



Subject: Legal Update and Guidance on Book Ban Bill

October 2, 2023

Dear Superintendent,

We are writing to ensure that you are aware of recent legal developments regarding House Bill 900 (HB 900), otherwise known as “the book ban bill.”

HB 900 passed during the 88th Legislative Session and was signed by Governor Greg Abbott on June 13, 2023. The legislation creates a bureaucratic oversight system over school libraries that risks removing valuable books from your collections.¹ A coalition of bookstores and bookseller associations filed suit (*BookPeople, Inc. v. Wong*) on July 25, claiming the law violated their constitutional rights. On August 31, U.S. District Judge Alan Albright signaled his intent to enjoin HB 900, and on September 18, the Court released a written order granting a preliminary injunction against most of the law, finding that “this law violates the Free Speech Clause of the First Amendment.”² On September 25, a three-judge panel of the Fifth Circuit Court of Appeals issued an administrative stay that may temporarily allow HB 900 to go into effect while the Court further

¹ H.B. 900, 88th Legislative Session (2023).

² *BookPeople, Inc. v. Wong*, No. 1:23-cv-00858 at 3 (W.D. Tex. September 18, 2023).

considers whether a longer lasting stay would be appropriate while it deliberates on the merits of the case.³

While *BookPeople, Inc. v. Wong* works its way through a long legal process, we urge you to refrain from taking unnecessary action, avoid unconstitutional book bans, and protect students’ freedom to read—and we stand ready to support you in following this guidance and any future guidance to the letter of the law.

HB 900 lays out a clear timeline for implementation, with most of the responsibilities falling on state agencies and book vendors. Districts should follow this timeline, should not attempt to rate books, and should not take preemptive action to remove books.

- By January 1, 2024, the **Texas State Library and Archives Commission (TSLAC)** must establish mandatory collection development policies for all school libraries, with approval from the **State Board of Education (SBOE)**.⁴
- By April 1, 2024, **book vendors** must submit ratings to the **Texas Education Agency (TEA)** of all library materials previously sold to schools that are determined to be “sexually explicit” or “sexually relevant”,⁵ according to definitions in the statute.⁶ TEA will have the final authority over approving or revising ratings.⁷ Districts must remove all library materials rated “sexually explicit” under this provision.⁸

HB 900 also requires vendors and TEA to submit an updated list by September 1 each year.⁹

- By January 1, 2025, **school districts and open-enrollment charter schools** must complete their first collection review and report any materials in their library collections rated “sexually relevant” by vendors or TEA.¹⁰ Moving forward, districts and open-enrollment charter schools must complete this process by

³ *BookPeople, Inc. v. Wong*, No. 1:23-cv-00858, (5th Cir. Sep. 25, 2023).

⁴ H.B. No. 900 pg. 1, ¶¶ 17-24 and pg. 2, ¶¶ 1-3.

⁵ H.B. No. 900 pg. 4, ¶¶ 6-11.

⁶ H.B. No. 900 pg. 1, ¶¶ 9-16 and pg. 3, ¶¶ 16-22. The vagueness and overbreadth of these definitions is a central claim in *Book People, Inc. et al v. Wong et al*. U.S. District Judge Alan Albright found that the definitions are unconstitutionally vague and “are created out of whole cloth by the Legislature, are confusing, and have no basis in existing law.” (*BookPeople, Inc. v. Wong*, No. 1:23-cv-00858 at 43 [W.D. Tex. September 18, 2023]). The Fifth Circuit has not addressed the merits of this claim.

⁷ H.B. No. 900 pg. 4, ¶¶ 18-20, pg. 5, ¶¶ 26-27, and pg. 6 ¶¶ 1-9.

⁸ H.B. No. 900 pg. 4, ¶¶ 1-5.

⁹ H.B. No. 900 pg. 4, ¶¶ 12-17.

¹⁰ H.B. No. 900 pg. 7, ¶¶ 14-27 and pg. 8 ¶¶ 1-12.

January 1 of each odd-numbered year.¹¹

Districts must require parental consent for students to reserve, check out, or otherwise use outside the library any material that has been rated “sexually relevant” by book vendors.¹²

The law is clear that your school board, teachers, or librarians should not rate library materials, nor should they prematurely review collections or remove books until after ratings have been finalized and approved by TEA. It is vital that school districts adhere to this timeline and avoid violating students’ First Amendment rights.

In 1982, the Supreme Court held that “local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books.”¹³ The Court further held that “the special characteristics of the school library make that environment especially appropriate for the recognition of the First Amendment rights of students.”¹⁴ Other federal courts have further clarified that school boards may not remove books solely due to content such as controversial treatment of racial issues,¹⁵ the presence of LGBTQ+ relationships,¹⁶ or the depiction of disobedience and disrespect for authority.¹⁷

Following this legal precedent, HB 900 requires that the statewide collection development policy must prohibit “the removal of material based solely on the ideas contained in the material; or personal background of the author of the material; or characters in the material.”¹⁸ Your district’s school board, librarians, teachers, or staff should not purge materials based on this criteria.

We are particularly concerned about HB 900’s implementation given the national landscape of book bans. PEN America tracked 3,362 instances of school districts restricting or removing an individual book title in the 2022-2023 school year - an increase of 33 percent over the previous year.¹⁹ Disturbingly, PEN’s report also found clear trends in book bans, which disproportionately target books that discuss or feature student health and wellbeing, characters of color, and LGBTQ+ characters.²⁰

¹¹ Ibid.

¹² H.B. No. 900 pg. 7, ¶¶ 6-13.

¹³ *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982).

¹⁴ *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 868 (1982).

¹⁵ *Loewen v. Turnipseed*, 488 F. Supp. 1138 (N.D. Miss. 1980).

¹⁶ *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864 (D. Kan. 1995).

¹⁷ *Counts v. Cedarville Sch. Dist.*, 295 F. Supp. 2d 996 (W.D. Ark. 2003).

¹⁸ H.B. No. 900 pg. 3, ¶¶ 1-6.

¹⁹ Kasey Meehan, Jonathan Friedman, Sabrina Baêta, and Tasslyn Magnusson, *Banned in the USA: The Mounting Pressure to Censor*, PEN America (September 21, 2023).

²⁰ Ibid.

Districts have the responsibility to serve all students and provide instructional materials that reflect the breadth and depth of students' lives. Removing library materials discourages reading and critical thinking, suggests that some students' experiences do not belong in the classroom, prevents students from accessing lifesaving resources, and denies students opportunities to prepare for their futures. Your school libraries can support all students—especially those living in poverty, from marginalized communities, or living in unsupportive or abusive homes²¹—by keeping these constitutionally-protected materials on the shelves.

We understand the chilling effect that legislation like HB 900 can have due to vague language, ongoing legal challenges, and unclear direction from state entities, and we stand ready to support you and your district. We ask that you refrain from premature book bans and support your students' constitutional rights in your school libraries.

Sincerely,

Children's Defense Fund of Texas

ACLU of Texas

Texas AFT

Asian Texans for Justice

Defense of Democracy

Equality Texas

Ethnic Studies Network of Texas Core Organizing Team

Every Texan

Faith Commons

Human Rights Campaign

FFRF Action Fund

IDRA

Interfaith Alliance of Texas

Keshet

Pastors for Texas Children

Resource Center

Students Engaged in Advancing Texas (SEAT)

Texas Freedom Network

Texas State Teachers Association

Transgender Education Network of Texas (TENT)

²¹ Danika Ellis, *Sex ed books don't "groom" kids and teens. They protect them.*, BookRiot (April 27, 2022)(noting that, "The most illustrative story she shared, though, was about a 10-year-girl in Delaware who picked up her book [It's Perfectly Normal] when at the library with her mother. Her mother let her check the book out, and when they came home, she showed her mom the chapter on sexual abuse and said, 'This is me.' She was being abused by her father, and it was the first time she'd spoken about it.").