

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

In re: Gender Queer

Case No. CL22-1985

**Motion for Leave to Appear as Amici Curiae  
or, in the Alternative, to Appear as Persons Interested  
in the Sale or Commercial Distribution of the Book**

Main Street Books, LTD d/b/a Prince Books; KatMac LLC d/b/a Read Books;  
One More Page, LLC, d/b/a One More Page Books; Two Knickers, LLC d/b/a bbg  
tales for kids; American Booksellers for Free Expression; Association of American  
Publishers, Inc.; Authors Guild, Inc.; American Library Association; Virginia  
Library Association; and Freedom to Read Foundation (collectively, the  
“Movants”), by counsel, move for leave to appear and file an answer amicus curiae  
or, in the alternative, to appear as persons interested in the sale or commercial  
distribution of *Gender Queer* (the “Book”). See Va. Code Ann. § 18.2-384(F). In  
either status, Movants submit a motion to dismiss or to support the motions to  
dismiss previously submitted by the counsel for the other parties, attached hereto.

**Supporting Memorandum**

The motion for leave to file is based upon the following:

1. This case threatens the First Amendment right of minors to choose to read First Amendment-protected material, the First Amendment right of adults to do the same, and the First Amendment right of booksellers, librarians, and publishers to curate and provide access to such materials.

2. Movants’ members write, create, publish, produce, distribute, and sell books and literary works of all types, including materials that are scholarly, educational, artistic, scientific, and entertaining. All of the Movants both practice and promote free expression and the free exchange of ideas. The Movants are:

**Main Street Books, LTD d/b/a Prince Books** has for forty years been a general independent bookstore in Norfolk, Virginia.

**KatMac LLC d/b/a Read Books** is a small, independent bookshop carrying new books of all genres, for all ages, located in the ViBe Creative District within Virginia Beach, Virginia.

**One More Page, LLC, d/b/a One More Page Books** is an independent bookstore in Arlington-Falls Church, Virginia. It provides a place for its community to come together to share a love of reading and books through author talks, book clubs, wine and chocolate tastings and conversation. One More Page engages with the community where they are—whether in the store or beyond its walls.

**Two Knickers, LLC d/b/a bbgb tales for kids** has for twelve years been a children’s bookstore in Richmond, Virginia. It is a place where minors of all ages—from birth to eighteen—can find themselves represented in books.

The **American Booksellers for Free Expression** (“ABFE”) is the free speech initiative of the American Booksellers Association (“ABA”). ABA was founded in 1900 and is a national not-for-profit trade organization that works to help

independently owned bookstores grow and succeed. ABA represents 1,900 member companies operating in 2,400 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. The forty-eight ABA members located in the Commonwealth of Virginia, including some who currently sell *Gender Queer*, will be subject to any injunction granted in this action.

The **Association of American Publishers, Inc.** ("AAP"), a not-for-profit organization, represents the leading book, journal, and education publishers in the United States on matters of law and policy, advocating for outcomes that incentivize the publication of creative expression, professional content, and learning solutions. AAP's members range from major commercial book and journal publishers to small, non-profit, university, and scholarly presses, as well as leading publishers of educational materials and digital learning platforms. AAP's members publish a substantial portion of the general, educational, and religious books produced in the United States, some of which include images of nudity or sexual conduct. Its members are active in all facets of print and electronic media, including publishing a wide range of electronic products and services. AAP represents an industry whose

very existence depends on the free exercise of rights guaranteed by the First Amendment.

The **Authors Guild, Inc.** (the “Guild”) was founded in 1912, and is a national non-profit association of more than 10,000 professional, published writers of all genres, 378 of whom are located in Virginia. The Guild counts historians, biographers, academicians, journalists, and other writers of non-fiction and fiction as members. The Guild works to promote the rights and professional interest of authors in various areas, including copyright, freedom of expression, and taxation. Many Guild members earn their livelihoods through their writing. Their work covers important issues in history, biography, science, politics, medicine, business, and other areas; they are frequent contributors to the most influential and well-respected publications in every field.

**The American Library Association (“ALA”)**, established in 1876, is a nonprofit professional organization of more than 50,000 librarians, library trustees, and other friends of libraries dedicated to providing and improving library services and promoting the public interest in a free and open information society. ALA upholds, promotes, and defends the right to free thought and free expression and resists all efforts to censor library resources. ALA values our nation’s diversity and strives to reflect that diversity by fostering the conditions that permit libraries to provide a full spectrum of resources and services to the communities they serve.

The purpose of the **Virginia Library Association (“VLA”)** is to develop, promote, and improve library and information services, library staff, and the profession of librarianship in order to advance literacy and learning and to ensure access to information in the Commonwealth of Virginia. Since its founding in 1905, VLA has: grown to represent more than 5,000 librarians, library workers and library staff; expanded the scope of its organization; engaged legislatively at the state and federal level; provided its members with newsletters, scholarly journals, and a website; and supported library education, training, and outreach. VLA is committed to its Core Organizational Values, which include support for: all types of libraries; all library staff, friends, trustees, and other individuals and groups working to improve library services; intellectual freedom for all members of our communities; and diversity, inclusion, equity, and accessibility in our profession and in library practice.

**The Freedom to Read Foundation** is an organization established by members of the American Library Association to promote and defend First Amendment rights, foster libraries as institutions that fulfill the promise of the First Amendment, support the rights of libraries to include in their collections and make available to the public any work they may legally acquire, establish legal precedent for the freedom to read of all citizens, protect the public against efforts to suppress or censor speech, and support the right of libraries to collect and individuals to access

information that reflects the diverse voices of a community so that every individual can see themselves reflected in the library's materials and resources.

Movants have a strong interest in ensuring that a broad selection of non-obscene fiction and non-fiction reading material be made available to readers, including material that challenges them. Therefore they have a significant interest in preventing the imposition of unconstitutional governmental limitations on the content of the First Amendment-protected communicative materials minors and adults choose to read whether directly, by censorship or removal from access, or indirectly, by content-based taxation, labeling requirements, restrictions on manner of sale, or other means.

Movants have brought actions in both federal and state courts to assert the unconstitutionality of laws that infringe the First Amendment rights of Americans of all ages. Movants also have filed a number of amicus briefs in the U.S. Supreme Court, other federal courts, and state courts addressing First Amendment issues.

Movants believe that it is particularly important to present the unique perspective of mainstream creators, producers, distributors, retailers, and consumers when, as in this case, an important First Amendment issue arises involving speech that some may view as being outside of the mainstream. In this case, the concern is even more direct for Prince Books, One More Page Books, Read Books, bbgb tales for kids, and other members of ABA located in Virginia. As to these booksellers, the

statute purports to vest the Court with authority to temporarily enjoin them from selling *Gender Queer* upon a finding that there is “probable cause” to believe the book is obscene, and thereafter to adjudicate the book obscene, thereby imputing knowledge of the book’s obscenity to them and leading to possible criminal liability—all without their having any previous notice or knowledge of the matter. In addition, ABA members who are located in Virginia, but outside of Virginia Beach, can uniquely shed light on the problems with applying a local community standard of obscenity to determine whether *Gender Queer* can be sold or otherwise distributed statewide, including in communities with local standards other than that of Virginia Beach. At the same time, should this case ultimately proceed to a final obscenity adjudication, Prince Books, One More Page Books, Read Books, bbgb tales for kids and other ABA members located in Virginia have a unique perspective to offer regarding whether *Gender Queer* is, in fact, obscene under existing community standards relevant where they are located.

3. Movants respectfully request that this Court permit them to present the arguments from their unique perspectives against the misuse of what is, Movants contend, an unconstitutional statute.

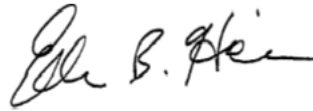
4. Movants timely file this request, within twenty-one days of the author of *A Court of Mist and Fury* receiving notice of the action. In addition, Movants needed this time to hear of and prepare for the proceeding.

WHEREFORE, Movants respectfully request that this Court grant leave to Movants to appear as amicus curiae or interested parties in this matter, and for such other relief as is proper under the circumstances.

Dated: June 22, 2022

Respectfully submitted,

Michael A. Bamberger  
(*pro hac vice* pending)  
Dentons US LLP  
1221 Ave. of the Americas, 25th Fl.  
New York, NY 10020  
Tel.: (212) 768-6700  
michael.bamberger@dentons.com



Eden B. Heilman, VSB No. 93554  
Matthew Callahan (*pro hac vice* pending)  
American Civil Liberties  
Union Foundation of Virginia  
701 E. Franklin St., Ste. 1412  
Tel.: (804) 644-8022  
eheilman@acluva.org  
mcallahan@acluva.org

Vera Eidelman (*pro hac vice* pending)  
Joshua Block (*pro hac vice* pending)  
American Civil Liberties  
Union Foundation  
125 Broad St., 18th Fl.  
New York, NY 10004  
Tel.: (212) 549-2500  
veidelman@aclu.org  
jblock@aclu.org

*Attorneys for Movants Prince Books, Read Books, One More Page Books, bbgb tales for kids, American Booksellers for Free Expression, Association of American Publishers, Inc., Authors Guild, Inc., American Library Association, Virginia Library Association, and Freedom to Read Foundation,*



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and accurate copy of the foregoing Motion to Dismiss and to Vacate Order to Show Cause was e-mailed and mailed via USPS to the following:

Timothy Anderson  
2492 N. Landing Rd. 104  
Virginia Beach, VA 23456  
Tel.: (757) 301-3636  
Fax: (757) 301-3640  
timanderson@virginialawoffice.com

*Counsel for petitioner*

Craig T. Merritt  
R. Braxton III  
Merritt Law  
919 E. Main St., Ste. 1000  
Richmond, VA 23219  
Tel.: (804) 915-1601  
cmerritt@merittfirm.com  
bhill@merittfirm.com

Ariel L. Stein  
Bischoff Martingayle, P.C.  
208 E. Plume St., Ste. 247  
Norfolk, VA 23150  
Tel.: (757) 440-3546  
Fax: (757) 440-3924  
stein@bischoffmartingayle.com

Michael K. Lowman  
Armstrong Teasdale, LLP  
14001C. St. Germain Dr., Ste. 223  
Centreville, VA 20121  
Tel.: (267) 780-2034  
mlowman@atllp.com

*Counsel for Oni-Lioin Forge  
Publishing Group, LLC*

*Additional counsel on following page.*

Robert Corn-Revere  
Laua R. Handman  
Linda Steinman  
Amanda B. Levine  
Davis Wright Tremaine, LLP  
Ste. 500 East  
1301 K. St. NW  
Washington, D.C. 2009-3317  
bobcornrevere@dwt.com  
laurahandman@dwt.com  
lindasteinman@dwt.com  
amandalevine@dwt.com  
  
*Counsel for Barnes & Noble Booksellers,  
Inc.*

Kamala H. Lanetti  
Deputy City Attorney  
Virginia Beach City  
Attorney's Office  
2512 Municipal Ctr., Building 6  
Virginia Beach, VA 23456  
Tel.: (757) 264-1215  
klannet@vbgov.com

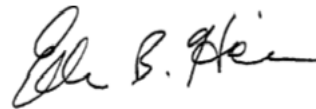
Dated: June 22, 2022

L. Stevern Emmert  
Sykes, Bourdon, Ahern  
& Levy, PC  
4429 Bourdon Rd., Ste. 500  
Virginia Beach, VA 23462  
Tel.: (757) 499-8971  
Fax: (757) 456-5445  
lsemmert@sykesbourdon.com

Jeff Trexler  
15110 Boones Ferry Rd., Ste. 220  
Lake Oswego, OR 97035  
Tel.: (212) 677-4092  
jeff.trexler@gmail.com

*Counsel for Maia Kobabe*

Respectfully submitted,



---

Edén B. Heilman  
Matthew Callahan  
American Civil Liberties  
Union Foundation of Virginia  
701 E. Franklin St., Ste. 1412

Tel.: (804) 644-8022  
Fax: (804) 649-2733  
eheilman@acluva.org  
mcallahan@acluva.org

*Counsel for Movants Prince  
Books, Read Books, One More  
Page Books, bbgb tales for kids,  
American Booksellers for Free  
Expression, Association of  
American Publishers, Inc,  
Authors Guild, Inc., American  
Library Association, Virginia  
Library Association, and  
Freedom to Read Foundation*