

Book rating law blocked

Vendors sue Texas over undue burden, infringement on First Amendment rights

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A law enforced by the Texas Education Agency that required bookstores to rate all books sold to schools for sexual explicitness was blocked by the 5th U.S. Circuit Court of Appeals on Jan. 17.

This decision, handed down by one of the most conservative courts in the nation, affirmed the lower court's ruling that sided with bookstores, including Austin's Book People, that sued the state, arguing that House Bill 900 infringed on their First Amendment rights.

According to Book People CEO Charley Rejsek, there were multiple issues with this law from the start.

"The problem is a bookseller's business model does not include paying people to read books," Rejsek said. "[Booksellers] don't spend time while they are working reading because then we would not be able to stay open. And so in my mind, I considered this an unfunded mandate — requiring us to do this without giving us money to do it."

Rejsek finds the law even more untenable because it also requires book vendors to go back and rate all books ever sold to schools in the past. Because Book People has been in business for over 53 years, Rejsek said she simply wouldn't have access to those records. If the vendor cannot rate these previously sold books, the state would provide ratings to Rejsek to use when doing business with schools.

According to Rejsek, even if she did have the records and could therefore rate the books, under this law, the state could override Book People's ratings.

"That's the problem," Rejsek said. "Because then even if I did rate books, they could override me. And that is where the violation of the First Amendment comes in. And that's also where business overreach comes in. There's just so many things about this law that are not constitutional."

Because of these issues, Book People decided to join other bookstores across the state in a lawsuit that began on July 25, 2023.

"It started with a lot of data collection, from the legal team about, how many school districts do we work with, what does the vendor paperwork to enable to work with a school district look like," Rejsek said. "So I just provided all of our vendor forms that we had submitted to be able to work with school districts to sell them books. I wrangled, as much data as I could. I was able to find data that we have had relationships with over a dozen if not two dozen local Central Texas school districts. So those are all of the relationships that would be affected by this [decision]."

The law, which was initially passed in May of 2023, required that book vendors label books as either sexually relevant (material portraying sexual activity in a book that is part of required curriculum) or sexually explicit (material portraying sexual activity that is "patently offensive" in a book that is not part of required curriculum).

Books rated "sexually explicit" would be banned from school libraries and books deemed "sexually relevant" could only be checked out by students after receiving parent permission.

According to senior and Banned Books Club founder Keegan Sarwate, this law could have had significant effects on students' education.

"I think that by limiting what people can read, you're preventing yourself from learning about people who have different experiences than you, or people who, have gone through things that you might not personally know about," Sarwate said. "You're limiting your knowledge to only very specific things, and it prevents you from accessing a lot more stories."

Sarwate specifically thought of the readings in his AP Literature and Composition class that could have been limited by this law.

"We've been reading a lot of short stories in AP Lit that contain some implied sexual content," Sarwate said, "but they're important for us to learn about because they're connected to what we're learning, so we wouldn't have been able to read those if this had gone through."

Because of this consequence, Sarwate is pleased with the court's decision to block this law.

"I definitely think it's a good thing, because

In the appellate court's ruling, the judge declared that the definitions of sexually relevant/sexually explicit ratings were vague and that enforcing the law would require bookstores to comply with a certain point of view, violating their right to free speech.

"I was ecstatic," Rejsek said. "I mean, this is the best case scenario. It definitely is extremely, extremely promising that both courts sided with us and agree

that this law was written unconstitutionally, and so I'm just very happy that the Fifth Circuit was able to see through the law and understand what we were saying about how it's going to harm us as a business."

Despite the legal victory, the legal process isn't over for Book People and the other bookstores serving as plaintiffs in this lawsuit. This ruling was only a preliminary injunction, which means the book vendors will still need to seek a permanent injunction.

"This definitely isn't the end," Rejsek said, "but the state does have some time to decide how to respond, and so we're waiting to see

how the state is going to respond."

HB 900 hasn't been blocked in its entirety either: a provision that requires ratings from the Texas State Library and Archives Commission and prohibits school libraries from procuring material deemed as sexually explicit is still in place.

Despite the law being blocked, the issue remains divisive with book bannings increasing across the nation.

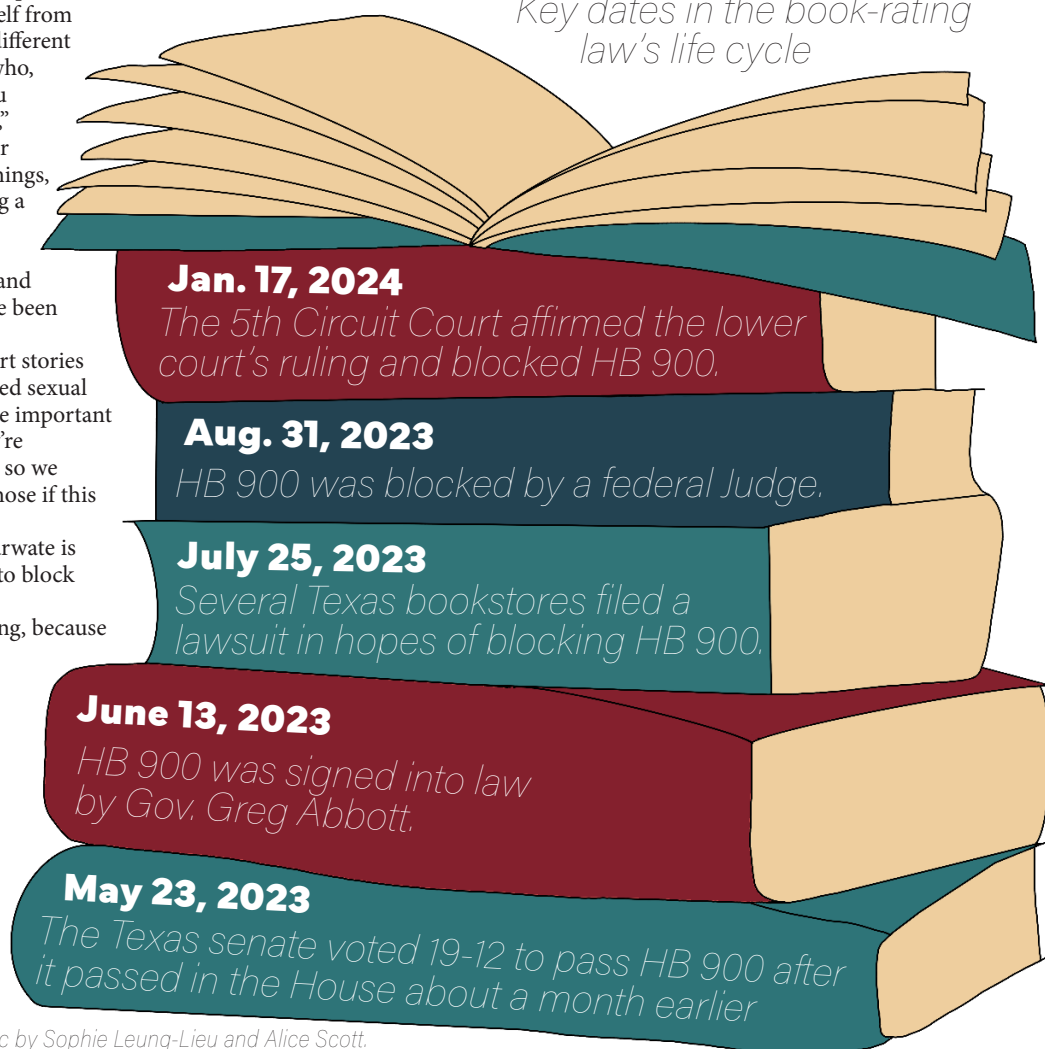
"[As] book vendors, we all 100% agree that sexually explicit books should not be in schools," Rejsek said, "but what we don't agree with is that we should be the persons to determine what's actually explicit and what's not. And so that is the problem here is that we are booksellers — there's no prerequisite to work here, you don't have to go to college, you don't have to have any kind of training on understanding the full content of a book when you read it — which is how this law works."

“There’s just so many things about this law that are not constitutional.”

— Book People CEO
Charley Rejsek

History of HB 900

Key dates in the book-rating law's life cycle



Graphic by Sophie Leung-Lieu and Alice Scott.