

No. 90510-0

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

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

Appellees,

v.

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.

BRIEF OF AMICI CURIAE

Caitlin K. Hawks, WSBA No. 46669
SAVITT BRUCE & WILLEY LLP
1425 Fourth Avenue, Suite 800
Seattle, WA 98101
(206) 749-0500

Stacey J. Rappaport, NYSBA No. 2820520
Nicole Fidler, NYSBA No. 4651840
MILBANK, TWEED, HADLEY &
McCLOY LLP
1 Chase Manhattan Plaza
New York, NY 10005-1413
Tel: (212) 530-5000
Fax: (212) 530-5219

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| IDENTITY AND INTEREST OF AMICI | 1 |
| STATEMENT OF THE CASE..... | 2 |
| ARGUMENT | 3 |
| I. THE DOMESTIC SEX TRAFFICKING INDUSTRY ROUTINELY VICTIMIZES CHILDREN..... | 5 |
| A. The Demand for the Commercial Sexual Exploitation of Children in the United States, and in Washington, Is Soaring | 5 |
| B. Children Are Particularly Vulnerable to Sex Trafficking | 6 |
| C. The Consequences for Child Victims of Sex Trafficking Are Devastating | 10 |
| II. BACKPAGE.COM FACILITATES THE VICTIMIZATION OF CHILDREN | 13 |
| A. Backpage.com Is a Major Online Marketplace for the Sale of Illegal Sex | 14 |
| B. Backpage.com’s Illegal Marketplace Includes the Sale of Children for Sex..... | 16 |
| III. VICTIMS MUST BE ABLE TO SEEK JUSTICE AGAINST THOSE THAT FACILITATE THEIR TRAFFICKING..... | 18 |
| CONCLUSION..... | 19 |

TABLE OF AUTHORITIES

| | Page(s) |
|---|----------------|
| Cases | |
| <i>In re B.W.</i> , 313 S.W.3d 818 (Tex. 2010)..... | 7, 8, 10 |
| <i>Chappell v. Rich</i> , 340 F.3d 1279 (11th Cir. 2003) | 18 |
| <i>Christensen v. Royal Sch. Dist.</i> , 156 Wn.2d 62 (Wash. 2005)..... | 7 |
| <i>Miller v. Alabama</i> , 132 S. Ct. 2455 (2012) | 7 |
| <i>Roper v. Simmons</i> , 543 U.S. 551 (2005)..... | 7 |
| <i>Ryland v. Shapiro</i> , 708 F.2d 967 (5th Cir. 1983) | 18 |
| <i>Snyder v. Nolen</i> , 380 F. 3d 279 (7th Cir. 2004) | 18 |
| <i>U.S. v. Brooks</i> , 610 F.3d 1186 (9th Cir. 2010) | 8 |
| Legislative Materials | |
| <i>Exploiting Americans on American Soil: Domestic Trafficking Exposed, Hearing on H.R. 972 before the Comm’n on Sec. & Cooperation in Europe</i> ,109th Cong. (2005)..... | 11, 13 |
| H.R. 4225, 113th Cong. (2014)..... | 15 |
| S. 2536, 113th Cong. (2014)..... | 15 |
| S. Res. 439, 112th Cong. (2012)..... | 15, 16 |

Statutes

Trafficking Victims Protection Act of 2000 § 102, 22
U.S.C.A. § 71013, 5, 12

Trafficking Victims Protection Act of 2000 § 103, 22
U.S.C.A. § 71013, 8

Wn. Rev. Code § 9.73.2306

Wn. Rev. Code § 9A.40.1008

Other Authorities

AIMGroup, *Online prostitution-ad revenue crosses
Craigslis benchmark* (2013), available at
<http://aimgroup.com/2013/07/10/online-prostitution-ad-revenue-crosses-craigslis-benchmark/>14, 15

Alan Scher Zagier, *Wagner Promotes Bill to Shut Down
Online Sex Ads*, Wash. Times (Mar. 13, 2014).....15

Ann Gerhart, *Sex-trafficking Opponents Fight Craigslis’s
‘Adult Services’ Ads*, Wash. Post (Aug. 7, 2010),
available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/06/AR2010080606376.htm>
117

Brian Beckley, *Human trafficking sting nets 11*, Renton
Reporter Editor (July 16, 2014), available at
<http://www.rentonreporter.com/news/267365001.html>6

Bureau of Justice Statistics, *Most Suspected Incidents of
Human Trafficking Involved Allegations of Prostitution
of an Adult or Child* (Apr. 28, 2011), available at
<http://www.bjs.gov/content/pub/press/cshti0810pr.cfm>3

Covenant House, *Homelessness, Survival Sex and Human
Trafficking: As Experienced by the Youth of Covenant
House New York* (May 2013), available at
[http://www.covenanthouse.org/sites/default/files/attach-ments/Covenant-House-trafficking-study.pdf](http://www.covenanthouse.org/sites/default/files/attachments/Covenant-House-trafficking-study.pdf);8, 9

| | |
|--|------------|
| Darren Geist, <i>Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors</i> , 4 Leg. & Pol’y Brief 67 (2012) | 10, 12 |
| Deborah Feyerick & Sheila Steffen, <i>A Lurid Journey Through Backpage.com</i> , CNN (May 10, 2012), available at http://thecnnfreedomproject.blogs.cnn.com/2012/05/10/a-lurid-journey-through-backpage-com/ | 16 |
| Debra Boyer, <i>Who Pays the Price? Assessment of Youth Involvement in Prostitution in Seattle</i> (June 2008) | 6 |
| Jessica Lustig, <i>The 13-Year Old Prostitute: Working Girl or Sex Slave?</i> , NY Magazine (Oct. 24, 2007), available at http://nymag.com/news/features/30018/ | 11 |
| Joan A. Reid, <i>Doors Wide Shut: Barriers to the Successful Delivery of Victim Services for Domestically Trafficked Minors in a Southern U.S. Metropolitan Area</i> , 20 Women & Crim. Just. 147 (2010) | 9 |
| Laura J. Lederer, et al., <i>The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities</i> , 23 Annals Health L. 61 (Winter 2014) | 11, 12, 13 |
| Lawrence Steinberg, <i>Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science</i> , 16 Current Directions in Psychol. Sci. 55 (2007) | 7 |
| Letter from the National Association of Attorneys General to Samuel Fifer, dated Aug. 31, 2011, available at http://www.atg.wa.gov/uploadedFiles/Home/News/Pres_s_Releases/2011/NAAG_Backpage_Signon_08-31-11_Final.pdf | 14, 16 |

Linda A. Smith, *et al.*, *The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children*, Shared Hope (May 2009), available at http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf13

Linda Smith & Cindy Coloma, *Renting Lacy: A Story of America’s Prostituted Children* (Shared Hope Int’l 2009)5, 9, 10

Mary P. Alexander *et al.*, *Community and Mental Health Support of Juvenile Victims of Prostitution*, 1 *Med., Legal, & Soc. Sci. Aspects of Child Sexual Exploitation* 397 (2005).....13

Megan Anitto, *Consent, Coercion, and Compassion: Crafting a Commonsense Approach to Commercial Sexual Exploitation of Minors*, 30 *Yale L. & Pol’y Rev.* 1 (2011).....5, 7, 9, 10

Melissa Farley & Howard Barkan, *Prostitution, Violence, and Posttraumatic Stress Disorder*, 27(3) *Women & Health* 37 (1998)13

Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order To Keep the Business of Sexual Exploitation Running Smoothly*, 18 *Yale J.L. & Feminism* 109 (2006)11

Meredith Dank *et al.*, *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities* (The Urban Institute Mar. 2014).....13

NCMEC, *Commercial Sexual Exploitation of Children: A Fact Sheet*, http://www.missingkids.com/en_US/documents/CCSE_Fact_Sheet.pdf (last visited on July 15, 2014).....10

Noy S. Davis & Jennifer Twombly, *State Legislator’s Handbook for Statutory Rape Issues* (6th ed. 2000), *available at* <http://www.ojp.usdoj.gov/ovc/publications/infores/statutoryrape/handbook/statrape.pdf>7, 8

NPR Staff, *Online and Anonymous: New Challenges To Prosecuting Sex Trafficking*, NPR (Aug. 3, 2013), <http://www.npr.org/2013/08/03/208664066/online-the-web-of-sex-trafficking-can-be-even-more-obscure>14, 17

Phoebe Sloane *et al.*, *Improving Outcomes for Homeless Youth*, Soc. Issue Rep. (Sept. 2012).....9

Polaris Project, *The Victims*, <http://www.polarisproject.org/human-trafficking/overview/the-victims> (last visited July 15, 2014)5

Protecting Vulnerable Children: Preventing and Addressing Sex Trafficking of Youth in Foster Care, Testimony of John D. Ryan for the U.S. House of Representatives Committee on Ways and Means Subcommittee on Human Resources (Oct. 23, 2013), *available at* <http://www.missingkids.com/Testimony/10-23-13>9

Sara Dillon, *What Human Rights Law Obscures: Global Sex Trafficking and the Demand for Children*, 17 UCLA Women’s L.J. 121 (2008)4, 5

Sara Jena Green, *Teen prostitution on the run*, The Seattle Times (Jan. 20, 2011).....6

Shared Hope, *Chosen, A Documentary by Shared Hope International* (2013).....6

Shared Hope, *Memorandum: Facilitation of Domestic Minor Sex Trafficking* (Sept. 9, 2013), *available at* http://sharedhope.org/wp-content/uploads/2014/04/Shared-Hope-Written-Remarks_Arizona-Governors-Anti-Trafficking-Taskforce_Sex-Trafficking-on-Classified-Website.pdf.....14, 17

Soren Anderson, *A heartbreaking look at underage sex-trafficking in Seattle*, *The Seattle Times* (Dec. 14, 2012).....6

Tessa L. Dysart, *Child, Victim, or Prostitute, Justice through Immunity for Prostituted Children*, 21 *Duke J. Gender L. & Pol’y* 255 (2014).....8

U.S. Department of Justice, Child Exploitation and Obscenity Section,
<http://www.justice.gov/criminal/ceos/subjectareas/prostitution.html> (last visited July 15, 2014)
.....4, 11, 12, 13

U.S. Department of State, *Trafficking in Persons Report* (June 2013).....11, 12, 13

United Nations Population Fund, *Ending Violence against Women and Girls*,
<http://www.unfpa.org/swp/2000/english/ch03.html> (last visited July 15, 2014).....5

Washington State Office of the Attorney General, *Sexual Trafficking*,
<http://www.atg.wa.gov/HumanTrafficking/SexTrafficking.aspx> (last visited July 15, 2014).....3, 5

WestCoast Children’s Clinic, *Research to Action: Sexually Exploited Minors (SEM) Needs & Strengths* (2012), available at
http://www.westcoastcc.org/WCC_SEM_Needs-and-Strengths_FINAL.pdf10

The National Crime Victim Law Institute (“NCVLI”), Shared Hope International (“Shared Hope”), Covenant House, and Human Rights Project for Girls (“HRPG”; collectively, “Amici”) respectfully submit this Brief of Amici Curiae, pursuant to Rule 10.6 of the Washington Rules of Appellate Procedure, in support of the position on appeal of Appellees J.S., S.L., and L.C., and request that the Court affirm the trial court’s ruling denying Defendant-Appellants’ motion to dismiss.

IDENTITY AND INTEREST OF AMICI

Amici are nonprofit education and advocacy organizations that work with, and on behalf of, among others, child victims of sex trafficking. Shared Hope works to prevent conditions that foster sex trafficking and to assist sex trafficking victims. NCVLI works to promote balance and fairness in the justice system through crime victim-centered legal advocacy and education. Covenant House provides services to homeless, abandoned, abused, trafficked, and exploited youth. HRPG seeks to ensure that young women and girls live a life free of violence and exploitation. Amici seek to advance and protect the rights and interests of sex trafficking victims, and to prevent future victimization. Amici thus have a substantial interest in preventing the illegal marketing and sale of sex trafficking victims on Backpage.com. Amici have extensive experience assisting sex trafficking victims and addressing ways to eliminate sex

trafficking, and are uniquely positioned to inform the Court regarding issues relevant to this case.

STATEMENT OF THE CASE

Plaintiff-Appellees are three child victims who were repeatedly raped after their adult pimps advertised and sold them for sex on the website Backpage.com. (First Amended Complaint for Damages, dated September 5, 2012 (the “Complaint” or “Compl.”) ¶¶ 1.2, 2.1-2.3.) Plaintiffs were first marketed and sold on Backpage.com at the ages of 15, 13, and 13. (*Id.*)

Defendant-Appellant Backpage.com¹ is a major provider of online advertising for the illegal sale of sex. (*Id.* ¶¶ 3.1, 3.3, 3.7, 3.18, 3.19.) In exchange for fees, Backpage.com advertises prostitution services. (*Id.* ¶¶ 3.2, 3.4.) Backpage.com has become well-known as a website for customers seeking to find and purchase sex, and it makes millions of dollars every year from this illicit advertising, including the advertising of children for sex. (*Id.* ¶¶ 1.3, 3.1, 3.2, 3.4, 3.7, 3.18, 3.19.)

In 2012, Plaintiffs brought the Complaint against Backpage.com in the Superior Court of Washington (the “Trial Court”), alleging several causes of action stemming from the marketing and sale of Plaintiffs for

¹ Defendant-Appellants include 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. Defendant-Appellants are referred to collectively herein as “Backpage.com.”

sex on Backpage.com. (*Id.* ¶¶ 1.1, 7.1-7.26.) Backpage.com filed a Motion to Dismiss the Complaint on March 25, 2013 (the “Motion to Dismiss”), alleging that the Communications Decency Act (the “CDA”) grants it immunity from suit. The Trial Court denied the Motion to Dismiss on April 26, 2013. Backpage.com subsequently brought this appeal.

ARGUMENT

Sex trafficking, which includes the commercial sexual exploitation of minors,² is a serious and pervasive problem in the U.S.³ Of suspected human trafficking incidents in the U.S. investigated between January 2008 and June 2010, the vast majority involved either prostitution or the sexual exploitation of a child.⁴ In confirmed sex trafficking cases during this time period, 83% of the victims were identified as U.S. citizens.⁵

The sex trafficking industry is growing rapidly and has already claimed many victims in Washington and beyond.⁶ The surge in the industry is attributed in part to the growth and increasing availability of

² *See, e.g.*, Trafficking Victims Protection Act of 2000 (hereinafter, “TVPA”) § 103(9), (14), 22 U.S.C.A. § 7101.

³ *See, e.g.*, Washington State Office of the Attorney General, *Sexual Trafficking*, <http://www.atg.wa.gov/HumanTrafficking/SexTrafficking.aspx> (last visited July 15, 2014) (“Domestic minor sex trafficking is becoming a burgeoning risk factor for American youth.”).

⁴ Bureau of Justice Statistics, *Most Suspected Incidents of Human Trafficking Involved Allegations of Prostitution of an Adult or Child* (Apr. 28, 2011), available at <http://www.bjs.gov/content/pub/press/cshti0810pr.cfm>.

⁵ *See id.*

⁶ *See, e.g.*, TVPA § 102(b)(2) (“The sex industry has rapidly expanded over the past several decades.”).

the Internet.⁷ Websites like Backpage.com facilitate sex trafficking by providing a cheap, easy, and anonymous marketplace for traffickers and buyers to trade in illegal sex.⁸ This marketplace includes the sale of children for sex, making Backpage.com a facilitator of the “most hideous, and possibly least acknowledged, human rights violation of our time.”⁹

Plaintiffs’ allegations regarding Backpage.com’s facilitation of their victimization are sufficient to place Backpage.com outside the scope of CDA immunity,¹⁰ and to permit this case to go forward. Moreover, the importance of the issues at stake and the implications that resolution of these issues have for the welfare of Washington’s children mitigate against dismissing Plaintiffs’ claims. The Court should allow Plaintiffs to pursue their causes of action against Backpage.com and gather the facts necessary to fully advise the Court on the important questions raised by this litigation. Accordingly, Amici respectfully urge the Court to affirm the

⁷ See, e.g., U.S. Department of Justice, Child Exploitation and Obscenity Section (hereinafter, “[DOJ Website](http://www.justice.gov/criminal/ceos/subjectareas/prostitution.html)”), <http://www.justice.gov/criminal/ceos/subjectareas/prostitution.html> (last visited July 15, 2014) (“Technological advances, in particular the Internet, have facilitated the commercial sexual exploitation of children by providing a convenient worldwide marketing channel.”); *infra*, Part II.

⁸ See *infra*, Part II.

⁹ Sara Dillon, *What Human Rights Law Obscures: Global Sex Trafficking and the Demand for Children*, 17 UCLA Women’s L.J. 121, 139 (2008).

¹⁰ For example, the Complaint alleges, *inter alia*, that Backpage.com “intentionally developed its website to require information that allows and encourages . . . the illegal trafficking of underage girls” on its website, (Compl. ¶ 3.5), that it knows that its website is used to illegally traffic underage girls (Compl. ¶¶ 1.3, 3.1-3.2), and that it “has developed and marketed its website for that purpose” (Compl. ¶ 3.2).

Trial Court's denial of the Motion to Dismiss.

**I. THE DOMESTIC SEX TRAFFICKING INDUSTRY
ROUTINELY VICTIMIZES CHILDREN**

**A. The Demand for the Commercial Sexual Exploitation of
Children in the United States, and in Washington, Is
Soaring**

Trafficking for the purpose of commercial sexual exploitation is a grisly reality for millions of girls worldwide and for hundreds of thousands of girls in the U.S.¹¹ Some estimates indicate that the U.S. has the third-largest number of children being prostituted in the world.¹² Children are illegally sold for sex in all 50 states and the District of Columbia.¹³ Victims come from all backgrounds and are of all races and ages.¹⁴ The typical age of entry into prostitution is between 12 and 14, but children even younger than that are being sold for sex as well.¹⁵

¹¹ United Nations Population Fund, *Ending Violence against Women and Girls*, <http://www.unfpa.org/swp/2000/english/ch03.html> (last visited July 15, 2014); Linda Smith & Cindy Coloma, *Renting Lacy: A Story of America's Prostituted Children*, 95 (Shared Hope Int'l 2009). There is no doubt that the sex trafficking industry victimizes men and boys. However, because the victims of sex trafficking are predominately women and girls, and because Plaintiffs here are girls, Amici usually refer to the trafficking of "girls" herein. See TVPA § 102(b)(4) ("[t]raffickers primarily target women and girls").

¹² See Dillon, *supra* note 9, at 130.

¹³ See, e.g., Polaris Project, *The Victims*, <http://www.polarisproject.org/human-trafficking/overview/the-victims> (last visited July 15, 2014) ("victims have been identified . . . in all 50 states and in Washington, D.C.").

¹⁴ See, e.g., Washington State Office of the Attorney General, *supra* note 3 ("victims are American children, youth of all races and all different backgrounds, and range in age from infants to teens").

¹⁵ See, e.g., Megan Annitto, *Consent, Coercion, and Compassion: Crafting a Commonsense Approach to Commercial Sexual Exploitation of Minors*, 30 Yale L. &

The Washington legislature has recognized that the state has seen “increasing incidents of commercial sexual exploitation of children.”¹⁶ One Washington-based study reports that in King County (where one of the Plaintiffs resides, *see* Compl. ¶ 2.1) as many as 300 to 500 girls are used in prostitution every day.¹⁷ The same study also reports that girls as young as 13 are used in prostitution in Washington.¹⁸ The plight of children who have been victims of commercial sexual exploitation in Washington has been chronicled in numerous news articles and documentaries.¹⁹

B. Children Are Particularly Vulnerable to Sex Trafficking

The sex trafficking industry victimizes women, men, and children. Children, however, are particularly vulnerable to sex trafficking because

Pol’y Rev. 1, 9 (2011) (“Some children are prostituted as early as age nine, while the average age of entry into prostitution is estimated to be between twelve and fourteen.”).

¹⁶ 2011 c. 241 § 1 (Wn. Rev. Code § 9.73.230 legislative findings).

¹⁷ Debra Boyer, *Who Pays the Price? Assessment of Youth Involvement in Prostitution in Seattle*, 18 (June 2008). Moreover, this estimate is likely conservative because arrest and social services data generally underrepresent the number of youth in prostitution. *See id.*; Sara Jena Green, *Teen prostitution on the run*, *The Seattle Times* (Jan. 20, 2011) (police believe the 300-500 statistic set forth in the Boyer study is too conservative).

¹⁸ Boyer, *supra* note 17, at 18.

¹⁹ *See e.g.*, Brian Beckley, *Human trafficking sting nets 11*, *Renton Reporter Editor* (July 16, 2014), available at <http://www.rentonreporter.com/news/267365001.html> (discussing trafficking problem in Seattle); Soren Anderson, *A heartbreaking look at underage sex-trafficking in Seattle*, *The Seattle Times* at E16 (Dec. 14, 2012) (discussing the documentary “Rape for Profit,” which details Seattle’s underage sex trade); Shared Hope, *Chosen, A Documentary by Shared Hope International* (2013) (documentary featuring a girl from Washington who was recruited for sex trafficking).

of their emotional and economic dependence on others.²⁰

Adolescents have not fully developed the ability to analyze decisions and understand consequences, and their immaturity makes it difficult for them to distinguish between “bad” options and “good” options.²¹ Children are ill-equipped to understand how certain behavior affects their own well-being, and, as a result, children that are enmeshed in the sex trafficking industry often do not recognize that they are being exploited, manipulated, or that they are in danger.²²

Numerous laws recognize that a minor requires protection from decisions related to sexual activity.²³ For example, states recognize that

²⁰ See, e.g., *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012) (“children ‘are more vulnerable . . . to negative influences and outside pressures,’ including from their family and peers; they have limited ‘contro[l] over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings”) (quoting *Roper v. Simmons*, 543 U.S. 551 (2005)); *Roper*, 543 U.S. at 569 (“juveniles are more vulnerable or susceptible to negative influences and outside pressures”); *In re B.W.*, 313 S.W.3d 818, 821 (Tex. 2010) (“children are more vulnerable to exploitation by others even in the absence of explicit threats or fraud”).

²¹ See *Miller*, 132 S. Ct. at 2465 (children have a “proclivity for risk” and an “inability to assess consequences”); Annitto, *supra* note 15, at 5 (“underdevelopment in certain areas of the adolescent brain affect behavior, decision making, and the ability to understand consequences”); Lawrence Steinberg, *Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science*, 16 *Current Directions in Psychol. Sci.* 55, 56 (2007) (children have not developed the “psychosocial capacities that improve decision making . . . such as impulse control, emotion regulation, delay of gratification, and resistance to peer influence”).

²² See, e.g., Annitto, *supra* note 15, at 13 (“when a pimp introduces a young girl into prostitution, she fails to recognize that she is a victim and becomes trapped”).

²³ See, e.g., Noy S. Davis & Jennifer Twombly, *State Legislator’s Handbook for Statutory Rape Issues* (6th ed. 2000) 1, 8-13, available at <http://www.ojp.usdoj.gov/ovc/publications/infores/statutoryrape/handbook/statrape.pdf>; *Christensen v. Royal Sch. Dist.*, 156 Wn.2d 62, 68 (Wash. 2005) (children “are too immature to rationally or legally consent” to sex).

persons under a certain age (generally 16 to 18 depending on the state) cannot consent to sex in most instances.²⁴ Moreover, many states now recognize that laws criminalizing prostitution should not apply to children because prostituted children are victims, not criminals.²⁵ Under both federal law and Washington law, children who are prostituted are deemed victims of trafficking without having to prove force, fraud, or coercion.²⁶ Under federal law, such children are considered victims of a “severe form of trafficking” and, under Washington law, traffickers of such children can be charged with a Class A felony.²⁷

Virtually all children are economically dependent on adults to provide essential needs like food, clothing, and shelter. Traffickers use this economic vulnerability to attract and trap children, and are adept at targeting the most economically and socially vulnerable populations—children with a history of abuse, poverty, neglect; runaway or homeless youth; and youth in foster homes or under the care of social services.²⁸

²⁴ See, e.g., Davis & Twombly, *supra* note 23, at 1, 8-13.

²⁵ See, e.g., Tessa L. Dysart, *Child, Victim, or Prostitute, Justice through Immunity for Prostituted Children*, 21 Duke J. Gender L. & Pol’y 255, 265-67 (2014).

²⁶ TVPA § 103(8), (13); Wn. Rev. Code § 9A.40.100.

²⁷ TVPA § 103(8), (13); Wn. Rev. Code § 9A.40.100.

²⁸ See *U.S. v. Brooks*, 610 F.3d 1186, 1199-1200 (9th Cir. 2010) (adults targeted minors with “no money, no job, and . . . nowhere to live”); *In re B.W.*, 313 S.W.3d at 825-26 (children with a history of abuse and/or neglect are most at risk of sexual exploitation); Covenant House, *Homelessness, Survival Sex and Human Trafficking: As Experienced by the Youth of Covenant House New York*, 6-7, 14-15, 20 (May 2013) (hereinafter “Covenant House Study”), available at

These children likely do not have stable adults in a position of trust to help them and are often unaware of the options available from government or non-profit groups.²⁹ The adults they turn to for “help” end up exploiting them in the commercial sex trade or otherwise.³⁰ Many victims feel that their trafficker is their only option for survival.³¹

In addition to capitalizing on this economic vulnerability, traffickers are adept at taking advantage of children’s developmental immaturity.³² Traffickers nurture an emotional connection with a child, acting as her boyfriend and/or protector.³³ They provide whatever the child needs at the time—affection, affirmation, protection, shelter, food, clothing.³⁴ Once the child begins to depend on, or has fallen in love with, her “boyfriend,” he uses his position of trust and power to sexually exploit

<http://www.covenanthouse.org/sites/default/files/attachments/Covenant-House-trafficking-study.pdf>; Protecting Vulnerable Children: Preventing and Addressing Sex Trafficking of Youth in Foster Care, Testimony of John D. Ryan for the U.S. House of Representatives Committee on Ways and Means Subcommittee on Human Resources (Oct. 23, 2013), available at <http://www.missingkids.com/Testimony/10-23-13>.

²⁹ See Covenant House Study, *supra* note 28, at 6, 15; Phoebe Sloane *et al.*, *Improving Outcomes for Homeless Youth*, Soc. Issue Rep. (Sept. 2012) at 4.

³⁰ See, e.g., Covenant House Study, *supra* note 28, at 11, 14-15.

³¹ See, e.g., *id.*

³² See Joan A. Reid, *Doors Wide Shut: Barriers to the Successful Delivery of Victim Services for Domestically Trafficked Minors in a Southern U.S. Metropolitan Area*, 20 *Women & Crim. Just.* 147, 148-50, 158 (2010).

³³ See Anitto, *supra* note 15, at 12-15; Covenant House Study, *supra* note 28, at 11.

³⁴ See, e.g., Smith & Coloma, *supra* note 11, at 119-20.

her.³⁵ He often reinforces his power with severe violence, torture and/or rape.³⁶

As a result of traffickers' psychological control, children often experience "trauma bonding" with their traffickers, which is characterized by "an incredibly intense or important relationship, but one in which there has been an exploitation of trust or power."³⁷ This is one of the many factors preventing a child from leaving her trafficker, and is a bond that often requires intense therapy to break.³⁸

C. The Consequences for Child Victims of Sex Trafficking Are Devastating

Large numbers of Washington's children are repeatedly raped every day. A child sold for a sexual service is not a child who has "chosen"

³⁵ See *id.* at 29 (trafficker exercises emotional control over children, acting as "dictator and boyfriend at the same time."); *In re B. W.*, 313 S.W.3d at 824-25 ("Most of these children are controlled by their pimps through a combination of emotional and financial security mixed with violence and drugs, and are unaware that the treatment they are receiving is against the law.").

³⁶ See Annitto, *supra* note 15, at 16-17; Darren Geist, *Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors*, 4 Leg. & Pol'y Brief 67, 75-76 (2012).

³⁷ NCMEC, *Commercial Sexual Exploitation of Children: A Fact Sheet*, http://www.missingkids.com/en_US/documents/CCSE_Fact_Sheet.pdf (last visited on July 15, 2014).

³⁸ See WestCoast Children's Clinic, *Research to Action: Sexually Exploited Minors (SEM) Needs & Strengths*, 11-13 (2012), available at http://www.westcoastcc.org/WCC_SEM_Needs-and-Strengths_FINAL.pdf; Geist, *supra* note 36, at 75-78.

to engage in prostitution.³⁹ Anyone who suggests otherwise profoundly misunderstands the nature of trafficking: “It [i]s really the commercialized rape of our children.”⁴⁰ As the U.S. Department of Justice explains:

Using the term prostitution in connection with children can confuse one’s understanding of this form of child sexual exploitation. The term itself implies the idea of choice, when in fact that is not the case. It is important to emphasize that the children involved are victims.⁴¹

The consequences of this repeated rape cannot be overstated—“women and children who are trafficked into prostitution are physically, mentally, and emotionally devastated by the crime, and this devastation is lasting—with injuries, illnesses, and impairments continuing for decades.”⁴²

Nearly all sex trafficking victims suffer physical injuries from beatings and rapes by traffickers and/or purchasers.⁴³ Traffickers use

³⁹ See, e.g., *Exploiting Americans on American Soil: Domestic Trafficking Exposed*, Hearing on H.R. 972 before the Comm’n on Sec. & Cooperation in Europe, 109th Cong., at 6 (2005) (“[C]hildren can never consent to prostitution. It is always exploitation.”)

⁴⁰ Jessica Lustig, *The 13-Year Old Prostitute: Working Girl or Sex Slave?*, NY Magazine (Oct. 24, 2007), available at <http://nymag.com/news/features/30018/> (quoting Robert J. Flores, former head of the Office of Juvenile Justice and Delinquency Prevention at the U.S. Department of Justice).

⁴¹ See DOJ Website.

⁴² Laura J. Lederer, et al., *The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities*, 23 *Annals Health L.* 61, 62 (Winter 2014); see also U.S. Department of State, *Trafficking in Persons Report* (June 2013) (hereinafter, “2013 TIP Report”), at 31 (“[s]ex trafficking has devastating consequences for minors”).

⁴³ See, e.g., Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order To Keep the Business of Sexual Exploitation Running Smoothly*,

“beatings, burnings, cuttings, gang rape, and sodomy” as means of controlling their victims,⁴⁴ and victims are subject to the whims—sometimes extraordinarily violent—of those who purchase them.⁴⁵ In extreme cases, victims “are sometimes worked or physically brutalized to death.”⁴⁶ Further, victims are more susceptible to drug or alcohol addiction, particularly because such substances are often forced on them by their traffickers as a means of maintaining control.⁴⁷ They also have an increased risk of contracting serious and/or deadly diseases; an increased risk of long-lasting reproductive issues; and high rates of dietary issues, including severe weight loss, malnutrition, and eating disorders.⁴⁸ Most sex trafficking victims suffer from significant mental health issues, including depression, anxiety, nightmares, flashbacks, and/or low self-esteem, and they often feel socially ostracized and blamed for their

18 Yale J.L. & Feminism 109, 112- 17 (2006) (detailing the extreme violence that victims of commercial sexual exploitation endure).

⁴⁴ Geist, *supra* note 36, at 75-76; *see also* DOJ Website (“it is not uncommon for traffickers to beat, rape or torture their victims”).

⁴⁵ *See* Geist, *supra* note 36, at 76-77.

⁴⁶ *See* TVPA § 102(b)(11).

⁴⁷ *See, e.g.,* Lederer, *supra* note 42, at 75-76 (“Many survivors were dependent on drugs or alcohol while they were trafficked either because the substances were forced on them as a control mechanism by their traffickers or because substance use was a means of coping with the immense abuse they suffered.”); DOJ Website (traffickers use drugs and alcohol “to maintain control”).

⁴⁸ *See* TVPA §102(b)(11) (“[t]rafficking exposes victims to serious health risks,” including “deadly diseases [like] HIV and AIDS”); 2013 TIP Report, *supra* note 42, at 31; Lederer, *supra* note 42, at 68, 71-74, 79.

supposed “choices.”⁴⁹ These consequences are true for all victims of sex trafficking, but they are even more pronounced for children.⁵⁰ Not surprisingly, given the multifaceted trauma inflicted by the sex trafficking industry, victims have an extraordinarily high rate of attempted suicide and Post-Traumatic Stress Disorder.⁵¹

II. BACKPAGE.COM FACILITATES THE VICTIMIZATION OF CHILDREN

The sex trade has many similarities to traditional businesses; its success depends in part on efficiently marketing and selling its “product”—in this case, sex with children.⁵² The Internet has provided traffickers with a remarkably easy and cost-effective way to do this, opening up new and vast markets for the commercial sex industry.⁵³ Websites such as Backpage.com are a significant means by which

⁴⁹ See Lederer, *supra* note 42, at 70; 2013 TIP Report, *supra* note 42, at 31; Linda A. Smith, *et al.*, *The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children*, Shared Hope, 41-42 (May 2009), available at http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf.

⁵⁰ See Mary P. Alexander *et al.*, *Community and Mental Health Support of Juvenile Victims of Prostitution*, 1 *Med., Legal, & Soc. Sci. Aspects of Child Sexual Exploitation* 397, 397-98 (2005); 2013 TIP Report, *supra* note 42, at 31.

⁵¹ See Lederer, *supra* note 42, at 70; Melissa Farley & Howard Barkan, *Prostitution, Violence, and Posttraumatic Stress Disorder*, 27(3) *Women & Health* 37-49 (1998).

⁵² See Meredith Dank *et al.*, *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities* 112, 190-91 (The Urban Institute Mar. 2014).

⁵³ See, *e.g.*, *Exploiting Americans on American Soil*, *supra* note 39, at 33 (traffickers and pimps are using the Internet to grow their businesses); Smith, *supra* note 49, at 17 (“the accessibility to commercial sex markets on the Internet is staggering”).

traffickers advertise child victims to potential customers, facilitating the sexual exploitation of children.⁵⁴

A. Backpage.com Is a Major Online Marketplace for the Sale of Illegal Sex

Backpage.com’s “adult” section is “[o]ne of the most well-known online classified sites” for sex trafficking.⁵⁵ The “anonymity and accessibility” of Backpage.com create the “perfect storm for the proliferation of sex trafficking.”⁵⁶ After Craigslist shut down its “adult services” section in 2010, Backpage.com acquired a huge portion of the online prostitution business and is now “the nation’s leading publisher of online prostitution advertising.”⁵⁷ According to a study by the Advanced Interactive Media Group, LLC, some 69,450 advertisements for “escorts” and “body rubs”—both euphemisms for prostitution⁵⁸—were posted on Backpage.com in May 2013, earning the website about \$4.5 million—a

⁵⁴ *See id.*; DOJ Website.

⁵⁵ NPR Staff, *Online and Anonymous: New Challenges To Prosecuting Sex Trafficking*, NPR (Aug. 3, 2013), <http://www.npr.org/2013/08/03/208664066/online-the-web-of-sex-trafficking-can-be-even-more-obscure>.

⁵⁶ Shared Hope, *Memorandum: Facilitation of Domestic Minor Sex Trafficking*, 1 (Sept. 9, 2013), available at http://sharedhope.org/wp-content/uploads/2014/04/Shared-Hope-Written-Remarks_Arizona-Governors-Anti-Trafficking-Taskforce_Sex-Trafficking-on-Classified-Website.pdf.

⁵⁷ AIMGroup, *Online prostitution-ad revenue crosses Craigslist benchmark* (2013), available at <http://aimgroup.com/2013/07/10/online-prostitution-ad-revenue-crosses-craigslist-benchmark/>.

⁵⁸ *Id.*; Letter from the National Association of Attorneys General to Samuel Fifer, dated Aug. 31, 2011 (hereinafter “A.G. Letter”), at 1, available at http://www.atg.wa.gov/uploadedFiles/Home/News/Press_Releases/2011/NAAG_Backpage_Signon_08-31-11_Final.pdf.

figure consistent with monthly levels throughout the year.⁵⁹

Federal and state leaders recognize that Backpage.com is a major facilitator of sex trafficking. For example, in a unanimous resolution, the U.S. Senate “call[ed] on Village Voice Media Holdings, LLC to act as a responsible global citizen and immediately eliminate the ‘adult entertainment’ section of the classified advertising website Backpage.com to terminate the website’s rampant facilitation of online sex trafficking.”⁶⁰ In the House, U.S. Representative Ann Wagner introduced, and the House ultimately passed with overwhelming bipartisan support, the Stop Advertising Victims of Exploitation Act (the “SAVE Act”), aimed at websites “that post third-party ads for massages, body rubs, escort services and other thinly veiled references to prostitution.”⁶¹ Representative Wagner specifically identified Backpage.com as a “top forum” for the posting of prostitution advertisements.⁶² In another example, 46 state attorneys general (including Washington’s then-Attorney General Rob McKenna), in a letter to Backpage.com, identified the website as a “hub” for the trafficking of minors:

⁵⁹ AIMGroup, *supra* note 57.

⁶⁰ S. Res. 439, 112th Cong. (2012).

⁶¹ Alan Scher Zagier, *Wagner Promotes Bill to Shut Down Online Sex Ads*, Wash. Times (Mar. 13, 2014); H.R. 4225, 113th Cong. (2014) (passing the SAVE Act in the House with 392 yeas to 19 nays). The SAVE Act was introduced in the Senate by Senators Feinstein and Kirk on June 26, 2014. *See* S. 2536, 113th Cong. (2014).

⁶² Zagier, *supra* note 61.

As our state’s chief law enforcement officers, we are increasingly concerned about human trafficking, especially the trafficking of minors. Backpage.com is a hub for such activity This hub for illegal services has proven particularly enticing for those seeking to sexually exploit minors.⁶³

The letter chastised Backpage.com’s purported efforts to limit advertisements for prostitution, stating that “[t]he prominence of illegal content on Backpage.com conflicts with the company’s representations about its content policies.”⁶⁴

B. Backpage.com’s Illegal Marketplace Includes the Sale of Children for Sex

Despite its title, the “adult” section on Backpage.com includes advertisements for children.⁶⁵ Indeed, Backpage.com itself admits that at least 400 advertisements a month in its “adult services” section potentially involve minors—although the actual number is likely much higher.⁶⁶ A study by the non-profit group YouthSpark in Atlanta surveyed service providers across the nation on questions related to domestic minor sex

⁶³ A.G. Letter, at 1.

⁶⁴ *Id.* at 2.

⁶⁵ *See generally* A.G. Letter.

⁶⁶ S. Res. 439, 112th Cong. (2012) (finding that “Backpage.com vice president Carl Ferrer acknowledged . . . that the company identifies more than 400 ‘adult entertainment’ posts that may involve minors each month” and finding that “the actual number of ‘adult entertainment’ posts on Backpage.com each month that involve minors may be far greater than 400”). While the company reports that these advertisements involve minors, it nevertheless leaves the advertisements on its website. *See* Deborah Feyerick & Sheila Steffen, *A Lurid Journey Through Backpage.com*, CNN (May 10, 2012), available at <http://thecnnfreedomproject.blogs.cnn.com/2012/05/10/a-lurid-journey-through-backpage-com/>.

trafficking victims. Seventy-two percent of the child victims in their care were bought and sold for sex online; 53% of those child victims reported being trafficked on Backpage.com.⁶⁷

Backpage.com only has one purported requirement relating to advertising and minors—the person posting the advertisement (often the adult trafficker) must click on the posting rules page, which includes the following statement: “I am at least 18 years of age or older and not considered to be a minor in my state of residence.” (Compl. ¶ 3.19.) Worse still, traffickers can post advertisements of children without fear of recourse—Backpage.com allows traffickers to post advertisements anonymously.⁶⁸ Traffickers post provocative photographs of minors on Backpage.com, sometimes with their faces blurred in an attempt to hide their youth.⁶⁹ Traffickers and buyers have developed a code so that buyers specifically seeking underage girls can identify them quickly—“young,” “new to town,” and “fresh” are common code words used by traffickers to appeal to pedophiles looking to purchase sex with children.⁷⁰

⁶⁷ Shared Hope, *Memorandum: Facilitation of Domestic Minor Sex Trafficking*, *supra* note 56.

⁶⁸ NPR Staff, *Online and Anonymous*, *supra* note 55.

⁶⁹ *See, e.g.*, Compl., Exhibit A (samples of Backpage.com advertisements, some of which include photographs with blurred faces).

⁷⁰ *See* Ann Gerhart, *Sex-trafficking Opponents Fight Craigslist’s ‘Adult Services’ Ads*, *Wash. Post* (Aug. 7, 2010), *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/06/AR2010080606376.html>; *see also*, Compl., Exhibit A

Backpage.com’s lax advertising “requirements” create an online forum that is both lucrative and dangerous. Traffickers profit from the sale of children for sex advertised on Backpage.com; Backpage.com profits from these traffickers; and buyers get a free and anonymous way to shop for children and purchase them for sex.

III. VICTIMS MUST BE ABLE TO SEEK JUSTICE AGAINST THOSE THAT FACILITATE THEIR TRAFFICKING

It is well-settled that all individuals have a constitutional right to access the courts to seek redress for wrongs committed against them.⁷¹ Such access is “grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and/or the Fourteenth Amendment.”⁷² Importantly, the constitutional right to access the courts “must be more than merely formal; it must also be adequate, effective, and meaningful.”⁷³ Plaintiffs here are victims of horrific crimes facilitated by Backpage.com, and they have the right to meaningfully pursue relief in the courts to vindicate the wrongs committed against them.

Despite allegations that Backpage.com developed content that

(samples of Backpage.com advertisements, some of which use the descriptions “young,” “new to town,” and “fresh”).

⁷¹ See, e.g., *Chappell v. Rich*, 340 F.3d 1279, 1282 (11th Cir. 2003) (access to courts is a fundamental right); *Ryland v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983) (same); *Snyder v. Nolen*, 380 F. 3d 279, 291 (7th Cir. 2004) (“right of access to the courts is the right of an individual . . . to obtain access to the courts without undue interference”).

⁷² *Chappell*, 340 F.3d at 1282.

⁷³ *Id.*

encouraged and facilitated the criminal victimization of Plaintiffs, Backpage.com argues that it is entitled to immunity pursuant to the CDA. But such a broad interpretation of CDA immunity would effectively cut off the ability of victims like Plaintiffs to seek redress against websites that catalyze the sexual exploitation of children. It also would protect the facilitator of criminal conduct that is devastating to the welfare of children—a protection that Congress could not have intended.

Backpage.com argues, *inter alia*, that the CDA promotes freedom of speech on the Internet, and that allowing Plaintiffs' action to continue would defeat that goal. (*See, e.g.*, Appellants' Op. Br. at 11, 38.) But this argument ignores the many countervailing interests implicated by the expansive immunity that Backpage.com seeks here—one of which is Plaintiffs' right to meaningfully access the courts to seek justice against the facilitator of their victimization. At this early stage in the litigation, Plaintiffs' constitutional right to seek justice in the courts must prevail, or that right is lost completely.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in the Brief of Respondents J.S., S.L., and L.C., the Court should affirm the Trial Court's denial of Appellants' Motion to Dismiss.

Dated: September 4, 2014
Seattle, Washington

SAVITT BRUCE & WILLEY LLP

By: /s/ Caitlin K. Hawks
Caitlin K. Hawks, WSBA No. 46669
1425 Fourth Avenue, Suite 800
Seattle, WA 98101
(206) 749-0500

MILBANK, TWEED, HADLEY & McCLOY
LLP

By: /s/ Stacey J. Rappaport
Stacey J. Rappaport, NYSBA No.
2820520
Nicole Fidler, NYSBA No. 4651840
1 Chase Manhattan Plaza
New York, New York 10005
(212) 530-5000

*Attorneys for Amici National Crime Victim Law
Institute, Shared Hope International, Covenant
House, and Human Rights Project for Girls*

This amicus curiae brief has been endorsed by the following:

Advocates For Freedom
Biloxi, MS

Exchange Initiative
St. Louis, MO

Advisory Council on Child
Trafficking (ACCT)

Foster Family-based Treatment
Association

Breaking Free
St. Paul, MN

Free for Life International
Franklin, TN

Center for Children and Youth
Justice
Seattle, WA

Freeborn County Crime Victims
Crisis Center
Albert Lea, MN

Charlotte Law Advocates
Against the Trafficking of
Humans
Charlotte, NC

Girls Inc.
New York, NY

Children's Rescue Alliance
Los Angeles, CA

Go Girl Global
Boston, MA

Civil Society
St. Paul, MN

Ho'ola Na Pua
Honolulu, HI

Courtney's House
Washington, DC

Innocents at Risk
Washington, DC

DC Stop Modern Slavery
Washington, DC

Kalamazoo Anti Human
Trafficking Coalition
Kalamazoo, MI

Delores Barr Weaver Policy
Center
Jacksonville, FL

Keeping Kids Safe, Inc.
Portland, ME

ECPAT-USA
New York, NY

The Legal Aid Society Juvenile
Rights Practice
New York, NY

Engage Daily
Jacksonville, FL

Lives Worth Saving Human
Trafficking
Orange, CA

Magdalene St. Louis
St. Louis, MO

Minnesota Coalition Against
Sexual Assault
St. Paul, MN

Mission 14
Baltimore, MD

Mission 21
Rochester, MN

The Moore Center for the
Prevention of Child Sexual
Abuse at John Hopkins
Bloomberg School of Health
Baltimore, MD

National Council of Jewish
Women
Washington, DC

National Crittenton Foundation
Portland, OR

NOOWA! Not On Our Watch
Advocacy!
Washington, DC

On Eagles Wings Ministries
Charlotte, NC

Operation HOPE, Inc.
New Orleans, LA

Rebecca Bender Ministries
Grants Pass, OR

Restoration Project International
Denver, CO

Sisters of St. Francis
Rochester, MN

SOLD: The Human Trafficking
Experience
West Richland, WA

Soroptimist International of
Stuart
Palm City, FL

St. Mary of the Lake Human
Trafficking Working Group
White Bear Lake, MN

Sufficient Grace Outreach, Inc.
Asheville, NC

Trafficking in America Task
Force
Lecanto, FL

True Colors Fund
New York, NY

West Florida Center for
Trafficking Advocacy
Tarpon Springs, FL

Women's Foundation of
Minnesota
Minneapolis, MN

YouthCare
Seattle, WA

U.S. Representative Ann Wagner
2nd District of Missouri