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Senate Holds Classified-Ad Site Backpage.com in Contempt

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The Senate on Thursday unanimously approved a contempt resolution against a classified-ad website that has been criticized for reportedly facilitating child-sex trafficking but has successfully fended off victim lawsuits and lawmaker inquiries.

The resolution, approved 96-0, directs the Senate legal counsel to bring action against the chief executive officer of Backpage.com in federal court, a highly unusual move aimed at forcing the Internet firm to provide information about its internal operations.

The last time the Senate approved a contempt action was more than 20 years ago, and it hasn't filed a lawsuit since 1993.

So far, Backpage.com has largely refused to comply with subpoenas from the Senate Permanent Subcommittee on Investigations, citing constitutional protections for publishers. "I've been in Congress a long time and I've never seen anything quite like it," Sen. John McCain (R., Ariz.) said of the company's approach, adding that it is the first time in more than 20 years the Senate has needed to enforce a subpoena in court.

The company contends it uses industry-leading practices to prevent sex-trafficking ads, including ads featuring minors, from showing up in its classified listings.

But many lawmakers and anti-trafficking advocates scoff at those claims. They say the website's screening practices are aimed instead at helping sex traffickers avoid prosecution by disguising the fact that they are selling sexual services, such as avoiding terms like "underage" while using "fresh" and other terms.

In court battles Backpage has pointed to its rules prohibiting improper ads, including ads that concern prostitution or underage sex trafficking. It also has noted that federal law provides broad protection for websites that post third-party content.

Lawmakers say Backpage.com is the largest site in what has become a flourishing market for sex-trafficking ads.

Senators cited specific cases on Thursday to support their claim that hundreds of underage victims have been trafficked online, many via Backpage.com. Child advocates say the Internet has made it much easier to market child prostitution by linking traffickers and clients while providing anonymity.

Steve Ross, an attorney for Backpage, said in a statement that the company welcomes the Senate action and “looks forward to a proper consideration of the important First Amendment constitutional issues by the judiciary—the branch of government charged with protecting the constitutional rights of all Americans.”

Government efforts to “investigate or attack publishers, including those who publish on the Internet, must comply with the limits placed on the government by the First Amendment,” Mr. Ross said.

Sen. Rob Portman (R., Ohio), who is leading the congressional investigation along with Sen. Claire McCaskill (D., Mo.), said on the Senate floor that child advocates searching for a missing child recently found the girl in a “sex advertisement” on Backpage.

“What made this case even more incredible was that the Backpage ad actually contained a missing-child poster of that same child” along with topless photos of the girl, Mr. Portman said. “We’d certainly like to know what supposedly market-leading screening and moderation procedures missed that one.”

The website’s lawyers didn’t respond to a request for comment on those allegations.

Child advocates say the dispute shows that free-speech protections for the Internet may go too far in shielding potentially illegal activities. They say Backpage.com and other similar sites have flourished under the protection of a 1996 federal law, the Communications Decency Act, which sought to protect fledgling Internet businesses from lawsuits by granting websites, such as Facebook or Twitter, broad legal immunity for content posted by others.

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Many experts say the Communications Decency Act is an important legal underpinning for the Internet, although some argue the law should be tightened now that online commerce is well-established and can be a convenient venue for illicit activity.

Backpage.com has relied on the Communications Decency Act for protection from criminal prosecution and from several civil lawsuits by minors who allege that pimps offered the girls’ services through its site.

Earlier this week, the U.S. Court of Appeals for the First Circuit, based in Boston, ruled that a group of alleged minor victims couldn't proceed with a case against the company. The three-judge panel conceded that the victims "have made a persuasive case" for their argument that "Backpage has tailored its website to make sex trafficking easier."

But, the court added, "Congress did not sound an uncertain trumpet when it enacted the [Communications Decency Act], and it chose to grant broad protections to Internet publishers."

Backpage.com has drawn some support in its legal battles from high-profile Internet freedom groups such as the Electronic Frontier Foundation and the Center for Democracy and Technology, who worry that court rulings could unduly narrow the law's protections for websites.

Backpage.com also has drawn some support from libertarian groups such as the Cato Institute. They argue there is no evidence the Internet has led to an epidemic of sex trafficking, and some say websites like Backpage.com have actually helped the government target offenders.

Senators on Thursday underscored that they were seeking answers about Backpage.com operations for the purpose of formulating legislation to balance Internet freedom with victim protection, not aiming to shut it down because some of its business is unpopular.

"This is a valid investigation, this is an important investigation," Ms. McCaskill said.