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Plaintiffs Book People, Inc., VBK, Inc. d/b/a Blue Willow Bookshop, American Booksellers Association, Association of American Publishers, Authors Guild, Inc., and Comic Book Legal Defense Fund (“Plaintiffs”) file this Motion for Preliminary Injunction under Fed. R. Civ. Proc. 65 (“Motion”) and ask this Court to enjoin the enforcement of H.B. 900¹ under 42 U.S.C. § 1983 because it violates the First and Fourteenth Amendments to the U.S. Constitution.

I. INTRODUCTION

This case concerns the looming implementation of H.B. 900, a recently enacted law that bans books deemed “sexually explicit” and restricts access to books deemed “sexually relevant” in public schools in violation of the First Amendment (the “Book Ban”). The Book Ban burdens Plaintiffs—a coalition of booksellers, publishers, and authors—with impossible demands, compels their speech on controversial topics, implicates them in the recall and removal from schools of books deemed “sexually explicit,” and grants the State licensing authority over what appears in school libraries. If booksellers resist these infringements on their First Amendment rights, the State will bar them from conducting business with any Texas public school and subject them to public censure. As for publishers and authors, they have no recourse and must live with the State banning their books and labeling them as unacceptable for minors. To preserve the fundamental free-speech rights guaranteed by the U.S. and Texas Constitutions,² the Book Ban must be enjoined.

II. STATEMENT OF FACTS

Gov. Greg Abbott signed the Book Ban on June 13, 2023, and it is scheduled to take effect

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.

² See *Ex parte Tucci*, 859 S.W.2d 1, 5 (Tex. 1993) (freedom of expression protections in the Texas Constitution are broader than the U.S. Constitution).

on September 1, 2023. The Book Ban requires that a “library material vendor”³ rate all “library material”⁴ previously sold to a “school district or open-enrollment charter school” (“public schools”) as “sexually explicit” or “sexually relevant” based on vague and ambiguous content-based criteria.⁵ *See* proposed TEX. EDUC. CODE §§ 33.021, 35.001, 35.002, 35.005.⁶ The Book Ban offers three possible book ratings: “sexually relevant,” “sexually explicit,” or “no rating.” These ratings ultimately determine a bookseller’s ability to sell them to schools and consequently, students’ ability to access them. Books deemed “sexually relevant” may only be accessed “outside the school library” with written parental consent, while books deemed “sexually explicit” are banned entirely. §§ 35.002, 35.005.

“Sexually relevant material” is defined as “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.” § 35.001(3). The vast definition of “sexual conduct”⁷ seemingly encompasses all books that mention any sexual-related topic. Plaintiffs fundamentally oppose these subjective standards and sweeping restrictions on students’ access to these materials. Specifically, members of the Authors Guild have

³ 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.

⁴ “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”).

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

⁶ Below references to the Education Code refer to *proposed* sections.

⁷ “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).

serious concerns that even a “sexually relevant” rating, which will be posted on Texas Education Agency’s (“TEA”) website, could unduly stigmatize their books and affect their ability to sell or distribute them in the future.⁸

While the Book Ban exempts material “related to the curriculum” based on § 28.002(a) of the Education Code, that Section provides little guidance for what the exemption covers.⁹ Because there is no statewide curriculum in Texas, there is no way to know what material is “related to the curriculum” across all 1,025 Texas school districts. Curricula vary from classroom-to-classroom within a district and from day-to-day or year-to-year within a classroom, requiring consistent reevaluation.¹⁰ Even if there was a statewide standard, it would be unclear what is “related to” it.

The definition of “sexually explicit material” includes the above definition of “sexually relevant material” and requires that the depiction be presented “in a way that is patently offensive, as defined by Section 43.21, Penal Code.” §§ 33.021(a); 35.001(2). That definition requires Plaintiffs to determine whether a book is “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 Plaintiffs whether this community standard is based on Austin, Texas, or Onalaska, Texas—or any of the more than 1,200 incorporated municipalities across Texas. Thus, Plaintiffs lack clarity to determine whether a book conforms to current community standards.¹¹

⁸ See Declaration of Mary E. Rasenberger, CEO of the Guild, attached as Exhibit B (“Rasenberger Decl.”) ¶¶ 7-12.

⁹ § 28.002(a) provides only a general list of subjects that curriculum must cover.

¹⁰ Further, if a teacher brings a book from home to use in her lessons, would that book be presumed to “relate to the curriculum” when it enters the classroom? How would Plaintiffs even be aware of its use, much less whether it is considered “related to the curriculum” when attempting to perform their rating obligations? Questions abound. See Declaration of Valerie Koehler, owner of Blue Willow Bookshop, attached as Exhibit C (“Koehler Decl.”) ¶ 19; Declaration of Matthew Stratton, Deputy General Counsel of AAP, attached as Exhibit D (“Stratton Decl.”) ¶ 11.a-b.

¹¹ See Rejsek Decl. ¶ 17; Grogan Decl. ¶ 9; Stratton Decl. ¶ 11.g.

Besides assessing the current unspecified community standards, Plaintiffs must “perform a contextual analysis”¹² before finding that books are “patently offensive.” § 35.0021. To perform the analysis, the Book Ban contains three subjective 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.

§ 35.0021(b). The Book Ban prescribes a balancing test in which Plaintiffs must “weigh and balance” each of these factors while recognizing that each instance “may present a unique mix of factors.” § 35.0021(c). The Book Ban also instructs booksellers to “consider the full context . . . 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 material.” § 35.0021(d). Departing from any constitutionally recognized standards, Plaintiffs are unclear how to weigh the various factors outlined above and how to perform the required confusing contextual analyses. *See* Declaration of Charley Rejsek, CEO of BookPeople, attached as Exhibit E (“Rejsek Decl.”) ¶ 17; Stratton Decl. ¶ 11.f. Plaintiffs do not believe their members or employees have the time or the training to properly make these assessments, which could lead to the banning

¹² The Book Ban will cause the prohibition of swaths of non-obscene, 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. PEN. CODE §43.21(a)(1). Instead, a book can be banned if it depicts “sexual conduct” in a way that is “patently offensive,” regardless of whether it has societal value, and need not be considered as a whole.

of many classic works of literature.¹³ See Rejsek Decl. ¶ 17; Koehler Decl. ¶¶ 13, 18; Declaration of David Grogan, Director of the American Booksellers for Free Expression, Advocacy and Public Policy, attached as Exhibit F (“Grogan Decl.”) ¶¶ 7, 11.; Stratton Decl. ¶ 9; Trexler Decl. ¶¶ 8-9.

After considering the curriculum under Tex. Educ. Code § 28.002(a), the relevant definitions under Penal Code §§ 43.21 and 43.25, weighing the Book Ban’s three principal factors under § 35.0021(b), and performing the two required contextual analyses under §§ 35.0021(c)-(d), Plaintiffs must then issue a rating *for each work they have sold or could sell in the future*. A list of each bookseller’s ratings as will be posted “in a conspicuous place” on TEA’s website “as soon as practicable.” § 35.002(e). This process begins with the rapidly approaching 2023-2024 school year and repeats each year thereafter. *Id.* § 35.002(d).

If TEA disagrees with any ratings, it may compel a bookseller to accept the agency’s revised rating or face reprisal from the State. Upon written notice of TEA’s corrected rating,¹⁴ booksellers are required to revise their ratings “to the agency’s corrected rating” within 60 days. § 35.003(b)(1). Presumably, this revised rating is then added to each bookseller’s public entries on TEA’s website. If a bookseller refuses to do so, it will be banned from selling *any* books to public schools. § 35.003(d). Plaintiffs are concerned that these revised ratings—which booksellers are coerced to accept by statute—will be interpreted by the public as Plaintiffs’ own independent rating when it is, in fact, speech compelled by the State. See Rejsek Decl. ¶¶ 19-21; Koehler Decl.

¹³ The Book Ban would appear to restrict access—or ban entirely—such classic works as *Twelfth Night*, *A Midsummer Night’s Dream*, *Romeo and Juliet*, *Of Mice and Men*, *Ulysses*, *Jane Eyre*, *Maus*, *Anne Frank’s Diary: The Graphic Adaptation*, *The Canterbury Tales*, *I Know Why the Caged Bird Sings*, *Lonesome Dove*, and even the Bible. See [Debate on Tex. H.B.900 in the House Committee on Public Education](#), 88th Leg. (Mar. 21, 2023); Declaration of Jeff Trexler, Executive Director of the CBLDF, attached as Exhibit G (“Trexler Decl.”) ¶¶ 7-9.

¹⁴ The Book Ban does not require TEA to provide any justification for its decision to overrule a bookseller’s rating or the right to appeal the rating change.

¶¶ 17, 21-22; Grogan Decl. ¶ 15; Trexler Decl. ¶¶ 14, 16.

If a bookseller refuses to accept the State’s compelled rating as its own, it will not only be prohibited from selling books to public schools, but it will also face public censure by the State. Under the Book Ban, TEA must post a list of booksellers who fail to assent to the agency’s compelled ratings “in a conspicuous place” on its website. § 35.003(c). School districts are barred from purchasing books from these blacklisted booksellers, who have no recourse for the loss of business. §§ 35.003(d); 35.004. This Hobson’s Choice requires booksellers accept the State’s compelled speech as their own or sacrifice their ability to conduct business with school districts. Plaintiffs stand to suffer significant financial—and reputational—damages from their loss of business with school districts. *See* Rejsek Decl. ¶¶ 20-22; Koehler Decl. ¶¶ 14-16, 21-25; Grogan Decl. ¶¶ 19-20; Rasenberger Decl. ¶ 7; Trexler Decl. ¶ 12. Yet the Book Ban bars booksellers from bringing claims against school districts, open-enrollment charter schools, or their employees for any damages caused by it. § 35.004.

Plaintiffs are not only banned from selling books rated as “sexually explicit” in the future, but they must “issue a recall” for all such books they have ever sold and that are still “in active use” by a public school. § 35.002(b). Plaintiffs, some of whom have been in business for decades, are unable to comply with this onerous requirement because they do not have records of every book they have ever sold to a public school. *See* Rejsek Decl. ¶¶ 9-10; Koehler Decl. ¶ 7; Grogan Decl. ¶ 6; Stratton Decl. ¶ 5. Nor would they know which books are “in active use” in a school. *See* Rejsek Decl. ¶ 11; Koehler Decl. ¶ 9; Stratton Decl. ¶ 6.

Even if they could comply with this unfunded mandate, Plaintiffs are conscripted into aiding the State in the *removal* of books from libraries based on content-based criteria with which Plaintiffs sincerely disagree and could lead to public backlash against booksellers or even liability

from authors. Such a recall would not only be antithetical to the First Amendment, but Plaintiffs are also concerned it would be interpreted as their own speech, when, in fact, their speech is being compelled by the State if they want to continue selling books, even where Plaintiffs specifically disagree with the State’s rating. *See* Rejsek Decl. ¶¶ 19-21; Koehler Decl. ¶¶ 17, 21-22; Grogan Decl. ¶ 22; Stratton Decl. ¶ 14; Trexler Decl. ¶¶ 15-16. Further, although the Book Ban clearly requires booksellers to submit by April 1, 2024 a list of all “sexually relevant” and “sexually explicit” material it has sold in the past that is still in active use by school districts, it is unclear whether Plaintiffs can sell books to public schools before compiling such a list.

III. ARGUMENT

Plaintiffs are entitled to a preliminary injunction if they establish: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that the injunction might cause to the defendant; and (4) that the injunction will not disserve the public interest.” *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 288 (5th Cir. 2012). These elements are not examined in isolation but balanced in consideration of each other. *State of Texas v. Seatrain Int’l, S.A.*, 518 F.2d 175, 180 (5th Cir. 1975). As shown below, Plaintiffs can satisfy each element and are thus entitled to a preliminary injunction.

A. Plaintiffs have standing to challenge the Book Ban.

Plaintiffs have standing to facially challenge the Book Ban. Because Plaintiffs have sold books to public schools and intend to continue selling books to public schools, they will be subject to the Book Ban’s unconstitutional requirements. *See Zimmerman v. City of Austin, Tex.*, 881 F.3d 378, 388 (5th Cir. 2018) (to establish an injury sufficient to raise a facial challenge under the First Amendment, “a plaintiff must produce evidence of an intention to engage in a course of conduct

arguably affected with a constitutional interest, but proscribed by statute”); *see* Rejsek Decl. ¶ 4; Koehler Decl. ¶¶ 3-5; Grogan Decl. ¶ 5; Stratton Decl. ¶ 4; Rasenberger Decl. ¶ 6; Trexler Decl. ¶ 5. The Book Ban also violates the constitutional rights of others not before the Court, such as students and other booksellers, publishers, and authors, and chills their protected speech. *See Virginia v. Am. Booksellers Ass’n.*, 484 U.S. 383, 392–93 (1988).

Plaintiffs also have standing because of their injuries. To establish standing, a plaintiff must show an (1) “injury in fact,” (2) a sufficient “causal connection between the injury and the conduct complained of,” and (3) a “likel[i]hood” that the injury “will be redressed by a favorable decision.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157–58 (2014). An injury that is “concrete and particularized” and “actual or imminent” satisfies the standing requirement. *Id.* at 158.

Plaintiffs have standing because they have suffered an injury in fact caused by the Book Ban that can be redressed by issuing a preliminary injunction. Plaintiffs have been injured by the Book Ban because at least one school district, Katy ISD, ceased all library book purchases, including from Plaintiffs, after the Book Ban’s passage.¹⁵ Because Plaintiffs have lost business that, but-for the Book Ban, they would have received from Katy ISD, they have already suffered “actual” injury. Standing is sufficient on that basis alone. *Id.*

Plaintiffs also have standing because further injury is “imminent.” *Id.* When the Book Ban takes effect on September 1, 2023, Plaintiffs will be required to rate all books previously sold to a public school as “sexually explicit material” or “sexually relevant material.” TEX. EDUC. CODE § 35.002. But Plaintiffs cannot issue the ratings because, among other reasons, they do not have lists of all library materials sold to or in “active use” by public schools. Thus, because they cannot issue

¹⁵ *See* Claire Goodman, [Katy ISD halts all library book purchases, new books stored](#), HOUSTON CHRONICLE (June 27, 2023); Koehler Decl. ¶ 24.

the ratings as required, Plaintiffs will be prohibited from selling *any* books to public schools, which will cause them economic and reputational damages. § 35.002(a); *see* Rejsek Decl. ¶ 22; Koehler Decl. ¶¶ 7-8; Grogan Decl. ¶ 5; Stratton Decl. ¶ 5; Rasenberger Decl. ¶ 11; Trexler Decl. ¶ 12.

Plaintiffs will suffer further injury because the State will seek to compel their speech by requiring them to rate books based on the State’s subjective criteria with which they disagree. *See 303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2308 (2023) (standing is demonstrated in a compelled speech case by showing that a “credible threat” exists that the State will “seek to compel speech” from a speaker which the speaker “d[oes] not wish to produce”); Rejsek Decl. ¶¶ 19, 21; Koehler Decl. ¶ 17; Grogan Decl. ¶ 15; Stratton Decl. ¶ 14; Trexler Decl. ¶¶ 14, 16.

B. Plaintiffs are likely to succeed in proving that the Book Ban is unconstitutional.

1. The Book Ban compels speech in violation of the First Amendment because it requires Plaintiffs to express the government’s views.

The Book Ban compels Plaintiffs to speak in ways in which they disagree, forcing them to adopt the State’s preferred message or face sanctions—a fundamental and flagrant violation of the U.S. Constitution’s prohibition against compelled speech.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

W. Va. Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943). “Just as the First Amendment may prevent the government from prohibiting speech, the Amendment may prevent the government from compelling individuals to express certain views.” *U.S. v. United Foods, Inc.*, 533 U.S. 405, 410 (2001).

The Book Ban directly conflicts with settled constitutional jurisprudence by compelling Plaintiffs’ speech in at least two ways. First, the Book Ban coerces Plaintiffs to express that a book is “sexually explicit” or “sexually relevant” based on the government’s standards with which they

disagree. Worse, the Book Ban requires Plaintiffs to revise their own independent assessments to conform with the State’s views. This violates the principle that “the government may not compel a person to speak its own preferred messages.” *303 Creative LLC*, 143 S. Ct. at 2312.¹⁶ Earlier this year, in *303 Creative*, the U.S. Supreme Court struck down a Colorado law that sought “to force an individual to speak in ways that align with its views but defy her conscience about a matter of major significance.” *Id.* at 2321. By forcing a person to “utter what is not in [her] mind,” the State attempted “something the First Amendment does not tolerate.” *Id.* at 2318.

The Book Ban is equally unconstitutional here, where the State seeks to force booksellers to adopt its preferred message. Booksellers must first “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 government with which they disagree. TEX. EDUC. CODE § 35.002(c); Rejsek Decl. ¶¶ 19, 21; Koehler Decl. ¶ 17; Grogan Decl. ¶ 15; Stratton Decl. ¶ 14. Booksellers that fail to issue ratings are prohibited from selling *any* books to public schools. § 35.002(a). The government may then review the booksellers’ ratings and overrule them for any book that it believes was “incorrectly rated.” § 35.003(a). If a bookseller fails to adopt the government’s imposed rating, public schools will be banned from purchasing *any* books from it, which will result in a significant financial injury. §§ 35.003(c), (d). The purchasing ban continues indefinitely unless and until the bookseller caves to the government’s demands. The Book Ban’s repressive speech regime—and the associated financial sanctions for noncompliance—are “more than enough [] to represent an impermissible abridgment of the First Amendment’s right to speak

¹⁶ See also *Knox v. Serv. Empl. Int’l Union*, 567 U.S. 298, 309 (2012) (“government may not . . . compel the endorsement of ideas that it approves”); *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006) (“freedom of speech prohibits the government from telling people what they must say”).

freely.” 303 *Creative*, 143 S. Ct. at 2313.¹⁷

2. The Book Ban is unconstitutionally vague because its unclear and confusing terms fail to provide explicit standards and would cause disparate results.

The Book Ban contains many unconstitutionally vague provisions. A law is unconstitutionally vague when it (1) fails to provide a “person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly” or (2) fails to provide “explicit standards” for applying the law “to avoid arbitrary and discriminatory applications.” *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 551 (5th Cir. 2008). Because the Book Ban implicates constitutionally protected expression, it must provide heightened specificity and clarity in its definitions and protections against arbitrary enforcement. *Id.* at 552 (a “more stringent vagueness test” applies when a law “threatens to inhibit the exercise of constitutionally protected rights”).¹⁸

The Book Ban is unconstitutionally vague in at least four ways.¹⁹ First, the definitions of “sexually explicit material” and “sexually relevant material” are inherently vague because they are created out of whole cloth by the Legislature, are confusing, and have no basis in existing law. TEX. EDUC. CODE §§ 33.021, 35.001(3). While they purport to 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 how to know what curriculum exists and what is “related to” such a curriculum. Curricula vary from day-to-day, year-to-year, and district-to-district—and are consistently

¹⁷ See also *Agency for Int’l Devel. v. Alliance for Open Society Int’l.*, 570 U.S. 205, 220 (2013) (striking law requiring the adoption of the government’s views as a condition of federal funds).

¹⁸ See also *Smith v. Goguen*, 415 U.S. 566, 573 (1974) (when a law is “capable of reaching expression sheltered by the First Amendment, the [vagueness] doctrine demands a greater degree of specificity than in other contexts.”).

¹⁹ See *Interstate Circuit, Inc. v. City of Dallas*, 390 U.S. 676, 682 (1968) (Dallas ordinance that created the “Motion Picture Classification Board” that rated films as “not suitable for young persons” was unconstitutionally vague).

reevaluated. The definition of “sexually relevant material” is particularly vague because it refers to Tex. Penal Code § 43.21, which defines “obscene” consistent with *Miller*, 413 U.S. at 24. But the Book Ban cherry-picks the definition of “patently offensive” from that test, noticeably excluding the third prong of the *Miller* test—whether the material “taken as a whole, lacks serious literary, artistic, political, and scientific value.” The State’s standard thus fails to pass constitutional muster and would be difficult for a person of ordinary intelligence to apply, resulting in arbitrary applications.²⁰

Second, the convoluted “contextual analysis” required to determine whether a book is “sexually explicit” adds to the confusion. TEX. EDUC. CODE § 35.0021. To conduct a “contextual analysis,” the Book Ban requires the consideration of three vague factors not found elsewhere in law: (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; (3) and whether a reasonable person would find that the material intentionally panders to, titillates, or shocks the reader.” §§ 35.0021(b)(1)-(3). Although the Book Ban emphasizes that the analysis should be “contextual,” it seemingly contradicts itself by requiring that “each instance of a description, depiction, or portrayal of sexual conduct” be considered and that “contextual determinations are necessarily highly fact-specific.” §§ 35.0021(c), (d). This results in a highly personal and subjective test, which will yield widely disparate ratings—even for the same book—as dozens of booksellers attempt to categorize thousands of books. *See* Rejsek Decl. ¶ 17; Koehler Decl. ¶ 18; Grogan Decl. ¶¶ 9, 12, 13, 17; Stratton Decl. ¶ 11; Rasenberger Decl. ¶¶ 7-11.

²⁰ The Ban requires booksellers to make subjective assessments based on unclear criteria untethered to the defined bounds of the *Miller* test. *See Reno v. ACLU*, 521 U.S. at 873–74 (the third prong of the *Miller* test “critically limits the uncertain sweep of the obscenity definition”).

Third, the Book Ban requires booksellers to “recall” books deemed sexually explicit if they are still “in active use.” § 35.002(b). But the Book Ban provides no definition as to what constitutes a “recall” or “active use,”²¹ and fails to explain what happens if a school district fails to heed this recall. These definitions (or lack thereof) are not incidental to the Book Ban, since a bookseller’s ability to contract with school districts is premised on compliance with these vague terms. Finally, the Book Ban is unclear 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 submit their ratings to the State). This could cause some districts to refuse to enter into contracts until ratings are received. Because these imprecise statutory terms leave “grave uncertainty” about how to understand their scope, they are void for vagueness. *See Johnson v. United States*, 576 U.S. 591, 597, 602 (2015).

3. The Book Ban is an unconstitutional prior restraint because it prevents the distribution of constitutionally protected works without judicial review.

The Book Ban vests the State with unbridled discretion, without judicial oversight, to decide which books are available in public schools and which booksellers can conduct business with public schools. The State ultimately determines which books are banned in public schools by rating them as “sexually explicit,” even if they are constitutionally protected, based on its own subjective criteria. Booksellers that do not adopt the State’s ratings are blocked from selling *any* books to public schools, regardless of their rating. This results in an unconstitutional system of prior restraints.²² *See Chiu v. Plano Indep. Sch. Dist.*, 339 F.3d 273, 280 (5th Cir. 2003) (“The

²¹ 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.” “Active use” could presumably 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 their inventory or they do not intend to sell the book.

²² *See also Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503 (1952) (striking down a New York law that “require[d] that permission to communicate ideas be obtained in advance from state officials who judge the content of the words and pictures sought to be communicated . . . such a

prohibition of distributing literature is a classic form of a prior restraint.”).

Prior restraints, such as the Book Ban, “are the most serious and the least tolerable infringement on First Amendment rights” and face a “heavy presumption against [their] constitutional validity.” *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). In an analogous case, the U.S. Supreme Court struck down a Rhode Island law that established a Commission that reviewed and rated certain books as “objectionable for sale, distribution or display to youths under 18 years of age.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 66 (1963). The Court found that this scheme, in which distributors stopped selling the “suspect” publications in response, was an unconstitutional “system of prior administrative restraints” because it (1) suppressed the distribution of non-obscene, constitutionally protected books (2) without a judicial determination that the content could lawfully be banned. *Id.* (“[A] State is not free to adopt whatever procedures it pleases for dealing with obscenity without regard to the possible consequences for constitutionally protected speech.”).

So too is the situation here. First, because the Book Ban does not consider whether books have literary, artistic, political or scientific value, as required by the *Miller/Ginsberg* test, it sweeps a wide swath of constitutionally protected works within its definition of “sexually explicit material.” See *Ginsberg v. State of N. Y.*, 390 U.S. 629 (1968), *modified by Miller v. California*, 413 U.S. 15, 24 (1973). It also prevents booksellers from distributing constitutionally protected books in the future based on unrelated past government determinations. See *Universal Amusement Co., Inc. v. Vance*, 587 F.2d 159, 166 (5th Cir. 1978), *aff'd*, 445 U.S. 308 (1980) (“[E]njoin(ing) the future operation of a (business) which disseminates presumptively First Amendment protected

previous restraint is a form of infringement upon freedom of expression to be especially condemned”).

materials solely on the basis of the nature of the materials which were sold . . . in the past” “would constitute an impermissible prior restraint.”)

Second, the Book Ban improperly provides no due process or ability to challenge the State’s final determinations. Booksellers have no opportunity to challenge the State’s “corrected” ratings or decision to ban them from selling books to public schools before the TEA, let alone a judicial body. *See Freedman v. State of Md.*, 380 U.S. 51, 58 (1965) (“[O]nly a procedure requiring a judicial determination suffices to impose a valid final restraint.”); *Penthouse Int’l, Ltd. v. McAuliffe*, 610 F.2d 1353 (5th Cir. 1980) (“There must be some judicial determination of obscenity [b]efore a seizure or ‘constructive seizure’ may occur.”).²³ Publishers and authors are also left with no recourse against the State. Without a judicial determination that the books can be lawfully banned, the constitutionality of the statute is doomed.

4. The Book Ban is facially unconstitutional because it is a content-based regulation not narrowly tailored to a compelling government interest.

The Book Ban is a content-based regulation of speech that is “presumptively unconstitutional” because it “applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015) (a content-based regulation “‘on its face’ draws distinctions based on the message a speaker conveys”). 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 restricted, based on its content.²⁴ The Book Ban requires booksellers to review a book’s specific content, such as “a written description, illustration, photographic image, video image, or audio file,” to

²³ Again, a bookseller’s *only* (and insufficient) recourse is to agree to the government’s demand of compelled speech.

²⁴ The Book Book Ban also 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 their content. § 35.001(3).

determine whether it contains “communication, language, or material” that “describes, depicts, or portrays sexual conduct, as defined by Section 43.25, Penal Code.” TEX. EDUC. CODE §§ 33.21(a); 35.001(3). If so, the book must be rated as either “sexually explicit” or “sexually relevant” and would be subject to the Book Ban. If the book also “describes, depicts, or portrays sexual conduct” “in a way that is patently offensive, as defined by Section 43.21, Penal Code,” it will be rated as “sexually explicit” and will be banned entirely. § 33.21(a). Because the Book Ban applies to speech depending on the “topic discussed or idea or message expressed,” it is a content-based regulation. *See Reed*, 576 U.S. at 163.

The Book Ban cannot survive strict scrutiny because even if it serves a compelling government interest, it is not narrowly tailored to achieve that interest or the least restrictive means of advancing that interest. *Sable Commc’ns of Cal., Inc. v. Fed. Commc’ns Comm’n*, 492 U.S. 115, 126 (1989). It is true that the government has an interest in protecting minors from materials that are obscene and harmful. *See Ginsberg*, 390 U.S. at 636–43. But the Book Ban goes beyond this interest and broadly blocks the distribution of constitutionally protected works. *See Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213–14 (1975) (“Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.”).

The Book Ban improperly creates a new category of unprotected speech—books deemed “sexually explicit”—by defining it outside the bounds of obscenity. The State could have tracked the definition of “sexually explicit material” with the definition of obscenity, but it purposefully proscribed a broader category of prohibited speech not sanctioned by the U.S. Supreme Court. TEX. EDUC. CODE §§ 33.21(a); 35.001(3); *see Brown v. Entm’t Merchants Ass’n*, 564 U.S. 786, 791 (2011) (although obscenity is within the “well-defined and narrowly limited classes of speech”

that are not constitutionally protected, “new categories of unprotected speech may not be added to the list by a legislature that concludes certain speech is too harmful to be tolerated.”); *Reno v. ACLU*, 521 U.S. 844, 874-75 (1997) (“sexual expression which is indecent but not obscene is protected by the First Amendment”).

The Book Ban is also not narrowly tailored because the ratings do not vary based on the age of the reader.²⁵ The Book Ban, instead, uses a one-size-fits-all model for rating books for all K-12 students regardless of age or maturity. Under this overbroad policy, a high school senior may not have access to a book about issues of significant concern, such as teen pregnancy,²⁶ 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 not only be age-appropriate for them but also contribute to necessary discourse about matters of public concern facing their grade level.

Besides capturing constitutionally protected speech and failing to be narrowly tailored, the Book Ban is not the least restrictive means of achieving a compelling government interest. The Book Ban excessively burdens booksellers by requiring them to rate every book they have sold to a public school as “sexually explicit” or “sexually relevant,” if applicable, and provide those ratings to the State, which will post them online. For Plaintiffs that likely have sold hundreds of thousands of books to public schools over the decades, these burdens are onerous and extreme. *See* Rejsek Decl. ¶ 16; Koehler Decl. ¶¶ 8-10, 12-16; Grogan Decl. ¶ 7; Stratton Decl. ¶¶ 8-11. Because the Book Ban is neither narrowly tailored to achieve a compelling government interest nor the least restrictive means of advancing that interest, it fails strict scrutiny.

5. The Book Ban is unconstitutionally overbroad because it restricts and chills a

²⁵ *See Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 812 (2011) (law that failed to distinguish between ages of minors was not narrowly tailored).

²⁶ *See* Danika Ellis, [All 850 Books Texas Lawmaker Matt Krause Wants To Book Ban: An Analysis](#), BOOK RIOT, November 5, 2021 (“About 5% of the books banned have to do with pregnancy.”).

substantial amount of protected speech.

The Book Ban is also constitutionally overbroad because it “prohibits a substantial amount of protected speech relative to its plainly legitimate sweep.” *United States v. Hansen*, 143 S. Ct. 1932, 1939 (2023). The overbreadth doctrine prohibits the government from restricting even unprotected speech where “a substantial amount of protected speech is prohibited or chilled in the process.” *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 237 (2002). When a statute, such as the Book Ban, “sweeps so broadly, encompassing any number of constitutionally protected threats...it is overbroad” and should be invalidated. *Seals v. McBee*, 898 F.3d 587, 597 (5th Cir. 2018).

While the Book Ban may legitimately prohibit some obscene material from school libraries, any legitimate applications are outnumbered by the Book Ban’s sweeping prohibitions of protected speech. The Book Ban’s capacious definitions of “sexually explicit” and “sexually relevant” materials encompass not only books that may be constitutionally unprotected, but also a vast amount of constitutionally protected books, including classic works of literature that no reasonable person would find obscene. In this respect, the text of the Book Ban differs significantly from the U.S. Supreme Court cases on which its definitions are purportedly based. *See Free Speech Coal.*, 535 U.S. at 256 (invalidating statute that went beyond unprotected categories recognized in prior decisions). By severely limiting access to these works, the Book Ban also threatens to “deter or chill constitutionally protected speech” and causes authors to self-censor themselves, by which “society will lose their contributions to the marketplace of ideas.” *Hansen*, 143 S. Ct. at 1939.

The Court should also consider the effect on parties not presently before the Court. *Id.* at 1939 (“overbreadth doctrine allows a litigant ... to vindicate the rights of the silenced, as well as society's broader interest in hearing them speak”). Here, the Book Ban also threatens to impinge on the constitutional right of students “to receive information and ideas” from their school library.

Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 871 (1982).²⁷

6. The Book Ban unconstitutionally delegates government authority to regulate speech to private entities and individuals.

The delegation of government authority to regulate speech to private entities or individuals, such as the establishment of rating systems, is unconstitutional. *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). Because the Book Ban vests private “library material vendors” with the authority to rate and review books and determine whether they are allowed or restricted in public schools, it violates the First and Fourteenth Amendments to the U.S. Constitution. *See Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 553 (N.D. Tex. 2000) (state delegation of the selection and removal of library books to private citizens enjoined as an “improper delegation of governmental authority”).

C. Plaintiffs will suffer irreparable injury because their constitutional rights will be violated unless the Book Ban is enjoined.

Because, as explained above, the Book Ban violates Plaintiffs’ First Amendment rights, they will suffer irreparable injury unless the Book Ban is enjoined. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”); *Opulent Life Church*, 697 F.3d at 295 (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”).

In fact, Plaintiffs have already suffered irreparable injury because the Book Ban has caused at least one school district to stop buying books from them. *See* § III.A, *supra*; Koehler Decl. ¶ 24.

²⁷ *See also Martin v. City of Struthers*, 319 U.S. 141, 143 (1943) (the First Amendment “embraces the right to distribute literature, and necessarily protects the right to receive it.”); *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 188 (5th Cir. 1995).

If the Book Ban takes effect, Plaintiffs' injuries will continue to mount. Because Plaintiffs do not maintain lists of all library materials sold to public schools, they will be unable to comply with the Book Ban. *See* TEX. EDUC. CODE § 35.002(b). Thus, Plaintiffs will be prohibited from selling books to public schools, which will cause them economic damages. § 35.002(a).

D. The balance of equities and public interest weighs heavily in favor of enjoining the Book Ban because the First Amendment rights of Plaintiffs and other Texans will be infringed if a preliminary injunction is not granted.

The Court's consideration of the balance of the equities and the public interest merge when, as here, a preliminary injunction is filed against the government. *Nken v. Holder*, 556 U.S. 418, 435 (2009) ("The third and fourth factors, harm to the opposing party and the public interest, merge when the Government is the opposing party."). Both the balance of the equities and the public interest favor enjoining the Book Ban because the First Amendment rights of Plaintiffs and others will be infringed if a preliminary injunction is not granted. *See Opulent Life*, 697 F.3d at 298 ("Injunctions protecting First Amendment freedoms are always in the public interest.").

By contrast, neither Defendants nor the public have a legitimate interest in the enforcement of an unconstitutional law. *See De Leon v. Perry*, 975 F. Supp. 2d 632, 664 (W.D. Tex. 2014), *aff'd sub nom. De Leon v. Abbott*, 791 F.3d 619 (5th Cir. 2015) ("There is no harm from issuing a preliminary injunction that prevents the enforcement of a likely unconstitutional statute.").

IV. CONCLUSION

The Book Ban must be enjoined to avoid the compulsion of unwanted government speech, the institution of a state-wide book licensing regime, and the recall, removal, and banning of many constitutionally protected books in public schools. These unconstitutional consequences, coupled with a plethora of undue practical and financial burdens placed on Plaintiffs (and others) to attempt to comply with the Book Ban's vague and overbroad requirements, offend First Amendment rights at the core of our democracy. Plaintiffs thus respectfully request that the Motion be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 25th day of July 2023, a true and correct copy of the above document was served via the CM/ECF system to all counsel of record.

/s/ Laura Lee Prather

Laura Lee Prather

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

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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

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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.

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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

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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

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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).

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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:

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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

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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

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 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.

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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

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 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,**

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Plaintiffs,

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v.

CASE NO.

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**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,**

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Defendants.

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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 F

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 G

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