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In Our View / Backpage ruling

State Supreme Court opinion protects kids, speech

By The Herald Editorial Board

We hesitate to use the word “ironic,” only because “galling” is much more fitting to describe an online classified ad website's attempt to avoid responsibility for its role in alleged human trafficking by seeking protection under the federal Communications Decency Act.

Thankfully, the [state Supreme Court last week rejected that argument](#) and is allowing a lawsuit to proceed to trial against Backpage, an online classified ad site, that alleges it facilitated advertisements that promoted the prostitution of three young girls.

Backpage, which like Craigslist, offers free online classified advertising for perfectly legal items and services, also lists “adult” ads for “escorts.” But [a long list of stories in The Herald](#) regarding criminal charges and prosecutions show that the escorts are often underage girls. In two separate cases in July, Snohomish County prosecutors filed charges against five people, including a married couple, who allegedly posted Backpage ads for underage girls that included their pictures, then collected part of the money paid to the girls for the sex acts.

In arguing against the case before the Supreme Court, attorneys for Backpage claimed that Congress, when it passed the Communications Decency Act 1996, gave websites such as Backpage immunity from the ads posted there. It doesn't create the ads, Backpage claimed, and holding it responsible would chill freedom of speech.

But Justice Steven Gonzalez, writing for the majority, ruled that Backpage's role in those ads deserves to be heard by a trial court. The original suit alleges that Backpage not only allowed the posting of the advertising but has assisted the writing of the ads by publishing guidelines that in effect advise pimps and prostitutes on how to word ads that evade law enforcement.

Backpage's ads aren't just a local problem. Based in Dallas and with a parent corporation in Amsterdam, Backpage is being fought across the country by law enforcement agencies and groups fighting human trafficking. [The sheriff in Cook County, Illinois, successfully convinced Visa and Mastercard](#) to stop providing payment services to the site. In return, Backpage has filed suit against the sheriff, demanding he retract his statements to the credit card companies.

The [state Supreme Court's decision](#) may carry importance beyond the decision to allow the three girls' lawsuit to go forward. If successful, it may provide a path for civil and criminal cases against ads that promote human trafficking while still protecting legitimate speech as was intended by the 1996 law.

The Communications Decency Act, specifically Section 230, shields websites and Internet service providers from state law liability if the site acts only as a host for content created by others, a provision that does protect free speech. But the state Supreme Court's ruling also allows for the recognition that websites have a responsibility not to aid in allowing content providers to abuse that right.

The act is there to protect our freedom of speech; it was not meant to be used as a shield for those websites that won't acknowledge the tragedy of human trafficking and child prostitution that goes on with their silent consent.

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