

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

In re: Gender Queer, A Memoir

Case No. CL22-1985

Final Order

On August 30, 2022, counsel for the parties appeared, by counsel, and presented oral argument on Barnes & Noble’s Motion to Dismiss and Vacate Order to Show Cause, Oni-Lion Forge Publishing Group, LLC’s Demurrer and Motion to Dismiss, and Motion to Dismiss of Maia Kobabe. The Court, having considered the Petition, the briefs submitted by the parties, and the argument of counsel, hereby ORDERS that:

The motion of the Virginia Booksellers and Interested Persons (Main Street Books, LTD d/b/a Prince Books; KatMac LLC d/b/a Read Books; One More Page, LLC d/b/a One More Page Books; Two Knickers, LLC d/b/a bbgb tales for kids; American Booksellers for Free Expression; Association of American Publishers, Inc.; Authors Guild, Inc.; American Library Association; Virginia Library Association; and Freedom to Read Foundation) to appear as *amici curiae* is hereby GRANTED.

The Court further finds that:

1. The Code of Virginia does not provide a Circuit Court with the statutory authority to grant the relief sought in the Petition, specifically, a determination that the book *Gender Queer: A Memoir* (the “Book”) is “obscene as to minors,” and that consequently this Court lacks subject matter jurisdiction to adjudicate this matter.
2. The Petition does not allege facts sufficient to support a finding, under the terms of Va. Code § 18.2-384, that the Book is obscene.

3. The Constitutions of the United States and the Commonwealth of Virginia operate as a constraint on the pleading of a claim of obscenity as to adults and as to material that is inappropriate for distribution to minors, and the Petition fails to meet the requirements of the governing constitutional rules.

4. Virginia Code § 18.2-384 is unconstitutional on its face in that it authorizes a prior restraint that violates the First Amendment and the Constitution of Virginia.

5. Virginia Code § 18.2-384 is unconstitutional on its face under the First Amendment and the Constitution of Virginia in that it imposes a presumption of *scienter* on persons who have no knowledge that a book may be considered obscene.

6. Virginia Code § 18.2-384 is unconstitutional on its face under the First Amendment and the Constitution of Virginia in that it violates due process by authorizing judgment without notice to affected parties.

7. Petitioner's request to withdraw the Temporary Restraining Order was granted. The School Board's request for a Motion to Dismiss pursuant to Code of Virginia Section 18.2-383 was determined to be moot in light of the withdrawal of the Temporary Restraining Order.

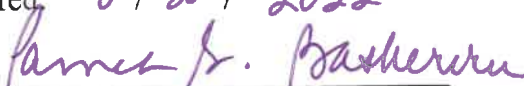
The Court determines that each of its above findings constitutes an independent and alternative ground for dismissal of the Petition, and hereby ORDERS that the motions of Barnes & Noble, Inc., Maia Kobabe, and Oni-Lion Forge Publishing Group, LLC, to dismiss the Petition be and are hereby GRANTED. As it appears from the record that amendment would be futile, leave to amend shall not be granted.

The Court further finds that its Order to Show Cause dated May 18, 2022, was issued *ex parte* without the benefit of briefing or argument by affected parties, and that the finding of

probable cause was made on an incomplete record. Thus, it is hereby ORDERED that the Order to Show Cause dated May 18, 2022, is VACATED.

The Court having adjudicated all matters raised by the Petition, the Clerk is directed to remove this case from the active docket.

The Clerk of this Court shall send a certified copy of this Order to all counsel of record.

Entered: 8 / 30 / 2022

Pamela S. Baskervill, Circuit Judge

We ask for this:



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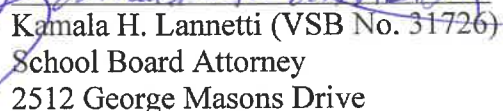
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