

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH  
IN RE: GENDER QUEER, A Memoir

CASE NO.: CL22-1985

**DEMURRER AND MOTION TO DISMISS**

NOW COMES Oni-Lion Forge Publishing Group, LLC, identified by misnomer in the petition as Lion Forge LLC (hereafter, "Oni-LF"), by counsel, and as and for its demurrer and motion to dismiss, states as follows:

1. This matter purports to be a proceeding instituted pursuant to Code of Virginia §18.2-384.
2. Code §18.2-384(A) purportedly authorizes a person with "reasonable cause to believe that any person is engaged in the sale or commercial distribution of any obscene book" to institute a proceeding pursuant to the procedures described in the statute.
3. Therefore, the plain language of Code §18.2-384(A) indicates that the primary target of the statute is "the sale or commercial distribution of any obscene book...."
4. According to Code §18.2-384(B)(3), the required content for a petition includes "the author, publisher, and **all other persons interested in its sale or commercial distribution.**" (Emphasis added).
5. The petition filed in this matter is defective in failing to make any good faith effort to identify "all other persons interested in [the] sale or commercial

distribution” of the subject book, nor does the petition even make a claim to have engaged in an effort to identify all such persons.

6. Accordingly, the petition is defective because it fails to comply with what is required by Code §18.2-384(B)(3) and fails to join all necessary and indispensable parties pursuant to Va. Sup. Ct. R. 3:12, and any order of judgment rendered in the absence of these necessary parties can be set aside as void.
7. Additionally, Code §18.2-384 is unconstitutional and violative of due process and free speech rights guaranteed by the United States Constitution and Constitution of Virginia, both facially and as applied.
8. The Petition fails to allege any of the grounds required under Code §18.2-384. Considered as a whole, and further considered in the context of other literary works, Gender Queer, A Memoir cannot, as a matter of law, be deemed obscene in accordance with free speech principles and pursuant to any clear standards. Petitioner, identifies seven pages of a 240-page book, ignores the context of those selections contained in the book, and asserts that the book is obscene.
9. Petitioner’s conclusory assertions are unfounded when considering the entirety of the work. The petition in this matter grossly mischaracterizes the nature of the subject literary work, and all of the opinions stated in the petition are both irrelevant and contradicted by the content of the book taken as a whole and put into proper context. This can be determined

from the pleading itself, which states that it includes a copy of the book as Exhibit A. (Petition ¶2).

10. Moreover, the Petition fails to state a claim of relief under Code §18.2-384. The statute permits the challenge of a book on the grounds that it is "obscene" to the entirety of the community of the Commonwealth. Petitioner here attempts to redefine Code §18.2-384 to have book declared obscene as it relates to one subset of the Community – minors in the Hampton Roads and Virginia Beach areas. (Petition ¶4). As such, the Petition fails to state a claim for relief under Code §18.2-384.
11. Further, the petition repeatedly references purported criminal violations but fails to cite any criminal code that has allegedly been violated.
12. Code §18.2-384 denies due process facially and as applied. The statute fails to require proper notice to interested parties before an initial presentation and determination is made in court, fails to require adequate service of process, and fails to provide clear and objective standards.
13. Additionally, the Order to Show Cause Pursuant to 18.2-384 of the Code of Virginia ("Show Cause Order") is facially deficient in that it fails to comply with Code of Virginia §18.2-384(D)(3) by not ordering service by registered mail on other persons interested in the sale or commercial distribution of the book, including for example other retailers and distributors.
14. Further, Code §18.2-384(K) imposes "knowledge" burdens on and threatens punishment against individuals who, in many instances, will

have no actual notice of legal proceedings and subsequent orders issued by the court.

15. Moreover, Code §18.2-384 potentially impairs the rights of all persons engaged in distribution in the Commonwealth, not just the Hampton Roads and Virginia Beach areas. Many such persons are headquartered in other states outside of the Commonwealth. Yet Code §18.2-384 does not specify that notice by publication is available after diligent attempts have been made to serve ascertainable interested persons and does not specify that notice via publication be then provided via a means reasonably calculated to apprise interested parties of the litigation. This deficiency is further underscored by the Order to Show Cause permitting service by publication via the Virginian-Pilot. Code §18.2-384's failure to mandate that all ascertainable parties are served or to mandate proper alternative service of process is a deprivation of due process.
16. Finally, the petitioner lacks standing and has not pled sufficient facts to establish standing to proceed in this matter.
17. For any or all of the above reasons, the petition and the statute upon which the petition is based are defective and violative of constitutional rights.
18. The petition fails to state any proper cause of action and must be dismissed.

WHEREFORE, for the foregoing reasons, Oni-LF respectfully requests that this Honorable Court sustain this demurrer, grant this motion to dismiss, vacate the

previously entered show cause order, and dismiss with prejudice the petition filed herein. Oni-LF requests such other and further relief as deemed appropriate under the circumstances of this matter.

ONI-LION FORGE PUBLISHING GROUP, LLC

By  \_\_\_\_\_  
Of Counsel

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### CERTIFICATE

I hereby certify that on this 15<sup>th</sup> day of June, 2022, a true copy of the foregoing was sent via electronic mail to Timothy Anderson, Esq., Kamala H. Lannetti, Deputy City Attorney, Dannielle Hall-McIver, Associate City Attorney, Craig T. Merritt, Esq., David B. Lacy, Esq., L. Steven Emmert, Esq., Jeff Trexler, Esq., Robert Corn-Revere, Esq., Laura R. Handman, Esq., Linda Steinman, Esq., and Amanda Levine, Esq.

  
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Kevin E. Martingayle