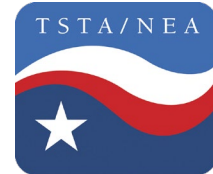


Texas AFT
A Union of Professionals



Subject: Legal Update and Guidance on Book Ban Bill
January 29, 2024

Dear Superintendent,

We are writing to ensure that you are aware of the recent decision by the Fifth Circuit Court of Appeals declaring that key parts of House Bill 900 (HB 900) are likely unconstitutional.

The Fifth Circuit's decision means that the HB 900 book ratings imposed on booksellers cannot be enforced at this time. Under HB 900, even before this lawsuit, school districts have never had an obligation to rate library books. We urge any district that may have acted prematurely to rate books and consequently remove or otherwise limit access to those books to return all books and remove any rating system.

HB 900, also known as "the book ban bill," passed during the 88th Legislative Session and was signed by Governor Greg Abbott on June 13, 2023. A coalition of bookstores

and bookseller associations filed suit (*BookPeople, Inc. v. Wong*) on July 25, 2023. District Court Judge Alan Albright initially found that the law likely “violates the Free Speech Clause of the First Amendment” on September 18, 2023 and preliminarily blocked enforcement of most of the bill. The State appealed the District Court’s order to the Fifth Circuit Court of Appeals, and on January 17, 2024, the Fifth Circuit affirmed the lower court’s order to block enforcement of key parts of HB 900 on the grounds that they are likely unconstitutional.¹

The Court did note that the adoption of the school library collection standards recently developed by the Texas State Library and Archives Commission (TSLAC) and approved by the State Board of Education (SBOE) may proceed. However, two provisions of the new library collection standards reference the library material vendor ratings that are currently blocked. According to TSLAC, these two provisions “are effectively inoperative at this time.”² Your district should not attempt to further rate books in an effort to comply with HB 900 until it receives further guidance from TEA or the courts.³

As your district adopts these new standards, we urge you to take note that the purpose of a school library according to TSLAC and the SBOE is to:

- (1) Enrich and support the Texas Essential Knowledge and Skills (TEKS) and curriculum established by Education Code, §28.002 (relating to Required Curriculum), while taking into consideration students' varied interests, maturity levels, abilities, and learning styles;
- (2) Foster growth in factual knowledge, literary appreciation, aesthetic values, and societal standards;
- (3) Encourage the enjoyment of reading, foster high-level thinking skills, support personal learning, and encourage discussion based on rational analysis; and
- (4) Represent the ethnic, religious, and cultural groups of the state and their contribution to Texas, the nation, and the world.⁴

¹ *BookPeople, Inc. v. Wong*, No. 23-50668, (5th Cir. 2024). Please see our previous communication from October 2, 2023 for a more detailed timeline.

² TSLAC has developed further guidance and will provide additional resources and online training through the spring and summer of 2024. You can find their guidelines at <https://www.tsl.texas.gov/ldn/schoollibrarystandards>.

³ The Fifth Circuit did not address the bookstores’ and booksellers’ arguments that the definitions of “sexually relevant” and “sexually explicit” invented by HB 900 are unconstitutionally vague. However, in his preliminary injunction order, Judge Albright found that these definitions are likely “unconstitutionally vague...because they 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 3 (W.D. Tex. Sep. 18, 2023)). Therefore, districts should also avoid using these definitions in local policy or practice.

⁴ 13 Tex. Admin. Code § 4.2(b) (2024).

The standards affirm that books cannot be removed “based solely on the ideas contained in the material or the personal background of the author of the material or characters in the material.”⁵ They also provide ample opportunity for all stakeholders - including students - to provide feedback on library collections, while affirming the importance of trained library staff, educators, and authoritative reviews to evaluate the full context and educational suitability of a book.⁶

Districts have the responsibility to serve all students and provide instructional materials that reflect the breadth and depth of students’ lives. The educational suitability of inclusive, representative, and culturally relevant books is clear: when students have the freedom to read, they report higher reading scores, improved mental health, and stronger relationships with their families and peers.⁷ Your school libraries can provide these invaluable benefits to all students—especially those living in poverty, from marginalized communities, or living in unsupportive or abusive homes⁸—by keeping constitutionally protected materials on the shelves.⁹

We understand the chilling effect that legislation like HB 900 has had, and the real harm it has already caused to Texas students, families, and schools.¹⁰ **We urge you to avoid unconstitutional book bans, return any books preemptively removed for review in attempts to comply with HB 900, and protect students’ right to read—and we stand ready to support you in following this guidance.**

Sincerely,

Children’s Defense Fund of Texas

PEN America

⁵ 13 Tex. Admin. Code § 4.2(c)(7)(G) (2024).

⁶ For example, 13 Tex. Admin. Code § 4.2(c)(7)(B) (2024) cites the Texas Penal Code to prohibit the possession, acquisition, and purchase of harmful material. The relevant statute affirms that “harmful material” must be “*utterly* without redeeming social value” and must be evaluated by its “*dominant* theme *taken as a whole*” (9 Tex. Penal Code § 43.24(a)(2), emphasis added). Trained library staff, teachers, and authoritative reviews are best qualified to make those contextual determinations for the thousands of books in a well-stocked school library.

⁷ Frank Strong, “[New Research Shows Why the Freedom to Read Matters](#),” Texas Freedom to Read Project (January 8, 2024).

⁸ 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.”).

⁹ The courts have consistently upheld students’ rights to read in their school libraries, and your district policies should too. See for example: *Loewen v. Turnipseed* (1980), *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico* (1982), *Case v. Unified Sch. Dist. No. 233* (1995), and *Counts v. Cedarville Sch. Dist.* (2003).

¹⁰ See student testimony, for example: Cameron Samuels, “[As a Katy student, I fought book bans. We’re losing.](#),” Houston Chronicle (June 28, 2023).

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Texas Freedom to Read Project
Texas State Teachers Association