

# FOSTA: THE LAW ALLOWING STATES TO FIGHT ONLINE SEX WORK

BY KATHRYN MCDANIEL

Without the ability to use ads online, they have no choice but to go to the streets if they intend to survive.

In April 2018, President Trump signed into law the politically popular bill, “Allow States and Victims to Fight Online Sex Trafficking Act.” The law, referred to in short as FOSTA, intends to eliminate online sex trafficking but instead forces already marginalized sex workers into even more vulnerable situations and makes it more difficult to locate and prosecute traffickers. Prior to FOSTA, § 230 of the Communications Decency Act of 1996 (CDA) protected internet service providers (ISP) from the liability of their users’ actions, including trafficking and prostitution. FOSTA no longer allows this protection for ISPs; in response, many ISPs like Reddit, Facebook, Tumblr, and Twitter have responded by removing sex workers’ safe means of advertisement and law enforcement’s easy access to traffickers and their victims. By rejecting the input of sex workers, legislators have designed a remarkably ineffective law. This paper illuminates the voices of sex workers, which have been politically ignored but provide powerful insight into the fight against sex trafficking.

Following President Donald Trump's signing of the "Allow States and Victims to Fight Online Sex Trafficking Act" (FOSTA), Congresswoman Ann Wagner (R-MO), a notable proponent of the act, expressed her support in a press release. In her words, likely mirroring the opinions of her peers in the House and Senate, both Republicans and Democrats, "The Allow States and Victims to Fight Online Sex Trafficking Act will bring us closer to ending this horrific crime." Senator Kamala Harris (D-CA) conveyed similar high expectations only a month before when the Senate passed its version of the bill (SESTA), "for those who continue to support sex trafficking online, our message is clear: your time is up." Since the Communications Decency Act of 1996 (CDA) was signed with the addition of Section 230 (§ 230), which was designed to protect websites from the liabilities of user-generated content, there has been controversy over the prohibitions to prosecute website operators for allowing users to engage in sex trafficking of women and children. With an overwhelming majority in the Senate (97-2), SESTA was passed, and in the House, FOSTA was passed under similar terms with a 388-25 vote. FOSTA has been marketed as a law to battle sex trafficking online by finally punishing offenders who had been protected by § 230, so it is clear why FOSTA had such overwhelming political and popular support. However, the way FOSTA has been characterized and the actual objectives of the law have huge disparities. The conflation of sex work with sex trafficking has allowed for equal punishment against both sites advertising sex traffickers and sex workers, two vastly different subjects. A victim of sex trafficking has been forced into selling sex while a sex worker has made a deliberate choice to sell sex-related performances, products or exchanges. The inclusion of sex work calls into question the goals of the representatives who pushed this law and muddled the impact of FOSTA on sex trafficking. FOSTA was drafted with a narrow goal of punishing Backpage, a website comprised of classifieds, many of which advertised from either an involuntary trafficking victim or voluntary sex worker. The political rhetoric surrounding FOSTA indicates the goals

of the House and Senate, but it will be the voices of sex workers, as individuals and organizations, that assess the impact of the law. Sex workers' voices must be heard if Congress hopes to make an effective law to handle sex trafficking. Without their input, FOSTA only inhibits women from engaging in consensual sex work and prevents actual sex trafficking victims from escaping trafficking situations.

## **Background: The CDA and § 230**

The invention of the internet created a debate over censorship in the United States. With the broad capability and application of the internet, legislators were aware of the possibility it could be used in inappropriate or malicious ways. To address this concern, the Communications Decency Act of 1996 (CDA) was drafted, passed, and signed into law in 1997. Congress designed the CDA to provide protections for internet users, but internet service providers and website operators demanded protections from the liability of user behavior. Unlike newspapers and magazines, which have complete control over what is published before final print, internet service providers like AT&T and website operators such as Facebook have little control over the content a user can upload to the internet. Even though the internet and news providers served similar roles in disseminating information to the public, the ISPs and website operators did not have the luxury of filtering everything users posted or uploaded. Congress heard the concerns of ISPs and website operators and made concessions by including § 230 in the final bill.

§ 230 directly demonstrates Congress's struggle to screen inappropriate material, namely pornography, from the internet to protect children while simultaneously allowing the internet to flourish in a capitalist environment. These two goals were both important to the CDA but were perceived as contradictory. At least initially, it was unclear how the government could effectively censor pornography and other content without infringing on the creativity and entrepreneurship already flourishing through the nascent internet. The solution came with § 230; essentially, it

protected ISPs and website operators from the liability of users. Congress intended to protect ISPs and website operators with the expectation they would, in turn, develop screening and blocking programs so users could filter inappropriate images for themselves or for their children. Part (b) of § 230 outlines the policy that it will enforce: the allowance of unfettered development and use of the internet while still encouraging the creation and use of blocking and filtering technology. The law includes immunity for ISPs and website operators so long as they do not take part in generating the illicit content. On the other end, § 230 gives these parties the freedom to take down any offensive content without

fear of retaliation from users through the “Good Samaritan” clause. Daphne Keller, a scholar of internet law and frequent legislative advisor on intersections between the use of the internet and society, pointed out the challenge of proving an ISP participated in the creation of content. By using Backpage as an example, Keller demonstrates that legal opinions can differently interpret the involvement of the ISP or website operator.

It is important to note that legislators did not anticipate the problem with trafficking when drafting and passing the CDA, especially with the inclusion of § 230. The CDA predates both the Trafficking Victims Protection Act of 2000 (TVPA) and the United Nations Palermo Protocol (2003). The TVPA and the Palermo Protocol were the defining trafficking laws that initiated legislative actions toward ending sex trafficking. Congress designed the CDA to address the possibility of children encountering excessively violent or lewd information online, specifically pornography, but sex trafficking was not considered a problem at the time. Although trafficking was not explicitly considered with § 230, there is debate over whether or not it should have been an implied violation of the CDA despite

§ 230. According to the analysis of Mary Graw Leary, a professor of law at the Columbus School of Law, Congress did not intend to give ISPs “absolute immunity” for the content generated by users. Instead, its intention was for ISPs to take

part in monitoring content before it became a problem. In Keller’s classifications of intermediary liability law, the attribution of liability outlined in § 230 is the clearest and provides the most freedom to ISPs and users. The intermediary liability adopted by legislators for FOSTA makes every illegal post a liability for the ISP, not the user. This method of attributing liability is what Keller calls “the worst law: strict liability.” In

short, Congress rejected § 230, which provides conditional freedoms, for FOSTA, which seriously limits the freedoms of ISPs.

Until FOSTA, courts repeatedly recognized broad interpretations of § 230 by always deferring to freedom of speech above the responsibility of the ISP to regulate inappropriate content. The courts consistently upheld § 230 as a broad protector of ISPs case after case. Despite Congress’s intentions to encourage ISPs to regulate content to protect children, the courts have rejected this and found their own interpretation, one that provided almost complete immunity. In the case of *Doe v. America Online, Inc.*, one of the first suits to challenge § 230, the courts ruled in favor of AOL because of the explicit language protecting ISPs in the CDA. Even though the case dealt with the dissemination of child pornography through AOL, an act obviously outside of Congress’s intended protections of § 230, the courts adhered to the exact language of the law. Since *Doe v. AOL* was decided in 2001, courts have decided in favor of ISPs and maintained their immunity, marking § 230 as an ironclad piece of law.

Without the protection of § 230, ISPs are now afraid of the consequences of FOSTA. Many

---

**The conflation of sex work with sex trafficking has allowed for equal punishment against both sites advertising for sex traffickers and sex workers, two vastly different things.**

---

ISPs such as Craigslist have taken down pages to avoid any possibility of violating FOSTA. Craigslist even cites FOSTA as its reason for taking down its “personals” ads, so there is no doubt about the depth of FOSTA’s impact. Even though much of the site is not in violation of FOSTA, Craigslist recognized it could not prevent users from abusing the platform, so it “can’t take the risk.” Most website operators cannot afford the criminal or civil liabilities of users’ illegal posts, so there is no choice but to take down pages that may suggest illegal activity. As much as the ISPs and website operators feel the consequences of FOSTA, sex workers and trafficking victims face harsher ramifications.

## FOSTA

The U.S. Department of Justice (DOJ) issued a press release April 9, 2018, announcing the seizure of Backpage.com, and the indictment of seven individuals with the crimes of conspiracy to facilitate prostitution using a facility in interstate or foreign commerce, conspiracy to commit money laundering, concealment money laundering, international promotional money laundering, and transactional money laundering. Backpage was indictable due to its finances, but it garnered attention because of its actions facilitating commercial sex. Classified advertising sites like Backpage frequently featured ads for “erotic services” or more explicitly, prostitution. These ads became problematic when it became clear many were for children, not just consenting adults. The case of Backpage.com is significant to the fight to pass FOSTA and ultimately negate § 230 of the CDA. Initially, the financial crimes incriminated Backpage.com, but two days later, FOSTA made ISPs suddenly liable for the sex trafficking crimes users had committed, not just the companies’ own financial crimes. In theory, making an effort to criminalize and punish online sex trafficking is a positive legal innovation. Despite good intentions, Congress passed and President Trump signed a poorly designed law. Its supporters, primarily legislators and celebrities, focus too heavily on the goals of

the law rather than the expected outcomes. Its critics see the flaws in future contexts as well as within the context of the Constitution. It is clear in the case of Backpage, the ISPs were abusing § 230 and the users of the site were abusing freedom of speech. These abuses of liberty seem to justify FOSTA and even obligate legislators to hold ISPs accountable for the actions of users. However, the implications of FOSTA only present greater danger for victims of sex trafficking as well as for sex workers.

The objective of FOSTA is to amend § 230 of the Communications Decency Act to directly state the facilitation of or participation in sex trafficking, sexual exploitation of children, and prostitution is no longer protected under § 230. As a result, providers and users of internet services engaging in any of these activities via the internet are subject to federal and state criminal and civil law. Among the problems of this law, one is that it allows for ex post facto prosecution, which is considered by many, including the U.S. Department of Justice, to be unconstitutional. FOSTA also conflates sex work with the sex trafficking of women and children by assigning the same criminal sentencing parameters to sex traffickers and a consensual sex worker.

**Despite good intentions,  
Congress passed and President  
Trump signed a very poorly designed law.**

Assistant Attorney General Stephen Boyd, representing the U.S. Department of Justice, addressed a letter to U.S. Representatives Jerrold Goodlatte, Jerrold Nadler and Ann Wagner before FOSTA’s passing. The DOJ’s judgment of FOSTA concluded there were several problems that needed to be amended before it became law – none of these changes were made. Boyd implored the House of Representatives to reconsider and revise three technical aspects, as well as a constitutional concern, before passing the bill. Of these concerns, Boyd included the broad

language intended to criminalize consensual and commercial sex, which is of little federal concern compared to the sex trafficking and sexual exploitation of children. FOSTA allows for ex post facto prosecution of violations of the law, meaning an ISP that violated FOSTA prior to it being signed into law could be prosecuted. The DOJ has already highlighted this provision as a constitutional violation. The DOJ's critiques were not considered seriously by Congress even though the DOJ is the department that would be in charge of enforcing FOSTA.

Even though sex workers' voices were not amplified by the DOJ or dissenters of FOSTA in Congress, the problems they predicted were echoed. In the past several months since FOSTA was signed by President Trump, sex workers' stories have made evident the impacts of FOSTA's flaws. For the sake of sex workers and victims of trafficking, there is a desperate need to either repeal or amend FOSTA.

## Sex Workers' Voices

The objective of FOSTA is to make illegal the "promotion of prostitution and reckless disregard of trafficking." In the act designed to "fight online sex trafficking," sex work is criminalized before trafficking. The simple order of the words in the law provide clarity as to the intentions of Congress. This interpretation aligns closely with the views of many sex workers who have spoken out against FOSTA and SESTA. With nearly every piece of legislation signed into law, the sex working community loses some of its agency and is criminalized more heavily. The general consensus is that FOSTA has made life more dangerous for sex workers and no less complicated to locate and prosecute traffickers. The conversations within the sex worker community predicted the consequences of FOSTA.

A significant part of the loss that came with the signing of FOSTA into law was the loss of Backpage. As blogger and sex worker Caty Simon writes in her article for Tits and Sass, "anyone regardless of identity with \$5 to rub together, could put up a Backpage ad." Simon

describes Backpage as what was the best option for many who could not afford to place an ad on another site or were purposefully excluded based on their race, gender identity, or sexuality. Under the newspaper model, it cost Simon \$200 a week to pay for an ad in the back pages of a newspaper. Backpage was liberating in that it gave sex workers the opportunity to safely advertise their work at little cost. Backpage allowed sex workers to afford their safety. Without the luxury of indoor sex work and the additional help of online screening, many sex workers have been driven to the streets to support themselves. The lack of an affordable site like Backpage has put sex workers in financial binds. As FOSTA was signed, more and more sites shut down their advertising pages for sex work leaving few options for those who cannot afford to move to more high-end sites. Without the ability to use ads online, they have no choice but to go to the streets if they intend to survive.

The most critical blow to sex workers came with the loss of their safety in the aftermath of FOSTA. Outdoor sex work, work initiated on the streets, is comparatively more dangerous compared to indoor sex work, work that occurs and is arranged off the streets. Online advertisements have a significant impact on making sex work safer and put the sex worker in greater control of her job. Economists Scott Cunningham, Gregory DeAngelo, and John Tripp studied the impact that Craigslist's erotic services page had on the homicide rates of women in certain cities as well as proposed market explanations for the correlation. Their arguments have been indirectly corroborated by the experiences of sex workers themselves in the aftermath of FOSTA. Cunningham and colleagues found a reduction of 17.4% in homicide rates of women between 2006 and 2012, the period when Craigslist had an erotic services page. This is significant considering sex work to be the most dangerous type of work for women with a crude mortality rate of death by homicide of 229 per 100,000 women. They explain the decrease in homicide rates was likely because of the growing transition from the streets to the indoor market that allowed the ability to find better matches for dates, the opportunity to

conduct background checks, and the trace left behind by criminal clients. The ability to conduct background checks is especially critical to a sex worker's ability to ensure her safety and the safety of others in her community. Cunningham and colleagues' central claim is that Craigslist's erotic services page restructured the sex market which ultimately resulted in making commercial sex safer for sex workers. Sex workers' voices verify the assertions made by Cunningham and colleagues.

Simon's article about Backpage is full of her own opinions and anecdotes relaying the impact of FOSTA, but she includes a particularly powerful reference to Facebook conversations between sex workers. The online conversation occurred on the Facebook page of sex worker group "bidibidibombom." The poster, Vincent Chadsworth, captioned a picture with updates on the number of women who had gone missing, been raped, been murdered, or committed suicide in San Francisco alone in the three days after FOSTA was signed. He stated that thirteen sex workers had gone missing, two found dead, and two sexually assaulted at gunpoint. He also refers to a report from St. James Infirmary, a sex workers' services nonprofit located in San Francisco, that says four times as many sex workers were on the streets in the three days after FOSTA was signed. This is only accounting for a small group of sex workers in one city. Even so, it supports the point that sex workers have been making time after time before FOSTA and SESTA were passed. As stated by Jessica Peñaranda of the Sex Workers' Project, "if these bills pass, sex workers will die... that is not hyperbole." Statements like Peñaranda's comprise the repeated message of sex workers. They knew this would make their already dangerous work even more unsafe, yet nobody with any power cared to listen to them. Emily McCombs's article for the Huffington Post consists of short interviews with nine sex workers each selling sex in different forms, from full service

to pornography. No matter the type of service the sex workers provide, their experiences relate. One interviewee said, "It's forcing me to go back the streets, walking up and down trying to find clients." This interview only restated what sex worker's rights organizations and individuals had been saying early on in opposition to FOSTA. Now, the early anxieties are being realized on the streets. Sex workers are forced to resort to the streets to pay their bills. Without the ability to use ads online, they have no choice but to go to the streets if they intend to survive.

As a result of all the sites coming down or being taken down out of fear of FOSTA, sex workers have had to change their avenues of communication. These transitions included a move from Twitter to the sex work friendly Twitter-like platform, "Switter." Jack Chendo discusses the creation of Switter and the goals of re-liberalizing speech for sex workers with his and his team's innovation. Switter demonstrated a move from mainstream communication to the underground. Chendo explains that he purposely used Cloudflare as the site's content delivery network (CDN) because of its supposed commitment to free speech (the last site that it had taken down was a neo-nazi site in 2017). In a statement with Motherboard, Cloudflare admitted it had taken down Switter because of FOSTA. Censorship has been damaging for nearly all uses of online communication whether it involves advertising sex work or not. Many sex workers have commented on the threat to bad date lists. These bad date lists serve as a caution for the community. Sex workers can notify others about dangerous dates through bad date lists. One sex worker told McCombs in her interview that one of the bad date list sites she had previously used to "warn other workers of a man who had raped and scammed [her]" had begun to self-censor. The absence of bad date lists robs sex workers of a critical tool for protection. As sex workers become more heavily criminalized and

---

**Backpage allowed sex workers  
to afford their safety.**

increasingly isolated from each other, it is more difficult for them to protect one another.

In spite of the damage FOSTA has done to sex workers and trafficking victims, sex worker rights activists are responding and mitigating the situation to the best of their abilities. A wide variety of organizations (i.e. Sex Workers Outreach Project (SWOP USA), Global Network of Sex Workers Project (NSWP), St. James Infirmary), ranging from the global scale to the local scale, are spreading information about FOSTA-SESTA and providing services for the sex workers they aim to protect. An NSWP publication implored sex workers to communicate within their communities and share information and resources before losing this ability to FOSTA. The goal of these messages from organizations was to help sex workers stay safe. However, in light of FOSTA's provisions and the serious threats it made to the viability of many ISPs, these warnings have limited impacts. As long as ISPs facilitate sex work to any degree, their sites are liable for criminal prosecution under FOSTA. One good sign for the sex working community is the fact that these organizations still have active pages on safety in sex work. It was a sincere fear that pages on safety would have to come down due to FOSTA.

Laws like FOSTA, that conflate child sex trafficking and consensual, adult sex work, have increased the criminalization of sex workers and has done little to remedy the trafficking problem. Despite the lack of results from past laws, Congress continues to pass ineffective laws to criminalize sex work along with trafficking. Given the impacts on sex workers, it is no wonder they feel as if these laws are personal attacks. Over and over they describe FOSTA as if it were specifically designed to endanger their lives. The joint statement, presented by the Desiree Alliance and signed by over 150 sex worker's rights organizations and individual signees, argues for an end to the legal attacks against sex workers under the pretense of solving the problems of human trafficking. The signing organizations make their stance clear with the single line: "We consider the unbalanced policing of online adult-oriented websites as a direct assault against the sex worker community." The entire joint statement carries the weight of

thousands of sex workers and activists. This same view towards Congress is repeated in the words of sex workers speaking up in interviews. This sentiment is clear in the words of one sex worker in the interview:

*The powers that be don't care about victims. They don't care about sex workers. They want to abolish sex work and eliminate the demand for it while providing no concrete solutions for those who do wish to leave sex work.*

Considering the serious damage that FOSTA and other laws have done to the community, it makes sense for sex workers to feel this way towards their representatives in Congress. As harmful as legislation has been towards sex workers, it is evident that they are not considered to have equal rights or liberties compared to constituents in traditional work. Sex workers deserve fair treatment under the law but will not receive it until they receive real representation in legislatures.

Some of the most critical points sex workers make, at least for legislators, is the impact FOSTA will really have on sex trafficking. As Lola Li from the #LetUsSurvive campaign stated in an interview with SWOPBehindBars:

*There's a reason a lot of service providers that serve trafficking victims... oppose this bill. It's because this bill is going to make their job harder. Sites like Backpage already cooperate with investigators on trafficking investigations. When sites like Backpage shut down, traffickers don't stop trafficking. They just move their victims onto the streets or onto non-US hosted sites, where it is much harder to identify and support these trafficking victims.*

FOSTA does not suddenly make traffickers afraid of trafficking online. All it does is make ISPs afraid to keep advertisements for sex work up, especially considering there is no way they can be sure if it is consensual sex work or if it is trafficking. ISPs do not have the resources to investigate every advertisement. Under § 230, the users were liable, and in the case of sex trafficking,

the traffickers were liable. Now with FOSTA, the ISPs are liable and many are too small to risk the potential legal fees of leaving advertisements up. As a result, sites or parts of sites are taken down by the ISPs, and traffickers just move to a different site. In an interview on the podcast Reply All, Carol Smolenski, the executive director of ECPAT USA (End Child Prostitution and Trafficking) and supporter of FOSTA said she would prefer for trafficking to be driven further underground because “that is where it should be.” However, in that case, the problem of trafficking is then only aggravated. If ISPs are not encouraged to provide information on traffickers but rather encouraged to remove evidence of traffickers’ online presence, it will be more difficult to locate and prosecute traffickers. In Smolenski’s opinion, the overt presence of child prostitution websites like backpage is just normalizing trafficking and desensitizing people. In opposition to FOSTA, Freedom Network USA, a group of organizations fighting trafficking in communities across the US, reinforces the points of Lola Li. Freedom Network emphasizes that public advertisements were trafficking victims best chance of being found by an organization or law enforcement; the loss from FOSTA only drives traffickers deeper into the shadows making both traffickers and victims more difficult to find. Jessica Peñaranda, executive director of the Sex Workers’ Project, argues Congress is oversimplifying trafficking if it thinks that erasing traffickers’ presence is an easy solution to the problem. As sex workers know, trafficking is a highly complicated problem and removal of advertisements is not a viable solution. Even if Smolenski’s concern for the impact of online sex trafficking is a reality, the consequences of driving it further underground are far worse than a desensitized public. The result is impunity for the traffickers who are able to disappear with trafficked children when their advertisements are removed. As one trafficking victim said in response to FOSTA for an article in

**Even if Smolenski’s concern for the impact of online sex trafficking is a reality, the consequences of driving it further underground are far worse than a desensitized public.**

the Guardian, “How is this protecting us? How is this saving us?”

## The Voices of Congress

The most significant gap between the statements of sex workers and those of Congress are their assessments of the laws. Sex workers are in obvious opposition to the laws and feel legislation on trafficking is only increasing the criminalization of their labor. On the other hand, supporters of the legislation feel there is not enough legal action to successfully suppress trafficking. The problem, however, isn’t the number of laws; it is the approach of the laws. Sex workers have pointed out the flaws in over-criminalization of consensual, adult sex work. Their experiences alone indicate the need for a lighter hand of the law. Congress does not listen to sex workers when drafting legislation. Their attention is captured by the heartbreaking stories of trafficking victims’ families. As poignant as their testimonies are, these family members do not have a view of trafficking from the inside. Their highly personal, outside views cloud the judgment of the legislators attempting to address the trafficking problem. This is not to say that victims’ families do not contribute to the discussion. Their stories must be included but should be used to aid the stories from sex workers. Senator Rob Portman (R-OH) credits the victims of sex trafficking and their families for helping lawmakers see FOSTA through to law. It is significant that their voices were included in developing FOSTA. Although this was an important step, without the inclusion of sex workers and sex worker rights activists, trafficking cannot be prevented effectively.

While sex workers have feared FOSTA would cause sites with the slightest fear of indictment to remove pages, Congress ensures that FOSTA is only targeting the ISPs committing truly illegal acts. Congress-member Ann Wagner



(R- MO) claims that FOSTA will only take effect on the sites like Backpage that are aware they are facilitating sex work or sex trafficking. Despite the reassurance of Congress-member Wagner, the response of sites like Craigslist to FOSTA being signed into law give credence to the anxieties of sex workers. In Craigslist's statement upon removing its "personals" section, it regretfully explained that FOSTA had motivated it to remove its "personals" section commonly used by sex workers. The same NPR article commented on Reddit's similar decision to ban certain transactions on its website, one of which being "paid services involving physical sexual contact." Considering the prevalence of Craigslist and Reddit, it is alarming that these two ISPs, with likely a great pool of resources, have made concessions in response to FOSTA. Smaller websites with fewer resources to fight FOSTA would have no choice but to pull pages that could possibly violate the law. The White House record of the statements made as President Trump signed FOSTA into law contains important notes of the impact FOSTA made within the day it was signed. Representative Wagner commented about receiving a text from the Manhattan DA reporting that "we have already shut down 87 percent — 87 percent — of the online sex trafficking ads out there. And we're after the remaining 13 percent." It is unclear who exactly "we" is referring to. It also seems unlikely that anyone or any institution would be able to document the number of sex trafficking ads that exist, especially when many may not even be for trafficking but for legitimate sex work between consenting adults. This makes the actual statement dubitable and the impact cannot be said to be positive.

An additional question created by FOSTA is the fate of any actual victims currently trapped in trafficking. FOSTA seems to offer civil and criminal justice for survivors who have already been freed from trafficking but fails to offer assistance for those trapped at the time. As websites pull down pages and advertisements, victims will be driven further into obscurity; there is little hope for them there. The only hope is for the survivors or the families of victims. Senator Heitkamp (D - ND) commented that FOSTA is

what will finally give victims justice for the hurt inflicted by Backpage. Even if victims get justice from Backpage, they still may not see justice for the crimes their traffickers committed. There is absolutely no doubt that Backpage facilitated trafficking, and that can never be justified. However, basing a law on one specific site, a law that will impact the entirety of the internet is only aggravating the problem of trafficking. Congress cannot continue to make myopic, rushed decisions in regards to trafficking and prostitution.

FOSTA and SESTA, the Senate version of the bill, received overwhelming bipartisan support in both the Senate and the House. Similarly, the House passed FOSTA with a vote of 388-25. Similarly, SESTA passed with a majority of 97-2. Senator John McCain (R-AZ) was the only senator who did not vote as he was too ill. Senator Rand Paul (R-KY) and Senator Ron Wyden (D-OR) were the only two to vote "no" against passing SESTA. Aside from these outliers, the bill received a great deal of support and was passed easily. Paul remained silent on his vote, but it is likely he voted in line with his libertarian sensibilities. Wyden, however, made a formal statement to explain his decision against FOSTA. The press release comprised of a simple two paragraphs, one to address the internet problem and another to reinforce his stance on trafficking. He predicted that FOSTA will only impede innovation, make it an even greater challenge to incriminate sex traffickers, and ultimately become "something that this congress will regret." Additionally, Wyden echoes the voices of sex workers and activists arguing FOSTA/SESTA will only create an environment more dangerous for victims and drive traffickers deeper into the "shadowy corners of society that are harder for law enforcement to reach."

When it comes down to it, the lives and rights of sex workers simply are not valued by Congress. This was made clear in an interview with Senator Rob Portman (R-OH) when asked about the impact on sex workers. His spokesperson's response completely evades the question replying, "Tell that to the mothers and fathers of daughters who've been murdered after being trafficked on Backpage." All Senator Portman's words tell sex

workers is that their lives and their rights do not matter to him.

It is important to note that the stories of exploitation cited by the members of the Congress are not completely unfounded and definitely not untrue. The documentary *I am Jane Doe* tells the story of three girls who were trafficked and prostituted via Backpage and chronicles a years-long, uphill battle for justice. Throughout the legal turmoil, the girls and their families are repeatedly disappointed by outcomes favoring Backpage. *I am Jane Doe* argues that the only avenue for justice would be through Congress; it calls for Congress to write legislation effectively ending § 230. The result, FOSTA, is the legislation these girls and their families asked for, but its intended impacts do not portray reality. The stories of the families are poignant. The sexual exploitation these girls experienced was real. It is horrifying and beyond disturbing what happened to these girls. However, the fact of the matter is that without the visibility online, police would not have been able to find the trafficked girls as quickly as they did. In a *Techdirt* article, police officer Sgt. John Daggy shares that as much as he hated Backpage, it was a tool to find traffickers. Without visibility online, these girls would have simply disappeared without a trace.

Furthermore, the film's argument is very specific to Backpage. All of the evidence it presents pertains to Backpage but likely is not unique to Backpage. It makes a convincing argument for Backpage's culpability in the trafficking of minors through its website. The ISPs allowed for users to type out phone numbers (two-1-5-six...) and make transactions with Bitcoin, supposedly to enable traffickers to evade police. The film also contains interviews with former ad moderators from Backpage. These moderators recalled allowing for code language on ads, which ultimately kept up many of the child prostitution ads. They admitted the existence of an unspoken knowledge of the illegal ads, a knowledge that makes Backpage complicit in sex trafficking of minors. worker Katy Simon writes, "poor fucking Backpage." Her sarcastic sympathy for Backpage is rooted in frustration with the profits they made off exploiting herself

and other sex workers primarily. Backpage caused families serious suffering that led them to call on their legislators to help them get justice. And, as Simon points out, Backpage had both positive and negative connotations for sex workers. As bad as Backpage is, the singular focus on it as a reason to pass FOSTA was simply unreasonable considering the ripple effect the new law has already had.

## Conclusion

FOSTA was signed into law almost exactly eight months ago, a short period of time, but its impacts are already visible and widespread. Backpage was the main target of FOSTA and obviously the first to go with the law. It only took a short amount of time for Craigslist to pull its "personals" page to avoid noncompliance with the law. Even Facebook, one of the only supporters of FOSTA from Silicon Valley, is facing charges for facilitating sex trafficking because the conversations between the victim and trafficker took place on Facebook messenger. Another attempt to avoid noncompliance with FOSTA is seen in Tumblr's recent announcement to ban all "adult content" on its site. As writer Matthew Rodriguez said for *Into More*, "This is part of the war on sex workers and the war on sex." FOSTA has already affected websites that are used by sex workers and non-sex workers alike. Even the ISPs like Facebook that seemed invincible are experiencing the consequences. Throughout it all, the ramifications trickle down to the most vulnerable internet users, those in the sex work community. While a loss of Facebook messenger may mean a loss of communication with a friend or loved one for the average person, it may mean a threat to a sex worker's livelihood. Sex work must be recognized as legitimate work, and legislators must adjust FOSTA to protect sex workers. Until then, this population's rights will be violated over and over again. As a sex worker, Kate D'Adamo comments in the aftermath of FOSTA, "sex workers are not collateral damage." Even if that is how the government views sex workers, they form a community determined to prevail.

# Works Cited

- “Adult Content.” Tumblr. December 3, 2018. Archived December 12, 2018, <https://web.archive.org/web/20181213061720/https://tumblr.zendesk.com/hc/en-us/articles/231885248-Sensitive-content>
- “Blumenthal Praises Signing of Bipartisan Bill to Help Stop Online Trafficking.” April 11, 2018. Archived December 13, 2018, <https://web.archive.org/web/20181213023422/https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-praises-signing-of-bipartisan-bill-to-help-stop-online-sex-trafficking>
- Chen, Jack “Chendo.” “Switzer: My Six Week Roller-Coaster Ride.” Assembly 4, May 15, 2018, <https://web.archive.org/web/20181213021231/https://medium.com/assembly-four/my-six-week-rollercoaster-ride-172eb58ba80e>
- Communications Decency Act. U.S. Code 230 (1996)
- Cunningham, Scott, Gregory DeAngelo, and John Tripp. “Craiglist’s Effect on Violence Against Women.” November 2017, <http://scunning.com/craiglist70.pdf>
- CW, Vincent. Photo of sex worker’s tweet on bidibidibombbomb, a sex worker group Facebook page with comments updating the status of missing and hurt sex workers in San Francisco, Facebook, April 12, 2018. Archived December 13, 2018, <https://web.archive.org/web/20181213020620/https://www.facebook.com/photo>.
- Gira Grant, Melissa. “FOSTA Backers to Sex Workers: Your Work Can Never Be Safe,” *The Appeal*, April 24, 2018. Archived December 13, 2018, <https://web.archive.org/web/20181213114659/https://theappeal.org/fosta-backers-to-sex-workers-your-work-can-never-be-safe-5a67582e04f3/>
- Graw Leary, Mary. “The Indecency and Injustice of § 230 of the Communications Decency Act.” *Harvard Journal of Law and Public Policy* 41, no. 2 (2018): 555 - 621.
- Harmon, Elliot. “How Congress Censored the Internet,” *Electronic Frontier Foundation*, March 21, 2018. Archived December 13, 2018, <https://web.archive.org/web/20181213022453/https://www.eff.org/deeplinks/2018/03/how-congress-censored-internet>
- “Harris Statement on Senate Passage of SESTA.” U.S. Senator Kamala Harris of California. March 21, 2018. <https://web.archive.org/web/20181213015830/https://www.harris.senate.gov/news/press-releases/harris-statement-on-senate-passage-of-sesta>
- I am Jane Doe. Directed by Mary Mazzio. USA: 50 Eggs Films, 2017. Netflix.
- Jackman, Tom. “Trump signs ‘FOSTA’ bill targeting online sex trafficking, enabling states and victims to pursue websites,” *The Washington Post*, April 11, 2018. Archived December 13, 2018, [https://web.archive.org/web/20181213022927/https://www.washingtonpost.com/news/true-crime/wp/2018/04/11/trump-signs-fosta-bill-targeting-online-sex-trafficking-enables-states-and-victims-to-pursue-websites/?utm\\_term=.cf72cc338a7c](https://web.archive.org/web/20181213022927/https://www.washingtonpost.com/news/true-crime/wp/2018/04/11/trump-signs-fosta-bill-targeting-online-sex-trafficking-enables-states-and-victims-to-pursue-websites/?utm_term=.cf72cc338a7c)
- Keller, Daphne. “SESTA and the Teachings of Intermediary Liability.” *Center for Internet and Society*, (2017): 1-17.
- Kennedy, Merrit. “Craiglist Shuts Down Personals Section After Congress Passes Bill On Trafficking,” *National Public Radio*, March 23, 2018. Archived December 13, 2018, <https://web.archive.org/web/20181213023132/https://www.npr.org/sections/thetwo-way/2018/03/23/596460672/craiglist-shuts-down-personals-section-after-congress-passes-bill-on-trafficking>
- Levin, Sam. “Sex workers fear online violence as US cracks down on online ads: ‘Girls will die,’” *The Guardian*, April 10, 2018. Archived December 13, 2018, <https://web.archive.org/web/20181213022716/https://www.theguardian.com/us-news/2018/apr/10/sex-workers-fear-violence-as-us-cracks-down-on-online-ads-girls-will-die>
- Masnick, Mike. “More Police Admitting that FOSTA/SESTA Has Made It More Difficult to Catch Pimps and Traffickers,” *TechDirt*, July 9, 2018. Archived December 13, 2018, <https://web.archive.org/web/20181213050933/https://www.techdirt.com/articles/20180705/01033440176/more-police-admitting-%20that-fosta-sesta-has-made-it-much-more-difficult-to-catch-pimps-traffickers.shtml>
- Masnick, Mike. “Facebook, Whose Support Made FOSTA Law, Now Sued For Facilitating Sex Trafficking Under FOSTA,” *Techdirt*, October 10, 2018. Archived December 12, 2018, <https://web.archive.org/web/20181213052107/https://www.techdirt.com/articles/20181008/17533740793/facebook-whose-support-made-fosta-law-now-sued-facilitating-sex-trafficking-under-fosta.shtml>
- McCombs, Emily. “This Bill is Killing Us: 9 Sex Workers On Their Lives In The Wake Of FOSTA,” *Huffington Post*, May 17, 2018. Archived December 13, 2018, [https://web.archive.org/web/20181213021050/https://www.huffingtonpost.com/entry/sex-workers-sesta-fosta\\_us\\_5ad0d7d0e4b0edca2cb964d9](https://web.archive.org/web/20181213021050/https://www.huffingtonpost.com/entry/sex-workers-sesta-fosta_us_5ad0d7d0e4b0edca2cb964d9)
- North American & Caribbean Regional Correspondent, “New Legislation poses threat to sex workers in the US,” *Global Network of Sex Workers Project (NSWP)*, March 19, 2018. Archived December 2013, <https://web.archive.org/web/20181213020958/http://www.nswp.org/news/new-legislation-poses-threat-sex-workers-the-us>
- Potterat, John J., Devon D. Brewer, Stephen Q. Muth, Richard B. Rothenberg, Donald E. Woodhouse, John B. Muth, Heather K. Stites and Stuart Brody. 2004. “Mortality in a Long-term Open Cohort of Prostitute

- Women.” *American Journal of Epidemiology* 159(8): 778–785.
- “Remarks by President Trump at Signing of H.R. 1865, the “Allow States and Victims to Fight Online Sex Trafficking Act of 2017,” April 11, 2018. Archived December 13, 2018, <https://web.archive.org/web/20181213023306/https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-1865-allow-states-victims-fight-online-sex-trafficking-act-2017/>
- Rodriguez, Matthew. “Tumblr to Ban Adult Content, Potentially Harming Sex Workers, on Day to End Violence Against Sex Workers,” *Into More*, December 3, 2018. Archived December 4, 2018, <https://web.archive.org/web/20181204114905/https://www.intomore.com/impact/tumblr-to-ban-adult-content-potentially-harming-sex-workers-on-day-to-end-violence-against-sex-workers>
- “Roll Call Vote on Passage of H.R. 1865 SESTA/FOSTA/ Last Vote of the Day,” March 21, 2018, <https://www.democrats.senate.gov/2018/03/21/roll-call-vote-on-passage-of-hr-1865-last-vote-of-the-day>
- Senator Ron Wyden, “Wyden Statement on FOSTA-SESTA Passing House,” February 27, 2018. Archived December 13, 2018, <https://web.archive.org/web/20181213114356/https://www.wyden.senate.gov/news/press-releases/wyden-statement-on-fosta-sesta-passing-house>
- Sex Workers Outreach Project USA (SWOP) Behind Bars, “Understanding SESTA,” March 23, 2018. Archived December 13, 2018, <https://web.archive.org/web/20181213042317/http://swopbehindbars.org/2018/03/23/understanding-sesta/>
- Simon, Caty. “On Backpage,” *Tits and Sass*, April 25, 2018, Archived December 13, 2018, <https://web.archive.org/web/20181213020316/http://titsandsass.com/on-the-death-of-Backpage/>
- Simon, Caty. “Sex Workers are Not Collateral Damage: Kate D’Adamo on FOSTA and SESTA,” *Tits and Sass*, March 6, 2018. Archived December 3, 2018, <https://web.archive.org/web/20181203041342/http://titsandsass.com/sex-workers-are-not-collateral-damage-kate-dadamo-on-fosta-and-sesta/>
- Smolenski, Carol. “#119 No More Safe Harbor.” interview with PJ Vogt. *Reply All*. Gimlet Media. Podcast audio. April 20, 2018, Archived December 13, 2018, <https://web.archive.org/web/20181213043705/https://www.gimletmedia.com/reply-all/119-no-more-safe-harbor>
- The Desiree Alliance, “Sex Workers Rights Joint Statement,” [https://docs.google.com/document/d/1nolvaK\\_PQEfrcnNlmj0J0s37RMtvHRGLQlrjKqw\\_o3xk/edits](https://docs.google.com/document/d/1nolvaK_PQEfrcnNlmj0J0s37RMtvHRGLQlrjKqw_o3xk/edits)
- U.S. Congress, House, Allow States and Victims to Fight Online Sex Trafficking Act of 2017, HR 1865, 115th U.S. Cong., Public Law 115-164 (2018). 1253-1256.
- U.S. Department of Justice, “Justice Department Leads Effort to Seize Backpage.com, the Internet’s Leading Forum for Prostitution Ads, and Obtains 93-Count Federal Indictment,” Office of Public Affairs, Press Release no.18-24, (2018).
- U.S. Department of Justice, Letter to Honorable Robert W. Goodlatte presenting the views of the DOJ on the “Allow States and Victims to Fight Online Sex Trafficking Act,” by Stephen E. Boyd, Assistant Attorney General, (February 27, 2018).
- “Wagner Statement on President Signing FOSTA into Law.” Congresswoman Ann Wagner. May 02, 2018. <https://web.archive.org/web/20181213015509/https://wagner.house.gov/media-center/press-releases/wagner-statement-on-president-signing-fosta-into-law-0>.