

January 9, 2017

Statement from James Larkin and Michael Lacey regarding Government Violations of the U.S. First Amendment Right to Free Speech

Nearly two years ago we sold our interests in Backpage.com to the classified advertising operator who had founded the company. Backpage.com was created 13 years ago for our newspaper company, New Times Media, to compete with Craigslist, the nation's largest online classified ad platform.

In 2010, Craigslist bowed to government pressure by censoring and closing its adult advertising section. Within a week state and federal officials demanded that Backpage.com follow suit. We made the decision to fight what we saw as the same attempts at censorship we had faced numerous times in our four decades of print journalism. Whether fighting and winning a defense of satire for the Dallas Observer in the Texas Supreme Court or hiring 2 Live Crew's Luther Campbell (who had his own victory against censorship in the U.S. Supreme Court) to write a Miami New Times column, we exercised our First Amendment rights without fear or favor in our 20 newspapers and online for over 40 years.

We believed we would secure Backpage's free speech rights in the courts, and we did. What we did not foresee is that a vindication of Internet speech and privacy rights in the federal courts would lead to what Judge Richard Posner of the Seventh Circuit U. S. Court of Appeals called illegal "official bullying" by government actors aimed at the "suffocation" of Backpage. This effort is spearheaded by headline hunting politicians who understand that government-regulated banks and credit card companies won't lift a finger to protect the First Amendment rights of websites and Internet users from government intrusion. Judge Posner said that the "analogy is to killing a person by cutting off his oxygen supply rather than by shooting him".

We have been jailed twice in the last decade by government officials who chose to ignore the First Amendment and the rule of law.

The first arrest, in Phoenix in 2007, was as retaliation for refusing to accede to the demands of Sheriff Joe Arpaio that our Phoenix newspaper stop criticizing him. We sued Arpaio under the federal Civil Rights Act and won a multimillion dollar settlement.

The second arrest, initiated by then-California Attorney General (now senator) Kamala Harris in October 2016 in Sacramento, charged us with having conspired to commit pimping by the publication of nine Adult ads created and placed by users over a three-year period in which hundreds of millions of ads were posted to Backpage. In a ruling dismissing the case last month, Judge Michael Bowman of the Sacramento County Superior Court held that federal law immunizes websites from liability for these third-

party posts. There was nothing new or novel about Judge Bowman's ruling; basic website immunity from state prosecution was black-letter law the day the arrests were made. As the federal courts have said time and again, there would be no Internet if websites were liable for user content they neither created nor posted.

Just as we successfully did with Sheriff Arpaio, we intend to sue Kamala Harris and the California Attorney General's Office for her October arrest and prosecution that Harris knew had no basis in law when she brought it. In 2013, Harris and 45 other Attorneys General signed a letter imploring Congress to amend federal law so that they could prosecute Backpage—something the letter correctly stated the AGs had no legal authority to do. Congress wisely declined the invitation to make websites liable for user-generated content.

We are proud of the law we have made in the federal courts protecting online speech and privacy rights today and in the future. We are grateful for the years of support of organizations like the Internet Archive, Center for Democracy & Technology, Electronic Frontier Foundation, Cato Institute, the Reason Foundation, and DKT Liberty Project, who have joined in these important First Amendment cases.

And we support our friend Carl Ferrer in whatever he chooses to do with his business. It is worth mentioning that in 2011 then-FBI Director Robert Mueller awarded a Certificate of Appreciation to Ferrer and Backpage "...for your outstanding cooperation and assistance" in the fight against child sex trafficking.

Today, the censors have prevailed. We get it.

But the shut-down of Backpage's adult classified advertising is an assault on the First Amendment. We maintain hope for a more robust and unbowed Internet in the future.