



Public policy group sees First Amendment liberties at risk in Backpage.com case

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OAKLAND, Calif. (Legal Newslines) – Critics continue to argue that actions like those that recently forced classified-ad website Backpage.com to shutter its “adult” section are unconstitutional and in violation of freedom of speech rights.

Nonetheless, the long controversial website, which some reports estimate generated as much as 99 percent of the company’s revenue from such offerings, announced earlier this year that it was caving to unwavering pressure being exerted from the government at virtually every level, the Cato Institute reported.

In one instance, the Senate Permanent Subcommittee on Investigations (PSI) ordered several of the company’s executives to appear before the committee before a ruling on the legality of its investigation was even rendered.

In December, then-California attorney general and current U.S. Senator Kamala Harris refiled criminal charges against the company’s CEO and several of the website's former owners.

After forcing Craigslist to close its “adult advertisements” section in 2010, attorneys general of the same 17 states that spearheaded that mission have seemingly focused all their attention on making sure Backpage suffers a similar fate, despite federal courts having historically found many of the AGs' actions resonate as violations of the First Amendment, according to the Cato Institute.

Collectively, the courts have taken the position that the government cannot assume that ads that highlight sex acts are actually advertising illegal transactions, the institute says.

Legal rulings aside, the pressure being exerted by PSI and other government agencies aligned with them on the issue has been intense enough to have the same impact as a favorable court ruling.

“The government wants what it wants and in this instance they seem to think something is going in a gray area of the law that needs attention,” Cato Institute Senior Fellow and Editor of Cato Supreme Court Review Ilya Shapiro told *Legal Newslines*.

Cook County, Illinois, Sheriff Thomas Dart has been among the most outspoken critics of Backpage, Shapiro wrote in a recent article.

More recently, Dart was spurred to action, strategically attempting to force credit card companies to cease doing business with the website.

He later claimed he only wrote a letter he forwarded to various executives as “a father and a caring citizen,” Shapiro wrote, but ultimately U.S. Court of Appeals for the Seventh Circuit Judge Richard Posner ruled his actions amounted to an organized boycott and ordered him to stop contacting company officials.

The judge further stipulated that such tactics allow for “a formula for permitting, unauthorized, unregulated, foolproof, lawless government coercion.”

“Dart is a zealous law enforcement officer and the city really wants to give the appearance of looking tough in their actions,” said Shapiro, noting that Cato has previously filed an amicus brief in a related case on behalf of Backpage.

“We became involved because we tend to speak out on issues of constitutional law and the First Amendment,” he said. “The right to free speech is a big part of that. We decided that the issues in question here were a big enough reason for us to become involved.”

Meanwhile, PSI has already subpoenaed Backpage CEO Carl Ferrer, and despite subcommittee members’ insistence that they have no ties to Dart, a string of recently uncovered emails seem to tell a whole different story, Shapiro wrote.

In one correspondence exchanged around the time Ferrer was arrested in California on what several news outlets reported were pimping charges, subcommittee council members praised Dart and his staff while assuring the sheriff that their investigations were “rapidly progressing down a parallel track,” according to Shapiro's article.

Added Shapiro of the subpoena process, “it’s an overly broad fishing expedition and it’s come out in discovery that there was coordination between Dart and PSI. Backpage is doing the only thing they can do by going to court and filing briefs to quash the subpoenas and protect its constitutional rights.”