

First They Came for Backpage

The First Amendment to the US Constitution is pretty clear: “Congress shall make no law ... abridging the freedom of speech, or of the press ...”

The Communications Decency Act is similarly clear: “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”

But even after repeated judicial rebuffs on these grounds the federal government continues to attempt to “get” Backpage.com for allegedly “facilitating” sex work by accepting advertisements — usually, and usually falsely, described by rabid demagogues like US Senator Claire McCaskill (D-MO) as “human trafficking.”

On April 6, several federal agencies stole (the word they used was “seized”) the site’s domain names and raided its co-founder’s home, arresting him pursuant to a 93-count indictment from a grand jury.

As of the raid, the indictment remained “sealed,” legalese for “why should the US government be obliged to tell mere serfs what it is up to or why?” That’s a rotten kettle of fish in and of itself. A “justice system” that operates in secret has no legitimate claim to the title.

News accounts that may be based on leaks (I’ve been unable to verify that the indictment has been un-“sealed”) describe the charges as relating to “money laundering” and “human trafficking.” The “money laundering” nonsense brings an additional disturbing element with it to the extent that it’s described as being about the use of cryptocurrency (Bitcoin), another activity that the feds would like to bring under their control.

I hesitate to describe the secrecy and cryptocurrency angles as distractions. They’re absolutely important. But the most urgent problem from my point of view is that the federal government has openly arrogated to itself the power to outlaw speech and punish publishers for allowing that speech on their platforms, so long as it clicks its collective heels together and says “there’s no crime like human trafficking” three times first.

In 2016, after a court slapped down the attempts of Kamala Harris (D-CA), then attorney general of her state and now a US Senator, to prosecute Backpage for “pimping,” I suggested that merely dismissing the charges was not enough. I am still of that opinion.

The ringleaders of the Backpage crackdown — legislators, prosecutors and law enforcement chiefs — need to be charged with conspiracy against rights under United States Code, Title 18, Chapter 242:

“If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same ... They shall be fined under this title or imprisoned not more than ten years ...”

These bad actors have completely abandoned rule of law, and they’ve done so for the express purpose of violating the First Amendment. If they are not brought to bay and severely punished, Backpage will merely be their first, not their final, victim.