

No. 16-276

IN THE
Supreme Court of the United States

JANE DOE NO. 1, JANE DOE NO. 2, AND JANE DOE
NO. 3, A MINOR CHILD BY HER PARENTS AND NEXT
FRIENDS SAM LOE AND SARA LOE,

Petitioners,

v.

BACKPAGE.COM, LLC, CAMARILLO HOLDINGS,
LLC, (F/K/A VILLAGE VOICE MEDIA HOLDINGS,
LLC), AND NEW TIMES MEDIA, LLC,

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the First Circuit**

**MOTION OF FAIR GIRLS FOR LEAVE TO FILE
BRIEF AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONERS AND BRIEF OF
AMICUS CURIAE FAIR GIRLS**

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**MOTION FOR LEAVE TO FILE AMICUS
CURIAE BRIEF IN SUPPORT OF
PETITIONERS**

FAIR Girls respectfully moves under Supreme Court Rule 37(2)(b) for leave to file the attached brief as *amicus curiae* in support of Petitioners' petition for writ of certiorari. As required by Supreme Court Rule 37(2), FAIR Girls sought consent from the parties to file its *amicus curiae* brief. See Letter from Jenna A. Hudson, Gilbert LLP, to Petitioners' Counsel, Ropes & Gray LLP (Sept. 13, 2016) (on file with author); Letter from Jenna A. Hudson, Gilbert LLP, to Respondents' Counsel, Davis Wright Termaine LLP (Sept. 13, 2016) (on file with author). In response, on September 13, 2016, Petitioners provided written consent. See Email from John T. Montgomery, Ropes & Gray LLP, to Jenna A. Hudson, Gilbert LLP (Sept. 13, 2016, 18:48 EST) (on file with author). Respondents, however, have affirmatively withheld consent. See Email from Jim Grant, Davis Wright Termaine LLP, to Jenna A. Hudson, Gilbert LLP (Sept. 14, 2016, 11:16 EST).

FAIR Girls has an interest in the Court granting certiorari because FAIR Girls has seen firsthand the devastating, nationwide consequences of the affirmative conduct for which Backpage.com seeks to escape liability by claiming immunity under the Communications Decency Act. As detailed more extensively in its attached *amicus curiae* brief, FAIR Girls provides direct services to victims of sex trafficking. The average FAIR Girls

client is between sixteen to eighteen years old and was raped an average of three to five times per night, every night, for four years before she escaped sex trafficking. Virtually all of FAIR Girls' clients—including some as young as eleven—have at some point been sold through Backpage.com. FAIR Girls therefore respectfully requests that the Court grant it leave to file the attached *amicus curiae* brief.

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INTEREST OF AMICUS CURIAE¹

Amicus curiae FAIR Girls (formerly FAIR Fund) is a nonprofit agency headquartered in Washington, D.C. that seeks to prevent the exploitation of young women and girls aged eleven to twenty-four and to aid survivors of exploitation through education and empowerment. FAIR Girls does this by providing direct services to survivors; educating groups about prevention, identification, and assistance; and by advocating for changes in legislation. Since its founding, FAIR Girls has served over 20,000 young people and provided technical and programmatic support to hundreds of social service organizations in eighteen countries.

¹ In accordance with Supreme Court Rule 37.6, *amicus curiae* notes that the position it takes in this brief has not been approved or financed by Petitioners, Respondents, or their counsel. Neither Petitioners, Respondents, nor their counsel had any role in authoring, nor made any monetary contribution to fund the preparation or submission of, this brief.

In accordance with Supreme Court Rule 37.2, FAIR Girls notified the parties of its intent to file an *amicus curiae* brief in support of Petitioners' petition for writ of certiorari and sought their consent more than ten days before FAIR Girls' *amicus curiae* brief was due to the Court. See Letter from Jenna A. Hudson, Gilbert LLP, to Respondents' Counsel, Davis Wright Termaine LLP (Sept. 13, 2016) (on file with author). In response, on September 13, 2016, Petitioners provided their written consent. See Email from John T. Montgomery, Ropes & Gray LLP, to Jenna A. Hudson, Gilbert LLP (Sept. 13, 2016, 18:48 EST) (on file with author). Respondents, however, have affirmatively withheld consent. See Email from Jim Grant, Davis Wright Termaine LLP, to Jenna A. Hudson, Gilbert LLP (Sept. 14, 2016, 11:16 EST) (on file with author). Accordingly, FAIR Girls filed with this Court a motion for leave to file this *amicus curiae* brief.

FAIR Girls' direct services include emergency response, medical assistance referral, stabilization support, 24/7 hotline access, court advocacy, individual and group therapy, job-readiness education, interpreter/translator services, HHS certification assistance, art therapy, and crisis housing. Up to seventy-five young women and girls reside at FAIR Girls on an annual basis, with an average of at least one new girl seeking assistance per week. The average FAIR Girls client is between sixteen and eighteen years old and was raped an average of three to five times per night, every night, for four years before she escaped sex trafficking.

FAIR Girls also is a member of the D.C. Anti-Trafficking Task Force, where it co-chairs the training and victim services committee. FAIR Girls regularly trains law enforcement, medical professionals, social workers, and educators to identify and assist victims of human trafficking. FAIR Girls also provides prevention education services to 4,000 teens in high schools, foster group homes, detention facilities, and youth shelters. FAIR Girls' four-week prevention curriculum has been featured in the Boston Globe and USA Today. It also has been incorporated into action plans in Maryland and D.C. high schools.

Finally, FAIR Girls works with legislators to address the realities that survivors of sex trafficking face. For example, FAIR Girls is a supporter of the Trafficking Survivors Relief Act of 2016, which Senator Kirsten Gillibrand announced on Sunday, September 25, 2016.

FAIR Girls has an interest in this case because it has firsthand knowledge of the devastating, nationwide consequences of the affirmative conduct for which Backpage.com seeks to escape liability by claiming immunity under the Communications Decency Act. Virtually all of FAIR Girls' clients—some as young as eleven—have at some point been sold through Backpage.com. To prevent the continuation of sex trafficking, FAIR Girls monitors the “escorts” section of Backpage.com to identify underage and missing youth being sold for sex and notifies Backpage.com when it finds such advertisements. However, Backpage.com routinely refuses to remove the advertisements, even after multiple reports, and even after acknowledging that the advertisements should be removed. Conversely, Backpage.com has, of its own accord, promptly removed advertisements FAIR Girls has attempted to post that would help victims of sex trafficking. FAIR Girls therefore submits this *amicus curiae* brief in support of Petitioners' petition for writ of certiorari.

SUMMARY OF THE ARGUMENT

There is no question that underage girls are trafficked through Backpage.com. The question before this Court is whether to consider on the merits the “chain of causation” test for immunity under the Communications Decency Act. Under the First Circuit's interpretation of that test—which, as addressed in depth in the petition for certiorari, is contrary to the interpretation applied by other United States courts of appeals and the Supreme Court of the state of Washington, as well as

principles enunciated by this Court—Backpage.com would escape liability for its affirmative involvement in sex trafficking. Although FAIR Girls supports all arguments made by Petitioners in support of certiorari, this brief focuses on the significance of the question before the Court by highlighting the devastating, nationwide consequences of the affirmative conduct for which Backpage.com seeks to escape liability. It also notes that even Backpage.com appears to agree that consideration of “the level of protection” that it enjoys under the Communications Decency Act is “of critical importance.”

ARGUMENT

I. NATIONWIDE, UNDERAGE GIRLS ARE SOLD FOR SEX ON BACKPAGE.COM.

Between 14,500 and 17,500 individuals are trafficked into the United States each year.² Approximately 79% of female trafficking victims are sexually exploited.³

FAIR Girls provides services to victims that have escaped sex trafficking. Annually, FAIR Girls

² Dep’t of Justice, *Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2005*, 3 (June 2006), <http://www.justice.gov/archive/ag/annualreports/tr2005/agreporthumantrafficking2005.pdf>.

³ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, 36 (2014), http://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf.

serves over 300 survivors.⁴ The average FAIR Girls client is between sixteen and eighteen years old and was raped an average of three to five times per night, every night, for four years before she escaped sex trafficking.⁵ These girls are not alone; it is well-known and publicized that Backpage.com is a haven for sex traffickers.⁶

⁴ Evidence on file with *amicus curiae*.

⁵ Evidence on file with *amicus curiae*.

⁶ See, e.g., Opp'n to Appl. by Carl Ferrer for Stay Pending Appeal at 8, *Carl Ferrer v. Senate Permanent Subcomm. On Investigations*, No. 16A236 (U.S. Sept. 9, 2016). (“[Backpage.com] dominates the online market for commercial sex, and numerous instances of sex trafficking (including trafficking of minors) have occurred through [Backpage.com].”); Cameron Knight, *Prosecutors: Man pushed runaway teen to prostitution*, Cincinnati.com (Sept. 26, 2016, 03:16 PM), <http://www.cincinnati.com/story/news/crime/2016/09/26/prosecutors-man-pushed-runaway-teen-prostitution/91096210/>; Conor Berry, *Anti-sex trafficking group praises AG Maura Healey for hard-line stand against Backpage.com after prostitute murdered*, MassLive (July 9, 2015, 7:57 PM), http://www.masslive.com/news/boston/index.ssf/2015/07/nonprofit_opposed_to_sex-for-m.html; Cameron Knight, *Police: Woman compelled 17-year-old into prostitution*, Cincinnati.com (Sept. 17, 2015, 11:54 PM), <http://www.cincinnati.com/story/news/crime/2015/09/17/police-woman-compelled-17-year-old-into-prostitution/72365288>; Jon Seidel, *Federal judge says Backpage.com is full of prostitution ads*, Chicago Sun-Times (Aug. 24, 2015, 8:41 PM), <http://chicago.suntimes.com/news/7/71/904297/federal-judge-says-backpage-com-full-prostitution-ads>; Arianna Pickard, *Human trafficking in Tulsa linked to escort ads on Backpage website*, Tulsa World (Aug. 17, 2015, 12:00 AM), http://www.tulsaworld.com/news/courts/human-trafficking-in-tulsa-linked-to-escort-ads-on-backpage/article_2b4f7430-8c58-5dce-b489-0caebbb52807.html.

The reality of what girls sold for sex on Backpage.com undergo is difficult, but one that the Court cannot ignore. Below are but a few examples of FAIR Girls clients that were sold on Backpage.com and subject to repeated rapes.

- At 17, Macy's parents gave her up to the foster care system.⁷ Shortly thereafter, she met an older man who gained her trust with promises of love and safety. Macy's trafficker promised her that he would protect her and that she did not have to live in foster care or be homeless. A few days after she moved in with him, Macy's trafficker told her she would have to have sex with other men to earn money if she did not want to lose him. She initially said no, but he strangled her until she almost blacked out. Fearing for her life, she agreed. For months, Macy was forced to have sex with countless men in hotels in six different states. All of these men bought her through Backpage.com.⁸
- In the summer of 2015, a D.C.-area mother discovered that her 15-year-old daughter was being sold on Backpage.com. She was being held captive without the ability to contact the outside world and forced to have sex with men who contacted her traffickers at all times of the day and night. Her traffickers took her to

⁷ All names of trafficking victims used herein are pseudonyms.

⁸ Evidence on file with *amicus curiae*.

California for months before returning to the D.C. area. Upon discovering the Backpage.com advertisements, the girl's mother desperately tried to contact the traffickers and rescue her daughter. Ultimately, the traffickers admitted to having the girl and left her on the side of the road.⁹

- Also in 2015, D.C. law enforcement uncovered a 14-year-old sex trafficking victim who had been sold on Backpage.com using advertisements that included markers of sex trafficking. This girl was told that as long as she made a minimum of \$500 a day, she would have food and shelter. Coming from a life of foster care and child sexual abuse at the hands of her family members, this girl believed that her trafficker actually cared for her and that she was in love with him. While in captivity, she frequently had sex with up to eight men per day. Eventually, she became pregnant. Today, she is in a locked facility and her infant child is in foster care.¹⁰
- In February 2016, FAIR Girls was contacted by a 17-year-old victim who was seeking to escape sex trafficking. She had been lured by her pimp from Florida to Washington, D.C. and sold on Backpage.com for two years. Each night of those two years, her trafficker made at least \$1,500 per night from selling this girl

⁹ Evidence on file with *amicus curiae*.

¹⁰ Evidence on file with *amicus curiae*.

and her 16-year-old sister.¹¹ And even though she now has escaped her trafficker, her trafficker's advertisements remain on Backpage.com, and as a result, men have attempted to rape her.

All of these girls ultimately escaped sex trafficking, but thousands like them continue to be sold through Backpage.com every day, all over the United States.¹²

II. BACKPAGE.COM ACTIVELY PARTICIPATES IN AND AIDS SEX TRAFFICKING ON ITS WEBSITE.

In order to combat sex trafficking, FAIR Girls monitors Backpage.com to identify underage and missing youth being sold for sex and reports these advertisements to Backpage.com for removal. However, in FAIR Girls' experience, Backpage.com routinely responds to these reports by refusing to remove advertisements that increase and promote underage sex trafficking, even after multiple reports and/or even after acknowledging that the advertisements should be removed. Conversely,

¹¹ Evidence on file with *amicus curiae*.

¹² See, e.g., Second Amended Complaint for Damages, *J.S., S.L., and L.C., v. Village Voice Media Holdings, L.L.C.*, No. 312-cv-06031-KLS, 2012 WL 10095992 at ¶¶ 1.2, 4.1 – 6.7 (W.D. Wash. Dec. 6, 2012). (Telling the story of two 13-year-old girls and one 15-year-old girl in Washington state who were sold for sex on Backpage.com with advertisements that included multiple lascivious photographs showing that they were minors and the hundreds of customers who raped them, often multiple times a day, over the course of months).

Backpage.com will, of its own accord, promptly remove advertisements that seek to provide support for victims. These actions demonstrate that Backpage.com is not a passive intermediary. Rather, it actively participates in and aids the sale of underage girls for sex.

A. Backpage.com Refuses To Remove Advertisements That Increase and Promote Underage Sex Trafficking.

FAIR Girls' review of advertisements placed in the "escorts" section of Backpage.com has resulted in numerous successful efforts, in conjunction with local law enforcement, to rescue victims of trafficking. Backpage.com, however, actively refuses to remove such advertisements.

For example, during the course of FAIR Girls' routine search of the "escorts" section on Thursday, May 17, 2012, FAIR Girls identified an advertisement that it knew was trafficking sex because it included a photograph of a girl that could not have been advertising herself for sex—she was a sex trafficking survivor who at that moment was sitting in FAIR Girls' office reading a book. FAIR Girls also believed that the advertisement was being used to sell sex with underage girls because the client whose photograph was used suffers from a serious developmental disability that makes her look extremely young.¹³ FAIR Girls therefore reported this advertisement to abuse@backpage.com. In response, Backpage.com wrote, "[t]hanks for

¹³ Evidence on file with *amicus curiae*.

bringing these advertisements to our attention and reporting them to us. We have tried to remove as much of the content as we could find.”¹⁴ However, it did not remove the advertisement.¹⁵

Had Backpage.com removed the advertisement, it would have prevented thirty-five days of continuing rape and captivity of two young girls. As discovered by law enforcement on June 22, 2012, two girls were being sold through the advertisements that FAIR Girls reported. D.C. police found the girls in an upscale hotel across the street from the National Zoo. One of the victims was pregnant. And during the month between when Backpage.com failed to remove the advertisement and when the girls were rescued, the sex traffickers had threatened the girls with both a semi-automatic weapon and handgun, had taken their money, and had monitored them at all times to prevent them from escaping.¹⁶

Backpage.com also has failed to remove advertisements it admits publicly should not have made it through its screening process. In April 2012, FAIR Girls identified online “escorts” advertisements depicting a then 19-year-old young woman whose advertisements had been posted since she was underage. Those advertisements read: “Submissive Coco Slave. Beat Me. Degrade Me. Choke Me” and “@All Bottom Chick @ All submissive

¹⁴ Email exchange on file with *amicus curiae*.

¹⁵ Evidence on file with *amicus curiae*.

¹⁶ Evidence on file with *amicus curiae*.

Slave @ All Nasty Freak, Looking for a Master – 19.”¹⁷ Despite the fact that FAIR Girls regularly reported these advertisements to abuse@backpage.com, Backpage.com did not remove them. In May 2012, CNN’s Anderson Cooper presented Backpage.com’s legal counsel with an advertisement depicting the very same girl.¹⁸ Although Backpage.com’s counsel admitted that the advertisement should not have made it through Backpage.com’s screening process,¹⁹ for approximately four months after the interview, Backpage.com did not remove the advertisements (or stop the pimp from simply reposting.²⁰ Based on the experience of the average FAIR Girls’ client, this delay could have resulted in the victim being raped between 360 and 600 times.²¹ Yet despite publicly acknowledging that the advertisement should be removed, and its knowledge of the likely consequences, Backpage.com did nothing.

¹⁷ Evidence on file with *amicus curiae*.

¹⁸ Village Voice Pimps, *CNN Anderson Cooper 360 16 May 2012 Village Voice backpage com tony Ortega jim larkin michael lacey*, YouTube (May 26, 2012), <https://www.youtube.com/watch?v=rMBFIvb9U2k> (discussion begins at 6:20).

¹⁹ *Id.*

²⁰ Evidence on file with *amicus curiae*.

²¹ Evidence on file with *amicus curiae*.

B. Backpage.com Independently Removes Advertisements That Could Decrease Sex Trafficking.

Conversely, in FAIR Girls' experience, Backpage.com independently has removed from its website advertisements that offer support to victims of sex trafficking. For example, on April 15, 2014, FAIR Girls attempted to post a simple advertisement in the "escorts" section of Backpage.com. The advertisement provided a crisis hotline phone number to victims of sexual exploitation and trafficking. FAIR Girls intentionally posted its advertisement in the "escorts" section because that is the section of the website where sex trafficking occurs, and therefore where the girls it is trying to reach may see it.²²

On April 16, 2014, FAIR Girls received an email advising that its advertisement had been removed because "non-escorts" advertisements aren't likely to stay up in the "escorts" category for very long."²³ Despite the fact that Backpage.com waited approximately four months to remove advertisements that it agreed should be removed to protect victims of trafficking, it independently identified and removed a post designed to *help* sex trafficking victims after it had been online for only one day.

²² Evidence on file with *amicus curiae*.

²³ Email exchange on file with *amicus curiae*.

III. BACKPAGE.COM APPEARS TO AGREE THAT THE QUESTION BEFORE THE COURT HAS FAR-REACHING IMPLICATIONS.

Since April 2015, the Senate Permanent Committee on Investigations has been investigating the growing problem of online sex trafficking.²⁴ Through its investigation, the Senate has identified Backpage.com as a website that “dominates the online market for commercial sex,” and that “numerous instances of sex trafficking (including trafficking of minors) have occurred through [Backpage.com].”²⁵

In keeping with these findings and to aid its investigation, the Senate Permanent Committee on Investigations issued a document subpoena on Backpage.com.²⁶ However, Backpage.com has staunchly refused to produce the requested documents. In fact, on September 6, 2016, Backpage.com applied to this Court for an immediate stay of the United States District Court for the District of Columbia’s order that it comply with the subpoena.²⁷

²⁴ Opp’n to Appl. by Carl Ferrer for Stay Pending Appeal at 7, *Carl Ferrer v. Senate Permanent Subcomm. On Investigations*, No. 16A236 (U.S. Sept. 9, 2016).

²⁵ *Id.* at 8.

²⁶ *Id.* at 9.

²⁷ Appl. by Carl Ferrer for Immediate Stay and Stay Pending Appeal to the D.C. Circuit of Order to Comply with

In its application to this Court, Backpage.com argued, among other things, that the Communications Decency Act “create[s] broad immunity.”²⁸ It also argued (albeit most directly with regard to reporter’s privilege and the first amendment) that “[t]he unresolved question of the level of protection that online intermediary publishers enjoy . . . is of critical importance not only to Backpage, but to *all* online publishers of third-party content.”²⁹ It therefore is incredible to believe that Backpage.com would disagree that “[w]hether Section 230 of the [Communications Decency Act] precludes a civil lawsuit against a website owner and operator based on its own criminal conduct any time online content created by a third party was part of the chain of causation”³⁰ is not “of critical importance.”

Subcomm. Subpoena, *Carl Ferrer v. Senate Permanent Subcomm. on Investigations*, No. 16A236 (U.S. Sept. 6, 2016).

²⁸ *Id.* at 9.

²⁹ *Id.* at 4 (emphasis in original).

³⁰ See Petition for Writ of Certiorari, *Jane Doe, et al. v. Backpage.com LLC, et al.*, (No. 16-276) at I.

CONCLUSION

FAIR Girls' experience demonstrates the devastating, nationwide consequences of the affirmative conduct for which Backpage.com seeks to escape liability by claiming immunity under the Communications Decency Act. Additionally, Backpage.com appears to agree that "the level of protection" that it enjoys under the Communications Decency Act is "of critical importance." For these reasons, as well as the reasons set forth in the petition for certiorari, FAIR Girls supports the Petitioners' petition for certiorari.

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