Texas—could accurately assess the community standards in Texas, as the Book Ban requires.¹³ Sen. Angela Paxton, the Book Ban’s Senate sponsor, said TEA would review booksellers’ ratings and that booksellers that did not accurately identify Texas’ standards “can lose their privilege of selling books to all Texas school districts.”¹⁴

33. Concerns about the Bill’s broad definitions were also dismissed by its authors. Rep. Patterson and Sen. Paxton conceded that the definitions used in the Book Ban were compiled using disparate sources, such as judicial opinions, FCC regulations, and the Texas Penal Code.¹⁵ But, as other legislators noted, the patchwork definitions in the Book Ban omit crucial portions of those sources and create onerous and unworkable standards.¹⁶

34. The Texas House and Senate rejected a series of amendments proposed to address many of the concerns raised during the Book Ban’s consideration, including its potential impact on books addressing race, civil rights, and LGBTQ topics.¹⁷

35. Despite these concerns, the Texas House passed the Book Ban on April 20, 2023, and the Texas Senate approved it on May 23, 2023. Gov. Greg Abbott signed the Book Ban on June 13, 2023. The Book Ban is scheduled to take effect on September 1, 2023 and applies to the 2023-2024 school year.

¹³ [Debate on Tex. H.B. 900 in the Senate Committee on Education](#), 88th Leg. (May 11, 2023) (“H.B. 900 Senate Debate”).

¹⁴ *Id.*

¹⁵ [H.B. 900 House Debate](#); [H.B. 900 Senate Debate](#).

¹⁶ *Id.*

¹⁷ *Id.*; [Floor Amendment Nos. 1, 2, 3](#), S.J. of Tex. 88th Leg. (May 23, 2023).

36. The effects of the Book Ban are already being felt as school districts prepare for how the law may be implemented.¹⁸ In June 2023, Katy ISD stopped all library book purchases and placed all incoming books in storage as it awaits the impact of the new law.¹⁹

C. **The Book Ban requires booksellers to rate books, punishes booksellers for refusing to adopt the State’s ratings, establishes a licensing regime that bans access to books deemed “sexually explicit,” and provides no means of recourse.**

1. **The Book Ban requires booksellers to review and rate books as “sexually explicit” or “sexually relevant” based on unclear and arbitrary criteria.**

37. The Book Ban includes a series of provisions that require every bookseller to separately review and rate each book it has previously sold to public schools and all books it may sell to public schools for the fast approaching 2023-2024 school year. *See* proposed TEX. EDUC. CODE §§ 33.021, 35.001, 35.002, 35.005.²⁰

38. The Book Ban requires that booksellers assess all books previously sold to public schools that remain in “active use” and rate them as “sexually explicit material” or “sexually relevant material,” if applicable. *Id.* § 35.002.

39. “Sexually explicit material” means “any communication, language, or material, including a written description, illustration, photographic image, video image,²¹ or audio file, other than library material directly related to the curriculum required under Section 28.002(a),²² that

¹⁸ *See* Koehler Decl. ¶ 24; Stratton Decl. ¶ 16.

¹⁹ Claire Goodman, [Katy ISD halts all library book purchases, new books stored](#), HOUSTON CHRONICLE (June 27, 2023).

²⁰ Below references to the Education Code refer to *proposed* sections.

²¹ The Book Ban applies broadly to films. Thus, works that are distributed in multiple mediums may be inconsistently rated such that they are banned in one form but not another. For example, the novel *Gone with the Wind* could be allowed in a school, yet the Academy-Award winning movie of the same name may be banned. *See* Grogan Decl. ¶ 17.

²² The Book Ban does not explain how booksellers can determine what is in the required curriculum, how they will know if what is in the required curriculum changes (potentially requiring a re-evaluation of the rating), or how closely “related to” the curriculum the book must be. Because there is no statewide curriculum in Texas, there is no way to know what material is “related to the

describes, depicts, or portrays sexual conduct, as defined by Section 43.25, Penal Code,²³ in a way that is patently offensive, as defined by Section 43.21, Penal Code.”²⁴ *Id.* § 33.021(a).

40. “Sexually relevant material” means “any communication, language, or material, including a written description, illustration, photographic image, video image, or audio file, other than library material directly related to the curriculum required under Section 28.002(a), that describes, depicts, or portrays sexual conduct, as defined by Section 43.25, Penal Code.” *Id.* § 35.001(3).

41. While both “sexually explicit” and “sexually relevant” materials require the presence of descriptions or depictions of “sexual conduct,” “sexually explicit” material requires that the description or depiction be in a way that is “patently offensive.” *Id.* § 33.021(a).

42. To determine whether books are “sexually explicit,” booksellers must “perform a contextual analysis of the material to determine whether the material describes, depicts, or portrays sexual conduct in a way that is patently offensive.”²⁵ *Id.* § 35.0021(a).

curriculum” across all 1,025 Texas school districts. Curricula can also vary from classroom-to-classroom within a district and from day-to-day or year-to-year, requiring consistent reevaluation.²³ “Sexual conduct” means “sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.” TEX. PEN. CODE § 43.25(a)(2).

²⁴ “Patently offensive” means “so offensive on its face as to affront current community standards of decency.” TEX. PEN. CODE § 43.21(a)(4). But the Book Ban, confusingly, does not tell booksellers whether this community standard is based on Austin, Texas, or Onalaska, Texas—or any of the more than 1,200 other incorporated municipalities across the state. Thus, Plaintiffs lack clarity to determine whether books conform to current community standards. *See* Rejsek Decl. ¶ 18; Grogan Decl. ¶¶ 10-12; .

²⁵ The “contextual analysis” does not account for the age of students. *See* Rejsek Decl. ¶ 17; Grogan Decl. ¶¶ 9-10; Stratton Decl. ¶ 11.f.; Rasenberger Decl. ¶ 12. Instead, the Book Ban uses a one-size-fits-all model for rating books for all K-12 students regardless of age, maturity, or school district. Under this overbroad policy, a high school senior may not have access to a book because it is deemed “sexually explicit” for a first grader. This creates a race-to-the-bottom where older students are blocked from accessing books that may be age-appropriate for them.

43. In performing a “contextual analysis,” booksellers must consider “three principal factors”:

- (1) the explicitness or graphic nature of a description or depiction of sexual conduct contained in the material;
- (2) whether the material consists predominantly of or contains multiple repetitions of depictions [but not descriptions or portrayals] of sexual or excretory organs or activities; and
- (3) whether a reasonable person would find that the material intentionally panders to, titillates, or shocks the reader.²⁶

Id. § 35.0021(b).

44. Booksellers must “weigh and balance each factor and conclude whether the library material is patently offensive, recognizing that because each instance of a description, depiction, or portrayal of sexual conduct contained in a material may present a unique mix of factors.” *Id.* § 35.0021(c).²⁷

45. To determine “whether a description, depiction, or portrayal of sexual conduct contained in a material is patently offensive,” booksellers must “consider the full context in which the description, depiction, or portrayal of sexual conduct appears, to the extent possible, recognizing that contextual determinations are necessarily highly fact-specific and require the consideration of contextual characteristics that may exacerbate or mitigate the offensiveness of the

²⁶ The Book Ban will cause the prohibition of swaths of constitutionally protected books. In determining whether a book is “sexually explicit,” booksellers need not consider whether the book “taken as a whole, lacks serious literary, artistic, political, and scientific value,” which is an element of obscenity for minors. *See Ginsberg v. State of N. Y.*, 390 U.S. 629 (1968), *modified by Miller v. California*, 413 U.S. 15, 24 (1973); TEX. PENAL CODE §43.21(a)(1).

²⁷ The Book Ban will be excessively burdensome for booksellers to review each of the hundreds of thousands of books across all genres sold to public schools over the decades. *See Rejsek Decl.* ¶¶ 8-17; *Koehler Decl.* ¶¶ 8-10, 12-16; *Grogan Decl.* ¶¶ 7, 19-21; *Stratton Decl.* ¶¶ 8-11.

material.”²⁸ *Id.* § 35.0021(d).

46. Booksellers are banned from selling books rated “sexually explicit” and must “issue a recall”²⁹ for all books rated “sexually explicit” that are “in active use”³⁰ by a school or district. *Id.* § 35.002(b).

47. A student may only “reserve, check out, or otherwise use outside the school library” a book rated “sexually relevant” if “written consent” is obtained from “the student’s parent or person standing in parental relation.” *Id.* § 35.005.

48. By April 1, 2024, booksellers must retrospectively “develop and submit” to TEA a list of books rated as “sexually explicit” or “sexually relevant” that have ever been sold to a public school³¹ and that are still in “active use” by the school. *Id.* § 35.002(c). The list of ratings will be posted “in a conspicuous place” on TEA’s website. *Id.* § 35.002(e). Booksellers that do not issue ratings are prohibited from selling *any* books³² to school districts or open-enrollment charter

²⁸ The Book Ban’s convoluted instructions and subjective requirements in determining whether a book is “sexually explicit” will result in inconsistent determinations. *See* Rejsek Decl. ¶¶ 17-18; Grogan Decl. ¶¶ 13-17; Stratton Decl. ¶¶ 11, 15; Trexler Decl. ¶ 7. Books are likely to receive inconsistent ratings from booksellers, who generally have no experience or training in making these technical determinations of law, especially considering the “highly fact-specific” assessments of “each instance” of “sexual conduct” required by the Book Ban. *See* Rejsek Decl. ¶¶ 17-18; Koehler Decl. ¶ 13; Grogan Decl. ¶ 8.

²⁹ The Book Ban does not explain what constitutes a “recall,” how a bookseller should “issue a recall,” whether the books must be returned by the school, or if the bookseller must offer a refund. *See* Grogan Decl. ¶ 21; Stratton Decl. ¶ 17.a.; Trexler Decl. ¶ 15.

³⁰ The Book Ban does not define “active use,” provide a means of determining whether a book is in “active use,” or explain when it ceases to be in “active use.” *See* Rejsek Decl. ¶ 11; Koehler Decl. ¶ 9; Stratton Decl. ¶¶ 6-8, 11.c-d. “Active use” could presumedly include books once but no longer sold. This requires booksellers to rate *every* book *ever* sold to public schools, even if the book is not in the booksellers’ inventory and they do not intend to sell the book again.

³¹ Plaintiffs, such as BookPeople and Blue Willow Bookshop, do not have complete record of books and library materials sold for school use. *See* Rejsek Decl. ¶¶ 9-10; Koehler Decl. ¶ 7; Grogan Decl. ¶ 6; Stratton Decl. ¶ 5.

³² Should they not issue the government-imposed ratings, booksellers are even barred from selling books that are not rated as “sexually explicit” or “sexually relevant.”

schools. *Id.* § 35.002(a).

2. **The Book Ban establishes a licensing regime that blocks the distribution of and access to books deemed “sexually explicit” and restricts certain uses of books deemed “sexually relevant” in public schools.**

49. The Book Ban also includes a series of provisions vesting the State with licensing authority to decide what books are available in public schools and what booksellers can sell books to public schools. *Id.* §§ 35.003, 35.006.

50. The Book Ban provides that TEA may review and overrule the ratings for any book that was “not rated” or that it believes was “incorrectly rated.”³³ *Id.* § 35.003(a). Within 60 days of being notified that a rating has been overruled by TEA, a bookseller *must* adopt TEA’s “corrected rating,” regardless of whether it agrees with TEA’s decision. *Id.* § 35.003(b). If a bookseller does not adopt TEA’s rating, its name will be posted “in a conspicuous place” on TEA’s website and public schools will be banned from purchasing *any* books from it.³⁴ *Id.* §§ 35.003(c), (d). TEA is not required to offer a basis for the re-rating, and the law does not provide any right to appeal. Booksellers are also barred from bringing claims against school districts, open-enrollment charter schools, or their employees for any damages caused by the Book Ban. *Id.* § 35.004. Their *only* and woefully inadequate recourse to the public shaming and permanent Book Ban is to accede to TEA’s unconstitutional demand for compelled speech and unquestioningly adopt TEA’s rating. If a bookseller adopts TEA’s rating, a list of books rated by the bookseller as “sexually explicit” will be posted on TEA’s website, which will inform potential customers (not only schools) that a

³³ The Book Ban does not require TEA to provide any justification for its decision to overrule a bookseller’s rating.

³⁴ The Book Ban provides no opportunity to be heard to challenge TEA’s decisions to overrule a bookseller’s rating or bar schools from purchasing books from it. The purchasing ban continues indefinitely unless and until the bookseller acquiesces to the government’s demands.

bookseller has deemed a book “sexually explicit,” even if it disagrees with the compelled designation. *Id.* § 35.003(e).

51. Books deemed “sexually relevant” will be continuously reviewed. By January 1 of every odd-numbered year, each school district and open-enrollment charter school must review books rated as “sexually relevant” and determine whether those books should remain available—even on a heavily restricted basis—in the school library catalog. *Id.* § 35.006(a).

3. The Book Ban requires the adoption of “standards” for “library collection development policies.”

52. The Book Ban also requires that the Texas State Library and Archives Commission, “with approval by a majority vote of the State Board of Education,” adopt “standards” for school districts to follow “in developing or implementing the district’s library collection development policies.” *Id.* § 33.021(c).

53. The standards must include a “collection development policy” that

- (A) prohibits the possession, acquisition, and purchase of:
 - (i) harmful material, as defined by Section 43.24, Penal Code;
 - (ii) library material rated sexually explicit material by the selling library material vendor; or
 - (iii) library material that is pervasively vulgar or educationally unsuitable as referenced in *Pico v. Board of Education*, 457 U.S. 853 (1982);
- (B) recognizes that obscene content is not protected by the First Amendment to the United States Constitution;
- (C) is required for all library materials available for use or display, including material contained in school libraries, classroom libraries, and online catalogs;

- (D) recognizes that parents are the primary decision makers regarding a student’s access to library material;³⁵
- (E) encourages schools to provide library catalog transparency;
- (F) recommends schools communicate effectively with parents regarding collection development; and
- (G) prohibits the removal of material based solely on the:
 - (i) ideas contained in the material; or
 - (ii) personal background of:
 - (a) the author of the material; or
 - (b) characters in the material.”

Id. § 33.021(d)(2).

54. The standards must be reviewed and updated at least once every five years. *Id.* § 33.021(d)(1).

VI. CAUSES OF ACTION

A. Count One: 42 U.S.C. § 1983, Violation of Free Speech Rights Under the First and Fourteenth Amendments to the U.S. Constitution—Compelled Speech

55. Plaintiffs reallege all paragraphs above.

56. Defendants are state actors operating under color of state law.

57. The First and Fourteenth Amendments to the U.S. Constitution prevent the government from compelling the expression of certain views. *See 303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2312 (2023) (“[T]he government may not compel a person to speak its own preferred messages.”).

³⁵ This provision contradicts other aspects of the Book Ban, which remove control from parents in deciding whether books are “sexually explicit” and should be allowed in public schools.

58. The Book Ban compels Plaintiffs’ speech by coercing Plaintiffs to express that a book is “sexually explicit” or “sexually relevant” based on the government’s (vague and ambiguous) standards, not their own, and requiring Plaintiffs to revise their own independent assessments to conform with the government’s views. *See* Rejsek Decl. ¶ 19; Koehler Decl. ¶¶ 17, 21-22; Grogan Decl. ¶¶ 15, 22; Stratton Decl. ¶ 14; Trexler Decl. ¶¶ 14, 16.

59. Booksellers must “develop and submit” to the State a list of books rated as “sexually explicit” or “sexually relevant” that have ever been sold to a public school based on criteria developed by the State. TEX. EDUC. CODE § 35.002(c). Booksellers that do not issue ratings are prohibited from selling *any* books to school districts or open-enrollment charter schools. *Id.* § 35.002(a). If the bookseller does issue ratings for their books, the State may then review the bookseller’s ratings and overrule the rating for any book that it believes was “incorrectly rated.” *Id.* § 35.003(a). If a bookseller does not adopt the State’s rating, it will be banned from selling *any* books to school districts and open-enrollment charter schools. *Id.* §§ 35.003(c), (d). Banned booksellers are unable to bring claims against school districts, open-enrollment charter schools, or their employees for any damages caused by the law. *Id.* § 35.004. The ratings are posted on an official government website, allowing the public to see whether a bookseller has issued—or acquiesced in—a particular rating compelled by the State. *Id.* § 35.003(e).

60. Compelling Plaintiffs to adopt the State’s preferred speech violates the First Fourteenth Amendments to the U.S. Constitution.

B. Count Two: 42 U.S.C. § 1983, Violation of Free Speech and Due Process Rights Under the First and Fourteenth Amendments to the U.S. Constitution—Vagueness

61. Plaintiffs reallege all paragraphs above.

62. Defendants are state actors operating under color of state law.

63. The First and Fourteenth Amendments to the U.S. Constitution prohibit statutes that are so impermissibly vague that an ordinary person would not understand what conduct the statute prohibited or that are so standardless as to invite arbitrary enforcement.

64. The Book Ban includes terms that are vague, indefinite, arbitrary, and subject to different meanings such that they fail to provide adequate notice of their obligations in violation of the First and Fourteenth Amendments to the U.S. Constitution. *Smith v. Goguen*, 415 U.S. 566, 582 (1974)

65. The definitions of “sexually explicit material” and “sexually relevant material” are unconstitutionally vague.³⁶ TEX. EDUC. CODE § 33.02. Although their definitions exempt material “related to the curriculum required under Section 28.002(a)” of the Education Code, the Book Ban provides little, if any, guidance on what the exemption covers.³⁷ *Id.*; see *Nat’l Press Photographers Ass’n v. McCraw*, 594 F. Supp. 3d 789, 809 (W.D. Tex. 2022) (terms “surveillance” and “commercial purposes” as used in a Texas statute are void for vagueness).

66. The definition of “sexually relevant material” is vague and confusing because any de minimus, non-explicit reference in any context to sexual relations could result in the rating. TEX. EDUC. CODE § 35.001(3); see *Nat’l Press Photographers Ass’n*, 594 F. Supp. 3d at 809. It could thus apply broadly to health-related works, religious texts, historical works, encyclopedias, dictionaries, and many other works.

³⁶ See Rejsek Decl. ¶ 17; Grogan Decl. ¶ 9; Stratton Decl. ¶ 11.f.; Rasenberger Decl. ¶¶ 7, 11-12; Trexler Decl. ¶ 7.

³⁷ See Koehler Decl. ¶ 19; Stratton Decl. ¶ 11.a.

67. The “contextual analysis” required to determine whether a book is “sexually explicit” is unconstitutionally vague.³⁸ TEX. EDUC. CODE § 35.0021; *see Nat’l Press Photographers Ass’n*, 594 F. Supp. 3d at 809.

68. The Book Ban’s requirement that booksellers “recall” materials deemed “sexually explicit” if those materials are still “in active use” is unconstitutionally vague.³⁹ TEX. EDUC. CODE § 35.002(b); *see Nat’l Press Photographers Ass’n*, 594 F. Supp. 3d at 809.

69. The Book Ban is unconstitutionally vague regarding whether books can be sold by booksellers between September 1, 2023 (the Book Ban’s effective date) and April 1, 2024 (the date booksellers must issue their ratings).⁴⁰

C. Count Three: 42 U.S.C. § 1983, Violation of Free Speech and Due Process Rights Under the First and Fourteenth Amendments to the U.S. Constitution—Prior Restraint

70. Plaintiffs reallege all paragraphs above.

71. Defendants are state actors operating under color of state law.

72. The Book Ban establishes a licensing regime that blocks the distribution of and access to books in public schools deemed by the government to be “sexually explicit” and restricts access to those books deemed to be “sexually relevant.”

73. Although the Book Ban requires booksellers to review and rate books as “sexually explicit,” “sexually relevant,” or “no rating,” the Book Ban allows the State to review and overrule the booksellers’ ratings without explanation, opportunity to be heard, or right to appeal.

³⁸ *See* Stratton Decl. ¶ 11.f.; Rasenberger Decl. ¶¶ 7, 11-12.

³⁹ *See* Koehler Decl. ¶ 9; Stratton Decl. ¶¶ 6-7, 11.c-d.; 17.a.

⁴⁰ *See* Rejsek Decl. ¶ 24; Koehler Decl. ¶ 26.

74. If a bookseller fails to “correct” the rating to that designated by the State, the bookseller is barred from selling books to any Texas public school or open-enrollment charter school.

75. The Book Ban provides no due process or ability to challenge the States’ final determinations with the State or a judicial body.

76. The Book Ban forbids booksellers from bringing claims against school districts, open-enrollment charter schools, or their employees for any damages caused by the law.

77. By giving the State unbridled and arbitrary discretion to declare books “sexually explicit” and “sexually relevant” and prohibit the sale of constitutionally protected materials by a bookseller, with no recourse and no provision for judicial review, the Book Ban constitutes a prior restraint that violates the First and Fourteenth Amendments to the U.S. Constitution. *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976); *Book Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

D. Count Four: 42 U.S.C. § 1983, Violation of Free Speech Rights Under the First and Fourteenth Amendments to the United States Constitution—Facial and As Applied Challenge

78. Plaintiffs reallege all paragraphs above.

79. Defendants are state actors operating under color of state law.

80. Content-based restrictions on speech are presumptively unconstitutional. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). The First Amendment prohibits the government from regulating speech based on its content, unless the government can demonstrate that the law is necessary to achieve a “compelling government interest,” it is “narrowly tailored” to achieve that interest, and it uses the “least restrictive means” to achieve that interest.

81. The Book Ban is a content-based restriction on speech because it regulates certain “library material” based on “the topic discussed, or the idea or message expressed.” The Book Ban draws distinctions based on the type of messages conveyed.

82. The Book Ban distinguishes between “sexually explicit material” and “sexually relevant material,” which are subject to the law’s restrictions, and material that receives “no rating,” which is not subject to the law, based on their content.

83. The Book Ban distinguishes between “material directly related to the curriculum,” which is not subject to the law’s restrictions, and material *not* “directly related to the curriculum,” which is subject to the law, based on the material’s content.

84. The Book Ban violates the First and Fourteenth Amendments to the U.S. Constitution on its face because it is neither narrowly tailored nor the least restrictive means of accomplishing a compelling government interest.

85. The Book Ban violates the First and Fourteenth Amendments to the U.S. Constitution as applied to Plaintiffs because it interferes with their ability to distribute constitutionally protected works. It also stigmatizes Plaintiffs, including booksellers, publishers, and authors, by labeling books as “sexually explicit” or “sexually relevant.”⁴¹

86. The Book Ban unconstitutionally burdens Plaintiffs by requiring them to search past records to find the entire universe of library materials they ever sold to any Texas public school and review and rate those materials based on the Book Ban’s vague definitions.⁴²

E. Count Five: 42 U.S.C. § 1983, Violation of Free Speech and Due Process Rights Under the First and Fourteenth Amendments to the U.S. Constitution—Overbreadth

87. Plaintiffs reallege all paragraphs above.

⁴¹ See Rejsek Decl. ¶ 21; Koehler Decl. ¶ 21; Stratton Decl. ¶ 12; Rasenberger Decl. ¶¶ 7-10; Trexler Decl. ¶ 12.

⁴² See Rejsek Decl. ¶¶ 9-10, 14, 16; Koehler Decl. ¶ 9; Grogan Decl. ¶ 7; Stratton Decl. ¶¶ 6-8.

88. Defendants are state actors operating under color of state law.

89. The First and Fourteenth Amendments to the U.S. Constitution prohibit statutes that punish a substantial amount of protected speech in the course of regulating unprotected speech. Such statutes are unconstitutionally overbroad in violation of the First and Fourteenth Amendments. *United States v. Hansen*, 143 S. Ct. 1932, 1939 (2023)

90. The Book Ban regulates substantially more speech than the First and Fourteenth Amendments permit.

91. Although the Book Ban may prohibit some obscene and harmful material, it also prohibits a wide swath of constitutionally protected material.

92. The Book Ban's significant overbreadth unconstitutionally chills Plaintiffs and others from engaging in protected expressive activity.⁴³

F. Count Six: 42 U.S.C. § 1983, Violation of Free Speech and Due Process Rights Under the First and Fourteenth Amendments to the U.S. Constitution—Unconstitutional Delegation of Government Authority

93. Plaintiffs reallege all paragraphs above.

94. Defendants are state actors operating under color of state law.

95. Government authority may generally not be vested in private entities or individuals. *See Andrews v. Wilson*, 959 S.W.2d 686, 690 (Tex. App.—Amarillo 1998), *rev'd*, 10 S.W.3d 663 (Tex. 1999) (it is “generally recognized that governmental or legislative functions . . . cannot be delegated to private entities”)

96. Delegating the power to regulate speech to private entities or individuals, such as the establishment of rating systems, violates the First and Fourteenth Amendments to the U.S. Constitution. *See Swope v. Lubbers*, 560 F. Supp. 1328, 1334 (W.D. Mich. 1983) (“[I]t is well-

⁴³ *See* Stratton Decl. ¶ 5; Rasenberger Decl. ¶¶ 7, 10-11.

established” that private ratings system “may not be used as a standard for a determination of constitutional status”); *Entm't Software Ass'n v. Hatch*, 443 F. Supp. 2d 1065, 1071 (D. Minn. 2006), *aff'd sub nom. Entm't Software Ass'n v. Swanson*, 519 F.3d 768 (8th Cir. 2008) (the delegation of governmental authority to a private entity to determine what video games a child under 17 years of age could rent or purchase violated the First and Fourteenth Amendments).

97. The Book Ban grants private “library material vendors” the authority to review and rate books as “sexually explicit,” “sexually relevant,” or “no rating” and determine whether they are recalled from public schools, banned from public schools, or restricted in public schools. TEX. EDUC. CODE §§ 33.021(a), 35.001(3), 35.002.

98. The Book Ban’s delegation of government authority to private entities and individuals to rate and prohibit books violates the First and Fourteenth Amendments to the U.S. Constitution. *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 71 (1963) (delegation of government authority to Commission that rated books as objectionable and prevented their circulation to minors was unconstitutional); *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 553 (N.D. Tex. 2000) (enjoining the government’s delegation of the selection and removal of library books to a group of private citizens because it was an “improper delegation of governmental authority”).

VII. IRREPARABLE HARM

99. There is no adequate remedy at law for the violation of Plaintiffs’ constitutional rights. Unless the requested injunctive and declaratory relief is granted, Plaintiffs and their members will suffer immediate and irreparable harm.⁴⁴

⁴⁴ Plaintiffs have already suffered actual injury by the Ban because at least one school district, Katy ISD, ceased all library book purchases, including those from Plaintiffs, after the Ban’s passage. *See Koehler Decl.* ¶ 24. Further injury is imminent when the Book Ban takes effect on September 1, 2023. At that time, Plaintiffs will be burdened with the onerous and expensive task

100. The existence of the Book Ban has a chilling effect on the exercise of Plaintiffs' constitutional rights. The Book Ban will cause Plaintiffs irreparable personal and economic injury each day it is in effect.

VIII. PRAYER FOR RELIEF

Plaintiffs request the following relief against Defendants:

- a. That this matter be set for a hearing on the requested preliminary injunctive relief at the earliest practical date;
- b. That the Court enter a preliminary and permanent injunction enjoining the Defendants and their agents, attorneys, servants, employees, and other representatives from enforcing the Book Ban in any manner whatsoever;
- c. That the Court enter a declaratory judgment that the Book Ban is unconstitutional, void, and of no effect;
- d. That Plaintiffs be awarded the costs of this action;
- e. That Plaintiffs recover from Defendants their reasonable attorney's fees under 42 U.S.C. § 1988; and
- f. That Plaintiffs be granted any other and further relief the Court deems proper.

of reviewing and rating all books sold to public schools “in active” use as “sexually explicit” and “sexually relevant” using a vague “contextual analysis.” *See* Rejsek Decl. ¶¶ 15-16, 20-22, 25-26; Koehler Decl. ¶¶ 8-16; Grogan Decl. ¶¶ 7, 19-21; Stratton Decl. ¶¶ 8-11. Blue Willow Bookshop estimates that it will cost between \$200 and \$1,000 per book and between \$4 million and \$500 million total to read and rate books already sold to public schools according to the Book Ban's multi-layered criteria. *See* Koehler Decl. ¶¶ 14-16. These estimates do not account for the cost of reviewing future books or the cost of obtaining previously sold books. *Id.* ¶ 15. Because of these exponential costs and low margins, the Book Ban could cause bookstores to close and will likely deter new bookstores from opening in Texas.

Respectfully submitted,

/s/ Laura Lee Prather

Laura Lee Prather

Texas Bar No. 16234200

laura.prather@haynesboone.com

Catherine L. Robb

Texas Bar No. 24007924

catherine.robb@haynesboone.com

Michael J. Lambert

Texas Bar No. 24128020

michael.lambert@haynesboone.com

Reid Pillifant

Texas Bar No. 24126157

reid.pillifant@haynesboone.com

HAYNES AND BOONE, LLP

600 Congress Avenue, Suite 1300

Austin, Texas 78701

Telephone: (512) 867-8400

Facsimile: (512) 867-8470

ATTORNEYS FOR PLAINTIFFS

EXHIBIT A

H.B. No. 900

1 AN ACT

2 relating to the regulation of library materials sold to or included
3 in public school libraries.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. This Act shall be known as the Restricting
6 Explicit and Adult-Designated Educational Resources (READER) Act.

7 SECTION 2. Section [33.021](#), Education Code, is amended to
8 read as follows:

9 Sec. 33.021. LIBRARY STANDARDS. (a) In this section,
10 "sexually explicit material" means any communication, language, or
11 material, including a written description, illustration,
12 photographic image, video image, or audio file, other than library
13 material directly related to the curriculum required under Section
14 [28.002](#)(a), that describes, depicts, or portrays sexual conduct, as
15 defined by Section [43.25](#), Penal Code, in a way that is patently
16 offensive, as defined by Section [43.21](#), Penal Code.

17 (b) The Texas State Library and Archives Commission, in
18 consultation with the State Board of Education, shall adopt
19 voluntary standards for school library services, other than
20 collection development, that a~~[-A]~~ school district shall consider
21 ~~[the standards]~~ in developing, implementing, or expanding library
22 services.

23 (c) The Texas State Library and Archives Commission, with
24 approval by majority vote of the State Board of Education, shall

H.B. No. 900

1 adopt standards for school library collection development that a
2 school district shall adhere to in developing or implementing the
3 district's library collection development policies.

4 (d) The standards adopted under Subsection (c) must:

5 (1) be reviewed and updated at least once every five
6 years; and

7 (2) include a collection development policy that:

8 (A) prohibits the possession, acquisition, and
9 purchase of:

10 (i) harmful material, as defined by Section
11 43.24, Penal Code;

12 (ii) library material rated sexually
13 explicit material by the selling library material vendor; or

14 (iii) library material that is pervasively
15 vulgar or educationally unsuitable as referenced in *Pico v. Board*
16 *of Education*, 457 U.S. 853 (1982);

17 (B) recognizes that obscene content is not
18 protected by the First Amendment to the United States Constitution;

19 (C) is required for all library materials
20 available for use or display, including material contained in
21 school libraries, classroom libraries, and online catalogs;

22 (D) recognizes that parents are the primary
23 decision makers regarding a student's access to library material;

24 (E) encourages schools to provide library
25 catalog transparency;

26 (F) recommends schools communicate effectively
27 with parents regarding collection development; and

H.B. No. 900

1 (G) prohibits the removal of material based
2 solely on the:

3 (i) ideas contained in the material; or

4 (ii) personal background of:

5 (a) the author of the material; or

6 (b) characters in the material.

7 SECTION 3. Subtitle F, Title 2, Education Code, is amended
8 by adding Chapter 35 to read as follows:

9 CHAPTER 35. REGULATION OF CERTAIN LIBRARY MATERIAL

10 Sec. 35.001. DEFINITIONS. In this chapter:

11 (1) "Library material vendor" includes any entity that
12 sells library material to a public primary or secondary school in
13 this state.

14 (2) "Sexually explicit material" has the meaning
15 assigned by Section 33.021.

16 (3) "Sexually relevant material" means any
17 communication, language, or material, including a written
18 description, illustration, photographic image, video image, or
19 audio file, other than library material directly related to the
20 curriculum required under Section 28.002(a), that describes,
21 depicts, or portrays sexual conduct, as defined by Section 43.25,
22 Penal Code.

23 Sec. 35.002. RATINGS REQUIRED. (a) A library material
24 vendor may not sell library materials to a school district or
25 open-enrollment charter school unless the vendor has issued
26 appropriate ratings regarding sexually explicit material and
27 sexually relevant material previously sold to a district or school.

H.B. No. 900

1 (b) A library material vendor may not sell library material
2 rated sexually explicit material and shall issue a recall for all
3 copies of library material sold to a district or school that is:

4 (1) rated sexually explicit material; and

5 (2) in active use by the district or school.

6 (c) Not later than April 1, 2024, each library material
7 vendor shall develop and submit to the agency a list of library
8 material rated as sexually explicit material or sexually relevant
9 material sold by the vendor to a school district or open-enrollment
10 charter school before that date and still in active use by the
11 district or school.

12 (d) Not later than September 1 of each year, each library
13 material vendor shall submit to the agency an updated list of
14 library material rated as sexually explicit material or sexually
15 relevant material sold by the vendor to a school district or
16 open-enrollment charter school during the preceding year and still
17 in active use by the district or school.

18 (e) The agency shall post each list submitted under
19 Subsection (c) or (d) in a conspicuous place on the agency's
20 Internet website as soon as practicable.

21 Sec. 35.0021. RATING GUIDELINES. (a) For purposes of
22 determining whether a library material is sexually explicit as
23 required by Section 35.002, a library material vendor must perform
24 a contextual analysis of the material to determine whether the
25 material describes, depicts, or portrays sexual conduct in a way
26 that is patently offensive.

27 (b) In performing the contextual analysis of a library

H.B. No. 900

1 material, a library material vendor must consider the following
2 three principal factors with respect to the material:

3 (1) the explicitness or graphic nature of a
4 description or depiction of sexual conduct contained in the
5 material;

6 (2) whether the material consists predominantly of or
7 contains multiple repetitions of depictions of sexual or excretory
8 organs or activities; and

9 (3) whether a reasonable person would find that the
10 material intentionally panders to, titillates, or shocks the
11 reader.

12 (c) In examining the three factors listed under Subsection
13 (b), a vendor must weigh and balance each factor and conclude
14 whether the library material is patently offensive, recognizing
15 that because each instance of a description, depiction, or
16 portrayal of sexual conduct contained in a material may present a
17 unique mix of factors.

18 (d) To determine whether a description, depiction, or
19 portrayal of sexual conduct contained in a material is patently
20 offensive, a library material vendor must consider the full context
21 in which the description, depiction, or portrayal of sexual conduct
22 appears, to the extent possible, recognizing that contextual
23 determinations are necessarily highly fact-specific and require
24 the consideration of contextual characteristics that may
25 exacerbate or mitigate the offensiveness of the material.

26 Sec. 35.003. AGENCY REVIEW. (a) The agency may review
27 library material sold by a library material vendor that is not rated

H.B. No. 900

1 or incorrectly rated by the vendor as sexually explicit material,
2 sexually relevant material, or no rating in accordance with Section
3 35.002(a). If the agency determines that the library material is
4 required to be rated as sexually explicit material or sexually
5 relevant material or to receive no rating at all under that
6 subsection, the agency shall provide written notice to the vendor.
7 The notice must include information regarding the vendor's duty
8 under this section and provide the corrected rating required for
9 the library material.

10 (b) Not later than the 60th day after the date on which a
11 library material vendor receives notice regarding library material
12 under Subsection (a), the vendor shall:

13 (1) rate the library material according to the
14 agency's corrected rating; and

15 (2) notify the agency of the action taken under
16 Subdivision (1).

17 (c) The agency shall post and maintain in a conspicuous
18 place on the agency's Internet website a list of library material
19 vendors who fail to comply with Subsection (b).

20 (d) A school district or open-enrollment charter school may
21 not purchase library material from a library material vendor on the
22 list described by Subsection (c).

23 (e) A library material vendor placed on the list described
24 by Subsection (c) may petition the agency for removal from the list.
25 The agency may remove a vendor from the list only if the agency is
26 satisfied that the vendor has taken appropriate action under
27 Subsection (b).

H.B. No. 900

1 Sec. 35.004. LIABILITY. A school district or
2 open-enrollment charter school or a teacher, librarian, or other
3 staff member employed by a district or school is not liable for any
4 claim or damage resulting from a library material vendor's
5 violation of this chapter.

6 Sec. 35.005. PARENTAL CONSENT REQUIRED FOR USE OF CERTAIN
7 LIBRARY MATERIALS. A school district or open-enrollment charter
8 school may not allow a student enrolled in the district or school to
9 reserve, check out, or otherwise use outside the school library
10 library material the library material vendor has rated as sexually
11 relevant material under Section 35.002(a) unless the district or
12 school first obtains written consent from the student's parent or
13 person standing in parental relation.

14 Sec. 35.006. REVIEW AND REPORTING OF CERTAIN LIBRARY
15 MATERIALS. (a) Not later than January 1 of every odd-numbered
16 year, each school district and open-enrollment charter school
17 shall:

18 (1) review the content of each library material in the
19 catalog of a district or school library that is rated as sexually
20 relevant material under Section 35.002(a) by the library material
21 vendor;

22 (2) determine in accordance with the district's or
23 school's policies regarding the approval, review, and
24 reconsideration of school library materials whether to retain each
25 library material reviewed under Subdivision (1) in the school
26 library catalog; and

27 (3) either:

H.B. No. 900

1 (A) post in a conspicuous place on the Internet
2 website maintained by the district or school a report; or

3 (B) provide physical copies of the report at the
4 central administrative building for the district or school.

5 (b) The report required under Subsection (a)(3) must
6 include:

7 (1) the title of each library material reviewed under
8 Subsection (a)(1);

9 (2) the district's or school's decision regarding the
10 library material under Subsection (a)(2); and

11 (3) the school or campus where the library material is
12 currently located.

13 Sec. 35.007. RULES. The commissioner may adopt rules as
14 necessary to administer this chapter.

15 Sec. 35.008. ASSISTANCE OF AGENCY. The agency may provide
16 assistance to school districts and open-enrollment charter schools
17 in complying with this chapter.

18 SECTION 4. Not later than January 1, 2024, the Texas State
19 Library and Archives Commission shall adopt the standards for
20 school library collection development as required under Section
21 [33.021\(c\)](#), Education Code, as added by this Act.

22 SECTION 5. (a) Not later than April 1, 2024, each library
23 material vendor, as defined by Section 35.001, Education Code, as
24 added by this Act, shall submit the initial list required under
25 Section 35.002(c), Education Code, as added by this Act.

26 (b) Not later than September 1, 2024, each library material
27 vendor, as defined by Section 35.001, Education Code, as added by

H.B. No. 900

1 this Act, shall submit the initial updated list required under
2 Section 35.002(d), Education Code, as added by this Act.

3 (c) Not later than January 1, 2025, each school district and
4 open-enrollment charter school shall conduct the initial content
5 review and submit the initial report required under Section
6 35.006(a), Education Code, as added by this Act.

7 SECTION 6. The changes in law made by this Act to the
8 Education Code apply beginning with the 2023-2024 school year.

9 SECTION 7. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2023.

H.B. No. 900

President of the Senate

Speaker of the House

I certify that H.B. No. 900 was passed by the House on April 20, 2023, by the following vote: Yeas 95, Nays 52, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 900 was passed by the Senate on May 23, 2023, by the following vote: Yeas 19, Nays 12.

Secretary of the Senate

APPROVED: _____

Date

Governor

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**BOOK PEOPLE, INC., VBK d/b/a BLUE
WILLOW BOOKSHOP, AMERICAN
BOOKSELLERS ASSOCIATION,
ASSOCIATION OF AMERICAN
PUBLISHERS, INC., AUTHORS
GUILD, INC., COMIC BOOK LEGAL
DEFENSE FUND,**

Plaintiffs,

v.

**MARTHA WONG in her official capacity
as chair of the Texas State Library and
Archives Commission, KEVEN ELLIS in
his official capacity as chair of the Texas
Board of Education, MIKE MORATH in
his official capacity as Commissioner of
Education,**

Defendants.

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

CASE NO.

DECLARATION OF CHARLEY REJSEK

Pursuant to 28 U.S.C. § 1746, Charley Rejsek declares:

1. My name is Charley Rejsek. I am over twenty-one (21) years of age and am fully competent to testify about the matters contained herein. The following statements are made within my personal knowledge and are true and correct.
2. I am the CEO of Book People, Inc., (“BookPeople”) an independent bookstore that sells new books in Austin, Texas. I have been the CEO of BookPeople since 2022 and previously served as the company’s general manager.
3. BookPeople was founded in 1970 as Grok Books. Since its founding, BookPeople has sold books and other library materials to Texas school districts for use in their school libraries.

4. BookPeople is an authorized vendor to many school districts.

5. BookPeople sells books and other library materials to schools and teachers for school use in response to RFQs from school contacts, in response to online orders, in the bookstore, and at offsite events, festivals, school events, bookfairs, and conferences.

6. Book People is the official bookseller for the Texas Book Festival co-founded by former First Lady Laura Bush.

7. BookPeople intends to continue selling books and other library materials to Texas school districts for use in school libraries in the future.

8. BookPeople is not able to comply with H.B. 900 (the “Book Ban”), which requires BookPeople to identify and rate every book it has ever sold to a public school district that is “still in active use.”

9. BookPeople does not have complete records detailing all products sold to schools during its 53 years in business, so it cannot identify all books previously sold to school districts, as the Book Ban requires.

10. BookPeople has changed record-keeping and inventory systems several times in its 53-year history and records from previous decades have largely been lost. BookPeople did not expect that it would someday need to access these decades-old records in order to comply with a government mandate.

11. Because BookPeople does not have records of all sales during its existence, it also has no way of knowing which books sold by BookPeople are still “in active use” by a school district. BookPeople does not have any way of ascertaining this information. BookPeople does not have records of every school district to which it has sold books.

12. BookPeople does not ask its customers to specify how the books they are purchasing will be used.

13. Even if BookPeople had records of its sales, BookPeople would be unable to comply with the Book Ban's rating requirements.

14. Many of the books that BookPeople has previously sold would no longer be in our current inventory. The Book Ban requires us to review and rate these books—which are not in our possession—regardless of whether we plan to sell them in the future. These are books that BookPeople was well within its rights to sell at the time. The Book Ban now forces us to—decades after the fact—obtain and review these books.

15. BookPeople is a fixed-price bookseller; the vast majority of our books arrive with the price already printed on the book. As a result, BookPeople operates with very narrow profit margins.

16. The financial resources that would be required to have BookPeople's staff identify, read and rate every book that BookPeople sells—or has ever sold—to school districts, as the Book Ban requires, would be financially unsustainable. As CEO, I do not see any way for BookPeople to comply with the Book Ban and remain in business.

17. Even if BookPeople did have the resources to comply with the Book Ban, our staff would not know how to rate books based on the subjective nature of the Book Ban's rating requirements. For instance, the Book Ban requires BookPeople to assess books based on "current community standards," but which community? BookPeople is based in Austin, Texas, but serves many communities throughout the State, each of which has its own community character. Our ratings would necessarily differ from vendors who serve other communities.

18. Our ratings would also consider the age-appropriateness of a given work. However, the Book Ban does not specify what age group we should consider in reviewing the works. This alone makes it impossible to apply an accurate rating.

19. Even if BookPeople could rate these materials according to the State's criteria, BookPeople does not believe it should be compelled to provide these ratings, based on criteria in which it does not agree, in order to sell books to public schools.

20. If BookPeople does rate these books, our ratings can still be overridden by the State and then publicly posted as if they represent our own speech. BookPeople would not want customers to believe these ratings reflect its views on the books. But if BookPeople resists adopting the State's ratings, then we will be identified on the State's public blacklist, which would cause reputational damage to the company.

21. I am also concerned that the public posting of any ratings by BookPeople would lead to stigma and reputational harm for BookPeople. If BookPeople does participate in this system of compelled speech, we stand to lose customers who disagree with the Book Ban.

22. The Book Ban also states that if we do not comply with the State's ratings, the State will prevent us from selling *any* books to public schools. This will cause direct financial harm.

23. The law does not specify how long BookPeople would be banned if it runs afoul of the State's rating regime, so BookPeople cannot fully assess whether to comply. Nor does the law explain how the State will handle ratings that differ among vendors—an inevitable outcome when numerous vendors are being asked to review thousands of works.

24. BookPeople does not have clarity as to whether it can continue selling books to Texas public school districts between the law's effective date (September 1, 2023) and the date that its ratings are due to be submitted (April 1, 2024).

25. BookPeople is a community bookstore and we want to continue supporting *all* schools in our area. By imposing an unfunded mandate to review and rate every book that we have ever sold to a public school, the State of Texas will force BookPeople to discontinue its work with local public schools, in violation of its First Amendment rights.

26. If BookPeople was not able to work with local public schools, its reputation and commitment to serving the community would be harmed.

27. I hereby declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed this 23rd day of July, 2023.

/s/ Charley Rejsek
Charley Rejsek

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BOOK PEOPLE, INC., VBK d/b/a BLUE
WILLOW BOOKSHOP, AMERICAN
BOOKSELLERS ASSOCIATION,
ASSOCIATION OF AMERICAN
PUBLISHERS, INC., AUTHORS
GUILD, INC., COMIC BOOK LEGAL
DEFENSE FUND,

Plaintiffs,

v.

MARTHA WONG in her official capacity
as chair of the Texas State Library and
Archives Commission, KEVEN ELLIS in
his official capacity as chair of the Texas
Board of Education, MIKE MORATH in
his official capacity as Commissioner of
Education,

Defendants.

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

CASE NO.

DECLARATION OF VALERIE KOEHLER

Pursuant to 28 U.S.C. § 1746, Valerie Koehler declares:

1. My name is Valerie Koehler. I am over twenty-one (21) years of age and am fully competent to testify about the matters contained herein. The following statements are made within my personal knowledge and are true and correct.

2. I am the owner of VBK, Inc. d/b/a Blue Willow Bookshop, an independent bookstore in Houston, Texas (“Blue Willow”). I have been the owner of Blue Willow since 1996.

3. Blue Willow sells books and other library materials for school use in response to RFPs and RFQs from schools, to librarians and teachers who are reimbursed, and as a result of arranging for author visits at schools.

4. In addition to school visits, Blue Willow Bookshop arranges three large festivals for young readers every year, each with a goal of promoting literacy and fostering lifelong readers: TeenCon, Tweens Read, and Bookworm. During those festivals, schools and teachers purchase books for students and classrooms.

5. Blue Willow is an authorized vendor to many school districts and has sold books to at least 22 Texas school districts in the last 15 years.

6. Although Blue Willow intends to comply with House Bill 900 (the “Book Ban”) to the best of its ability, I do not know how we will be able to do so.

7. Blue Willow has no complete record of books and library materials sold for school use since 1996. Blue Willow has not attempted to keep complete records of every sale, and Blue Willow has migrated its records among various record-keeping systems, which has resulted in the loss of some records.

8. As a result, Blue Willow is not able to comply with the Book Ban, which requires Blue Willow to identify and rate every book it has ever sold to a public school district—even books it may no longer sell or that are out of circulation.

9. Blue Willow also has no way of knowing which books are in “active use.” Blue Willow does not ask its customers how its books will be used, and Blue Willow does not have any information as to where books it has sold are housed within a school district or school—whether they are used in conjunction with a school’s curriculum, used in the classroom, used in a library, given or loaned to students, or whether these books are still within the district’s possession.

10. Even if Blue Willow had these records, it would be impossible for Blue Willow to devote the financial resources necessary to comply with the Book Ban’s rating requirements.

11. Blue Willow estimates it has sold between 20,000 and 50,000 different titles to Texas schools or school districts in its 26 years of business.

12. Many of the books that Blue Willow has previously sold would no longer be in our current inventory. The Book Ban requires us to review and rate these books—which are not in our possession—regardless of whether we plan to sell them in the future. These are books that Blue Willow was well within its rights to sell at the time. The Book Ban now forces us to—decades after the fact—obtain and review these books.

13. Based on the Book Ban’s highly fact-specific criteria, Blue Willow does not believe that its staff would be capable of producing accurate ratings and believes such a review would require employing legal professionals.

14. To read and rate a book according to the Book Ban’s multi-layered criteria, Blue Willow estimates that it would cost between \$200 and \$1,000 per book.

15. Blue Willow estimates the total cost to read and rate books already sold would be between \$4 million and \$500 million dollars. This estimate does not account for the cost of reviewing future book sales or the cost of obtaining previously sold books.

16. Blue Willow does not have the financial resources to comply with the Book Ban. Blue Willow’s annual sales are just over \$1 million per year.

17. Blue Willow does not want to be compelled by the State to issue ratings for books based on criteria with which it does not agree. Blue Willow sells a wide variety of books, including books that I would not personally be interested in reading. However, we do not judge our customer’s choices. We would not want our customers to think the ratings reflect our views of these books.

18. The standards for rating books that are contained in the Book Ban are confusing and vague. I have discussed this issue with my staff, and we do not know how we could rate books based on the Book Ban's criteria, since the criteria are inherently subjective, and what might be offensive to one person would not be to another. For instance, is a book that contains kissing acceptable under the Ban? Is kissing between the same sex acceptable? This is just one small example of the confusion our staff would face.

19. Blue Willow is also confused as to which books are exempt from ratings as part of the required curriculum. Blue Willow does not know, and has no realistic way of ascertaining, the curriculum for each school, grade level and classroom in each of the Texas districts to which we sell books.

20. If Blue Willow does rate these books, our ratings can still be overridden by the State and then publicly posted as if they represent our own speech. Blue Willow would not want customers to believe these ratings reflect our views of these books. But if Blue Willow resists adopting the State's ratings, then the State will prevent us from selling *any* books to public schools, and we will be identified on the State's public blacklist, which would cause both financial and reputational damage to our company.

21. I am also concerned that the public posting of any ratings by Blue Willow would lead to stigma and reputational harm for our company. If Blue Willow does participate in this system of compelled speech, we stand to lose customers who disagree with the Book Ban.

22. Blue Willow also does not wish to participate in a forced recall of books based on ratings with which we do not agree. I am concerned that the issuance of recall requests from Blue Willow to school districts would be interpreted as our own speech, when, in fact, it is being compelled by the State.

23. Approximately 20 percent of Blue Willow's sales are directly to schools or are related to school author visits and our three festivals. Blue Willow would lose the vast majority of this revenue if schools were no longer able to purchase from Blue Willow.

24. Blue Willow has already lost sales as a result of the Book Ban. Blue Willow has sold over \$200,000 in books to Katy Independent School District in the past 5-7 years, but Katy ISD has now paused its purchasing in response to the uncertainty surrounding the Book Ban.

25. Blue Willow anticipates that it will continue to lose sales at a rapid rate because of the Book Ban.

26. Blue Willow does not have clarity as to whether it can continue selling books to Texas public school districts between the law's effective date (September 1, 2023) and the date that its ratings are due to be submitted (April 1, 2024).

27. Blue Willow intends to continue selling books and other library materials to Texas school districts for use in school libraries in the future.

28. I hereby declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed this 21st day of July, 2023.

/s/ Valerie Koehler
Valerie Koehler

EXHIBIT D

4. ABA represents over 2,100 member companies operating in over 2,500 locations. ABA's core members are key participants in their communities' local economy and culture. To assist them, ABA provides education, information dissemination, business products, and services; creates relevant programs; and engages in public policy, industry, and local-first advocacy.

5. The ABA has 156 members located in Texas who are vendors to school districts subject to the Ban.

6. Our members each utilize different systems for tracking their sales and inventory, and thus have different sets of records. Many of our members do not have complete records of all sales they have ever made to school districts. As a result, they are unable to comply with the requirements of House Bill 900 (the "Book Ban").

7. The Book Ban places an extreme burden on booksellers to rate books for their sexual content. It is impossible for any bookseller or bookstore owner to know the contents of every book they sell or have sold, making the law impossible for any bookstore to follow. Over four million new books were published in 2022, according to numerous sources. Fear of inadvertently running afoul of the law would result in a bookseller erring on the side of caution, thereby limiting students' access to age-appropriate, relevant materials.

8. Importantly, the rating is not just for the book as a whole. The Book Ban requires a bookseller to review every page of every book for any description of genitals, buttocks or breasts or any description of mild sexual activity. As a result, booksellers will need to do much more than review a handful of sexual health books or prominent biographies or fiction by people who are known for writing about sexual topics—they will have to comb through every page of every book.

9. The Book Ban's vague standards would also make it difficult for booksellers to comply with the rating system's criteria. The rating must be based on sexual content, but also on

contemporary standards of decency as to minors (this is the difference between sexually explicit and sexually relevant). The community standard is entirely undefined and subjective—forcing vendors to guess what a community thinks is appropriate for minors.

10. The Book Ban also fails to distinguish between minors based on age (5- versus 17-year-olds), maturity (advanced reader versus academically challenged reader) or geographic location (Houston versus Wichita Falls).

11. Concerns over this subjectivity would lead booksellers to err on the side of caution, ultimately labeling a book as “sexually explicit” or “sexually relevant” that may not need this rating. This could ultimately deprive students of age-appropriate works of literature. Just as an example, these titles could include *Dracula*, *Romeo & Juliet*, *Ulysses*, *Gone with the Wind*, and *The Color Purple*.

12. Additionally, due to the vagueness of the law, the Book Ban could result in the banning of a book that is “sexually relevant” as to younger minors but appropriate for older teenagers. What is appropriate to a 15-year-old may not be appropriate for a child under the age of 10. This law does not discern these nuances, and it places the onus on booksellers to make this impossible determination.

13. The lack of specificity in the Book Ban will inevitably lead to inconsistent ratings among our members and the broader bookselling community. It could also lead to financial liability from authors unhappy with their rating, who may place blame on booksellers for lost sales.

14. Our members do not believe that they are best positioned to evaluate every book for school use. They believe these decisions are best left to experienced, professional librarians, with parental input.

15. Our members do not wish to participate in a public rating system that compels them to rate books on criteria with which they do not agree. They are concerned that these ratings—which are compelled by the State but published under their name—would be interpreted as their own speech.

16. Our members believe these ratings are inherently subjective. The Book Ban’s requirement that the ratings be listed online could lead to classic or award-winning books, such as *The Bluest Eye* or *The Color Purple*, being branded with a proverbial Scarlet letter. It is not a stretch to imagine that a book being label as “sexually explicit” or “sexually relevant” on the TEA’s website could impact whether a parent buys a book at a bookstore for their child, thereby limiting access to titles that could be a positive influence on, and potentially life-changing for, a given child.

17. Further, because videos and movies that are based on books, like Academy Award-winning *Gone with the Wind*, are often shown in public school classrooms, it is also likely that the ratings provided to these books may foreclose their availability in the library, even while the movie version is still shown in the classroom—creating inconsistent treatment of similar content.

18. Our members believe the State has no business determining what books are acceptable for anyone to read. It is simply Orwellian for the State to do so. Our members further believe the impact of these ratings will not only affect what books are available in schools, but also extend into what books are sold in bookstores.

19. The Book Ban will undoubtedly lead to financial harm for our members, whether it is due to a loss of book sales, potential exposure to liability from book authors, or because bookstores need to hire additional staff to handle the burdensome responsibility of rating books sold to schools. The average net operating profit of an independent bookstore (as reported in

ABA's annual financial survey) from book sales in 2023 was 1.5 percent. Moreover, book prices are set by the publishers and printed on the books. If bookstore expenses increase, a bookstore owner cannot increase the price of books to offset this new expense.

20. Our members do not yet know the extent of the labor and resources that will be necessary to handle rating the books due to the vagueness of the law. It is conceivable that attempting to comply with the law will put a bookstore out of business. Aside from being unconstitutional, this law is impractical and burdensome for bookstore businesses and will result in a loss of net income.

21. Our members are also unclear what is required regarding recalling certain books. The law does not make clear their responsibilities nor what they are required to do if a school does not comply with such a recall. There are significant questions as to how the books that are recalled will be handled and what further burdens this could place on a bookstore.

22. Our members are also concerned that the issuance of a recall would be interpreted by school districts and the general public as an expression of the bookseller's views and values, when its speech is actually being compelled by the government.

23. It is impossible to overstate the importance of local businesses, such as independent bookstores, to their communities. In economic terms, according to a civic economics study, independent businesses recirculate a substantially greater proportion of their revenues back into the local economy than do their chain competitors.

24. I hereby declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed this 23rd day of July, 2023.

/s/ David Grogan
David Grogan

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**BOOK PEOPLE, INC., VBK d/b/a BLUE
WILLOW BOOKSHOP, AMERICAN
BOOKSELLERS ASSOCIATION,
ASSOCIATION OF AMERICAN
PUBLISHERS, INC., AUTHORS
GUILD, INC., COMIC BOOK LEGAL
DEFENSE FUND,**

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

Plaintiffs,

v.

CASE NO.

**MARTHA WONG in her official capacity
as chair of the Texas State Library and
Archives Commission, KEVEN ELLIS in
his official capacity as chair of the Texas
Board of Education, MIKE MORATH in
his official capacity as Commissioner of
Education,**

Defendants.

DECLARATION OF MATTHEW STRATTON

Pursuant to 28 U.S.C. § 1746, Matthew Stratton declares:

1. My name is Matthew Stratton. I am over twenty-one (21) years of age and am fully competent to testify about the matters contained herein. The following statements are made within my personal knowledge and are true and correct.

2. I am the Deputy General Counsel of the Association of American Publishers (“AAP”).

3. The Association of American Publishers (“AAP”) is a not-for-profit organization that represents the leading book, journal, and education publishers in the United States on matters of law and policy, advocating for outcomes that incentivize the publication of creative expression,

professional content, and learning solutions. AAP's membership includes approximately 130 individual members, who range from major commercial book and journal publishers to small, non-profit, university, and scholarly presses, as well as leading publishers of educational materials and digital learning platforms. AAP's members publish a substantial portion of the general, educational, and religious books produced in the United States in print and digital formats, including critically acclaimed, award-winning literature for adults, young adults, and children. AAP represents an industry that not only depends upon the free exercise of rights guaranteed by the First Amendment, but also exists in service to our Constitutional democracy, including the unequivocal freedoms to publish, read, and inform oneself.

4. The AAP has a number of members that do business in Texas who are vendors to school districts subject to House Bill 900 (the "Book Ban"). AAP also has many more members that publish titles that are distributed to Texas schools through third-party vendors subject to the Book Ban. As the latter category of AAP members will also have their books rated, they will experience the same harms discussed in paragraphs 12-16.

5. A number of AAP's members have only a partial set of records of past sales to Texas public schools or school districts. The records are limited because, among other reasons: (i) AAP members may sell books to Texas public schools or school districts without being aware of it; and (ii) AAP members may have document-retention policies under which records that are no longer needed are destroyed and/or not reasonably accessible. As a result, these AAP members are unable to comply with the Book Ban.

6. Even if AAP's members did possess these records, AAP's members have no way to know which books are in active use (or even what "active use" means), so it is impossible for

AAP members to undertake the task of rating and recalling (if applicable) these materials, absent receiving information from the schools.

7. Furthermore, schools may purchase the same books from multiple vendors so it may not be feasible to determine whether the copies of books sold by AAP members are those that remain in active use. With multiple vendors for the same book, the likelihood of consistent ratings is slim.

8. The rating system imposed by the Book Ban would be a burden on AAP's members, requiring significant time and expense to identify past sales and compare those to books in "active use." Some of AAP's members have sold tens of thousands of books to Texas schools and school districts, and it is estimated that hundreds of hours of work or even more would be required by each of these members to attempt to search sales records and compare them against lists of books in active use (assuming such lists were provided to AAP's member), as required by the Book Ban. It would be an enormous burden in terms of resources, staff, and costs, and would require significantly diverting existing staff or hiring new staff.

9. Likewise, applying ratings would be a significant burden on AAP's members. There are millions of books in Texas school libraries. Our members do not have existing staff or an existing process for the purpose of applying the ratings. It would be cost-prohibitive, difficult and time-consuming to hire and train new staff (or re-train existing staff) to apply ratings, given the vague and confusing process outlined by the Book Ban.

10. The amount of time per book (e.g., a 450-page work of fiction or non-fiction in a high school library would take significantly longer to review than a picture book in an elementary school library), but broadly speaking the time to read, analyze, and possibly solicit other viewpoints could require a substantial, double-digit number of hours per book on average.

11. AAP members will have difficulty applying the rating standards set forth in the Book Ban for at least the following reasons:

- a. It is unclear what it means for library material to be “directly related” to the required curriculum (and therefore exempt from the ratings). Oftentimes AAP members do not even get copies of the curriculum.
- b. It is unclear how a vendor would know if library material is being used in a way that is directly related to the required curriculum.
- c. It is unclear what “active use” means.
- d. It is unclear how a vendor will know if a library material remains in “active use.”
- e. The “sexually relevant” rating is vague and confusing insofar as any de minimis, non-explicit reference, in any context, to sexual relations, could result in the rating. It could apply broadly to health-related works, religious texts, historical works, encyclopedias, dictionaries, and many other works.
- f. The “sexually explicit” rating is vague and confusing because the contextual analysis does not adjust for differences in ages or communities and does not provide for consideration of the work as a whole.
- g. Vendors may not have any knowledge about the contemporary community standards of decency nor do they know which community’s standards should be considered
- h. The balancing test is entirely subjective and cannot be applied with any consistency.

12. The ratings will stigmatize books that are rated “sexually explicit” or “sexually relevant” and will risk reducing sales of these works—not just to Texas schools, but globally, since the ratings are posted online. This, in turn, risks publishers foregoing investment in important new works.

13. The ratings could also reduce royalties to authors, and therefore reduce the incentive for authors to produce new works or expose those who issue ratings to potential liability for doing so.

14. The ratings will also chill members’ and their authors’ constitutionally protected speech. The ratings compel our members to adopt a highly subjective opinion that they patently disagree with or suffer a significant financial penalty. If members refuse to adopt the State’s speech as their own, then they lose all business with Texas public school districts.

15. By refusing to rate books, or by being placed on the State’s blacklist, the universe of vendors and titles would contract. A member would be forced to weigh the prejudice to sales and distribution globally against the prospect of losing the school market in Texas. Many members would consider no longer selling books to Texas schools. The impact of the State licensing regime could extend beyond the State’s borders. Other localities or states may rely on the ratings, either informally or formally. In addition, other states may decide to adopt their own ratings requirements, which could lead to a patchwork of inconsistent rating regimes and likely result in vendors adopting the most restrictive ratings for all states.

16. Members have reported that there are schools that are stopping or delaying buying books. This trend may escalate in August, when fall back-to-school buying ordinarily starts. The confusion is expected to be detrimental to our members’ sales.

17. With less than 45 days until the law takes effect, our members remain confused about their responsibilities under the Book Ban, including (but not limited to) the following unanswered questions:

- a. What is the definition of a “recall”? Is a refund required if a vendor is required to recall material?
- b. How does a vendor communicate a library material rating to a school? On the library material? In marketing material? On a pro forma invoice? A list? Other?
- c. What happens if different vendors adopt different ratings for identical titles?
- d. What happens if a vendor no longer sells a book that is still in “active use” by a district? Is it then compelled to re-purchase the book and rate it?
- e. May vendors sell library material to a school prior to submission of the list with ratings for prior sales (on or before April 1, 2024), and if so, must that library material be rated?
- f. If after being added to the banned vendor list, a vendor changes its ratings as instructed by the TEA, does the TEA have discretion to refuse removal from the banned vendor list?

18. I hereby declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed this 21st day of July, 2023.

/s/ Matthew Stratton
Matthew Stratton

EXHIBIT F

submitted an *amicus curiae* brief before the Circuit Court of Virginia Beach *In re: A Court of Mist and Fury* and *In re: Gender Queer, a Memoir*, in which a petitioner asked the court to find these two books obscene for unrestricted viewing by minors; the Court denied that request. It is currently a plaintiff before the Western District of Arkansas in *Fayetteville Public Library et al. v. Crawford County Arkansas et al.*, asking the court to declare portions of an Arkansas law unconstitutional for violating plaintiffs' rights to disseminate, receive, and read constitutionally protected books and other media.

4. The Guild counts historians, biographers, academicians, novelists, journalists, and other writers of non-fiction and fiction as members; many write for children or young adults, and are frequent contributors to the most influential and well-respected publications in every field. The Guild works to promote the rights and professional interest of authors in various areas, including copyright, freedom of expression, antitrust, fair contracts and artificial intelligence. Many Guild members earn a substantial portion of their livelihoods through their writing, and the ability to write freely and distribute their work is vital to their incomes, as well as to the culture.

5. The ability of Guild members to write on topics of their choosing and to have their work available through bookstores and libraries is vital to their ability to make a living in their chosen profession. Schools are a vital market for many Guild members, especially for children's, young adult, and crossover writers.

6. Guild members and their works are subject to House Bill 900 (the "Book Ban").

7. The rating system imposed by the Book Ban will effectively ban many educationally valuable books written by our members from schools. Books marked "sexually explicit" are expressly banned, even for students who are 18 and older, and books marked as "sexually relevant" are effectively banned, as they are highly unlikely to be included in official

curricula due to the difficulty of librarians getting written consent from parents to allow the books to circulate. This includes books where there is *any* reference to the sex of a person, anything related to people's sexuality, biology related to human or animal sexuality. Given the overbreadth, vagueness, and ambiguity of the law, book sellers will have to err far on the side of being over-inclusive in rating books as either "sexually explicit" or "sexually relevant". Many authors' books will undoubtedly be effectively banned in the significant Texas school market even when there is nothing remotely obscene or sexualized in them. As a result, our members will lose the entire Texas school market, which will adversely impact their incomes. Because many publishers and books sellers cannot practically sell different books to different markets, authors will lose school market throughout the country – which many children's, young adult, and literary classics authors rely upon.

8. The law also ignores the literary artistic, political, or scientific value of the work as a whole. The definitions in the Book Ban allow the State to cherry-pick terms and passages to justify removing books. Rating a book as either "sexually explicit" or "sexually relevant" will create the false impression that the book is obscene or pornographic. This stands to disproportionately apply to books that include LGBTQ+ or sexually active characters, which are often accused of containing obscenity even when they do not. As a result, the Book Ban would bar books from schools based on the political attitude that discussions of sexuality (especially LGBTQ+ sexuality) are "patently offensive" by their very nature.

9. Under the Book Ban, authors do not have any involvement in the rating process. This greatly increases the odds that their work will be mischaracterized by individuals determined to remove books based upon viewpoint discrimination. There is no recourse under the Book Ban for an author to protest a rating or attempt to provide context for the passages in question.

10. The Book Ban will lead to self-censorship among both authors and publishers, so that they can retain the school markets and avoid being offensively labelled. We have already seen this occur in other states such as Florida, where textbook publishers attempted to eliminate race from a discussion about Rosa Parks.

11. Given the influence of the Texas book market, this vague and ambiguous rating system could result in publishers not daring to publish some books out of fear that they would violate the Book Ban, which could devastate authors' incomes and careers.

12. The lack of guidance in the Book Ban makes it effectively impossible for authors to know how to meet its standards in their future works. Of the twenty books by Jodi Picoult that were banned in Florida, half of them didn't even have a kiss in them. The only surefire way to avoid a damaging rating under the Book Ban is to eliminate any reference to sex or sexuality altogether, which is impossible for most works about humans and biology, since most humans and animals have a sex (i.e., are male or female) and have children through sex. Further, because the Book Ban makes no distinction as to age, the censorship will cause authors who wish to sell to schools to avoid writing stories or books that address important issues that many teenagers experience in their lives or communities, including important topics like family, love, preventing or dealing with pregnancy. Like teachers, authors of books written for children and young adults know their audience – they are highly educated and deeply invested in understanding and speaking to the age group they are addressing. The Book Ban will censor authors' speech at the cost of the children's and teenagers' comprehension of their world, including some who are of or close to voting age. It is an attack on democracy itself.

13. I hereby declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed this 24th day of July, 2023.

/s/ Mary E. Rasenberger

Mary E. Rasenberger

EXHIBIT G

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

BOOK PEOPLE, INC., VBK d/b/a BLUE	§
WILLOW BOOKSHOP, AMERICAN	§
BOOKSELLERS ASSOCIATION,	§
ASSOCIATION OF AMERICAN	§
PUBLISHERS, INC., AUTHORS	§
GUILD, INC., COMIC BOOK LEGAL	§
DEFENSE FUND,	§
	§
Plaintiffs,	§
	§
v.	§
	§
MARTHA WONG in her official capacity	§
as chair of the Texas State Library and	§
Archives Commission, KEVEN ELLIS in	§
his official capacity as chair of the Texas	§
Board of Education, MIKE MORATH in	§
his official capacity as Commissioner of	§
Education,	§
	§
Defendants.	§

CASE NO.

DECLARATION OF JEFF TREXLER

I, Jeff Trexler, Pursuant to 28 U.S.C. § 1746, do declare:

1. My name is Jeff Trexler. I am over twenty-one (21) years of age and am fully competent to testify about the matters contained herein. The following statements are made within my personal knowledge and are true and correct.

2. I am the Interim Director of the Board of the Comic Book Legal Defense Fund (“CBLDF”). I have held this position since 2020.

3. The CBLDF is a nonprofit organization founded in 1986 dedicated to protecting the legal rights of the comic arts community. With a membership that includes creators, publishers, retailers, educators, librarians, and fans, the CBLDF has defended dozens of First Amendment

cases in courts across the United States and led important educational initiatives promoting comics literacy and free expression.

4. In recent years, the comic arts have received widespread recognition for their value in expressing serious literary, artistic, political, and scientific content in genres across demographic categories, including middle-grade, young adult, and material addressed to older audiences. A particularly significant historical milestone in this regard was the awarding of a Pulitzer Prize in 1992 to Art Spiegelman for *Maus*, a graphic novel about the Holocaust. Subsequent decades have seen numerous other cartoonists and graphic novelists win significant awards, including Neil Gaiman, author of *The Sandman* (World Fantasy Award, 1991); Marjane Satrapi, author of *Persepolis* (Angoulême Coup de Couer Award, 2013); Alison Bechdel, author of *Fun Home* (MacArthur Award, 2014); Ari Folman and David Polonsky, creators of *Anne Frank’s Diary: The Graphic Adaptation* (Will Eisner Comic Industry Award and the Munich Documentation Center for the History of National Socialism, 2019); Maia Kobabe, author of *Gender Queer* (American Library Association Stonewall Book Award and Alex Award, 2020); and Mike Curato, author of *Flamer* (Lambda Literary Award, 2021).

5. Comic artists, publishers and retailers are all subject to the requirements of House Bill 900 (the “Book Ban”).

6. Despite their accolades and obvious literary merit, all of the award-winning works listed above would likely be subject to restriction or removal under the definitions of “sexually relevant” and “sexually explicit” contained in the Book Ban.

7. Determining where books may fall in light of these vague categories is not at all clear, especially in light of recent mischaracterizations of certain graphic novels as obscene,

pornographic, or otherwise “harmful to minors” despite the books’ demonstrable and widely recognized artistic, meritorious, and serious value for minors.

8. *Maus*, for instance, is one of the most respected graphic works of our generation and a pillar of Holocaust studies. But it contains a single image of a partially nude woman. Under the Book Ban, that would appear to be enough to qualify as “sexually relevant” material, subject to restriction and parental approval. That single image could also lead to a total ban, depending on who is performing the multi-layered contextual analysis required by the Book Ban. Losing this important work in libraries and classrooms would be a detriment to Holocaust education and a disservice to those who attempt to keep its memory alive.

9. Similarly, the illustrated *Anne Frank’s Diary: The Graphic Adaptation* could be subject to restriction or ban based on a brief description of male and female body parts. This work undoubtedly has societal valuable and clearly suitable for older students, but the Book Ban provides no mechanism for evaluating works based on their suitability for certain ages, nor does it allow for rating books on age-appropriate scale.

10. Should books like these be banned from public school libraries, Texas youth will not have available to them accurate and significant renditions of history that both help to educate about our past and help society not repeat grotesque wrongs, such as the Holocaust, in the future.

11. Many more works of equal merit are likely to be restricted or banned based on the Book Ban.

12. The public nature of the Book Ban’s ratings could also have a stigmatizing effect on comic works, depressing the market for these works.

13. For creators in the comic arts, these restrictions would substantially limit their ability to write freely on topics of their choosing and to have their work purchased by school districts and available to students.

14. Retail members and publishers are also subject to the rating system through their sales to public schools. The Book Ban would force comic retailers to engage in compelled speech by rating books based on criteria with which they do not agree.

15. These retailers would also be required to issue recalls for books that the State disfavors, forcing them to participate in the removal of important works from library shelves—a process with which they fundamentally disagree.

16. If the Book Ban is allowed to take effect, it will unconstitutionally compel the speech of retailers and publishers, while chilling the speech of comic artists.

17. I hereby declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed this 24th day of July, 2023.

/s/ Jeff Trexler

Jeff Trexler

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BOOK PEOPLE, INC., VBK, INC. d/b/a BLUE WILLOW BOOKSHOP, AMERICAN BOOKSELLERS ASSOCIATION, ASSOCIATION OF AMERICAN PUBLISHERS, AUTHORS GUILD, INC., COMIC BOOK LEGAL DEFENSE FUND

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Laura Lee Prather, Catherine L. Robb, Michael J. Lambert, Reid Pillifant, Haynes and Boone, LLP, 600 Congress Ave., Suite 1300, Austin, TX 78701 (512) 867-8400

DEFENDANTS

MARTHA WONG, KEVEN ELLIS, MIKE MORATH

County of Residence of First Listed Defendant Travis County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983. Brief description of cause: Civil rights action challenging the constitutionality of H.B. 900

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE Jul 25, 2023 SIGNATURE OF ATTORNEY OF RECORD /s/ Laura Lee Prather

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.