

No. 90510-0  
SUPREME COURT  
OF THE STATE OF WASHINGTON

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VILLAGE VOICE MEDIA HOLDINGS, L.L.C., d/b/a Backpage.com;  
BACKPAGE.COM, L.L.C.; and NEW TIMES MEDIA, L.L.C., d/b/a  
Backpage.com,

Appellants,

v.

J.S., S.L., and L.C.,

Respondents.

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STATE OF WASHINGTON  
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ANSWER OF RESPONDENTS J.S., S.L, and L.C. TO BRIEFS OF  
AMICI CURIAE

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 ORIGINAL

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## I. INTRODUCTION

Congress did not intend to preempt Washington's compelling state interest in protecting children from being sexually abused and exploited, whether the misconduct occurs offline or online, or whether the defendant is the perpetrator or a company who intentionally aids the perpetrator.

Neither Backpage nor its amici provide any legal support for their assertion that Congress created some sort of "bright line rule" that confers absolute immunity on websites. If Congress intended to create a "bright line rule," then it would have simply said that websites are immune from liability. It did not.

The trial court properly denied Backpage's motion to dismiss, as reflected by a growing number of appellate decisions that have balanced Congress' desire to protect the good faith effort of websites to remove offensive content while at the same time ensuring that "[t]he information superhighway should not become a red light district."

## II. ARGUMENT

### A. **The Court Must View All Allegations and Hypothetical Facts in a Light Most Favorable to the Child Victims**

The Backpage amici devote a considerable amount of their briefs to asserting that notice of unlawful content is not enough. But nowhere do they acknowledge that the child victims allege much more than notice, or that the Court is required to accept, as true, all of the child victims'

allegations and all hypothetical facts that are supported by those allegations, even if not part of the formal record. *Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 120, 744 P.2d 1032 (1987). With the foregoing in mind, the trial court properly denied Backpage’s motion to dismiss because the company failed to show “beyond a reasonable doubt that no facts exist that would justify recovery.” *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994).

To the extent the Backpage amici ignore the specific facts alleged by the child victims in their complaint, or glibly refer to the pleadings as “conclusory,” the amicus briefs of The National Center for Missing and Exploited Children, the Coalition Against Trafficking in Women, and FAIR Girls vividly show the allegations are not hypothetical or the result of fanciful “artful pleading”:<sup>1</sup>

- Backpage’s self-titled “escort” category markets the illegal activity by bringing sellers and customers together to complete the sale;
- Backpage instructs traffickers what content to include in their sex advertisements, including content that should be omitted in order to avoid law enforcement;
- Backpage charges a posting fee only for sex ads;
- Backpage accepts anonymous forms of payment, including prepaid cards and bitcoin, and instructs customers on remaining anonymous by using these payment methods;

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<sup>1</sup> This Court may legitimately treat these factual assertions of organizations closely familiar with Backpage’s conduct as the type of hypothetical facts contemplated in the case law addressing CR 12(b)(6) motions.

- Backpage’s escort ads pricing model is designed to maximize its profits;
- Backpage does not remove from public view all ads it suspects and reports as child sex trafficking ads;
- Backpage specifically directs customers to change underage escort ads to a legal age before posting the ad; and,
- Backpage removes law enforcement sting ads to avoid disruption of the market it created for pimps and customers.

Nowhere do Backpage’s amici address the foregoing allegations or the reasonable inferences that can be drawn from them, likely because their position that “notice is not enough” will not carry the day if the child victims prove in discovery what they have alleged in their complaint and their amici have shared in their briefs. At most, the Backpage amici suggest the girls have only made “vague allegations” that Backpage is an information content provider, but this argument is belied by both the detailed factual allegations and the hypothetical facts that can be inferred from those allegations. Even if the girls had only alleged that Backpage intentionally created and developed an online marketplace for sex trafficking, and then helped traffickers create and develop their advertisements for sex, the Court must accept those allegations as true so the trial court can decide this case, including any claim of immunity, on the merits: “[w]hen an area of the law involved is in the process of development, courts are reluctant to dismiss an

action on the pleadings alone by way of a CR 12(b)(6) motion.” *Haberman*, 109 Wn.2d at 120.

The trial court properly denied Backpage’s motion to dismiss because the girls alleged facts and reasonable inferences that made it impossible for the company to meet its burden of showing that no facts exist that would justify recovery.

**B. Congress Did Not Intend to Preempt Washington State’s Compelling State Interest in Protecting Children from Sexual Abuse and Exploitation**

At the time the child victims were trafficked for sex on Backpage’s website, it was a crime in Washington to aid or facilitate prostitution:

(1) “Advances prostitution.” A person “advances prostitution” if, acting other than as a prostitute or as a customer thereof, he or she causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(2) “Profits from prostitution.” A person “profits from prostitution” if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity.

RCW 9A.88.060-.090 (2011); *see also City of Seattle v. Jones*, 3 Wn. App. 431, 434, 475 P.2d 790 (1970) (the state has an interest in controlling the “evils of prostitution”).

When it comes to children, Washington has also long imposed criminal liability for promoting the sexual abuse of minors:

(1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.

(a) A person “advances commercial sexual abuse of a minor” if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person “profits from commercial sexual abuse of a minor” if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person “advances a sexually explicit act of a minor” if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a

minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

RCW 9.68A.101.

Not only does Washington impose criminal liability for the sexual abuse and exploitation of children, but the Washington legislature also imposed additional civil liability in the form of attorneys' fees for children who prevail in a civil action that arises from their sexual abuse and exploitation:

A minor prevailing in a civil action arising from violation of this chapter is entitled to recover the costs of the suit, including an award of reasonable attorneys' fees.

RCW 9.68A.130.

As reflected in the preamble to the Sexual Exploitation of Children Act, Washington has a compelling state interest in protecting children from being sexually abused and exploited:

The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

RCW 9.68A.001; *see also Osborne v. Ohio*, 495 U.S. 103, 109 (1990) (“It is evident beyond the need for elaboration that a State’s interest in safeguarding the physical and psychological well-being of a minor is compelling.”).

Nowhere does Backpage or its amici address Washington's compelling state interest in protecting children from being sexually abused and exploited. Their mantra is that other courts in other jurisdictions have broadly applied section 230, but nowhere do they address the unique facts of this case, and nowhere do they provide any evidence to support their rhetoric that the internet will somehow come to a screeching halt if the trial court's order is upheld.

The acts of Congress are presumed to preserve the power of the State of Washington unless it can be shown that Congress had a "clear and manifest" intent to preempt Washington's laws protecting children from sexual abuse and exploitation. *Reece v. Good Samaritan Hosp.*, 90 Wn. App. 574, 578, 953 P.2d 117 (1998). Backpage and its amici bear a "heavy burden" in overcoming the presumption against preemption, *id.* at 579, particularly where this Court has stated that "[t]here is a strong presumption against finding that federal law has preempted state law." *Resident Action Council v. Seattle Housing Authority*, 177 Wn.2d 417, 444, 300 P.3d 376 (2013).

Both Backpage and its amici have failed to meet that heavy burden because there is no evidence to show Congress had a clear and manifest intent to displace Washington's authority to protect children. While section 230(e)(3) states that no cause of action may be brought that "is inconsistent with this section," it also states that "[n]othing in this section shall be

construed to prevent any State from enforcing any State law that is consistent with this section.”

Congress did not intend to preempt Washington’s power to protect children from sex trafficking, and neither Backpage nor its amici provide any legal support for their assertion that Congress created some sort of “bright line rule” that confers absolute immunity on websites, given the language of section 230 itself and the context of its enactment in a Communications *Decency* Act. If Congress intended to create a “bright line rule,” then it would have simply said that websites are immune from liability. It did not.

**C. Congress Did Not Confer Absolute Immunity on Websites**

There has been no showing that allowing the child victims to pursue their claims against Backpage would be inconsistent with either the plain language of section 230 or its purposes:

It is the policy of the United States -

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate material; and,

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassing by means of computer.

47 U.S.C. § 230(b)(1)-(5) (1996).

None of these policy objectives support the “bright line test” urged by Backpage’s amici, which is shorthand for suggesting Congress intended to provide *absolute* immunity to websites. The only purpose that is clear and manifest is that Congress wanted to encourage websites to remove offensive or unlawful material provided by third parties, while at the same time continuing to protect children and to punish those who try to exploit them. Put another way, Congress intended to preempt state law claims against websites who were being sued under traditional theories of publisher liability for their good faith efforts to remove offensive material, but it did not intend to preempt state law claims against a website who intentionally creates an online marketplace for illegal sex trafficking and then aids others in committing that crime.

If Backpage’s website allowed its customers to reserve a brick and mortar room to have sex with minors it would clearly be held criminally liable under RCW 9A.88.060-.090 and civilly liable under RCW 9.68A.130. Congress did not intend that same conduct to be immune from

suit simply because Backpage has thus far limited its business model to the internet and shied away from bricks and mortar. Just like Congress did not intend for section 230 to preempt the State's power to provide criminal and civil remedies for advancing and promoting prostitution and child exploitation offline, nothing in its legislative history suggests it intended a different result simply because the wrongful conduct occurs online. To the contrary, Congress specifically intended to prevent the internet from becoming an online red light district:

The information superhighway should not become a red light district. This legislation will keep that from happening and extend the standards of decency which have protected telephone users to new telecommunications devices.

Once passed, our children and families will be better protected from those who would electronically cruise the digital world to engage children in inappropriate communications and introductions. The Decency Act will also clearly protect citizens from electronic stalking and protect the sanctuary of the home from uninvited indecencies.

141 Cong. Rec. S1953 (daily ed. Feb. 1, 1995).

Congress was so concerned with the offline danger posed by an online red light district that it targeted criminal penalties "at content providers who violate this section and persons who conspire with such content providers, rather than entities that simply offer general access to the internet and other online content." H.R. Conf. Rep. 104-458, at 190.

Neither the plain language nor the legislative history suggests that Congress intended to provide websites with absolute immunity, or to preempt Washington's authority when it comes to protecting children from sexual abuse and exploitation and providing them with means for redress.

**D. Recent Cases Reject the Assertion of a “Bright Line Test” and Absolute Immunity, Confirming that the Scope of Section 230 is More Limited than Backpage and Its Amici Claim**

This case is before the Court on a CR 12(b)(6) motion, so it would be premature for the Court to decide what test should be applied to ultimately determine whether Backpage's conduct falls outside of section 230. However, as noted by the amicus brief of the State of Washington, a number of recent appellate decisions reflect a growing trend toward developing a test that balances Congress's intent of protecting websites who engage in good faith efforts to remove offensive material with the realized risk that section 230 is being used in bad faith to try to shield illegal conduct. *See e.g.* David Lukmire, *Can the Courts Tame the Communications Decency Act?: The Reverberations of Zeran v. America Online*, 66 N.Y.U. Ann. Surv. Am L. 371 (2010), at 407-410 (noting recent courts have taken steps toward recognizing an objective bad faith exception to section 230).

Notably, a number of these recent decisions are from the Ninth Circuit, a jurisdiction that is home to a majority of the country's youngest and oldest websites. As the Ninth Circuit observed in the paradigm shifting decision of *Fair Hous. Council of San Fernando Valley v. Roommates.com*,

*LLC*, 521 F.3d 1157, 1168-69 (9th Cir. 2008), section 230 was “not meant to create a lawless no-man’s land on the Internet,” but to hold liable those who create content as well as those who “materially contribut[e] to its alleged unlawfulness.” This recognition that website operators can be liable when they materially contribute to illegal content on their website further demonstrates section 230 is not intended to provide absolute immunity at the front door of a case at this motion to dismiss stage. Rather, Backpage must first prove it is entitled to the immunity provided under section 230; there is no “bright line test” that triggers absolute immunity merely because Backpage identifies itself as a website operator. This is particularly true where neither Backpage nor its amici deny that the facts as alleged by the child victims were sufficient to support a denial of Backpage’s motion to dismiss. Their sole argument is that section 230 provides Backpage with a “get out of jail free card” because it self-identifies as a website operator and it claims it removes unlawful content. A number of recent decisions reject this purported bright line test, and compel courts to dig deeper to assess the precise interaction between website operators and their users with regard to content development.

In *Federal Trade Commission v. Accusearch*, 570 F.3d 1187, 1198-99 (10th Cir. 2009), the Court stated:

Just as the CDA does not define *development* it does not define *responsible*. We need not provide a complete definition of the term that will apply in all contexts; but we

can say enough to resolve this case and to assuage concern that the broad meaning for *development* that we have adopted will undermine the purpose of immunity under the CDA. ...

In this context - responsibility for harm - the word responsible ordinarily has a normative connotation. *See The Oxford English Dictionary* 742 (2d ed. 1998) (stating one definition of responsible as “Morally accountable for one’s actions.”). As one authority puts it: “[W]hen we say, ‘Every man is responsible for his own actions,’ we do not think definitely of any authority, law, or tribunal before which he must answer, but rather of the general law of right, the moral constitution of the universe...” James C. Fernald, *Funk & Wagnalls Standard Handbook of Synonyms, Antonyms, and Prepositions* 366 (1947). Synonyms for responsibility in this context are blame, fault, guilt, and culpability. *See Oxford American Writer’s Thesaurus* 747 (2d ed. 2008). Accordingly, to be “responsible” for the development of offensive content, one must be more than a neutral conduit for that content. That is, one is not “responsible” for the development of offensive content if one’s conduct was neutral with respect to the offensiveness of the content (as would be the case with the typical internet bulletin board). We would not ordinarily say that one who builds a highway is “responsible” for the use of that highway by a fleeing bank robber, even though the culprit’s escape was facilitated by the availability of the highway.

In other words, if the site is a genuine bulletin board, and the website operator is not involved in creating or developing content, it is immune; but if it intentionally aids users in posting illicit material in order to promote an illegal enterprise, it is not. Backpage, as the nation’s number one entity promoting and profiting from human sex trafficking, is responsible, at least in part, for the content on its website. As pled in the Amended Complaint, Backpage solicits and encourages sex trafficking, provides instructions to

pimps, stymies law enforcement, and has created an atmosphere designed to promote and enhance unlawful content and behavior. Backpage is responsible, at least in part, for the massive amount of human and child sex trafficking on its website. It is hardly a neutral and passive conduit.

In *Roommates*, the Ninth Circuit stressed that section 230 was not intended to prevent the enforcement of all laws online, but was intended to protect websites from their good faith efforts to remove offensive content:

We believe that this distinction is consistent with the intent of Congress to preserve the free-flowing nature of Internet speech and commerce without unduly prejudicing the enforcement of other important state and federal laws. When Congress passed section 230 it didn't intend to prevent the enforcement of all laws online; rather it sought to encourage interactive computer services that provide users *neutral* tools to post content online to police that content without fear that through their "good Samaritan ... screening of offensive material," 47 U.S.C. § 230(c), they would become liable for every single message posted by third parties on their website.

521 F.3d at 1175. In distinguishing one of the cases upon which Backpage's amici heavily rely, the Court in *Roommates* stated "the salient fact in *Carafano* was that the website did nothing to enhance the defamatory sting of the message, to encourage defamation, or make defamation easier." *Roommates*, 521 F.3d at 1173. In contrast, Backpage enhances child sex trafficking. According to NCMEC, there has been a 1,432% increase of child sex trafficking reports due to internet sex trafficking websites. And

Backpage controls the lion's share of that market. Nowhere does Backpage or its amici deny that the company enhances child sex trafficking.

Likewise, as alleged by the child victims and as reflected by the "hypothetical" facts noted by amici The National Center for Missing and Exploited Children, The Coalition Against Trafficking in Women, and FAIR Girls, Backpage encourages child sex trafficking and makes the sale and purchase of children for sex easier. Backpage removes law enforcement sting ads from its website, thus assuring johns that they are getting a real victim, instead of getting arrested. This encourages johns to shop at Backpage's website and makes it easier for them to achieve their unlawful liaison. Backpage also offers an environment of complete anonymity for pimps to market their victims. These pimps have Backpage.com in mind when they create their advertisements. They do not just create them out of the blue with nowhere in mind to put them. Prepaid "burner" phones coupled with prepaid credit cards stymie law enforcement efforts to identify traffickers. Backpage even instructs traffickers on how to purchase and use such prepaid credit cards. Backpage's "age filter" serves to guide pimps to falsely identify their victims as 18 years old. Backpage's posting rules and guidelines instruct pimps on how to create a successful human trafficking advertisement which limits exposure to criminal prosecution. Backpage also fails to track phone numbers, photographs, and credit cards used in suspected child sex trafficking ads

and instead enables pimps to continuously post ads selling children for sex without consequences.

Backpage created the “escort” title which identifies all advertisements within that category as prostitution advertisements, including advertisements selling children for sex. All of these efforts by Backpage encourage human sex trafficking and make it easier for the perpetrators to engage in this unlawful activity. It is because of the above efforts by Backpage.com that the website has become the nation’s number one entity involved in human and child sex trafficking. Backpage has not achieved this ranking by accident or because it is a neutral bulletin board which is being misused by third parties. Backpage has engaged in a deliberate, sophisticated, corporate effort to assist in child sex trafficking for profit over the internet and to develop the necessary advertising content to stay in its illicit business, a jump ahead of law enforcement. The company is responsible for its actions.

While Backpage and its amici frame section 230 as an absolute defense at the outset of a case, recent case law shows the statute is more subject to nuance when fundamental issues regarding content creation and responsibility for creation of illegal content are at issue. In line with those cases, the trial court correctly concluded that the well-pled allegations in this case regarding Backpage’s creation of and responsibility for certain

content on its site were more than sufficient to deny Backpage's motion to dismiss.

**E. The Websites Cited by Backpage's Amici Demonstrate Why the Court Should Uphold the Trial Court's Ruling**

The leading websites noted by Backpage's amici, including Google, YouTube, Wikipedia, Twitter, Instagram, and Craigslist, all have three things in common that starkly differentiate them from Backpage: (1) they did not intentionally create and develop an online marketplace for sex trafficking, (2) they do not actively help traffickers create and develop their advertisements for selling children, and (3) they have become leading websites through legitimate business models, yet each relies on content generated almost exclusively by third parties. It is unclear why amici suggest these websites "would likely be driven out of business" if the trial court's ruling is upheld when their conduct bears absolutely no relation to that of Backpage.<sup>2</sup> Backpage would have this Court view it as a mainstream company whose business practices are based on a strong sense of corporate

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<sup>2</sup> While not relevant to the Court's analysis, the Brief of Amici Curiae Professors of Constitutional Law and Related Fields asserts that Backpage.com is a "leading site on the Internet." Brief at 3. This claim is not supported by the offered citation. *Cf. e.g.*, Jack M. Balkin, *The Future of Free Expression in a Digital Age*, 36 *Pepp. L. Rev.* 427 (2009) (the word "Backpage" appears nowhere in the article, let alone in any section that discusses the leading sites of the internet).

To the extent the Brief of Amici Curiae Professors of Constitutional Law and Related Fields describes the authors as professors of constitutional law and related fields who have written about online freedom of speech, Backpage did not raise a constitutional issue with the trial court and neither Backpage nor its amici raise a constitutional issue in their briefs with this Court. No constitutional issue exists for the Court to consider or resolve. *Douglas v. Freeman*, 117 Wn.2d 242, 257-58, 814 P.2d 1160 (1991) (court will not consider issues a party fails to raise in its briefing or tries to raise for the first time in a supplemental brief).

responsibility. The facts alleged in the complaint and the amici briefs demonstrate that Backpage is in a class far different from these mainstream online companies as much as it may try to seek cover by invoking the names of these companies.

Craigslist poses a particular hurdle to amici's arguments. In 2010, the company removed the "adult services" section of its website in response to mounting public pressure that the section, like Backpage's "escort" section, was a front for prostitution and sex trafficking.<sup>3</sup> But the company continues to flourish: in 2010 its revenues were \$122 million;<sup>4</sup> in 2014 its revenues are projected to be \$335 million.<sup>5</sup>

The only people driven out of business were the sex traffickers who used Craigslist to post their advertisements. Yet their unemployment was apparently short-lived given the resulting jump in revenue that Backpage saw after Craigslist shut down its "adult services."<sup>6</sup>

Neither Backpage nor its amici cite to any factual support for the claim that any websites, let alone any leading websites, would suffer

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<sup>3</sup> "Craigslist Says It Has Shut Its Section for Sex Ads," New York Times (Sept. 15, 2010).

<sup>4</sup> "Craigslist revenue, profits soar," Peter Zollman (aimgroup.com) (April 30, 2010) (<http://aimgroup.com/2010/04/30/craigslist-revenue-profits-soar/>) (last visited October 6, 2014).

<sup>5</sup> "2014 Craigslist Annual," Advanced Interactive Media Group LLC (June 2014) ([http://www.researchandmarkets.com/research/llmxxd/2014\\_craigslist](http://www.researchandmarkets.com/research/llmxxd/2014_craigslist)) (last visited October 6, 2014).

<sup>6</sup> "Escort-ad revenue migration continues," Advanced Interactive Media Group LLC (July 12, 2011) (<http://aimgroup.com/2011/07/13/escort-ad-revenue-migration-continues-2>) (last visited October 6, 2014).

consequences by allowing the child victims their day in court. Moreover, given Backpage’s business model and the assistance it provides to pimps to sell children for sex on its website, it cannot claim that liability – much less allowing the case to proceed to discovery – would discourage Good Samaritan filtering, which is the core of the CDA’s intent. *Doe v. Internet Brands, Inc.* (9th Cir. 2014).<sup>7</sup> As the Ninth Circuit recently held, the potential that tort liability may attach to a website operator for content on its website would have a “chilling effect” on liability through increased costs of doing business online, is not persuasive to bar a claim due to the CDA. Rather, the Ninth Circuit recognized that the CDA is not a “general immunity from liability” and was not intended by Congress to provide “an all purpose get-out-of-jail free card for businesses that publish user content on the internet, though any claims might have a marginal chilling effect on internet publishing businesses.” *Internet Brands*, at 11. Even more compelling, the Ninth Circuit has recognized that on a motion to dismiss, consideration of any potential chilling effect of allowing a claim to proceed against a website operator is premature because the viability of the tort claim asserted by plaintiffs is not before the court on a motion to dismiss. *Id.*

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<sup>7</sup> *Doe v. Internet Brands, Inc.* was decided by the Ninth Circuit on September 17, 2014. A copy of the decision was provided to the Court by letter on October 6, 2014.

The Ninth Circuit is home to most, if not all, of the leading internet sites cited by Backpage's amici. Yet the Court was unpersuaded by assertions that the internet, or the substantial *good* it enables, will somehow be eroded by rejecting an argument that section 230 confers absolute immunity on websites simply because they are websites. Notably, the amicus brief submitted by the Electronic Frontier Foundation and the Center for Democracy and Technology in support of Backpage states that the amici are two organizations that support free speech, privacy rights, and openness on the internet. However, absent from their brief is any argument that this Court would somehow hamper free speech, privacy rights, or the openness of the internet if the Court upholds the trial court's order and Washington's compelling interest in protecting children from sexual abuse and exploitation. Given these amici are funded by the technology industry, it is telling that their brief lacks any evidence to support the assertion that upholding the trial court's order would somehow curb the continued growth and development of the internet.

**F. The Girls Do Not Propose Liability Based Solely on a Website's Knowledge**

The Brief of Amici Curiae Professors of Constitutional Law and Related Fields states that the authors are professors of constitutional law and related fields who have written about online freedom of speech. However, their brief is not focused on those subjects. Instead, they repeat

the same legal arguments made by Backpage, and then with a flair of professorial imprimatur, they set-up a Socratic straw man by suggesting the child victims are urging liability based solely on a website's knowledge.

While tempting to debate, particularly given the lack of any record to support their claim that the internet would be "crippled" by notice-based liability, the majority of their brief is a red herring. The child victims have never advocated for notice-based liability and the trial court's order was not premised on notice-based liability. To the contrary, the trial court correctly concluded that Congress did not make websites absolutely immune from suit and that the child victims should be allowed to conduct discovery into their factual allegations that Backpage to some extent created, encouraged, aided, designed, and was responsible for the illegal content on its website.

None of the websites referred to by amici come anywhere close to the same illicit business model as Backpage. For example, amici tell the story of Wikipedia, and suggest it arose from the ashes of a former website called Nupedia that failed because of a "demanding editorial review policy." Amici suggest Wikipedia would be threatened by notice-based liability, but nowhere do they explain how Wikipedia could be threatened if the Court upholds the trial court's denial of Backpage's motion to dismiss based on the allegations made by the child victims. Wikipedia is not in the business of trafficking sex.

Similarly, amici recall the grass roots role of Twitter and YouTube in covering the Iranian protests in Summer 2009, and suggest the trial court's order would have somehow required them to "prescreen all their content." They actually go further, and argue the trial court's order would have resulted in neither Twitter nor YouTube existing. Yet again, nowhere do they articulate any set of facts that someone could have pled to hold Twitter or YouTube liable for this conduct, or how that conduct in any way, shape, or form is analogous to the allegations against Backpage.

**G. The Sex Trafficking of Children is Not a Cost of Doing Business**

The Backpage amici suggest that "[i]n many cases, the protection offered by § 230 comes with costs." Thankfully, Washington has long made clear that its children are not a cost of doing business. To the contrary, and as reflected in the preamble to the Sexual Exploitation of Children Act, "[t]he care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children." RCW 9.68A.001. By analogy, Washington long ago rejected the notion that the blood of workers is the cost of doing business. *Birklid v. Boeing Co.*, 127 Wn.2d 853, 874, 904 P.2d 278 (1995) ("[a]lthough ... in 1916 everyone 'agreed that the blood of the workman was a cost or production,' that statement no longer reflects the public policy

or the law of Washington.”). Nor should the innocence of child victims of sex trafficking be the price of the internet.

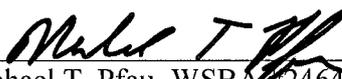
### III. CONCLUSION

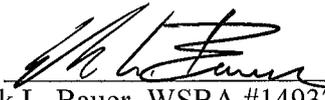
J.S., S.L., and L.C. respectfully request the Court affirm the trial court’s ruling because the trial court committed no error in denying Backpage’s motion to dismiss.

Respectfully submitted this 6th day of October, 2014.

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## CERTIFICATE OF SERVICE

Bernadette Hacker, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on October 6, 2014, I delivered via Personal Service/Email and sent for delivery via U.S. Mail a true and correct copy of the above document, directed to:

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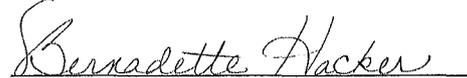
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**Subject:** RE: Village Voice Media Holdings, LLC, et al. v. J.S., et al. -- Case No. 90510-0 -- Respondents' Motion for Over-Length Brief, Answer to Brief of Amicus Curiae and Supplemental Authority

Received 10/06/2014

Supreme Court Clerk's Office

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**Subject:** Village Voice Media Holdings, LLC, et al. v. J.S., et al. -- Case No. 90510-0 -- Respondents' Motion for Over-Length Brief, Answer to Brief of Amicus Curiae and Supplemental Authority

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