

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BACKPAGE.COM, LLC, : Civil Action No.: 2:13-CV-03952
Plaintiff, :
v. :
JOHN JAY HOFFMAN, Acting Attorney :
General of the State of New Jersey, et al., :
Defendants, in their official :
capacities. :

THE INTERNET ARCHIVE, : Civil Action No.: 2:13-CV-03953
Plaintiff, :
v. :
JOHN JAY HOFFMAN, Acting Attorney :
General of the State of New Jersey, et al., :
Defendants, in their official :
capacities. :

**PROPOSED BRIEF OF *AMICI CURIAE*
PUBLIC INTEREST, SOCIAL SERVICE, AND CITIZENS GROUPS
WORKING TO COMBAT HUMAN TRAFFICKING**

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INTEREST OF AMICI

Amici are public interest, social service, and citizens groups that devote significant resources to fighting human trafficking in New Jersey, both nationally and internationally. Human trafficking is modern-day slavery that exploits millions of men, women and children around the world for labor and sex.

Amici submit this brief to focus the Court's attention on the significant harm that the Village Voice Media Holdings, LLC's Backpage.com causes to the most defenseless individuals among us. Backpage.com has refused to heed to requests by anti-trafficking advocates, the United States Senate, and a coalition of Attorneys General to shut down its "adult services" section which facilitates the sale and exploitation of both children and adults. Instead of taking steps to curb trafficking, Backpage.com knowingly profits from it. Backpage.com has fought every attempt by states to regulate it, including here in New Jersey. In doing so, it presents itself as a white knight and a defender of the United States Constitution. This brief is submitted to inform the Court of the full extent of Backpage.com's knowledge and profiting from human trafficking, including trafficking of children.

BACKGROUND

A. HUMAN TRAFFICKING IS MODERN-DAY SLAVERY AFFECTING MILLIONS OF VICTIMS AROUND THE WORLD, INCLUDING IN THE UNITED STATES.

Human trafficking is a global crisis and "the fastest-growing criminal industry in the world." Washington State Office of the Attorney General, *What is Human Trafficking*, <http://www.atg.wa.gov/HumanTrafficking.aspx#.UehiMDdpi70>. It is prevalent in the United States, affecting not only foreign nationals but also United States citizens. See Alison Siskin and

Liana Sun Wyler, Cong. Research Serv., RL 34317, *Trafficking in Persons: U.S. Policy and Issues for Congress 1* (2013). New Jersey is a known locale and destination for trafficking, as it is a key transportation hub.¹

According to the United States government, human trafficking is a form of modern-day slavery that exploits children, women, and men around the world for sex and labor. *See* Trafficking Victims Protection Act (“TVPA”), 22 U.S.C. §§ 7102-12 (2013); U.S. DEPARTMENT OF STATE, *TRAFFICKING IN PERSONS REPORT* (“State Depart. TIP 2013 Report”) (2013) (“‘Trafficking in persons’ and ‘human trafficking’ have been used as umbrella terms for the act of recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud, or coercion.”); UNITED NATIONS OFFICE ON DRUGS AND CRIMES, *GLOBAL REPORT ON TRAFFICKING IN PERSONS* (“UNODC Report”) (2012), pp. 5-7.² Traffickers gain control of victims through force, coercion, fraud, and other criminal conduct. *Id.*

The United States Department of State, pursuant to the Trafficking Victims Protection Act of 2000 (“TVPA”), and pursuant to anti-trafficking international treaties, defines modern-day slavery and human trafficking as conduct related to “compelled service.” *See* 22 U.S.C. §§ 7102-12, (addressing trafficking victims); 18 U.S.C. § 1589 (2008) (addressing forced labor); 18 U.S.C. § 1590 (2008) (addressing trafficking with respect to peonage, slavery, involuntary servitude, or forced labor); 18 U.S.C §§ 1591-4 (2008) (addressing sex trafficking of children or by force, fraud, or coercion); 18 U.S.C. § 1588 (1996) (addressing transportation of slaves).

¹ Editorial, *Throwing a Block at Human Trafficking*, N.J. Law. J., May 17, 2013, *available at* <http://www.law.com/jsp/nj/PubArticleNJ.jsp?id=1202600701407&slreturn=20130618180429>.

² State Depart. TIP Report 2013 is available at <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>, accessed July 12, 2013. UNODC Report is available at http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf, accessed July 12, 2013.

The United States and 155 other countries are parties to the 2003 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (“Palermo Protocol”), Nov. 15, 2000., 2237 U.N.T.S. 000, entered into force on Dec. 25, 2003. *See also* Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Sept. 7, 1956, entered into force Apr. 30, 1957, signed by U.S. Dec. 6, 1967, 18 U.S.T. 3201, 266 U.N.T.S. 3; Protocol Amending the Slavery Convention, Sept. 25, 1926, entered into force Dec. 7, 1953, signed by U.S. Mar. 7, 1956, 7 U.S.T. 479, 182 U.N.T.S. 51; Convention to Suppress the Slave Trade and Slavery, Sept. 25, 1926, entered into force Mar. 9, 1927, signed by U.S. Mar. 21, 1929, 46 Stat. 2183, 60 U.N.T.S. 253.

Congress has enacted civil and criminal laws prohibiting both. *See* 8 U.S.C § 1232 (2013); (enhancing efforts to combat the trafficking of children); 18 U.S.C. § 2251 (2008) (prohibiting sexual exploitation of children specifically); 18 U.S.C. § 1591 (2008) (addressing sex trafficking of children or by force, fraud, or coercion); 22 U.S.C. §§ 7101-12 (TVPA); 28 U.S.C. §§ 206-19 (2000) (Fair Labor Standards Act); 18 U.S.C. §§ 1961-1968 (1970) (Racketeer Influenced and Corrupt Organizations Act).

Almost every state, including New Jersey, has also enacted criminal and civil statutes to stop traffickers; several states specifically emphasize the need to prohibit the trafficking of children. *See e.g.*, N.J. STAT. ANN. § 2C:13-8 (West 2013) (defining and criminalizing human trafficking); VA. CODE ANN. § 40.1-11.3 (2013) (requiring truck stops and strip clubs to post notices about trafficking hotline); LA. REV. STAT. ANN. § 46.2 (2012) (defining and criminalizing human trafficking); TENN. CODE ANN. § 39-13-314 (West 2012) (defining human trafficking and providing civil remedy for victims); MO. REV. STAT. § 566.212 (2011)

(stating that trafficking of children is punishable felony); VT. STAT. ANN. tit. 13, § 2652 (2011) (defining and criminalizing human trafficking); TEX. PENAL CODE ANN. § 20A.02 (Vernon 2011) (defining and criminalizing human trafficking with special consideration of children); N.Y. PENAL LAW § 230.34 (McKinney 2007) (defining and criminalizing sex trafficking).

Additionally, the United States Department of State, pursuant to the TVPA, has developed the Office to Monitor and Combat Trafficking in Persons, which “leads the United States’ global engagement in the fight against human trafficking, partnering with foreign governments and civil society to develop and implement effective strategies for confronting modern slavery.”³ In 2009, President Barack Obama appointed Ambassador at-Large Luis CdeBaca to lead the United States’ efforts to protect victims, prevent trafficking, and prosecute traffickers. The Department of State has also established national trafficking hotlines for victims, as well as training and awareness-building materials to help identify trafficking victims.⁴

1. Human Trafficking is a Global Problem Affecting Millions of Vulnerable Women and Children and the Fastest-Growing Criminal Industry in the World.

According to the United States Department of State, approximately 27 million children and adults are trafficked around the world. State Dept. TIP 2013 Report, available at <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>, accessed July 12, 2013. This number, however, is likely even higher, as it is often difficult to locate and identify trafficking victims. UNODC Report pp. 5-7. The International Labour Organization estimates that some 20.9 million people, or around three out of every 1,000 persons worldwide, are victims of forced

³ U.S. Dept. of State website, available at <http://www.state.gov/j/tip/id/domestic/index.htm>, accessed July 12, 2013.

⁴ *Id.*

labor. International Labor Organization, Global estimate of Forced Labor, Results and Methodology, Report from 2002-2012, p.13.⁵

As the fastest-growing criminal industry in the world, human trafficking produces billions of dollars in profits for pimps, handlers, and other traffickers. UNODC Report, pp. 5-7. The United Nations Office of Drugs and Crimes (“UNODC”) reports that trafficking is the third largest criminal industry internationally, surpassed only by the illegal arms and drugs trade. *Id.*

Traffickers prey on and target vulnerable groups and individuals, like children and young women. *Id.* Women and girls are one of the most vulnerable groups for traffickers and account for 75% of all trafficking victims globally. *Id.* Children are similarly vulnerable and are 27% of all victims. *Id.* Of every three child victims, two are girls and one is a boy. *Id.*

2. Human Trafficking/Modern-Day Slavery Is Prevalent in the United States and Harms United States Citizens.

Human trafficking is not only an international phenomenon but also one that widely affects United States citizens. State Dept. TIP Report 2013 at p. 29. Trafficking does not necessarily involve movement of persons across borders or international actions. *Id.* As the Federal Bureau of Investigation (“FBI”) has stated, “[i]t’s sad but true: here in this country, people are being bought, sold, and smuggled like modern-day slaves. They are trapped in lives of misery—often beaten, starved, and forced to work as prostitutes or to take grueling jobs as migrant, domestic, restaurant, or factory workers with little or no pay.” Federal Bureau of Investigation, Human Trafficking Summary, available at http://www.fbi.gov/about-us/investigate/civilrights/human_trafficking, accessed July 10, 2013.

⁵ Report is available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf, accessed July 12, 2013.

The United States Department of State found that the United States is a “source, transit, and destination country” for victims—men, women, children, United States citizens, and foreign nationals—who are “subjected to forced labor, debt bondage, involuntary servitude, and sex trafficking.” TIP Report 2013 at p. 29. This means that victims are brought into the United States and forced to work, *and* that our very own United States citizens are trafficked domestically. *Id.*

According to the United States Department of Justice, between 14,500 and 17,500 people worldwide are trafficked into the United States every year. Alison Siskin and Liana Sun Wyler, Cong. Research Serv., RL 34317, Trafficking in Persons: U.S. Policy and Issues for Congress 1 (2013). In only two years (2008-2010), federally-funded human trafficking task forces opened 2,515 suspected incidents of human trafficking, 82% of which were sex trafficking incidents. FBI, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2372>. More than 1,000 incidents, about 40%, involved allegations of prostitution or sexual exploitation of a child. *Id.*

In the United States, trafficking “occurs in many licit and illicit industries or markets, including in brothels, massage parlors, street prostitution, hotel services, hospitality, agriculture, manufacturing, janitorial services, construction, health and elder care, and domestic service.” State Depart. TIP 2013 Report at p. 29. Traffickers promise a better life to victims, but once they arrive, traffickers often destroy victims’ forms of identification and other legal documents, threaten family members, and intimidate victims with debts that can never be repaid. National Human Trafficking Resource Center Hotline (“NHTRC”), New Jersey, available at <http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/the-nhtrc/overview>, accessed on July 12, 2013. NHTRC is a body of the United States Department of Health and Human Services.

Victims of trafficking are subjected to deplorable living conditions that cause serious physical health and psychological problems. U.S. Dept. of Health and Human Services, Office of the Assistance Secretary of Planning and Evaluation, Human Trafficking into and within the U.S.: A Review of the Literature (2009), p.8., available at <http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/index.pdf>, accessed on July 12, 2013.

Children and adults who are trafficked for sexual purposes also suffer from sexually transmitted infections, anal trauma, unwanted pregnancy, infertility as a result of botched or unsafe abortion, and a variety of gynecological problems in addition to the emotional and psychological issues.

Id. Psychological trauma may include depression, post-traumatic stress disorder (PTSD), disorientation, confusion, phobias, shock, denial, and disbelief. *Id.* In addition, victims may experience blame or rejection by family and community members and may turn to substance abuse. *Id.*

3. New Jersey is a Known Locale and Destination for Human Trafficking.

New Jersey is a known locale and destination for trafficking. Between 2010 and 2012, New Jersey was ranked eighth in the country for human trafficking hotline calls.⁶ According to the United States Health and Human Services, there were 73 cases that referenced potential trafficking situations in New Jersey reported on the National Human Trafficking Resource Center hotline in 2012. NHTRC, New Jersey, available at <http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/the-nhtrc/overview>, accessed on July 12, 2013. Thirty-four of the reported cases were determined to have a *high probability* of being instances of

⁶ *Attorney General Calls on N.J. Law Enforcement to Increase Efforts Against Human Trafficking*, http://www.nj.com/news/index.ssf/2012/07/nj_attorney_general_calls_on_1.html (June 21, 2013).

trafficking; with 25 of those cases being of sex trafficking with “pimp controlled prostitution.”

Id. Twenty three of the cases involved the trafficking of minors. *Id.*

In *USA v. Afolabi, et al.*, the United States Attorney’s office for the District of New Jersey successfully prosecuted three people for trafficking and forcing dozens of Togolese women, including some as young as ten years old, to work in hair braiding salons in Essex County without pay. *USA v. Afolabi, et al.*, No. 2:07-mj-03136-PS-1 (D.N.J. filed Sept. 4, 2007), *aff’d by USA v. Afolabi*, 508 Fed. App’x. 111, 113 (2013). The defendants preyed on the women’s desires for a better life and forced them to work for up to sixteen hours per day, six or seven days a week, under threats of extreme violence. *Id.* The women had to turn over all of their earnings, including tips, and they were not allowed to keep identification documents, speak freely to family members, or leave their residences without defendants’ permission. *Id.* They were severely physically, psychologically, and sexually abused. *Id.*

On July 11, 2013 the New Jersey Attorney General announced the arrest of six traffickers on charges of human trafficking. Press Release, Office of the Attorney General, Attorney General Announces Six Arrests in International Human Trafficking Case (July 18, 2013), *available at* <http://nj.gov/oag/newsreleases13/pr20130718a.html>. These individuals are accused of trafficking women from Mexico to work as prostitutes in suburban Lakewood. *Id.*

As the New Jersey Law Journal reported, the upcoming 2014 Super Bowl will likely increase trafficking in New Jersey.

With the Super Bowl coming to New Jersey next January, there is great excitement in the business community as the state anticipates a great influx of visitors, tourists and celebrities. The event is expected to generate tremendous amounts of commercial revenue for the state, the region and the National Football League.

Unfortunately, there is a sinister side. Much like other sports' mega-events, including the World Cup Soccer Championships, the baseball World Series and

the Olympics, the Super Bowl draws traffickers who arrange to import droves of young women, and sometimes young men, to be of sexual service to high-rolling male sports fans in town for just a few days and away from their wives, girlfriends and family members. . . .

In New Jersey, sex trafficking of foreign and domestic women and girls and labor trafficking of mostly foreign migrants are becoming a bigger and bigger problem for law enforcement. New Jersey-sandwiched between two very large commercial hubs, with excellent transportation networks and ease of ingress and egress- is a prime target for traffickers and their financiers. The Super Bowl will be sauce in this soup, as there will be much illicit money to be made.⁷

B. BACKPAGE.COM KNOWINGLY PROFITS FROM HUMAN TRAFFICKING INCLUDING SEXUAL SLAVERY OF CHILDREN AND ADULTS.

Backpage.com defines itself, innocuously, as a website that allows users to post classified ads for goods and services. *Plaintiff Backpage.com LLC's Memorandum of Law in Support of Motion for Temporary Restraining Order and Preliminary Injunction* at 5, 2:13-cv-03952-DMC-JAD (*"Backpage.com Brief"*) ("Backpage.com hosts millions of user posts each month in numerous categories . . . and subcategories."). While technically true, this sanitized definition does *not* adequately describe what Backpage.com actually does. Backpage.com knowingly operates a lucrative "adult services" section that facilitates the sexual slavery of women and children.

In December 2012, the United States Senate passed a bi-partisan resolution calling for the Village Voice Media Holdings, LLC, the parent company of Backpage.com, to remove its "adult services section." S. Res. 439, 112th Cong. (2012). The Senate "calls on Village Voice Media

⁷ Editorial, *Throwing a Block at Human Trafficking*, N.J. Law. J., May 17, 2013, available at <http://www.law.com/jsp/nj/PubArticleNJ.jsp?id=1202600701407&slreturn=20130618180429>.

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.” *Id.* at 8. The resolution states that: “the number of Backpage.com advertisements for ‘escorts’ and ‘body rubs,’ a thinly veiled code for prostitution, increased by nearly 5 percent between February 2011 and February 2012.” *Id.* at 4. It also states that “the actual number of ‘adult entertainment’ posts on Backpage.com each month that involve minors may be far greater than 400.” *Id.*

Similarly, 51 Attorneys General from 48 states and three territories have written to the Village Voice Media Holdings, LLC asking that it shut down Backpage.com’s “adult services” section because traffickers use it to attract johns to have sex with children. *Id.*; *see also* *Backpage.com’s ongoing failure to effectively limit prostitution and sexual trafficking activity on its website*, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, <http://www.naag.org/assets/files/pdf/signons/Backpage%20WG%20Letter%20Aug%202011Final.pdf> (Aug. 31, 2011); *Backpage.com responds to AGs*, WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL, <http://www.atg.wa.gov/pressrelease.aspx?id=29014#UeQ5-GQWlro> (Sep. 27, 2011) (“More states and U.S. territories have joined the effort to hold Backpage.com accountable.” and “A total of 51 attorneys general, representing 48 states and three territories, have now signed the letter . . .”).

Backpage.com has ignored these requests and has consciously chosen, as a business, to continue to profit from modern-day slavery. As such, Backpage.com is an outlier. It goes against industry practices and continues to facilitate the exploitation of children and adults. A comparable e-site, Craigslist, on the other hand, shut down its “adult services” section after evidence showed that it was being used for child trafficking. *Backpage.com Brief* at 5; *see also*

Ryan Singel, 'Adult Services' Shutdown Is Permanent, Craigslist Tells Congress, WIRED (Sep. 15, 2010, 4:22 PM), <http://www.wired.com/business/2010/09/adult-services-shutdown-is-permanent-craigslist-tells-congress/> ("Craigslist told Congress Wednesday that it had permanently terminated its Adult Services section in response to criticism that it was facilitating child exploitation and prostitution.").

1. Backpage.com Makes Most of Its Profits Through Its Adult Services Section.

Backpage.com makes most of its profit from its "adult services" section, which contains ads for selling adults and minors into prostitution. The pricing plans offered by Backpage.com to post an advertisement for "adult services" varies based on location. In New Jersey, it begins at four postings for \$48.00.⁸ Backpage.com will re-post an "adult services" ad up to 26 times for \$288.00. *Id.* "Sponsored advertisements," which appear highlighted on the website, begin at \$13.65/week and can be re-posted for up to a year for \$709.80. Ex. C to 7/19/13 Venetis Cert.

By comparison, for non-sex advertisements, Backpage.com charges \$0.50 for four ads.⁹ Backpage.com will re-post an ad up to 26 times for just \$3.00, and "sponsor" an ad for an entire year for just \$7.80. *Id.*; Ex. E to 7/19/13 Venetis Cert.

In 2012 Backpage.com's adult services advertisements brought in approximately \$22 million. *National Association of Attorneys General (NAAG) Speech on Backpage.com* (Mar. 7, 2012), <http://www.kirk.senate.gov/?p=blog&id=434>. Backpage.com raised its rates between

⁸ See, e.g. BACKPAGE, <http://posting.southjersey.backpage.com/online/classifieds/PostAdPPI.html/snj/posting.southjersey.backpage.com/> (last visited Jul. 16, 2013); Ex. B. 7/19/13 Venetis Cert.

⁹ See, e.g. BACKPAGE, <http://posting.northjersey.backpage.com/online/classifieds/PostAdPPI.html/nnj/posting.northjersey.backpage.com/?section=4378&category=5431&u=nnj&serverName=posting.northjersey.backpage.com&superRegion=North%20Jersey> (last visited Jul. 16, 2013); Ex. D to 7/19/13 Venetis Cert.

2012 and 2013, by 250% in some locales. Mark Whittaker, *Backpage Raises Rates Again, Escort-Ad Revenue Jumps 55 Percents*, <http://aimgroup.com/2013/04/01/backpage-raises-rates-again-escort-ad-revenue-jumps-55-percent/> (April 1, 2013). “In the last 12 months, online prostitution ads have generated \$39.1 million for [the] five tracked sites. Of that total, Backpage accounted for \$31.4 million or 80.4 percent.” *Id.*

It is a gross understatement to say that the “adult services” portion of Backpage.com is very big business for the Village Voice Media Holdings, LLC. Perhaps it is the enormous profit that the Village Voice Media Holdings, LLC reaps through Backpage.com that is fueling its constitutional zeal and its refusal to follow industry practices and shut down its “adult services” section.

2. Federal and State Case Law Make Clear That Backpage.com and the Village Voice Media Holdings, LLC Know That Backpage.com is Used For Trafficking in Children.

Backpages.com. facilitates horrific instances of child sexual exploitation. *See M.A. ex rel. P.K. v. Village Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1043 (E.D. Mo. 2011); *State v. Hopson*, 170 Wash. App. 1012 (Ct. App. 2012); *see, e.g., Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1267-68 (W.D. Wa. 2012); *United States v. Chappell*, Crim. No. 09-139 (JNE/JJK), 2011 WL 607385 (D. Minn. Feb. 10, 2011). These cases are evidence that Backpage.com fully knows that its site is being used to facilitate the raping of children.

For example in *McKenna*, a user notified Backpage.com of an ad depicting a minor being sold for sex. 881 F. Supp. 2d at 1267-68. Backpage.com took it down, but only temporarily. It allowed the exact ad selling the same 14 year old to be reposted just a few days later. *Id.* Also, in *M.A. ex rel. P.K.*, the court recognized that a pimp had trafficked a 14-year-old girl, M.A., using Backpage.com. 809 F. Supp. 2d at 1043. M.A. was photographed in pornographic poses

on Backpage's website. *Id.* "She [was] transported and subjected to sexual liaisons with adult males who responded to the advertisements." *Id.* at 1046. Even though a civil suit by the victim against Backpage.com was dismissed because the Communications Decency Act ("CDA") preempted the suit, the underlying facts of the suit demonstrate Backpage.com's knowledge that it is facilitating trafficking is unquestionable. *See id.* at 1043.

Traffickers who sell children for sex have been prosecuted and convicted both in federal and state courts for using Backpage.com to facilitate their exploitation. *See, e.g., id.* at 1043. In *State v. Hopson*, the Washington State Appellate Court affirmed the conviction of a defendant who sold sex with a 15 year old on Backpage.com. *State v. Hopson*, 170 Wash. App. 1012, at 8 (Ct. App. 2012) (Westlaw). The defendant placed daily ads on Backpage.com, including photographs of the girl posing on a pool table. *Id.*

In *United States v. Chappell*, Mr. Chappell was convicted of sex trafficking of a minor. Crim. No. 09-139 (JNE/JJK), 2011 WL 607385, at 1 (D. Minn. Feb. 10, 2011). Carl Ferrer, Vice President of Backpage.com, testified at trial that the defendant's credit card was used to pay for advertisements on Backpage.com for sex with a minor. *Id.* at 2. Similarly, in *United States v. Fuertes*, Backpage.com's Mr. Ferrer once again testified that the website was used to advertise sex with a 17-year-old girl. *See* 435 F. App'x 802, 806. The Eleventh Circuit upheld Mr. Fuertes' conviction for trafficking of a minor. *Id.* at 810.

Police testimony in other cases also demonstrates that advertising for commercial sex acts is a well-recognized aspect of Backpage.com's business. In *Sin v. State*, a police officer testified that "Backpage is 'well known for a place for prostitutes to advertise.'" No. 01-11-00105-CR, 2012 WL 114149 at 1 (Tex. App. Jan. 12, 2012). Similarly in *U.S. v. Latham*, the police were

easily able to search Backpage.com for prostitution ads. Criminal No. 12-25 (ADM/FLN), 2012 WL 1155459 at 1 (D. Minn. Mar. 8, 2012).

3. State Legislation Acknowledges that Backpage.com is Used For Human Trafficking.

Online providers' role in child sex trafficking is well recognized by state legislatures. When Washington State passed WASH. REV. CODE ANN. § 9.68A.104, the State Legislature found that minors are being advertised and sold for sex online locally. 2012 Wash. Legis. Serv. 6251 (WEST). The State Legislature recognized that escort advertisements included minors being sold against their will, and sought to end this human rights violation through legislation. *Id.*

The New Jersey Legislature also recognizes that escort advertisements, including those online, may falsely claim a girl is over the age of 18, when in reality she is not, and is instead a victim of child sex trafficking. N.J.S.A. § 2C:13-10(a)(3)-(4). One online service provider voluntarily removed its escort section after these revelations became public. N.J.S.A. § 2C:13-10(5). New Jersey's legislature recognizes that Backpage.com, unlike this other website, has refused to remove its escort section despite overwhelming evidence of child sex trafficking being advertised on its servers. *Id.*

Tennessee passed a law very similar to those in Washington and New Jersey. TENN. CODE ANN. § 39-13-315. Similarly, Missouri passed a law criminalizing the promotion of sexual solicitation online, including sex trafficking of children. MO. ANN. STAT. § 566.103 (West). In 2012, Connecticut also passed a law also criminalizing the commercial sexual exploitation of a minor. CONN. GEN. STAT. ANN. § 53a-196i (West). The Connecticut statute makes it a crime to purchase advertising which sells minors for sex. *Id.* In early 2013, the Connecticut General

Assembly proposed amending the legislation to mirror the New Jersey and the Washington statutes to also hold online providers accountable for sex trafficking. *See* H.B. 6500, Gen. Ass., Jan. Sess. (Ct. 2013).

These state laws, which have all been proposed within the last two years, demonstrate that states recognize that Internet providers such as Backpage.com.

4. Backpage.com Makes No Real Efforts to Combat Trafficking.

a. Backpage.com’s Definition of Protecting Minors is to List Hotlines on its Website.

Backpage.com allegedly provides a procedure for users to report “suspected exploitation of minors and/or human trafficking.”¹⁰ But, this procedure is nothing more than a list of government hotlines.¹¹ *See* Ex. A to 7/19/13 Venetis Cert. This is certainly not a comprehensive pro-active system aimed at protecting anyone. Frankly, the very presence of these hotline numbers demonstrates that Backpage.com is aware that it is being used to exploit children. Moreover, Backpage.com does not even ask users for their birthdays!¹² Backpage.com “does [not] . . . screen [children under 13] from using the Site. . . [and] does not collect . . . information indicating whether a user is a child.”¹³

¹⁰ *See, e.g.*, BACKPAGE <http://centraljersey.backpage.com/FemaleEscorts/classifieds/Disclaimer?category=4443> (last visited Jul. 16, 2013); Ex. F. to 7/19/Venetis Cert.

¹¹ BACKPAGE <http://www.backpage.com/en-us/online/classifieds/PopUp?page=StopTrafficking> (last visited Jul. 16, 2013); Ex. G to 7/19/13 Venetis Cert.

¹² *See* BACKPAGE.COM, <http://posting.centraljersey.backpage.com/online/classifieds/PostAdPPI.html/cnj/posting.southjersey.backpage.com?u=cnj§ion=4381&serverName=posting.centraljersey.backpage.com&category=4443&superRegion=Central%20Jersey> (last visited Jul. 16, 2013); Ex. H to 7/19/13 Venetis Cert.

¹³ BACKPAGE PRIVACY POLICY, <http://centraljersey.backpage.com/online/PrivacyPolicy> (last visited Jul. 16, 2013).

b. Backpage.com Makes no Efforts to Screen for Trafficked Adults.

Backpage.com claims to screen suspicious advertisements for child victims is, in fact, evidence of the website's total disregard to the trafficking of adults. Indeed, Backpage.com makes no mention of any effort to screen for adult victims of sex trafficking.

Backpage.com explicitly acknowledges that there is a risk of adult sex trafficking on its website by providing information on how to report it.¹⁴ While the form used to post an advertisement includes a warning, reading: "If you are exploited or need help, call 211,"¹⁵ this warning is entirely ineffective. It is the traffickers, not victims, who post advertisements. *See e.g. State v. Strothers*, No. 97687 slip op. (E.D. Oh. Nov. 1, 2012) (finding that the defendant, who ran a brothel created and maintained advertisements on Backpage.com.).

c. Backpage.com's Alleged "Screening Process" Does Not Work.

Backpage.com purports to review ads that are unlawful, and reporting them to law enforcement. Backpage.com Brief at 7. Yet, Backpage.com, in all its submissions to federal courts, has *never* produced a letter from law enforcement saying that Backpage.com helps fight trafficking. If indeed, Backpage.com helps fight trafficking, it would submit affidavits beyond that of its self-serving CEO's to support this bald assertion. Moreover, if Backpage.com helped fight trafficking, the United States Senate (notorious for its polarization) and a coalition of 51 state Attorneys General would not have passed bi-partisan resolutions and written letters asking the Village Voice Media Holdings, LLC. to shut down its "adult services" section. As the United States Senate has stated, the CDA "[does] not preclude a service provider from

¹⁴ *E.g.*, BACKPAGE, available at <http://www.backpage.com/en-us/online/classifieds/PopUp?page=StopTrafficking>, accessed July 16, 2013; Ex. F to 7/19/13 Venetis Cert.

¹⁵ *E.g.*, BACKPAGE <http://posting.centraljersey.backpage.com/online/classifieds/PostAdPPI.html/cnj/posting.centraljersey.backpage.com/> (last visited Jul. 16, 2013); Ex. I 7/19/13 Venetis Cert.

voluntarily removing a portion of a website known to facilitate the sexual exploitation of minors in order to protect children in the United States.” S. Res. 439, 112th Cong., at 7 (2012).

Backpage.com allegedly screens its ads using keyword filters for terms associated with sex trafficking. *Id.* at 7. But, traffickers can easily circumvent the screening process. Indeed, police sting operations use Backpage.com widely to advertise phony child prostitutes. In *U.S. v. Jungers* the police placed an ad on Backpage.com for sex with an 11-year-old girl. 702 F.3d 1066, 1071 (8th Cir. 2013) (the TVPA permits prosecution of johns as well as traffickers of children). The police purposefully did not reveal the age of the advertised girl until the john contacted them for “a date.” *Id.* at 931. The police have found that if they post ads that “do not specifically advertise sex in exchange for money,” they can conduct sting operations without their ads being removed by Backpage.com. See Brian Rokos, *Law Enforcement Targets Backpage.com ‘Escort’ ads*, (Oct. 24, 2011, 6:28 PM), <http://www.pe.com/local-news/local-news-headlines/20121024-inland-law-enforcement-targets-backpage-com-escort-ads.ece>.

If Backpage.com had an effective screening process, it would be able to filter such ads, at a minimum, for further inquiry. Effective screening processes do not let ads for trafficking slip through the cracks. Clearly, johns who purchase sex can recognize prostitution ads for sex with children. If johns can do so, then Backpage.com should be able to do so too. Backpage.com just chooses not to do so. *Amici* posit that a corporation that makes 31.4 million dollars annually for running thinly-veiled prostitution ads can most certainly hire the proper technical personnel to implement an effective trafficking screening process, and partner with law enforcement to help fight trafficking.

LEGAL ARGUMENT

Amici respectfully request that this Court uphold New Jersey's statute for the reasons discussed in the Attorney General's brief. If however, the Court determines that the CDA preempts New Jersey's statute, *amici* respectfully request that this Court refrain from addressing the constitutional arguments raised by Backpage.com.

Additionally, this Court should dismiss Plaintiff, The Internet Archive, because it has no standing to sue.

I. IF THE COURT FINDS THAT THE CDA PREEMPTS NEW JERSEY'S ANTI-TRAFFICKING STATUTE, THEN THE COURT SHOULD EXERCISE JUDICIAL RESRAINT AND NOT RULE ON BACKPAGE'S CONSTITUTIONAL CLAIMS.

As the United States Supreme Court stated in *Greater New Orleans Broad. Association, Inc. v. United States*, it is "an established part of our constitutional jurisprudence that we do not ordinarily reach to make novel or unnecessarily broad pronouncements on constitutional issues when a case can be fully resolved on a narrower ground." 527 U.S. 173, 184 (1999). Therefore, before considering Plaintiffs' free speech, Due Process and Commerce Clause arguments, this Court should determine whether or not the CDA preempts N.J.S.A. § 2C:13-10. If this Court finds that New Jersey's law is pre-empted by the CDA, a decision that would be dispositive, then this Court should not consider any of the constitutional arguments presented by Plaintiffs. *See Egolf v. Witmer*, 526 F.3d 104, 109 (3d. Cir. 2008) (citing *U.S. v. Otero*, 502 F.3d 331, 334 n.1 (3d Cir. 2007)). Indeed, deciding constitutional questions should be avoided "unless absolutely necessary to a decision of the case." *Burton v. U.S.*, 196 U.S. 283, 295 (1905).

The Third Circuit agrees. It makes clear that courts should "avoid constitutional questions in cases where [they] can reach a decision on other grounds." *Egolf*, 526 F.3d at 109

(citing *Otero*, 502 F.3d at 334 n.1). When a court is faced with both a statutory claim and a constitutional claim, the statutory claim must be decided first, and the constitutional claim “not reached if the statutory claim was dispositive.” *Hagans v. Lavine*, 415 U.S. 528, 543 (1974).

Preemption, though technically a constitutional issue derived from the Supremacy Clause, is treated as “statutory” by courts to avoid determining substantive constitutional questions unnecessarily. *C.E.R. 1988, Inc. v. Aetna Cas. and Sur. Co.*, 386 F.3d 263, 272 n.13 (3d Cir. 2004) (citing *Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981); *Swift & Co. v. Wickham*, 382 U.S. 111, 120 (1965); *N.J. Payphone Ass’n v. Town of West New York*, 299 F.3d 235, 239 n.2 (3d Cir. 2002)). Preemption should be treated as statutory rather than constitutional because “[t]he basic question involved in these cases . . . is never one of interpretation of the Federal Constitution but inevitably one of comparing two statutes.” *Swift*, 382 U.S. at 120.

The United States District Courts of Tennessee (located in the Sixth Circuit) and Washington (located in the Ninth Circuit) both improperly discussed, in unnecessarily detail, the constitutional issues raised by Backpage.com in their challenges to state laws that tried to limit trafficking by online bulletins. *See e.g., Bowman v. Tennessee Valley Authority*, 774 F.2d 1207, 1211 (6th Cir. 1984) (“If we are able to decide this appeal on non-constitutional grounds we will do so and will not reach the First and Fifth Amendment issues.”); *Poe v. Snyder*, 834 F. Supp. 2d 721, 732 (W.D. Mich. 2011) (“It is a fundamental rule of judicial restraint that a court will avoid reaching a constitutional question if it can decide the issue on a statutory ground.”) (citing *Olympic Arms v. Buckles*, 301 F.3d 384, 388 (6th Cir. 2002); *Episcopal Student Foundation v. City of Ann Arbor*, 341 F. Supp. 2d 691, 697 (E.D. Mich. 2004) (“At the outset, the Court observes the well-established principle that a court should defer addressing constitutional

questions until it has resolved any statutory issues in the suit.”); *see also* *U.S. v. Withers*, 638 F.3d 1055, 1068 n.5 (9th Cir. 2010) (“Moreover, this approach is consistent with the ‘established part of our constitutional jurisprudence that we do not ordinarily reach out to make novel or unnecessarily broad pronouncements on constitutional issues when a case can be fully resolved on a narrower ground.’”) (citing *Greater New Orleans Broad. Ass’n*, 527 U.S. at 184); *see also* *Barnes-Wallace v. City of San Diego*, 607 F.3d 1167, 1174 (9th Cir. 2010) (stating that federal courts should not decide a constitutional issue if it can reach the same decision using alternative grounds).

For reasons unknown, the District Courts of Tennessee and Washington ignored this well-established doctrine and wrote extensively on all the constitutional issues raised by Backpage.com. *See Backpage.com, LLC v. Cooper*, —F. Supp. 2d—, 2013 WL 1558785 (M.D. Tenn. Jan. 3, 2013); *see also Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262 (W.D. Wash. 2012). *Amici* respectfully request that this Court refrain from following that model, as there is no legal support for doing so. Expounding on the Constitutional issues raised by Backpage.com only helps Backpage.com. Backpage.com can portray itself as a constitutional victim and First Amendment advocate, rather than a multi-million dollar corporation that knowingly (and handsomely) profits from modern day slavery, including the forced prostitution and sexual exploitation of children.

II. THE INTERNET ARCHIVE SHOULD BE DISMISSED FROM THE SUIT BECAUSE IT LACKS STANDING.

A. The Internet Archive Does Not Profit From Trafficking in Any Way and Is Thus Outside the Scope of Section 12(b)(1) Liability.

The Internet Archive should be dismissed from this suit because it lacks standing to sue. *Wheeler v. Travelers Ins. Co.*, 22 F.3d 534, 537 (3d Cir. 1994) (quoting *Warth v. Seldin*, U.S. 490, 498 (1975) (“standing is a ‘threshold question in every federal case.’”). Standing is a jurisdictional requirement under Article III of the United States Constitution and must be satisfied in order for a party to be heard in federal court. *Id.* Three elements must be satisfied in order to establish standing:

First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, . . . and (b) actual or imminent, not conjectural or hypothetical. . . . Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Goode v. City of Philadelphia, 539 F.3d 311, 316 (3d Cir. 2008) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

To remain a party to this suit, The Internet Archive must be able to prove that it suffered “some actual or threatened injury as a result of the putatively illegal conduct.” *Id.* (citing *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99 (1979)). Likewise, “[t]he injury must be concrete and capable of being redressed by the court should the plaintiff prevail on the merits.” *Id.* (citing *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38-40 (1976)). The Internet Archive lacks standing because it is not within the statute’s ambit, thus there is no injury in fact.

Section 12(b)(1) imposes liability only for the “commercial sexual abuse of a minor.” Section 12(e) defines this as “any advertisement or offer in electronic or print media, including the Internet, which includes either an explicit or implicit offer for a commercial sex act to occur in this State.” The legislative history of Section 12 also makes clear that the intended scope of the section covers anyone that “commit[s] an offense related to advertising commercial sexual abuse of a minor.” NJ Senate and Budget Appropriations Committee, http://www.njleg.state.nj.us/2012/Bills/S2500/2239_S2.HTM (March 4, 2013). Section 12(b)(1) only applies to “advertisements,” which are defined by their commercial nature, The Internet Archive’s practices are not within the scope of the Section’s ambit.

The Internet Archive neither advertises nor offers anything for sale on its website. The Internet Archive is merely an online library that provides “access for researchers, historians, scholars, people with disabilities, and the general public to historical collections that exist in digital format.” Plaintiff The Internet Archive’s Brief in Support of Its Motion for an Order to Show Cause and Issuance of Temporary Restraints to Prevent Enforcement or P.L. 2013, c.51 § 12(b)(1), (“Pl. Internet Archive’s Br.”) at 7. The Internet Archive does not (and legally cannot) profit from the dissemination of any information, as it is a 501(c)(3) non-profit organization. *Id.* As such, The Internet Archive cannot be challenged under New Jersey’s statute.

The Internet Archive argues that because it reproduces copies of content that “may result in criminal liability for the content’s original author,” its speech is essentially being curtailed. Pl. The Internet Archive’s Br. at 23. This assertion is based on an incorrect interpretation of New Jersey’s statute. The plaintiff’s misunderstanding of the law’s scope, however, does not confer it with the ability to appear before this Court.

The Internet Archive's brief provides no evidence whatsoever to support its claim that this law will have *any* effect on its ability to operate or function. The United States Supreme Court has found that when a potential harm is based on the actions of third parties, the causal connection between the government action and the alleged harm may be too weak to support standing. *See Allen v. Wright*, 468 U.S. 737, 759 (1984). Here, the alleged harm to The Internet Archive is dependent on supposed harm that in third parties like Backpage.com may suffer. This is too tenuous a link to create standing.

The Internet Archive's description of the alleged "irreparable harm" is no more than a general statement of opposition to the law. The Internet Archive claims, broadly, that this law will have a chilling effect on free expression. However, "courts 'refrain from adjudicating abstract questions of wide public significance which amount to generalized grievances.'" *Wheeler v. Travelers Ins. Co.*, 22 F.3d 534, 538 (3d Cir. 1994).

B. The Internet Archive Also Lacks "Prudential Standing."

The Internet Archive should also be dismissed from this case because it does not have "prudential standing," as it is not the litigant "best suited to assert" the claims it raises in their suit. *Id.*; *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985). To determine whether a party has prudential standing, (1) a party to the case must assert their own legal interest rather than those of a third party, and (2) courts should 'refrain from adjudicating abstract questions of wide public significance which amount to generalized grievances,' and (3) a party must show that "the asserted interests are arguable within the 'zone of interests' intended to be protected by the statute, rule or constitutional provision on which the claim is based." *Conte Bros Automotive*,

Inc. v. Quaker State-Slick 50, Inc., 165 F.3d 221, 226 (3d Cir. 1998) (citing *Wheeler*, 22 F.3d at 538).

In its brief, The Internet Archive argues that New Jersey's law will harm other providers of interactive computer services and the general public. Pl. Internet Archive's Br, at 22.

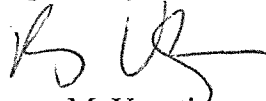
Standing, however, requires that "a litigant 'assert his [or her] own legal interests rather than those of third parties' *Wheeler*, 22 F.3d at 538 (quoting *Phillips Petroleum Co.*, 472 U.S. at 803). Alleging that Section 12(b)(1) hurts others is insufficient to confer standing.

Moreover, the other litigant in this case is better suited to assert the claims being made by The Internet Archive. Backpage.com is undoubtedly liable under Section 12(b)(1) because in 2013 it made over \$30 million in profits from its "adult services" section which is used to traffic minors. The Internet Archive raises the exact same points raised by Backpage.com. Thus, there is no value to it being in the suit. United States judges should "limit access to the federal courts to those litigants best suited to assert a particular claim." *Gladstone Realtors*, 441 U.S. at 100. Here, that litigant is Backpage.com, not The Internet Archive.

CONCLUSION

For the reasons discussed above, if this Court finds that the CDA preempts N.J.S.A. § 2C:13-10, this Court should not address the Constitutional arguments raised by Plaintiffs, Backpage.com. This Court should also dismiss Plaintiff The Internet Archive, for lack of standing.

Respectfully submitted,



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