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Mayor's Task Force on Anti-Human Trafficking Position Paper On FOSTA

Adopted on October 24, 2018

The Mayor's Task Force on Anti-Human Trafficking opposes the recently passed federal legislation Allow States and Victims to Fight Online Sex Trafficking Act (H.R. 1865) ("FOSTA"). FOSTA creates harm for those engaging in sex trades, whether by choice, circumstance, or coercion. The purpose of this position paper is to acknowledge the negative impacts of FOSTA, and to take a stand that reflects our focus on harm reduction strategies and is consistent with the Mission Statement of our Task Force, which includes:

The Task Force works through a collaboration of government, business, and community-based organizations, and includes those affected by trafficking and policies developed to address trafficking.

The Task Force makes policy recommendations to improve the lived experiences of persons who are trafficked.

The language in FOSTA states that "websites can be prosecuted if they knowingly engage in the promotion or facilitation of prostitution or facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims." This language falsely conflates all prostitution and other forms of sex work with trafficking. This conflation will increase the risks of harm and exploitation associated with sex work and will hinder the efforts of law enforcement and private watchdogs to identify trafficking victims and prosecute traffickers. Shutting down websites that people use to advertise sexual services will hurt people who sell sex, including victims of trafficking.

One of the most noticeable and serious harms is the disappearance of online forums, including, but not limited to, classified-ad-style websites, that people in the sex industry use to stay safe.¹ By listing their services online, they were able to screen clients, protect their identities, and arrange safe meeting places. With the disappearance of these sites because of FOSTA, people selling sex, including those who are being trafficked, have been pushed in to street-based sex work, which is far more dangerous. People engaged in street-based sex work are far more likely to experience violence or exploitation. This is equally true for those who voluntarily enter the sex industry as well as for those whose involvement is because of force, fraud, or coercion. Street-based sex work also increases marginalization and isolation, which in turn increases violence, and diminishes someone's ability to reach out for help when needed.

The 2017 study, "Craigslist's Effect on Violence Against Women," illustrates the importance of online advertising to keeping individuals selling sex off the streets and safer. The authors of the study looked at the effect of Craigslist's "erotic services" section on the safety of women. They found a 17.4% reduction in the female homicide rate following the introduction of "erotic services." The authors suggest this

¹ This position paper is not meant to conflict with any current or future provisions of Article 29 of the San Francisco Health Code, which regulate the types of advertisements used by Massage Businesses.

reduction in female violence “was the result of street prostitutes moving indoors and matching more efficiently with safer clients.”²

The loss of online advertising platforms also drives people selling sex to exploitative third-party controllers, who take advantage of their increased vulnerability. Involvement with exploitative third parties also greatly exacerbates the risks of violence and exploitation. The reason for this is that it is much harder to stay safe on your own when working outside. The move to street-based sex work will compel people to need a third party to help connect them to clients and provide some types of safety while they are involved in sex trades.

Law enforcement efforts will also be negatively impacted by the elimination of online advertisements. For many years, law enforcement officials have accessed ads to help them fight human trafficking. Eliminating these online venues will make it more difficult to both locate potential victims of trafficking and to build cases against traffickers. From a law enforcement perspective, online profiles make it far easier to identify trafficking victims than when they are working on the street. For example, Eric Quan, a sergeant in the human-trafficking unit with the San Jose Police Department, noted that the closure of Backpage resulted in a conspicuous rise in street prostitution in San Jose. According to Sergeant Quan, “When Backpage was running adult ads, we used to get tips, but that has dropped off. It makes it a lot more complicated for us to figure out what’s going on.”³

Having online advertising venues makes it easier to screen ads for potential trafficking. For example, a lot of law enforcement agencies scrub online ads looking for indicators of trafficking, such as pictures of people who look underage. Responsible website administration can also make trafficking more visible, which can lead to increased identification. Internet sites also provide a digital footprint that law enforcement can use to investigate trafficking into the sex trade, and to locate trafficking victims. A 2016 State Department report found that being able to access sites like Backpage, the number of identified victims of sex trafficking increased over a seven-year period from fewer than 31,000 to nearly 78,000.⁴ Online profiles similarly assist prosecutors because they often allow them to link phone numbers from people being charged with trafficking to other online ads (thus identifying more potential victims).

In addition to advertising, those in and adjacent to the sex industry used their own and third-party websites to post bad date lists – typically user-generated lists of clients with whom sex workers are warned not to engage – and to distribute occupational health and safety information, to link to health service providers and other community resources. These sites are now under threat because they could be seen as “promoting prostitution.” In San Francisco, the Department on the Status of Women helps to fund a bad date list run by St. James Infirmary.

Shutting down websites will not eradicate trafficking in commercial sex or sex work. Instead it will make things more dangerous for those who are involved in sex trades. Shutting down websites affects the most marginalized people in the sex industry, including those being trafficked. The best way to

² <http://gregoryjdeangelo.com/workingpapers/Craigslist5.0.pdf>

³ <https://www.nytimes.com/2017/03/11/us/backpage-ads-sex-trafficking.html>

⁴ U.S. Department of State, Trafficking in Persons Report. (2016).
<https://www.state.gov/j/tip/rls/tiprpt/2016/index.htm>

protect people involved in sex trades from both physical harm and exploitation is for peers to develop, run, or maintain screening mechanisms to assess whether someone is being forced to sell sex, or as a minor are trading sex to survive.⁵ Unfortunately, FOSTA makes it impossible to operate such forums.

⁵ Jana, S., B. Dey, S. Reza-Paul, and R. Steen. 2013. Combating human trafficking in the sex trade: Can sex workers do it better? *Journal of Public Health (Oxford)* 36 (4): 622–628.

Vote Count

In accordance with the Task's Force voting rules, abstentions were not counted. It is important to note that of the 16 voting members present, there were 10 abstentions, indicating that a significant number of Task Force members did not feel ready, able, or comfortable taking a position on the paper.

Yes:

Asian Pacific Islander Legal Outreach
San Francisco Department of Public Health
San Francisco Department on the Status of Women
St. James Infirmary

No:

Freedom House
Love Never Fails

Abstain:

Asian Law Caucus
Freedom FWD
Huckleberry Youth Programs
Larkin Youth Services
NorCal Coalition of Sisters Against Human Trafficking
Safe and Sound
San Francisco District Attorney Victim Services
San Francisco Unified School District
SHADE Movement
Young Women's Freedom Center

Not Present:

Bay Area Legal Aid
Legal Aid at Work
Legal Services for Children
National Council of Jewish Women
San Francisco Human Services Agency – Family and Children's Services
UNA USA/SF