

# IN-DEPTH: National Publishers, Booksellers Sue Over Ratings Law for Public School Books with Sexual Content



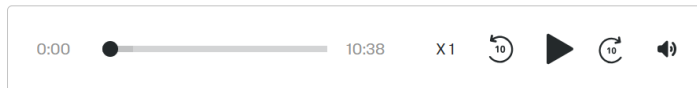
Diana Richards of Texas testified before the state House of Representatives regarding House Bill 900 on March 28, 2023. This is a stack of books containing explicit language and images that have been found in some Texas public school libraries. (Courtesy of Diana Richards)



By [Jana J. Pruet](#)

8/3/2023 Updated: 8/3/2023

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A coalition of national publishers and booksellers are suing the state of Texas over a bill that will require public school library vendors to review and assign book ratings for any sexual content.

House Bill 900, which is also known as the Reader (Restricting Explicit and Adult-Designated Educational Resources) Act, was passed during the

regular legislative session and was signed into law by Gov. Greg Abbott in June. The law is set to take effect on Sept. 1.

The law seeks to protect children from exposure to inappropriate or explicit sexual content in books and other materials in public school libraries, and enables the Texas Education Agency (TEA) to have oversight of the ratings.

The 28-page complaint, filed in a federal court in Austin, Texas, on July 25 describes the ratings law as a "Book Ban," arguing that it violates the First and Fourteenth Amendments to the U.S. Constitution. The plaintiffs—Houston's Blue Willow Bookshop, Austin's BookPeople, American Booksellers Association, Association of American Publishers, Authors Guild, and Comic Book Legal Defense—are asking the court for preliminary and permanent injunctions.

The lawsuit ([pdf](#)) names Mike Morath, commissioner of the TEA; Martha Wong, chair of the Texas State Library and Archives Commission; and Keven Ellis, chair of the Texas State Board of Education (SBOE), as defendants in the case.

Under the law ([pdf](#)), school library vendors will be required to label books as "sexually explicit," "sexually relevant," or "no rating." Then, they will submit their proposed ratings to the TEA for oversight and posting on its website.

## Parental Rights vs. Federal Protections

The Reader Act is a result of the yearslong efforts by parents across the state and nation who have been embroiled with school districts over library materials they see as inappropriate for their children.

Concerned parents have packed school board meetings calling on districts to remove books with graphic text or images about sex, at times depicting rape, abuse, masturbation, and other sexually explicit content.

"A growing number of parents of Texas students are becoming increasingly alarmed about some of the books and other content found in public school libraries that are extremely inappropriate in the public education system. The most flagrant examples include clearly pornographic images and substance that have no place in the Texas public education system," Mr. Abbott [wrote](#) in a letter to the Texas Association of School Boards on Nov. 1, 2021.

Last year, the TEA released a set of statewide standards for districts when making book selections in an attempt to keep sexually explicit content out of

school libraries. The agency enlisted the help of the Texas State Library and Archives Commission and the SBOE in creating the guidelines.

The guidelines ([pdf](#)) remind district-level library supervisors that parents "have the right to guide what their children read" and that each library is to maintain a printed list of materials onsite and on the school library website.

It states that librarians have a responsibility to "support and enrich the curriculum and/or students' interests and learning" and ensure that material is age-appropriate. Districts are also called to offer a "parent preview" at least 10 days before new books or materials are placed on shelves.

Texas Eagle Forum [President](#) Cindi Castilla, an advocate of HB 900, said the explicit content she and others oppose has nothing to do with violating the right to free speech; rather, it is about [federal laws](#) that provide protections for children from obscene materials. Texas Eagle Forum is a nonprofit organization that advocates for traditional, conservative values in the Texas Legislature.

"Your free speech does not allow you to expose someone else's children to explicit sex, to sexual performance, to graphic rape from the rapist's perspective, from drawings of children touching their bodies and touching other bodies, and children having sexual relationships," Mr. Castilla told The Epoch Times.

State Rep. Jared Patterson, who authored HB 900, [told](#) WFAA-TV that the biggest challenge he faced when writing the legislation was convincing people that the state's school libraries were really providing sexually-explicit books to children due to the content being inappropriate to show on television.

"Concerned parents brought books to me that were so radically explicit in nature that, again, you couldn't show it on television or read it on the radio because of FCC guidelines," said Mr. Patterson, whose children attend school at Frisco ISD in North Texas. "Yet it's in the children's library at school."

"People and the media kept saying, 'Oh, this is about classic works of art' or, you know, 'This is about Black or brown characters' when that's not even remotely close to true," he continued. "The books we challenged at Frisco ISD, 89 percent of the authors were white and straight."



Donated LGBTQ+ books are displayed in the library at Nystrom Elementary School in Richmond, Calif., on May 17, 2022. (Justin Sullivan/Getty Images)

Ms. Castilla said some book titles can sound somewhat innocuous, but when you open the cover, you find out the content inside is not what you expect for children.

"Let's Talk About It: The Teen's Guide to Sex, Relationships, and Being a Human" is one example. The graphic novel with explicit sexual images and detailed instructions on masturbation and engaging in various sexual acts, including anal sex. It even encourages young people to access pornography.

"A great place to research fantasies and kinks safely is on the internet," reads the beginning of a chapter titled: "What are kinks, fantasies, and porn?"

"There are tons of people and communities that are your interests and have all kinds of advice," the children's book read.

A page in the same chapter shows two males in a sexual act. Another male character says, "Ha, sometimes I worry I watch too much porn, you know?"

"Yeah, I know that worry. But there's nothing wrong with enjoying some porn; it's a fun sugary treat," another character responds.



Ms. Castilla said she believes that as parents and taxpayers, "we have a right to say our school will not provide this to children."

Exposure to sexually explicit content is harmful to young minds and has nothing to do with the goals of educating children, she said.

"I look at this bill as a protection for children and parental rights," Ms. Castilla continued. "Any bookstore that wants to argue that they have a greater right under any amendment to expose our children to graphic and explicit sexual content, that should be criminal."

## Vague law

The plaintiffs in the lawsuit argue that the law is "inherently vague."

"As enacted, the law provides labels and consequences that are overbroad, confusing, and impermissibly restrictive under constitutional standards," the plaintiffs [wrote](#) in a joint press release. "[T]he 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 law."

Another argument from the plaintiffs is that the vendors would be subject to determining a book's ratings based on a blanket analysis of community standards of decency.

"[T]he '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 ... and does not provide for consideration of the work as a whole," the release said.

The law would also call on vendors to recall sexually explicit materials sold to public schools in the past, according to the text of the bill, which some vendors say would be unattainable.

Blue Willow Bookshop owner Valerie Koehler told Houston Public Media that it would not be possible for her to rate every book in the store or every book that has been sold to a school district over the last 20-plus years she has been in business.

"We do not know where these books go once they are requested [by school districts], once they sell them. We're not sure that they all go into a school library," Ms. Koehler [told](#) Houston Public Media.

Ms. Koehler did not respond to multiple requests from The Epoch Times for comment.

The complaint also argues that the law is anti-business and will threaten the viability of vendors.

They say it would not only be too costly to rate all books, but if they choose not to comply, they will not be permitted to sell to Texas public school districts.

Ms. Koehler said she sells books to 21 school districts in and around the Houston area and that banning her from doing so would cost about 20 percent of her business.

Texas has more than 1,200 public school districts and charters with more than 9,000 campuses.

## Obscenity Not Protected by First Amendment

Obscenity is not protected speech under the First Amendment.

"Federal law strictly prohibits the distribution of obscene material to minors," [according](#) to the Department of Justice.

Courts use the three-pronged test, known as the [Miller test](#), as established by the U.S. Supreme Court, to determine whether a given material is obscene.

- "Whether the average person, applying contemporary adult standards, finds that the matter, taken as a whole, appeals to prurient interests (*i.e.*, an erotic, lascivious, abnormal, unhealthy, degrading, shameful, or morbid interest in nudity, sex, or excretion);
- "Whether the average person, applying contemporary adult standards, finds that the matter depicts or describes sexual conduct in a patently offensive way (*i.e.*, ultimate sexual acts, normal or perverted, actual or simulated, masturbation, excretory functions, lewd exhibition of genitals, or sadomasochistic sexual abuse); and
- "Whether a reasonable person finds that the matter, taken as a whole, lacks serious literary, artistic, political, or scientific value."

Federal Judge Alan Albright, who was appointed by former President Donald Trump in 2018, will preside over the case in the Western District of Texas in Austin. A hearing is scheduled for 9 a.m. on Aug. 18.