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Coalition of Local and National Booksellers, Authors and Publishers File Suit to Challenge New Censorship Law and Defend the Right of Free Expression in Texas

Today a coalition including Texas bookstores, national booksellers, authors and publishers filed suit in the US District Court for the Western District of Texas, Austin Division, challenging a new Texas law that would require independent bookstores, national chain bookstores, large online book retailers, book publishers and other vendors to review and rate millions of books and other library materials according to sexual content if those books are sold to school libraries, and to do so according to vague labels dictated by the state without any process for judicial review.

The Texas law replaces the long-established rights of local communities to set and implement standards for school materials within constitutional boundaries, and forces private businesses to act as instruments of state censorship on controversial topics under threat of retaliation. Companies that insufficiently comply will be subject to censure through a public listing and Texas schools will be prohibited from purchasing any books from them in the future. The plaintiffs have asked the Court for preliminary and permanent injunctions to enjoin the implementation of the law, which has been signed by the Governor of Texas and is slated to go into effect on September 1, 2023.

The Law Violates the First and Fourteenth Amendments

The law violates the First and Fourteenth Amendments by, among other things, compelling speech, imposing unconstitutional prior restraints, regulating speech with impermissibly vague

and overbroad terms, imposing unconstitutional content-based restrictions, delegating the power to regulate speech to private entities, and violating the due process rights of those affected to object, appeal, bring claims for damages, or seek judicial determination of content labels and distribution restrictions.

Literary Classics Will be Implicated

As noted in the complaint, during debate about the new law some Texas Legislators warned that the overbroad language “could result in the banning of many classic works of literature, such as *Twelfth Night*, *A Midsummer Night’s Dream*, *Romeo and Juliet*, *Of Mice and Men*, *Ulysses*, *Jane Eyre*, *The Canterbury Tales*, *I Know Why the Caged Bird Sings*, and even the Bible.” One lawmaker, a former schoolteacher, said the Ban would likely prohibit school libraries from offering the quintessential Texas novel *Lonesome Dove*.

Plaintiffs

Plaintiffs in the case include two Texas bookstores, Austin’s BookPeople, and West Houston’s Blue Willow Bookshop, together with the American Booksellers Association, the Association of American Publishers, the Authors Guild, and the Comic Book Legal Defense Fund.

Comment from Valerie Koehler, owner of Houston’s Blue Willow Bookshop

“The rating system this law would impose is not viable for any book vendor. We have always adhered to the idea that we cannot judge what a customer chooses. Requiring booksellers to rate novels, poetry and works of nonfiction would impede our ability to disseminate constitutionally protected books, magazines, and other materials. The law is also unfair to local communities who have the right to set their own standards. We would be forced to seek legal opinions about every book we will sell and have sold. We do not have the human or capital resources as a small independent bookshop to comply with the law as it is written.”

Comment from Charley Rejsek, the CEO of Austin, Texas-based bookstore, BookPeople

“Setting aside for the moment the fact that this law is clearly unconstitutional, booksellers do not see a clear path forward to rating the content of the thousands of titles sold to schools in the past, nor the thousands of titles that are published each year that could be requested by a school for purchase, neither do we have the training nor funding needed to do so. In addition, booksellers should not be put in the position of broadly determining what best serves all Texan communities. Each community is individual and has different needs. Setting local guidelines is

not the government's job either. It is the local librarian's and teacher's job, in conjunction with the community they serve."

The following are joint remarks from Allison K Hill, CEO of the American Booksellers Association; Maria A. Pallante, President and CEO of the Association of American Publishers; Mary Rasenberger, CEO of the Authors Guild; and Jeff Trexler, the Director of Comic Book Legal Defense Fund:

"There is no question that reading in schools should be guided and age appropriate, but this law does not accomplish that goal. It is inferior to existing constitutional standards because it robs parents, schools and teachers from across the state of Texas of the right to make decisions for their respective communities and classrooms, instead handing that role to a state entity and private businesses.

"It is central to the First Amendment that the government can neither restrain nor compel speech, but this law will force booksellers to label constitutionally protected works of literature and nonfiction with highly subjective and stigmatizing ratings, effectively forcing private actors to convey and act upon the government's views even when they disagree.

"From a logistical angle, this law creates an impossibly onerous and cumbersome process that bookstores and other vendors must follow, forcing them to review massive amounts of material without the benefit of clear and workable standards, and compelling them to recall titles previously sold over an indeterminate period of time.

"The suit filed today seeks to protect the basic constitutional rights of the plaintiffs and restore the right of Texas parents to determine what is age appropriate and important for their children to access in their schools, without government interference or control."

What the Law Would Do

The new law, "The Reader Act" (formerly [HB 900](#)), would require vendors, including local and national bookstore owners, to determine "current community standards of decency" and subsequently assign "sexually relevant" or "sexually explicit" labels to books and other library materials based on the presence of descriptions or depictions of "sexual conduct."

It forces booksellers to express an opinion on constitutionally protected works of literature and nonfiction based on the government's vague, ambiguous, and stigmatizing standards, not their own standards. If the State disagrees, it can overrule the rating for any book that it believes was "incorrectly rated."

If a bookseller fails to provide the State's chosen rating public schools will be banned from purchasing any books from it in the future. In effect, the compelled ratings under state standards and state power to overrule them make booksellers the mouthpiece for State censorship.

Materials Covered Under the Law

The law applies to library materials vendors offer to schools. It also applies retroactively to library materials vendors previously sold to schools that are still in active use. It excludes material directly related to required curriculum.

The Law is Vague, Overbroad and Operates as a Prior Restraint on Speech

As enacted, the law provides labels and consequences that are overbroad, confusing, and impermissibly restrictive under constitutional standards. As stated in the brief, "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."

The ratings required by the law areas follows:

Vendors would be required to give a rating of "sexually relevant" to works that include any descriptions or portrayals of "sexual conduct." If a book has been rated "sexually relevant" a student would not be able to reserve, check out, or otherwise use outside of the school library that book without prior written consent from a parent or guardian. Schools must assess biennially whether to retain library material rated "Sexually Relevant."

As enacted, the "sexually relevant" rating covers all non-explicit references, in any context, to sexual relations, and therefore could apply broadly to health-related works, religious texts, historical works, encyclopedias, dictionaries, and many other works.

Bookstore owners and other vendors would be required to give a rating of "sexually explicit" to material describing or portraying "sexual conduct" that is determined to be "patently offensive." (Texas state law defines "patently offensive" as materials that are an affront to "current community standards of decency."). Vendors would be prohibited from selling books that they have rated "Sexually Explicit" to schools. Vendors would have to recall previously sold copies of "Sexually Explicit" material still in active use. Schools would have to adopt standards that prohibit the possession, acquisition, and purchase of materials rated "Sexually Explicit."

As enacted, the “sexually explicit” rating requires booksellers to assess “contemporary community standards of decency” and engage in a highly subjective “contextual analysis” balancing test. It does not allow for adjustments for differences in ages or differing community standards—whether from state-to-state, or between any of the more than 1,200 incorporated municipalities across the state of Texas—and does not provide for consideration of the work as a whole.

This Law is Anti-Business, Threatens the Viability of Book Vendors and May Lead to the Shuttering of Some Small Bookstores in Texas

The new law threatens the viability of national chain bookstores, large online book retailers, and book publishers, operating in the state of Texas, and might even put some independent bookstores out of business.

For example, the requirement to rate books being sold now, and to search past records for the entire universe of library materials ever sold to any Texas public school and also rate those books, would require massive investments of time and money, possibly exceeding the resources of some bookstores.

In addition, the mandate to recall some books sold in the past, would place additional economic pressure on large and small vendors across the state. It also risks publishers foregoing the investment in important new works and authors ceasing to write new books.

Access the Motion for Preliminary Injunction [here](#).

Access the Complaint [here](#).