

No. 90510-0

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

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

Respondents,

v.

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

Appellants.

AMICUS CURIAE BRIEF OF
FAIR GIRLS
IN SUPPORT OF RESPONDENTS

Pellegrino Certa, WSBA No. 25903
Certa Law Group
pcerta@certalaw.com
(206) 838-2500
403 Columbia Street, Ste. 500
Seattle, WA 98104

Andrea Powell
Executive Director
apowell@fairgirls.org
(202) 577-1505
2100 M Street NW
Ste. 175-245
Washington, D.C. 20037

TABLE OF CONTENTS

I. IDENTITY AND INTEREST OF THE AMICUS..... 2

II. STATEMENT OF THE CASE..... 4

III. ARGUMENT OF THE AMICUS CURIAE..... 4

 A. BACKPAGE.COM CONTROLS THE CREATION AND DEVELOPMENT OF CONTENT IN THEIR “ESCORT” CATEGORY..... 4

 B. BACKPAGE.COM KNOWINGLY DISREGARDS AND DOES NOT REMOVE ADVERTISEMENTS OF KNOWN SEX TRAFFICKING VICTIMS FROM THEIR WEB SITE 7

 C. BACKPAGE.COM HAS BEEN INFORMED OF SEXUAL SLAVERY ADVERTISEMENTS POSTED ON THEIR WEB SITE AND DOES NOT REMOVE THEM. 9

 D. BACKPAGE.COM’S SCREENING PROCEDURES DO NOT EFFECTIVELY PREVENT MINORS FROM BEING SOLD ON BACKPAGE.COM 12

 i. THE CASE OF 15 YEAR OLD “S”..... 14

 ii. THE CASE OF 15 YEAR OLD “K” 15

 iii. THE CASE OF 16 YEAR OLD “J” 15

IV. CONCLUSION..... 15

TABLE OF AUTHORITIES

Anderson Cooper 360 (CNN Television Broadcast May 10, 2012) available at <http://transcripts.cnn.com/TRANSCRIPTS/1205/10/acd.02.html>..... 10

Backpage.com “Come and Take a Ride With Kayla... The Best in the Area!!!! – 19” <http://dc.backpage.com/FemaleEscorts/.../5178329> (Downloaded on May 17, 2012). 7, 8

Backpage.com. “@All Bottom Chick @ All submissive Slave @ All Nasty Freak, Looking for a Master - 19.” <http://www.dc.backpage.com/FemaleEscort/.../7606447> (Downloaded on April 20, 2012)..... 9, 10

Backpage.com “Pertfect Treat to Make Your Day – 19.” <http://washingtondc.backpage.com/FemaleEscorts/perfect-treat-to-complete-your-day-19/5866533> (Downloaded from October 5, 2011).... 11

Backpage.com “Pertfect Treat to Make Your Day / Stay Away From This One – 18.” <http://dc.backpage.com/FemaleEscorts/pertfect-treat-to-make-your-day-stay-away-from-this-one-18/5867565> (Downloaded on October 5, 2011). 11

“Female Juvenile Prostitution: Problem and Response.” National Center for Missing and Exploited Children. (December 1992). Retrieved from: <http://www.hawaii.edu/hivandaids/Female%20Juvenile%20Prostitution%200%20%20Problem%20and%20Response.pdf> 12

U.S. Department of State, Office to Monitor and Combat Trafficking in Persons. “Trafficking in Persons Report 2006.” <http://www.state.gov/j/tip/rls/tiprpt/2006/> 12

Backpage.com. “ My Hourglass Shape Is Waiting For You. Apple booty a??.60 specials – 19” <Http://www.washingtondc.backpage.com/FemaleEscorts/.../7988350> (Downloaded on June 19, 2012) 15

I. IDENTITY AND INTEREST OF THE AMICUS

FAIR Girls is a nonprofit agency headquartered in Washington, D.C.. FAIR Girls (formerly FAIR Fund) aims to prevent the exploitation of young women and girls aged 11 to 24 through education and empowerment. Annually, FAIR Girls serves over 300 survivors of sex trafficking and labor exploitation. FAIR Girls services include emergency response, medical assistance referral, stabilization support, 24/7 hotline access, crisis housing for girls aged 18 to 24, court advocacy, individual and group therapy, job readiness education, interpreter/translator services, HHS certification assistance, victim advocacy, art therapy, and a tailored individual plan toward long-term independence.

Since its founding, FAIR Girls has reached over 20,000 young people and provided technical and programmatic support to hundreds of social service organizations in 18 countries, with a primary focus on serving youth aged 11 to 24 in the District of Columbia. FAIR Girls began providing direct services to clients in the D.C. metro area through its *Emergency Response and Case Management* program in 2007, and has since seen rapid expansion in the demand for services. In 2011, FAIR Girls served a total of 48 youth through the *Emergency Response* program in D.C. In 2012, this number grew to a total of 78 youth served, and in 2013, this number totaled 108 total clients served through crisis

intervention and ongoing case management services. FAIR Girls has received 18 new referrals in the 2014 calendar and is serving an active case load of 66 clients. This averages to at least one new client seeking services per week.

In the United States, over 90% of FAIR Girls clients are American born citizens. The average age of FAIR Girls clients is between 16 to 18 years old. The average number of years our clients are sold as victims of sex trafficking is four years. The average number of times our clients are raped as trafficking victims is between 3 to 5 times per night.

FAIR Girls is a member of the D.C. Anti Trafficking Task Force and serves as co-chairs to the training and victim services committee. FAIR Girls regularly trains law enforcement, medical and social work professionals, and educators in how to identify and assist victims of human trafficking. FAIR Girls receives 40% of our client referrals from local, state, and federal law enforcement officers across the country. Currently, FAIR Girls provides the only crisis housing in the metro D.C. area for victims of trafficking where up to 75 young women and girls aged 18 to 24 reside on an annual basis.

FAIR Girls also provides prevention education services to 4,000 teens in high schools, foster group homes, detention facilities, and in youth shelters. Our four-week curriculum, piloted in 2007, has been featured in

the Boston Globe, USA Today, and also incorporated into school action plans in Maryland and D.C. high schools. Thru this program, FAIR Girls identifies an additional 10% of our client basis.

Due to FAIR Girls' extensive 11-year experience providing direct services to survivors of trafficking, we are uniquely posed to understand the complex ways in which traffickers lure and sell their victims. The majority of our clients, some as young as 11, are lured online and again sold by their traffickers online, including use of the website Backpage.com. FAIR Girls dedicates resources to the monitoring of Backpage's Female Escort advertisements for the DC metropolitan region. FAIR Girls identifies underage and missing youth that have been reported by the National Center for Missing and Exploited Children during these searches, and provides our findings to local law enforcement. In our experience, many of the missing and exploited girls who are referred to FAIR Girls for services were sold by their traffickers on Backpage.com. Our initial interest in monitoring Backpage.com's Female Escort advertisements because we knew of specific potentially trafficked underage girls who we later were able to identify on Backpage.com.

II. STATEMENT OF THE CASE

FAIR Girls adopts the Statement of the Case as set forth by the Respondents.

III. ARGUMENT OF THE AMICUS CURIAE

A. BACKPAGE.COM CONTROLS THE CREATION AND DEVELOPMENT OF CONTENT IN THEIR “ESCORT” CATEGORY

On April 15, 2014, FAIR Girls attempted to post a simple advertisement in the escort section of the Washington, D.C. area Backpage.com website. The purpose of this advertisement was to provide a crisis hotline phone number to potential victims of sexual exploitation and trafficking who may be posted on this section of the web site. In FAIR Girls experience, the majority of sex trafficking victims, both adult and children, were advertised in this section prior to be identified by law enforcement. Our hope was that girls in need of services would see and respond to this advertisement for support.

The advertisement read as a poem with the following language:

A GIRL JUST LIKE YOU. She was caught in Sex Trafficking, the second biggest crime in America. ONLY 19. HELD BY INVISIBLE CHAINS PRETENDING TO BE LOVE. Sex Trafficking is also known as Modern Day Slavery. Anyone under

*18 who is involved in prostitution, stripping or pornography is considered a victim of human trafficking. Even if it's consensual. SHE WAS TRAPPED IN A CRIME. Sex Trafficking is one of the fastest growing crimes in the world. Second to drugs. (US State Department) THAT HUNTED HER. Approximately 80% of victims are women and girls, 50% are minors. (US Department of Justice). SHE WAS SOLD ON THE STREETS BUT MAINLY ONLINE. The growing accessibility and privacy of the internet has largely contributed to the growth of the sex trafficking "business". Men buy and sell. SHE WAS SOLD OFTEN. She was sold 10-15 times a day, 6 days a week. That's between 9,360 and 14,040 sex acts a year. (Shared Hope International). SHE GOT NOTHING. All or most of the money made by the young women goes directly to their "pimp". They have no clothes, no home, no identity. EXCEPT ABUSE. BAD DATES. NOTHING. Young women are often beat, starved, abused and tormented. DOES THIS SOUND LIKE YOU OR SOMEONE YOU KNOW If so, here is where YOU can get help. No Judgement. Totally Confidential. We are here 24/7. We are NOT law enforcement. WE BELIEVE YOU **FAIR GIRLS 855-900-3247 (FAIR)**”*

On April 16, 2014, FAIR Girls received an email from Backpage representatives that our advertisement was denied by Backpage.com based

on their assertion that the “ad was removed for being in the wrong category.” The Backpage.com representative stated: “...non-escort ads aren’t likely to stay up in the Escorts category for very long.” And an offer was made to relocate the advertisement to the Community section of Backpage. This clearly indicates that Backpage.com does in fact review and decide which content may be placed in the “Escort” section of Backpage.com.

At the core of Backpage.com’s assertion that immunity remains intact with the CDA is the fact that they have no influence on the creation or development of content published on their website. However, by denying our outreach advertisement intended to provide help to girls just like the three young women in this case, it is clear Backpage.com does discriminate as to what content may be placed in the Escort section. Furthermore, by deciding what is and is not a “clear” Escort advertisement, Backpage.com is making a statement as to what kind of postings they deem to be relevant. Advertisements with clear sexual content pass through the Backpage.com screening process on a regular basis, however, advertisements that do not suggest sexual exchanges do not.

B. BACKPAGE.COM KNOWINGLY DISREGARDS AND DOES NOT REMOVE ADVERTISEMENTS OF KNOWN SEX TRAFFICKING VICTIMS FROM THEIR WEB SITE

FAIR Girls regularly conducts manual reviews of advertisements placed in the Escort section of Backpage.com to search for known missing and exploited young women and girls. This outreach has resulted in numerous successful efforts by local law enforcement to search for trafficking victims, including those as young as 14 years of age.

On Thursday, May 17th 2012, FAIR Girls conducted an online search of Backpage.com's metro-D.C. area postings that potentially could be connected to sex trafficking. During the course of our routine search, an advertisement appeared depicting the photographs of one of our existing clients. We were confident at this time that the young women whose photos were being used to advertise "Come & take A Ride with KAYLA ... Best in the Area!!!! – 19" (visited May 17, 2012) was not currently soliciting herself on Backpage.com. We were confident of this fact because she was sitting in our office and reading a book.

On May 17, 2012, FAIR Girls immediately contacted the "Abuse" section of Backpage.com to report the advertisement. We were concerned about the physical safety of our 19-year old client. We also believed that the advertisement used her images because she looked extremely young due to the fact that she suffered from a serious developmental disability.

Our young client was terrified that her new friends or others in the community could see her advertisements. The posting of her photos caused extreme emotional trauma and re-victimization of our mentally disabled client.

Four days later, FAIR Girls sent the following email to abuse@backpage.com:

“I am reporting this ad because it features images of young woman who is a survivor of sex trafficking who does not want her images on Backpage. She feels threatened and has men approaching her on the streets. It's unsafe and degrading for her. I have sent you a few other emails regarding this young woman's ads, and they have not been removed and more keep coming up. Please help us get these down -- it's horrible for her.”

We received a message:

“Thanks for bringing these ads to our attention and reporting them to us. We have tried to remove as much of the content as we could find.”

However, the advertisements of “Kayla” continued until June 22, 2012, when law enforcement conducted Operation Cross Country VI and found a 16-year old child victim who was being sold as the 19-year old

“Kayla” in an upscale D.C. area hotel across the street from the National Zoo. During her recovery, the 16-year old victim was also pregnant. With her was another 19-year old victim of sex trafficking who was also sold under the same advertisement by their traffickers, Candice Ponder and Dominique Bell.

In the following months, facts of the case revealed that the 16-year old runaway, a previous child sex trafficking victim, was threatened with both a semi-automatic weapon and handgun. All of the money was then taken from the victims, who were monitored at all times, by their two traffickers. The advertisement for the pregnant teenage victim was posted dozens of times on Backpage.com by the very traffickers who are now in jail.

C. BACKPAGE.COM HAS BEEN INFORMED OF SEXUAL SLAVERY ADVERTISEMENTS POSTED ON THEIR WEB SITE AND DOES NOT REMOVE THEM

As previously stated in this amicus brief, FAIR Girls conducts regular weekly online reviews of D.C. area advertisements in the “Escort” section of Backpage.com. In April 2012, FAIR Girls identified an extremely disturbing online escort advertisement that read: “Submissive Coco Slave. Beat Me. Degrade Me. Choke Me.” This advertisement depicted a 19-year old young woman whose advertisements had been posted for over a year. Those advertisements then, using the same young

women's images, evolved into much more sexually abusive and controlling behavior. The subject line of an April 2012 advertisement read: "**@All Bottom Chick @ All submissive Slave @ All Nasty Freak, Looking for a Master – 19**" The advertisement posted multiple times all the while FAIR Girls made regular reports to Backpage.com's "Abuse" section requesting they be removed.

In a CNN interview on May 10, 2012 with Anderson Cooper, Backpage.com's legal counsel, Liz McDougall, was presented with the advertisement depicting the very same girl. Ms. McDougall admitted that the advertisement should not have made it thru their screening process. However, following that nationally heard statement by Backpage.com's counsel, the advertisements continued well into the summer until that fall when both the advertisements and the girl who was being sold as a "bottom slave" disappeared.

Upon deeper investigation, FAIR Girls found the following posting by men who had found and bought the 19-year old victim on Backpage.com:

"Ok, i saw her ad and seem to good to be true, did some look and it seemed she was new so i said let's have a look went there. Stay away!!! I repeat stay away! She has a pimp thats the only reason I stayed" – Buyer, EroticReview.com.

This was also shared with Backpage.com, who did not respond to FAIR Girls emails or remove the advertisements. Since this time, this young woman has disappeared from Backpage.com and all over postings, leaving no indication if she survived her abuse and sexual exploitation.

This egregious lapse in screening demonstrates that Backpage.com either cannot or will not remove advertisements that clearly advertise sexual slavery and physical violence. Furthermore, even when presented with specific cases, they choose to not remove the advertisements.

On September 27, 2011, another advertisement depicting a “19” year old girl appeared on Backpage.com. This advertisement seemingly written by a buyer of sex on Backpage.com sent a “warning” to other buyers that read:

“Pertfect Treat to Make Your Day / Stay Away From This
One – 18.

SHE IS ALL SHOW NO GO

*stay away from this one. says quality and classases
anything but shes trailer. and to add onn she likes to play cards yes
only card. andto boot her pimp will and out front yellscream what
ever it takes get you to pay her number is 202 702 1549 stay away.
im just another man tryn to WARN OTHERS”*

Thus, upon reviewing this advertisement, FAIR Girls learned that the young teen victim had a violent pimp and did not like or was not willing to have sex. This advertisement was followed by another posting:

“guys stay away from this one she likes sit play cards. and her pimp wont give up till you pay dudes”

FAIR Girls reported these advertisements to Backpage.com, however they remained. This clearly indicates that Backpage.com allows for advertisements about teenage victims to be posted on their web site.

D. BACKPAGE.COM’S SCREENING PROCEDURES DO NOT EFFECTIVELY PREVENT MINORS FROM BEING SOLD ON BACKPAGE.COM

By the very nature of their age, children are most at-risk for human trafficking. Traffickers target youth because they are easily manipulated and easily controlled. The factors that increase a child’s vulnerability include: unstable home life, physical or sexual abuse, exposure to drugs, being homeless and/or a runaway. The National Center for Missing and Exploited Children (NCMEC) estimates that 450,000 children run away from home every year, quickly becoming prime targets for pimps and traffickers at bus stops, malls or playgrounds¹. Furthermore, domestic

¹ “Female Juvenile Prostitution: Problem and Response.” National Center for Missing and Exploited Children. (December 1992). Retrieved from:

minor sex trafficking (DMST) – the commercial sexual exploitation of American children – happens at an alarming rate. Nationally, the U.S. Department of State, Office to Monitor and Combat Trafficking in Persons’ reports that between 14,500 and 17,000 individuals are trafficked into the United States each year and approximately 80% are victims of sexual exploitation².

FAIR Girls’ direct services team based in Washington, D.C. serve hundreds of exploited and trafficked young women and girls aged approximately 11 to 24. In October 2013, FAIR Girls launched a dynamic cloud-based tracking system documenting our work to serve clients. While our data is does not go back as far as many of our cases involving sexually exploited minors sold on Backpage.com and other online advertising web sites, we do know more than 25% of our clients were sold via Backpage.com between 2012 and 2014.

The very rules and suggested posting guidelines that Backpage.com shares with those posting in the Escort section have been

<http://www.hawaii.edu/hivandaids/Female%20Juvenile%20Prostitution%20%20%20Proble%20and%20Response.pdf>

² U.S. Department of State, Office to Monitor and Combat Trafficking in Persons. “Trafficking in Persons Report 2006.”
<http://www.state.gov/j/tip/rls/tiprpt/2006/>

used ensure that traffickers are able to hide the age and identify of their young victims.

i. THE CASE OF 15 YEAR OLD “S”

In March 2012, 15 year old “S” was sold in the metro D.C. area as a 19 year old “Judy.” Her advertisement, posted by her trafficker, followed Backpage.com’s posting guidelines, including hiding the face of the young victim and requesting “donations for time” and “70 roses” in exchange for time. However, the advertisement only posted images of the 15 year old with her buttocks exposed and in the air. Furthermore, the advertisement referred to her as a “big booty gurl.. with an azz to die 4.” What is clear from the images is that this young woman did not take these photos herself. Even without knowing that this advertisement was that of a sex trafficked 15-year old girl, anyone could review the advertisement and know that the girl in the photo did not take this photo. In the world of anti trafficking, this is a huge red flag.

FAIR Girls recovered this child victim who has been arrested for solicitation in the District of Columbia. She requested assistance by FAIR Girls to remove the advertisements depicting her image and shared the email address and password of her pimp. FAIR Girls then worked with law enforcement and also removed the advertisement.

ii. THE CASE OF 15 YEAR OLD “K”

In December of 2012, a Washington, D.C. trafficker lured a 15-year old teenage girl from Washington State with the intention to sell her both on the street and on Backpage.com. This girl’s images were found by law enforcement who then worked to recover the child victim. All advertisements were posted by her trafficker for a period of at least four days, which indicates there were numerous opportunities for Backpage reviewers to find and identify this child victim.

iii. THE CASE OF 16 YEAR OLD “J”

In June 2012, a Maryland teenager and former child victim of sex trafficking was re-trafficked by a local pimp who posted her on Backpage.com for a series of days with the subject line “**My hour glass body is waiting for you. Apple booty a??. 60 specials – 19**” The victim’s face was also not shown, however thru communication with the child victim’s mother, who had filed numerous missing persons reports, she was identified by her tattoos. All photos were sexually charged with the victim’s buttocks clearly visible in black-laced underwear. After contacted law enforcement directly, FAIR Girls was able to recover the child victim and begin to offer her services.

IV. CONCLUSION

For the foregoing reasons, and also for the reasons set forth in

Respondent's brief and the briefs of other amici, FAIR Girls requests this Court affirm the decision of the Superior Court and deny Backpage.com's motion to dismiss.

Respectfully submitted this 5th day of September 2014.



Pellegrino Certa, WSBA No. 25903
Certa Law Group
pcerta@certalaw.com
(206) 838-2500
403 Columbia Street, Ste. 500
Seattle, WA 98104